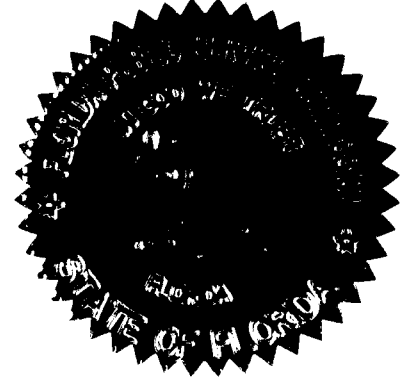


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030851-TP

In the Matter of

IMPLEMENTATION OF REQUIREMENTS  
ARISING FROM FEDERAL COMMUNICATIONS  
COMMISSION'S TRIENNIAL UNE REVIEW:  
LOCAL CIRCUIT SWITCHING FOR MASS  
MARKET CUSTOMERS.



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VOLUME 24

Pages 3480 through 3644

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN BRAULIO L. BAEZ  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER LILA A. JABER  
COMMISSIONER RUDOLPH "RUDY" BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON

DATE: Thursday, February 26, 2004

TIME: Commenced at 9:00 a.m.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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PLACE: Betty Easley Conference Center  
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Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
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APPEARANCES: (As heretofore noted.)

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## I N D E X

## WITNESSES

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EXHIBITS

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

(Transcript follows in sequence from Volume 23.)

CHAIRMAN BAEZ: Next I have David Stahly. Is Mr. Cruz here? Right behind you.

MR. CRUZ-BUSTILLO: Yes, Mr. Chairman. We have Dave Stahly on direct with no exhibits, and we would ask that that be moved into the record as read. Mr. Chairman, I would also note that Mr. Nilson will be adopting Mr. Stahly's direct testimony in total.

CHAIRMAN BAEZ: Okay. Then show the direct testimony of David Stahly as adopted by Mr. Nilson moved into the record as though read.

And now I'm showing Mr. Nilson filed rebuttal and surrebuttal?

MR. CRUZ-BUSTILLO: That is correct, Mr. Chairman. And I would ask that Mr. Nilson's rebuttal and surrebuttal be moved into the record as if read. And, Mr. Chairman, would you like me to read the exhibits along with those?

CHAIRMAN BAEZ: Hold on. Show Mr. Nilson's rebuttal and surrebuttal testimony, and the surrebuttal is corrected I'm showing, as well, moved into the record as though read.

MR. CRUZ-BUSTILLO: That is correct.

CHAIRMAN BAEZ: Now, go ahead and give me the exhibits.

MR. CRUZ-BUSTILLO: For Mr. Nilson's surrebuttal

1 there is DAN-RT-1, just one exhibit.

2 CHAIRMAN BAEZ: Show that marked as Exhibit 115.

3 (Exhibit 115 marked for identification.)

4 MR. CRUZ-BUSTILLO: And for Mr. Nilson's surrebuttal  
5 there is DAN-SRT-1, 2, 3, and 4.

6 CHAIRMAN BAEZ: We can show DAN-1 and DAN-RT-1  
7 through 4. That is the totality of the exhibits?

8 MR. CRUZ-BUSTILLO: Right. 1 through 4, DAN-SRT-1  
9 and then the same for DAN-SRT-2.

10 CHAIRMAN BAEZ: We will include them all in Composite  
11 Exhibit 115.

12 MR. CRUZ-BUSTILLO: There is a DAN-RT-1 and then --

13 CHAIRMAN BAEZ: Through 4.

14 MR. CRUZ-BUSTILLO: Right. There is 1 through 4 on  
15 surrebuttal and then there is 1 on rebuttal.

16 CHAIRMAN BAEZ: Right. And we are going to make them  
17 a composite, all of them Composite 115.

18 MR. CRUZ-BUSTILLO: Thank you, Mr. Chair.

19

20

21

22

23

24

25

1 **SECTION I FOSTERING COMPETITION IN FLORIDA – UNE-P, HOT CUTS, AND**  
2 **COMPETITION**  
3  
4

5 **I. INTRODUCTION, PURPOSE, AND SUMMARY OF TESTIMONY.**  
6

7 **Q. Please state your full name, position, and business address.**

8 A. My name is David E. Stahly. I am employed by Supra Telecommunications and  
9 Information Systems, Inc. ("Supra Telecom") as a Director of Business Operations. My  
10 business address is 2620 SW 27<sup>th</sup> St.; Miami, FL 33133.

11 **Q. Please describe your educational background, work experience and**  
12 **present responsibilities.**

13 A. I graduated from the University of Chicago with a Master of Arts degree in Public  
14 Policy and from Brigham Young University with a Bachelor of Arts degree in Economics.

15 I began working for Supra Telecom in September 2002. My responsibilities  
16 include negotiating interconnection agreements with ILECs, CLECs, and wireless  
17 carriers, tariff development, cost studies, and state and federal regulatory work. Prior to  
18 joining Supra Telecom, I spent eleven years at Sprint in a variety of capacities including  
19 Sprint's local telephone division, long distance division, and CLEC operations. I  
20 negotiated Sprint's interconnection agreement with Qwest, developed policy for Sprint's  
21 long distance and CLEC divisions and testified in 60 proceedings as an expert witness.  
22 I also conducted competitive analysis for Sprint's local division and developed several  
23 cost studies for switched and special access as well as local products. I have filed

**Direct Testimony of David E. Stahly  
Supra Telecommunications and Information Systems, Inc.**

1 testimony and/or testified before regulatory Commissions in 26 states in 60 proceedings  
2 including one proceeding before the Florida Public Service Commission.<sup>1</sup>

3 Prior to joining Sprint, I worked for the Illinois Commerce Commission as an  
4 Executive Assistant to the Commissioners for four years providing financial and  
5 economic analyses of cost studies and other issues for telecommunications, gas and  
6 electric utilities.

7

8 **Q. What is the purpose of this docket?**

9 A. The purpose of this docket is for the Florida Public Service Commission ("FPSC")  
10 to review Florida's local exchange markets to determine if CLECs are not impaired from  
11 providing local service to mass market customers without access to unbundled local  
12 switching from the ILEC. Additionally, the FPSC is to establish batch cut processes for  
13 each ILEC that will compel the ILECs to provision batch cuts on a timely basis, with  
14 minimal service disruption and at a reasonable cost-based rate.

15

16 **Q. Please provide a brief description of your testimony.**

17

18 A. My testimony will address portions of the impairment analysis test developed by  
19 the FCC that state commissions are required to use. In particular, I will discuss Supra  
20 Telecom's real world experience with BellSouth's manual cut over and the numerous  
21 problems BellSouth has cutting over UNE-P customers to Supra's switch. I will also  
22 discuss the need for UNE-P in light of the FCC's national finding of impairment. Finally,  
23 I address the Staff's List of Issues.

---

<sup>1</sup> Case No. 96-1173-TP, In The Matter Of Sprint's Arbitration With GTE For An Interconnection Agreement.



Direct Testimony of David E. Stahly  
Supra Telecommunications and Information Systems, Inc.

1 **Q. Does Supra Telecom agree with the policy analysis presented by Mr.**  
2 **Joseph Gillan in his Direct Testimony filed on behalf of the FCCA?**

3 A. Yes. Supra Telecom endorses the policy analysis presented by Mr. Gillan in his  
4 Direct Testimony filed on behalf of the Florida Competitive Carriers' Association  
5 ("FCCA"). Supra endorses in particular Parts II (The Unbundling Policy for the State), III  
6 (The POTS Marketplace in Florida), IV (A Roadmap to the TRO, addressing the three  
7 prong test), V (Applying the actual competition test), and VI (The False Tension  
8 Between Unbundling and Facilities-Deployment) of his Direct Testimony. Supra  
9 reserves the right to supplement and expand on Mr. Gillan's policy discussion in Supra's  
10 Rebuttal Testimony, to the extent it is necessary to illuminate any particular issue or  
11 question.

12

13 **II. UNE-P MUST BE MAINTAINED TO PRESERVE COMPETITON.**

14

15 **Q. Did the FCC find on a national level that CLECs serving the mass market**  
16 **were impaired without access to unbundled local switching?**

17 A. Yes. The FCC focused its conclusion on only one source of impairment, the  
18 ILEC's flawed cut over ("hot cut") process. Based on this single factor, the FCC  
19 concluded that impairment exists on a national scale.<sup>2</sup> It is noteworthy that the FCC did  
20 not determine that the ILECs' cut over process was the only source of impairment –  
21 rather, having *already* found impairment nationally, the FCC left it

---

<sup>2</sup> See TRO para. 423.

**Direct Testimony of David E. Stahly  
Supra Telecommunications and Information Systems, Inc.**

1 to the states to identify other sources of impairment that would remain (even if it were  
2 possible to correct for the problems created by the manual cut over process).

3 The FCC also did not conclude that “fixing” the present cut over process and  
4 making it into an actual “hot”-cut process that is seamless would, by itself, automatically  
5 eliminate all impairments facing CLECs in the mass market. Even if it were possible to  
6 correct all of the numerous inadequacies and inherent defects of the present conversion  
7 process, the ILECs would still be unable to demonstrate that competition in the mass  
8 market is not impaired.

9 The term “hot cut” assumes that the conversion of a CLEC customer from UNE-P  
10 to UNE-L is seamless without any interruption in dial tone and/or loss of service. The  
11 “real world” experience with BellSouth’s manual cut over process is that customers do  
12 in, fact, lose dial tone and service. The process is never “hot” as desired by the FCC.

13 Much of my testimony will focus on Supra’s “real world” experience with  
14 BellSouth’s cut over process. This focus is designed to demonstrate that BellSouth  
15 manual conversion process to UNE-L is anything but “hot.” Given this evidence, alone,  
16 there is no reason – and no basis – to overturn the FCC’s national impairment finding in  
17 Florida.

18 Notwithstanding Supra’s focus on BellSouth’s present manual cut over process,  
19 the TRO and its focus does not allow for a reversal of the national finding of impairment,  
20 unless and until the ILECs can demonstrate that competition in the relevant mass  
21 markets are not impaired by the removal of UNE-P. On this point, Supra endorses the  
22 analysis put forth by Mr. Gillan on behalf of the FCCA.

Direct Testimony of David E. Stahly  
Supra Telecommunications and Information Systems, Inc.

1 **Q. Who has the burden of proof in the proceeding?**

2 A. The burden rests with the ILECs. It is important to keep in mind that the TRO  
3 starts with a national finding of impairment and asks that the Florida Commission  
4 determine whether there are any exceptions to this national finding of impairment. The  
5 burden is on the ILEC to explain why and where impairment does not exist. This  
6 burden is explicit given the fact that there is already a finding of impairment. If  
7 BellSouth and the other ILECs cannot overcome this finding, the national finding of  
8 impairment in mass markets remains in effect.

9

10 **Q. Is this proceeding fundamentally about competition?**

11 A. It cannot be emphasized enough that this proceeding is fundamentally about  
12 competition -- more precisely, the impairments that would otherwise prevent competition  
13 -- in the POTS market. There is no reason for the ILEC to encourage CLECs to install  
14 switches unless it stood to gain financially by forcing such an investment by its rival.  
15 The reason that the incumbent is so interested in forcing its rivals into a switch-based  
16 entry strategy is because it expects that CLECs will fail and that most UNE-P lines (in  
17 an environment where UNE-P is no longer available) will return to the ILEC as retail  
18 lines. Thus, the push to eliminate UNE-P is primarily designed to further impair and  
19 ultimately eliminate competition in the State of Florida.

20

21 **Q. Could you please provide a summary of the goals of competition as**  
22 **envisioned by the 1996 Telecommunications Act?**

Direct Testimony of David E. Stahly  
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1 A. In 1996, the United States Congress passed the 1996 Telecommunications Act  
2 ("1996 Act")(47 U.S.C. § 151, *et seq.*), which, states in its preamble, that this is:

3 An Act to promote competition and reduce regulation in order to  
4 secure lower prices and higher quality services for American  
5 telecommunications consumers and encourage the rapid deployment  
6 of new telecommunications technologies.  
7

8 Since the passage of the 1996 Act, the FCC, state Public Service Commissions  
9 and the courts have engaged in numerous proceedings for the implementation of the  
10 market-opening provisions of the Communications Act as amended by the Federal  
11 Telecommunications Act of 1996 ("the Act") as: "the result [of competition] is often lower  
12 prices for the consumer. Of course, competition can lead to disputes over how, when  
13 and where parties may compete." According to the FCC:

14 [A]t the core of the Act's market-opening provisions is section 251. In  
15 section 251, Congress sought to open local telecommunications markets  
16 to competition by, among other things, reducing economic and  
17 operational advantages possessed by incumbents.<sup>3</sup>  
18

19 Furthermore, the FCC stated in that Order that:  
20

21 **Section 251 requires incumbent LECs to share their networks in**  
22 **a manner that enables competitors to choose among three**  
23 **methods of entry -- the construction of new networks, the use of**  
24 **unbundled elements of the incumbent's network, and resale of**  
25 **the incumbent's retail services.** Section 251(a) requires all  
26 "telecommunications carriers" to "interconnect directly or indirectly  
27 with the facilities and equipment of other telecommunications  
28 carriers." Section 251(c)(3) requires incumbent LECs to provide  
29 nondiscriminatory access to unbundled network elements. In  
30 addition, section 251(c)(6) imposes an obligation on incumbent LECs  
31 "to provide, on rates, terms and conditions that are just, reasonable,  
32 and nondiscriminatory, for physical collocation of equipment  
33 necessary for interconnection or access to unbundled network  
34 elements. . . ." Finally, for competitors that seek to compete by

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<sup>3</sup> See Advanced Services Order (ASO). CC Docket No. 98-147, (adopted March 18, 1999) at ¶ 13.

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1           reselling the incumbent LEC's services, section 251(c)(4) requires  
2           incumbent LECs to offer for resale at wholesale rates "any  
3           telecommunications service that the carrier provides at retail to  
4           subscribers who are not telecommunications carriers (emphasis  
5           added)."<sup>4</sup>

6  
7           The business model envisioned by Congress was for small competitors to: (1)  
8           amass customers via resale, (2) move to leasing the cost-based unbundled network  
9           elements, and (3) once a sufficient customer base was acquired and economies of  
10          scale were realized, begin to purchase and implement one's own facilities.

11          This Commission should continue to encourage UNE-P competition because  
12          only such competition will lead to innovative product offerings and product bundles, the  
13          development of advanced technologies, and better prices for Florida's  
14          telecommunications users as competitors look to distinguish themselves in the  
15          marketplace. In the absence of UNE-P, consumers are left only with the incumbent with  
16          no incentive to distinguish itself from non-existing competition.

17  
18          **Q.    Is Supra following the model of competitive mass market entry as**  
19          **envisioned by the Act?**

20          A.    Yes. Since the enactment of the Act, Supra has sought to provide competitive  
21          local services to the mass market. To date, Supra has acquired approximately 300,000  
22          access lines in the State of Florida alone. The foundation of Supra's business plan was  
23          the Act itself, as well as the FCC and various state commissions' rules and orders  
24          interpreting the intent of Congress in passing the Act. Congress intended to create a

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<sup>4</sup> Id. at ¶14.

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1 model for CLECs to follow in which CLECs would use the ILECs' existing networks in  
2 order to effectively compete with the ILECs "on rates, terms and conditions that are just,  
3 reasonable, and nondiscriminatory"<sup>5</sup> with little capital and within a minimum period of  
4 time.

5 *Supra's mission has been to follow that model.* Since January 1997, Supra has  
6 tried unsuccessfully to secure nondiscriminatory access to ILEC's services, unbundled  
7 network elements, facilities, combinations, interconnection, personnel and ancillary  
8 functions including collocation and rights of way, in order to enter the  
9 telecommunications services market and begin the provision of national new innovative  
10 advanced telecommunications services.

11 Only through years of hard fought legal battles has Supra been able to begin to  
12 realize some of the benefits that Congress intended to provide small competitors. For  
13 example:

- 14 ● Supra won the right in December 1998 to collocate in central offices  
15 previously deemed closed by BellSouth. Notwithstanding this right, BellSouth  
16 continued over the next four (4) years to raise new barriers to collocation.<sup>6</sup>  
17
- 18 ● Supra had to litigate and finally won the right, in June 2001, to order and  
19 enjoy UNE Combinations despite the fact that Supra's interconnection  
20 agreement adopted in 1999 clearly allowed Supra the right to buy UNE-P.<sup>7</sup>  
21

22 These facts alone demonstrate that even with the right under the Act to purchase  
23 UNE-P and collocate in BellSouth's central offices and a signed interconnection  
24 agreement allowing Supra to purchase UNE-P and collocate in BellSouth's central

---

<sup>5</sup> Section 251(c)(2)(D) of the Communications Act, as amended by the Telecommunications Act of 1996.

<sup>6</sup> See various Awards filed in Docket No. 001305-TP.

<sup>7</sup> Id.

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1 offices, BellSouth fought relentlessly to prevent Supra from buying these services. The  
2 result was that BellSouth prevented Supra from entering the mass market for over four  
3 years and caused Supra to incur enormous legal expenses simply to enforce  
4 BellSouth's compliance with the Act. The ILECs, and BellSouth in particular, have  
5 taken every opportunity to prevent competition. Their current effort to eliminate UNE-P  
6 is yet another attempt to quash competition.

7

8 **Q. Would competition in the mass market be dramatically harmed if the ILECs'**  
9 **existing unbundling obligations were limited by a finding of non-impairment?**

10 A. Absolutely. The overwhelming majority of mass market customers in the State of  
11 Florida are served by UNE-P today and many more will be given a competitive  
12 alternative as new national CLECs enter the Florida market. Without UNE-P, CLECs  
13 could not serve them. Although Supra Telecom has already started the process of  
14 cutting over its customers to its own switches, over 95% of Supra's mass market  
15 customers are still served by UNE-P. Additionally, there are numerous markets that  
16 Supra has not yet entered and will not be able to enter if UNE-P is unavailable.

17 The evidence demonstrates that BellSouth has only recently begun to comply  
18 with its unbundling obligations. Many of Florida's residential telephone customers have  
19 not reaped the benefits of the Act because BellSouth and the other ILECs have (a)  
20 endlessly challenged the constitutionality of the Act itself, (b) refused to comply with  
21 their obligations even after being ordered to do so, and (c) have ruthlessly done all they  
22 can to prevent competition. That is why it is imperative for the Florida Commission, at

1 this time, to preserve CLECs' rights to continue to use UNE-P so that they can bring the  
2 benefits of better pricing and better service bundles to more of Florida's residential  
3 users. This last point cannot be stressed enough.

4

5 **Q. Does BellSouth continue to disregard Commission orders?**

6 A. Yes. I would note that BellSouth has proven to be quick to implement FCC and  
7 state decisions that they believe benefit BellSouth. However, as noted above, the  
8 record demonstrates that BellSouth refuses to comply with their obligations even after  
9 being ordered to do so – especially when it affects its bottom line and forces BellSouth  
10 to offer services to competitors.

11 One case in point is the BellSouth Fast Access DSL case. For On May 29, 2001,  
12 BellSouth informed Supra that Supra's UNE-P customers could not have BellSouth Fast  
13 Access DSL. This policy directive was based solely on BellSouth's own interpretation of  
14 ¶26 of the ***Third Report And Order On Reconsideration*** In CC Docket No. 98-147<sup>8</sup>  
15 released January 19, 2001.

16 Supra brought this issue to this Commission. On July 1, 2002, in Docket No.  
17 001305-TP, this Commission found in favor of Supra and ordered BellSouth to cease  
18 this anti-competitive practice as it related to BellSouth's Fast Access. BellSouth was  
19 not granted (nor did it ever request) a stay of this Commission's Order. Despite this  
20 explicit order and no stay, BellSouth simply ignored this Commission's direct order.

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<sup>8</sup> *Third Report and Order on Reconsideration - Line sharing Order* CC Order 01-26 released



**Direct Testimony of David E. Stahly  
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1           After repeated requests to BellSouth to comply with this lawful Commission  
2 order, Supra filed a complaint in December 2002 asking the Commission to enforce its  
3 previous order. Two of the three Commission Panel members were not members of the  
4 Commission at the time of the prior vote which resolved the issue in Supra's favor. For  
5 what appears to have been good-faith philosophical objections (to the way the law had  
6 been previously interpreted) from those two Commissioners, the panel refused to even  
7 grant Supra an evidentiary hearing – despite having met all of the necessary legal  
8 prerequisites of the Administrative Procedures Act entitling Supra to such a hearing. If  
9 BellSouth was in compliance with the previous order as it so argued, then there was no  
10 reason not to schedule a hearing to allow BellSouth the opportunity to prove it. Supra  
11 was prepared to prove its case. As of this writing BellSouth still refuses to comply with  
12 the Commission's Order in Docket 001305-TP. Irrespective of the different  
13 philosophical views of the law, what was paramount in the complaint brought by Supra  
14 was BellSouth's willful refusal to comply with a lawfully issued order of this Commission.

15           I am concerned that whatever "fixes" to BellSouth's cut over process the  
16 Commission recommends or other remedies the Commission orders in this proceeding  
17 will be, once again, blatantly ignored and disregarded by BellSouth. Now that BellSouth  
18 wants this Commission to do away with UNE-P, I am more concerned than ever that  
19 BellSouth will ignore implementing any "cures" and that CLECs could be stuck with the  
20 worst of both worlds - no UNE-P and hopelessly impaired markets.

21           This Commission must look beyond the ILECs' empty promises to comply and  
22 take serious consideration of past compliance of the ILECs, in particular BellSouth,

1 because the mere legal right to enjoy UNE Combinations, collocation, and other  
2 contractual and regulatory imposed access or services does not mean that the CLEC  
3 who request these services will receive them. Supra's experience shows that BellSouth  
4 is willing to go to great lengths to deny CLECs access to the services they need to  
5 compete.

6

7 **Q. Has a “facilities first” business plan proven unsuccessful?**

8 A. Yes. Through this proceeding, the ILECs are attempting to force an “if-you-build-  
9 it-they-will-come” strategy upon CLECs that has proven to be a disaster to the CLEC  
10 industry and competition as a whole. Over the past seven and one half years, CLECs  
11 have invested billions of dollars in hopes of building infrastructure and facilities that  
12 would, in theory, attract customers, but sufficient customers and revenues never  
13 materialized and former industry leaders such as Rhythms, Northpoint, Allegiance, XO,  
14 Winstar, Global Crossing, and more, filed bankruptcy, were sold, or simply went out of  
15 business. In all, at least 63 CLECs, many of them facilities-based, have filed for  
16 bankruptcy since Oct. 1999.<sup>9</sup> Florida’s residential customers will never have actual or  
17 potential from the majority of these companies and will lose out on the benefits of local  
18 competition these companies could have provided.

19 Having lost enormous amounts of investment money on previous facilities-based  
20 CLECs, Wall Street is reluctant to invest in new CLECs today. In order to be successful  
21 in today’s marketplace, CLECs must first acquire a sufficient number of customers via

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<sup>9</sup> See “Telecommunications Companies in Bankruptcy” by Miller and Van Eaton at  
[http://www.millervaneaton.com/hot\\_april3\\_c.htm](http://www.millervaneaton.com/hot_april3_c.htm)

1 UNE-P before they invest in new facilities. UNE-P is absolutely essential for  
2 competition to succeed in the mass market in Florida.

3

4 **Q. Will lack of access to unbundled local circuit switching cause prices for**  
5 **unbundled switching to rise and impair competition in mass markets?**

6

7 A. Absolutely. Lack of access to unbundled local circuit switching will cause prices  
8 for unbundled switching to increase exponentially and will dramatically impair mass-  
9 market competition. A case in point is the price increase for unbundled local switching  
10 in density zone one of the top 50 MSAs for switching that serves customers with four or  
11 more lines.

12 In the *UNE Remand Order*, the FCC determined that CLECs would not be  
13 impaired if ILECs were not obligated to provide unbundled local switching to requesting  
14 CLECs serving customers with four or more lines provided the ILEC made EEL  
15 combinations available. However, based on the experience of the past few years, this  
16 FCC “carve-out” has proven to be extremely anti-competitive.

17 In the Miami, Ft. Lauderdale, and Orlando Markets BellSouth increased its  
18 unbundled switching rate by a multiple of 10 from a TELRIC cost of \$1.40 to a “Market  
19 Rate” of \$14.00. (See Supra/BellSouth Interconnection Agreement, on file with the  
20 **Florida Commission, approved on 8.22.03, Attachment 2**)

1           Supra has been unable to locate a single vendor for Unbundled Local Switching  
2 in the Miami, Ft. Lauderdale or Orlando Florida MSAs. Vendors will only sell what is  
3 essentially a BellSouth resale clone, but not facilities based Unbundled Local Switching.

4           This FCC “carve-out” was created due to the misconception that CLECs had  
5 alternative sources of switching in the top 50 MSAs. This is simply untrue as evidenced  
6 by the exorbitant “Market-Based” rate that BellSouth charges for unbundled local  
7 switching. If competition truly existed and there were alternative sources of local  
8 switching, then one would expect the price for switching to be closer to its TELRIC cost  
9 of \$1.40. BellSouth’s usurious rate of \$14.00 is indicative of a complete lack of any  
10 meaningful competitor in these areas.

11  
12 **Q.     Could you please summarize your testimony regarding the importance of**  
13 **maintaining the availability of UNE-P to preserve competition in the mass market?**

14  
15 A.     Yes. As I stated at the outset of my testimony, It cannot be emphasized enough  
16 that this proceeding is fundamentally about competition and the impairments that would  
17 otherwise prevent competition in the POTS market.

18           If UNE-P is eliminated, Supra’s cost of providing service will increase  
19 substantially. This will force Supra to exit many markets and raise prices in others  
20 eliminating a competitive choice for some Florida telecommunications consumers and  
21 reducing savings for others. Resale simply cannot generate the necessary margin for  
22 sustainable competition as envisioned by the Florida legislature.

1           Using UNE-P over the past two years, Supra has been able to save Florida's  
2 residential telephone users close to \$100 million dollars. If UNE-P is eliminated, real  
3 savings will be taken from the pockets of Florida's residents.

4  
5 **Q.     How has increased local competition affected BellSouth?**

6 A.     Competition from CLECs has forced BellSouth to offer more attractive product  
7 bundles and better pricing. BellSouth is bundling its cellular, long distance, and DSL  
8 services (something no CLEC can do) with its local service. At the same time,  
9 BellSouth is battling CLECs by refusing to comply with a Commission order requiring  
10 BellSouth to continue to provide its Fast Access, to its own customers, when that  
11 customer migrates its voice service over UNE lines. BellSouth further adds insult to  
12 injury by offering large discounts and cash back offers, which no CLEC can match, and  
13 which undercut the discounts and cash back offerings CLECs can offer. Despite claims  
14 of losing lines to CLECs and cries of declining local revenues, it is interesting to note  
15 that BellSouth's revenues and earnings per share have continued to increase as a  
16 whole over the past year.

17  
18 **III.   SUPRA'S EXPERIENCE WITH BELL SOUTH'S CUT OVER PROCESS AND**  
19 **WHY CUT OVERS ARE CRUCIAL TO CLECS.**

20  
21 **Q.     Did the FCC find that the ILEC's flawed "hot cut" process impaired CLECs'**  
22 **ability to serve the mass market without access to unbundled local switching?**

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1 A. Yes. In conducting their impairment analyses, the FCC concluded that on  
2 a national level, CLECs serving the mass market are impaired without access to  
3 unbundled local switching.<sup>10</sup> The FCC stated that, "This finding is based on  
4 evidence in our record regarding the economic and operational barriers caused  
5 by the cut over process."<sup>11</sup> Specifically, the FCC said that these barriers include:

- 6 • The non-recurring costs of hot cuts,
- 7 • The potential for disruption of the customer's service
- 8 • The ILEC' inability to handle the necessary volume of migrations to  
9 support competitive switching in the absence of unbundled  
10 switching.
- 11

12 These problems are compounded by high customer churn rates. The  
13 FCC went on to say that, "these hot cut barriers not only make it uneconomic for  
14 competitive LECs to self-deploy switches specifically to serve the mass market,  
15 but also hinder competitive carriers' ability to serve mass market customers using  
16 switches self-deployed to serve enterprise customers."<sup>12</sup>

17 The FCC found that as a result of these barriers, there has only been minimal  
18 deployment of CLEC-owned switches to serve mass-market customers. The FCC  
19 noted that the characteristics of the mass market raise significant barriers to CLECs  
20 self-provisioning switching to serve mass-market customers and required state  
21 commissions to develop and implement a batch cut process to begin to overcome the  
22 existing barriers to these markets. However, as noted previously, simply overcoming

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<sup>10</sup> See TRO para. 419, 422.

<sup>11</sup> See TRO para. 459.

<sup>12</sup> See TRO para. 459.

1 the cut over process does not eliminate the impairment to markets that would grip the  
2 industry by the elimination of UNE-P.

3

4 **Q. Would you please define what is meant by “hot cut”?**

5 A. Yes. “Hot cut” refers to the process of the ILEC transferring a customer’s  
6 telephone service to another service provider in a timely and non-disruptive manner to  
7 the customer’s service. This includes physically transferring the customer’s voice grade  
8 (DS0) loop from the ILEC’s switch to the CLEC’s switch as well as all of the features  
9 and functions relating to that customer’s service. “Hot” presumes the transfer occurred  
10 quickly with minimal disruption to the customer. However, BellSouth’s “hot cut” process  
11 is fraught with service disruptions and delays and should simply be referred to as a “cut  
12 over” process – that at best could be characterized as a “cold-cut” for the lack of a  
13 better phrase.

14

15 **Q. What steps are involved in a “cut over” process?**

16 A. The cut over process is initiated by the CLEC sending an order to the ILEC  
17 requesting that a customer’s loop be cut over to the CLEC’s switch. The ILEC replies  
18 with a cut over due date. The ILEC may send a technician to its central office to pre-  
19 wire a cut over. On the schedule cut over date, the ILEC’s central office technician  
20 disconnects the customer’s loop, which was hard wired to the ILECs switch, and  
21 physically re-wires it to the CLEC’s switch. The ILEC must then must also  
22 simultaneously reassign (i.e., “port”) the customer’s telephone number from the ILEC’s

1 switch to the CLEC's switch.<sup>13</sup> The ILEC then must notify the CLEC that the customer's  
2 loop has been cut over and the CLEC must activate the porting in NPAC.

3 The goal of a hot cut is to quickly transfer the customer to the CLEC switch with  
4 minimal disruption to the customer's service so that their service remains "hot" or,  
5 without interruption. By industry norm, the customer should experience minimal  
6 interruption of service. In the voice scenario, minimal interruption of service would be  
7 less than three minutes.

8

9 **Q. Can BellSouth's cut over process be described as a "hot cut" process?**

10 A. No, not by any means. BellSouth's cut over process for individual LSRs or batch  
11 cuts is not "hot" by any definition. It is fraught with errors, service delays, and  
12 provisioning problems which have resulted in Supra's customers experiencing service  
13 interruptions (No Dial Tone) of several hours as well as the inability to receive calls from  
14 any party and, until recently, the inability to receive calls from cellular carriers.

15

16 **Q. Is BellSouth's Batch Order process provide for faster cuts?**

17 A. No. BellSouth's Batch Order process is really two painfully slow and flawed  
18 processes – one, the Batch Order Process and two, the individual LSR hot cut process.

19 The Batch Order process is not a batch "hot cut" process. It is a batch pre-  
20 ordering process which, as a result, prequalifies orders in large numbers and assigns  
21 them due dates. The remainder of the process reverts back to the individual submission

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<sup>13</sup> See TRO footnote 1294.



1 and processing of LSRs until the due date. At that time, the orders are processed in the  
2 central office as a batched set and their completion is communicated via telephone to  
3 the CLEC.

4 Additionally, BellSouth's batch cut process has much longer installation intervals  
5 of more than 21 days whereas a single manual hot cut takes 3-6 days showing that  
6 BellSouth is incapable of cutting over commercial volumes of customers. There are no  
7 benefits to BellSouth's Batch Order. It is only a bulk order process that adds 17 days to  
8 the orders. It is not a bulk or batched conversion process because we still have to enter  
9 all the LSRs and process them for conversion as if they are individual orders.

10

11 **Q. Why are hot cuts, and the ILEC's ability to perform hot cuts, so critical for a**  
12 **CLEC to compete in the mass market?**

13 A. Although a CLEC may have a switch installed in the same wire center as the  
14 ILEC to reach the same customers, the CLEC still needs to use the ILEC's loop to reach  
15 the end user customer. As the FCC noted,

16 "Competitive LECs can use their own switches to provide services  
17 only by gaining access to customers' loop facilities which  
18 predominantly, if not exclusively, are provided by the incumbent  
19 LEC. Although the record indicates that competitors can deploy  
20 duplicate switches capable of serving all customer classes, without  
21 the ability to combine those switches with customers' loops in an  
22 economic manner, competitors remain impaired in their ability to  
23 provide service. **Accordingly, it is critical to consider**  
24 **competing carriers' ability to have customers' loops**  
25 **connected to their switches in a reasonable and timely manner**  
26 **(emphasis added).**<sup>14</sup>  
27

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<sup>14</sup> See TRO para. 429.

1           Since it would be prohibitively expensive for a CLEC to build its own loops to all  
2 of its mass market customers, many CLECs have chosen to lease the UNE Loops from  
3 the ILEC. However, the CLEC's switch is useless if the ILEC cannot transfer the  
4 customers' loops over to the CLEC's switch and attach the UNE Loop to the CLEC's  
5 switch. Not only must the ILEC be able to transfer the customer's loop to the CLEC's  
6 switch, but it must be able to do so without undue delay in processing the order and  
7 without interrupting the customer's service for more than a brief instant.

8           Currently, some ILECs, including BellSouth, have difficulty in satisfactorily  
9 performing hot cuts. Long service disruptions, delays in processing cut over orders, and  
10 high NRCs are the norm. ILECs should be able to hot cut, or transfer, the customer's  
11 loop at a minimal cost and with minimal service disruption to the customer and a  
12 minimal delay in processing the order. Additionally, the ILEC should be able to handle  
13 commercial volumes of hot cuts each day with minimal service disruptions.  
14 Unfortunately, BellSouth has been unable as of yet to meet any of these criteria.

15

16 **Q.     How many cut overs has BellSouth completed for Supra?**

17 A.     Since the first week of November 2003, Supra has moved in excess of 2,400  
18 customer lines within LATA 460 to its switches. Of this number, 5% have suffered NDT  
19 problems requiring 1-5 dispatches of BellSouth and third party technicians. However, a  
20 shocking 47% of cutovers have experienced "No incoming calls" problems caused by  
21 LNP porting delays or errors caused by BellSouth.

22

1 **Q. Has Supra lost customers because of BellSouth's inability to perform**  
2 **acceptable hot cuts?**

3 A. Yes. Supra has lost at least 16 customers over the past month due to  
4 BellSouth's inability to perform acceptable hot cuts. This is rub.???? BellSouth  
5 successfully ran ads over the last two years disparaging CLECs as companies with  
6 unreliable networks. These ads were intentionally misleading because the CLECs were  
7 using the same BellSouth wires and switches. Now, BellSouth and the other ILECs  
8 want this Commission to eliminate UNE-P which will cause a mass migration to the  
9 ILECs. If and when CLECs are able to obtain their own switches, BellSouth will once  
10 again begin to employ their tried and true "fat-finger" or "rogue-employee" excuses for  
11 why the conversions from UNE-P to UNE-L are not occurring. In the meantime,  
12 customers will seek to convert back to the ILEC in an environment of ILEC ads, once  
13 again, disparaging CLEC networks as inferior – even though it is BellSouth and the  
14 other ILECs causing the loss of dial tone and service during the conversion.

15

16 **Q. Part of the cut over process requires that BellSouth inform the CLEC that**  
17 **the customer's loop has been cut over. What problems has Supra experienced**  
18 **with regards to BellSouth notifying Supra that a customer's loop has been cut**  
19 **over?**

20 A. Local Number Portability (a.k.a. "LNP"), or the porting of numbers from the ILEC  
21 to the CLEC switch, has been a continuing and vexing problem in the BellSouth region  
22 resulting in Supra's UNE-L customers not being able to receive calls for anywhere from

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1 two hours to 18 or more hours depending on when the customer's loop was moved,  
2 when BellSouth sent Supra an e-mail notification, and how fast Supra can activate the  
3 porting in the Number Portability Administration Center ("NPAC").<sup>15</sup> Occasionally, the  
4 NPAC system becomes congested and adds to the delay.

5 Rather than notify Supra immediately after a cut over has been completed,  
6 BellSouth may wait several hours to notify Supra resulting in Supra's customer being  
7 unable to receive any incoming calls despite having dial tone. To my knowledge,  
8 BellSouth has no published or internal metric requiring that the central office frame  
9 technician report or enter order completions into BellSouth's system similar to Verizon's  
10 20 order requirement. The result could be an order entry occurring minutes after a  
11 jumper move or up to eight hours depending on the technician's preference or workload.  
12 BellSouth has only committed to a best effort of every couple of hours.

13 **Q. Can you provide an example of the typical number portability problem that**  
14 **47% of Supra's UNE-L customers experience when BellSouth cuts them over to**  
15 **Supra's switch?**

16 A. Yes. Supra requires notification from BellSouth that a customer's loop has been  
17 cut over to Supra's switch. Once Supra has received the cut over notification, Supra  
18 can enter the number port activations into the NPAC system. However, BellSouth  
19 typically does notify Supra that a customer has been cut over until several hours after  
20 the cut over. The result is that the Supra customer has dial tone, but is not receiving

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<sup>15</sup> The NPAC system congestion occasionally adds to the delay.

1 any calls because the switching network does not know where to find the customer's  
2 number. An example of this is as follows:

3 8:00 AM: The BellSouth technician cuts over a customer's loop. The customer  
4 now has dial tone on Supra's switch but cannot receive local calls or  
5 calls from IXCs.

6 4:00 PM: The BellSouth technician enters his/her day's orders into the BellSouth  
7 system.

8 6:00 PM: BellSouth's E-mail system sends "Go-Ahead" notices on an individual  
9 line basis to the CLEC. (The two-hour lag is the estimated BellSouth  
10 system latency.)

11 6:30 PM: Supra starts to enter number port activations into the NPAC system.

12 7:00 PM: The customer can now receive calls from the local area and possibly  
13 many IXCs, although not the major IXCs.

14 10:30 PM: The customer can now receive all calls assuming there is no NPAC  
15 system congestion.

16 **Q. How does BellSouth notify Supra that a customer's number has been cut**  
17 **over to Supra's switch?**

18 A. Rather than send notices listing multiple cut overs on a single notice, BellSouth  
19 sends a separate e-mail notice for each and every number BellSouth cuts over  
20 regardless of whether those numbers were submitted as part of a 100 number batch cut  
21 over order. Thus, if BellSouth cuts over 120 numbers in one day, Supra's

1 representative receives 120 separate e-mails from BellSouth<sup>16</sup> informing her that the cut  
2 over is complete for just one specific number.

3

4 **Q. What cut over/operational problems has Supra experienced because of**  
5 **BellSouth's IDLC systems?**

6 A. BellSouth has a large amount of Integrated Digital Loop Carrier ("IDLC") systems  
7 in South Florida. The presence of these systems forces BellSouth to find alternative  
8 methods to deliver the customer loops riding these fiber-based systems to the CLEC.  
9 Of the eight options presented to Supra, BellSouth has selected one of the more  
10 expensive, time consuming and service effecting options to cut these customers over to  
11 the CLEC switch. They have chosen to either find alternative end to end copper facilities  
12 which are not readily available or to convert the customers over to existing or newly  
13 installed Universal DLC systems.

14 Copper is not available because most of these systems are Greenfield  
15 installations placed in lieu of copper. UDLC systems require complex reconfigurations of  
16 the remote DLC terminals and possible new installations of the CO end thus delaying  
17 the conversion orders.

18 In Supra's first batch order of 99 customer lines for a CO heavily populated with  
19 IDLC, 4 lines were rejected as not eligible for conversion, 39 had to be installed as more  
20 expensive SL-2 loops because they were IDLC and the remaining 56 lines (57%) were  
21 given due dates. As of December 2, 2003, BellSouth has not given a reason for

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<sup>16</sup> This is a slight improvement over BellSouth's earlier offers to provide notification by fax or even by a telephone call for each and every number cut over.

1 rejecting the orders. This batch was submitted the end of October; response was  
2 received on November 18th with most due dates in early December.

3

4 **Q. What other cut over/operational problems has Supra is experienced**  
5 **because of BellSouth's IDLC systems?**

6 A. A more substantial issue that we assume is related to IDLC is the cutover of  
7 IDLC-based customers in the normal course of business with the result of no dial tone  
8 ("NDT") to the customer. We have to make this assumption for two reasons. First, a  
9 simple jumper swing on a copper based customer loop should very rarely result in a  
10 customer having no dial tone especially since we test to our switch and BellSouth  
11 asserts they do as well before the cutover. Second, BellSouth does not tell Supra who  
12 these customers are and BellSouth's selected method of provisioning these customers  
13 requires a field dispatch to find and cross-connect a copper loop to the customer's  
14 copper sub-loop. If the outside plant records of the ILEC are relatively accurate, this  
15 should result in minimal, less than 1%, occurrences of NDT. Such has not been the  
16 case in LATA 460.

17

18 **Q. What has the FCC required state commissions to do to resolve the**  
19 **problems ILECs have executing hot cuts?**

20 A. The FCC has asked state commissions, within nine months from the effective  
21 date of the TRO order, to approve and implement a batch cut migration process that  
22 would provide a "seamless, low-cost process for transferring large volumes of mass

1 market customers”<sup>17</sup> and “reduce per-line hot cut costs”<sup>18</sup> within the context of the  
2 overall goals of the TRO and state conditions.

3

4 **Q. What would happened if the FPSC decided UNE-P should go away and**  
5 **BellSouth only had six months to convert Supra’s customers to UNE-L?**

6 A. Based on BellSouth’s current inability to cut over Supra’s customers in  
7 commercial volumes, it would be impossible for BellSouth to complete the task in six  
8 months or even one year. As discussed above, BellSouth’s cut over process is  
9 seriously flawed and is incapable of handling commercial volumes of cutovers.  
10 Additionally, BellSouth does not have enough manpower to convert all of Supra’s  
11 customers within a year.

12 To meet the one year goal, even assuming that BellSouth’s flawed cut over  
13 process could be fixed and worked perfectly with zero mistakes or problems, BellSouth  
14 would have to cut over approximately 1,200 customers per day just to meet Supra’s  
15 needs and that does not even consider the needs of the other CLECs using BellSouth’s  
16 UNE-P.

17 By contrast, BellSouth’s actual commitment of 150 cutovers per day/office over  
18 the past month when cutting over customers for Supra. At that rate, it would take  
19 BellSouth over a year to cut over just Supra’s existing customer base statewide. It  
20 would take even longer to cut over all of Supra’s customers assuming that Supra  
21 continues to grow its customer base in BellSouth’s territory.

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<sup>17</sup> Id. para. 423.

<sup>18</sup> TRO para. 460.



1

2 **Q. If BellSouth fixed all of the problems with its cut over process and turned it**  
3 **into a hot cut process, would CLECs continued to be impaired in their ability to**  
4 **enter the mass market without access to UNE-P?**

5 A. Yes. Cutovers are only one of the impairments that CLECs face when trying to  
6 enter the mass market. Even if cutovers were "fixed," if Supra did not have access to  
7 UNE-P, Supra would not be able to enter and serve much of the mass market.

8

9 **Q. What are some other operational issues that would impair Supra and other**  
10 **CLECs from providing service to all customers in a geographic market?**

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

14 1) The ILEC cannot cut over all of the CLEC's existing customers to  
15 the CLEC's switch based on technical or operational constraints  
16 such as mass deployment of Integrated Digital Loop carrier  
17 systems and fiber.

18 2) The ILEC cannot hot cut the CLEC's new customers to the  
19 CLEC's switch in a timely manner.

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

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

3           5) DS-0 level EELs are not physically available as an alternative  
4           method to lack of co-location availability.

5  
6   **Q.    What are some examples of how a CLEC could not be economically able or**  
7 **willing to provide service to all customers in a geographic market?**

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

11           1) Collocation space is available but prohibitively expensive.

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

14           3) The available market within a serving CO is too small (even at 100%  
15           penetration) to cost justify collocating facilities and back haul facilities  
16           to serve the CO.

17           4) DS-0 level EELs are not available to overcome issues number one and  
18           number three above.

1 **SECTION II: RESPONSES TO COMMISSION'S ISSUES**

2  
3 **I. DEFINING A MARKET AREA FOR MASS MARKET UNE-P SWITCHING**  
4 **(Question 1 & 2)**

5  
6  
7  
8 **Q. Issue 1) For purposes of this proceeding, what are the relevant markets for**  
9 **purposes of evaluating mass market impairment and how are they defined?**

10 A. The burden rests with the ILECs to explain why and where impairments does not  
11 exist. This answer is better left to Rebuttal.

12  
13 **Q. What factors affect a CLECs' ability to serve customers in a particular**  
14 **geographic area?**

15 A. The cost of serving a customer as well as the revenue that can be collected from  
16 each customer are two key factors that affect a CLECs' ability to serve each group of  
17 customers and can vary significantly by geographic area. Cost factors include UNE  
18 Loop rates, the size ,location and customers served count of a wire center, the  
19 availability of collocation space and availability of cost effective backhaul facilities.  
20 UNE Loop rates vary by ILEC and by zone density. SL-1 Loops vary from \$12.79 in  
21 Zone 1 to \$33.86 for Zone 3 in Florida and up to \$37.82 for SL-2 in Zone 3. The less  
22 dense the zone, the higher the rate; plus, some ILECs have higher rates than others for  
23 zones with similar densities.

24 The size and location of a wire center impact costs as well. A large wire center  
25 will generally have lower per unit costs. Likewise, a wire center located in a densely  
26 populated area will also have lower per unit costs because the CLEC will be able to

1 reach more customers from that site. Additionally, expected revenues per customer  
2 vary by ILEC and by population density. Rates in urban areas are generally lower than  
3 rates in rural areas and have to be weighed against costs of serving customers.  
4 However there are many wire centers in highly concentrated urban areas that are Rate  
5 Zone 2 offices. Pembroke Pines and Hialeah in Broward County and Dade County  
6 respectively are good examples. A Zone 2 loop costs \$17.27 per month. Furthermore,  
7 ILECs charge different rates for the same services. A CLEC must consider all of these  
8 factors before choosing to enter a particular area.

9

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

12 A. A key requirement is that an ILEC have collocation space available. If the ILEC  
13 does not have any collocation space available, then it becomes prohibitively more  
14 expensive for a CLEC to build their own suitable collocation space.

15 However, one of the largest non-cost factors for the commission to consider is  
16 the ILEC's inability to "handle large numbers of hot cuts."<sup>19</sup> An ILEC's ability to handle  
17 commercial volumes of hot cuts is absolutely crucial to the survival and success of a  
18 CLEC to compete in any given geographic area. If the ILEC is unable to handle  
19 commercial volumes of hot cuts, then all of the preceding cost and revenue factors  
20 become largely irrelevant.

21

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<sup>19</sup> See TRO para. 496.

1 **Q. Issue 2) Regarding question 2, when defining the relevant geographic**  
2 **areas to include in each of the markets for each of the ILECs, which factors**  
3 **should be taken into consideration and what relative weights should they be**  
4 **assigned:**

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

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

9 (c) **CLECs' ability to target and serve specific markets profitably and**  
10 **efficiently using current available technologies?**<sup>20</sup>

11 A. The burden rests with the ILECs to explain why and where impairments does not  
12 exist. For this reason, the answer to each sub-category above is better left for Rebuttal.  
13

14 **Q. 3(b) Why is the ILEC's ability to complete hot cuts and complete them in**  
15 **commercial volumes essential for a CLEC to compete in the local market?**

16 A. If an ILEC cannot cut customers over to the CLEC's switch in a non-disruptive  
17 manner and in commercial volumes, then a CLEC is impaired in its ability to provide  
18 timely service to its customers. The CLEC's customers will not tolerate waiting for  
19 service longer than they would wait if they were Retail or Resale to UNE-P.

20 Additionally, the CLEC's customers expect to have their service cutover without  
21 any service disruption and without needing to make multiple calls (from their cell phone

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<sup>20</sup> See TRO para. 495.

1 or their neighbor's phone) to their carrier to the resolve problems – which is presently  
2 the consequence of the BellSouth cut over process. If The ILEC cannot cut a CLEC's  
3 customers over to the CLEC's switch in a timely and non-disruptive manner, the  
4 customers will most often fault the CLEC for the service problems and go back to the  
5 ILEC.

6 Customers may even be aware that the cutover problems are not the fault of the  
7 CLEC and still go back to the ILEC simply to avoid any service disruption. Many small  
8 businesses such as restaurants that offer take-out, delivery, or require reservations, dry  
9 cleaners, plumbers, home maintenance and construction, and other businesses depend  
10 heavily on their phone for customers to reach them. These businesses may refuse to  
11 switch to a CLEC even if the CLEC offers better rates, if they are afraid that their phone  
12 service will be disrupted and their customers will not be able to reach them regardless  
13 of whether the service disruptions are caused by the CLEC or not. The ILEC must be  
14 able to perform hot cuts without disrupting the customer's service.

15 In addition to performing hot cuts in a non-disruptive manner to the customer, the  
16 ILEC must also be able to perform hot cuts in commercial volumes. That is, the ILEC  
17 should be able to cut over as many customers to the CLECs' switches as the ILEC  
18 could turn up for itself. If the ILEC cannot turn up a CLEC's new customers at the same  
19 pace as the ILEC does for itself, then the CLEC is not able to offer competing service at  
20 parity with the ILEC. Such is the case today and the disparity is apparent to customers.

21 There are many customers that may desire to switch to a CLEC to take  
22 advantage of better rates, call packages, or customer service, but are reluctant to do so

1 because they have heard of problems their neighbors may have had trying to switch to  
2 a new local phone company.

3  
4

5 **II. BATCH CUT PROCESS (Questions 3 – 6)**

6 **Q. Issue 3)**

7 **Q. 3(a) Does a batch cut process exist that satisfies the FCC's requirements in**  
8 **the Triennial Review Order? If not, in which markets should the Commission**  
9 **establish a batch cut process?**

10 A. No. A batch cut process does not exist that satisfied the FCC's requirements.  
11 Any process established must be automated and be implemented across the board.

12

13 **Q. 3(b) In BellSouth's service area, in which markets should the Commission**  
14 **establish a batch cut process?**

15 A. The Commission should require BellSouth to establish an automated batch cut  
16 process for all wire centers where the Commission feels Florida telecommunications  
17 users should have a choice of local phone companies.

18

19 **Q. 3(c) For those markets in BellSouth's service area where a batch cut**  
20 **process should be established, what volume of loops should be included in the**  
21 **batch?**

1 A. I have no response for a specific number at this time, but ultimately, BellSouth  
2 should be able to cut over all of the CLECs' customers in a timely manner.

3

4 **Q. 3(d) For those markets in BellSouth's service area where a batch cut**  
5 **process should be established, is the ILEC capable of migrating multiple lines**  
6 **that are served using unbundled local circuit switching to CLECs' switches in a**  
7 **timely manner?**

8 A Absolutely not. BellSouth's batch cut process is a step backwards. It adds  
9 seventeen extra days to the hot cut process. BellSouth still requires Supra to enter all  
10 the Local Service Requests ("LSRs") and process them for conversion as if they were  
11 individual orders. BellSouth is moving CLECs from a fully automated low cost retail-  
12 UNE-P cut process to a highly manual, high cost UNE-P to UNE-L process.

13 Currently, as noted, BellSouth's batch cut process is a bulk order process that  
14 adds seventeen extra days to Supra's batch cut orders. It is not a bulk or batched  
15 conversion process. BellSouth still requires Supra to enter all the Local Service  
16 Requests ("LSRs") and process them for conversion as if they were individual orders. It  
17 is ironic that BellSouth is moving CLECs from a fully automated low cost retail-UNE-P  
18 cut process to a highly manual, high cost UNE-P to UNE-L process.

19 There are a number of improvements that should be made to BellSouth's current  
20 batch process. Two of the larger issues Supra currently faces are cutover notification  
21 and No Dial Tones ("NDTs") caused by BellSouth having to move the customer loop  
22 from IDLC to copper or UDLC.



1 With regards to notifications, BellSouth provides Supra with notifications that are  
2 anywhere from an hour to several hours after the cutover actually happens. The result  
3 of this late notification is that the customer cannot receive any calls during that time  
4 because Supra cannot port the customer's phone number over to Supra's internal  
5 system in the master database. Hence, the customer's service is disrupted.

6 The NDT problems are caused by BellSouth having to move the customer's loop  
7 from IDLC to copper or UDLC. BellSouth's plant records are full of errors. They move  
8 the customer to a customer loop before the cut or install a loop before the cut and don't  
9 test end to end. The central office Frame technician moves the jumper on both the  
10 BellSouth end and the Supra end and a NDT results. Supra then dispatches a  
11 BellSouth technician to resolve the problem. Unfortunately, experience has shown that  
12 it will take the BellSouth technician several tries until they finally get a working pair from  
13 the customer to us. Ideally, BellSouth should tell CLECs ahead of time which  
14 customers are served via IDLC. If Supra received this information, it might be  
15 reasonable and financially possible to use a coordinated conversion to make sure the  
16 cut is successful. Currently, the coordinated cut does nothing more than to add another  
17 layer of people to the hot cut conversion process and slow it down.<sup>21</sup>

18 **Not in a timely manner**

19 As I stated earlier in my testimony, based on BellSouth's current inability to cut  
20 over Supra's customers in commercial volumes, it would be impossible for BellSouth to  
21 complete the task in six months or even one year. As discussed above, BellSouth's cut

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<sup>21</sup> In addition, Supra would have to have many more people on our side to handle a large number of such cutovers.

1 over process is seriously flawed and is incapable of handling commercial volumes of  
2 cutovers. Additionally, BellSouth does not have enough manpower to convert all of  
3 Supra's customers within a year.

4 To meet a one year goal, even assuming that BellSouth's flawed cut over  
5 process could be fixed and worked perfectly with zero mistakes or problems, BellSouth  
6 would have to cut over approximately 1,200 customers per day just to meet Supra's  
7 needs and that does not even consider the needs of the other CLECs using BellSouth's  
8 UNE-P.

9 By contrast, BellSouth's actual commitment of 150 cutovers per day/office over the past  
10 month when cutting over customers for Supra. At that rate, it would take BellSouth over  
11 a year to cut over just Supra's existing customer base statewide. It would take even  
12 longer to cut over all of Supra's customers assuming that Supra continues to grow its  
13 customer base in BellSouth's territory.

14 **Q. 3(e), For those markets in BellSouth's service area where a batch cut**  
15 **process should be established, should the Commission establish an average**  
16 **completion interval performance metric for the provision of high volumes of**  
17 **loops?**

18 A. Yes. This is desperately needed. A metric must also be established for PON  
19 completion notification.

20

21 **Q. 3(f), For those markets in BellSouth's service area where a batch cut**  
22 **process should be established, what rates should be established for performing**

1 the batch cut processes?

2 A. An answer to this question is better left to Rebuttal.

3

4 **Q. 3(g) Are there any markets in BellSouth's service area for which a batch hot**  
5 **cut process need not be implemented? If so, for those markets in BellSouth's**  
6 **service area where a batch cut process need not be established because absence**  
7 **of such a process is not impairing CLECs' ability to serve end users using DS0**  
8 **loops to serve mass market customers without access to unbundled local circuit**  
9 **switching,**

10 A. No. An automated batch cut process should be implemented for all BellSouth  
11 markets.

12

13 **Q. 3(g)(i), what volume of unbundled loop migrations can be anticipated if**  
14 **CLECs no longer have access to unbundled local circuit switching;**

15 A. Supra would need BellSouth to cut over all 300,000 of Supra's customers spread  
16 across almost every central office in the state assuming we could obtain collocation  
17 space in all of them. However, based on my answer in the hot cuts section earlier,  
18 BellSouth is incapable of cutting over commercial volumes of customers

19

20 **Q. 3(g)(ii), how able is BellSouth to meet anticipated loop migration demand**  
21 **with its existing processes in a timely and efficient manner; and**

1 A. As discussed in 3(g)(ii) above and earlier in my testimony, it would take  
2 BellSouth over a year to cut over all of Supra's customers using their existing cut over  
3 process.

4

5 **Q. 3(g)(iii), what are the nonrecurring costs associated with BellSouth's**  
6 **existing hot cut process?**

7 A. Nonrecurring charges typically recover the costs of labor as well as physical plant  
8 that cannot be redeployed elsewhere. The nonrecurring costs for BellSouth to complete  
9 a single hot cut is mainly comprised of the labor costs of BellSouth's central office  
10 technician performing the hot cut (finding and testing the customer's loop and running a  
11 jumper cable to the CLEC's interconnection point) and a short piece of jumper wire.  
12 BellSouth has proposed a rate of more than \$50.00 to Supra for a single cut over.  
13 While I do not offer a specific price point at this time, I suspect that the actual cost is  
14 less than 5% of BellSouth's actual charge.

15

16 **Actual Switch Deployment: Local Switching Triggers**

17 **Q. 4(a) In which markets are there three or more CLECs not affiliated with**  
18 **each other or BellSouth, including intermodal providers of service comparable in**  
19 **quality to that of the ILEC, serving mass market customers with their own**  
20 **switches?**

21 A. This is better answered in Rebuttal. I don't think we know the answer to this  
22 question unless we dig through all of the responses to the data requests.

1

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

7 **A. This is better answered in Rebuttal. I don't think we know the answer to this**  
8 **question unless we dig through all of the responses to the data requests.**

9

10 **Potential for Self-Provisioning of Local Switching**

11

12 **Q. 5(a) In which markets area are there either two wholesale providers or**  
13 **three self-provisioners of local switching not affiliated with each other or the**  
14 **ILEC, serving end users using DS1 or higher capacity loops? Where there are,**  
15 **can these switches be used to serve DS0 capacity loops in an economic fashion?**

16 **A. The FCC has said that switches serving the enterprise (DS1) market cannot be**  
17 **counted toward meeting the threshold for the mass-market triggers.<sup>22</sup> Even though**  
18 **there is a slim possibility that switches being used to serve the enterprise market could**  
19 **be deployed to serve the mass market after the state commission implements a batch**  
20 **cut process, the state commission should not currently consider them for purposes of**  
21 **meeting the triggers.**

---

<sup>22</sup> See TRO para. 508.

1

2 **Q. 5(b) In which markets are there any carriers with a self-provisioned switch,**  
3 **including an intermodal provider of service comparable in quality to that of the**  
4 **ILEC, serving end users using DS0 capacity loops?**

5 A. Supra Telecom self-provisions switching in a number of wire centers within the  
6 BellSouth territory.<sup>23</sup> Although there may be other CLECs self-provisioning switching in  
7 BellSouth's territory, I am not aware of their specific locations. The FCC has stated that  
8 intermodal providers of service (i.e., CMRS and Cable TV) do not provide service  
9 comparable in quality to that of BellSouth. Hence, they cannot be counted towards  
10 meeting this criteria. I currently know of only one CLEC self-provisioning switching and  
11 serving end users using DS0 capacity loops in the above markets.

12

13 **Q. 5(c) In which markets do any of the following potential operational barriers**  
14 **render CLEC entry uneconomic absent access to unbundled local circuit**  
15 **switching:**

16 A. Based on the problems Supra has experienced with collocation, UNE-P, and hot  
17 cuts, there are operational and economic barriers in every market in BellSouth's  
18 territory.

19

20 **Q. 5(c)1. The ILEC's performance in provisioning loops;**

---

<sup>23</sup> See Response of Supra Telecom to Staff's Data Request.

1 A. Although this has been addressed above, Supra will reply in greater detail during  
2 Rebuttal.

3

4 **Q. 5(c)2. Difficulties in obtaining collocation space due to lack of space or**  
5 **delays in provisioning by BellSouth; or**

6 A. As noted earlier in my testimony, BellSouth has fought collocation for years.  
7 BellSouth was ordered to allow Supra to collocate in 1998. Despite this order BellSouth  
8 continued to raise new hurdles for 4 years. Supra will reply in greater detail during  
9 Rebuttal.

10

11 **Q. 5(c)3. Difficulties in obtaining cross-connects in BellSouth's wire centers?**

12 A. Supra will reply in greater detail during rebuttal.

13

14 **Q. 5(d) In which markets do any of the following potential economic barriers**  
15 **render CLEC entry uneconomic absent access to unbundled local circuit**  
16 **switching:**

17 **Q. 5(d)1. The costs of migrating ILEC loops to CLECs' switches; or**

18 A. BellSouth charges an exorbitant nonrecurring charge to Supra Telecom for  
19 converting UNE-P to UNE-L or migrating a Supra customer loop from BellSouth's switch  
20 to Supra's switch. I estimate that the charge could be a multiple of 20 times the actual  
21 cost to BellSouth. It is not surprising that BellSouth would try to enforce an outrageous  
22 rate. BellSouth proposed a rate of \$178 for resale to UNE-P conversions, but the FPSC

1 later determined that the cost-based rate was only \$1.47, less than 1% of the rate that  
2 BellSouth proposed.

3 Supra's current interconnection agreement with BellSouth does not specifically  
4 address the NRC for UNE-P to UNE-L conversions. Supra met with BellSouth on  
5 March 5, 2003 to discuss the conversion of Supra customers from UNE-P to UNE-L and  
6 to discuss the appropriate rate. In that meeting, BellSouth said the rate was \$49.57 for  
7 the first line on an order, and \$22.83 for additional lines on the order. In a letter from  
8 BellSouth dated May 21, 2003, BellSouth raised the rate further to \$51.09. However, as  
9 I stated above, there is no rate for this in the current Supra/BellSouth IA. The rate that  
10 BellSouth quoted to Supra was the NRC rate for new construction of a 2-wire analog  
11 voice grade loop (UEANL).

12 A hot cut, or UNE-P to UNE-L conversion, is a simple cross-connect as has been  
13 shown by several parties at the Commissions Oct. 28, 2003 meeting on hot cuts. All  
14 that a BellSouth central office technician has to do to transfer a customer's loop from  
15 BellSouth's switch to Supra's switch is (1) run a jumper cable from the Main Distribution  
16 Frame (MDF) to which the customer's UNE loop is attached to Supra's collocated  
17 equipment, and (2) notify the relevant Number Portability Administration Center (NPAC)  
18 that calls to those customers' numbers should be routed to Supra's network. Supra  
19 estimates that the entire process should take less than 3 minutes per loop. Accordingly,  
20 the labor cost associated with three minutes of labor should be negligible. Supra will  
21 provide more detail in Rebuttal.

22



1 **Q. 5(d)(2) The costs of backhauling voice circuits to CLECs' switches from the**  
2 **end offices serving the CLECs' end users?**

3 A. This will be answered in Rebuttal testimony.  
4

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

9 A. This depends upon how area is defined. Any answer to this question is better left  
10 for Rebuttal.  
11

12 **Q. 5(f) For each market taking into account the point at which the increased**  
13 **revenue opportunity at a single location is sufficient to overcome impairment and**  
14 **the point at which multiline end users could be served economically by higher**  
15 **capacity loops and a CLEC's own switching (and thus be considered part of the**  
16 **DS1 enterprise market), what is the maximum number of DS0 loops that a CLEC**  
17 **can serve using unbundled local switching, when serving multiline end users at a**  
18 **single location?**

19

20 A. This answer is better left to Rebuttal Testimony, given that the ultimate burden  
21 rests with the ILECs.  
22

1 **Q. 6., If the triggers in §51.319(d)(2)(iii)(A) have not been satisfied for a given**  
2 **ILEC market and the economic and operational analysis described in**  
3 **§51.319(d)(2)(iii)(B) resulted in a finding that CLECs are impaired in that market**  
4 **absent access to unbundled local switching, would the CLECs' impairment be**  
5 **cured if unbundled local switching were only made available for a transitional**  
6 **period of 90 days or more? If so, what should be the duration of the transitional**  
7 **period?**

8 A. CLECs will be impaired if UNE-P is taken away. The cut over process is  
9 necessary for CLECs to remain competitive during the cut over from UNE-P to UNE-L.  
10 The strategies for serving consumers are not mutually exclusive. Both are needed if  
11 competition is to continue in this State. Any transition period would be anti-competitive  
12 and ultimately harm consumers. It cannot be stressed enough that it is the consumer  
13 and choices for that consumer that is of paramount concern, not the bottom line of the  
14 ILECs.

15

16 **IV. SUMMARY AND RECOMMENDATION**

17 **Q. Please summarize your testimony.**

18 A. UNE-P is absolutely essential for competition in the mass market. Without it,  
19 CLECs will not be able to continue serving the vast majority of Florida's residential  
20 telecommunications users and will be unable to enter new markets to serve Florida's  
21 residential customers. BellSouth's cut over process is an enormous impairment to  
22 CLECs in Florida. The Commission should fix BellSouth's cut over process, establish

1 performance benchmarks for cut overs, and impose definitive penalties if BellSouth fails  
2 to implement the Commission's cut over process or fails to meet the performance  
3 benchmarks. However, even if all of the problems with BellSouth's cut over process are  
4 fixed and BellSouth implements the process and complies 100%, the Commission  
5 should still find that CLECs are impaired without access to unbundled local switching  
6 (i.e. UNE-P) when serving mass markets. Fixing cut overs does not eliminate all of the  
7 impairments to CLEC mass market entry.

1 **I. INTRODUCTION AND SUMMARY OF TESTIMONY**  
2  
3

4 **PLEASE STATE YOUR NAME AND ADDRESS**

5 A. My name is David A. Nilson. My address is 2620 SW 27<sup>th</sup> Avenue, Miami, Florida  
6 33133.  
7

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

9 A. I am the Chief Technology Officer of Supra Telecommunications and Information  
10 Systems, Inc. ("Supra").  
11

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

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

1 American Airlines call centers, and various system controllers used on Air Force One and  
2 Two, other government aircraft and the Royal Family in England. I designed special  
3 purpose systems used by both the FAA and the FCC in monitoring and compliance  
4 testing. I was responsible for design validation testing and FAA system conformance  
5 testing. Since 1992 I have been performing network and system design consulting for  
6 various industry and government agencies, including research and design engineering  
7 positions at the Argonne National Laboratories. I joined Supra Telecom in the summer  
8 of 1997. A programmer for more than 35 years, I have extensive experience systems  
9 analysis, design, and quality assurance procedures required by various US government  
10 agencies. I have designed Internet Service Provider networks and organizations,  
11 including Supra's. I have done communications related software consulting to Fortune  
12 500 corporations such as Sherwin Williams, Inc.

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

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

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

1 I participate in bill analysis and dispute resolution and am intimately familiar with  
2 BellSouth retail and CLEC OSS systems, CRIS and CABS billing systems and standards.  
3 I have resolved tens of millions of dollars in over billed charges.  
4

5 Q **HAVE YOU EVER TESTIFIED BEFORE?**

6 A. Yes, I testified before the Florida Public Service Commission (FPSC) in numerous  
7 generic dockets and in various disputes between Supra Telecom and BellSouth regarding  
8 central office space availability, rates, requirements, and specifications for Collocation,  
9 Unbundled Network Elements (UNEs), and UNE Combinations. I have participated in  
10 settlement procedures before the FPSC staff on matters relating to OSS and OSS  
11 performance against BellSouth. I have testified before the Texas Public Utilities  
12 Commission (TPUC) on matters of collocation regarding disputes with SWBT. I have  
13 made ex-parte presentations before the Federal Communications Commission (FCC)  
14 regarding the Bell Atlantic / GTE merger, the UNE Triennial review in 2002, and the  
15 Department of Agriculture (RUS) regarding Network Design and Expansion policies for  
16 CLECs. I have appeared before the FCC staff on several occasions in disputes against  
17 BellSouth regarding collocation. I have testified before regulatory arbitrators in Texas,  
18 and in Commercial arbitration against BellSouth. I have been deposed numerous times  
19 by BellSouth, and SWBT. I was qualified as an Expert Witness in Telecommunications  
20 by the Texas Public Utilities Commission in 2000. I have testified in Federal District  
21 Court and Federal Bankruptcy Court.  
22

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

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

3

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

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

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

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

18

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

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

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

10  
11 **II. EVIDENCE THAT CLECS ARE STILL IMPAIRED FROM SERVING MASS**  
12 **MARKETS WITHOUT ACCESS TO UNBUNDLED LOCAL SWITCHING.**

13  
14 **Q. In addition to the analysis required by the FCC and the FPSC, what other evidence**  
15 **shows that local telecommunications mass market is not competitive and that**  
16 **CLECs should still be allowed to use unbundled local switching to serve mass**  
17 **market customers?**

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

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



1 2) The Big 3 ILEC's recent local rate increase clearly demonstrates that local  
2 competition from CLECs is not sufficient to restrain the ILECs' from exercising  
3 enormous monopoly pricing power and raising rates of captive local ratepayers.  
4

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

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

---

<sup>1</sup> 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.

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**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

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

7  
8 **Q. What are BellSouth's motives in opposing the continuation of Unbundled Local**  
9 **Switching?**

10 A. Quite simply the elimination of UNE-P as a means to eliminate meaningful competition  
11 in its service area. To say otherwise is ludicrous because, after all, that is the intent of  
12 any business. But in our Congress has clearly stated its intention that competition be  
13 encouraged and fostered, and as such the **means** to compete are to be regulated.

14 Congress went so far as to empower the state commissions with the authority to create  
15 state rules which exceed the FCC's **minimum** requirements to foster local competition.  
16 As this Commission has obviously looked to the actions of other state Commissions in  
17 formulating the issues to be decided in this docket, the history of competition in Florida  
18 over the past 6 years should be considered as much as the current status. Not all ILECs  
19 have resisted competition as vigorously as the Florida ILECs.

20  
21 **Q. How do you justify that answer?**

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

1 implementing since prior to the 1996 ACT. BellSouth knows well the economics of  
2 providing telephone service, and which of its revenues must be protected from  
3 competition. Despite entering into agreements to provide UNE-P in 1996, BellSouth  
4 refused to provide UNE-P, and refused to accept that the CLEC would be entitled to  
5 collect access charges and other end user line charges under UNE-P, if it was made  
6 available. This Commission ordered BellSouth to comply in order PSC-98-0810-FOF-  
7 TP on June 12, 1998. BellSouth refused to implement UNE-P. Bellsouth still refused to  
8 implement UNE-P after the Supreme Court ruled in *AT&T v. Iowa Utilities*<sup>2</sup> in January  
9 1999. Despite continuous pressure from Supra and other CLECs, BellSouth did nothing  
10 to implement UNE-P in 1999, 2000, and 2001. Supra first got limited and faulty UNE-P  
11 ordering capability on June 15, 2001, and by BellSouth's own sworn testimony in Federal  
12 Court<sup>3</sup> BellSouth itself never determined its CLEC OSS systems for UNE-P were  
13 effective until approximately June 18, 2002. BellSouth had avoided making UNE-P  
14 available for over 5 years in an effort to avoid meaningful competition. Now a scant 18  
15 months later, BellSouth is using the TRO in an attempt to reduce competition back to  
16 token levels. Simply put, BellSouth knows it can **eliminate** anything except token  
17 competition from its region by eliminating UNE-P because the step from resale to  
18 facilities based competition<sup>4</sup> is simply too large a step for a competitor to successfully  
19 make, even another ILEC competitor.

20  
21 **Q. What about the other Florida ILECs?**

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<sup>2</sup> 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.

<sup>3</sup> See Supra Exhibit DAN-1.

<sup>4</sup> Or startup to facilities based.

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

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

10  
11 **Q. What does meaningful competition mean?**

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

17  
18 **Q. Why is it that resale does not represent meaningful competition?**

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

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<sup>5</sup> 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.

<sup>6</sup> A situation that may not be attractive to large numbers of customers.

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

6  
7 **Q. Why does the Big 3 ILEC's recent local rate increase clearly demonstrate that local**  
8 **competition from CLECs is not sufficient to restrain the ILECs' from exercising**  
9 **enormous monopoly pricing power and show that unbundled local switching should**  
10 **still be required?**

11 A. A basic tenet of economics is that increased competition leads to lower prices. If the Big  
12 3 ILECs felt competitive pressure from CLECs, they would have reduced their basic local  
13 rates. The simple fact that BellSouth, Verizon, and Sprint each significantly raised their  
14 basic local rates proves that none of the Big 3 ILECs truly believe that CLECs provide  
15 significant competition.

16  
17 If CLECs are not allowed to continue to use unbundled local switching, then competition  
18 from CLECs will be decreased, and consumers will likely see continued price increases  
19 by the Big 3 ILECs. In the mis-named rate-rebalancing docket, this Commission  
20 acknowledged the inelasticity of the captive ILEC retail customers. Without UNE-P to  
21 place competitive pressure on BellSouth, the ILEC will feel secure in raising rates in the  
22 future. If customers have no alternatives, they will be forced to pay whatever BellSouth  
23 chooses to charge. The recent rate rebalancing shows the importance of access charges to

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

11  
 12 **III. REBUTTAL OF DR. CHRISTOPHER JON PLEATSIKAS – DEFINING**  
 13 **GEOGRAPHIC AREAS FOR MASS MARKET UNE-P SWITCHING (ISSUE 1**  
 14 **AND 2).**

15  
 16 **Q. When defining geographic market areas for mass market unbundled local**  
 17 **switching, which factors should be taken into consideration and what relative**  
 18 **weights should they be assigned?**

19 **A.** The FCC and FPSC Staff have identified three factors to consider. They are as follows:  
 20 (a) the locations of mass market customers actually being served by CLECs;  
 21 (b) the variation in factors affecting CLECs' ability to serve each group of customers;  
 22 and

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<sup>7</sup> As ordered in the Access Reform Docket 96-262, and particularly the CALLS order, 00-193.  
 BEFORE THE FPSC -- REBUTTAL TESTIMONY OF  
 DAVID A. NILSON  
 ON BEHALF OF SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.  
 DOCKET NO. 030851-TP  
 Filed: January 7, 2004  
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1 (c) CLECs' ability to target and serve specific markets profitably and efficiently  
2 using current available technologies?<sup>8</sup>

3  
4 **Q. Does Dr. Pleatsikas sufficiently address the Commission's criteria for defining a**  
5 **geographic market?**

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

14  
15 **Q. Regarding Issue 2(a), how does the location of mass market customers actually**  
16 **being served by CLECs affect defining the relevant geographic area for mass**  
17 **market switching?**

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

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<sup>8</sup> See TRO para. 495.



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

5 For POTS service it is substantially less expensive for a CLEC to serve customers  
 6 in the same wire center where its switch is collocated with the ILEC's switch than it is to  
 7 serve those same customers from a different wire center several miles away. Large  
 8 multiline customers which can be cost effectively served by DS1 loops<sup>10</sup> can be  
 9 efficiently cross connected to either a switch in the serving wire center, or to transport  
 10 which will carry the call back to a switch located remotely. On the other hand, 2 wire  
 11 POTS service requires electronics equipment be collocated<sup>11</sup> in every central office or  
 12 remote terminal where the two wire copper is terminated, in order to transport the call  
 13 back to a switch. Dr. Pleatsikas acknowledges this only to a very limited extent when he  
 14 acknowledges that even though Jacksonville and Miami are within the same UNE rate  
 15 zone, they are too far apart and transport costs would likely be too high. However, he  
 16 does not discuss the additional higher transport, collocation, and equipment<sup>12</sup> costs  
 17 CLECs would face if the market were defined as the entire Miami-Fort Lauderdale  
 18 metropolitan area and the CLEC must transport traffic across that market.  
 19

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<sup>9</sup> Or higher.

<sup>10</sup> 6-8 lines or more at a given location.

<sup>11</sup> 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.

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

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

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

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<sup>13</sup> Largely single family middle income and elderly customers.  
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1 intention to reduce competition from its current state, it is inappropriate to set threshold  
2 based upon an arbitrarily large boundary such as CEA or UNE rate zone.

3  
4 **Q. What factors affect a CLECs' ability to serve customers in a particular geographic**  
5 **area?**

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

13  
14 The size and location of a wire center impact costs as well. A large wire center, or a wire  
15 center serving 40,000 lines, will have lower per unit costs than a small wire center that  
16 serves only 2,000 lines. Likewise, a wire center located in a densely populated area will  
17 also have lower per unit costs because the CLEC will be able to reach more customers  
18 from that site. Additionally, expected revenues per customer vary by ILEC and by  
19 population density. Rates in urban areas are generally lower than rates in rural areas and  
20 have to be weighed against costs of serving customers. Furthermore, ILECs charge  
21 different rates for the same services. A CLEC must consider all of these factors before  
22 choosing to enter a particular geographic area.

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<sup>14</sup> 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.

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**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<sup>15</sup>, 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 do not exist in any large number and those that do are already partially or fully used by BellSouth itself. The use of multiple UDLC

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<sup>15</sup> 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.

1 boxes can also have a detrimental effect on high speed modem use by a customer,  
2 causing a customer who enjoyed %Kbps modem speeds as a Bellsouth customer to suffer  
3 14.4 or slower service as a CLEC customer due to the multiple A/D and D/A conversions  
4 negatively affecting the modems ability to compress data at the 56K rate. Service  
5 provided to customers formerly served by IDLC technology cannot be provided in the  
6 same time or manner as it is to a BellSouth Retail, Resale, or UNE-P customer.

7 Furthermore there is again the question of scale. What BellSouth can do to  
8 convert this type of service for 10 or 20 customers, it cannot do for 2000. Yet mass  
9 market advertising has provided Supra with approx 20,000 customers of this type in the  
10 Pembroke Pines wire center alone. BellSouth cannot convert these customers to UNE-L  
11 at all. BellSouth testimony is full of unfulfillable promises regarding EELs. Were EELS  
12 as ubiquitous as BellSouth would have you believe, they could use that technology to  
13 solve the UNE-P to UNE-L conversion issues in Pembroke Pines. The simple fact is that  
14 today, 2 wire POTS EELs do not exist as a viable high volume alternative to UNE-P.  
15

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

18 A. A key requirement is that an ILEC have collocation space available. If the ILEC does not  
19 have any collocation space available, then it becomes prohibitively more expensive for a  
20 CLEC to build their own suitable collocation space. EELs were supposed to eliminate  
21 this and provide a seamless<sup>16</sup> solution so that a CLEC did not have to collocate in all  
22 200+ wire centers in the BellSouth region. This all looks good on paper. But 2 wire

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<sup>16</sup> Albeit a prohibitively expensive.

1 POTS EELs provide the same problems<sup>17</sup> to the ILEC as they do to the CLEC. BellSouth  
2 simply cannot provide 290,000 POTS EELs to replace the UNE-P service being provided  
3 to Supra customers today. Supra on the other hand has been able to effect collocation in  
4 18 Bellsouth offices, and is unable to directly provide service, without collocation or  
5 POTS EELs in over 95% of the BellSouth central offices.

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

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

---

<sup>17</sup> Or impairments

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

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

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

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<sup>18</sup> See TRO para. 496.

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

4  
5 **Q. Regarding Issue 2(b), how does the variation in any of the above mentioned factors**  
6 **affect CLECs' ability to serve customers in each geographic area?**

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

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



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

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

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

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

3  
4 **Q. Regarding Issue 2(c), how does the CLECs' ability to target and serve specific**  
5 **markets profitably and efficiently using current available technologies affect**  
6 **defining the relevant geographic area for mass market switching?**

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

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

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<sup>19</sup> The FPSC has ordered that the conversion from 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!

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

8  
9 **Q. Why is it vital for the geographic area to be defined at the "right size" and not too**  
10 **large?**

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

18  
19 **Q. What did the FCC say about defining geographic areas?**

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

1 scope economies from serving a wider market.”<sup>20</sup> States should consider CLECs’ ability  
2 to self-provision switches or use switches provided by a third-party wholesaler<sup>21</sup> to serve  
3 various group of customers varies by geographic market. The FCC went on to say that if  
4 a CLEC was serving only a certain geographic area with its own switch, then the state  
5 commission should consider establishing those areas as separate markets.<sup>22</sup>

6 Additionally, the state may consider using other geographic market definitions that were  
7 used for determining retail rates, UNE loop rate zones, and intrastate universal service  
8 funding.

9  
10 States must determine the appropriate cut-off for multi-line DSO customers as part of its  
11 more granular review..

### 12 13 **Recommendation for Defining Geographic Markets**

14  
15 **Q. What is your recommendation for defining a geographic market for purposes of**  
16 **evaluating mass market impairment?**

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

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<sup>20</sup> See TRO para. 495.

<sup>21</sup> 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.

<sup>22</sup> See TRO footnote 1537.

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

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

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

11  
12 **Q. Regarding Issue 1, in BellSouth's service area, what are the relevant markets for**  
13 **purposes of evaluating mass market impairment and how are they defined?**

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

23

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

3  
4 **Q. Do you agree with Ms. Tipton, that the FCC’s criteria for the first trigger of three**  
5 **CLECs self-provisioning switching have been met in 10 of BellSouth’s markets?**

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

16  
17 **Q. Why is the mere presence of three self-provisioned CLEC switches in a market NOT**  
18 **enough to satisfy the trigger?**

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

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

3  
4 Based on the FCC's criteria, the checklist for analyzing each of the three CLECs that are  
5 self-provisioning switching is as follows:

6 1) The CLEC must be actively providing voice services to mass market  
7 customers in that market.<sup>23</sup>

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

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

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

14  
15 To meet this trigger, the state commission can only consider CLEC switches that are  
16 actively providing voice services to mass market customers in that market. Thus, if a  
17 CLEC switch is idle or is not currently being used to provide voice services to mass  
18 market customers, it cannot be counted towards meeting the threshold. The CLEC must  
19 also be operationally and economically able and willing to provide service to all  
20 customers in that market. Even if the CLEC is providing voice services to some mass  
21 market customers in that market, if the CLEC is unable to provide service to all mass

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<sup>23</sup> 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."



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

11  
12 **Q. What are some examples of how a CLEC would not meet the first criteria of**  
13 **providing voice services to mass market customers in a geographic market?**

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

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<sup>24</sup> 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.**

<sup>25</sup> I.e. an idle switch, or one serving the IXC market.

<sup>26</sup> See TRO para. 499.

<sup>27</sup> Id. (TRO para. 499).

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

5  
6 “We give substantial weight to **actual commercial deployment** of  
7 particular network elements by competing carriers.” (bold added for  
8 emphasis.)

9  
10 **Q. What are some examples of how a CLEC could not be operationally able or willing**  
11 **to provide service to all customers in a geographic market?**

12 **A.** The CLEC could be actively providing voice service to some mass market customers in a  
13 given geographic market, but may not be operationally able or willing to provide service  
14 to all customers in a geographic market. For example,

- 15 1) Collocation space is not available to the CLEC so the CLEC cannot  
16 offer service in parts of the market.
- 17 2) The CLEC’s switch capacity is not yet sufficient to serve all of its **own**  
18 UNE-P customers.
- 19 3) The ILEC cannot cut over all of the CLEC’s existing UNE-P customers to the  
20 CLEC’s switch.

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<sup>28</sup> TRO para. 498, We give

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

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

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

10

11   **Q.    What are some examples of how a CLEC could not be economically able or willing**  
12   **to provide service to all customers in a geographic market?**

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

16           1) Collocation space is available but is prohibitively expensive.

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

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

1 4) EELs are prohibitively expensive or unavailable so they are not a reasonable  
2 substitute<sup>29</sup>.

3  
4 **Q. What are some examples of how a CLEC's services might not be desirable to all  
5 segments of mass market customers in a geographic market?**

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

12  
13 **Customer Segment**

**Product Targeted to Segment**

14 a) Consumer <sup>30</sup>	POTS
15 b) Low-income	Lifeline
16 c) Bad Credit	Prepaid local phone service

17  

---

<sup>29</sup> 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.

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

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

4 A. The FCC said that a state commission would find impairment exists if a significant  
5 barrier to entry existed such that even a CLEC that self-provisioned its own switching  
6 would not be able to enter the market to serve all mass market customers. As I stated  
7 above, even if Supra has a switch collocated in BellSouth's central Office Supra is unable  
8 to serve all of the mass market customers with its switch because some customers are  
9 served with IDLC facilities which BellSouth will not unbundle or due to the  
10 unavailability of EELS and wholesale loop concentration facilities. The only way that  
11 Supra can reach these customers is by using unbundled local switching. Additionally, if  
12 the FPSC finds that there is no collocation space available in a geographic market to  
13 CLECs that self-provision switches, the Commission would find that CLECs are  
14 impaired without access to unbundled switching because further competitive entry would  
15 be impossible regardless of other economic or operational circumstances. (See para.  
16 503).

17  
18 **Q. What if there are three CLECs self-provisioning switching in the enterprise market,**  
19 **should the State commission count them for a finding non-impairment?**

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

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

5  
6 **Q. Did BellSouth's Witness, Ms. Tipton, address any of the FCC's criteria in her  
7 analysis?**

8 A. No, not a single one.

9  
10 **Q. Has BellSouth met the burden of proof in attempting to show that the first trigger is  
11 met?**

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

18  
19 **CMRS and Cable TV Intermodal Switching Is Not An Alternative For Analyzing the**  
20 **Presence of CLEC Switching Within A Market.**

21  
22 **Q. Ms. Tipton suggests that CMRS switches and/or Cable TV switches (intermodal  
23 switching alternatives) should also be considered when analyzing self-provisioning**

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

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

6  
7 The FCC said that CMRS providers do not provide service that is a suitable substitute for  
8 local circuit switching. As many know from their own personal experience with cellular  
9 phone service, voice clarity seldom compares to the clarity of a wireline call, calls are  
10 often dropped mid-sentence, service is simply unavailable in many areas, and surfing  
11 speeds on the internet via a cell phone are akin to watching paint dry. Specifically, the  
12 FCC stated that,

13 “We also find that, despite evidence demonstrating that narrowband local  
14 services are widely available through CMRS providers, wireless is not yet  
15 a suitable substitute for local circuit switching. ....the record demonstrates  
16 that wireless CMRS connections in general do not yet equal traditional  
17 landline facilities in their quality and their ability to handle data traffic.”  
18 (TRO para. 445.)

19  
20 “...we note that CMRS does not yet equal traditional incumbent LEC  
21 services in its quality, its ability to handle data traffic, its ubiquity, and its  
22 ability to provide broadband services to the mass market....(TRO para.  
23 230 and footnote 1549)

24  
25 The FCC stated that that was no evidence that either CMRS or Cable TV switching  
26 provided CLECs access to the ILEC’s DS0 loops. Thus, they could not be considered as  
27 intermodal alternatives for wholesale switching for purposes of this docket.

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

1 wireline voice-grade local loop and thereby self-deploy local circuit  
2 switches.<sup>31</sup>

3  
4 **Q. Did the FCC specifically state that CMRS switches should not be considered?**

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

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

10  
11 **Q. Did the FCC specifically state that Cable TV switches should not be considered as  
12 an intermodal alternative?**

13 A. Yes. The FCC stated that their intermodal switching analysis is based, in part, on  
14 evidence from the intermodal loop analysis.<sup>32</sup> Regarding the intermodal loop analysis  
15 which included analyzing the use of Cable TV networks to provide voice services, the  
16 FCC stated:

17 “Upon review of the extensive record on intermodal competition compiled  
18 in this proceeding, we determine that, although the existence of intermodal  
19 loops does not warrant a finding of no impairment, such competition is a  
20 factor to consider in establishing our unbundling requirements. . . Neither  
21 wireless nor cable has blossomed into a full substitute for wireline  
22 telephony.”<sup>33</sup>

23  
24 **Q. When considering intermodal switching, did FCC consider if CLECs were  
25 impaired?**

---

<sup>31</sup> See TRO para. 446.

<sup>32</sup> 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.”

<sup>33</sup> See TRO para. 245.



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

3 "In particular, we determine that the limited use of intermodal circuit  
4 switching alternatives (CMRS and Cable TV) for the mass market is  
5 insufficient for us to make a finding of no impairment in this market,  
6 especially since these intermodal alternatives are not generally available to  
7 new competitors."<sup>34</sup>  
8

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

13 A. The FCC stated that packet switches could be considered to the extent that they are used  
14 to provide local voice service to the mass market.<sup>35</sup>  
15

16 **Reversing a finding of Non-impairment.**  
17

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

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

---

<sup>34</sup> See TRO para. 443.

<sup>35</sup> See TRO footnote 1549.

1  
2 There are a couple of very possible scenarios that would cause a CLEC that is self-  
3 provisioning switching in a geographic market to no longer be counted as meeting the  
4 benchmark of three CLECs. First, the CLEC may merge with the ILEC. For example, if  
5 BellSouth and AT&T were to merge, then AT&T's switches should no longer be counted  
6 as one of the three CLECs to meet the FCC's criteria of three CLECs self-provisioning  
7 switching. Second, over the past three years, numerous CLECs have filed bankruptcy  
8 and have ceased providing service. If a CLEC ceases to provide service in that market,  
9 leaving only two CLECs self-provisioning switching in that geographic market, then that  
10 CLEC should no longer be counted as one of the three meeting the criteria. Third,  
11 CLECs may withdraw from a given geographic market for economic reasons other than  
12 bankruptcy, as the ILEC SBC withdrew from the Florida market. CLECs may scale back  
13 operations to survive financially or a CLEC may no longer find it economically profitable  
14 to serve that specific geographic market. If this occurs, then the commission should  
15 immediately find that the criteria of three CLECs is no longer met and should require the  
16 ILEC to offer unbundled local switching. This "automatic impairment trigger" – for a  
17 lack of a better term – should be included in the order of the Commission, if the  
18 Commission were to find that presently non-impairment exists in these markets. It would  
19 be detrimental to the fundamental legislative mandate of Chapter 364, Florida Statutes,  
20 that this Commission promotes competition in the State of Florida.  
21

1 IV. REBUTTAL OF BELL SOUTH'S BACE (BELL SOUTH ANALYSIS OF  
2 COMPETITIVE ENTRY) - OPERATIONAL AND ECONOMIC BARRIERS TO  
3 CLEC ENTRY

4  
5 Q. Q. Didn't the FCC find on a national level that CLECs serving the mass market  
6 were impaired without access to unbundled local switching due to operational and  
7 economic barriers?

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

11 The FCC stated:

12 "We find on a national basis, that competing carriers are impaired without  
13 access to unbundled local circuit switching for mass market customers.  
14 **This finding is based on evidence in our record regarding the**  
15 **economic and operational barriers caused by the cut over process.**  
16 **These barriers include the associated non-recurring costs, the**  
17 **potential for disruption of service to the customer, and our conclusion,**  
18 **as demonstrated by our record, that incumbent LECs appear unable**  
19 **to handle the necessary volume of migrations to support competitive**  
20 **switching in the absence of unbundled switching. These hot cut**  
21 **barriers not only make it uneconomic for competitive LECs to self-**  
22 **deploy switches specifically to serve the mass market, but also hinder**  
23 **competitive carriers' ability to serve mass market customers using**  
24 **switches self-deployed to serve enterprise customers. (bold added for**  
25 **emphasis)"<sup>36</sup>**  
26

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

---

<sup>36</sup> See TRO para. 459.

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

7  
8 **Q. Are hot cuts the largest operational and economic barrier to CLEC entry in the**  
9 **mass market?**

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

16  
17 “...we conclude that the operational and economical barriers arising from  
18 the to cut process create an insurmountable disadvantage to carriers  
19 seeking to serve the mass market, demonstrating that competitive carriers  
20 are impaired without local circuit switching as a UNE.”<sup>41</sup>  
21

---

<sup>37</sup> See TRO footnote 1405

<sup>38</sup> 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!

<sup>39</sup> See TRO para. 419, 422.

<sup>40</sup> See TRO para. 459.

<sup>41</sup> See TRO para. 475.

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

3  
4   **Q.    What other operational barriers prevent CLEC Entry?**

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

12  
13   **Q.    What economic barriers prevent CLEC Entry?**

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

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

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<sup>42</sup> See TRO para. 456.

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

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

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

1 with entry, carriers are not impaired without unbundled access to local  
2 circuit switching for DS1 enterprise customers.”  
3  
4

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

6 A. No. The BACE model looks at a theoretical world where BellSouth is able to complete  
7 hot cuts on a timely basis, where CLEC customers aren’t left without service for days  
8 because BellSouth cannot resolve a hot cut issue with IDLC, and where CLEC customers  
9 don’t blame the CLEC for problems with BellSouth’s ineptitude and leave the CLEC.  
10  
11

12 **Actual Switch Deployment: Local Switching Triggers**

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

17 A.  
18 Based on my analysis of the several criteria the FCC requires state commissions to use to  
19 analyze CLEC provisioning of switching in a market and based on the market definition  
20 the FPSC should adopt, I find that there are no areas in BellSouth’s territory where there  
21 are three or more CLECs not affiliated with each other or BellSouth serving mass market  
22 customers with their own switches.<sup>43</sup>

---

<sup>43</sup> 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

1

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

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

13

14 **Potential for Self-Provisioning of Local Switching**

15

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

---

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.

<sup>44</sup> 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.

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

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

13  
14   **Q.    Regarding Issue 5(b), in which markets in BellSouth's service area is there a carrier**  
15       **with a self-provisioned switch, including an intermodal provider of service**  
16       **comparable in quality to that of BellSouth, serving end users using DS0 capacity**  
17       **loops? Where there is, can this switch be used to serve DS0 capacity loops in an**  
18       **economic fashion?**

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

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

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

23

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

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

11

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

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

14

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

17   A.    Supra's collocation battles have been fought before this commission on several occasions  
18   and in other venues. Supra applied for collocation in 18 central offices in April 1998, and  
19   finally took possession of these spaces in March 2002, although problems existed until  
20   August 2002 when BellSouth finally resolved its problems and started billing rent, over  
21   5 years later.

22

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

1           **wire centers?**

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

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

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

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

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

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

13  
14 **Q. Regarding Issue 5(d)(i), the costs of migrating BellSouth loops to CLECs’ switches;**  
15 **or**

16 **A.** BellSouth charges an exorbitant nonrecurring charge to Supra Telecom for converting  
17 UNE-P to UNE-L or migrating a Supra customer loop from BellSouth’s switch to  
18 Supra’s switch. I estimate that the charge is a multiple of 25 times the actual cost to  
19 BellSouth. It is not surprising that BellSouth would try to enforce an outrageous rate.  
20 BellSouth proposed a rate of \$178 for resale to UNE-P conversions, but the FPSC later  
21 determined that the cost-based rate was only \$1.47<sup>45</sup>, less than 1% of the rate that

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<sup>45</sup> FPSC order PSC-98-0810-FOF-TP, June 12, 1998.

1 BellSouth proposed. Subsequent FPSC TELRIC proceedings reduced that rate to \$0.102  
2 (10.2 cents)<sup>46</sup>

3 Supra's current interconnection agreement with BellSouth does not specifically  
4 address the NRC for UNE-P to UNE-L conversions. Bellsouth in sworn testimony in  
5 Federal court has stated that they have never produced a cost study for this and the FPSC  
6 has never heard testimony regarding this cost. Supra met with BellSouth on March 5,  
7 2003 to discuss the conversion of Supra customers from UNE-P to UNE-L and to discuss  
8 the appropriate rate. In that meeting, BellSouth said the rate was \$49.57 for the first line  
9 on an order, and \$22.83 for additional lines on the order. In a letter from BellSouth dated  
10 May 21, 2003, BellSouth raised the rate further to \$51.09. Subsequently they began  
11 billing Supra \$59.31 to disconnect local switching by crossconnecting the loop to  
12 Supra's switch. However, as I stated above, there is no rate for this in the current  
13 Supra/BellSouth IA. The rate that BellSouth quoted to Supra was the NRC rate for new  
14 construction of a 2-wire analog voice grade loop (UEANL).

15  
16 A hot cut, or UNE-P to UNE-L conversion, is a simple cross-connect as has been shown  
17 by several parties at the Commissions Oct. 28, 2003 meeting on hot cuts. All that a  
18 BellSouth central office technician has to do to transfer a customer's loop from  
19 BellSouth's switch to Supra's switch is (1) run a jumper cable from the Main Distribution  
20 Frame (MDF) to which the customer's UNE loop is attached to Supra's collocated  
21 equipment, and (2) notify the relevant Number Portability Administration Center (NPAC)  
22 that calls to those customers' numbers should be routed to Supra's network. Supra

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<sup>46</sup> FPSC Order PSC-01-2051-FOF-TP, October 2001.  
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1 estimates that the entire process should take about 3 minutes per loop and that the cost  
2 should be less than \$2.00.

3  
4  
5 **Q. Regarding Issue 5(e), taking into consideration the above factors, in what markets in**  
6 **BellSouth's service area is it economic for CLECs to self-provision local switching**  
7 **and CLECs are thus not impaired without access to unbundled local circuit**  
8 **switching?**

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

13  
14 **Q. Regarding Issue 5(f), for each market in BellSouth's service area, taking into**  
15 **account the point at which the increased revenue opportunity at a single location is**  
16 **sufficient to overcome impairment and the point at which multiline end users could**  
17 **be served economically by higher capacity loops and a CLEC's own switching (and**  
18 **thus be considered part of the DS1 enterprise market), what is the maximum**  
19 **number of DS0 loops that a CLEC can serve using unbundled local switching, when**  
20 **serving multiline end users at a single location?**

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

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

3  
4 **Transitional use of unbundled local switching** (§51.319(d)(2)(iii)(C))

5  
6 **Q. Regarding Issue 6, if the triggers in §51.319(d)(2)(iii)(A) have not been satisfied for a  
7 given BellSouth market and the economic and operational analysis described in  
8 §51.319(d)(2)(iii)(B) resulted in a finding that CLECs are impaired in that market  
9 absent access to unbundled local switching, would the CLECs' impairment be cured  
10 if unbundled local switching were only made available for a transitional period of 90  
11 days or more? If so, what should be the duration of the transitional period?**

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

17  
18 **Conclusion**

19 **Q. What are your findings and recommendations?**

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



1

2 Q. Does this conclude your Testimony

3 A. Yes

1 SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

2 SUREBUTTAL TESTIMONY OF DAVID A. NILSON

3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

4 DOCKET 030851-TP

5 JANUARY 28, 2004

6  
7 **I. INTRODUCTION AND SUMMARY OF TESTIMONY**

8  
9  
10  
11 **Q PLEASE STATE YOUR NAME AND ADDRESS**

12 A. My name is David A. Nilson. My address is 2620 SW 27<sup>th</sup> Avenue, Miami, Florida  
13 33133.

14  
15 **Q BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

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

18  
19 **Q ARE YOU THE SAME DAVID A. NILSON WHO FILED REBUTTAL TESTIMONY**  
20 **IN THIS DOCKET?**

21 I am.  
22  
23

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

25 A. The purpose of my testimony is to rebut the testimony of **Mr. K Ainsworth, Mr. John**  
26 **Ruscilli, and Mr. Wayne Gray.**

1 Q: MR. AINSWORTH TESTIFIES THAT GO AHEAD NOTIFICATIONS ARE  
2 COMPLETED, ON AVERAGE, IN LESS THAN (2) MINUTES FOR COORDINATED  
3 CUTS. WHAT IS WRONG WITH THAT?

4 A. Like most of Mr. Ainsworth's replies, it is designed to cast Bellsouth's performance in a  
5 good light while obfuscating the underlying issue. Notwithstanding Supra's complaint before  
6 the FCC that Bellsouth's act of **actually charging** these rates in a UNE-P to UNE-L conversion  
7 constitutes improper recovery of avoided costs, the benefits of an SL2 conversion are loss on  
8 mass market residential customers, and Bellsouth's performance on SL1 cutover notifications  
9 can lag as much as two days.

10 This commission, in order 01-2051-TP established different non-recurring rates for SL1  
11 (\$49.57) and SL2 (\$135.75). Stripping away the rhetoric, the difference in real world benefits,  
12 and the cost studies filed with this commission in the generic UNE docket 990649A-TP both  
13 agree – the predominant benefit of the SL2 process is the compressed time schedule of the  
14 customer, **and the notification process**. In essence, in a coordinated cutover of an SL2 loop, the  
15 CLEC is paying most of the \$ 86.18 additional cost for the notification itself. In fact the cost  
16 studies filed by BellSouth for the NRC shows the only new activity between SL1 and SL2 is the  
17 notification (Labor grade 4N4X for notification)<sup>1</sup>.

18 Yet Supra data (Exhibit Supra Exhibit # DAN-RT-1 shows that BellSouth's performance  
19 on SL1 loops is much poorer than what Mr. Ainsworth states is the coordinated timeframe. The  
20 import is clear – pay more, three times more in fact, and BellSouth will then do the job right.  
21 No where does Mr. Ainsworth address **any** timeframes regarding SL1 conversions of residential  
22 POTS customers, the bulk of Supra's business and **clearly** the largest component of the customer

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<sup>1</sup> In addition to increased Connect and test work times.  
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1 base for “mass market” unbundled local switching. This same thought will be discussed further  
 2 in my testimony regarding Mr. Ainsworth’s testimony regarding IDLC conversions.

3 Non recurring costs to convert UNE-P to UNE-L are being used as a barrier to entry. If a  
 4 CLEC is making \$10 per line profit, an SL1 conversion from UNE-P<sup>2</sup> takes 5 months to recover  
 5 before the customer begins to contribute to the profitability of the company. For SL2 loop, over  
 6 a year before the break even point, **on the conversion of existing, profitable UNE-P service.**

7 To credibly make a finding of no impairment

8

9 **Q ON PAGE 4 LINES 17-19 MR. AINSWORTH TAKES EXCEPTION TOI MR.**  
 10 **STAHLY’S TESTIMONY THAT BELLSOUTH IS WILLING TO COMMIT TO “GO**  
 11 **AHEAD” NOTIFICATIONS EVERY COUPLE OF HOURS.” IS MR.**  
 12 **AINSWORTHS TESIMONY CREDIBLE?**

13 A. No. First of all Mr. Ainsworth is quotes policy, not reality. Second he addresses only  
 14 coordinated conversions where a premium price is being paid, generally on a high revenue  
 15 business line, to ensure timely notification. Third, Mr. Ainsworth does not address the  
 16 performance of Bellsouth in real “mass market “ conversion, i.e. SL1 conversion for residential  
 17 POTS customers.

18 In the cases where the go ahead notification comes several days late, it is disingenuous to talk  
 19 of the “two minute” notification interval as if that were the type of conversion most often ordered  
 20 by a CLEC. It is not and BellSouth’s records show that. In these cases the customer has the  
 21 ability to make calls, but no ability to receive any so that until an issue arises of a missed call, the  
 22 customer has no reason to notify Supra of a problem. Supra, likewise, has no indication that the

---

<sup>2</sup> According to BellSouth’s interpretation of 990649 orders.  
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1 conversion too place, as the go-ahead notice, late as it often is, actually leads the updating of  
2 other CLEC OSS such as the CLEC Service Order Tacking System (“CSOTS”).

3 If BellSouth is confident in its ability to make notifications within 2 minutes of a hot cut,  
4 this Commission should set that, or a reasonable extension of that as a mandated notification  
5 interval for any and all conversions, and set SEEMS penalties for non-compliance. I strongly  
6 believe that should this Commission make such a move, Bellsouth’s testimony regarding their  
7 ability to make timely notifications will suddenly change in opposition making it possible to  
8 divine the truth of this matter.

9

10 **Q WHY ARE TIMELY GO AHEAD NOTIFICATION IMPORTANT?**

11 A. After the UNE-P local switching is disconnected and the loop connected to the CLEC  
12 switch, all other steps being performed properly, the customer can make a telephone call, but  
13 cannot receive one, as incoming calls are still being directed to the Bellsouth switch by the SS7  
14 network and the LNP process.

15 Once the go ahead is received the pending LNP port, which both the CLEC and ILEC have  
16 already electronically “signed off on”, can be activated by the CLEC. However if the go ahead  
17 notice is not sent, then most often the ILEC portion of the LNP process is not signed off on  
18 either. So the CLEC lacks information that the cut occurred, and once notified by a customer  
19 complaint, still cannot activate the port until the ILEC signs off and send the go ahead notice. If  
20 the ILEC fails to act, the customer is left without incoming service until they do.<sup>3</sup>

21

---

<sup>3</sup> This final step, the activation, is documented in Mr. Ainsworth testimony at page 6. However the pre-cursor steps are not included in his dissertation.

1 Q IS MR. AINSWORTH CONSISTENT IN HIS TESTIMONY REGARDING  
2 BELLSOUTH'S CAPACITY TO PERFORM CONVERSION TO UNE-L?

3 A. Not at all. In numerous places Mr. Ainsworth defends Bellsouth's ability to support large  
4 conversion volumes<sup>4, 5, 6</sup>, yet he contradicts this statement in almost as many other places.

5 On page 5 lines 5&6, Mr. Ainsworth makes apologies for Bellsouth's technicians not  
6 being able to timely close out a work order enabling CLEC notification to start the LNP process  
7 as "Based on the volumes being converted, it is not always efficient for the technician to close  
8 his work after each conversion."

9 Yet Mr. Ainsworth refers to the BellSouth imposed limit of 125 loops per day per office  
10 in praise of Bellsouth's capacity.<sup>7</sup> Yet these small numbers are not being achieved. On pg 15 at  
11 line 20 pg 16 line 6 Mr. Ainsworth testifies that BellSouth **allowed** 655 orders, 264 in one office  
12 to be scheduled on a single day. The BellSouth controls how many orders it can handle per day<sup>8</sup>,  
13 not the CLEC.

14 Mr. Ainsworth at page 15, lines 1-18 praises BellSouth's ability "...to move large  
15 quantities of customers from BellSouth's switches to a CLEC's switches in a single day." Yet  
16 just following that he defines this "large quantizes" to be exactly 263 lines. Surely Bellsouth  
17 retail division does not consider this to be a "large" quantity. Operating as a UNE-P provider,  
18 Supra has on numerous occasions converted over 3,000 line **per day** from BellSouth to UNE-P.  
19 Likewise, these customers are not spread equally across the state so dividing by the number of  
20 wire centers yields a disproportionately low estimation that **should not** be used in this

<sup>4</sup> Page 15, lines 1-8.

<sup>5</sup> Page 30, lines 1-11

<sup>6</sup> Page 32, lines 1-14.

<sup>7</sup> Supra had requested the ability to order up to 300 lines per office per day, a volume BellSouth refused stating they did not have the capacity to support it at a March 5, 2003 intra-company meeting.

<sup>8</sup> Ainsworth Rebuttal page 8 line 23- page 9 line 5, and page 9, lines 18-19.

1 proceeding. It is a plain fact that 49 BellSouth wire centers, a mere 22% of the total offices serve  
2 66% of the Bellsouth customers in Florida.<sup>9</sup>

3 Looking at the same "large quantities" issue from Supra's perspective, in order to  
4 convert all of Supra's customers in that one office<sup>10</sup>, BellSouth would have to be able to cut 264  
5 lines a day, day in and day out for nearly 75 days, nearly six months. There is no demonstrated  
6 ability to sustain that many conversions per day, in a single office, much less the many offices  
7 that will be needing to be converted simultaneously. Furthermore, Mr. Ainsworth does not  
8 address BellSouth's ability to **sustain** such a peak rate for the six months it will take to converts  
9 Supra's customer base alone in that office, much less the two year period Bellsouth claims they  
10 will have to make the conversion for all CLECS in that same office.

11 And therein lies the problem with BellSouth's predictions. They are based on small  
12 CLEC volumes. Everything BellSouth does, or creates for the CLEC industry is predicated on  
13 the assumption that no CLEC will ever be able to garner more than a few percentage points of  
14 what was BellSouth's 1996 customer base. When a CLEC is actually successful, the processes,  
15 procedures and systems breakdown<sup>11</sup>. What we should be discussing in terms of capacity is  
16 BellSouth's ability to service its own customer base. Strangely such testimony was not  
17 presented.

18

19 **Conclusion**

20 **Q. What are your findings and recommendations?**

21 **A.** I find that CLECs are still impaired from providing local service to mass market

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<sup>9</sup> Fall 1999 BellSouth OMNI database is the source. Similar findings can be seen in the current filings before this commission.

<sup>10</sup> Perrine.

<sup>11</sup> As was seen with LENS, once BellSouth actually allowed CLECs to order UNE\_P service in the summer – fall of 2001.

1 customers without access to unbundled local switching from the ILEC. Accordingly, the  
 2 FPSC should order the ILECs to continue offering mass market unbundled local  
 3 switching.

4

5 Q MR. AINSWORTH, ON PAGE 19, LINES 4 -17 CLAIMS 100% DUE DATE  
 6 PERFORMANCE. HOW IS IT POSSIBLE BELLSOUTH IS THIS GOOD?

7 A. Mr. Ainsworth disparages Mr. Stahly regarding service disruptions, and then launches  
 8 into a gratuitous discussion of 100% due date performance. How he ties these two ideas together  
 9 is not documented in his testimony, nor is Mr. Ainsworth's testimony any less "uncorroborated"  
 10 than Mr. Stahly.

11 First of all, nothing ties due date performance to a finding that BellSouth actually did its  
 12 work correctly. Nothing could be further from the truth. In **every single instance** where a Supra  
 13 customer experienced loss of dialtone due to an error in the manner BellSouth employed to cut  
 14 the customer from an IDLC to a UDLC / copper loop arrangement, BellSouth proclaimed it had  
 15 met its due date. The fact the customer was out of service for anywhere up to 5 days is **not**  
 16 **counted against** BellSouth's performance against its due date, although I believe it should be.  
 17 Instead BellSouth calls a repair issue, sidestepping the earlier faulty work performed in the hot  
 18 cut process. So Due date performance has nothing to do with working telephone service in  
 19 BellSouth's statistics on BellSouth's performance.

20 In the case where a conversion gets in trouble, BellSouth employs many tricks to move  
 21 the initial due date, thus avoiding SEEMS penalties.<sup>12</sup> Among these are claiming a "missed

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<sup>12</sup> On of these tricks is to declare a missed appointment at he customer premises. Remember this is a conversion of a working UNE-P line to UNE-L, BellSouth never requests a customer prem appointment at all. However in the work process, the technician in the field needs to get access to the



1 appointment” at he customer premises when no request for an appointment was ever made,  
2 rescheduling due dates, putting the order into a pending facilities status, making a claim of no  
3 dialtone from the CLEC switch prior to cutover, LNP issues unresolved at cutover, and making a  
4 claim of no facilities are all means to take an orders due date and extend it without incurring a  
5 penalty. Nowhere does BellSouth ever track performance against an initial due date and  
6 according to Mr. Ainsworth they were able to move due dates such that the data showed that not  
7 a single due date was missed for the four months of July – October 2003.

8 This commission operates a consumer section which takes complaints from the public.  
9 Those complaints will rebut BellSouth's assertions in this regard every bit as effectively as I  
10 expect the CLEC community to reject Mr. Ainsworth’s testimony in this regard. It simply is not  
11 credible without understanding the machinations which allow such due dates to change during  
12 the process so as to avoid SEEMS penalties.

13

14 **Q MR. AINSWORTH, ON PAGE 19, LINES 19 – PAGE 20 LINE 11 STATES THAT**  
15 **BELLSOUTH MEETS THE THREE MINUTES OF SERVICE DISRUPTION**  
16 **STANDARD POSED BY MR. STAHLY. HOW IS THAT POSSIBLE?**

17 A. It is not. Mr. Ainsworth simply states that BellSouth policy, and data indicates that the  
18 step of moving a crossconnect from the ILEC switch to the CLEC switch merely takes three  
19 minutes or less. Surprisingly, in the cost study filed by BellSouth on October 8, 2001 in Docket  
20 990649A-TP, the non recurring cost study for elements A.1.1 (FL-2W.xls) clearly states that the  
21 Central office connect and test average time is 20 minutes, not three for both SL1 and SL2

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customer premises, without an appointment presumably to find a pair improperly documented in BellSouth records. If the customer cannot provide access because they are at work, the due date is rescheduled for a **CLEC error**. Supra normally finds out about these moves after the fact, and has no means to prevent Bellsouth's actions.

1 conversions. It is not apparent how BellSouth suddenly improved so drastically between rate  
2 setting, and this docket.

3 However, Mr. Ainsworth sidesteps Mr. Stahly testimony. Supra does not complain about  
4 the 3<sup>13</sup> min time interval it takes to move the jumper. The real problem comes in  
5 BellSouth's refusal to implement an effective conversion method for customers served by  
6 IDLC. According to BellSouth data<sup>14</sup> BellSouth offices tend to fall into two categories  
7 in this regard:

- 8 1. Downtown Metropolitan offices<sup>15</sup> – serving largely business average  
9 approx 17-21% deployment of IDLC systems. These customers can be  
10 efficiently cut with a central office jumper change only.
- 11 2. New, and older residential serving wire centers<sup>16</sup> - Serving true mass  
12 market customer POTS service where customers are not expected to  
13 simultaneously use their phones in large numbers average 55%  
14 deployment of IDLC.

15 Given BellSouth's current policy on IDLC conversions, a truck roll, outside plant  
16 rearrangement(s) are required on all such conversions. It is these conversions where no  
17 premises visit is scheduled, office records are still suffering from errors introduced after  
18 Hurricane Andrew in 1992, where connections must be disturbed and moved, that  
19 generate the reports of lost dialtone. But BellSouth calls these repair issues.

20

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<sup>13</sup> Or 2:39, Ainsworth Rebuttal, page 19, line 25.

<sup>14</sup> Bellsouth response to MCI's second request for production of documents, Item No. 2.

<sup>15</sup> i.e. Hollywood Main, Fort Lauderdale Main Relief, Fort Lauderdale Oakland, Hollywood West  
Hollywood

<sup>16</sup> Hialeah, Perrine, Coral Springs, West Palm Beach Gardens, West Dade, Jacaranda, Boynton  
Beach main and Palmetto.

1 For example circuit ID 80.TYNU.658844..SB cut from a working UNE-P line on 11/21/2003.

2 Bellsouth resolved the customer outage, and billed Supra **an additional \$77.00** over and  
3 above the NRC for trouble determination on 11-27-2003.

4 Circuit ID80.TYNU.659596..SBcut on 11/26/2003. Bellsouth billed Supra for “ONE TIME  
5 CHARGE – TROUBLE DETERMINATION SIMPLE.” On 11/29/2003, and again on  
6 12/06/2003, billing Supra \$80.00 each time (\$60 additional total).

7 Circuit ID 70.TYNU.574266..SB cut on 11/19/2003. BellSouth billed Supra for “simple”  
8 trouble determination on 11/22/2003, and **twice** on 11/29/2003 before the customers  
9 service was restored.

10 It is a plain an simple fact in electronics reliability assessment that connections are about  
11 the second least reliable electronic component in a system. Disturbing the drop, crossconnect,  
12 changing the loop to a different electronic system and screwing up the computerized config of  
13 that loop, changing connections in a cross box, all are prone to introduce failures in the  
14 conversion process. BellSouth does not count these disruptions against itself, but Supra’s  
15 customers do. When Bellsouth cannot, or will not resolve the issue expeditiously the customer  
16 converts back to BellSouth, making it impossible to ever recoup the non recurring cost just spent  
17 in a futile effort to serve this particular customer.

18 Then Mr. Ainsworth attempts to indict Supra for these faults claiming Supra’s  
19 responsibility to ensure its switch is properly provisioned before the cutover. Supra’s switches  
20 are provisioned properly, and they are thousands of lines ahead of the Bellsouth cut schedule at  
21 any given time. What Mr. Ainsworth forgets in his defense is that the Bellsouth procedures  
22 requires that CLEC dialtone be verified **prior** to a cut. No dialtone at cut means the customer  
23 stays on UNE-P, the due date is re-scheduled and a CLEC fault is assigned. Therefore service

1 disruptions **cannot** occur because there is no dialtone from the CLEC switch at the OE terminal  
 2 being cross connected to. Disruptions are the result of Bellsouth doing something improper on  
 3 an otherwise working UNE-P circuit during the conversion to UNE-L.

4  
 5 **Q MR. AINSWORTH, ON PAGE 20, LINE 13 – PAGE 21 LINE 12 DISPARAGES MR.**  
 6 **STAHLY’S TESTIMONY THAT UNTIL RECENTLY SUPRA CUSTOMERS WERE**  
 7 **UNABLE TO RECEIVE CALLS FROM CELLULAR PROVIDES DUE TO**  
 8 **BELLSOUTH FAULT. IS HE EVEN CLOSE TO CORRECT IN HIS ASSERTIONS?**

9 A. Absolutely not. Bellsouth has admitted its culpability in writing (Supra Exhibit # DAN-  
 10 RT-3). Mr. Ainsworth's testimony is based on an email from a BellSouth consultant, Mr. Don  
 11 Smith (Supra Exhibit # DAN-RT-2) to Supra’s Mark Neptune in an effort to make Supra, and its  
 12 complaint go away. Mr. Smith, an outside consultant, is an extra layer of management BellSouth  
 13 has inserted between its account team to obfuscate, delay, and otherwise make sure that any  
 14 progress Supra makes is at BellSouth's pace, not Supra’s.

15 The simple facts of the matter are that Supra customers could not receive calls **from any**  
 16 cellular provider<sup>17</sup>, despite being able to make calls to **all** of the cellular providers. All Type II  
 17 wireless providers are required by BellSouth to interconnect at their equal access tandems, and as  
 18 such the interconnection between Supra’s switch and the Bellsouth Tandem was wholly  
 19 contained within the North Dade Golden Glades Equal Access Tandem office, as were the  
 20 cellular providers.

21 Supra thoroughly reviewed this situation before contacting the wireless carriers who  
 22 presented sufficient data to convince Supra the problem lay in the routing translations In

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<sup>17</sup> In contrast to Mr. Ainsworth’s incorrect testimony at page 20, lines 19-23.  
 BEFORE THE FPSC -- SUREBUTTAL TESTIMONY OF  
 DAVID A. NILSON  
 ON BEHALF OF SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.  
 DOCKET NO. 030851-TP  
 Filed: January 28, 2004  
 Page 11

1 Bellsouth's Equal Access Tandems. Supra repeatedly contacted BellSouth to resolve the  
2 problem, until Mr. Smith, and outside consultant was given the project. "After some review..."  
3 which took forever<sup>18</sup>, during which time the complaint kept coming in, Mr. Smith sent Supra a  
4 letter Supra Exhibit # DAN-RT-2 postulating how this could be Supra's problem, not BellSouth's  
5 and that it was impossible that he problem was BellSouth's.

6 After many weeks<sup>19</sup> of pressing for resolution, escalation, the problem finally got past the  
7 account team / regulatory / legal interface and into the hands of working people. Two days later  
8 Supra Exhibit # DAN-RT-3, the problem was identified as a BellSouth problem and admitted,  
9 and the appropriate switch translations were corrected.

10 Were this a Bellsouth customer threatening a Public Service Commission Complaint  
11 instead of a group of Supra customers, they would have been all over the problem, working  
12 nights and weekends to resolve the problem. Because this was a CLEC complaint, however, it  
13 was filtered by the Account team, consultants, legal and regulatory before every being addressed  
14 by the very technical people BellSouth would have gone to were it BellSouth's own customer  
15 complaint. This cannot happen in a UNE-P world because a UNE\_P problem is either a problem  
16 for all Bellsouth customers, or it can be isolated to the orders on a specific line in question.  
17 However in UNE-L the added layers of beaurocracy, combined with the pervasive attitude that  
18 all CLEC are inept and Bellsouth is never wrong, as personified by Mr. Ainsworths testimony  
19 make UNE-L a very different risk proposition to the customer served than does UNE-P. To  
20 make that step directly from resale to UNE-L is a policy that benefits only the ILEC to the  
21 detriment of consumers in Florida.

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<sup>18</sup> Page 20, line 25.

<sup>19</sup> This complaint of Supra's languished at the legal / regulatory level for about 30 days before being given to the working class group at BellSouth. It was fixed less than two days later. (See Exhibit 18)

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**Q MR. AINSWORTH, ON PAGE 27, LINE 23 – PAGE 28 LINE 4 ADDRESSES THE ISSUE OF WHETHER IDLC IS AVAAILABLE IN A HOT CUT PROCESS. CAN YOU COMMENT ON HIS TESTIMONY?**

A. Mr. Webber may well have been correct when he filed his testimony. BellSouth has only recently changed that policy, largely due to the vast numbers of Supra cut orders that were requested for IDLC served customers. Yet the process is not yet well thought out, and the customers converted are placed on old and obsolete UDLC equipment. Not that the concept of UDLC is inherently obsolete, but that the UDLC equipment being used is equipment which BellSouth no longer chooses to use to serve its own customers because the internal sampling frequency of the Analog to digital (“A/D?”) conversions that take place within the box are not done at a high enough frequency to support 56K dial up modem service. In fact it is not high enough to support 33K, or even 28K in most cases. At best the boxes support v.42 / LAPM modem connection at about 23kbps to 26Kbps. Customers experiencing 46K – 49K or higher connect speeds suddenly find themselves unable to sustain speeds above 23 after the IDLC / UDLC changes “necessary” to effect a UNE-P to UNE-L conversion.

At a march 5, 2003 Intercompany meeting BellSouth presented a list of at least 8 options for converting IDLC exclusive of the UDLC option. Supra first picked one option, then a second. Each time BellSouth took the option off the table as soon as Supra requested it. A third option, hairpinning was discarded due to Lucent limitations of 128 lines per switch mode that could be effected in this manner. In Pembroke Pines, an office with 82% IDLC, and approx 20,000 Supra customers, this is not a viable option.

1 BellSouth's IDLC conversion methods have a long way to go before they are viable.  
2 Done right, it may be years before UNE\_L is as effective as UNE-P in serving customers.  
3 Bellsouth had heavy motivation to finally offer UNE-P in June 2001, after 5 years refusing to  
4 do so, in order to garner 271 approval. The **ONLY** motivation for improving the current state of  
5 hot cuts, particularly IDLC based ones (i.e. the majority of lines) is to make a finding of  
6 impairment until BellSouth makes the necessary changes to support orders for new service at the  
7 rate of 3,000 to 5000 per day, per CLEC. This is unattainable in the foreseeable future.

8  
9

10 **Q MR. AINSWORTH, ON PAGE 29, LINE 5-14 ADDRESSES THE ISSUE OF**  
11 **ORDERS REJECTED BY BELLSOUTH. WHAT IS WRONG WITH HIS**  
12 **TESTIMONY?**

13 A. Mr. Stahly is right. BellSouth never gave a reason why (4) orders were rejected. Four  
14 lines, with working functional UNE-P service were rejected because there were "no  
15 compatible facilities". What BellSouth is saying is that they can provide service to this  
16 customer but that they can find no way for a CLEC to do so. I reject that premise  
17 outright, just as BellSouth rejected viable options to provide those customers service for  
18 its own reasons.

19 Furthermore, the issue of the SL2 lines was never addressed. Supra didn't want SL2  
20 lines, didn't want the added expense of the SL2 conversion. BellSouth has never  
21 addressed why it cannot provision the lines as SL1. It is simply "take it or leave it",  
22 although I'm sure Mr. Ainsworth does not want to say that before the Commission.

23

1 Q **MR. RUSCILLI, ON PAGE 28, LINE10 PG 29 LINES 15 ADDRESSES THE ISSUE**  
2 **OF WHAT BELLSOUTH IS ERRONEOUSLY CHARGING CLECS FOR UNE-P TO**  
3 **UNE-L CONVESRIONS. WHAT IS WRONG WITH HIS TESTIMONY?**

4 A. If Mr. Ruscilli is correct, the non recurring rate to convert a Bellsouth retail customer to  
5 UNE-P would be at a \$90 per line rate instead of the 10.2 cents this Commission ordered.  
6 The error in Mr. Ruscilli's testimony is that the cost studies for the individual network  
7 elements contain both duplicative and avoided costs when a retail to UNE-P conversion  
8 is made. The same is likewise true for a UNE-P to UNE-L conversion.  
9 The fallacy is on page 29, lines 6-10 where Mr. Ruscilli states this commission **set a rate**  
10 **for UNE-P to UNE-L conversion.** This is not the case. In fact at the March 5  
11 Intercompany meeting, and again in sworn testimony before a Federal Judge, Mr. Greg  
12 Follensbee testified that the FPSC **could not** have ever adjudicated a conversion rate  
13 because BellSouth ahead never even prepared a cost study to support UNE-P to UNE-L.

14 Supra has, and filed same In an FCC proceeding earlier this month. This  
15 Commission should not be confused by Mr. Ruscilli's erroneous and result oriented  
16 testimony.

17

18 Q **MR. RUSCILLI, ON PAGE 35, LINES 7-25 DISPARGES SUPRA'S CLAIM OF**  
19 **SAVING FLORIDA CONSUMERS \$100 MILLION DOLLARS, STATING THOSE**  
20 **SAVINGS WERE TAKEN DIRECTLY FROM BELLSOUTH. WHAT DID MR.**  
21 **RUSCILLI FAIL TO INCLUDE IN HIS TESTIMONY.?**

22 A. In stating that Supra "...refuses to pay suppliers portions of its suppliers bills...", Mr.  
23 Ruscilli casts the inference that the bills themselves were correct.



1 They were not and BellSouth well knows this. For the Period of June 1, 2001 through  
 2 June 30, 2002, BellSouth's bills to Supra were more than double what they were legally  
 3 entitled to. Supra disputes the bills, Bellsouth refused to acknowledge the dispute, and  
 4 after all the dust cleared 67 million dollar (56.8%) was found to be erroneous charges and  
 5 Supra was relieved of its responsibility to pay such erroneous charges.

6 How many other CLECS went out of business without ever getting true and accurate bills  
 7 from Bellsouth. Mr. Ruscilli's testimony is patently disingenuous, and he should know  
 8 it.

9  
 10 **Q MR. GRAY, ON PAGE 5, LINE 15- PAGE 6 LINE 4 ANSWERS THE QUESTION OF**  
 11 **WHETEHER BELLSOUTH EVER MISSED ANY OF ITS COLLOCATION AND**  
 12 **PROVISIONING INTERVALS AND PAID SEEMS PENALTIES AS A RESULT.**  
 13 **WHY IS WRONG?**

14 **A.** Simply in the rejoinder of having "paid SEEMS penalties." Bellsouth is otherwise fully  
 15 guilty of delaying Supra's collocation efforts by more than 4 years. And they know it, if  
 16 Mr. Gray has somehow been kept in the Dark.

17  
 18 In Docket 98-0800 this Commission awarded Supra collocation space in the North Dade  
 19 and West Palm Beach Gardens central offices. Despite such a clear an unequivocal  
 20 order, Supra was faced with taking the complaint to the FCC and other dispute resolution  
 21 processes.

22  
 23 Bellsouth finally turned over the collocation space in these offices, and 16 other on or

1 about March 21, 2002, and began billing Supra for collocation rent in August 2002 after the post  
2 turnover errors were resolved. This much is a matter of record, and Mr. Gray is wrong.

3 In between those dates, BellSouth used the doge of excessive, irrational, unsupportable  
4 charges (based on the contract provisions) to charge Supra in excess of \$325,000 per office to  
5 gain access to the 400 sq feet of collocation space. Supra eventually took possessing in 2002  
6 without ever paying , or being billed these charges which were used as a barrier to entry for over  
7 4 years.

8 There is nothing truthful in Mr. Grays testimony in regard to Supra's collocation efforts. (Supra  
9 Exhibit # DAN-RT4)

10

11 **Q. Does this conclude your Testimony**

12 **A. Yes**

1 CHAIRMAN BAEZ: Sure. Next I have, Mr. McGlothlin,  
2 Mr. Reith.

3 MR. McGLOTHLIN: Michael Reith submitted Direct  
4 Testimony on behalf of Z-Tel consisting of 22 pages. There is  
5 a brief errata sheet that I distributed to staff and parties  
6 during the break. I request that the prefiled direct testimony  
7 of Mr. Reith be inserted into the record as though read.

8 CHAIRMAN BAEZ: Show the direct testimony of Michael  
9 Reith, as corrected by the errata sheet, moved into the record  
10 as though read.

11 And I'm not showing any exhibits.

12 MR. McGLOTHLIN: Oh, he does have exhibits.

13 CHAIRMAN BAEZ: He does have exhibits?

14 MR. McGLOTHLIN: Yes.

15 CHAIRMAN BAEZ: Okay.

16 MR. McGLOTHLIN: He is sponsoring seven exhibits  
17 marked for purposes of filing as Reith 1 through 7. There are  
18 no confidential exhibits.

19 CHAIRMAN BAEZ: And we will show Reith 1 through 7  
20 marked as Composite 116.

21 (Composite Exhibit 116 marked for identification.)  
22  
23  
24  
25

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of the Implementation of the Federal  
Communications Commission's Triennial Review  
Regarding Local Circuit Switching in the Mass  
Market

)  
)  
) Docket No. 030851-TP  
)  
)

**TESTIMONY OF MICHAEL REITH  
ON BEHALF OF  
Z-TEL COMMUNICATIONS, INC.**

**December 4, 2003**

1 **Q. Please state your name, business address and occupation.**

2

3 A. My name is Michael Reith. I am the Director of Industry Policy for Z-Tel  
4 Communications. My business address is 601 S. Harbour Island Boulevard,  
5 Tampa, Florida 33602.

6

7 **Q. Please briefly outline your educational background and related experience.**

8

9 A. I received my Bachelor's degree in Engineering from the University of Florida.  
10 Since that time, I have had more than 15 years of telecommunications industry  
11 experience in the critical areas of regulatory policy, operational compliance and  
12 implementation. From 1986 through 1997 I was employed by the Florida Public Service  
13 Commission as a Utility Systems Engineer. There I held various technical staff positions,  
14 was an advisor to the Commissioners and represented the Florida Public Service

1 Commission (FPSC) as the communications subject matter expert for the Florida  
2 Legislature.

3 From 1997 through 1998, I was employed with Intermedia Communications, a  
4 competitive local exchange carrier. I had primary responsibility for regulatory policy and  
5 compliance in the Bell Atlantic (Verizon) region. Additional responsibilities included  
6 providing subject matter expertise and participation in the interconnection agreement  
7 negotiation process and to establish or present overall company policy and positions  
8 before Public Service Commissions (PSCs) or Public Utility Commissions (PUCs) and  
9 the FCC. I also provided input to the company's business plan and direction and  
10 established procedures for implementation of regulatory requirements in the company.

11 From 1998 through May, 2001 I was Assistant Vice President, Regulatory and  
12 Industry Relations for 2<sup>nd</sup> Century Communications. In that position I managed a  
13 professional staff of five others who were responsible for state and federal carrier  
14 certifications for a nationwide service rollout in 48 cities, regulatory reporting and  
15 operational compliance with industry and regulatory policy, including E911  
16 implementation and PSAP agreements. Other key responsibilities included  
17 Interconnection agreement negotiation and implementation. I also established processes  
18 and procedures to manage the operational impact of legal and regulatory policy and to  
19 file and maintain tariffs.

20 In May 2001 I joined The KDW Group LLC, as a regulatory policy and  
21 compliance consultant. I assisted and advised clients on state and federal policy issues,  
22 decisions and orders, and recommended procedures and options for implementing various  
23 rules and regulations.

1 I joined Z-Tel Communications in August of 2001. My core responsibilities  
2 include ILEC relations, industry policy assessment, and operational performance  
3 evaluation.

4  
5  
6 **Q. On whose behalf are you testifying?**

7  
8 A. I am providing testimony on behalf of Z-Tel Communications, Inc. (Z-Tel). Z-  
9 Tel is a Florida-based software company and competitive local exchange carrier,  
10 headquartered in Tampa, Florida

11  
12 **Q. What is the purpose of your testimony?**

13  
14 A. The outcome of this proceeding is of tremendous importance to Z-Tel. Z-Tel  
15 provides local telecommunications services to “mass market” consumers by use  
16 of unbundled switching and the Unbundled Network Element Platform, or UNE-  
17 P. The UNE-P gives Z-Tel the opportunity to provide residential and small  
18 business consumers with innovative, software products in which we have invested  
19 tens of millions of dollars. Z-Tel has been repeatedly recognized as a leader in  
20 the Florida technology community, and if our business and growth is to continue,  
21 we need the ability to provide our services in our home state of Florida

22  
23 **Q. Please describe the structure of your testimony.**

1

2 A. First, I will describe how Z-Tel began as a Tampa-based start-up software  
3 company and our evolution to becoming one of the nation's largest CLECs.  
4 Second, I will describe the unique and innovative services that we provide our  
5 residential and small business customers. Finally, I will describe how these  
6 services are available to Florida customers throughout the BellSouth, Verizon,  
7 and Sprint territories in Florida only by virtue of UNE-P. In particular, I will  
8 point out that our ability to serve customers *throughout* the State of Florida is  
9 critical to our success. Z-Tel does not redline geographic areas; indeed, the very  
10 concept of "mass market" means that the provider can generate efficiencies and  
11 economies by distributing its services over as large a customer base as possible.  
12 Taking away UNE-P availability in some urban parts of Florida could ruin the  
13 ability to serve the *remaining* parts of Florida. As a result, if BellSouth or  
14 Verizon propose to redline UNE-P availability in the state by virtue of some  
15 arbitrary geographic line, adoption of any such proposal could mean the exit of  
16 competitive entry even in areas in which the Commission might think it is  
17 "preserving" UNE-P. An important question is whether or not what is left for  
18 UNE-P carriers is sufficient to support competition. Finally, the Commission  
19 needs to know that its actions in this proceeding will have significant and serious  
20 consequences not only upon Florida consumers, either positive or negative, but  
21 also upon Florida technology companies like Z-Tel and our Florida employees.

22

**Q. Are you sponsoring any exhibits to your testimony?**

1       A.    Yes. To illustrate points made in my testimony, I am sponsoring several exhibits,  
2            which have been labeled as my Exhibit Nos. 1 through 7.

3

4       **Q,    Does Z-Tel concur in the testimony of other witnesses in this proceeding?**

5

6            Yes. Z-Tel is a member of the Florida Competitive Carriers Association and concurs  
7            in the testimony filed on FCCA's behalf in this proceeding. In particular, the  
8            testimony of Joseph Gillan, on behalf of FCCA, provides a review of application of  
9            the "trigger" criteria for this "mass market" switching case. Z-Tel reserves the right  
10           to sponsor or co-sponsor testimony that might include rebuttal of BellSouth's  
11           "hypothetical" CLEC model, which I understand BellSouth will present informally to  
12           Commission staff today and which I expect will be filed as part of BellSouth's  
13           opening case.

14       **Z-TEL: A FLORIDA TECHNOLOGY SUCCESS STORY**

15

16       **Q.    Please describe Z-Tel's founding and its services.**

17

18       A.    Z-Tel Technologies, Inc., the parent company of Z-Tel, was started in 1998  
19            principally as a software company. Founded in Tampa, Florida by entrepreneur  
20            D. Gregory Smith, Z-Tel set out to develop and sell software that would allow  
21            consumers to use their telephones to access advanced, enhanced services  
22            databases and features. Our vision is to bring the power of the Internet, including  
23            sophisticated databases and messaging services, to consumers through their



1 regular telephone. By developing and deploying “Intelligent Dialtone” software,  
2 ordinary consumers and small businesses would be able to communicate in new  
3 and innovative ways.

4  
5 In the pre-1996, monopoly era, wireline, local telephone services simply did not  
6 evolve or change radically. Local dialtone service (referred to either derisively or  
7 affectionately as “POTS”) remained local dialtone service for decades, with  
8 touch-tone dialing and Princess telephones being billed “innovations.” Incumbent  
9 LECs like BellSouth and Verizon began to deploy Advanced Intelligent Network  
10 (“AIN”) services onto their networks, but without competitive pressures, the  
11 potential of those AIN features (especially the potential from interconnection of  
12 third-party databases to the AIN system) had not been fully realized. Services  
13 such as customized “Do-Not-Call” lists, FindMe and FollowMe features, voice  
14 activated dialing, and “calling tree”-like community messaging services, all were  
15 technologically possible by use of AIN networks and call-related databases. But  
16 as long as access to those AIN functionalities was limited and tied to that  
17 customer’s local voice service provider, the incumbent LEC could control the  
18 pace and nature of these innovations.

19  
20 The 1996 Act – and, especially, UNE-P – changed that. The 1996 Act mandated  
21 the interconnection of signaling systems pursuant to section 252(c)(2) (a finding  
22 the FCC recently reiterated in the Triennial Review Order). In addition, by use of  
23 UNEs, a new entrant can provide and bundle both dialtone and advanced,

1 software-based messaging services to customers. No longer would the incumbent  
2 LEC be able to slow-roll the availability of advanced software-based messaging  
3 services, because the incumbent LEC no longer had control over the customer.  
4 After implementation of the 1996 Act, new entrants could become the dialtone  
5 provider to customers and, because UNE-P offers access to the full features,  
6 functions and capabilities of the network element, the entrant can configure the  
7 local dialtone service to interface directly with new databases and software  
8 services.

9  
10 Z-Tel was among the first companies to recognize this opportunity to bring new  
11 and innovative services to residential and small business customers. Beginning in  
12 1998, Z-Tel began to invest tens of millions of dollars into developing software  
13 and developing back office processes to become a competitive local exchange  
14 provider. *See* Exhibit No. \_\_\_\_ (Reith No. 1). While Z-Tel has not achieved the  
15 level of AIN interconnection with BellSouth and Verizon that it believes is  
16 technologically feasible (and to which it is entitled to under the 1996 Act), as the  
17 local service provider, our bundle of local and enhanced messaging services do  
18 offer Floridians significant new messaging services.

19  
20 Z-Tel's entry into local telecommunications markets generally tracked the  
21 progress of Bell operating company 271 "interLATA" entry, because it was in  
22 those states where Bell companies were seriously beginning to implement the  
23 unbundling provisions of the 1996 Act, especially the OSS necessary to support

1 UNE-P. Z-Tel entered New York in 1998, Texas in 1999, and finally entered the  
2 BellSouth service area of Florida in 2001. Z-Tel entered the Verizon and Sprint  
3 areas of Florida in 2002, and 2003, respectively, but due to the excessively high  
4 UNE costs in these regions Z-Tel offers its services there , at a significantly  
5 higher rate.

6 Z-Tel utilized its software expertise to build highly-automated systems to  
7 interface with ILEC OSS. Customer orders are processed in seconds (*see* Exhibit  
8 No. \_\_\_\_ (Reith No. 1)). Z-Tel sees software and support services as being its  
9 value-add to the industry, and overall we invested over \$150 million of  
10 investment into designing, building and deployment enhanced “Intelligent  
11 Dialtone” services, including a multi-million dollar message “Z-Node” processing  
12 center in Tampa, Florida. Today, Z-Tel has the ability to provide local, long-  
13 distance and its enhanced services to over 80% of the U.S. population in 47 states.

14  
15 In the meantime, Z-Tel grew to over 1000 employees, 450 located in Tampa.  
16 These employees are largely highly-skilled workers in the software design,  
17 marketing, customer support, and network engineering fields. In 2001, Z-Tel was  
18 ranked by Deloitte & Touche LLP as the number one Rising Star of the Florida  
19 High Tech Corridor Technology Fast 50 list. This distinction was not limited to  
20 Florida – Z-Tel was also the number one Rising Star of Deloitte & Touche LLP’s  
21 “Fast 500” list for the United States and Canada. *See* Exhibit No. \_\_\_\_ (Reith No.  
22 2).

23

1           **INNOVATIVE SERVICES AVAILABLE FROM Z-TEL BECAUSE OF UNE-P**

2

3           **Q.     What enhanced features are available to Floridians from Z-Tel today?**

4

5           A.     Z-Tel's flagship residential product is Z-LineHOME Unlimited, our bundle of

6           unlimited local, unlimited long distance, and Personal Voice Assistant ("PVA")

7           software, which we sell to Florida residential customers in BellSouth territory for

8           one flat monthly rate of \$49.99. Because of excessively high UNE rates in the

9           Verizon areas of Florida (including, ironically, Z-Tel's hometown of Tampa), the

10          same service costs \$64.99 per month. Z-Tel also offers residential consumers

11          long-distance and personalized 800 numbers. Z-Tel also offers an array of

12          customized services to small businesses, which also leverage Z-Tel's advanced

13          PVA software.

14

15          UNE-P entrants were the first entrants to offer "unlimited" local/long-distance,

16          flat monthly pricing plans. Indeed, Z-Tel and MCI Worldcom developed this

17          service jointly in 2002, and Z-Tel was a key strategic partner in MCI's nationwide

18          launch of its "Neighborhood" product, which was the first of its kind. Z-Tel now

19          has a similar wholesale relationship with Sprint, for its "Common Sense"

20          unlimited product. These growing unlimited local/long-distance packages have

21          generated substantial savings and consumer welfare for consumers, and those

22          services were first developed and provided by UNE-P entrants.

23

1       **Q.     What is Z-LinePVA™ technology?**

2

3       A.     Z-LinePVA™ allows customers to create virtual address books, store contact  
4           information, make telephone calls, and send and receive voice emails simply by  
5           utilizing spoken voice commands from their telephone. Exhibit No. \_\_\_\_ (Reith  
6           No. 3) contains Z-LinePVA™ Member's Guide and some materials that describe  
7           PVA technology in more detail. Earlier this year, Z-LinePVA™ was named the  
8           Best New Technology at the RetailVision Fall 2003 conference, hosted by  
9           Gartner, Inc. See Exhibit No. \_\_\_\_ (Reith No. 4). This award was chosen by top  
10          U.S. retailers, such as CompUSA, Circuit City, HSN, Staples, Best Buy, Radio  
11          Sack, Costco, Buy.com, OfficeMax.com, AOL, Office Depot and Amazon.com.

12

13       **Q.     Why does Z-Tel need UNE-P to provide its PVA software?**

14

15       A.     When Z-Tel is the local provider to a subscriber, that subscriber can access his or  
16          her PVA and all of its functions simply by dialing "00" on their handset. In the  
17          future, if we can obtain even better interconnection with ILEC AIN triggers, our  
18          local customers would be able to access PVA simply by picking up their  
19          telephone and speaking. There would not necessarily be need for any dialtone: a  
20          customer would simply be able to pick up the phone, say "Call Mom", and the  
21          call would be completed. If Mom's home phone were busy, the PVA software  
22          would be able to call alternative numbers automatically.

23

1 Similarly, a customer would be able to dictate which calls he or she wanted to go  
2 through at different times of day: calls from unknown numbers after 6 pm on  
3 weeknights could be sent directly to voice mail, for example. As we have seen  
4 with the enormous consumer response to the national “Do-Not-Call” List,  
5 consumers are virtually begging for more control over what calls they receive and  
6 when. Local telecommunications providers could have been utilizing AIN  
7 capabilities to provide consumers that level of control, but innovation in this  
8 space was stalled and stifled by the incumbents’ monopoly control .

9  
10 PVA technology can be provided independent of local telephone service, but its  
11 functionality is much more limited. Given the current limited nature of AIN  
12 interconnection, the PVA-alone customer has to dial a string of digits before he or  
13 she is able to access his or her contact list. The functionality and usability of the  
14 service is considerably less. As a result, the vast majority of Z-Tel’s customers  
15 purchase a bundle of local, long-distance and PVA services.

16  
17 The ability to bundle PVA with local services – the functionality UNE-P provides  
18 – is a crucial distribution channel for our software.

19  
20 **Q. What do you mean by “distribution channel”?**

21  
22 **A.** Software can be provided in a number of different ways, and the key for a  
23 software company is to open up as many distribution channels as possible.

1 Writing software is an expensive and time-consuming task, almost all of which is  
2 incurred up-front. To succeed, a software company needs to have its software be  
3 distributed as widely as possible. Cultivating large distribution channels is crucial  
4 for success. For example, imagine if Microsoft Windows was available only in  
5 stores and was not permitted to be pre-loaded onto new PCs.

6  
7 In our case, the ability to bundle PVA with local service (in other words, have it  
8 pre-loaded onto local phone service, like Windows is preloaded onto a PC) is  
9 critical. Almost by definition, Z-Tel's PVA and Intelligent Dialtone software is  
10 tied to the customers telephone service. Because AIN interconnection available  
11 today is limited, PVA is simply less useful to consumers if they have to dial a  
12 string of digits before accessing the functionality. Resale is also not a viable  
13 option because resale ties the sale of our bundle to ILEC retail pricing plans.  
14 Moreover, resale does not permit Z-Tel to access and utilize the complete  
15 features, functions and capabilities of the local network that UNEs permit. UNE-  
16 P allows Z-Tel to integrate this software with the consumer dialtone service in a  
17 way a stand-alone product and resale offerings cannot yet match.

18  
19 **Q. Does Z-Tel offer small business services?**

20  
21 A. Yes. Z-Tel offers Z-LineBUSINESS services in the BellSouth and Verizon  
22 territories of Florida. The broad distribution availability UNE-P provides Z-Tel  
23 allows it to effectively and efficiently provide small business services. Earlier

1 this year, Z-Tel launched its Communications Briefcase product, which allows  
2 small businesses to create customized packages for their business that would  
3 include PVA and other services. *See* Exhibit No. \_\_\_\_\_ (Reith No. 5).  
4

5 An example of Z-Tel's growing small business services is Darden Restaurants,  
6 the parent company of Red Lobster, Olive garden, Bahama Breeze and Smokey  
7 Bones BBQ restaurants. A particular restaurant location may only require a  
8 handful of analog dialtone lines and may not necessarily justify a DS1 circuit  
9 (e.g., it would not qualify as an "enterprise" under the new FCC rules).

10 Restaurants like those that Darden own are also spread nationwide, as dispersed  
11 as the general population. Because of UNE-P, Z-Tel can provide service to about  
12 half of *all* Darden restaurants in the nation. Z-Tel obtained this national account  
13 solely because it had the ability to distribute to Darden restaurants nationwide  
14 dialtone and PVA software. Despite the fact its restaurants are spread throughout  
15 the country, Darden can have the benefits of one contract, one bill, and one  
16 service provider for 3,200 lines in 45 states.

17  
18 There are hundreds of multi-location businesses, like banks, real estate offices,  
19 etc. that have customer profiles like Darden. UNE-P may be the only way for a  
20 competitive entrant to compete for these accounts, because UNE-P is available  
21 ubiquitously. These customers want a comprehensive and consistent  
22 telecommunications solution – not a mish-mash of one type of technology or  
23 provider in one neighborhood and another technology or provider in another



1 neighborhood. Without UNE-P, only large incumbent LECs like BellSouth and  
2 Verizon would have the nationwide scale to services a substantial portion of the  
3 telephone lines of a company like Darden. And the scale offered by ILECs like  
4 BellSouth and Verizon are a series of regional offerings – in other words, without  
5 UNE-P, Darden and multi-location companies like it would no choice but to deal  
6 with a series of regional monopolies if they desired to aggregate all of their  
7 locations onto one bill.

8  
9 **Q. What other services has Z-Tel developed and deployed?**

10  
11 **A.** We are also building upon our PVA technology to provide other unique services.

12  
13 For example, earlier this year, once Operation Iraqi Freedom began, Z-Tel, in  
14 conjunction with McDill Air Force Base in Tampa, modified its PVA platform for  
15 Operation Connect. *See* Exhibit No. \_\_\_\_ (Reith No. 6). McDill AFB is the  
16 headquarters of U.S. Army Central Command, and many members of Z-Tel's  
17 Tampa community have been and continue to be stationed in Kuwait, Saudi  
18 Arabia, and Iraq. This software application permits military families throughout  
19 the country to send unlimited voice email to loved ones stationed overseas for  
20 free. No family was required to purchase any Z-Tel service to take advantage of  
21 Operation Connect. Z-Tel was able to provide a customized version of its PVA  
22 software to these military families that makes communicating easier and helps

1 overcome the timezone and expense of international phone calls to remote areas  
2 overseas.

3  
4 Z-Tel has also developed a PVA application known as “Community” services.  
5 See Exhibit No. \_\_\_\_ (Reith No. 3), Z-LinePVA™ Member’s Guide, at 18. This  
6 PVA application allow customers to interact with communities of interest to them,  
7 such as church congregations, PTAs, or little league teams. For example, the  
8 Community application can provide every church member the ability to call or  
9 email any other member by using the phone, without having to keep a separate list  
10 of numbers. A day care center could set up a community and update parents of  
11 events or schedules. A little league coach could immediately inform all team  
12 members of a rain-out.

13  
14 Importantly, Operation Connect and Community communications would not have  
15 been possible without UNE-P. We would not have had the ability to fund and  
16 write PVA software initially without UNE-P, our largest distribution channel.

17 Take away this distribution channel, and our ability to provide additional software  
18 services like Operation Connect and Community would fall by the wayside.

19  
20 **IMPACT OF IMPAIRMENT PROCEEDING ON Z-TEL**

21  
22 **Q. How does Z-Tel’s business plan impact the Commission’s impairment**  
23 **analysis?**

1

2 A. Under the law, the impairment analysis of section 251(d)(2) focuses upon the  
3 services that a requesting carrier (Z-Tel) seeks to provide. Z-Tel seeks to provide  
4 its advanced, PVA software services to its customers, bundled with local services.  
5 As discussed above, to achieve this goal, Z-Tel needs broad distribution channels  
6 that allow us to spread out the costs of software development and deployment  
7 over as many customers as possible.

8

9 Broad distribution also makes advertising more efficient. Because it can take  
10 orders throughout the ILEC territories in a state, Z-Tel can advertise on television,  
11 radio, and in print. Virtually every person that views an ad can purchase our  
12 service. If we were limited to serving only 50% or 60% of potential viewers, the  
13 effectiveness of these “mass-market” advertising tools decreases commensurately  
14 (not to mention expose itself to the frustrating consumer experience of Inquiring  
15 to purchase a service, only to find out that they live in the wrong neighborhood.)  
16 Looked at in another way, Z-Tel’s cost of acquiring customers through mass  
17 market advertising doubles when 50% of the customers are excluded from its  
18 potential customer base.

19

20 In addition, to provide this “mass market” service, Z-Tel also has to confront  
21 issues of churn, installation costs, and reliability. A significant level of churn is a  
22 fact of doing business in the telecommunications industry, and as competition

1 grows, churn as to be expected to increase significantly. For consumers, churn is  
2 indicative of a robust competitive market.

3  
4 Reliability is also critical and is one of the major benefits of UNE-P. Customers  
5 of analog dialtone service are used to “five nines” (99.999%) quality and rapid,  
6 seamless installation and quick repairs. Because it is provided electronically,  
7 UNE-P offers that level of reliability and efficient, low-cost provisioning. Other  
8 entry strategies, particularly UNE-L, are not as reliable and efficient.

9  
10 **Q. How does Z-Tel’s business plan impact the “geographic area” analysis**  
11 **required by the FCC Order?**

12  
13 A. The testimony of Joseph Gillan discusses the “geographic areas” within which the  
14 Commission should conduct a further analysis of “mass market switching”  
15 impairment. As I explained above, Z-Tel provides our “mass market” services to  
16 residential and small business customers throughout ILEC service areas statewide,  
17 in Florida and in other states. The hallmark of UNE-P is its geographically-broad  
18 reach, which makes it the only entry strategy with a pattern of activity that  
19 matches the “mass market.” Whatever geographic area the Commission  
20 ultimately settles on for its impairment analysis, it should not lose sight of the  
21 most important fact: only UNE-P works at a scale and scope that is necessary to  
22 support broad, “mass market” competition throughout a state like Florida.  
23 Ubiquitous availability is critical for UNE-P based services like Z-Tel’s. If the

1 Commission restricts or eliminates UNE-P availability in a certain geographic  
2 portion of Florida, it places at risk denying consumers in other areas of Florida a  
3 choice they currently have, and it risks ending or reducing investment and  
4 innovation in software services like Z-Tel's technology.

5  
6 **Q. What would be the impact on Z-Tel if UNE-P access were limited or**  
7 **restricted in certain geographic areas?**

8  
9 A. It is entirely possible that if UNE-P were limited to certain areas of Florida, it  
10 would be uneconomic or unprofitable for Z-Tel to provide its UNE-P based  
11 services in the remaining parts of Florida. As I said above, UNE-P allows us to  
12 distribute our software and services as broadly as possible. If UNE-P availability  
13 is limited in certain geographic areas, our ability to profitably serve the remaining  
14 geographic areas would be significantly curtailed.

15  
16 In addition, if we are denied our largest distribution channel, it may be difficult or  
17 impossible for us to effectively or efficiently develop and deploy stand-alone  
18 software services like Operation Connect. As discussed above, Z-Tel was able to  
19 deploy its Operation Connect application in a matter of days because it was an  
20 derivative of our existing PVA software platform. We were only able to finance  
21 and develop that PVA software platform because of UNE-P.

22

1 To think of it another way – what if one day Microsoft were prohibited from  
2 selling Windows software on desktop and laptop PCs? Other devices, such as  
3 PDAs, smartphones, and tablet PCs, run versions of Microsoft Windows, but  
4 would those distribution outlets be sufficient to support all of Microsoft’s  
5 software development costs? The result of banning Microsoft Windows from PCs  
6 might possibly mean the end to Windows availability on those other devices.

7  
8 At this early stage, the final impact of this proceeding is difficult to predict.

9 However, it is important to note that services like Z-Tel’s PVA were not  
10 developed and deployed *until* UNE-P opened up the local market to this type of  
11 bundling innovation. Similarly, unlimited local/long-distance plans, like Z-  
12 LineHOME Unlimited, Sprint Common Sense, and MCI’s Neighborhood, were  
13 not available to consumers until *UNE-P providers* (not incumbent LECs) began to  
14 deploy them last year. Bell company responses to those unlimited products have  
15 been called “copycat plans.” Given that history, it certainly seems possible that if  
16 the UNE-P distribution channel is shut off, that development work on PVA-like  
17 software will also slow down or cease and that the industry would revert to  
18 metered, per-minute toll charges.

19  
20 **Q. But couldn’t Z-Tel simply purchase its own switch and still have nationwide**  
21 **distribution?**

22

1 A. Not to serve the “mass market” on a ubiquitous scale. Other CLEC witnesses in  
2 this proceeding will describe the operational and economic impairments that self-  
3 deploying switching presents for the mass market.

4  
5 From Z-Tel’s perspective, our access to capital is very limited. We believe that  
6 our limited capital is best spent investing in services and applications to solve  
7 problems or provide services not previously available. In our judgment, PVA and  
8 Intelligent Dialtone technology is such an investment. Public policy should wish  
9 to promote that use of capital as well.

10  
11 As described above, limiting access to UNE-P will, at worst, result in the  
12 elimination of new entrants and probably the exit of extant entrants from Florida.  
13 At best, limiting access to UNE-P will force entrants to redirect their scarce  
14 capital away from developing new services and innovations and into deploying  
15 Class V switches, which the FCC record shows to require about \$12 million in  
16 expenditures in one year for only each switch. *Triennial Review Order* n.1485.  
17 Z-Tel’s most recent quarterly statement (November 14, 2003) shows a cash and  
18 cash equivalents balance of only \$14.5 million – clearly insufficient to cover its  
19 current 46-state footprint with Class V switches. Exhibit No. \_\_\_\_ (Reith No. 7).  
20 Moreover, if Z-Tel deployed a Class V switch today, it could do no more than it  
21 currently does leasing capacity from BellSouth or Verizon. With such a switch,  
22 instead of POTS, Z-Tel would be able to offer its customers SPOTS – same old,  
23 plain old telephone service. In the meantime, capital would be denied to investing

1 in new software and network functionality. Customers would receive no benefit  
2 from the capital investment that they do not receive today. Therefore, this  
3 redirection of capital (to the extent it exists), seems inordinately wasteful.

4  
5 UNE-P unleashes forces of innovation and investment in the telecommunications  
6 industry. In the end, the business of being a service provider is very different than  
7 the business of being a network provider. Service providers focus upon customer  
8 support, building new features and functions (like PVA and Z-Tel's Z-Node),  
9 marketing and sales. The requirements to be a successful service provider include  
10 marketing savvy, good customer relationships and the ability to offer new and  
11 innovative services. For "mass market" services, service providers need  
12 ubiquitous service availability, so they can gain efficiencies and economies of  
13 mass-marketing, such as television, radio, and billboards.

14  
15 Network providers, on the other hand, have entirely different cost structures.  
16 They must spend significant fixed, capital costs on network construction, most of  
17 which becomes sunk. Because fixed and sunk costs limit the number of firms that  
18 can successfully provide network services, networks will be built out serially, if at  
19 all, and over a long period of time and generally not ubiquitously. As a result,  
20 entry in the network business will, almost by definition, be very limited and such  
21 entry may never produce ubiquitous alternatives, and may never produce  
22 alternatives at all. Accordingly, relying solely upon network providers to be the  
23 only retail service providers in Florida (which is what a decision based upon self-



1 provisioning switch triggers would accomplish) would be a prescription for local  
2 competition to develop very slowly and in a piecemeal fashion, if at all. The  
3 FCC's Triennial Review Order indicates that nearly 80% of all facilities-based  
4 entrants have vanished. *Triennial Review Order* para. 37 ("in 2000 there were  
5 about 300 facilities-based competitive LECs, , but that by early 2002 that number  
6 had contracted to about 70.") Obviously, successful entry as a facilities-based  
7 provider in local telecommunications markets is difficult and rare. Certainly, the  
8 broad distribution of competition across the state the UNE-P brings would not be  
9 replicated.

10

11 **Q. Does this conclude your direct testimony?**

12

13 **A. Yes.**

ORIGINAL

3625

Docket No. 030851-TP

Errata Sheet for Direct Testimony of Michael Reith

On Behalf of Z-Tel Communications, Inc.

Page 1, line 9

Change to

University of Florida

University of South Florida

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

1 MR. MCGLOTHLIN: Thank you, sir.

2 CHAIRMAN BAEZ: Thank you, Mr. McGlothlin. I am just  
3 going down the list. I'm showing Mr. Neptune. Or did we take  
4 care of Mr. Neptune earlier, Mr. Cruz?

5 MR. CRUZ-BUSTILLO: According to my notes we had  
6 placed him in the record stipulated.

7 CHAIRMAN BAEZ: We already did, correct.

8 MR. CRUZ-BUSTILLO: We already did.

9 CHAIRMAN BAEZ: I think that does it.

10 MR. CRUZ-BUSTILLO: Thank you, Mr. Chairman.

11 CHAIRMAN BAEZ: Okay. Did I miss anyone?

12 MR. HATCH: Mr. Chairman, one minor addition. I had  
13 failed to note for the record that I had included errata sheets  
14 for Mr. Bradbury, Mr. Turner, and Mr. Van De Water. They have  
15 been previously supplied.

16 CHAIRMAN BAEZ: Show their testimony as corrected.

17 All right. How are we working this? Forgive me, I'm  
18 just not enough familiar with what you all are doing, so --

19 MR. MAGNESS: We are going to begin with Ms.  
20 Masterton for Sprint and (inaudible, microphone off.)

21 CHAIRMAN BAEZ: Okay. Carry on.

22 MS. MASTERTON: Yes, this is on. I wasn't sure about  
23 that. Good afternoon, Commissioners. I'm Susan Masterton, and  
24 I am representing Sprint-Florida and Sprint Communications  
25 Company, Limited Partnership in this proceeding. I am going to

1 make a few brief remarks on behalf of Sprint, and then turn it  
2 over to Bill Magness and the other presenters for the  
3 impairment side.

4           The issues you have before you are critical issues  
5 that will have long-lasting effects on whether and to what  
6 extent there will be competition in Florida, especially for  
7 mass market customers. As you know, Sprint operates as both an  
8 ILEC and a CLEC, not only in Florida, but in other states  
9 around the country. Because Sprint has national CLEC and ILEC  
10 interests, Sprint must weigh the issues as both an ILEC and a  
11 CLEC and balance those interests in deciding its positions.

12           Sprint, as an ILEC, is not challenging the national  
13 finding of impairment in any of its markets in Florida. In  
14 addition, Sprint believes that the evidence will show that  
15 neither BellSouth nor Verizon has demonstrated that the finding  
16 of impairment should be lifted in any of their markets in  
17 Florida.

18           As far as the triggers, both BellSouth and Verizon  
19 have conveniently interpreted the TRO to require merely a  
20 counting exercise. However, that purposefully narrow view  
21 ignores all of the criteria set forth in the TRO itself that  
22 the Commission must consider in making the decision that the  
23 triggers have been met.

24           In addition, BellSouth has presented this Commission  
25 with a seriously flawed model that purports to demonstrate that

1 CLECs can compete economically in many of BellSouth's Florida  
2 markets. These markets are where BellSouth admits that CLECs  
3 are not competing today with their own switches.

4           Although meaningful access to the full BACE Model has  
5 been limited, Sprint's Witnesses Dickerson and Londerholm have  
6 identified serious logic flaws in the model. This is not  
7 surprising, because the model produces results that are  
8 directly contrary to common sense and real world CLEC  
9 experiences. With sufficient time to conduct additional more  
10 detailed analyses and sensitivity runs, Sprint believes that  
11 additional problems with the model and its inputs would be  
12 revealed.

13           Because the decision this Commission will have to  
14 make in this proceeding will have such dramatic and far  
15 reaching effects on competition in the mass market in Florida,  
16 Sprint urges the Commission to focus carefully on the evidence  
17 that is presented. In doing so, you will find consistent with  
18 the real word evidence that what the evidence shows is that  
19 impairment continues to exist for CLECs providing services in  
20 the mass market in Florida. Therefore, this Commission must  
21 uphold the FCC's national finding that CLECs should continue to  
22 have access to unbundled local switching to serve the mass  
23 market. Thank you.

24           MR. MAGNESS: Mr. Chairman, Commissioners, I am Bill  
25 Magness here representing FCCA and speaking on behalf of a

1 rather large group of CLECs. And, Regina, if you could put  
2 that first slide up again. It just shows who we are speaking  
3 on behalf of today.

4 I tell you, when Dr. Johnson was up here this morning  
5 talking about heterogeneity, I felt a bond. You have never  
6 seen heterogeneity like a group of CLECs trying to coming up  
7 with a joint presentation. Although we often have a common  
8 purpose, we do range from AT&T all the way to literally Z-Tel,  
9 and represent every interest in our industry there between.  
10 The large and the small. Companies that have switches,  
11 companies that use UNE-P, and everything in between.

12 So there is a great deal of heterogeneity. But I  
13 imagine if you laid AT&T and Z-Tel side-by-side they would look  
14 more different than one another than if you laid BellSouth and  
15 Verizon said by side. But we found in the evidence there were  
16 differences of opinion between BellSouth and Verizon on some of  
17 the issues, and it is not surprising.

18 We have an over 600-page order from the FCC, and a  
19 lot of work that is defined for the state commissions to do.  
20 And while there are differences of opinion, we are united in  
21 this group in wanting this Commission and believing that the  
22 evidence already supports and will continue to support the  
23 FCC's national finding of impairment for unbundled local  
24 switching in the mass market.

25 Now, this is a different kind of proceeding, and it

1 is not just because we are doing it in a different way, like  
2 these presentations. It is not just because this is a rather  
3 odd process we have to undertake. What I mean is more  
4 substantively. Since the act passed in 1996, state commissions  
5 are very accustomed to seeing huge rolling thunder tours of  
6 lawyers and witnesses coming through on big issues. I was on  
7 the Texas Commission staff in 1996 and '97 when what we there  
8 called the mega-arbitrations occurred. The first round of  
9 arbitrations that opened up local competition after the act.

10 Those arbitrations essentially were about bringing a  
11 new kind of competition into existence that was not there  
12 before and setting the terms and conditions under which it  
13 would take place.

14 The next round of cases that rolled through the state  
15 commissions were the 271 cases. And although there was a lot  
16 of rancor and discord amongst all the parties, essentially  
17 again those cases were about the same thing, about opening up a  
18 new competitive choice where it did not exist before. That was  
19 allowing the RBHCs to, as they could under the 1996 Act, enter  
20 the long distance market and undertake what has become one of  
21 the most powerful marketing strategies we have seen in  
22 telecommunications, the incumbents' ability to bundle long  
23 distance and local. And as the evidence showed yesterday, we  
24 have seen in Verizon territory, for example, in New York  
25 Verizon has achieved a 61 percent market share in long

1 distance.

2 But, again, those cases were all about opening up a  
3 new form of competition. What is different here is for the  
4 first time since the act passed state commissions are  
5 explicitly faced with a choice of whether to take away a form  
6 of competition, of whether to remove a form of entry from the  
7 marketplace that is having success in the marketplace. And not  
8 in a niche market. I mean, remember what we're really here  
9 talking about today is the mass market.

10 The mass market, although we talk a lot about it and  
11 there is a lot of economic terms about it, essentially it is  
12 the households and the small businesses in this state and every  
13 other state in the union. That is what the mass market is.  
14 Those are the customers who are getting mass market services,  
15 the small businesses, the residential customers.

16 And before identifying the areas that are in  
17 contention, and there is plenty, as you are already well aware,  
18 I would like to start with one thing that really isn't in too  
19 much dispute. And I put it up here on the board. It is a very  
20 simple slide, and the witnesses do much better at Power Point  
21 than I do, but this communicates my point.

22 There is a difference between the mass market and the  
23 enterprise market. The mass market is DS-0s. It is analog  
24 service. It is the POTS service that is traditionally used.  
25 The enterprise market is characterized by the use of DS-1



1 service, a more complicated access method, and it is  
2 characterized by being digital.

3           The marketplaces are different, but one of the rare,  
4 I guess, points where the real live walking around experiential  
5 world that we live in in the marketplace and that you face  
6 every day in figuring out how to control that marketplace  
7 appropriately, that actually converges with the TRO. The real  
8 world and the TRO meet on this point, because the FCC  
9 recognized that particularly as it affects unbundled network  
10 elements and local switching there is a difference between the  
11 enterprise market and the mass market.

12           And I talked to Mr. Fulp from Verizon and I talked to  
13 Mr. Ruscilli from BellSouth about that. I asked them simple  
14 examples. Now, if somebody takes a DS-1, they are enterprise,  
15 right? Right. There wasn't any disagreement about that. You  
16 know, DS-0 customers are analog, right? Right. DS-0 versus  
17 DS-1, digital versus analog is the key noncontroversial  
18 distinction that we all agree on.

19           Now, in talking about how we look at the mass market  
20 and the enterprise market and what that distinction means in  
21 the context of these cases, I want to give you a little bit of  
22 background. And most all of this background is discussed in  
23 the testimony of either Mr. Gillan, Mr. Turner, Mr. Woods,  
24 several of the witnesses here.

25           Now, I'm going to start in 1995 where in this state

1 Florida passed Chapter 364. And Chapter 364 was a piece of  
2 legislation where, in essence, BellSouth was allowed to get out  
3 from under rate of return regulation, something they  
4 desperately wanted at the time, and the exchange for that new  
5 regulatory freedom was that competition was supposed to open.  
6 Unbundling is there in that statute to facilitate competition.  
7 It was part of that deal.

8 Florida consumers were promised in 1995 that for the  
9 first time in the local market they were going to experience  
10 what they had been experiencing in the long distance market for  
11 sometime. That the phone company was going to treat them like  
12 a customer instead of an end user of a monopoly service.  
13 Somebody was going to be there to compete for their service, or  
14 rather for their business.

15 In 1996, a year later, American consumers were  
16 promised the same thing in the Federal Telecommunications Act.  
17 And, in essence, the Federal Telecommunications Act said we are  
18 going to introduce local competition into this market by  
19 whatever means, including resale, including unbundling,  
20 including interconnection of competitive facilities. And if  
21 you were around in the industry in 1993, '94, '95, you know  
22 that these things that are kind of noncontroversial now, like,  
23 yes, you can interconnect the competitive network into my ILEC  
24 network. There was fighting words in 1994. Unbundling, resale,  
25 facilities investment, all of those things were not only

1 permitted, but encouraged by the 1996 Act.

2           Then in the 271 cases. Well, let me stop about the  
3 1996 Act, because it related to the 271 cases. The similar  
4 deal in the 1996 act was we are going to open up the local  
5 market and when that market is irreversibly open, the RHBCs can  
6 get in long distance, because Congress knew how powerful they  
7 were going to be in that marketplace because of their ability  
8 to bundle services. And as expected, when the 271 cases rolled  
9 through the ILECs needed to show some competition. Back in  
10 them days UNE-P was called facilities-based competition in the  
11 271 context, and that is how it got counted.

12           And in the meantime, state commissions were busily  
13 setting UNE rates, using the TELRIC standard, which has been  
14 challenged every which way, up and down, all the way to the  
15 United States Supreme Court in the Verizon case where that  
16 methodology was upheld. Those UNE rates were set, and with  
17 those UNE rates in place it created the opportunity for what we  
18 know as the unbundled network element platform, or UNE-P.

19           And we talk a lot about UNE-P, but I want to  
20 emphasize the last word in that. That is platform. And I  
21 think there is something that is very misunderstood, and you  
22 are going to hear from Mr. Reith over here from Z-Tel in a  
23 little bit. UNE-P is a platform for innovation. In 1999,  
24 Z-Tel put to work a bunch of people in Tampa, Florida where  
25 they employ over 500 people. And they don't just hire guys who

1 lift and lay copper lines, they hire software developers. And  
2 they are using the telecommunications platform as a new vehicle  
3 to deliver innovative software programs.

4           In 1999, before anybody else did, they had a program  
5 called Z-node, N-O-D-E, which allowed users to log onto the  
6 web, have a secure site, and they could put in their follow me  
7 or find me numbers, which were a lot of business customers and  
8 residential customers. It seems like no big deal today in  
9 2004. The first time that ever got introduced was in 1999 in  
10 New York. And guess who responded with something similar?  
11 Verizon in New York. It had to respond to a technology-based  
12 investment driven business innovation that came from the  
13 existence of the UNE platform. Did Z-Tel need to buy a switch  
14 to invest in that, to invest in the people and the software  
15 development? No. They had to invest in people and software  
16 development.

17           UNE-P is also a platform for bundling. And as I have  
18 mentioned, if there is anything more powerful in the  
19 telecommunications market than the RHBCs' ability to bundle  
20 local and long distance, I don't know that we have seen it yet.  
21 How are CLECs going to match that if they can't bundle the  
22 local and the long distance?

23           And, finally, as it turns out, nobody knew in 1996  
24 what was going to work. You know, in 1996 when you read the  
25 congressional reports to the act, you thought that cable

1 competition, full-blown phone competition from the cable  
2 companies was going to happen tomorrow. Of course, it may  
3 still happen tomorrow. It's starting. It may be big, but, you  
4 know, it has been a long time. We didn't know what was going  
5 to work.

6 Well, as it turns out UNE-P is a good platform for  
7 delivery of services in the mass market. The POTS customers,  
8 the analog customers. And, you know, we always talk about a  
9 lot of people, you know, you sure see a lot of people with cell  
10 phones today, and you see a lot of them here. But you know  
11 what you don't notice, you don't notice that every home you go  
12 into has got a phone. About every business you go into, it has  
13 got a landline phone. And when I, like I did today, leave my  
14 charger at the hotel, my fancy little PDA doesn't work real  
15 well.

16 You don't notice that because POTS service is still  
17 part of the background of American life. It is still what  
18 serves most people. Over 600,000 of those people who have  
19 chosen a competitive alternative from UNE-P for their POTS  
20 service live in Florida. There is over 600,000 mass market  
21 lines, and we talk a lot about lines and end users and things  
22 like that, but those are the people whose home phones and  
23 business phones are connected to those lines. Over 600,000  
24 Florida mass market customers have shown they appreciate having  
25 a choice for that service. So that is how we got here in the

1 mass market, okay.

2 Well, now let's look at the enterprise market. You  
3 know, there was a time, and it wasn't so long ago, when it  
4 looked like all you needed to do to get into the phone business  
5 was drop a switch in any city that had an NFL football team,  
6 and, you know, just hook up a loop from the ILEC. And there  
7 was a lot of venture capitalists that waved their hands a lot  
8 about how easy that was going to be, and they spent a lot of  
9 money on it. And Mr. Gallagher, we had a conversation about  
10 those days in his deposition, and he said, you know, back in  
11 the day, you know, about all you needed was a Power Point  
12 presentation and a year in telecom and you could raise some  
13 money.

14 And the people who raised that money in the late '90s  
15 after the act passed, they put a lot of switches in the ground.  
16 Some of their plans focused on serving enterprise, some of  
17 their plans focused on serving mass market. People tried  
18 different things. That's what it was like after the act  
19 passed. Nobody quite knew how the marketplace was going to  
20 shake out.

21 Time Warner, for example, said -- I think it is in  
22 their corporate by-laws that they can't do residential. Time  
23 Warner's business plan from early on -- Time Warner Telecom,  
24 not the cable company. Time Warner Telecom early on was  
25 focused on the enterprise market. That is where they live.

1 They're doing all right. Look at their stock price. They're  
2 healthy.

3           There are many CLECs that went to the mass market.  
4 Some survived, a whole lot of them landed in Chapter 11. And  
5 worse, many landed in Chapter 7, which meant they were  
6 basically sold for scrap. For many CLECs, the debt they  
7 incurred to put those switches in the ground was ultimately  
8 what put them in the ground. And I'm not saying those CLECs  
9 made mistakes. A lot of people didn't know a whole lot of  
10 things about telephone competition in 1996 through 2000. There  
11 was a lot of experimentation in the marketplace and we didn't  
12 know what was going to work.

13           Some of those companies have filed affidavits in this  
14 case. KMC, Expedia, for example, Network Tel. What those  
15 companies have done, what saved those companies is using their  
16 switches to serve the enterprise market, because you can make a  
17 business out of serving those switches and using them to serve  
18 the enterprise market. Companies like -- and you heard Dr.  
19 Johnson talk this morning about, you know, when does it make  
20 sense for somebody to have a switch, you know, get off the  
21 UNE-P and start using the switch.

22           Well, let me tell you something. It is no fun to  
23 have to deal every day with your biggest competitor. You have  
24 to interconnect with the incumbent. You have to deal with the  
25 incumbent at some level to have an interconnected network. But

1 most of the CLECs in this room, if they could wish it away  
2 right now, they would rather not have to do that. You have  
3 more control over your network, but it comes at a certain  
4 price.

5           How you figure out how to use that switch is how you  
6 can make a business out of it. For example, ITC^DeltaCom has  
7 been discussed here. They are in the state. Birch Telecom  
8 (phonetic) operates here some, operates in BellSouth quite a  
9 bit. Those companies have switches, those companies tried a  
10 mass market approach, those companies almost weren't companies  
11 anymore because they were losing their shirts. They focused  
12 their switch use on the enterprise market where there is money  
13 to be made. They are using UNE-P to serve the smaller  
14 businesses, to serve the residential. It makes sense. It  
15 saved those companies.

16           It doesn't mean they quit using the switch. They are  
17 using the switch where it makes sense. And if different people  
18 can do that different ways, that's great. But it doesn't mean  
19 we eliminate the thing that is serving 600,000 customers.

20           Now, I want to talk to you about those real companies  
21 and the triggers especially and the actual competition test.  
22 But first I want to give you a quick summary of what you are  
23 going to hear from our panels. First, we are going to present  
24 you after the triggers a critique of the BACE Model. That is  
25 going to be led by Mr. Londerholm (sic) and Mr. Dickerson from



1 Sprint. Is that right? Close enough. Don Wood from AT&T, and  
2 Dr. Mark Bryant from MCI. And, you know, as we get into the  
3 BACE Model, that is when the ship of this case sails away from  
4 the actual and enters the realm of the potential.

5 And to sum up our problems with it, I'll tell you  
6 real quickly. The BACE Model is flawed. The model assumes  
7 illogical results. Why is that? Well, it shifts all of the  
8 operational impairments out of the picture altogether. It  
9 overstates revenue while it understates costs. It is based on  
10 the cost of a large ILEC instead of a CLEC, which it is  
11 supposedly modeling. And the most interesting thing to me, and  
12 I'm not an economist, it suggests an economic rate of return  
13 for this hypothetical CLEC of 37 percent. 37 percent.

14 Now tell that to the creditors committee in some of  
15 these bankruptcies. Tell that to the banks who were forced to  
16 renegotiate their deals with smaller CLECs because those CLECs  
17 couldn't pay their debts anymore. But most tellingly, if Dr.  
18 Aron really believes that the BACE Model CLEC is such a  
19 terrific business plan, why is she telling us about it? Why  
20 doesn't she hold some confidential meetings with her clients  
21 telling them they out to be going out of region. And more  
22 tellingly than that, why isn't Verizon serving Miami if this is  
23 such a good business opportunity, and why isn't BellSouth  
24 challenging SBC in Texas? Think about that when you think  
25 about potential deployment and what the BACE Model really

1 means.

2 Now, part of the reason why they are not doing that  
3 has to do with the on the ground in the trenches issues the FCC  
4 addressed when it made a national finding of impairment.  
5 Operational issues. And you're going to hear from Mr. Mark Van  
6 De Water from AT&T, Ms. Sherry Lichtenberg of MCI, and David  
7 Nilson representing Supra on that topic.

8 Now, BellSouth and Verizon assure us that in the  
9 UNE-L promised land that awaits us there will be no hot cut  
10 headaches. There will be no loop provisioning nightmares. And  
11 the evidence will show they are making promises they can't  
12 deliver. And the outcome could be fatal to competition.  
13 Because if you trust all local competition to the ILECs'  
14 ability to flawlessly handcraft every phone line transition in  
15 the mass market, you know, every phone number in the phone  
16 book, if you do that and they don't deliver, the ILECs will get  
17 their monopoly back. Because if CLECs can't deliver as UNE-L  
18 carriers, customers aren't going to take CLEC services and that  
19 is the end.

20 Finally, Mr. Steve Turner is going to address the  
21 fundamental roadblock to mass market UNE-L competition. That  
22 is if your business plan requires you to pay your debts, keep a  
23 payroll, and maybe make a profit and return something to the  
24 people who funded your business, UNE-L for the mass market is a  
25 tough row to hoe.

1           There are guys making it in the enterprise market,  
2 but he is going to show you that in the mass market there is a  
3 UNE-L penalty of \$11.86 per line per month in Miami. And when  
4 you go to the Panama City LATA it goes up to \$19.74 per month  
5 per line on top of the cost of the loop, on top of the  
6 infrastructure the CLEC has got to put in to pay for the  
7 switch, on top of marketing and SGA and everything else you pay  
8 to run a business. When you go toe to toe with that ILEC in  
9 the UNE-L business plan, you start \$11.86 in the hole in Miami,  
10 Florida.

11           Now I want to talk about the triggers. We get into a  
12 critical question of is UNE-L going to step up to replace  
13 UNE-P. Is the cavalry going to come riding in to save the mass  
14 market. That is a critical question. And I would suggest to  
15 you you ask the players in the marketplace. Look at Paragraph  
16 9 of Mr. Mike Duke's affidavit which was before you last night  
17 and is in evidence. Mr. Mike Duke of KMC. We used to do that  
18 he says. We don't do that anymore. We serve enterprise.  
19 Because those mass market customers who they tried to serve but  
20 couldn't do successfully are available again, because they have  
21 this opportunity to lose money again, they are not going step  
22 up and ride to the rescue of those 600,000 Floridians if they  
23 lose their UNE-P.

24           And look at that article we read yesterday from the  
25 paper in Jacksonville. AllTel is leaving. You know why they

1 said they are leaving? It costs too much to do this. And they  
2 are an ILEC. It isn't worth it.

3 (Transcript continues in sequence with Volume 25.)

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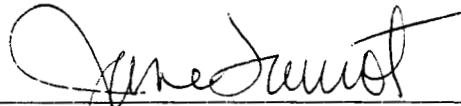
COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 1st day of March, 2004.



JANE FAUROT, RPR

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