

E. Earl Edenfield, Jr.
General Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0763

February 22, 2002

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

Re: Docket No. 001097-TP (Supra Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Strike Portions of the Direct Testimony of Olukayode Ramos and David Nilson, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

E. Earl Edenfield, Jr. (KA)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER DATE

02161 FEB 22 02

FPSC-COMMISSION CLERK

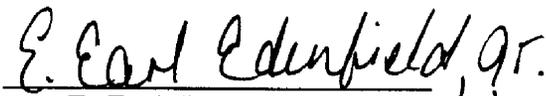
CERTIFICATE OF SERVICE
Docket No. 001097-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail, Facsimile and U.S. Mail this 22nd day of February, 2002 to the following:

Lee Fordham
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Fax. No. (850) 413-6250
cfordham@psc.state.fl.us

Brian Chaiken
Supra Telecommunications &
Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, Florida 33133
Tel. No. (305) 443-3710
Fax. No. (305) 443-9516
bchaiken@stis.com

Ann H. Shelfer
Supra Telecommunications &
Information Systems, Inc.
1311 Executive Center Drive, Suite
200
Tallahassee, FL 32301-5027
Tel. No. (850) 402-0510
Fax No. (850) 402-0522
ashelfer@stis.com



E. Earl Edenfield Jr. (KA)

The scope of these issues was defined by the Commission in two Orders: (1) the Commission's Order Granting Oral Argument and Granting in Part and Denying in Part Motion to Dismiss (Order No. PSC-00-2250-FOF-TP) ("Order on Motion to Dismiss"); and (2) the Commission's Order Denying Motion for Reconsideration or Clarification of Order on Motion to Dismiss (Order No. PSC-01-0493-FOF-TP) ("Order on Reconsideration"). These Orders limited the scope of this proceeding to billing disputes arising under the 1997 BellSouth/Supra Resale Agreement. In its Final Order on Complaint (Order No. PSC-01-1585-FOF-TP) dated July 31, 2001,¹ the Commission discusses the issue limitations imposed on this proceeding in the Order on Motion to Dismiss:

In Order No. PSC-00-2250-FOF-TP, issued November 28, 2000, we determined that the relevant agreement in this instant matter is the resale agreement entered into by BellSouth and Supra on June 26, 1997, approved by us on October 8, 1997, and effective June 1, 1997, through December 1999. For clarification, we found that those issues in dispute arising on or after October 5, 1999, the effective date of Supra's adoption of the AT&T/BellSouth agreement, were to be addressed by the sole and exclusive remedy available, pursuant to the terms of the adopted agreement, which is private arbitration.

Final Order on Complaint at p. 3.

As discussed in more detail below, Supra has raised a number of issues surrounding other agreements that Supra had with BellSouth that have no relevance to this proceeding. Specifically, BellSouth objects to: (1) testimony surrounding the circumstances leading up to the execution of the October 23, 1997 Supra/BellSouth Interconnection Agreement; (2) testimony concerning the unbundled network element

¹ Although the Final Order on Complaint was not made a part of the re-hearing proceeding, the Commission's discussion of its interpretation of the Order on Motion to Dismiss and the Order on Reconsideration, both of which are a part of the re-hearing proceeding, is relevant here.

(“UNE”) provisions of the October 23, 1997 Supra/BellSouth Interconnection Agreement; (3) testimony regarding the circumstances leading up to Supra’s adoption of the AT&T/BellSouth Interconnection Agreement in 1999; and (4) testimony concerning the private arbitration arising under the adopted AT&T/BellSouth Interconnection Agreement.

II. TESTIMONY REGARDING THE CIRCUMSTANCES LEADING UP TO THE EXECUTION OF THE OCTOBER 23, 1997 SUPRA/BELLSOUTH INTERCONNECTION AGREEMENT.

A. Direct Testimony of Olukayode Ramos (Page 4, Line 1 through Page 6, Line 13 and Page 7, Line 21 through Page 8, Line 12).

In these portions of his testimony, Mr. Ramos embarks upon a self-serving, pejorative recitation of the events leading up to the execution of the 1997 Supra/BellSouth Interconnection Agreement.² Mr. Ramos’ testimony in this regard is irrelevant. First, to the extent that Mr. Ramos is challenging the validity of the 1997 Supra/BellSouth Interconnection Agreement, such a challenge is without merit and beyond the scope of any issue in this proceeding. Second, even assuming that the 1997 Supra/BellSouth Interconnection Agreement is invalid, which it is not, such a finding would have no impact on whether certain charges were properly billed under the 1997 Supra/BellSouth Resale Agreement.

It cannot be argued rationally that the circumstances leading up to the execution of the 1997 Supra/BellSouth Interconnection Agreement (a Commission-approved agreement under which the parties operated for a number of years) have any bearing on

² Anticipating Supra’s testimony, BellSouth witness Patrick Finlen filed direct testimony addressing the issue of the circumstances leading up to the adoption of the Supra/BellSouth Interconnection Agreement. If the Commission grants BellSouth’s Motion, then page 4, line 14 through page 13, line 7 of Mr. Finlen’s testimony should also be stricken.

an issue in this proceeding. The Commission made it clear on page 2 of the Order Setting Matter for Rehearing and Establishing Procedure that “[t]he scope of this proceeding shall be limited to the issues raised by the parties in ... the first Prehearing Order ... unless modified by the Commission.” If Supra believes that its testimony concerning the circumstances leading up to the execution of the 1997 Supra/BellSouth Interconnection Agreement should be considered in this proceeding, then the proper avenue is for Supra to request that the Commission expand the current list of issues. Absent such Commission approval, the testimony of Mr. Ramos (Page 4, Line 1 through Page 6, Line 13 and Page 7, Line 21 through Page 8, Line 12, together with Exhibits KR-2, KR-3, and KR-4) should be stricken.

B. Direct Testimony of David Nilson (Page 41, Line 1 through Page 43, Line 10 and Page 49, Line 11 through Page 50, Line 8).

Based on the same grounds as stated above for the testimony of Mr. Ramos, the testimony of Mr. Nilson should also be stricken. Again, there is nothing in the circumstances leading up to the execution of the 1997 Supra/BellSouth Interconnection Agreement that is relevant to this proceeding. Thus, the testimony of Mr. Nilson (Page 41, Line 1 through Page 43, Line 10 and Page 49, Line 11 through Page 50, Line 8, together with Exhibits DN-21, DN-22, DN-24, and DN-25) should be stricken.

III. TESTIMONY CONCERNING THE UNBUNDLED NETWORK ELEMENT (“UNE”) PROVISIONS OF THE OCTOBER 23, 1997 SUPRA/BELLSOUTH INTERCONNECTION AGREEMENT.

A. Direct Testimony of Olukayode Ramos (Page 6, Line 15 through Page 7, Line 19).

In this portion of his testimony, Mr. Ramos discusses the UNE provisions in the 1997 Supra/BellSouth Interconnection Agreement and their supposed impact on the

provisions of the Supra/BellSouth Resale Agreement. This is simply another instance of Supra attempting to expand the issues beyond those delineated by the Commission. The ability, or inability, of Supra to exercise its rights under the provisions of the 1997 Supra/BellSouth Interconnection Agreement has no relevance to whether BellSouth properly billed Supra under the provisions of the Supra/BellSouth Resale Agreement.

If Supra believed that its rights under the 1997 Supra/BellSouth Interconnection Agreement had been violated, then it was incumbent upon Supra to bring that grievance to the Commission. The Commission should not allow this proceeding to become a forum for Supra to pursue general grievances under long-expired agreements. Instead, the Commission should only entertain testimony strictly related to the issues as defined in the Order Setting Matter for Rehearing and Establishing Procedure. Thus, the testimony of Mr. Ramos (Page 6, Line 15 through Page 7, Line 19, together with Exhibit KR-5) should be stricken.

B. Direct Testimony of David Nilson (Page 32, Line 16 through Page 40, Line 17 and Page 50, Line 10 through Page 58, Line 15 and Page 65, Line 6 through Page 69, Line 4 and Page 70, Lines 5 - 13).

Based on the same grounds as stated above for the testimony of Mr. Ramos, the testimony of Mr. Nilson should also be stricken. Again, there is nothing about the provisioning of UNEs, or lack thereof, under the terms of the 1997 Supra/BellSouth Interconnection Agreement that is relevant to the issues as framed in this proceeding. Thus, the testimony of Mr. Nilson (Page 32, Line 16 through Page 40, Line 17 and Page 50, Line 10 through Page 58, Line 15 and Page 65, Line 6 through Page 69, Line 4, and Page 70, Lines 5 – 13, together with Exhibits DN-5, DN-6, DN-7, DN-8, DN-9, DN-10, DN-11, DN-12, DN-13, DN-14, DN-15, DN-16, DN-17, DN-18, DN-19, DN-20 (with all

subparts), DN-26 (with all subparts), DN-27, DN-28, DN-29, DN-30, DN-31, DN-32, DN-33, DN-34, DN-35, DN-36, DN-37, DN-38, DN-39, DN-40) should be stricken.

IV. TESTIMONY REGARDING THE CIRCUMSTANCES LEADING UP TO SUPRA'S ADOPTION OF THE AT&T/BELLSOUTH INTERCONNECTION AGREEMENT IN 1999.

A. Direct Testimony of Olukayode Ramos (Page 8, Line 17 through Page 11, Line 7).

BellSouth does not dispute that the provisions of the AT&T/BellSouth Interconnection Agreement are relevant to this proceeding to the extent that the Commission needs to determine whether the rates and charges in the AT&T/BellSouth Interconnection Agreement apply to the bills at issue in this proceeding. In fact, a large portion of Mr. Nilson's testimony is directed to that issue. BellSouth has no objection to that testimony.

BellSouth does object, however, to the testimony of Mr. Ramos that discusses his version of the events leading up to the adoption of the AT&T/BellSouth Interconnection Agreement. Similar to BellSouth's discussion in Section II of this Motion, Supra does not challenge the validity of the AT&T/BellSouth Interconnection Agreement. To the contrary, Supra relies on the AT&T/BellSouth Interconnection Agreement as the basis for its testimony that BellSouth improperly billed Supra. Given this reliance on the AT&T/BellSouth Interconnection Agreement, Mr. Ramos' incessant complaining about the circumstances surrounding Supra's adoption of the AT&T/BellSouth Interconnection Agreement is simply not relevant. Mr. Ramos' testimony is unfairly, and inaccurately, designed solely to try and paint BellSouth in a bad light and has nothing to do with the billing issues in this proceeding. Thus, the testimony of Mr. Ramos (Page 8, Line 17

through Page 11, Line 7, together with Exhibits KR-6, KR-7, KR-8, and KR-9) should be stricken.

V. TESTIMONY CONCERNING THE PRIVATE ARBITRATION ARISING UNDER THE ADOPTED AT&T/BELLSOUTH INTERCONNECTION AGREEMENT.

A. Direct Testimony of David Nilson (Page 30, Line 15 through Page 32, Line 2 and Page 43, Line 12 through Page 49, Line 9 and Page 58, Line 17 through Page 64, Line 17).

In his testimony, Mr. Nilson makes reference to the private arbitration proceedings between Supra and BellSouth under the AT&T/BellSouth Interconnection Agreement. This testimony should be stricken for two reasons. First, the Commission has already considered the proper forum for claims arising under the AT&T/BellSouth Interconnection Agreement. In its Order on Motion to Dismiss, the Commission ruled:

... we find that the dispute resolution provisions in each of the agreements should be strictly followed.

Accordingly, we find that Supra's Motion to Dismiss should be granted as to the portion of the Complaint alleging Supra's failure to pay for services received under the present agreement, because of the exclusive arbitration clause.

Order on Motion to Dismiss at p. 4.

It is ironic that the very issues Supra requested be removed from this proceeding for lack of the Commission's subject matter jurisdiction, are the very issues that Supra has improperly attempted to insert back into this proceeding. The Commission has already determined that the proper forum for Supra to address these issues is private arbitration, not this proceeding. It is therefore inconceivable that this testimony can in any way be relevant to any issue in this proceeding.

The second reason that the Commission should strike Mr. Nilson's testimony³ is that activities associated with the arbitration proceeding are confidential. As noted in the AT&T/BellSouth Interconnection Agreement (Section 14.1 of Attachment 1):

BellSouth, [Supra], and the Arbitrator(s) will treat any arbitration proceeding, including the hearings and conferences, discovery, or other related events, as confidential, except as necessary in connection with a judicial challenge to, or enforcement of, an award, or unless otherwise required by an order or lawful process of a court of governmental body.

Supra's attempt to introduce excerpts of a discovery deposition is a blatant violation of the AT&T/BellSouth Interconnection Agreement and should not be condoned by the Commission.⁴ Supra has not demonstrated, not even attempted to demonstrate, that it is attempting to introduce this material into this proceeding under any of the confidentiality exceptions set forth in Section 14.1 of Attachment 1 of the AT&T/BellSouth Interconnection Agreement. Nor has Supra attempted to protect this confidential material by redacting it from the public version of Mr. Nilson's testimony. Further, Supra's deliberate disclosure of these confidential materials is not consistent with representations made by Supra regarding the confidential nature of discovery materials in other proceedings.

The Commission should not tolerate Supra's egregious conduct in attempting to introduce irrelevant and confidential materials into this proceeding. Therefore, the testimony of Mr. Nilson (Page 30, Line 15 through Page 32, Line 2 and Page 43, Line 12

³ BellSouth specifically refers to page 43, line 12 through page 48, line 15, which quotes portions of a discovery deposition taken by Supra in the private arbitration.

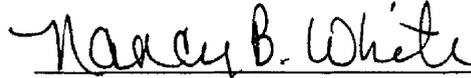
⁴ BellSouth is not asking the Commission to take any enforcement action against Supra in this proceeding. BellSouth is considering its legal recourse against Supra and Supra's counsel and, if appropriate, will pursue that legal recourse in a separate proceeding.

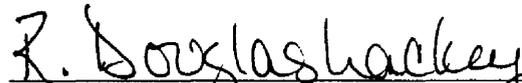
through Page 49, Line 9 and Page 58, Line 17 through Page 64, Line 17, together with Confidential Exhibits DN-40, DN-41, and DN-42) should be stricken.⁵

WHEREFORE, for the reasons discussed above, BellSouth respectfully requests that the Commission grant BellSouth's Motion and strike the referenced portions of the testimony of Supra witnesses Ramos⁶ and Nilson.

Respectfully submitted this 22nd day of February 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.


NANCY B. WHITE (LHA)
JAMES MEZA III
c/o Nancy H. Sims
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558


R. DOUGLAS LACKEY (LHA)
E. EARL EDENFIELD JR.
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0763

434794

⁵ BellSouth also objected to Exhibit DN-40 in Section III of this Motion. As BellSouth has not seen the confidential testimony and exhibits, BellSouth assumes that this testimony and related exhibits relate to the private arbitration.

⁶ If the Commission grants BellSouth's Motion in its entirety as to Mr. Ramos' testimony, then the entire testimony of Mr. Ramos should be stricken as the only remaining portions of the testimony would be non-substantive testimony concerning Mr. Ramos background and employment history.