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December 6, 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. 040301-TP -
SUPRA'S MOTION FOR PARTIAL SUMMARY FINAL ORDER ON ISSUES 3 AND 4

Dear Mrs. Bayo:

Enclosed are the originals and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Motion For Partial Summary Final Order On Issues 3 And 4 to be filed in the above captioned docket

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

Sincerely,

Brian Chaiken

Brian Chaiken
Executive Vice President, Legal Affairs

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 6th day of December 2004 to the following:

Jason Rojas/Jeremy Susac
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Nancy White
c/o Ms. Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

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

Brian Chaiken

By: Brian Chaiken

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra Telecommunications and Information Systems, Inc.'s for arbitration with BellSouth Telecommunications, Inc.	))))	Docket No. 040301-TP Filed: December 6, 2004

SUPRA'S MOTION FOR PARTIAL SUMMARY FINAL ORDER ON ISSUES 3 AND 4

Supra Telecommunications and Information Systems, Inc. ("Supra") pursuant to Rule 28-106.204(4), Florida Administrative Code, moves for partial summary final order on Issues 3 and 4 in this docket. Specifically, Supra requests that the Florida Public Service Commission ("Commission") find, pursuant to undisputed facts, including admissions made by BellSouth Telecommunications, Inc. ("BellSouth") in this proceeding, that the parties' current Florida interconnection agreement ("Current Agreement" or "ICA") provides that BellSouth must bear its own costs for effectuating UNE-P to UNE-L conversions, whether the loops being converted are served by copper, UDLC or IDLC. As established below, there is no genuine issue of material fact as to these issues and Supra is entitled to a partial summary final order as a matter of law.

BACKGROUND

On April 5, 2004 Supra filed a petition requesting that this Commission find that, under the plain, unambiguous language contained in the Current Agreement, BellSouth is not entitled to bill Supra for effectuating a UNE-P to UNE-L conversion.

STATEMENT OF UNDISPUTED FACTS

The following facts are undisputed:

1. General Terms & Conditions ("GT&C") §3.1 of the ICA establishes an obligation on BellSouth to cooperate in **terminating services and elements and transitioning customers to Supra services.**

2. Between the parties, UNE-P to UNE-L conversions require BellSouth to cooperate in terminating services and elements and transitioning customers to Supra's services. See Affidavit of David Nilson, attached hereto as **Exhibit A.**

3. GT&C §22.1 of the ICA states that if [BellSouth] has an obligation to do something, it is responsible for its own costs in doing it, "except as otherwise specifically stated."

4. The "hot-cut" process is described in the Network Elements Attachment in §3.8 of the ICA.

5. Under §3.8.1 of the ICA, the hot cut process only applies "when Supra Telecom orders and BellSouth provisions the conversion of **active BellSouth retail end users** to a service configuration by which Supra Telecom will serve such end users by unbundled loops and number portability (hereinafter referred to as 'hot-cuts')." (Emphasis added).

6. The Current Agreement does not contain or even reference a rate for UNE-P to UNE-L conversions.[1]

7. In its pleading before the United States Bankruptcy Court, Southern District of Florida, BellSouth stated:

> BellSouth agrees that the terms of the Agreement do not explicitly reference a conversion process from the Port/Loop combination Service (i.e. UNE-P) Supra currently uses to the separate 2-Wire Analog Voice Grade Loop Service (i.e. UNE-L) Supra now seeks to use. BellSouth

[1] See **Exhibit B** -- Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions at p. 5, para. 12.

> **believes** that the process and rates detailed in the Present Agreement for conversion of BellSouth's retail service to UNE-L should be applied to UNE-P to UNE-L conversions because UNE-P is, for the several functions involved in conversion to UNE-L, the functional equivalent of BellSouth's retail service. BellSouth has been, and continues to be, ready to convert service consistent with the contractual process if it has adequate assurance that the applicable rates will be paid.[2]

(Emphasis added.)

8. The unbundled rates in the Current Agreement are based upon Commission orders in Docket No. 990649-TP.[3]

9. The Commission orders in Docket No. 990649-TP do not contain or reference a rate for UNE-P to UNE-L conversions.[4]

10. On July 15, 2003, the United States Bankruptcy Court, Southern District of Florida, held[5]:

> Supra should pay the UNE-L Conversion changes on a weekly basis at the rate proposed by BellSouth in its Motion (the "BellSouth Rate") unless BellSouth voluntarily agrees to a lower rate. This rate will be subject to later adjustment if an appropriate regulatory body fixes a lower rate (the "Regulated Rate"). Although **the BellSouth/Supra contract does not specifically set a rate for UNE-P to UNE-L conversions**, BellSouth believes the $59.31 Rate proposed in its motion applies...

(Emphasis added.)

11. BellSouth's director in charge of all of BellSouth's cost studies, Daonne Caldwell, testified under oath that she neither prepared nor was ever requested to prepare a cost study for a retail to UNE-L conversion, much less a UNE-P to UNE-L conversion.[6]

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2 Id.

3 PSC-01-1181-FOF-TP, PSC-01-2051-FOF-TP, PSC-02-1311-FOF-TP, *et al.*

4 Id.

5 See **Exhibit C** -- Order Granting Emergency Motion of BellSouth Telecommunications, Inc., for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions (the "Order"), at p. 2.

6 **See deposition transcript of BellSouth's corporate witness with most knowledge regarding** BellSouth's cost studies, Daonne Caldwell, taken on August 18, 2004 ("Caldwell Deposition"), at p. 15.

12. Ms. Caldwell further testified that the Commission never once even referenced a retail to UNE-L conversion or hot cut, much less a working UNE-P to UNE-L conversion or hot cut, in any of its orders issued in the cost study docket, or any other docket.[7]

13. The cost studies upon which BellSouth relies in support of its argument includes the construction of new SL1 and SL2 loops to locations that do **not** already have a loop, and does not distinguish such from a retail to UNE-L conversion, or a UNE-P to UNE-L conversion, which an active loop already exists.[8]

14. BellSouth issues a "D" (disconnect) and "N" (new connect) order in the UNE- P to UNE-L conversion process as testified to by BellSouth's Kenneth Ainsworth:[9]

> Well, I've got what's in the testimony, and I'll just refer to that just to keep on track, but as -- first of all the -- you get a request – an LSR request is supported by the CLEC, and the LSR request would come in in a mechanized fashion to make that request to migrate that service from a UNE-P to a UNE-L service, **and it would pass through our systems and generate some -- an N and a D order to transition that particular product** and also that order would comply with an LNP portion that will would also build an LNP -- it would also build it as an LNP for porting purposes into impact for a concurrence message so that we could do the porting on that number.

(Emphasis added.)

15. The Commission has already found, in its order denying Supra's Motion for Partial Summary Final Order on issues 1 and 2, that "the agreement does not explicitly list a rate for a UNE-P to UNE-L 'hot cut,'".[10]

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7 Id., at p. 22.
8 Id., at p. 19.
9 See deposition transcript of Kenneth Ainsworth, taken on September 22, 2004 at p. 25 lines 3 -16.
10 See **Exhibit D** -- Order No. PSC-04-1180-PCO-TP dated November 30, 2004 at p. 9.

LAW AND ANALYSIS

Rule 28-106.204(4), Florida Administrative Code, "[a]ny party may move for summary final order whenever there is no genuine issue of material fact." The purpose of summary judgment or of a summary final order is to avoid the expense and delay of trial when no dispute exists as to the material facts.[11] When a party establishes that there is no material fact on any issue that is disputed, then the burden shifts to the opponent to demonstrate the falsity of the showing.[12] "If the opponent does not do so, summary judgment is proper and should be affirmed."[13] There are two requirements for a summary final order: (1) there is no genuine issue of material fact; and (2) a party is entitled to judgment as a matter of law.[14] Regarding Issues 3 and 4 in this docket, Supra satisfies both requirements.

In deciding Issues 3 and 4, the Commission is confined to the express language of the Current Agreement by the long-standing principles of the parole evidence rule. As such, in order to grant the Motion, the Commission need look no further than the express language of the Current Agreement; specifically, GT&C §§3.1 and 22.1.

GT&C §3.1 of the ICA establishes an obligation on BellSouth to cooperate in **terminating services and elements and transitioning customers to Supra services,** while GT&C §22.1 states that if [BellSouth] has an obligation to do something, it is responsible for its own costs in doing it, "**except as otherwise specifically stated.**"

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11 See Order No. PSC-01-1427-FOF-TP at 13.
12 Id.
13 Id.
14 Id. at 14-15.

Florida law requires that the Commission read and apply this contractual language according to its plain and ordinary sense. In furtherance of such, the Florida Supreme Court has held:

> Where there is no room for doubt . . . contracts are to be construed according to the sense and meaning of the terms which the parties have used, and, if clear and unambiguous, these terms are to be taken and understood in their plain and ordinary sense..

Goldsby v. Gulf Life Ins. Co., 117 Fla. 889 (Fla. 1935).

Further, Florida courts have held "to find the plain and ordinary meaning of words, one looks to the dictionary." *Vencor Hospitals South, Inc. v. Blue Cross and Blue Shield of Rhode Island*, 86 F.Supp.2d 1155 (S.D. Fla. 2000). While a reasonable person could conclude that definitions of "terminate", "transition", and "specifically" are not warranted, to avoid any doubt, Supra will provide guidance as to the meaning of these plain and ordinary words. The American Heritage dictionary defines "terminate", "transition", and "specifically" as "[t]o bring or come to an end, conclude", "[p]assage from one form, state, style, or place to another", and "explicitly set forth; definite", respectively.

Applying the applicable dictionary definitions to GT&C §3.1's language "**terminating services and elements and transitioning customers to Supra services**" results in the language meaning "ending the services and elements and passing customers from one place to another" (e.g. BellSouth's switch to Supra's switch). While a similar application to GT&C §22.1's language "**except as otherwise specifically stated**" results in the language meaning "except as otherwise explicitly set forth."

In accordance with Florida law, the Commission must apply GT&C §22.1 pursuant to its plain and ordinary sense. As such, unless a rate for a UNE-P to UNE-L

conversion is "explicitly set forth" within the ICA, BellSouth must perform this contractual obligation at its own costs.

ISSUES 3 AND 4 – The Commission need only interpret the Current Agreement.

The two issues in question are as follows:

3. Should a new nonrecurring rate be created that applies for a hot-cut from UNE-P to UNE-L, where the lines being converted are served by copper or UDLC, for (a) SL1 loops and (b) SL2 loops? If so, what should such nonrecurring rates be?

4. Should a new nonrecurring rate be created that applies for a hot-cut from UNE-P to UNE-L, where the lines being converted are not served by copper or UDLC, for (a) SL1 loops and (b) SL2 loops? If so, what should such nonrecurring rates be?

A. The Commission does not need to establish nonrecurring rates for UNE-P to UNE-L conversions.

The answer to the former part of each issue is no, as the Current Agreement: (i) imposes an obligation upon BellSouth to perform UNE-P to UNE-L conversions; (ii) obligates BellSouth to perform its contractual obligations (e.g., UNE-P to UNE-L conversions) at its own cost unless a specific rate is identified in the ICA[15]; and (iii) does not contain a specific rate for BellSouth's performance of UNE-P to UNE-L conversions.[16] Pursuant to the plain and unambiguous language of the ICA, the absence of a specific rate for UNE-P to UNE-L conversions requires BellSouth to perform such conversions at its own cost. Therefore, the Commission does not need to make a

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[15] See §22.1, GT&C, ICA.

[16] In support of the absence of a specific rate in the ICA for UNE-P to UNE-L conversions, see: (i) the Commission Order in this docket dated November 30, 2004 at p. 9, attached hereto as **Exhibit D** and (ii) the United States Bankruptcy Court's Order Granting Emergency Motion of BellSouth Telecommunications, Inc., for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions (the "Order"), at p. 2, attached hereto as **Exhibit CB**.

determination under Issues 3 and 4 as to applicable nonrecurring rates for UNE-P to UNE-L conversions.

B. BellSouth is transitioning customers from BellSouth's services (BellSouth's switch under UNE-P) to Supra's services (Supra's switch under UNE-L).

The ICA does not contain rates for such a UNE-P to UNE-L conversion, or even describe the process for such. The "hot cut" process described in Section 3.8 and 3.8.1 of Attachment 2 of the ICA is *only* utilized "when Supra Telecom orders and BellSouth provisions the conversion of *active BellSouth retail end users* to a service configuration by which Supra Telecom will serve such end users by unbundled Loops and number portability (hereinafter referred to as 'Hot Cuts')." Clearly, an active BellSouth retail end user is different than a Supra UNE-P end user. To hold that BellSouth can then charge Supra for a UNE-P to UNE-L hot cut would make it impossible to reconcile the parties' agreed upon language and requirement of a "specific statement" that a charge applies, noted above, with the claim that Section 3.8 applies where "active BellSouth retail end users" are involved.

Furthermore, BellSouth's witness with the most knowledge regarding BellSouth's UNE-P to UNE-L conversions process, Kenneth Ainsworth, admitted under oath that BellSouth is, in fact, terminating BellSouth services and transitioning them to Supra, as set forth in Section 3.1 of the GT&C.[17]

Based upon the plain and unambiguous language of the ICA as well as BellSouth witness Mr. Ainsworth's sworn testimony, the Commission must reject any argument by BellSouth to apply a Retail to UNE-L rate.

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[17] See deposition transcript of Kenneth Ainsworth, taken on September 22, 2004, at p. 25, cited hereinabove.

Furthermore, Commission Staff has recognized, and the Commission ruled, that the Current Agreement "**does not explicitly list a rate for a UNE-P to UNE-L "hot cut."**[18] As such, the Current Agreement does not "specifically state" that Supra has an obligation to pay BellSouth for such.

Therefore, under Section 3.1 of the GT&C, BellSouth has an obligation; under Section 22.1 of the GT&C that obligation is to be performed at BellSouth's expense unless "specifically stated" otherwise elsewhere in the Current Agreement. Nothing in either Section 3.1 of the GT&C or the UNE attachment "specifically states" a price for the cooperation and coordination required by Section 3.1 of the GT&C, and BellSouth has affirmatively stated in federal court that the Current Agreement does not specifically address it. It necessarily follows that the obligation in Section 3.1 of the GT&C is to be fulfilled at BellSouth's expense.

According to BellSouth, the "costs and expenses" it will (supposedly) incur in meeting its obligations under GT & C § 3.1 to assist Supra in terminating the use of UNE switching are not really "costs and expenses" at all; they are really "rates" that are governed by § 22.2 of the GT&C. But Supra is not objecting to the rates for UNE loops or UNE switching. Supra is simply noting that BellSouth agreed to do something under the contract for which no rate is "specifically" provided.[19] BellSouth has already admitted to such. The fact that BellSouth may incur some expense in performing its

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[18] See Exhibit D, at pg. 9.

[19] Of course, BellSouth's claim that granting Supra's interpretation would mean that no rates under the contract would ever apply, *see* Supra Exhibit DAN - 20 7/14/2003 BellSouth Letter to FCC at pg. 18, is nonsense. Precisely as § 22.1 says, the rates in the contract apply whenever it is "specifically stated" that they do. For precisely this reason, the "hot cut" rate does ***not*** apply to paring down an "active ***Supra*** retail end user's" UNE-P arrangement to a UNE-L arrangement.

contractual obligations does not and can not change the plain and unambiguous language contained in the Current Agreement.

For better of worse, the Current Agreement controls the parties' relationship, and this Commission must follow the plain, unambiguous language of such. As the language at issue is neither unclear nor ambiguous, this Commission need not look to the intent of the parties in determining what the language means. Even if the Commission was so inclined, as BellSouth was the drafter of such language, any ambiguities should be read in favor of Supra.

As BellSouth has already publicly admitted in a signed pleading that the Current Agreement is silent as to hot cut rates[20], and as the United States Bankruptcy Court, Southern District of Florida, already issued an Order[21] finding that the Current Agreement does not set such a rate, this Commission should find, on these bases alone, that Supra is entitled to summary final order as a matter of law.

In addition to BellSouth's admissions and the Bankruptcy Court's findings, BellSouth's discovery responses and deposition testimony in **this** docket show that BellSouth never even submitted cost studies for the work activities that are purportedly involved in performing UNE-P to UNE-L conversions as described in issues 3 and 4 and that the Commission has **not** ever considered nor issued an order regarding such.

BellSouth tries to incorporate the UNE-P to UNE-L conversion process into its general, all purpose UNE loop SL1 and SL2 cost study. It is undisputed that this cost study allocates costs for the **construction of new** UNE loop service; however, BellSouth tries to redefine and misinterpret this cost study to somehow be inclusive of not only the

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[20] See Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions, p. 5, para. 12.

[21] See **Exhibit C.**

costs for the construction of new service, but also for the costs of effectuating UNE-P to UNE-L conversions. BellSouth attempts this slight of hand by first claiming that the processes are identical and second that the use of averages somehow justifies the use of its general, all purpose cost study to account for many distinct and different processes. Neither of these two factual premises is true.

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

> Q I really don't understand why it is you're changing the F2 when we already have a working UNE-P line, even if it's served by IDLC. **Can you explain to me why that needs to take place?**
>
> A **That's just the way the assignments have been -- or the assignments did come out at that time. All of the pairs were being shown as new instead of reuse.**
>
> Q **And why is that?**
>
> A **I don't have that answer.**
>
> Q Is that how it's done today?
>
> A I don't know how it's done today.
>
> Q If you were to design this process today, do you think that would be necessary?
>
> A I'd have to go back and see what all the processes really are to really say that I could change the process from yesterday to today.

> Q Okay. Well, based on your understanding of a UNE-P to UNE-L conversion which IDLC is involved, do you believe it's necessary to change the F2?
>
> A I'm not sure how the records and the way that they can assign a working pair now, if they can reuse that or whatever, so I'm not familiar with how they actually assign them. I'm just familiar with what we need to do at the end when I get the service order and the work that I'm going to perform on that dispatch.
>
> Q Is the only factor that you're aware of that would change your -- or affect your response to my last question be the way that the lines are assigned?
>
> A **It's what -- it's what the assignments are on that dispatch.**
>
> Q So the answer would be yes?
>
> A The answer would be yes.

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

As testified to by Mr. McCracken, **all of BellSouth's assignments**, when a dispatch was required, were shown as new installs, as opposed to reusing the facilities that are already in-place in a UNE-P to UNE-L conversion scenario. As such, it cannot be disputed that BellSouth's purported SL1/SL2 cost study contains processes which are over and above what is necessary to effectuate conversions of working UNE-P lines.

As the ICA is clear and unambiguous, and as there are no material facts in dispute, this Commission should enter judgment, as a matter of law, in favor of Supra on Issues 3 and 4[22], and thereby find that BellSouth is not entitled to charge Supra anything for effectuating UNE-P to UNE-L conversions.

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[22] Although the Commission denied Supra's Motion for Partial Summary Final Order on Issues 1 and 2, Issues 3 and 4 are framed differently. Significantly, Issues 1 and 2 give the Commission discretion to determine whether the ICA contains rates that *could* apply to UNE-P to UNE-L conversions. Issues 3 and 4 are different in that the ICA requires that the ICA "specifically state" a rate in order for it to apply.

CONCLUSION

For all of these reasons, there is no genuine issue of material fact and Supra is entitled to judgment as a matter of law on Issues 3 and 4 in that the Current Agreement is plain and unambiguous and requires BellSouth to effectuate a UNE-P to UNE-L conversion at its own cost. Supra requests that the Commission grant its Motion for Partial Summary Final Order.

EXHIBIT - A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra Telecommunications and Information Systems, Inc.'s for arbitration with BellSouth Telecommunications, Inc.	))))	Docket No. 040301-TP Filed: December 6, 2004

AFFIDAVIT OF DAVID A. NILSON

I, David A. Nilson, do solemnly swear that I am over the age of eighteen, competent to testify, and have direct and personal knowledge of the facts set forth herein below.

1. I am the Vice-President of Technology for Supra Telecommunications and Information Systems, Inc. ("**Supra**").

2. In order to effectuate a UNE-P to UNE-L conversion, BellSouth must cooperate with Supra in terminating services and elements and transitioning customers to Supra's services.

Further Affiant sayeth not.

DAVID A. NILSON

STATE OF FLORIDA)
) ss
COUNTY OF DADE)

The execution of the foregoing instrument was acknowledged before me this 6TH day of December 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:

NOTARY PUBLIC
State of Florida at Large
Print Name:

ESTHER SUNDAY
Notary Public - State of Florida
My Commission Expires Jun 9, 2008
Commission # DD327338
Bonded By National Notary Assn.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.,

Debtor.

Chapter 11
Case No. 02-41250-BKC-RAM

EMERGENCY MOTION OF BELLSOUTH TELECOMMUNICATIONS, INC. FOR INTERIM RELIEF REGARDING OBLIGATION TO PERFORM UNE-P TO UNE-L CONVERSIONS

Compliance with Local Rule 9075-1
Basis for Exigency

At the June 18, 2003 hearing, the Court invited the filing of the instant Motion on an emergency basis to address BellSouth's obligations to incur substantial up-front non-recurring charges that were not dealt with in the Court's previous adequate assurance orders. In light of Supra's proffer at the June 18, 2003 hearing that it intends to place approximately 28,000 UNE-L orders in the near future, and the monetary scope of this issue (approximately $1.66 million), BellSouth may suffer direct, immediate and substantial harm in the absence of the immediate resolution of this issue.

BellSouth Telecommunications, Inc. ("BellSouth"), by and through undersigned counsel, submits this *Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions* (the "Motion"). In support of this Motion, BellSouth states:

1. On October 23, 2002 (the "Petition Date"), Supra Telecommunications & Information Systems, Inc. ("Supra"), filed its voluntary petition under Chapter 11, title 11 of the United States Code (the "Bankruptcy Code").[1]

[1] For the sake of brevity, BellSouth will recite only those facts relevant to the instant Motion. A detailed recitation of the facts and procedural history of the parties' relationship and the litigation that preceded the filing of Supra's chapter 11 case is set forth in the Motion of BellSouth Telecommunications, Inc. for Abstention or, in the Alternative, to Dismiss Case (C.P. #19).

BERGER SINGERMAN attorneys at law Fort Lauderdale Miami Tallahassee
200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-5308 Telephone 305-755-9500 Facsimile 305-714-4340

2. Supra continues to operate its business and manage its affairs as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

3. On November 13, 2002, this Court entered an *Order Determining Adequate Assurance for BellSouth under Section 366 of the Bankruptcy Code and Setting Further Hearing* (the "366 Order") (C.P. # 84), requiring Supra to make weekly adequate assurance payments to BellSouth for the continuation of post-petition utility service by BellSouth to Supra. The 366 Order set forth the formula (the "Formula") by which the adequate assurance number is calculated on a weekly basis. The Formula is as follows:

- 10,400 resale lines at $400,000 per month
- (x) UNE lines at $25/line = (y)
- (y) + 400,000 = (z)
- (z) / 30 x 7 = weekly adequate assurance payment

4. On November 26, 2003, this Court entered its *Preliminary Injunction* (C.P. # 26), which provided, among other things, that BellSouth will be entitled to seek an appropriate adjustment to the Formula to the extent collocation access results in additional charges.

5. On December 2, 2002, this Court entered its *Further Adequate Assurance Order (i) Providing Formula Adjustment Procedures; (2) Requiring Debtor to Provide Additional Financial Information; and (3) Preliminary Ruling* (the "Adequate Assurance Order") (C.P. # 138).

6. The Adequate Assurance Order approved and adopted the adequate assurance adjustment procedure described in paragraphs 9, 10, and 11 of BellSouth's adequate assurance proposals (the "Adjustment Procedures").[2] The Adjustment Procedures set forth in these paragraphs permits either party to send in writing a request to modify the Formula, along with an explanation of the request and an example of the modified formula. The other party shall have

[2] A true and correct copy of BellSouth's *Supplemental Adequate Assurance Proposals* is attached hereto as Exhibit "A."

10 calendar days to respond to the party making the request, and include in its response an explanation of its response. The parties shall then have 10 days to attempt to negotiate a resolution of the proposed modification. If after the 10 day negotiation period resolution cannot be reached, the requesting party may seek a determination from the Court by motion on at least 10 day notice.

7. On May 21, 2003, BellSouth issued written notice to Supra requesting an adjustment to the Formula to address the issue of Supra's ordering of UNE-Loops ("UNE-L").[3] By ordering UNE-L, Supra is attempting to convert Supra customers from BellSouth switches to Supra switches. Such conversions will result in substantial up-front non-recurring charges that were not contemplated by the Court when it entered the 366 Order and the Adequate Assurance Order. Based on the significant costs involved and Supra's declining cash reserves, BellSouth submits that it is necessary for Supra to pay the non-recurring portion of any and all UNE-P to UNE-L conversions within one week following such conversions, as well as to adjust the Formula to reflect the recurring UNE-L costs. The need for adequate assurance is particularly acute in light of Supra's proffer at the June 18, 2003 hearing that it intends to place approximately 28,000 UNE-L orders in the near future.

8. BellSouth and Supra have reached an agreement as to the appropriate adjustment to the Formula regarding the recurring UNE-L costs, pursuant to which the recurring payments would depend on the particular SL1s provisioned.[4] Added to the specific SL1 loop rate is $.31 for special directory listings and $.57 for Operator Services and Directory Assistance Services,

[3] A true and correct copy of the May 21 Letter is attached hereto as Exhibit "B."

[4] The prices charged by BellSouth for a loop varies according to whether it is located in zone 1 (generally high population density), zone 2 (medium population density) and zone 3 (low population density).

all of which are services that Supra currently purchases from BellSouth and that Supra has agreed it will continue to purchase with UNE-L.[5] The formula is illustrated in the table below:

Line Count Numbers for Week Ending:			6/27/2003
Gains:		4000	
Losses:		3000	
Net gain:		1000	
Total Of Lines:		275000	
PAYMENT:			
10,400 DSL Lines			400,000.00
Remaining	255000	UNE P Lines @ $25 each:	6,375,000.00
	2500 SL1 (zone 1)	Lines @ $11.60 each	28,994.00
	6000 SL1 (zone 2)	Lines @ $16.11 each	96,645.60
	500 SL1 (zone 3)	Lines @ $27.88 each	13,938.80
Total Monthly			6,914,578.40
Daily (Monthly / 30)			230,485.95
Weekly (Daily * 7):			1,613,401.63
Total Payment for Week			1,613,401.63

However, the parties are unable to reach an agreement regarding the non-recurring cost associated with effectuating such conversions.

9. In its May 29 Letter, Supra objects to the amount of BellSouth's non-recurring charge for converting an SL1 Loop ($51.09).[6] The May 29 letter states that there is no support for the $51.09 rate in the parties' interconnection agreement dated July 15, 2002 (the "Present Agreement") or any relevant FPSC order, and that such conversion should in fact cost less than $1 per loop.

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[5] Supra has requested that BellSouth provide voice mail service to Supra when a line is converted from UNE-P to UNE-L. BellSouth is still researching this request. If BellSouth elects to offer such service, the monthly recurring cost for each loop will need to be adjusted accordingly.

[6] BellSouth's May 21 Letter inadvertently failed to include the $8.22 cross-connect charge.

10. CLECs have been ordering UNE-L from BellSouth for several years. BellSouth developed a process to convert lines from its switches to CLEC switches through extensive negotiations with AT&T and other CLECs. This "hot cut" process has been used and continues to be used to provision CLEC orders for stand-alone loops.

11. The public service commissions in BellSouth's region, including the FPSC, have considered this process in extensive administrative litigation concerning UNE costs, BellSouth's applications to provide in-region long distance services and other dockets. In fact, the Florida PSC in its UNE cost docket adopted the rates for the components of BellSouth's hot cut process initially in its May 25, 2001 order in Docket No. 990649-TP, and later revised the rates in its October 18, 2001 order on motions for reconsideration of its May 2001 order. It later reaffirmed these rates in its September 27, 2002 order in Docket No. 990649A-TP, where it established new recurring rates for loops. These rates are incorporated in the Present Agreement and are the rates that BellSouth seeks to collect from Supra for the conversions in question. Moreover, the cost studies filed by BellSouth and approved by the FPSC reflect the rates to convert UNE-P loops to UNE-L. There can be no doubt that Supra must pay for the cost of converting Supra's customers to its switching facilities. BellSouth believes that its conversion process, which has been accepted by all CLECs (until now) and all PSCs, is the proper method of implementing Supra's conversions. Against this background, BellSouth has asserted that Supra is required to pay the approximately $58 in charges for each hot cut.

12. BellSouth agrees that the terms of the Agreement do not explicitly reference a conversion process from the Port/Loop Combination Service (i.e., UNE-P) Supra currently uses to the separate 2-Wire Analog Voice Grade Loop Service (i.e., UNE-L) Supra now seeks to use.[7]

[7] The fact that the Present Agreement is silent on this specific conversion is not unusual, as all the other interconnection agreements between BellSouth and other CLECs similarly do not address this issue. Evidently, all other CLECs understand that the FPSC rates would apply and thus have not disputed the charges.

BellSouth believes that the process and rates detailed in the Present Agreement for conversion of BellSouth's retail service to UNE-L should be applied to UNE-P to UNE-L conversions because UNE-P is, for the several functions involved in conversion to UNE-L, the functional equivalent of BellSouth's retail service. BellSouth has been, and continues to be, ready to convert service consistent with the contractual processes if it has adequate assurance that the applicable rates will be paid.

13. Based on the entire record of Supra letters to BellSouth and its argument to the Court, it is unclear to BellSouth whether Supra seeks to use the conversion process and rates of the Present Agreement, or whether Supra prefers a new conversion process separate from the Present Agreement. If Supra seeks a new process, BellSouth stands ready to negotiate its rates, terms, and conditions consistent with its incumbent local exchange company obligations.[8]

14. If Supra, however, desires to proceed under the Present Agreement, it should, as a debtor and debtor-in-possession, provide adequate assurance of payment, particularly in light of its declining cash flow. As a certificated CLEC, it should pay the same price for the establishment of UNE-L service that scores of other BellSouth Region CLECs pay. In Florida, those rates are: (i) Service Order: pursuant to Attachment 2, Exhibit A to the Present Agreement, the charge for submitting an electronic service order is $1.52 per order;[9] (ii) Service Provisioning: pursuant to Attachment 2, Exhibit A to the Present Agreement, the charge for

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[8] The Interconnection Agreement between BellSouth and Supra provides a process for the addition of services and elements or processes not included in the Agreement at the time of execution. Attachment 10 of the Agreement sets for the Bona Fide Request/New Business Request Process. The process contemplates Supra submitting to BellSouth its request, BellSouth processing that request pursuant to certain timeframes and then culminating in an amendment to the Agreement.

[9] The $1.52 service order charge is inadvertently identified in the box above its proper location; however, BellSouth believes that this amount is not disputed. A true and correct copy of Attachment 2, Exhibit A, Page 142 is attached hereto as Exhibit "C."

provisioning a SL1 loop is $49.57;[10] and (iii) Cross-Connect: pursuant to Attachment 2, Exhibit A to the Present Agreement, the charge for to cross-connect a 2-wire loop is $8.22.[11] Accordingly, the total charge for converting to UNE-L is $59.31.

15. Supra has elected to take its dispute regarding the applicable rate to the FCC. BellSouth believes the Florida Public Service Commission is the correct forum for the issues Supra is now raising. Regardless, it is apparent that one or the other regulatory agency will resolve the underlying substantive dispute. Neither agency, however, can currently provide BellSouth with the appropriate adequate assurances of payment -- only this Court can. The existing formula simply does not contemplate the Supra's incurring an additional $1.66M (28,000 lines x $59.31) in conversion charges. Accordingly, the Court should adopt the adequate assurance proposal that is set forth in detail below.

16. By this Motion, BellSouth requests that this Court adopt the following procedure with respect to all UNE-P to UNE-L conversions. In its weekly line count report to Supra, which is delivered to Supra every Tuesday under the present adequate assurance procedures, BellSouth will report the number of UNE-L conversions completed during the prior week, and shall calculate the total weekly payment due to BellSouth, including the amounts due for completed conversions, based on the rates set forth in paragraphs 8 and 14. Supra shall have until Thursday (of the same week) to remit payment to BellSouth, as it does under the current adequate assurance mechanism. If the FCC, or any other regulatory agency, ultimately determines that the appropriate rate for effectuating a UNE-P to UNE-L conversion is less than $59.31, BellSouth will issue Supra a credit to be applied against future conversions. Likewise, if

[10] A true and correct copy of Attachment 2, Exhibit A, Page 142 is attached hereto as Exhibit "D."

[11] A true and correct copy of Attachment 4, Exhibit A, Page 350 is attached hereto as Exhibit "E."

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the FCC, or any other regulatory agency, ultimately determines that the conversion rate is higher than $59.31, Supra shall immediately remit payment to BellSouth for all completed conversions.

17. BellSouth has made a bona fide effort to resolve this matter without the necessity of a hearing.

WHEREFORE, BellSouth respectfully requests this Court enter an Order:

A. Granting the Motion;

B. Modifying the Formula in the manner specified above; and

C. Granting such other and further relief as may be just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the *foregoing* was served via hand delivery on Michael Budwick, Esq. 200 S. Biscayne Blvd., 30th Floor, Miami, Fl 33131; the Office of the U.S. Trustee, 51 Southwest First Avenue, Room 1204, Miami, FL 33130; Robert Charbonneau, Esq., Kluger Peretz Kaplan & Berlin, P.A., Miami Center, 17th Floor, 201 South Biscayne Blvd., Miami, FL 33131; Kevin S. Neiman, Esq., 550 Brickell Avenue, PH2, Miami, FL 33131; and by first class mail, postage prepaid, without exhibits, to all other parties on the attached Master Service List this 23 day of June, 2003.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and that I am in compliance with all additional qualifications to practice before this Court as set forth in Local Rule 2090-1(A).

Respectfully submitted,

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:	CASE NO. 02-41250-BKC-RAM
SUPRA TELECOMMUNICATIONS, d/b/a SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS,	CHAPTER 11
Debtor.	

ORDER GRANTING EMERGENCY MOTION OF BELLSOUTH TELECOMMUNICATIONS, INC., FOR INTERIM RELIEF REGARDING OBLIGATION TO PERFORM UNE-P TO UNE-L CONVERSIONS

The Court conducted a hearing, on June 25, 2003, on the Emergency Motion of BellSouth Telecommunications, Inc., for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions ("Motion") (CP# 617) and the Response of Supra Telecommunications and Information Systems, Inc. To BellSouth Telecommunications, Inc.'s Emergency Motion for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions ("Opposition") (CP# 626). The Court heard argument of counsel, reviewed the Motion and Opposition, and is otherwise fully advised in the premises. The Court also reviewed BellSouth's July 3, 2003 supplement to its original Motion and reviewed the parties' proposed Orders, portions of which are incorporated in this Order.

The Motion relates to certain non-recurring charges for the conversion of UNE-P lines to UNE-L lines (the "UNE-L Conversions"), a process that is part of Supra's efforts to convert its customers from BellSouth switches to Supra switches.

The parties do not agree on the correct charge for effectuating the conversions. BellSouth filed the Motion because (1) these charges may be substantial if Supra begins to order thousands of UNE-L Conversions as it stated it intends to do; and (2) the cost of these UNE-L Conversions was not considered when the Court established the amount of Supra's weekly adequate assurance payments to BellSouth in its November 13, 2002 Order Determining Adequate Assurance (the "366 Order").

The Court finds that Supra should pay the UNE-L Conversion changes on a weekly basis at the rate proposed by BellSouth in its Motion (the "BellSouth Rate") unless BellSouth voluntarily agrees to a lower rate. This rate will be subject to later adjustment if an appropriate regulatory body fixes a lower rate (the "Regulated Rate"). Although the BellSouth/Supra contract does not specifically set a rate for UNE-P to UNE-L conversions, BellSouth believes the $59.31 BellSouth Rate proposed in its Motion applies since (1) that is the contract rate for the conversion of a BellSouth retail line to UNE-L service; and (2) BellSouth asserts that the procedures necessary to do a retail to UNE-L conversion are substantially the same as the procedures for converting a UNE-P line to UNE-L.

The rate that should apply to UNE-P to UNE-L conversions should be determined by the FCC or Florida PSC, not by this Court. In the interim, to ensure that BellSouth is not charging Supra the BellSouth Rates without reasonable justification, the

Court is reserving the right to require BellSouth to refund twice the difference between the BellSouth Rate and the ultimately determined Regulatory Rate.

The Court is not finding nor implying that BellSouth is intentionally overcharging Supra, nor is it indicating that sanctions will be imposed simply because the regulators fix a lower rate. The purpose of announcing a "twice the difference" refund possibility is simply to induce BellSouth to charge a lower rate now if it has substantial reason to believe that the Regulatory Rate will be materially lower than the $59.31 BellSouth Rate it presently proposes to charge. This "twice the difference" refund may be imposed even if BellSouth has a colorable argument for charging the BellSouth Rate under the contract. This may occur, for example, if the FCC or Florida PSC find that BellSouth's costs for converting UNE-P to UNE-L are significantly less than its costs for converting retail lines to UNE-L, or, if the regulators otherwise make findings in the rate proceedings that cast substantial doubt on BellSouth's justification for using the retail to UNE-L rates for the UNE-L Conversions requested by Supra.

For the foregoing reasons, it is -

ORDERED as follows:

1. The Motion is granted.

2. Commencing with the date of the entry of this Order, in the weekly line count report that BellSouth issues to the Debtor,

and which is delivered to the Debtor every Tuesday under the present adequate assurance procedures, BellSouth shall also report the total number of UNE-L conversions completed during the prior week, and shall calculate the total weekly payment due to BellSouth, including the amounts due for completed conversions, based on the BellSouth Rates set forth in paragraphs 8 and 14 of the Motion. The Debtor shall have until Thursday (of the same week) to remit payment to BellSouth for UNE-L conversions completed during the prior week based on the prices provided for in the BellSouth Rates, in the same manner as it does under the current adequate assurance mechanism.[1]

3. The Debtor has disputed the BellSouth Rates and has filed an action with the Federal Communications Commission ("FCC") seeking a determination of the appropriate amounts that BellSouth may charge the Debtor (as defined earlier, the "Regulated Rates"). If an appropriate regulatory body determines that (1) the Regulated Rates are materially lower than the BellSouth Rates and (2) BellSouth had substantial reason to believe that the Regulated Rates would be materially lower, then, as more fully discussed earlier in this Order, the Court may consider sanctions against BellSouth. At the Court's discretion, these sanctions may consist of a refund in an amount equal to twice the difference between the BellSouth Rates and the

[1]BellSouth's rights under the 366 Order and related Orders shall also be applicable under this Order.

Regulated Rates for each converted line.

ORDERED in the Southern District of Florida, this 15th day of July, 2003.

ROBERT A. MARK
Chief U.S. Bankruptcy Judge

COPIES FURNISHED TO:
Paul Singerman, Esq.
Michael Budwick, Esq.

(Attorney Budwick is directed to serve a copy of this Order on all other interested parties herein)

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc.	DOCKET NO. 040301-TP ORDER NO. PSC-04-1180-PCO-TP ISSUED: November 30, 2004

ORDER GRANTING
BELLSOUTH TELECOMMUNICATIONS, INC.'S
EMERGENCY MOTION FOR CONTINUANCE

BY THE COMMISSION:

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to promote the just, speedy and inexpensive determination of all aspects of the case.

On November 29, 2004, BellSouth Telecommunications, Inc. (BellSouth) filed an Emergency Motion for Continuance (Motion) requesting this proceeding be continued until a determination can be reached as to whether the UNE-P to UNE-L conversion issue is best considered on a generic basis in which all CLECs can participate. BellSouth also states that the only issues in this proceeding that are unique to both BellSouth and Supra, (issues one and two) are no longer relevant because Supra agreed to dismiss the issues.

On November 30, 2004, Supra Telecommunications and Information Systems, Inc. (Supra) filed its response citing three reasons for denying the motion. First, Supra states that it would be severely prejudiced by granting a continuance in light of the uncertainty surrounding UNE-P. Second, Supra's complaint is not mooted by the agreed dismissal of two counts and the filing of a petition for a generic docket. Third, Supra argues that should the Commission be inclined to grant the motion, it should grant Supra's request for an interim rate subject to a true-up.

Upon consideration, BellSouth's Motion For Continuance is hereby granted to the extent that it asks that this matter be continued. The more specific timing and procedural questions raised in BellSouth's motion will be addressed at a later date. It should also be noted that the parties should continue negotiating towards a final resolution of the issues in this docket.

Based on the foregoing, it is

ORDERED by Rudolph "Rudy" Bradley, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Emergency Motion For Continuance is granted.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 30th day of November, 2004.

RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

JLS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.