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June 5, 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. 0013005- TP –
SECOND VERIFIED MOTION TO DISQUALIFY AND RECUSE FPSC
FROM ALL FURTHER CONSIDERATION OF THIS DOCKET AND TO
REFER THIS DOCKET TO THE DIVISION OF ADMINISTRATIVE
HEARINGS FOR ALL FURTHER PROCEEDINGS**

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Second Verified Motion to Disqualify and Recuse FPSC From All Further Consideration of this Docket and to Refer this Docket to The Division of Administrative Hearings for all Further Proceedings in the above captioned docket.

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
General Counsel

DOCUMENT NUMBER PAGE

05886 JUN-58

FPSC-COMMISSION CLERK

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 5th day of June, 2002 to the following:

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By: Brian Chaiken
BRIAN CHAIKEN, ESQ.

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

Petition for Arbitration of the)
Interconnection Agreement between Bell-)
South Telecommunications, Inc. and)
Supra Telecommunications & Information)
Systems, Inc. pursuant to Section 252(b))
of the Telecommunications Act of 1996)
_____)

Docket No. 001305-TP

Dated: June 5, 2002

**VERIFIED SECOND SUPPLEMENTAL MOTION TO DISQUALIFY
AND RECUSE FPSC FROM ALL FURTHER CONSIDERATION OF THIS
DOCKET AND TO REFER THIS DOCKET TO THE DIVISION OF
ADMINISTRATIVE HEARINGS FOR ALL FURTHER PROCEEDINGS**

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEM'S INC. ("Supra"),
by and through its undersigned counsel and pursuant to Florida Statute § 120.665, hereby files this
Verified Second Supplemental Motion To Disqualify And Recuse FPSC From All Further
Consideration Of This Docket And To Refer This Docket To The Division Of Administrative
Hearing For All Further Proceedings ("Second Supplemental Motion To Recuse"), and herein
moves this Commission to disqualify and recuse itself from the consideration of any and all further
matters in this docket, and to refer this docket to the Division of Administrative Hearings
("DOAH") for all further proceedings, and in support thereof states as follows:

I. PROCEDURAL BACKGROUND

1. On April 17, 2002, Supra filed its Motion To Disqualify And Recuse Commission Staff
And Commission Panel From All Further Consideration Of This Docket And To Refer This Docket
To The Division Of Administrative Hearings For All Further Proceedings ("Motion To Recuse")
(FPSC Document No. 04272-02).

2. On April 26, 2002, Supra filed its Verified Supplemental Motion To Disqualify And
Recuse FPSC From All Further Consideration Of This Docket And To Refer This Docket To The

Division Of Administrative Hearing For All Further Proceedings ("Supplemental Motion To Recuse") (FPSC Document No. 04636-02). The Supplemental Motion To Recuse supplemented the original Motion to Recuse by attaching exhibits referenced in the Motion to Recuse which although found elsewhere in the docket, for convenience should have been attached again in the Motion to Recuse. The Supplemental Motion To Recuse also provided a further basis for recusal based upon Supra's then recent discovery of e-mails obtained from a public records request which showed that ex-parte communications at the Florida Public Service Commission appear to be a problem with both Commissioners and Staff Members such that they undermine the very integrity of the system. The e-mails were obtained by combing through FPSC e-mails provided as part of Supra's public records request of the FPSC.

3. The purpose of this Second Supplemental Motion To Recuse is to provide even more facts which establish a further basis for recusal based upon other events and e-mails uncovered since the previous motions. These new facts further show that: (a) ex-parte communications are a problem at the FPSC; (b) FPSC Staff and FPSC Commission members are biased in favor of BellSouth; and (c) FPSC Staff and FPSC Commission members have sought to actively assist BellSouth against Supra. This Second Supplemental Motion To Recuse covers seven new sets of occurrences uncovered, which are documented by e-mails, filings and related documents attached hereto as Composite Exhibits 1 through 8. For further reference, the Exhibits attached hereto have been numbered from Page E1 through Page E59.

4. For purposes of the record, Supra incorporates herein by reference its Motion to Recuse of April 17, 2002 and Supplemental Motion To Recuse of April 26, 2002, and submits that the

reasons set forth in the Motion to Recuse, the Supplemental Motion to Recuse and this Second Supplemental Motion To Recuse, all require this Commission to recuse the FPSC from all further consideration of this docket.

II. FURTHER EVENTS AND EVIDENCE UNCOVERED

A. Composite Exhibit 4 - Staff Bias, Assistance To BellSouth & Ex-Parte Communications

The first and perhaps most damaging incident to Supra discussed in this Second Supplemental Motion involves a FPSC Staff Attorney knowingly assisting BellSouth on a issue critical to Supra in this arbitration. In this regard, Composite Exhibit 4 (Pages E28 - E29) to this motion consists of: (a) an 10/29/01 e-mail from Wayne Knight (FPSC Staff Attorney) to Todd Brown (FPSC Staff) and Laura King (FPSC Staff) (Page E28); and (b) a subsequent 10/29/01 e-mail from Todd Brown to other FPSC Staff members (Page E29).

This group of e-mails reflects that on or about 10/29/01 Wayne Knight initiated a communication with Mike Twomey, on an ex-parte basis, for the purpose of informing him that BellSouth had failed to include a summary for Issue B in its post-hearing brief. Issue B was one of the most important issues to Supra raised in this arbitration docket, because it deal with what base agreement should be used as a starting point for all revisions (i.e. either BellSouth's standard agreement or the AT&T/BellSouth Agreement under which the parties were currently operating). The prehearing order in this cause (Order No. PSC-01-1401-PCO-TP) had previously established a 40 page limit on post-hearing briefs and had stated that a parties' failure to file a post-hearing statement in accordance with Rule 28-106.215, Florida Adminstrative Code, would constitute a waiver. That rule requires a party to provide both a summary statement of position, followed by any

argument and/or proposed findings of fact. Thus BellSouth's failure to include a summary on Issue B in its Post-Hearing Brief filed on October 26, 2001 amounted to a waiver on that issue. A waiver on this issue was of great importance to Supra. Had Supra been the party failing to file a summary statement, the FPSC Staff would have certainly made a recommendation stating that Supra had waived the issue.

Based upon the e-mails, it appears that Wayne Knight sought to come to BellSouth's rescue by advising Mike Twomey of the problem and advising BellSouth to file an amended brief. Thus Wayne Knight went beyond being neutral by specifically initiating an ex-parte communication with BellSouth for the purpose of assisting BellSouth in avoiding a potential problem. Thereafter, all staff members were advised that BellSouth would be amending its post-hearing brief to include a summary on Issue B which BellSouth filed on October 30, 2001. *See* Exhibit 8 (page E58-59). Although filing an amendment is out of the ordinary and normally not allowed, none of the FPSC Staff members appeared to have any objection any such amendment by BellSouth. Of course, Supra was not informed of the conversation between Wayne Knight and Mike Twomey until reviewing the e-mail obtained through a public records request.

This series of e-mails shows an obvious bias by a FPSC Staff Attorney in favor of BellSouth, such that this attorney actively sought to assist BellSouth further in this docket. As will later be shown, this same FPSC Staff Attorney also tried to assist BellSouth in researching potential defenses to a motion to compel and for continuance, which Supra had filed before the evidentiary hearing in this docket (see discussion below on Composite Exhibit 3). Irrespective of whether the communication was or was not prohibited under the ex-parte rules, the only reasonable conclusion

to be drawn from this series of e-mails is the open bias by the FPSC Commission Staff, and the ease in which they engage in ex-parte substantive discussions with BellSouth on disputed dockets.

B. Exhibit 1 – More Staff Bias & Ex-Parte Communications

Attached hereto as Exhibit 1 (Page E1) is a series of e-mails recently produced by the FPSC in response to Supra's public records requests. The e-mails begin with a 1/31/01 message from Brian Chaiken of Supra advising that in light of a pending Motion to Dismiss, Supra was not yet submitting proposed language regarding the issues identified at a joint conference. The series of e-mails continues with Wayne Knight (a Staff Attorney on this docket) passing on the message to other FPSC staff members, including Kim Logue (a FPSC Staff Supervisor) on 1/31/01 with the message: **"Just letting you know of the latest from our dear friends at Supra."** Ms. Logue responds to Wayne Knight asking: **"have you advised Nancy White at Bell? She's going to be livid. . . Well, they've got chutzpah, if nothing else."** Wayne Knight responds to Kim Logue stating as follows: **"Spoke to Nancy on Thursday at the Communications Symposium. She said she anticipated them doing something like that. She wanted to know what we were going to do about it."**

This series of e-mails demonstrates bias and prejudice in the sarcastic note by Wayne Knight in which he refers to Supra as **"our dear friends"** and in Ms. Logue's response that Ms. White **"is going to be livid"** and that Supra has **"got chutzpah, if nothing else."** This series also shows how easily Staff members (including attorneys) approach BellSouth and initiate ex-parte discussions about the merits of a pending case outside of the presence of all parties. In this instance, Wayne Knight felt nothing was inappropriate about discussing with an attorney for BellSouth (Ms.

White) a pending motion before the FPSC. Moreover, the BellSouth attorney (Ms. White), felt nothing about inquiring of, and discussing with the FPSC staff member, the FPSC's anticipated ruling on that pending matter. Obviously the ease at which these matters were discussed can only lead to the logical conclusion that FPSC staff members routinely engage in ex-parte communications with BellSouth regarding substantive matters in pending dockets.

Irrespective of whether the communication was or was not prohibited under the ex-parte rules, the only reasonable conclusion to be drawn from this series of e-mails is the open bias by FPSC Commission Staff, and the ease in which they engage in ex-parte substantive discussions with BellSouth on disputed dockets.

C. Composite Exhibit 2 – More Staff Bias & Ex-Parte Communications

Composite Exhibit 2 (Pages E2 - E21) to this motion consists of: (a) a 10/29/01 e-mail from Stephanie Cater to Beth Salak (page E2); (b) a 5/30/02 public records request from Supra to the FPSC (Page E3); (c) a copy of Supra's 2000 Regulatory Assessment Fee Return ("RAF") which was used as an exhibit by BellSouth at the evidentiary hearing in this docket (Page E4); and (d) electronic versions of relevant pages from the transcript in which the Supra RAF was used to question Supra representatives at the evidentiary hearing (Pages E5 - E21).

The relevance of Composite Exhibit 2 is that it demonstrates that Kim Logue (and/or others at the FPSC) were assisting BellSouth in this docket through unauthorized activities. In this regard, the e-mail from Cater to Salak advises that on July 11, 2001, Nancy Sims of BellSouth handed Stephanie Cater a copy of Supra's 2000 RAF, advising Ms. Cater that the form was purportedly false because Supra had allegedly not paid BellSouth in a year and thus the amount stated as paid to

other telecommunications companies had to be false. The e-mail further states that on the day before the Supra arbitration hearing (in this docket), Nancy Sims asked Ms. Cater to provide her with a certified copy of Supra's RAF form, but that Ms. Cater referred Ms. Sims elsewhere.

It should be noted that a certified copy of Supra's RAF (Page E4) was introduced by BellSouth during the evidentiary hearing in this docket as Exhibit 23, and was then used by both BellSouth and Staff in an effort to impeach Supra's CEO (Olukayode Ramos) at the evidentiary hearing. See Composite Exhibit 3 (at pages E6 - E14, E16 - E19) [hearing transcript at page 714, line 10 through page 722, line 19 (examination of Nancy White) and page 787, line 7 through page 790, line 11 (examination of Wayne Knight)].

As stated in the Cater e-mail of 10/29/01, Supra's Tallahassee office was eventually contacted by the FPSC regarding Supra's 2000 RAF. When questioned about the source of the Supra 2000 RAF, Supra was advised that Ms. Kim Logue had originally brought attention to the Supra 2000 RAF. On May 30, 2002, Supra made a public records request of the FPSC (Page E3) requesting a copy of all public records requests made between May 1, 2001 and October 1, 2001. The purpose of this request was to determine whether or not BellSouth had made a public records request for the Supra 2000 RAF, or whether someone at the FPSC had simply handed the document to Nancy Sims of BellSouth. As stated on the RAF Form (Page E4), that document was filed with the FPSC on May 22, 2001. Additionally, the evidentiary hearing in this docket took place at the end of September 2001. Thus Supra's May 30, 2002 public records request covered the time period between when Supra first filed the 2000 RAF and the evidentiary hearing in this docket. Supra's May 30, 2002 public records request revealed that BellSouth had never made a public records

request for Supra's 2000 RAF. Since Supra's 2000 RAF was unavailable to BellSouth other than through a public records request, the only reasonable conclusion is that someone within the FPSC violated Rule 25-22.033, Florida Administrative Code and Section 112.313(8), Florida Statutes, by providing BellSouth a copy of Supra's 2000 RAF without a written request. Given the above, it is reasonable to conclude that someone within the FPSC (perhaps Ms. Logue or others) provided Ms. Nancy Sims both the uncertified copy of Supra's 2000 RAF (which was provided to Ms. Cater on July 11, 2001) and the certified copy (which was used in the evidentiary hearing in this docket in September). Thus it appears that Ms. Logue, or perhaps someone else at the FPSC, was actively assisting BellSouth in this docket.

This series of documents reflects a bias within the FPSC in favor of BellSouth, such that FPSC employees are willing to violate existing procedures in order to assist BellSouth. Moreover, this event also demonstrates BellSouth's total comfort with the use of such improper tactics in order to further and champion its causes before the FPSC. The only reasonable conclusion to be drawn from these events is that BellSouth has extraordinary and improper influence within the FPSC which prejudices the positions of adverse parties such as Supra.

D. Composite Exhibit 3 – Even More Staff Bias & Ex-Parte Communications

Composite Exhibit 3 (Pages E22 - E27) to this motion consists of: (a) an 8/29/01 e-mail exchange between Wayne Knight (FPSC Staff Attorney) and Beth Keating (FPSC Staff Attorney) regarding "**001305 Supra's motion to compel**" (Page E22); (b) an 8/30/01 e-mail exchange between Wayne Knight and Alice Crosby (FPSC Staff) regarding "**defense to motion to compel**" (Page E23) and (c) portions of BellSouth's 8/31/01 Opposition To Supra's Motion To Compel

Production Of Documents And Continuance, which was filed on 8/31/01, FPSC Document No. 010895-01.

This series of documents is relevant because it reflects an ex-parte communication between Wayne Knight (a FPSC Attorney) and Michael Twomey (a BellSouth attorney) regarding a substantive motion pending before the FPSC, and Wayne Knight's willingness to begin researching a potential defense on behalf of BellSouth, before BellSouth has even responded to Supra's motion. Clearly this situation reflects a bias on the part of a FPSC Staff Attorney who was and currently is assigned to this docket.

In the first e-mail of 8/29/01 (Page E22), Wayne Knight writes to Beth Keating about "**001305 Supra's motion to compel**", stating as follows: "**I spoke with Mike Twomey of BellSouth. They are going to file a response by Friday.**" The e-mail is obviously a reference to the fact that Mike Twomey, a BellSouth attorney in this docket, spoke with Wayne Knight on 8/29/01 about Supra's then pending motion to compel discovery and request for continuance. Supra had argued in its motion that BellSouth had failed to timely object to certain discovery, and that BellSouth's failure to provide the discovery required a continuance of the evidentiary hearing in this docket. The 8/29/01 e-mail notes that BellSouth will be filing its response on Friday (8/31/01) (see Page E22). On 8/30/01, Wayne Knight then sought advice from other FPSC Staff members in reference to a "**defense to motion to compel**" in which Wayne Knight states as follows: "**Might be a shot in the dark, but do either of you recall a situation where a party said it didn't respond to the request made of it interrogatories and requests for production, because the other party had asked more questions than allowed by the order establishing procedure? I**

am trying to find an order that may have dealt with this, as I am currently dealing with this in the BellSouth/Supra arbitration." See 8/30/01 e-mail attached hereto as Page E23. Contrary to the statement in Wayne Knight's 8/30/01 e-mail, the issue which Wayne Knight was researching had not yet been made a part of the BellSouth/Supra arbitration until the next day when BellSouth filed its 8/31/01 Opposition To Supra's Motion To Compel Production Of Documents And Continuance. See pages of 4-5 of Document No. 010895-01, which is attached hereto as part of Composite Exhibit 3 (Pages E26 - E27).

The obvious conclusion from the above documents is that on August 29, 2001, Mike Twomey of BellSouth and Wayne Knight of the FPSC had an ex-parte conversation in which they specifically discussed Supra's then pending motion to compel, together with the reasons why BellSouth had failed to provide the requested discovery. Wayne Knight then took it upon himself to begin researching what he and Mike Twomey had discussed in hopes of supporting a favorable decision on behalf of BellSouth, even before BellSouth had responded to the motion to compel. Since BellSouth's motion eventually failed to provide any legal support for this argument, it is reasonable to conclude that Mike Twomey advised Wayne Knight that he was having difficulty supporting the argument with precedence. Thus Wayne Knight took it upon himself to see if he could help out Mike Twomey before BellSouth's response was filed. Thus it is clear that a FPSC Staff Attorney had decided to assist BellSouth in researching an argument to be included in a response which BellSouth had not yet even filed before the FPSC. The only reasonable conclusion is that Wayne Knight was obviously biased and simply sought to assist BellSouth's in violation of the neutrality and impartiality required of his position.

Irrespective of whether the communication was or was not prohibited under the ex-parte rules, the only reasonable conclusion to be drawn from this series of e-mails is the open bias by the FPSC Commission Staff, and the ease in which they engage in ex-parte substantive discussions with BellSouth on disputed dockets.

E. Exhibit 5 - FPSC Acknowledgement Of Ex-Parte Communications

Exhibit 5 (Page E30) to this motion consists of an 10/12/01 e-mail from Harold McLean (FPSC General Counsel) to Lila Jaber (FPSC Commission Chairperson) regarding a recent show cause docket before the FPSC. In the e-mail, McLean complains that the FPSC Staff was quick to enter into a settlement agreement with a regulated utility on a show cause order. McLean relays to Commissioner Jaber that the Office of Public Counsel ("OPC") had apparently complained because the violation was settled before interested parties could intervene. McLean then repeats the response he received from the FPSC staff member (Rick Moses) who defended this practice, stating: **"Perhaps you will be interested in the response of Rick Moses. I submit that it is relevant to why they are comfortable privately discussing issues with regulated utilities behind closed doors."**

Clearly this e-mail reflects an acknowledgement by the FPSC's general counsel that a problem exists within the FPSC regarding private discussions with regulated utilities (such as BellSouth). This e-mail bolsters the fact that FPSC staff members appear to routinely discuss substantive matters with regulated utilities (such as BellSouth) in disputed dockets, and on an ex-parte basis. Given the other evidence of repeated ex-parte communications set forth in this motion and Supra's two prior motions to recuse, it is clear that a real problem exists within the FPSC which

erodes and destroys the impartiality of the FPSC.

F. Composite Exhibit 6 - Commission Initiated Ex-Parte Communications

Composite Exhibit 6 (Pages E31 - E35) to this motion consist of a series of e-mails. These e-mails are as follows: (a) an e-mail of 10/11/01 from Commissioner Jaber to her assistants JoAnn Chase and Maria Woodward regarding "**Joe Lacher**" (President of BellSouth's Florida operations); (b) an e-mail of 10/12/01 from Harold McLean (FPSC General Counsel) to Commissioner Jaber regarding possible mediation between Supra and BellSouth over the cross-examination question issue raised in docket 001097; (c) an e-mail exchange of 10/12/01 between Harold McLean and Commissioner Jaber regarding a potential Supra/BellSouth mediation; (d) an e-mail exchange of 10/18/01 between Harold McLean and David Smith (FPSC attorney) regarding a potential Supra/BellSouth mediation; and (e) an e-mail of 10/18/01 from Veronica Washington (assistant to Harold McLean) to Harold McLean regarding the suggested mediation.

When viewed as a whole, these e-mails reflect that just before an investigation was initiated by the FPSC into Kim Logue, Commissioner Jaber used her influence to convince BellSouth to mediate the Kim Logue matter in hopes that a settlement would avoid an investigation into Kim Logue. In the process, Commissioner Jaber initiated ex-parte communications with the president of BellSouth's operations in Florida in order to convince BellSouth that it was in their best interest to resolve docket 001097 through mediation.

The evidence in support of this position is as follows. On October 11, 2001, Commissioner Jaber was expecting a visit from Joe Lacher, BellSouth president of Florida operations. Hence the first e-mail from Jaber to her assistants in regards to "**joe lacher**" which simply states: "**let me**

know" (Page E31), an obvious reference to when Joe Lacher will meet with Commissioner Jaber when read in conjunction with the other e-mails in this Composite Exhibit. The next e-mail is dated October 12, 2001 at 9:56 a.m. (Page E32) in which Harold McLean writes to Commissioner Jaber stating that Supra has agreed to mediate, but that Nancy White of BellSouth did not want to mediate stating to McLean: **"What we gone (sic) mediate, Harold"**. Harold McLean then states to Commissioner Jaber: **"Intervention by Mr. Lacher (from whom I have not had a visit as yet) might be just the thing. Please encourage his visit if you have the chance."** Approximately an hour and one half later, Harold McLean writes again to Commissioner Jaber (Page E33) stating: **"I had a visit from Joe Lacher of S. Bell this morning, who seemed agreeable to mediation, but would check first with Nancy White for her advice."** Commissioner Jaber then responds by stating to McLean: **"good job."** Thus it appears based upon the e-mails attached hereto as Page E32 and Page E33, that Joe Lacher met with Commissioner Jaber on the morning of October 12, 2001, who then spoke with Joe Lacher about a potential Supra/BellSouth mediation and then sent Lacher to see Harold McLean to further discuss having BellSouth mediate the Kim Logue issue with Supra. On October 17, 2001, Harold McLean then sends David Smith an e-mail advising that Supra and BellSouth have now both agreed to mediate (see Page E34), with instructions to contact counsel for the parties. Thereafter, a problem must have arisen since a message is then left on the afternoon of October 18, 2001, asking Harold McLean to telephone Marshall Criser (a BellSouth vice president) regarding the mediation suggestion (see Page E35). Presumably Harold McLean then had another ex-parte communication with Marshall Criser regarding the mediation and together with any future strategy in dealing with the Kim Logue matter.

Based upon the above it is clear that "behind closed doors" and "private" discussions were had with BellSouth by Commissioner Jaber and Harold McLean (Commission General Counsel) in an attempt to convince BellSouth to mediate the Kim Logue matter in Docket No. 00-1097. Obviously Commissioner Jaber and Harold McLean presented sufficient reasons to BellSouth management which convinced them to over-rule the advice of BellSouth's Florida general counsel (Nancy White). The most reasonable and plausible explanation of what transpired is that Commissioner Jaber and Harold McLean advised Joe Lacher that resolving the docket through mediation would prevent a FPSC investigation into Kim Logue, thus effectively hiding Ms. Logue's misconduct.

Without a doubt, these e-mails reflect that the FPSC Commissioners and Staff have no problem initiating ex-parte communications with BellSouth regarding substantive matters on dispute dockets. The only reasonable conclusion to be drawn from this series of e-mails is the open bias by the FPSC Commission and FPSC Commission Staff, and the ease in which they engage in ex-parte substantive discussions with BellSouth on disputed dockets.

G. Composite Exhibit 7 - FPSC Bias/Predetermination & Coordination Of Rulings

The last incident in this motion is set forth in Composite Exhibit 7 (Pages E36 - E57). Composite Exhibit 7 to this motion consist of: (a) portions of BellSouth's May 15, 2002 Motion For Reconsideration (FPSC Document No. 05256-02) (Pages E36 - E41); (b) a May 30, 2002 Staff Recommendation on Supra's Motion to Recuse and Supplemental Motion to Recuse (FPSC Document No. 05708-02) (Pages E42 - E47); and (c) a second May 30, 2002 Staff Recommendation on Supra's Motion to Recuse and Supplemental Motion to Recuse (FPSC

Document No. 05726-02) (Pages E48 - E57). It should be noted that the two recommendations cited above reference orders by Commissioners Jaber and Palecki which have not even been filed. The first recommendation states in pertinent part as follows: "**Although both the Motion and Supplemental Motion seek the recusal of the entire Commission panel, allegations of fact are directed only toward Chairman Lila A. Jaber and Micheal A. Palecki. Their orders respectively declining to recuse are incorporated herein by reference.**" See FPSC Document No. 05708-02 at pages 1-2 (attached hereto as Pages E42 - E43). The second recommendation likewise states that: "**Although both the Motion and Supplemental Motion seek the recusal of the Commission staff, allegations of fact are directed against Chairman Jaber and Commissioner Micheal A. Palecki concerning their communications with staff. Their respective Orders declining to Recuse From Docket No. 001305-TP are therefore incorporated by reference herein.**" See FPSC Document No. 05726-02 at pages 1-2 (attached hereto as Pages E48 - E49). Neither of these referenced orders have been filed with the FPSC. Thus it is clear that the FPSC Commission Staff rushed to file its recommendations on May 30, 2002. It should be noted that May 30, 2002 was the last day under which a staff recommendation can be filed in order for that recommendation to be voted by the Commission at the June 11, 2002 Agenda conference. Not only were these recommendations on May 30th, but FPSC Commission Staff also filed recommendations on Supra's two post-hearing motions seeking a rehearing and reconsideration of various orders on the evidentiary hearing in this docket. It is worth noting that Commission Staff's erroneous reference to non-existent orders were not the only mistakes in the recommendations. Indeed, FPSC Document No. 05726-02 is a revised version of a

recommendation which was filed earlier that day as FPSC Document No. 05709-02. Apparently the first filed version contained other mistakes which prompted the filing of a revised recommendation.

The FPSC Commission Staff's rush to meet the June 11, 2002 Agenda deadline can only be explained by BellSouth's request for expedited treatment of Supra's post-hearing motions. In this regard on May 15, 2002, BellSouth filed a Motion For Reconsideration in which BellSouth requested as alternative relief, expedited treatment on Supra's post-hearing motions. Copies of the relevant portions of BellSouth's Motion For Reconsideration are attached hereto as part of Composite Exhibit 7 (at Pages E37 - E41). On pages 9-11 of BellSouth's Motion For Reconsideration (attached hereto as Pages E38 - E40), BellSouth specifically seeks expedited rulings on Supra's post-hearing motions for an expedited disposition and vote by the Commission at the June 11, 2002 Agenda conference. Although this motion has not yet been ruled upon, FPSC Commission Staff effectively granted BellSouth's motion for expedited treatment by rushing to file recommendations by May 30, 2002, enabling Supra's post-hearing motions to be brought at the June 11, 2002 Agenda conference. In the process the FPSC Commission Staff simply rushed to judgment, relying upon what appear to be only drafts of orders by Commissioners, which may or may not be issued anytime soon.

The documents attached as Composite Exhibit 7 effectively show bias on the part of the FPSC Commission Staff against Supra for at least three reasons. First, it is clear that the FPSC Commission Staff rushed to file the two attached recommendations in an obvious attempt to assist BellSouth in its battle to be free of unbiased rulings by commercial arbitrators which are required by the parties' current Interconnection Agreement. Second, it is clear that the FPSC Commission Staff

did not give Supra's motions to recuse full consideration since the FPSC Commission Staff merely relied upon draft versions of probable orders, but treated those draft orders as being finalized and already filed. Third, it is also clear that rather than draft a recommendation independent of the Commissioners and on the merits, the FPSC Commission Staff chose to consult with the Commissioners and file coordinated recommendations which recommend denying Supra's motions to recuse. This suggests that the Commissioners and FPSC Commission Staff have already decided in secret among themselves the future results of the June 11, 2002 Agenda conference in reference to Supra's motions to recuse. Such actions are in violation of Florida's Sunshine Law which in Fla.Stat. § 286.011(1), requires that all meetings among Commissioners be in public and opened to the public. This statute is violated when Commissioners have already agreed amongst themselves as to the outcome of a particular matter and simply engage in a "ceremonial acceptance" at the public hearing. See Town of Palm Beach v. Gradison, 296 So.2d 473, 477 (Fla. 1974) cited by Monroe County v. Pidgeon Key Historical Park, Inc., 647 So.2d 857, 860 (Fla. 3d DCA 1995).

In addition to the above, the FPSC Commission Staff's reference to non-existent orders by Commissioners Jaber and Palecki could in fact reflect a calculated move by the Commissioners to delay the filing of their orders denying recusal until just prior to the June 11, 2002 Agenda. Thus attempting to frustrate any efforts by Supra to challenge those orders before the Commission has ruled upon Supra's post-hearing motions. Such a deliberate withholding of these orders would clearly indicate a bias on the part of Commissioners Jaber and Palecki. Thus, the mistake of referencing non-existent orders in the two recommendations indicates not only a bias by the FPSC, but also that Supra's motions for recusal have already been decided upon in private and that a

strategy has been adopted by the FPSC to frustrate Supra's efforts at obtaining effective review of the FPSC's actions.

III. MEMORANDUM OF LAW

The parties to an administrative adjudicatory proceeding are entitled to a fair hearing before an impartial tribunal, and to a determination made without bias, hostility, or prejudice. 2 Fla.Jur.2d, Administrative Law, § 273. In this regard, an agency head (whether individually or collectively), can be disqualified from serving in any agency proceeding for bias, prejudice, or interest. 2 Fla.Jur.2d, Administrative Law, § 277.

In Florida, administrative proceedings are, in general, governed by the Florida Administrative Procedure Act ("APA"). Except where specifically provided for in superseding provisions of law, the Florida Public Service Commission is subject to the APA. 2 Fla.Jur.2d Administrative Law, § 23. With respect to recusals and disqualifications of FPSC Commissioners, the APA applies. In this regard, Florida Statute § 120.665 states in pertinent part as follows:

"(1) . . . any individual serving alone or with others as an agency head may be disqualified from serving in any agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. If the disqualified individual was appointed, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified.

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution."

In the FPSC docket of In Re: Southern States Utilities, Inc. (Order No. PSC-95-1438-FOF-WS) (Docket Nos. 950495-WS, 930880-WS, 920199-WS) (1995 Fla.PUC LEXIS 1467), this

Commission held that the procedural statutes and rules dealing with the recusal of court officials do not apply to recusals of Commissioners. Rather that the time constraints and procedure to be used in seeking to recuse Commissioners are as set forth by the APA. Southern States, supra, PSC-95-1438 at pages 9-11. Pursuant to the statute, the standard is "**when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding.**"

In Bay Bank & Trust Co. v. Lewis, 634 So.2d 672, 678, n.6 (Fla. 1st DCA 1994), the Court held that the reference to "within a reasonable time prior to the agency proceeding" in the APA recusal statute should be read as applying to all future matters at issue before the administrative officer. Thus a motion for recusal is timely as to all future matters to be decided in the docket. Accordingly, this motion for recusal applies to all pending and future motions in this docket and is thus timely with respect to these matters.

In further defining the standard under the predecessor APA statute (i.e. Fla.Stat. § 120.71), this Commission stated in In Re: Southern States Utilities, Inc. as follows:

"We note that the holding of Bundy v. Rudd, supra, still states the law with respect to a motion for the disqualification of a trial judge, i.e., a judge presented with a motion for his disqualification shall not pass on the truth of the facts alleged nor adjudicate the question of disqualification, but shall limit his inquiry to the legal sufficiency of the motion."

Southern States, supra, PSC-95-1438 at pages 9-10. See also Bay Bank & Trust Co. v. Lewis, 634 So.2d 672, 678 (Fla. 1st DCA 1994) ("We do not decide disputed issues of fact in such a proceeding, but assume, as must the agency head, that all allegations of fact in the motion are true . . . [it is thus] a proceeding to review the legal sufficiency of the motion for disqualification") and

Bundy v. Rudd, 366 So.2d 440 (Fla. 1978); see also 2 Fla.Jur.2d, Administrative Law, § 277 ("In determining whether to grant or deny a motion for disqualification, the presiding officer must assume that all allegations of fact in the motion are true").

In Southern States this Commission further stated that, "**The applicable test for legal sufficiency for recusal in any event is enunciated in Hayslip v. Douglas, supra, i.e., whether the facts alleged would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial.**" Southern States, supra, PSC-95-1438 at page 10. This standard has also been enumerated in Pelham v. School Board of Wakulla County, Florida, 451 So.2d 1004, 1005 (Fla. 1st DCA 1984) (recusal require where there was a "well-grounded fear that he will not receive a fair hearing at the hands of the respondent agency").

It should also be noted that this Commission has an obligation to timely address Supra's motions for recusal prior to ruling upon any further matters. In Fuster-Escalona v. Wisotsky, 781 So.2d 1063 (Fla. 2000), the Florida Supreme Court stated that courts must not wait to decide motions for recusal, and that such motions must be ruled upon "immediately" when presented and "promptly" and "with dispatch." The Florida Supreme Court also held that any rulings made on other matters after the filing of a motion for recusal are subject to reversal. In this instance, the FPSC has not addressed Supra's motions for recusal on a timely basis, but rather have proceeded to continue acting upon other matters in this docket. These actions appear to be directly contrary to the Florida Supreme Court's ruling in Fuster-Escalona, supra.

With respect to procedural matters, the DOAH employs administrative law judges ("ALJ") to conduct hearings required by the Florida APA. 2 Fla.Jur.2d, Administrative Law, § 280. Florida

Statute Section 120.569(2)(a) allows any agency covered by the APA to request an ALJ from the division. Florida Statute Section 120.65(7) further empowers the DOAH to provide ALJs on a contract basis to any other governmental entity not covered by the APA. Additionally, Florida Statute Section 350.125 also contemplates the FPSC's use of the DOAH from time to time.

In World Transportation, Inc. v. Central Florida Regional Transportation, 641 So.2d 913, 914 (Fla. 5th DCA 1994), the Court held that where an adverse posture exists between the petitioners and the agency, the better procedure is not to select another agency member, but rather to request an independent hearing officer from the DOAH. Likewise, in Ridgewood Properties, Inc. v. Department of Community Affairs, 562 So.2d 322, 324 (Fla. 1990) the Florida Supreme Court stated that where the agency head has been appointed by the Governor, the procedure under the APA is to have any recommended orders decided upon by a substitute appointed by the Governor, who is not a member of the agency. See Florida Statute § 120.68(1); see also 2 Fla.Jur.2d, Administrative Law, § 280. Thus the procedure to be followed upon recusal is to refer this docket for further proceedings to the DOAH for the preparation of a recommended order. It should be noted that Commission Staff can present its views and testimony (if any is required) to the DOAH hearing officer. Thereafter, the recommended order will be reviewed by a person appointed by the Governor pursuant to Fla.Stat § 120.68, whose decision will stand in place of the agency head (i.e. the FPSC Commissioners) and will thereafter be treated as a decision of the FPSC.

With respect to the merits of Supra's Motion, in Martin v. Carlton, 470 So.2d 875 (Fla. 1st DCA 1985), the First District Court of Appeals held that an ex-parte letter sent to the Court, which urged the Court to dispose of the case on an expedited matter, constituted sufficient grounds for the

judge to recuse himself. In citing the Martin case, the First District Court of Appeals later wrote that: "**Ex parte communications concerning a matter before the court violates the concept and appearance of impartiality and may rise to the level which require disqualification of a trial judge.**" See Love v. State of Florida, 569 So.2d 807, 810 (Fla. 1st DCA 1990). Thus it is clear that when the FPSC Commission and the FPSC Commission Staff engage in ex-parte communications, they undermine their own credibility and cause reasonable minds to conclude that they cannot receive a fair hearing at the hands of the Commission. This standard applies to all ex-parte communications, whether the ex-parte communications are prohibited or not.

In regards to prohibited ex-parte communications, Florida Statute § 350.042(1) states in pertinent part as follows:

"(1) A commissioner should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a proceeding under s. 120.54 or s.120.565, workshops, or internal affairs meetings."

Florida Statute § 350.042 further provides in subsection (4) that if a Commissioner knowingly receives an ex parte communication, he or she must thereafter place it on the record of the proceeding, notify the parties, and thereafter allow all other parties to respond to the communication within 10 days thereafter. Subsection (5) also requires persons making an ex-parte communication to provide copies of the communication to all parties, with the same thereafter being place upon the record by the Commission.

Florida Administrative Code Section 25-22.033 governs communications between staff

employees and parties, and states in pertinent part as follows:

"(2) Written Communications -- Notice of any written communication between Commission employees and parties shall be transmitted to all other parties at the same times as the written communication, whether by U.S. Mail or other means.

*** * * * ***

(4) Response to Communications -- Any party to a proceeding may prepare a written response to any communication between a Commission employee and another party. Notice of any such response shall be transmitted to all parties.

(5) Prohibited Communications -- 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, Fla.Stat. Nothing in this subsection shall preclude non-testifying advisory staff members from discussing the merits of a pending case with a Commissioner, provided the communication is not otherwise prohibited by law."

The above circumstances cited in this Second Supplement Motion to Recuse, demonstrate that the ex-parte communications between BellSouth and the FPSC are a rampant problem and have occurred both in this docket and the related docket no. 00-1097, to the extent that Supra has been prejudiced in both proceedings.

The above events also show a willingness on the part of the FPSC Commissioners and FPSC Commission Staff to engage in secret, behind closed door, meetings with BellSouth regarding substantive matters at issue in pending dockets. Although Supra contends that most (if not all) of the ex-parte communications referenced above are violations of the applicable statutes and administrative code sections, whether the ex-parte communications are technically violations is of little importance since it is clear that both the Commissioners and FPSC Staff have sought to assist BellSouth in violation of fairness and neutrality obligations. Not only do the ex-parte

communications reflect improper communications, but the communications themselves reflect a bias to assist BellSouth in obtaining a favorable outcome. This clearly shows a bias in favor of BellSouth and willingness by the FPSC in violating various statutes, rules and other procedures created to ensure a fair result.

The above evidence further shows that BellSouth's tentacles of influence stretch deep into the FPSC Commission and the FPSC Commission Staff. Moreover, that under the circumstances, no reasonable person could believe that in any dispute with BellSouth, they could ever be afforded a fair hearing. Given the rampant bias in favor of BellSouth and the secret influence which BellSouth has over the FPSC Commission and its staff (allowed to flourish through repeated ex-parte communications), Supra has clearly demonstrated a "well-grounded fear that [it] will not receive a fair hearing at the hands of the respondent agency". Southern States, supra, at LEXIS page 17; and Pelham, supra, 451 So.2d at 1005.

The spirit of the ex-parte rules is to insure fair hearings. Both the FPSC Commission and FPSC Commission Staff may revel in their ability to construct mechanisms to hide such ex parte communications and to violate the spirit of the ex-parte rules. When the spirit and letter of those rules have been violated and/or deliberately circumvented by FPSC employees, favoritism and bias are allowed to infect the FPSC and its decisions. Such acts corrupt the very trust of the public and the litigants, and the whole credibility of the FPSC is called into doubt.

Unfortunately, the FPSC has now lost all creditability with Supra given the evidence of bias and ex-parte communications uncovered. Under the circumstances, neither Supra or any other CLEC could ever believe that they could get a fair hearing before the FPSC; at least until such time

as the whole FPSC house is swept clean of the improper outside influence of large utilities such as BellSouth and procedures are adopted to prevent (rather than just merely hide) future ex-parte communications and corrupting influence of monopolistic utilities such as BellSouth.

Accordingly, for the reasons set forth in Supra's Motion to Recuse, Supra's Supplemental Motion to Recuse and in this Second Supplemental Motion to Recuse, Supra respectfully requests that the FPSC recuse itself and all Commission Staff members and refer this docket to the DOAH for all further proceedings, with a substitute appointed by the Governor reviewing the recommendations of the DOAH hearing officer.

IV. VERIFICATION AND DECLARATION OF OLUKAYODE A. RAMOS

1. Pursuant to Florida Statute § 92.525, I, OLUKAYODE A. RAMOS, hereby verify and state under the pains and penalty of perjury that the following declaration is true and correct.

2. This declaration is based upon direct and personal knowledge.

3. I am the Chairman and Chief Executive Officer of Supra Telecommunications and Information Systems, Inc. ("Supra").

4. My business is located at 2620 S.W. 27th Avenue, Miami, Florida 33133.

5. I have reviewed this Verified Second Supplemental Motion To Disqualify And Recuse FPSC From All Further Consideration Of This Docket And To Refer This Docket To The Division Of Administrative Hearing For All Further Proceedings ("Second Supplemental Motion To Recuse").

6. I agree with the factual assertions and conclusions made in this Second Supplemental Motion To Recuse and incorporate them herein as the basis for the opinions and fears expressed in

this verification and declaration.

7. I have reviewed the exhibits attached to this Second Supplemental Motion To Recuse. These exhibits are true and correct copies of: (a) documents and other filings obtained from the FPSC; and (b) transcripts of proceedings before the FPSC.

8. After reviewing the e-mails of the FPSC Commission Staff and FPSC Commissioners, I can only conclude that the FPSC Commission Staff and FPSC Commissioners are biased in favor of BellSouth and that they regularly engage in secretive ex-parte communications with BellSouth regarding substantive matters in disputed dockets, including this docket. After seeing the e-mails and other documents recently provided in response to Supra's public records requests and in reviewing the exhibits attached to Supra's Motion to Recuse, Supplemental Motion to Recuse and this Second Supplemental Motion to Recuse, and in light of everything else that has occurred recently with respect to Kim Logue, I have a reasonable and well-grounded fear that Supra cannot receive a fair hearing at the hands of the Florida Public Service Commission.

9. Based upon the facts in this Second Supplemental Motion To Recuse, some of Supra's additional reasons for fearing it cannot receive a fair hearing before the FPSC (beyond those already expressed in Supra's Motion To Recuse and Supplemental Motion To Recuse) are as follows:

First, it continues to be obvious that FPSC Commissioners and FPSC Commission Staff have violated ex-parte communication rules in this docket and in the prior docket involving Supra and BellSouth (i.e. Docket No. 001097-TP).

Second, the violation of these ex-parte rules, together with the substance and tone of the e-mails reflect a bias within the Commission in favor of BellSouth and against Supra.

Third, the fact that although the FPSC acknowledges a problem with ex-parte

communications, the FPSC has done nothing to stop the problem. This shows an institutional bias in favor of the monopolies, including BellSouth. Without this problem being fixed, small litigants such as Supra can never have the confidence or belief that ex-parte communications are not continuing in secret and that Commission rulings are otherwise not infected by such improper communications.

Fourth, the revelation that further rulings in this docket were infected by improper ex-parte communications involving Commissioners, staff members and BellSouth.

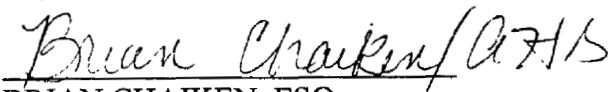
Fifth, the fact that the FPSC Commission itself continues to recognize a problem regarding ex-parte communications, yet does nothing. This problem is described in the words of Harold McLean (FPSC General Counsel) as the fact that FPSC Commission Staff **"are comfortable privately discussing issues with regulated utilities behind closed doors."**

10. For the reasons stated above and in Supra's Motion to Recuse and Supplemental Motion to Recuse, Supra has a well-grounded fear that it will not and cannot receive a fair hearing before the FPSC and therefore asks that the Commission recuse and disqualify itself from all further proceedings in this docket.

11. Pursuant to Florida Statute § 92.525, I, OLUKAYODE A. RAMOS, hereby declares, certifies, verifies and states under the pains and penalty of perjury that I have read the foregoing and that the facts stated herein are true and correct.

RESPECTFULLY submitted this 5th day of May 2002.

SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC.
2620 S. W. 27th Avenue
Miami, FL 33133
Telephone: 305/476-4248
Facsimile: 305/443-9516


BRIAN CHAIKEN, ESQ.



OLUKAYODE A. RAMOS

June 5 02

EXECUTED ON (DATE)

V. CERTIFICATE OF GOOD FAITH BY COUNSEL

The undersigned counsel of record, Brian Chaiken, hereby certifies that this motion and the attached exhibits and affidavit are made in good faith and well grounded in both fact and law.



BRIAN CHAIKEN, ESQ.

Dated: 6/5/22

From: Kim Logue
Sent: Monday, February 05, 2001 10:00 AM
To: Wayne Knight
Subject: RE: BellSouth v. Supra Telecom Docket No 00-1305-TP

my bottle of Tylenol and I are standing by.

-----Original Message-----

From: Wayne Knight
Sent: Monday, February 05, 2001 9:52 AM
To: Kim Logue
Subject: RE: BellSouth v. Supra Telecom Docket No 00-1305-TP

Spoke to Nancy on Thursday at the Communications Symposium. She said she anticipated them doing something like that. She wanted to know what we were going to do about it. Of course I didn't tell them that we were considering granting the motion for dismissal. More to come!

-----Original Message-----

From: Kim Logue
Sent: Monday, February 05, 2001 9:02 AM
To: Wayne Knight
Subject: RE: BellSouth v. Supra Telecom Docket No 00-1305-TP

have you advised Nancy White at Bell? She's going to be livid. These people are openly and actively defying a Commission request. Well, they've got chutzpah, if nothing else.

-----Original Message-----

From: Wayne Knight
Sent: Wednesday, January 31, 2001 4:31 PM
To: David Dowds; Sally Simmons; Kim Logue
Cc: Beth Keating
Subject: FW: BellSouth v. Supra Telecom Docket No 00-1305-TP

Just letting you know the latest from our dear friends at Supra.

-----Original Message-----

From: Chaiken, Brian [mailto:BChaiken@STIS.com]
Sent: Wednesday, January 31, 2001 3:18 PM
To: 'WKNIGHT@PSC.STATE.FL.US'
Subject: BellSouth v. Supra Telecom Docket No 00-1305-TP

Dear Mr. Knight:

I attempted to call you earlier today, but was unable to get a current phone number for you. The purpose of this message is to inform you that, in light of Supra's recently filed Motion to Dismiss, Supra would not be submitting proposed language regarding the issues identified last week in Tallahassee. Should you wish to speak to me regarding this matter, please feel free to call at 305/476-4248. Thank you.

Brian Chaiken, Esq.
General Counsel
Supra Telecommunications &
Information Systems, Inc.
2620 S.W. 27th Ave.
Miami, Florida 33133-3001
Phone: 305/476-4248
Fax: 305/443-1078

Exhibit 1

From: Stephanie Cater
Sent: Monday, October 29, 2001 11:21 AM
To: Beth Selak
Cc: Cheryl Bulecza-Banks; Bob Casey
Subject: Supra RAF

On July 11, 2001, we met with BellSouth in our Anti-Competitive Practices Project. On our way out of the meeting, Nancy Sims hands me Supra's RAF Form and tells me that Supra has not paid them in over a year and that the amount paid to other telecommunications companies is inaccurate since the only company that they list as purchasing service from as BellSouth.

Since I was training her on RAF, I asked Joni to contact Supra and investigate the deduction amount.

On the day before the Supra arbitration hearing (September I believe) Nancy Sims called me to request a certified copy of Supra's RAF Form. Since the documents are kept in CCA, I referred her to Jackie Knight in order to obtain the copy.

Composite Exhibit 2



1311 Executive Center Drive, Suite 200
Tallahassee, FL 32301-5027

Telephone: (850) 402-0510
Fax: (850) 402-0522
www.supratelecom.com

May 30, 2002

RECEIVED FPSC
02 MAY 30 PM 1:24
COMMISSION
CLERK

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

RE: PUBLIC RECORDS REQUEST

Dear Mrs. Bayo:

This is a public records request pursuant to Chapter 119.07, Florida Statutes. Supra Telecom respectfully requests a copy of the following documents:

Please provide copies of all **Public Records Requests** that have been filed with the Florida Public Service Commission's Clerk's office for the period of May 1, 2001 through October 1, 2001.

Please notify the Tallahassee Office at 850.402.0510 when these documents are copied. Thank you for your assistance.

Sincerely,

Brian Chaiken
General Counsel

TO AVOID PENALTY AND INTEREST CHARGES, THE REGULATORY ASSESSMENT FEE RETURN MUST BE FILED ON OR BEFORE 01/31/2001

Alternative Local Exchange Company Regulatory Assessment Fee Return

See TG 394 & T1635

CK Amt \$4,932.00

Florida Public Service Commission
(See filing instructions on Part 2 of Form)

STATUS:

- Actual Return
- Estimated Return
- Amended Return

TX088
 Supra Telecommunications and Information Systems, Inc.
 Roger Center - Ellis Building
 1311 Executive Center Drive, Suite 200
 Tallahassee, FL 32301-5027

PERIOD COVERED:
01/01/2000 TO 12/31/2000
DEPOSIT

FOR PSC USE ONLY	
Check #	1827
\$	4,645.00
\$	989.00
\$	232.00
Payment Date	5/21/01
Initials of Preparer	MC

0073 *

MAY 28 2001

(Name of Company) (Address) (City/State) (Zip)

LINE NO.	ACCOUNT CLASSIFICATION	FLORIDA	
		GROSS OPERATING REVENUE	INTRASTATE REVENUE
1.	Basic Local Services	\$ 2,199,013	\$ 2,199,013
2.	Long Distance Services (not LATA only)**		
3.	Access Services	1,929,959	1,929,959
4.	Private Line Services		
5.	Leased Facilities & Circuit Services		
6.	Miscellaneous Services		
7.	TOTAL REVENUES		\$ 4,128,972
8.	LESS: Amounts Paid to Other Telecommunications Companies* (see "2. Fees" on back)		1,032,596
9.	Net Intrastate Operating Revenue for Regulatory Assessment Fee Calculation (Line 7 less Line 8)		3,096,376
10.	Regulatory Assessment Fee Due (Multiply Line 9 by 0.0015)		4,645
11.	Penalty for Late Payment (see "3. Failure to File by Due Date" on back)		989
12.	Interest for Late Payment (see "3. Failure to File by Due Date" on back)		232
13.	TOTAL AMOUNT DUE		\$ 5,846

- * These amounts must be itemized only and must be verifiable.
- ** Other long distance revenues must be filed on the Interexchange Regulatory Assessment Fee Return.

AS PROVIDED IN SECTION 364.326, FLORIDA STATUTES, THE MINIMUM ANNUAL FEE IS \$50

CURRENT COMPANY STATUS

Facilities-Based Provider

- Retailer
- Other

BILLING INFORMATION

Complete below if billing agent if other than yourself.

(Name) (Address City/State/Zip) (Telephone)

COMPANY INFORMATION

Do you lease telecommunications facilities? YES NO
 If YES, who do you lease these facilities from? Name: Bell South

Address:

I, the undersigned owner/officer of the above-named company, have read the foregoing and declare that to the best of my knowledge and belief the above information is a true and correct statement. I am aware that pursuant to Section 327.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to subvert a public servant in the performance of his/her duty shall be guilty of a misdemeanor of the second degree.

(Signature of Company Officer) C.F.O. 5/21/01 (Date)

(Preparer of Form - Please Print Name)

Telephone Number () Fax Number ()

F.S.I. No. _____

FORM 300-7 (Rev. 11/21/99)

A TRUE COPY
 ATTEST *Kary Meyer*
 Chief, Bureau of Records and
 Hearing Services

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001305-TP

In the Matter of

PETITION BY BELLSOUTH
TELECOMMUNICATIONS, INC. FOR
ARBITRATION OF CERTAIN ISSUES IN
INTERCONNECTION AGREEMENT WITH
SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC.

ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

VOLUME 5

Pages 590 through 783

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

DATE: Thursday, September 27, 2001

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: TRICIA DeMARTE
Official FPSC Reporter
(850) 413-6736

APPEARANCES: (As heretofore noted.)

FLORIDA PUBLIC SERVICE COMMISSION

1 itself, and the question calls for a legal conclusion.

2 COMMISSIONER JABER: Ms. White.

3 MS. WHITE: I thought I asked is it his understanding
4 after reading that, but I will move on if that will help
5 matters. It's a public record. Let me ask the question. I
6 asked if it was his understanding that that's what the document
7 said.

8 COMMISSIONER JABER: I'll allow the question.

9 A Yes, that's my understanding of the document.

10 Q I'm going to hand out a document that's entitled,
11 "Alternative Local Exchange Company Regulatory Assessment Fee
12 Return," covering the period from January 1st, 2000 to
13 December 31, 2000 and filed by Supra with this Commission.

14 MS. WHITE: And would I like to have this marked as
15 an exhibit.

16 MR. CHAIKEN: I object on the grounds of relevancy.

17 COMMISSIONER JABER: Let me see it first. Hang on.
18 Okay. There's been an objection as to relevancy, Ms. White.

19 MR. CHAIKEN: Furthermore, if I may continue my
20 objection. This document was signed by Carol Bentley. It was
21 not attached as an exhibit to her testimony. To question
22 Mr. Ramos on this exhibit, I think, is completely improper.

23 COMMISSIONER JABER: Ms. White.

24 MS. WHITE: It goes strictly to impeachment of the
25 witness's credibility. He adopted Ms. Bentley's testimony.

FLORIDA PUBLIC SERVICE COMMISSION

1 Also, he is the president of the company, and this was filed on
2 behalf of Supra Telecommunications, the company, not on behalf
3 of Ms. Bentley personally.

4 COMMISSIONER JABER: Mr. Chaiken, I'm going to
5 overrule your objection. And I'm also going to state, you
6 remember how flexible I was during cross examination yesterday?
7 That flexibility doesn't end today. This is -- let me tell the
8 parties both -- this is the problem with doing discovery at the
9 hearing. And I have to tell you, I have been more, more
10 flexible in this hearing than I ever have been. And if you all
11 think in a future arbitration or interconnection dispute when
12 I'm Presiding Officer that I'll be this flexible, you are sadly
13 mistaken.

14 I'm going to be flexible in allowing this cross
15 examination. Mr. Ramos is president of the company, and he has
16 adopted Ms. Bentley's testimony. I do believe it's within
17 BellSouth's prerogative to cross examine and impeach your
18 witness, so I'll allow the question. Next time, do your
19 discovery way before the hearing.

20 Go ahead, Ms. White.

21 BY MS. WHITE:

22 Q Ms. Ramos, can you tell me at the bottom of that page
23 that I handed to you --

24 MS. WHITE: And I'm sorry, I would like it marked as
25 the next exhibit.

FLORIDA PUBLIC SERVICE COMMISSION

1 COMMISSIONER JABER: That will be Exhibit 23. Short
2 title?

3 MS. WHITE: "Supra's ALEC Regulatory Assessment Fee
4 Return."

5 (EXHIBIT 23 marked for identification.)

6 A What was the question, again, please.

7 Q If you could, look at the bottom of that page and
8 tell me who signed this document on behalf of Supra.

9 A Carol Bentley, I believe, well, based on this
10 signature.

11 Q And her title is listed there as chief financial
12 officer for Supra?

13 A That's correct.

14 Q And on May 21, 2001, when this document was signed,
15 was she indeed the chief financial officer for Supra?

16 A She was.

17 Q And if you look at the top of the page, do you see
18 the section labeled "Period Covered"? It's next to the left of
19 the box that has Supra's name and address.

20 A Yes.

21 Q And can you -- do you agree that that period shows
22 from January 1, 2000 to December 31, 2000?

23 A That's correct.

24 Q Can you look at Line Number 8 of that document for me
25 and read that aloud?

FLORIDA PUBLIC SERVICE COMMISSION

1 A "Less: Amounts paid to other telecommunications
2 companies."

3 Q And what is the amount of intrastate revenue listed
4 on that line?

5 A Which one?

6 Q On Line 8. What is the amount listed on that line?

7 A \$1,032,596.

8 Q Okay. When go down to the section labeled "Company
9 Information" -- do you see that?

10 A That's correct.

11 Q And the question, "Do you lease telecommunications'
12 facilities," do you see that?

13 A That's correct.

14 Q And what is the name of the company to which you put
15 down as leasing telecommunications facilities from?

16 A BellSouth.

17 Q Mr. Ramos, did Supra pay BellSouth \$1,032,596 in the
18 year 2000?

19 A No. Maybe not in cash but, yes, because of setoff.

20 Q I'm sorry, you are going to have to explain that one
21 to me.

22 A Okay. Thanks. The parties have had several billing
23 disputes going way back to January of 2000. And the business
24 for the billing dispute has been the fact that Supra believes,
25 and Supra has been vindicated, that BellSouth must provide it

FLORIDA PUBLIC SERVICE COMMISSION

1 with UNE combinations.

2 Being a UNE combo provider, Supra must -- or is
3 entitled to revenues, access charges, DSL, and some other
4 revenues, that because of the fact that BellSouth has get at
5 Supra from being a UNE combo provider and just being a resale
6 provider, Supra isn't able to collect those revenues. And part
7 of those revenues are the subject of damages that were awarded
8 by arbitrators as evidenced in OAR-3.

9 Q Are you finished with your response?

10 A I believe so.

11 Q Now, I believe you said earlier, it was either an
12 answer to one of my questions or in your summary, that
13 BellSouth owed Supra money; is that correct?

14 A That's correct.

15 Q And you also testified that Supra had not paid
16 BellSouth anything -- paid any amounts to BellSouth in the year
17 2000.

18 A That's correct.

19 Q Now, this form on Line 8 says, "Amounts paid to other
20 telecommunications companies," and it lists that \$1,032,000,
21 doesn't it?

22 A That's correct.

23 Q But BellSouth did not pay -- I mean, excuse me.
24 Supra did not pay BellSouth \$1,032,000 in the year 2000, did
25 it?

FLORIDA PUBLIC SERVICE COMMISSION

1 A Like I explained to you earlier, ma'am, maybe not
2 directly in cash but setoff. BellSouth has been collecting
3 revenues that belongs to Supra. And that, again, has been
4 clearly awarded to Supra based on Supra Exhibit OAR-3.

5 COMMISSIONER JABER: Mr. Ramos, is this a form you
6 filed with the Florida Public Service Commission?

7 THE WITNESS: Yes, ma'am.

8 COMMISSIONER JABER: Is this a form that someone in
9 your company swears that the information is true and correct,
10 the information contained within this sheet is true and
11 correct?

12 THE WITNESS: I believe so, ma'am.

13 COMMISSIONER JABER: And if I understand your
14 testimony correctly, money from Supra, regardless of what your
15 billing disputes are, money from Supra in the amount of
16 \$1,032,596 did not go to BellSouth as indicated in Line Number
17 8; is that correct?

18 THE WITNESS: Yes, ma'am.

19 COMMISSIONER JABER: So if Line Number 8 is supposed
20 to reflect amounts actually paid -- I understand you have a
21 billing dispute, but if Line Number 8 actually is supposed to
22 indicate amounts paid, money exchanging hands, then the
23 information on Line Number 8 is incorrect, isn't it?

24 THE WITNESS: That's correct, ma'am. What you said
25 is correct, but I will defend this document. I have never seen

FLORIDA PUBLIC SERVICE COMMISSION

1 it before. I'm not familiar with it. But the only thing there
2 is that -- on that Line 8, there's a "See asterisk 2, fees on
3 back," or something like that. And that document is not
4 attached to this. Maybe there's an explanation to this. I
5 don't know, but I'm only speaking to what I see here.

6 COMMISSIONER JABER: Thank you, Mr. Ramos.

7 Go ahead, Ms. white.

8 BY MS. WHITE:

9 Q Mr. Ramos, isn't the consequence of putting down
10 money on Line 8 the fact that you will pay a lower regulatory
11 assessment fee than if you had zero on Line 8?

12 A I don't believe so.

13 Q You don't believe so?

14 A That's not true.

15 Q Well, Mr. Ramos, let's look at this. Look at Line 7.

16 A Yes.

17 Q Line 7 is total revenues, and you have \$4,128,972 on
18 that line. And do you see Line 8 where it says, "less"?
19 Doesn't "less" usually mean to subtract?

20 A Yes.

21 Q So if you subtract 1,032,000 from 4,128,000, you get
22 \$3 million, and the regulatory assessment fee, if you look at
23 Line 10, is you multiply Line 9 by .0015, don't you?

24 MR. CHAIKEN: I object, Commissioner. The document
25 speaks for itself. The witness claims he has no knowledge of

FLORIDA PUBLIC SERVICE COMMISSION

1 it prior to this.

2 COMMISSIONER JABER: Ms. White.

3 MS. WHITE: Here, I'm just asking a mathematical
4 question. He's a CPA. He's already testified he's a CPA.

5 COMMISSIONER JABER: I'll allow the question.

6 MR. CHAIKEN: Excuse me, Commissioner. I'm sorry to
7 interrupt, but one more objection is the fact that this
8 document, as pointed out by the witness, is incomplete.

9 COMMISSIONER JABER: Yeah, I understand that, but I
10 think as it relates to asking for a simple mathematical
11 calculation, the rest of the document is not necessary, but you
12 can renew the objection as it relates to additional questions.

13 Go ahead, Ms. White.

14 BY MS. WHITE:

15 Q Isn't it correct that Line 10, regulatory assessment
16 fees due, it says, "Multiply Line 9 by .0015;" is that correct?

17 A That's correct.

18 Q And Line 9 you list \$3,096,000; right?

19 A That's correct.

20 Q And that amount is lower than the amount on Line 7,
21 which is \$4,128,000; correct?

22 A That's correct.

23 Q So if you're multiplying a lower amount by .0015,
24 will not your regulatory assessment fee be lower?

25 A That's correct. But the point of the matter is,

FLORIDA PUBLIC SERVICE COMMISSION

1 Supra -- my belief is Supra did not do this, did not
2 incorporate this \$1,032,000 to lower its regulatory assessment
3 fees.

4 First of all, I mean, the company declared revenues
5 of 4,128,972 as business revenues. It will not just because of
6 a million -- and how much will the difference be really if one
7 calculates the difference between the \$3 million and the
8 \$4 million? Maybe \$5,000? Supra has paid to this Commission
9 more than that, so I do not see any reason why Supra would have
10 done that.

11 Q Mr. Ramos, we've already noted that the date on this
12 document is May 21, 2001. Did you see that at the bottom of
13 the page?

14 A That's correct.

15 Q Would you agree that that date occurred before the
16 commercial arbitration award?

17 A That's correct, but Supra has been filing its billing
18 disputes with BellSouth before then, and Supra has made its
19 claims to BellSouth even before this May 21, 2001.

20 Q Let's move on to Issue 63.

21 COMMISSIONER JABER: Actually, Ms. White, we're going
22 to pause and play the videotape now.

23 MS. WHITE: May I ask that I finish my cross of
24 Mr. Ramos before you do that? I don't that much more and that
25 would be kind of a natural breaking point before Mr. Twomey

FLORIDA PUBLIC SERVICE COMMISSION

1 BEFORE THE
2 FLORIDA PUBLIC SERVICE COMMISSION

3 DOCKET NO. 001305-TP

4 In the Matter of

5 PETITION BY BELLSOUTH
6 TELECOMMUNICATIONS, INC. FOR
7 ARBITRATION OF CERTAIN ISSUES IN
8 INTERCONNECTION AGREEMENT WITH
9 SUPRA TELECOMMUNICATIONS AND
10 INFORMATION SYSTEMS, INC.
11 _____ /

12 ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
13 A CONVENIENCE COPY ONLY AND ARE NOT
14 THE OFFICIAL TRANSCRIPT OF THE HEARING,
15 THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

16 VOLUME 6

17 Pages 784 through 944

18 PROCEEDINGS: HEARING

19 BEFORE: COMMISSIONER LILA A. JABER
20 COMMISSIONER BRAULIO L. BAEZ
21 COMMISSIONER MICHAEL A. PALECKI

22 DATE: Thursday, September 27, 2001

23 TIME: Commenced at 9:30 a.m.

24 PLACE: Betty Easley Conference Center
25 Room 148
26 4075 Esplanade Way
27 Tallahassee, Florida

28 REPORTED BY: TRICIA DeMARTE
29 Official FPSC Reporter
30 (850) 413-6736

31 APPEARANCES: (As heretofore noted.)

32 FLORIDA PUBLIC SERVICE COMMISSION

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

2 (Transcript follows in sequence from Volume 5.)

3 COMMISSIONER JABER: Staff.

4 MR. KNIGHT: We have a few questions.

5 CROSS EXAMINATION

6 BY MR. KNIGHT:

7 Q Mr. Ramos, first, I'd like to go back to the exhibits
8 and the testimony of Ms. Bentley. Does Supra keep its books on
9 an accrual basis?

10 A Yes, we do.

11 Q Can you explain what that means?

12 A Accrual basis means a type of recordkeeping that
13 happens after the fact. So that means that costs are actually
14 accrued and a portion based on a historical basis, if you may.

15 Q Okay. In terms of payment to BellSouth, does it also
16 mean that the payment is put on the books as soon as it is
17 owed, not necessarily when it's paid?

18 A Can you repeat your question, sir?

19 Q Yes. I was saying in terms of making a payment to
20 BellSouth, does that mean that the payment is put on the books
21 as soon as it is owed and not necessarily when it's paid?

22 A That's correct.

23 Q Okay. Is this in accordance with generally accepted
24 accounting principles?

25 A That's correct.

FLORIDA PUBLIC SERVICE COMMISSION

1 Q Do you calculate your RAF using the same method you
2 use for your books?

3 A Yes.

4 Q Does the rule specify whether the RAF should be
5 calculated on the same basis that the company uses for its
6 books? And by "rule," I'm referring to the Commission's rules.

7 A I'm not familiar with that rule, sir.

8 Q The rules regarding regulatory assessment fees.

9 COMMISSIONER JABER: Mr. Knight, perhaps if you --
10 he's got a copy of the rule. Perhaps if you are specific --

11 MR. KNIGHT: Sure. It's Rule 25-4.0161.

12 COMMISSIONER JABER: What part of that rule?

13 MR. KNIGHT: Sub 1.

14 A It does not specify the basis.

15 Q Okay. Earlier you spoke of money that BellSouth owes
16 Supra. In what years did BellSouth's obligation to pay Supra
17 arise?

18 A Can you repeat that question, sir? I'm sorry.

19 Q Right. You earlier spoke about the moneys that
20 BellSouth owes Supra. In what years did that obligation to pay
21 BellSouth arise, I mean, to pay Supra from BellSouth?

22 A 2000 and as well as this current year, 2001.

23 Q Okay. Has any court or any Commission stated that
24 these amounts are owed to Supra, without disclosing any
25 confidential information?

FLORIDA PUBLIC SERVICE COMMISSION

1 A Yes, yes.

2 Q Can you elaborate without disclosing any confidential
3 information?

4 A It's in Exhibit OAR-3. And if you go to Page 49 of
5 OAR-3, Supra's damages setoff.

6 Q Okay. The document you referenced, was that award
7 filed after your filing other RAFs?

8 A I'm sorry, sir. This document?

9 Q Right. Was that filed after the filing of the RAFs?

10 A Yes.

11 Q Okay. Turning to the RAF document, if you have a
12 copy of that.

13 A Yes, I do.

14 Q And looking at Line 7 of that document.

15 A Yes.

16 Q It's Exhibit 23.

17 A That's correct.

18 Q Does Line 7 of the RAF for 2000 reflect the amount of
19 revenue that you believe BellSouth owes Supra for 2000?

20 A That is stated on Line 3.

21 Q Not what you paid, but what you believe BellSouth
22 owes Supra.

23 A 1.9. That is what we have on Line 3, the
24 1.9 million. And then what BellSouth billed to us is
25 1,032,000. Based on our own calculation, BellSouth owes Supra

FLORIDA PUBLIC SERVICE COMMISSION

1 money.

2 Q Does a RAF for any other year reflect the amount of
3 revenue that you believe BellSouth owes Supra?

4 A I'm not familiar with their filings with the RAFs.
5 I'm not really familiar with them. This one also -- this is my
6 first time I've seen it, but I've got to take responsibility
7 for the document. It's Supra.

8 Q Okay.

9 COMMISSIONER JABER: So your answer is that you don't
10 know the answer to his question; right?

11 THE WITNESS: I do not know.

12 BY MR. KNIGHT:

13 Q If you could, turn to Exhibit 1, which was Supra's
14 responses to Staff's interrogatories. And if you could, turn
15 to Page 39.

16 COMMISSIONER JABER: Mr. Knight, that was an exhibit
17 passed out yesterday; right? So you need to give him a copy.

18 MR. KNIGHT: We're taking a copy to him.

19 COMMISSIONER JABER: Go ahead, Mr. Knight.

20 BY MR. KNIGHT:

21 Q If you could, start at Page 39, and including Page
22 45, would you agree that this is your response on Issue 55?

23 A Yes.

24 Q Subject to check, would you agree with me that Issue
25 55 was phrased, "Should BellSouth be required to provide an

FLORIDA PUBLIC SERVICE COMMISSION

1 and went to BellSouth, and because of that, AT&T could not
2 present its own case on that. So that kind of issue has been
3 decided by the Commission based on BellSouth's evidence only,
4 and that's why we believe that -- I will respectfully believe
5 that our situation should be treated differently, and the
6 evidence in the record should be considered to determine the
7 relief to be given to the parties.

8 Q Okay. Regarding that, did that come out of a generic
9 proceeding?

10 A It did not. That's an arbitration. Is your question
11 regarding generic proceedings?

12 Q Well, I was going to follow up with that.

13 A No, that one was an arbitration. If it's generic
14 proceedings, Supra will abide by the rulings of the Commission.

15 MR. KNIGHT: Okay. That's all I had.

16 COMMISSIONER JABER: Commissioners?

17 Mr. Chaiken, redirect.

18 MR. CHAIKEN: Thank you.

19 REDIRECT EXAMINATION

20 BY MR. CHAIKEN:

21 Q Mr. Ramos, do you have Exhibit 23 in front of you?

22 A Yes.

23 Q At Line Number 3, it states "access services," and it
24 sets forth the amount of 1,929,959. Do you see that?

25 A Yes.

FLORIDA PUBLIC SERVICE COMMISSION

1 Q Do you know if Supra ever received those moneys?

2 A Never. We did not get it.

3 Q So Supra reported on this document that it had
4 received those moneys, and it reported that it had paid
5 BellSouth a figure substantially less than that, 1,032,596; is
6 that correct?

7 A That's correct.

8 Q Now, if, in fact, Supra had not receive those moneys
9 and didn't list it and did not pay BellSouth those moneys and
10 did not list it, in fact, the amount of tax to Supra would be
11 less or the RAF would be less, wouldn't it?

12 A That's correct, it would be less.

13 Q So, in fact, because Supra uses the accrual
14 accounting method, it paid more tax for the year 2000; correct?

15 A That's correct.

16 Q I believe you discussed the issue regarding
17 disconnections with Mr. Twomey; correct?

18 A That's correct.

19 Q Now, do you know whether or not Supra disconnects
20 customers for undisputed unpaid bills in a situation which the
21 customer claims it has a right to a setoff against Supra
22 Telecom?

23 A We did not disconnect our customers.

24 Q Has there ever arisen a situation in which a customer
25 said, you know what Supra? You have billed for me \$50, but in

FLORIDA PUBLIC SERVICE COMMISSION

From: Beth Keating
Sent: Wednesday, August 29, 2001 4:35 PM
To: Wayne Knight
Subject: RE: 001305 Supra's motion to compel

Great! Sometimes it just takes a phone call to light a fire under 'em.

-----Original Message-----

From: Wayne Knight
Sent: Wednesday, August 29, 2001 4:17 PM
To: Laura King; Michael Barrett
Cc: Beth Keating
Subject: 001305 Supra's motion to compel

I spoke with Mike Twomey of BellSouth. They are going to file a response by Friday.

Composite Exhibit 3

From: Alice Crosby
Sent: Thursday, August 30, 2001 1:45 PM
To: Wayne Knight
Subject: RE: defense to motion to compel

Seems like there was, but I think it was in a telephone docket. Sorry, I don't have anything to do with interrogatories. Noreen or Bob would probably remember.

-----Original Message-----

From: Wayne Knight
Sent: Thursday, August 30, 2001 12:35 PM
To: Alice Crosby; Kimberley Pena
Subject: defense to motion to compel

Might be a shot in the dark, but do either of you recall a situation where a party said it didn't respond to the request made of it in interrogatories and requests for production, because the other party had asked more questions than allowed by the order establishing procedure? I am trying to find an order that may have dealt with this, as I am currently dealing with this in the BellSouth/Supra arbitration.

T. Michael Twomey
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 338-0760

August 31, 2001

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

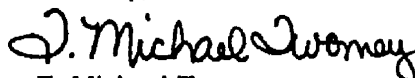
Re: Docket No. 001305-TP (Supra-BellSouth Arbitration)

Dear Mrs. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to Supra Telecommunications and Information Systems, Inc.'s Motion to Compel Responses to Request for Production of Documents and for Continuance, which we ask that you file in the above-referenced matter.

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,



T. Michael Twomey

(22)

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

DOCUMENT NUMBER-DATE

10895 AUG 31 2001

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection)
Agreement Between BellSouth Telecommunications,) Docket No. 001305-TP
Inc. and Supra Telecommunications & Information)
System, Inc., Pursuant to Section 252(b) of the) Filed: August 31, 2001
Telecommunications Act of 1996.)
_____)

**BELLSOUTH'S OPPOSITION TO SUPRA'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS AND FOR CONTINUANCE**

BellSouth Telecommunications, Inc. ("BellSouth") submits its Opposition to Supra Telecommunications & Information Systems, Inc.'s ("Supra") motion to compel production of documents and for a continuance of the hearing scheduled for September 26-28, 2001. For the reasons discussed in detail below, the Florida Public Service Commission ("Commission") should deny Supra's motion.

BACKGROUND

In the Supplemental Order Establishing Procedure (PSC-01-1475-PCO-TP), dated July 13, 2001, the Commission identified the issues that are the subject of this docket and otherwise reaffirmed the procedural schedule and rules that govern this proceeding as set forth in the initial Order Establishing Procedure (Order No. PSC-01-1401-PCO-TP), issued on June 28, 2001.

On August 6, 2001, Supra claims it served BellSouth with its Second Request for Production of Documents ("Second Request"). In fact, BellSouth did not receive a copy of the Second Request until August 20, 2001, by fax. BellSouth timely filed its objections to the Second Request on August 23, 2001. These objections were appropriate and well-founded and consisted of general objections as well as specific objections to

because the Second Set was supposedly sent on August 6 for delivery on August 7. Moreover, the discrepancies in the addressees listed in the certificate of service compared to the addressee on the FedEx letter casts further doubt on whether the FedEx letter relates to the Second Request at all.

II. BELLSOUTH'S OBJECTIONS WERE APPROPRIATE.

Without reaching the issue of timeliness, the Commission can dispose of Supra's motion to compel. In the Order Establishing Procedure, the Commission established reasonable limits on the parties' rights to conduct discovery. Among other limitations, the Commission stated that "requests for production of documents, including all subparts, shall be limited to 150." Order PSC-01-1401-PCO-TP at p. 2. Neither party was permitted to submit requests in excess of 150, including subparts, in this proceeding. Supra's First Request for Production of Documents dated January 18, 2001 ("First Request") included more than 150 requests, including subparts. Supra does not dispute this fact in its motion.

Instead, Supra suggests that the limitation does not apply to any discovery issued before the Order Establishing Procedure. That argument suggests that any party may issue unlimited discovery in any Commission case so long as the party serves the discovery before the Commission has an opportunity to release its standard procedural order. Obviously, the Commission – not the parties – controls the conduct of discovery in the proceedings before it. The reasonable limit on requests included in the procedural order is the same type of limitation the Commission issues in all cases such as this one and the parties are bound by the procedural order.

Significantly, Supra was entitled to request that the Prehearing Officer permit Supra to submit additional requests, but Supra elected not to do so. The Commission's limit on discovery bars additional, unauthorized, discovery and BellSouth was not obliged to submit any objection to the improper requests. That is, BellSouth did not waive its rights to refuse to answer the improper additional requests irrespective of whether the objections were submitted in a timely manner.

Specific Objections

If all of the requests included in the Second Request were new requests, then the reasonable limit on discovery discussed above would dispose of all of the requests. After a careful review and comparison of the items in the Second Request with the items in the First Request, undersigned counsel concluded that certain items in the Second Request (Nos. 7, 12, 13, 14, and 16) are the same, or substantially the same, as certain items included in the First Request. Therefore, BellSouth addressed those items separately because, arguably, those items were within the limits imposed by the Commission.

For example, Item No. 12 of the Second Request and Item No. 18 of the First Request are identical in their request that BellSouth produce "[a]ll documents which evidence or reflect BellSouth's policies and procedures regarding Supra's PONs which sit in clarification and/or pending status for 10 days or more." Similarly, Item Nos. 13, 14, and 16 of the Second Request are identical to Item Nos. 20, 23, and 24, respectively, of the First Request. Moreover, Item No. 7 of the Second Request seeks the same information that Supra collectively requested in Item Nos. 9 and 21 of the First Request. BellSouth submitted specific objections to the corresponding items in the First Request on February 22, 2001. See BellSouth's Response and Objections to Supra's First

From: Wayne Knight
Sent: Monday, October 29, 2001 2:48 PM
To: Laura King
Subject: FW: Issue B summary

FYI

-----Original Message-----

From: Wayne Knight
Sent: Monday, October 29, 2001 2:45 PM
To: Todd Brown
Subject: Issue B summary

Hi Todd,
I spoke with Mike Twomey at BellSouth regarding the issue B summary (or the lack thereof). He confirmed that it was an oversight, and they will be filing an amendment. Thanks for bringing that to my attention.

Tracking:	Recipient	Read
	Laura King	Read: 10/29/2001 4:19 PM

Composite Exhibit 4

From: Todd Brown
Sent: Monday, October 29, 2001 2:55 PM
To: Laura King
Cc: Jason-Earl Brown; Tobey Schultz; Latesa Turner; David Dowds; Michael Barrett
Subject: Issue B/1305/Amendment

Hello everybody,

Just wanted to let you know that in BellSouth's brief, Issue B did not contain a position statement. After discussing with Wayne, he has advised me that he contacted BellSouth and they will be filing an amendment that addresses their position on this issue. Just wanted to FYI everybody.

Thanks,
Todd

From: Harold McLean
Sent: Friday, October 12, 2001 9:41 AM
To: Lila Jaber
Subject: show cause

In a recent case, the staff began to process a recommendation of show cause against an entity, but the entity initiated settlement negotiations with staff, a 'settlement' was reached and it was submitted to the Commission; the Commission voted it out as a final order.

With some help from OPC, it came to my attention that perhaps parties were not afforded a clear, effective point of entry into the administrative process, and I have instructed legal staff to prepare a recommendation that the settlement approval be re-issued as a PAA order.

Perhaps you'll be interested in the response of Rick Moses. I submit that it is relevant to why they are comfortable privately discussing issues with regulated utilities behind closed doors. (I have furnished Rick's legal opinion to Mary Bane)

Rick says:

We need to meet about this before anything is done. I strongly disagree with this approach. Any person that had concerns had the opportunity to intervene in the docket. Interested Parties also had the opportunity to address the commission at the agenda conference when the settlement was proposed. Normally, settlements are final orders so why should this one be any different? If OPC doesn't like the settlement, let them petition for reconsideration and show us what facts of law we overlooked. I do not want to go up with a staff recommendation that essentially says we changed our mind and want to give the settlement up as an open target for protest. We will lose credibility with the industry and our ability to negotiate settlements in the future will be jeopardized.

Exhibit 5

From: Lila Jaber
Sent: Thursday, October 11, 2001 5:35 PM
To: JoAnn Chase; Maria Woodward
Subject: Joe Iacher

let me know

Composite Exhibit 6

From: Harold McLean
Sent: Friday, October 12, 2001 9:56 AM
To: Lila Jaber
Subject: mediation

Upon my invitation to both attorneys, Supra has agreed to try mediation (Dr. David Smith, presiding) to resolve the issues before us in the cross examination case. I also talked to Nancy White who was less than enthusiastic about it. ("What we gone mediate, Harold?") Intervention by Mr. Lacher (from whom I have not had a visit as yet) might be just the thing. Please encourage his visit if you have the chance.

Harold

Tracking:	Recipient	Read
	Lila Jaber	Read: 10/12/2001 10:30 AM

From: Lila Jaber
Sent: Friday, October 12, 2001 1:00 PM
To: Harold McLean
Subject: RE: Supra/Bell Cross questions

good job

-----Original Message-----

From: Harold McLean
Sent: Friday, October 12, 2001 11:20 AM
To: Lila Jaber; Braulio Baez; Michael A. Palecki
Cc: E. Leon Jacobs; J. Terry Deason
Subject: Supra/Bell Cross questions

In a letter sent to the parties Thursday, I suggested mediation might be a good course to resolve the issues presented in the above-referenced case. Supra has agreed to mediation. I had a visit from Joe Lacher of S. Bell this morning, who seemed agreeable to mediation, but would check first with Nancy White for her advice. If mediation can be agreed upon, I will assign our David Smith who has an established rapport with the parties and their counsel.

I am not excessively optimistic re the results of mediation, but nothing ventured, nothing gained.

I will keep you advised.

From: David Smith
Sent: Thursday, October 18, 2001 8:47 AM
To: Harold McLean
Subject: RE: Bell/Supra

Do we have any correspondence or anything that indicates what their respective positions are?

-----Original Message-----

From: Harold McLean
Sent: Wednesday, October 17, 2001 7:38 PM
To: David Smith
Subject: Bell/Supra

David, both Bell and Supra have now agreed to arbitration.

Please call Either Marshall or Nancy White and Brian (of Supra) and get things crankin'.

Bear in mind that Bell and Supra are at odds on many fronts -- concessions where ever tendered are concessions.

but the main thing is to get it crankin.

From: Veronica Washington
Sent: Thursday, October 18, 2001 2:53 PM
To: Harold McLean
Subject: Suggested Mediation

Pls. call Marshall Criser (222-7798) regarding the mediation suggestion.

Nancy B. White
General Counsel-Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

May 15, 2002

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

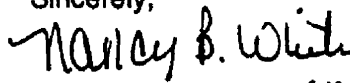
RE: Docket No. 001305-TP (Supra)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Reconsideration of Order No. PSC-02-0637-PCO-TP, 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 on the parties shown on the attached Certificate of Service.

Sincerely,


Nancy B. White (C#)

Enclosures

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

DOCUMENT NUMBER 001305-TP
05256 MAY 15 2002
FPSC-COMMISSION CLERK

Composite Exhibit 7

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection) Docket No. 001305-TP
Agreement Between BellSouth Telecommunications,)
Inc. and Supra Telecommunications & Information)
System, Inc., Pursuant to Section 252(b) of the)
Telecommunications Act of 1996.)
_____) Filed: May 15, 2002

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION FOR RECONSIDERATION**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 25-22.036, Florida Administrative Code, respectfully requests that the Florida Public Service Commission ("Commission") Panel assigned to this docket reconsider Order No. PSC-02-0637-PCO-TP and deny Supra Telecommunications and Information Systems, Inc.'s ("Supra") Motion for an Extension of Time ("Motion") to file an executed agreement in its entirety. For the reasons discussed in detail below, reconsideration is warranted because, in granting Supra's Motion in part, the Prehearing Officer failed to consider significant points of fact and law that require the denial of Supra's Motion. Alternatively, if this Motion for Reconsideration is denied, BellSouth respectfully requests that the Commission Panel order the expedited process and affirmative relief described herein to minimize and offset Supra's continual abuse and disregard of the regulatory process, the Commission's Orders, and its obligations to pay BellSouth.

INTRODUCTION

In the almost two years that this docket has existed, one theme has emerged: Supra's goal is to frustrate and delay the arbitration process to avoid

confusion about what the Commission had actually ordered. Although MCI objected to BellSouth's motion, the Commission granted it.

Plainly, the Commission's decision to grant BellSouth's motion for extension of time in Docket No. 960833-TP provides no support for the Prehearing Officer's decision to grant Supra's motion in this case. In this case, there is a clear, written order from the Commission deciding the issues that were raised in the arbitration, and the parties have had ample time to incorporate those decisions into the new agreement. To date, Supra has done nothing other than attempt to delay these proceedings. Since the Revised Commission Staff Recommendation was issued on February 25, 2002, Supra has redoubled those efforts. As noted above, focusing on the time period after the Commission's vote on March 5, 2002, Supra has steadfastly refused to participate in any discussions that would lead to a final agreement, even with regard to issues on which reconsideration has not been sought. Under these circumstances, the Prehearing Officer should not have granted Supra's motion.

Accordingly, the Commission Panel should reconsider the Prehearing Officer's Order and deny Supra's Motion for Extension of Time.

II. REQUEST FOR EXPEDITED APPROVAL OF AGREEMENT

In the alternative, if the Commission Panel will not reverse the Prehearing Officer's decision, the Commission Panel should expedite the decision on the pending motions for reconsideration and several other procedural issues. First, BellSouth requests that the Commission Panel decide the pending motions for reconsideration and the Instant Motion at the June 11, 2002 agenda conference.

Second, BellSouth requests that the Commission Panel expedite the process for issuing a written order once the motions for reconsideration have been decided. Specifically, BellSouth requests that the Commission Panel order that the final order disposing of Supra's Motions for Reconsideration be issued within five (5) days of the Commission Panel's vote at the June 11, 2002 agenda conference.

Third, BellSouth requests that the Commission Panel provide specific instructions to the parties in its written order and detail the consequences of a party's refusal to sign the agreement. Specifically, BellSouth requests that the Commission Panel (a) prescribe the language changes, if any, to the agreement submitted by BellSouth on April 25, 2002, that are necessary to effect whatever ruling the Commission Panel makes on the reconsideration motions; (b) order the parties to submit a signed agreement containing the conforming language within seven (7) days of the order; (c) order BellSouth to file the Agreement with its signature within the time specified and approve the contract as submitted if Supra fails to sign the agreement within the ordered time period; and (d) order the parties to immediately operate under the new Agreement in accord with Section 2.3 of the October, 1999 agreement or relieve BellSouth of the obligation to provide wholesale services to Supra in Florida if Supra refuses to sign the follow-on Agreement within the time specified. If the Commission Panel does not anticipate these possibilities, then BellSouth will be left to pursue further administrative remedies before the Commission Panel that will take time to

resolve. At present, Supra is withholding nearly [REDACTED] from BellSouth every month. A delay of only one month will be extremely prejudicial to BellSouth.²

Fourth, BellSouth requests that the Commission Panel sanction Supra for the bad faith actions described herein and in the various motions filed in this docket by BellSouth and award BellSouth attorneys' fees and all other appropriate relief.

In short, if the Commission Panel is unwilling to reverse the Prehearing Officer's ruling, the Commission Panel should nevertheless recognize the untenable position Supra has placed both BellSouth and the Commission itself in and the Commission Panel should take whatever action is necessary to expedite the execution of the follow-on agreement and thereby put an end to the virtual free ride that Supra has enjoyed since October, 1999.

WHEREFORE, BellSouth requests that the Commission Panel grant BellSouth the following relief: Overturn the Prehearing Officer's ruling in Order No. PSC-02-0637-PCO-TP. In the alternative, BellSouth requests that the Commission Panel

- (1) Decide the pending motions for reconsideration and the instant motion at the June 11, 2002 agenda conference;
- (2) Issue a final order disposing of the motions for reconsideration and the instant motion within five (5) days of the Commission Panel's vote at the June 11, 2002 agenda conference;
- (3) Provide specific instructions to the parties, including:

² As an alternative protective measure, the Panel could order Supra to submit to the Commission all payments it is withholding from BellSouth while the administrative process is concluded.

- (a) specific language changes, if any, to the agreement submitted by BellSouth on April 25, 2002;
 - (b) a requirement that the parties submit an executed agreement containing the conforming language within seven (7) days of the order;
 - (c) a requirement that BellSouth file the agreement with its signature regardless of whether Supra executes the agreement;
 - (d) a requirement that if Supra refuses to sign the agreement, the parties either immediately begin operating under the new agreement in accordance with Section 2.3 of the October, 1999 agreement or, BellSouth is relieved of the obligation to provide services to Supra;
- (4) Sanction Supra for bad faith;
 - (5) Attorney's fees; and
 - (6) All other appropriate relief.

Respectfully submitted this 15th day of May, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

NANCY B. WHITE (KA)

JAMES MEZA III

c/o Nancy Sims

150 South Monroe Street, Suite 400

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State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED FPSC
MAY 30 AM 10:58
COMMISSION CLERK

DATE: MAY 30, 2002
TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYO)
FROM: OFFICE OF THE GENERAL COUNSEL (BELLAK) *RCB*
RE: DOCKET NO. 001305-TP - PETITION BY BELLSOUTH
TELECOMMUNICATIONS, INC. FOR ARBITRATION OF CERTAIN ISSUES
IN INTERCONNECTION AGREEMENT WITH SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.
AGENDA: JUNE 11, 2002 - POST HEARING DECISION - PARTICIPATION IS
LIMITED TO COMMISSIONERS AND STAFF
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\GCL\WP\001305.RCM

CASE BACKGROUND

On April 17, 2002, Supra Telecommunications and Information Systems, Inc. (Supra) filed a Motion To Disqualify And Recuse Commission Staff And Commission Panel From All Further Consideration Of This Docket And To Refer This Docket To The Division Of Administrative Hearings For All Further Proceedings (Motion).

On April 26, 2002, Supra filed a Verified Supplemental Motion To Disqualify And Recuse FPSC From All Further Consideration Of This Docket And To Refer This Docket To The Division Of Administrative Hearings For All Further Proceedings (Supplemental Motion).

Although both the Motion and Supplemental Motion seek the recusal of the entire Commission panel, allegations of fact are directed only toward only toward Chairman Lila A. Jaber and

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FPSC-COMMISSION CLERK

Commissioner Michael A. Palecki. Their orders respectively declining to recuse are incorporated herein by reference. In responding to those allegations directed against the Commission panel, reference is made to p. 30-31 of the Motion.

DISCUSSION OF ISSUES

ISSUE 1: Are Supra's Motion and Supplemental Motion timely filed pursuant to applicable legal standards for disqualification motions?

RECOMMENDATION: No. Supra's Motion and Supplemental Motion are void for lack of timeliness.

STAFF ANALYSIS: The legal standard for the analysis of motions to disqualify agency heads is found in Bay Bank & Trust Company v. Lewis, 634 So. 2d 672 (1 DCA 1994). Pursuant to Section 120.71,¹ Florida Statutes, such a motion must be filed "within a reasonable period of time prior to the agency proceeding...."² Moreover, the agency head, in passing upon the legal sufficiency of the motion, does not decide disputed allegations of fact, but assumes instead that all allegations of fact in the motion are true. However, as noted by the Bay Bank court, citing Seddon v. Harpster, 403 So. 2d 409, 411 (Fla. 1981), Section 120.71 was meant to have a different meaning after a 1983 amendment deleted the phrase "or other causes for which a judge may be recused":

Thus, while a moving party may still disqualify an agency head upon a proper showing of "just cause" under Section 120.71, the standards for disqualifying an agency head differ from the standards for disqualifying a judge. This change gives recognition to the fact that agency heads have significantly different functions and duties than do judges. [e.s.]

634 So. 2d at 679. Staff also notes this Commission's order in In Re: Southern States Utilities, Inc., 1995 Fla. PUC LEXIS 1467, holding that

¹ Now renumbered as Section 120.665, Florida Statutes.

² See also, Section 120.569(2)(a) (affidavit to disqualify ALJ must be filed prior to the taking of evidence at a hearing).

The applicable test for legal sufficiency for recusal in any event is enunciated in Havslip v. Douglas, supra, i.e., whether the facts alleged would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial.

Timeliness

At the threshold, Supra's Motion and Supplemental Motion were not timely filed for the purposes of Section 120.71, which requires filing "within a reasonable period of time prior to the agency proceeding". [e.s.] Here, these recusal suggestions were both filed after the hearing in this docket and after the adjudication thereof.³ Supra cites n. 6 of Bay Bank, 632 So. 2d at 679, for the idea that

the reference to "within a reasonable time prior to the agency proceeding" in the APA recusal statute should be read as applying only to matters before the hearing officer. Accordingly, this motion for recusal applies to all pending and future motions in this docket and is thus timely with respect to these matters.

Motion, p. 3, ¶6.

However, Supra is incorrect that the discussion in n. 6 is applicable to this case or supports Supra's conclusion. As stated in Bay Bank, 634 So. 2d at 675, the Florida Department of Banking had referred that matter to the Division of Administrative Hearings (DOAH). Accordingly, the Court noted that

when a matter has been referred to DOAH ... the phrase "with respect to the formal proceeding" should be read as applying only to the matters before the DOAH⁴ hearing officer.... [e.s.]

634 So. 2d 679, n. 6.

³ There are Motions for Reconsideration pending in the docket.

⁴ Supra's discussion of n. 6 simply deleted the word "DOAH".

In this case, where there has been no referral of the matter to DOAH, n. 4 of Bay Bank, 632 So. 2d at 679, is the applicable discussion:

We note that Rule 28-5.108, Florida Administrative Code, requires that motions for the disqualification of a "presiding officer" be made at least "five days prior to the date scheduled for the final hearing". "Presiding officer" is defined in Rule 28-5.102 to mean an "agency head, or member thereof, who conducts a hearing on behalf of the agency...."

Supra's Motion and Supplemental Motion violated the timeliness requirements of Section 120.71. Moreover, this violation is not merely a "technical" problem. It is, after all, Supra itself that noted that

The applicable test for legal sufficiency for recusal in any event is ... whether the facts alleged would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial. [e.s.]

Motion, p. 10-11.

These principles do not contemplate that a litigant will wait until the trial or hearing is concluded and adjudicated, and, then, if dissatisfied with the result, allege that the unfavorable result must have reflected bias. In short, the policies of the very statutes and cases Supra purports to rely on are at odds with Supra's failure to comply with the requirement for timely filing.⁵ Both the Motion and Supplemental Motion are procedurally defective, therefore, for lack of timelines. As such, they are void motions.

⁵ Although Rule 28-5.108, the rule cited by the Bay Bank court has been repealed, Section 120.665 still requires disqualification motions to be filed prior to agency proceedings, not subsequent to them, as has Supra.

ISSUE 2: Are Supra's Motion and Supplemental Motion legally sufficient to support recusal of the Commission Panel from Docket No. 001305?

RECOMMENDATION: No, Supra's Motion and Supplemental Motion are not legally sufficient to support recusal of the Commission panel.

STAFF ANALYSIS: Legal Sufficiency - Pursuant to the principles of Bay Bank, staff notes that while it is not to resolve disputed issues of fact and, instead, will assume the truth of the facts alleged, it is not bound by movant's conjectures or legal conclusions. Therefore, the staff arrives at the conclusion that Supra's suggestion of recusal is legally insufficient based on the facts Supra alleges.

Staff relies on the Orders Declining Recusal From Docket No. 001305 of Chairman Jaber and Commissioner Palecki, incorporated herein by reference, for the conclusion that Supra's Motion and Supplemental Motion were legally insufficient to support the recusal of either Chairman Jaber or Commissioner Palecki from Docket No. 001305. The only argument offered by Supra relevant to support recusal of the entire Commission panel is that "an adverse posture exists between Supra and at least two of the three Commissioners assigned to Docket No. 001305-TP". However, none of the authorities cited by Supra⁶, support recusal in this case, where the hearing was held and adjudicated prior to Supra's untimely filing of legally insufficient motions for recusal of two commissioners. Because Supra has alleged merely conclusory, speculative and tenuous circumstances rather than facts relied on to objectively demonstrate the "adverse posture" claimed to exist between itself and the Commission, Supra's post-hearing attempt at

⁶ Ridgewood Properties, Inc. v. Department of Community Affairs, 562 So. 2d 322 (Fla. 1990), cited by Supra, involved a conflict in the roles of an agency head who testified at the hearing and then reviewed his own testimony and found it to be competent, substantial evidence in support of the agency's final order. None of the staff members or Commissioners that are subjects of Supra's motions testified at the hearing in this case. Thus, none had a "Ridgewood" conflict.

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DATE: May 30, 2002

forum shopping is only that and nothing more. No cited authority would support that attempt.⁷

ISSUE 3: Should this docket remain open?

RECOMMENDATION: Yes. The docket should remain open.

RCB

⁷ Supra's reliance on World Transportation, Inc. v. Central Florida Regional Transportation, 641 So. 2d 913 (Fla. 5th DCA 1994) is inapposite because Supra's claim that an "adverse posture" exists between it and the Commission is unsupported by objective facts. In that situation, any litigant dissatisfied with the outcome of litigation could forum shop "post-hearing" by filing the kind of conclusory, tenuous and speculative motions Supra has filed here as a pretext to "start over". This is not only defective as to the process, but contrary to the legislative intent that the Commission be the expert agency to adjudicate cases such as Docket No. 001305 in order to achieve a uniform statewide regulation of telecommunications. Section 364.01, Florida Statutes.

State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

COMMISSION CLERK
MAY 30 PM 3:30
RECEIVED-FPSC

DATE: MAY 30, 2002
TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)
FROM: OFFICE OF THE GENERAL COUNSEL (BELLAK) *ACB*
RE: DOCKET NO. 001305-TP - PETITION BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR ARBITRATION OF CERTAIN ISSUES IN INTERCONNECTION AGREEMENT WITH SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.
AGENDA: JUNE 11, 2002 - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\GCL\WP\001305#2.RCM

CASE BACKGROUND

On April 17, 2002, Supra Telecommunications and Information Systems, Inc. (Supra) filed a Motion To Disqualify And Recuse Commission Staff And Commission Panel From All Further Consideration Of This Docket And To Refer This Docket To The Division Of Administrative Hearings For All Further Proceedings (Motion).

On April 26, 2002, Supra filed a Verified Supplemental Motion To Disqualify And Recuse FPSC From All Further Consideration Of This Docket And To Refer This Docket To The Division Of Administrative Hearings For All Further Proceedings (Supplemental Motion).

Although both the Motion and Supplemental Motion seek the recusal of the Commission staff, allegations of fact are directed

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against Chairman Jaber and Commissioner Michael A. Palecki concerning their communications with staff. Their respective Orders Declining To Recuse From Docket No. 001305-TP are therefore incorporated by reference herein.

Reference is made to p. 16-17 of the Motion and p. 6-7 of the Supplemental Motion. Therein, allegations are made that numerous staff members engaged in ex parte communications, wrongdoing, or had knowledge of wrongdoing and covered it up.

DISCUSSION OF ISSUES

ISSUE 1: Are Supra's Motion and Supplemental Motion timely filed pursuant to applicable legal standards for disqualification motions?

RECOMMENDATION: No. Supra's Motion and Supplemental Motion are void for lack of timeliness.

STAFF ANALYSIS: The legal standard for the analysis of motions to disqualify agency heads is found in Bay Bank & Trust Company v. Lewis, 634 So. 2d 672 (1 DCA 1994). Pursuant to Section 120.71,¹ Florida Statutes, such a motion must be filed "within a reasonable period of time prior to the agency proceeding..."² Moreover, the agency head, in passing upon the legal sufficiency of the motion, does not decide disputed allegations of fact, but assumes instead that all allegations of fact in the motion are true. However, as noted by the Bay Bank court, citing Seddon v. Harpster, 403 So. 2d 409, 411 (Fla. 1981), Section 120.71 was meant to have a different meaning after a 1983 amendment deleted the phrase "or other causes for which a judge may be recused":

Thus, while a moving party may still disqualify an agency head upon a proper showing of "just cause" under Section

¹ Now renumbered as Section 120.665, Florida Statutes.

² See also, Section 120.569(2)(a) (affidavit to disqualify ALJ must be filed prior to the taking of evidence at a hearing).

120.71, the standards for disqualifying an agency head differ from the standards for disqualifying a judge. This change gives recognition to the fact that agency heads have significantly different functions and duties than do judges. [e.s.]

634 So. 2d at 679. Staff notes this Commission's order in In Re: Southern States Utilities, Inc., 1995 Fla. PUC LEXIS 1467, holding that

The applicable test for legal sufficiency for recusal in any event is enunciated in Havslip v. Douglas, supra, i.e., whether the facts alleged would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial.

Timeliness

At the threshold, Supra's Motion and Supplemental Motion were not timely filed for the purposes of Section 120.71, which requires filing "within a reasonable period of time prior to the agency proceeding". [e.s.] Here, these recusal suggestions were both filed after the hearing in this docket and after the adjudication thereof. Supra cites n. 6 of Bay Bank, 632 So. 2d at 679, for the idea that

the reference to "within a reasonable time prior to the agency proceeding" in the APA recusal statute should be read as applying only to matters before the hearing officer. Accordingly, this motion for recusal applies to all pending and future motions in this docket and is thus timely with respect to these matters.

Motion, p. 3, ¶6.

However, Supra is incorrect that the discussion in n. 6 is applicable to this case or supports Supra's conclusion. As stated in Bay Bank, 634 So. 2d at 675, the Florida Department of Banking had referred that matter to the Division of Administrative Hearings (DOAH). Accordingly, the Court noted that

when a matter has been referred to DOAH ... the phrase "with respect to the formal proceeding" should be read as

applying only to the matters before the DOAH³ hearing officer.... [e.s.]

634 So. 2d 679, n. 6.

In this case, where there has been no referral of the matter to DOAH, n. 4 of Bay Bank, 632 So. 2d at 679, is the applicable discussion:

We note that Rule 28-5.108, Florida Administrative Code, requires that motions for the disqualification of a "presiding officer" be made at least "five days prior to the date scheduled for the final hearing". "Presiding officer" is defined in Rule 28-5.102 to mean an "agency head, or member thereof, who conducts a hearing on behalf of the agency...."

Supra's Motion and Supplemental Motion violated the timeliness requirements of Section 120.71. Moreover, this violation is not merely a "technical" problem. It is, after all, Supra itself that noted that

The applicable test for legal sufficiency for recusal in any event is ... whether the facts alleged would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial. [e.s.]

Motion, p. 10-11.

These principles do not contemplate that a litigant will wait until the trial or hearing is concluded and adjudicated, and, then, if dissatisfied with the result, allege that the unfavorable result must have reflected bias. In short, the policies of the very statutes and cases Supra purports to rely on are at odds with Supra's failure to comply with the requirement for timely filing.⁴

³ Supra's discussion of n. 6 simply deleted the word "DOAH".

⁴ Although Rule 28-5.108, the rule cited by the Bay Bank court has been repealed, Section 120.665, Florida Statutes still requires that disqualification motions must be filed prior to agency proceedings, not subsequent to them, as has Supra.

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Both the Motion and Supplemental Motion are procedurally defective, therefore, for lack of timeliness. As such, they are void motions.

ISSUE 2: Are Supra's Motion and Supplemental Motion legally sufficient to support recusal of the Commission Staff from Docket No. 001305?

RECOMMENDATION: No, Supra's Motion and Supplemental Motion are not legally sufficient to support recusal of the staff.

STAFF ANALYSIS: Legal Sufficiency - Pursuant to the principles of Bay Bank, staff notes that while it is not to resolve disputed issues of fact and, instead, will assume the truth of the facts alleged, it is not bound by movant's conjectures or legal conclusions. Therefore, staff arrives at the conclusion that Supra's suggestion of recusal is legally insufficient based on the facts Supra alleges.

The origin of Supra's claim that Commission staff should be recused is found in the incident described at length by Chairman Jaber in her Order Declining To Recuse From Docket No. 001305. Therein, Chairman Jaber notes Supra's statement on p. 21 of the Motion that she "directed an inquiry into Kim Logue's ex parte communications with BellSouth's Director of Regulatory Affairs", also described by Supra as "Logue's misconduct". However, the scope of PSC Inspector General John Grayson's investigation was said to be about "the distribution of the cross-examination questions" by Ms. Logue, who knew about it and what if anything was done. See, Supplemental Motion, Exhibit Y. The characterizations "ex parte" and "misconduct" appear to be Supra's conclusions, rather than facts as determined by Inspector General Grayson.

The above-described incident demonstrates that Supra's attempt to disqualify the "top tier of the telecommunications portion of the Commission", based on the conclusory arguments stated at p. 16-17 of the motion is not only legally insufficient, but grossly so, since the incident itself was of the harmless, de minimus variety and the circumstances described by Chairman Jaber made no further action at this time entirely appropriate. Supra's argument, if accepted, would lead to the paradox that the less serious the incident, the more drastic the consequences for the agency and the more complete the disruption of the agency's processes. Supra lacks any factual basis for its claims, including the claim at p. 14 of the Motion that "Logue was allowed to continue to supervise other staff subordinates and to participate in the evidentiary hearing in Docket No. 001305-TP."

An example of Supra's unsupported conspiratorial view of Commission actions is afforded by p. 14 of the Motion at ¶10 and n. 11, the import of which is that the Commission's senior management knew in advance that Ms. Logue was going on active military duty before October 9, 2001 and conspired to delay notifying Inspector General Grayson so he would be "unable to interview Logue". Supra's theory that the Commission not only anticipated this particular fall-out of the unprecedented attack on the twin-towers on September 11, 2001, but neatly fit those world-changing events into forwarding some conspiracy against Supra gives new support to the rejection in Bay Bank of wholly conclusory, speculative or tenuous bases for recusal motions. Though the facts alleged are to be taken as true, Supra's unsupported and conclusory beliefs are not facts. This attempt to bootstrap an agency-wide conspiracy from an incident of harmless and de minimus employee error is legally insufficient to support the recusal of Commission staff from Docket No. 001305.

Supra's most recent claims at p. 15-16 of the Supplemental Motion do not survive scrutiny any better. The selective quotations from staff e-mails stating that "we called their hand" and "BellSouth is delighted with this resolution" do not support recusal of any staff. Indeed, Ms. Logue's description of the problems that would have resulted from the delay in scheduling Supra sought, "especially when the 271⁵ docket hits", is quite

⁵ "271" is a massively complex determination by the PSC of whether an incumbent former monopoly provider of local phone

reasonable support for Chairman Jaber's "solution" to move the date of the prehearing conference forward instead of back. Of course, Chairman Jaber would want to know that BellSouth was "delighted". Schedules are usually lengthened, not shortened, and if BellSouth's counsel were not "delighted", i.e., couldn't do it, the "solution" might not have worked. Supra's attempt to read more into it again fails as "conclusory, tenuous and speculative". Bay Bank.

Finally, Supra's strangely one-sided assumption that its scheduling conflicts had to be accommodated, whereas BellSouth's agreement to the scheduling change was something that staff should not have communicated to Chairman Jaber, reflects a glaring thematic defect in Supra's position as to all of these issues. Every communication between staff and BellSouth is described as "ex parte" and, therefore, "illegal", "wrongdoing" or "misconduct". However, Supra includes, as Attachment B to its Motion, a series of e-mails among various telecommunications staff which respond to an e-mail to staff from Supra. Supra has provided no analysis as to why the staff's contacts with BellSouth are all "ex parte" and "violations", while staff's e-mail contacts with Supra are not.⁶

service meets FCC criteria to be allowed to compete in long-distance markets.

⁶ Supra's point in attaching this series of e-mails is to demonstrate that the "tone" indicates staff's bias against Supra. However, such subjective inferences are not "facts". See, City of Palatka v. Frederick, 174 So. 826, 828 (Fla. 1937) (tone of voice or manner conceived to be indicative of bias or prejudice against the parties in the case are not facts indicating a just cause for disqualification under Section 120.71, Florida Statutes for bias, prejudice or interest).

Moreover, Supra's subjective inferences are legally insufficient to recuse staff based on the content of the e-mail: Thus, the bureau chief advised the attorney that the senior manager "believes we should dismiss the complaint..." The attorney replied, "Interesting. I thought she didn't want to see it dismissed. Well, Supra may have an argument for dismissing, we can discuss that Tuesday." [e.s.] In other words, Supra's position needed to be reviewed and considered.

Moreover, Supra's approach to this problem affecting all of its allegations is to studiously ignore it. Thus, at p. 12-13 of the Supplemental Motion, Supra states

With respect to the merits of Supra's Motion, Florida Statute §350.042(1) states in pertinent part as follows:
[e.s.]

Supra then quotes the first sentence of Section 350.042(1), but omits the last sentence thereof, the only sentence that is really pertinent to Supra's allegations:

The provisions of this subsection shall not apply to commission staff. [e.s.]

Thus, Supra's allegations are not only legally insufficient as conclusory, speculative, and tenuous, but legally incorrect and unsupported on their face. Actually, the ex parte provisions govern communications from persons outside the Commission to Commissioners and from Commissioners to persons outside the Commission. Yet, Supra's Motion and Supplemental Motion describe contacts (real and imagined) between staff and BellSouth as well as between Commissioners and staff as ex parte, wrongdoing and misconduct without any legal predicate for doing so based on Section 350.042.

Rule 25-22.033, in contrast, does apply to staff. However, Supra's misinterpretation of Section 350.042 causes it to misinterpret Rule 25-22.033 as well. First, Supra omits the initial paragraph of the rule, which states:

The intent of this rule is not to hinder in any way the exchange of information, but to provide all parties to adjudicatory proceedings notification of and the opportunity to participate in certain communications.
[e.s.]

The complexities inherent in actually achieving those goals means that the rule is "technical" and to be closely "read". Thus, it turns out that the rule governs "communications between Commission employees and parties to docketed proceedings," but does not "affect communications regarding discovery requests, procedure or other matters not concerned with the merits of a case". Rule 25-22.033(1).

That subsection identifies what is governed, but not how it is governed. Subsection (2) requires notice of "written communications", but subsection (3) does not require notice of one-to-one telephone calls, only "conference calls" involving "three or more persons".

At page 13-14 of the Supplemental Memorandum, Supra asserts that e-mails between Kim Logue and Nancy Sims about BellSouth's claims violated Rule 25-22.033(2). The rule, however, does not define whether e-mails are "written communications" or "one-to-one telephone conversations". Whether they violated the rule would depend on how they are defined. Staff's practice, pending that definition, is to treat them as one-to-one telephone conversations, since they function that way. That is why Supra's e-mails to the staff were not violations of the rule either. Moreover, it would also have to be determined whether the Logue/Sims e-mails merely clarified discovery requests, which are exempt even under subsection (2) of the rule.

Just as much complexity attends the operation of subsection (5) of the rule, which prohibits Commission employees from "directly or indirectly" relaying communications from parties or other persons which would "otherwise be a prohibited ex parte communication under Section 350.042, Florida Statutes". To Supra, which ignores the provision in Section 350.042(1) exempting staff from ex parte restrictions, the interpretation of subsection (5) of the rule is perfectly circular. Since Supra assumes that every contact between staff and BellSouth (but, illogically, not staff and Supra) is "ex parte" and a "violation", if a Commissioner seeks information from staff and Supra can magically impute to the Commissioner the "knowledge" that staff would seek the information from BellSouth rather than by other means, then staff has violated subsection(5). See, Supplemental Motion, p. 14-15. Again, this ignores the non-debatable and explicit exclusion of staff from ex parte restrictions in Section 350.042(1). What subsection (5) means in actual practice is that staff should not allow itself to be used by parties as conduits for ex parte communications initiated by parties that are intended for Commissioners, and to recognize that if it happens. This would not be a factor in requests to parties for information which are initiated by staff, as were the communications at issue in Supra's Motion and Supplemental Motion. Though Supra may disagree with the policies embodied in the statute and rule, the familiar precepts of statutory interpretation require that every provision be accorded

DOCKET NO. 001305-TP
DATE: May 30, 2002

a harmonious interpretation and that no provision be ignored.⁷ Staff's interpretation accommodating both Section 350.042(1) and Rule 25-22.033 does that, while Supra's interpretation ignores the last sentence of Section 350.042(1) as inconvenient to its arguments. That is, therefore, an incorrect reading. Moreover, the statute would control over the rule even if there were a conflict between them.⁸ Supra's reading is infirm on that ground also.

ISSUE 3: Should this docket remain open?

RECOMMENDATION: Yes. The docket should remain open.

RCB

⁷ See, Atlantic Coast Line R.R. v. Boyd, 102 So. 2d 709, 712 (Fla. 1958).

⁸ See, Gretz v. Florida Unemployment Appeals Commission, 572 So. 2d 1384, 1387 (Fla. 1991).

James Meza III
Attorney

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(305) 347-5561

October 30, 2001

Mrs. Blanca S. Bayo
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

RE: Docket No. 001305-TP (Supra)

Dear Ms. Bayo:

On October 26, 2001, BellSouth filed its Post Hearing Brief in the above-referenced proceeding. BellSouth inadvertently omitted from its brief a section setting forth a summary of its position for Issue B. This summary should read as follows:

The Commission should use BellSouth's proposed agreement as a template in this proceeding.

BellSouth respectfully requests that this summary be included as part of BellSouth's Post Hearing Brief.

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 on the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III

Enclosures

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

Exhibit 8

CERTIFICATE OF SERVICE
Docket No. 001305-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Federal Express this 30th day of October, 2001 to the following:

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James Meza III

(+) Signed Protective Agreement