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May 1, 2002

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

RE: Docket No. 001305-TP – Supra Telecommunication & Information Systems, Inc.'s Objection to BellSouth's Request for Confidential Classification.

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Objection to BellSouth's request for Confidential Classification.

We have enclosed a copy of this letter, and ask that you mark it to indicate that the original was filed, and thereupon return it to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Brian Chaiken

Brian Chaiken
General Counsel

CERTIFICATE OF SERVICE
Docket No. 001305-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Facsimile, Hand Delivery and/or Federal Express this 1st[h] day of May, 2002 to the following:

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Florida Public Service Commission
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SUPRA TELECOMMUNICATIONS
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By: Brian Chaiken
BRIAN CHAIKEN, ESQ.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Supra Telecommunications and Information Systems, Inc., pursuant to Section 252(b) of the Telecommunications Act of 1996	Docket No. 001305-TP Filed: May 1, 2002

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S OBJECTION TO BELLSOUTH'S REQUEST FOR CONFIDENTIAL CLASSIFICATION

Supra Telecommunications and Information Systems, Inc. ("Supra"), by and through its undersigned counsel and files this Response to BellSouth's Request for Confidential Classification in this docket, and in support thereof states as follows:

Brief Introduction

BellSouth's request for a protective order must be denied because the information BellSouth seeks to seal has already been made public by both BellSouth and this Commission.

Supra filed its document on April 1, 2002. BellSouth filed its Notice of Intent to seek Confidentiality on April 2, 2002. BellSouth filed its Request for Confidential Classification on April 23, 2002, and an Amended Request on April 24, 2002. Supra timely files this, its Objection to BellSouth's Request for Confidential Classification.

Argument

Under the present circumstances, BellSouth itself waived any rights to confidentiality by falsely disclosing to Commission Staff that BellSouth is owed millions of dollars. *See* Exhibit II to the April 1, 2002 Letter (where Harold McLean affirmatively stated, "yes -- $4.2 million" is owed by Supra to BellSouth, but "Bell claims a much higher amount due, however, between 50

and 70 million" dollars. These statements are false.); *See also* Exhibit I to the April 1, 2002 Letter (where Beth Keating affirmatively stated, "Supra owes BellSouth $3.5 million – none of which has been paid." This statement is false.) The information publicly communicated by the Commission and BellSouth (namely the $4.2 and $3.5 figures) could only have come from the parties' arbitration awards, the same awards which BellSouth now seeks to be classified as confidential.

BellSouth continues to falsely assert that Supra is wrongfully withholding payment of sums which are due and owing BellSouth. This scandalous charge has been a common theme for BellSouth throughout this docket, despite the fact that BellSouth currently has a remedy if it believes that Supra is withholding amounts due and owing. BellSouth can, and in fact has, brought such claims before Commercial Arbitrators pursuant to the parties' current agreement.[1] The letter dated April 1, 2002, and its accompanying attachments that BellSouth wishes hidden from the public, details the truth behind BellSouth's false claims. It is interesting to note that BellSouth, as far as Supra is aware, has not responded to that letter.

The truth is that BellSouth has, and continues to, collect and withhold third party revenues on Supra's access lines. If Supra had been afforded the opportunity to respond to the Commissioner's inquiry, the Commission would have understoond what is truly happening: (1) BellSouth has collected and withheld revenues (Supra believes such to be substantial) rightfully belonging to Supra as a UNE-based provider, (2) BellSouth has continuously sought to bill Supra at the higher priced resale rates, (3) BellSouth seeks to (and on more than one instance actually has) disconnect Supra's services unless Supra immediately pays the higher resale rates, while Supra is denied the additional revenues to which it is entitled.

[1] Supra submits that this Commission has already relied on this disingenuous BellSouth claim, and has relied on such in denying Supra's Motion to Dismiss and Supra's Motion to Stay filed in Docket No. 001305-TP.

BellSouth's defense to its disclosure of the false information is that Section 350.042(1), specifically provides that Commission Staff are exempt from the provisions under that statutory section.[2] The statutory exemption is specifically designed to apply to Commissioner's only. The exemption does not relieve the staff from engaging in *ex parte* communications.

Rule 25-22.033, Florida Administrative Code, specifically prohibits Commission employees from engaging in *ex parte* communications. The rule does recognize that Commission employee must exchange information with parties who have an interest in Commission proceedings, but the information is generally procedural in nature. This is evident because the Commission also recognizes in this rule that "all parties to adjudicatory proceedings need to be notified and given an opportunity to participate in certain communications."[3] Subsection (5) of this Rule expressly provides that "no Commission employee shall directly or indirectly relay to a Commissioner any communication from a party or an interested person which would otherwise be a prohibited *ex parte* communication under Section 350.042, Florida Statutes."

In all respects, BellSouth communicated to the Commission Staff false information going to the heart of the Commercial Arbitration Awards. This false information was then specifically transmitted over the Commission's e-mail system.

The Commission's e-mail system is a public record pursuant to Chapter 119, Florida Statutes. *Johnson v. Butterworth*, 713 So.2d 985, 986 (Fla. 1998) *citing Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980). Commission Staff is under a duty, pursuant to Rule 25-22.006(3)(d), Florida Administrative Code, to ensure that information that is deemed to be confidential is "accorded stringent internal procedural safeguards against

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[2] *See* BellSouth's Motion in Oppositions to Supra's Motion to Disqualify, pg 12, and Section 350.042(1), last sentence.

public disclosure." Subsection (8)(a) also emphasizes that "reasonable precautions will be taken to segregate confidential information in the record and otherwise protect its integrity." It is evident that the Staff did not comply with its duty.

BellSouth argues that it is entitled to make public substantively false statements regarding confidential issues before the Commercial Arbitrators, and that Supra does not have the right to publicly respond because the issues are of a confidential nature. BellSouth ignores the fact that Supra only responded to BellSouth's outright false statements after learning that BellSouth had engaged in *ex parte* communications with the Staff and that this information was then transmitted over the Commission's public e-mail system. BellSouth cannot now claim that the April 1, 2001, letter and its accompanying attachments must be made confidential. It is fundamentally unfair and prejudicial to allow BellSouth to utilize the non-disclosure provision as a shield and a sword.[4]

WHEREFORE, Supra respectfully requests that this Commission deny BellSouth's requests for confidential treatment of the April 1, 2002 Letter and its accompanying attachments based on the reasons set out in this response.

RESPECTFULLY SUBMITTED THIS 1ST DAY OF MAY 2002.

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INFORMATION SYSTEMS, INC.
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[3] *See* introductory paragraph to said Rule.

[4] *See* Hamilton *v. Hamilton Steel Corporation*, 409 So.2d 1111, 1114 (Fla. 4th DCA 1982) ("It is black letter law that once the privilege is waived, and the horse is out of the barn, it cannot be reinvoked.")