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July 8, 2002

Mrs. Blanca Bayo
Director
Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 323099-0850

Dear Mrs. Bayo:

RE: Docket No. 001305-TP
Supra's Motion to Stay Commission Order Nos. PSC-02-0413-FOF-TP and PSC-02-0878-FOF-TP Pending Appeal Pursuant to Rule 25-22.061, Florida Administrative Code

Enclosed is the original and seven (7) **redacted** copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Motion to Stay Commission Order Nos. PSC-02-0413-FOF-TP and PSC-02-0878-FOF-TP Pending Appeal Pursuant to Rule 25-22.061, Florida Administrative Code the above captioned docket.

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

Sincerely,

Brian Chaiken/gtb

Brian Chaiken
General Counsel

CERTIFICATE OF SERVICE
Docket No. 001305-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Hand Delivery or by Federal Express Mail on this 8th day of July, 2002, to the following

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By: Brian Chaiken/CHS
BRIAN CHAIKEN, ESQ.

REDACTED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc.	)	Docket No. 001305-TP Filed: July 8, 2002

SUPRA'S MOTION TO STAY COMMISSION ORDER NOS. PSC-02-0413-FOF-TP AND PSC-02-0878-FOF-TP PENDING APPEAL PURSUANT TO RULE 25-22.061, FLORIDA ADMINISTRATIVE CODE

Supra Telecommunications and Information Systems, Inc. ("Supra"), by and through its undersigned counsel and pursuant to Rule 25-22.061(2), Florida Administrative Code, hereby files this its motion to stay the final orders previously entered in this docket, namely Commission Order Nos. PSC-02-0413-FOF-TP and PSC-02-0878-FOF-TP, and in support thereof states as follows:

I. BRIEF INTRODUCTION

Supra is seeking review of Commission Order Nos. PSC-02-0413-FOF-TP and PSC-02-0878-FOF-TP before the Florida Supreme Court. Pending the appeal in the Florida Supreme Court, Supra seeks a stay of Commission Order Nos. PSC-02-0413-FOF-TP and PSC-02-0878-FOF-TP, on the following grounds:

a. Likelihood of prevailing on appeal.

b. Likelihood of Irreparable harm.

c. Delay will not cause substantial harm or be contrary to public interest.

II. BACKGROUND

1. On October 5, 1999, Supra adopted the Interconnection Agreement ("Current Agreement") entered into by BellSouth and AT&T of the Southern States, such Current

Agreement having been approved by the Commission. The Current Agreement also was reviewed by the United States Federal District Court for the Northern District of Florida for compliance with federal law, and found to be in such compliance. The Current Agreement provides for the term of the agreement, a termination date, and a process for the negotiations of a "Follow-On Agreement." The Current Agreement also includes an **"evergreen"** clause, which provides that "[u]ntil [a] Follow-on Agreement becomes effective, BellSouth shall provide Services and Elements pursuant to the terms, conditions and prices of this Agreement that are then in effect." Interconnection Agreement, GTC, § 2.3.

2. The basis for the review to be sought in the Florida Supreme Court involves issues regarding state law, including grounds that Supra's procedural due process rights were violated in Docket No. 001305-TP. Supra is also seeking review of Commission Order Nos. PSC-02-0413-FOF-TP and PSC-02-0878-FOF-TP before the United States District Court for the Northern District of Florida, for compliance with federal law, including the Telecommunications Act of 1996 and federal due process.

3. On August 9, 2000, BellSouth filed a complaint with the Commission seeking to resolve a billing dispute with Supra. The Commission docket number assigned to this complaint was 001097-TP.

4. Shortly thereafter, on September 1, 2000, BellSouth filed a second complaint with the Commission seeking to arbitrate certain issues in a Follow-On Agreement between the parties pursuant to 47 U.S.C. § 252(b). The Commission docket number assigned to this second complaint was 001305-TP.

5. On May 2, 2001, on the eve of the evidentiary hearing in Docket No. 001097-TP, Kim Logue (the Commission's Supervisor for Carrier Services) improperly provided Nancy Sims (BellSouth's Director of Regulatory Affairs) with cross-examination questions to be asked of both BellSouth and Supra witnesses at the next day's evidentiary hearing. Supra was neither advised of this incident at the time, nor was consulted about these questions. In fact, Supra was not advised of this incident until five (5) months later, after the two evidentiary hearings on both pending matters, Docket Nos. 001097-TP and 001305-TP, had taken place.

6. On July 31, 2001, the Commission, by unanimous vote, entered a final order in Docket No. 001097-TP, which denied Supra any credits. On August 18, 2001, Supra filed a motion for reconsideration of the final order previously entered on July 31, 2001 in Docket No. 001097-TP. On September 20, 2001, the Staff filed a recommendation denying Supra's Motion for Reconsidertaion.

7. On August 20, 2001, a confidential source informed Beth Salak (the Commission's Assistant Director, Division of Competitive Markets and Enforcement), that Kim Logue had sent cross-examination questions to BellSouth.

8. On August 20, 2001, a meeting of the Division of Competitive Markets and Enforcement was called to discuss ethics in dealing with regulated companies.

9. Beth Salak informed Walter D'Haeseleer (the Commission's Division Director of Competitive Markets and Enforcement) and Sally Simmons (the Commission's Bureau Chief, Market Development) of Kim Logue's actions.

10. Walter D'Haeseleer informed Mary Bane (Deputy Executive Director of the Commission) of Kim Logue's actions.

11. D'Haeseleer wished to handle the situation "**internally.**" Inspector General John Grayson's personal notes state: "Walter/Beth > **minimize damage.**"

12. Prior to September 6, 2001, Mary Bane asked Salak to conduct a search of Logue's computer e-mails going back to November 2000.

13. Salak made her initial request for a CD-ROM of Logue's e-mails on September 6, 2001, from Karen Dockham (the Commission's Systems Project Administrator). On September 12, 2001,[1] Karen Dockham provided Salak with the CD-ROM.

14. On September 20, 2001, the Commission's telecommunications and legal Staff filed a recommendation in Docket No. 001097-TP, which recommended a denial of Supra's motion for reconsideration.

15. On September 20, 2001, Dockham provided Salak a second CD-ROM containing more Logue e-mails.

16. On or before September 21, 2001, Mary Bane had a "**conversation**" with Marshal Criser (BellSouth, Vice-President Regulatory Affairs) regarding Kim Logue's actions in sending cross-examination questions to BellSouth.

17. On Friday, September 21, 2001, a meeting took place between Mary Bane (Deputy Executive Director), Walter D'Haeseleer (Division Director, Competitive Markets and Enforcement), Beth Salak (Assistant Director, Division of Competitive Markets and Enforcement) and Sally Simmons (Bureau Chief, Market Development) –

[1] The 5:39 pm e-mail on May 2, 2001, is contained in this first CD-ROM; this CD also contains the other transmissions between Logue and Sims that Supra was never told about.

these individuals discussed (a) "how to handle the situation"[2] and (b) what to do about Kim Logue.[3]

19. There is a large volume of e-mails demonstrating that Logue continued to act in the same supervisory capacity as she had been on all her dockets – including Docket No. 001305-TP - despite the September 21, 2001, meeting taking place.

20. The decision to allow Logue to continue to act in the same capacity in all of her dockets – including Docket No. 001305-TP – is in stark contrast to the public comments of John Grayson, Commission Inspector General. John Grayson was quoted by the South Florida Business Journal, on June 7, 2002, as stating the following:

> "**For a while** it was a mistake that happened – no damage was done, it was going to be **handled internally**," Grayson recalled Simmons saying [during her interview]. "**After that [Sept. 21st] meeting**, it appears there was a **heightened level of importance**, which is what she [Simmons] is telling me." (Bold and underline added for emphasis).

21. Despite this admitted "heightened level of importance" felt by the participants in the September 21, 2001, meeting, Logue would not be reassigned or removed from any of her responsibilities – including Docket No. 001305-TP. More importantly, Supra would not be notified of Logue's actions until October 5, 2001.

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[2] D'Haeseleer's and Salak's admitted to John Grayson that they wished to handle Logue's actions "internally" and with the goal to "minimize damage." The idea of notifying Supra *prior* to the evidentiary hearing in Docket No. 001305-TP scheduled for the following week was rejected. Supra would not be notified of Logue's actions for another fourteen (14) days.

[3] E-mail communications from Sally Simmons to Kim Logue on October 18, 2001, demonstrate that Logue was expected to resign if her active duty orders were not submitted to the Commission by October 10, 2001. Simmons writes: "**On 10/10**, we did receive your orders, which covered a period of two weeks. I know you indicated that the orders would be coming in two parts. **Walter advised** me to hold your **letter of resignation and the copies** until we receive your second orders. **We are otherwise proceeding according to plan**." *See also* e-mail sent on On October 29, 2001, at 3:24 pm, from Simmons to Logue: "Thanks for the fax and your explanation re. 10/26, 10/29, and 10/30 (my oversignht). **Your letter and copies** went out in this afternoon's mail, to your parent's address."

22. Commissioner Jaber in Order No. PSC-02-0773-PCO-TP, argued that: "the events of September 11, 2001 removed this employee [Logue] entirely from the PSC sphere." The totality of the voluminous amounts of e-mails later obtained by Supra via its public records requests demonstrate by any reasonable standard that Kim Logue was **not** "removed entirely from the PSC sphere."

23. On September 21, 2001, Bane, D'Haeseleer, Salak and Simmons, all had actual knowledge (1) that Logue had not been called to active duty, (2) that Logue might not be called to active duty anytime soon, (3) that Logue had provided BellSouth with cross-examination questions, and (4) that Marshall Criser, III (BellSouth's Vice-President for Regulatory Affairs) had discussed Logue's actions with Bane.

24. On September 26 - 27, 2001, the Commission held an evidentiary hearing in Docket No. 001305-TP.

25. On the morning of October 5, 2001, Harold McLean sent an e-mail to Mary Bane at approximately 9:29 am – which Bane opened at 9:43 am - attaching a "draft" of the letter McLean intended on sending to Supra that afternoon. In this "draft," there is no mention of "when" Logue's actions were first discovered – despite Bane's actual knowledge that Logue's actions were uncovered well in advance of the evidentiary hearing in Docket No. 001305-TP.

26. At approximately 4:37 pm, on October 5, 2001, Harold McLean sent his "official" letter to Supra regarding Logue's actions, via facsimile. The final version of the McLean's October 5, 2001 letter makes no mention of "when" Logue's actions were uncovered.

27. On October 29, 2001, over one month after the evidentiary hearing in Docket 001305-TP, the Commission's lead staff attorney, Wayne Knight, initiated a communication with BellSouth's legal counsel, Mr. Twomey, for the purpose of informing Mr. Twomey that BellSouth had **failed** to meet a substantive deadline by failing to include a position for Issue B in its Post-Hearing Brief in this Docket. BellSouth's omission was significant. Issue B was one of Supra's most important issues in this Docket because it dealt with whether BellSouth's standard agreement or the AT&T/BellSouth agreement was the starting point for all revisions.

28. On February 18, 2002, Supra filed in this Docket a motion seeking a new hearing based upon the fact that Ms. Logue was the Commission Staff supervisor responsible for Docket No. 001305-TP and that her actions as well as BellSouth's decision to remain silent about Logue's actions created an appearance of impropriety in Docket No. 001305-TP. At the time Supra filed its Motion, Supra was still unaware that all of Logue's superiors had actual knowledge of her wrongdoing well in advance of the evidentiary hearing in Docket No. 001305-TP.

29. Supra filed three separate motions for Recusal and Disqualification on April 17, 2002; April 26, 2002; and June 5, 2002. The motion for recusal involved two Commissioners and the motion for disqualification involved the Commission staff.

III. MEMORANDUM OF LAW

STAY REQUEST UNDER RULE 25-22.061, FLA. ADMIN. CODE

30. Supra seeks a stay of Order Nos. PSC-02-0413-FOF-TP (issued on March 26, 2002) and PSC-02-0878-FOF-TP (issued on July 1, 2002), pending judicial review in accordance with Rule 25-22.061(2), *Florida Administrative Code.* In determining whether to grant a stay under Rule 25-22.061(2), the Commission may consider the

following: **(a)** whether the petitioner is likely to prevail on appeal; **(b)** whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and **(c)** whether the delay will cause substantial harm or be contrary to the public interest. See Rule 25-22.061(2). Additionally, the Commission may condition a stay upon the posting of a corporate bond or corporate undertaking, or both. Id.

i. Likelihood of Prevailing on Appeal

31. Supra will be seeking review of this Commission Order before the Florida Supreme Court and believes that this Commission's Orders denying Supra's request for a new hearing based upon violations of Supra's procedural due process rights as well as this Commission's other Orders denying Recusal and Disqualification will be reversed.

32. Supra believes that it will prevail on the appeal with respect to a new hearing on the issue of violations of Supra's procedural due process rights.

33. The undisputed facts demonstrate that Senior Management of the Commission had actual knowledge of Logue's actions in advance of the evidentiary hearing in Docket No. 001305-TP and concealed this information from Supra. Quasi-judicial bodies have a duty to safeguard against violation of procedural due process. The United States Supreme Court has stated that: "A fair trial in a fair tribunal is a basic requirement of due process. This applies to administrative agencies which adjudicate as well as to courts. Not only is a biased decision maker **constitutionally unacceptable** but our system of law has always endeavored to prevent even the probability of unfairness." *Hithrow v. Larkin*, 421 U.S. 35, 46-47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). (Emphasis added).

34. Florida has a plethora of case law also providing that a fair trial in a fair tribunal is a basic requirement of due process. *See Rucker v. City of Ocala*, 684 So.2d

836, 841 (1st DCA 1996) (It is well established that "[i]t is fundamental that the constitutional guarantee of [procedural] due process, . . . extends to every proceeding," also for an administrative hearing "[t]o qualify under due process standards, the opportunity to be heard must be meaningful, full and fair, and not merely colorable or illusive"). Administrative agencies sitting in a quasi-judicial capacity have a duty not to "shut its eyes to constitutional issues that arise in the course of administrative proceedings it conducts." *Communications Workers of America, Local 3170 v. City of Gainesville,* 697 So.2d 167, 169 (1st DCA 1997). The "notion that the constitution stops at the boundary of an administrative agency's jurisdiction does not bear scrutiny." *Id. See* also *Jennings v. Dade County* 589 So. 2d 1337, 1340, (3d DCA 1991) ("Certain standards of basic fairness must be adhered to in order to afford due process"); *See also Miami-Dade County v. Reyes*, 772 So.2d 24, 29 (3d DCA 2000) ("Due process envisions a law that hears before its condemns, proceeds upon inquiry, and renders a judgment only after proper consideration of issues advanced by adversarial parties") (Emphasis added).

35. Supra also believes that it will prevail on the appeal of the recusal orders. If the Court determines, based upon a review of the record before the agency, that the Motions for Disqualification were legally sufficient, the Court will declare that the Commission was disqualified from hearing any matters in Docket 001305-TP.

36. Supra filed its motions to disqualify on April 17, 2002; April 26, 2002; and June 5, 2002. The only issue for the Commission's determination with respect to Recusal and Disqualification was whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair or impartial hearing. *See* Rogers v. State, 630 So.2d 513, 515-16 (Fla. 1993).

37. On June 7, 2002, Chairman Jaber and Commissioner Palecki issued orders declining to recuse themselves from this docket. The problem with the two Commission Orders is that the Commissioners attempt to dispute the factual allegations of Supra's motion. This Commission was under a duty to accept the allegations as true and to view the allegations from Supra's perspective. *See* Rogers, 630 So.2d at 515, and Smith v. Santa Rosa Island Auth., 729 So.2d 944, 946-47 (Fla. 1st DCA 1998) (where the court writes: "It is not a question of how the judge feels; it is a question of what feelings resides in the movant's mind, and the basis of such feelings."). Florida law is well settled that the facts in a motion for disqualification must be taken as true. See MacKenzie v. Super Kids Bargain Store, Inc., 565 So. 2d 1332 (Fla. 1990); Bundy v. Rudd, 366 So. 2d 440 (Fla. 1978) (noting that "a judge who is presented with a motion for his disqualification 'shall not pass on the truth of the facts alleged nor adjudicate the question of disqualification.'"). **The mere fact that the Commissioners comment upon or attempt to refute Supra's allegations of fact, is sufficient in itself to support disqualification.**

38. As a matter of procedure, the Commission was required to address and resolve Supra's motions for disqualification prior to ruling on any other substantive matters. The Commissioners, who adjudicate issues in administrative proceedings much like a judge would in a trial, should not wait to decide motions for recusal, but rather must rule upon them immediately. See Fuster-Escalona v. Wisotsky, 781 So. 2d. 1063 (Fla. 2000)(trial judge must rule upon motion for recusal immediately and with dispatch); Stimpson Computing Scale Co.,Inc. v, Knuck, 508 So.2d. 482 (Fla. 3d DCA 1987) (a judge faced with a motion for recusal should first resolve that motion before making additional rulings in a case).

39. In Loevinger v. Northrup, 624 So. 2d. 374, 375 (Fla. 1st DCA 1993), the Court reiterated the long-standing rule that "[a] judge faced with a motion for recusal should first resolve that motion before making any other rulings in a case." In Loevinger, Judge Davey of the Second Judicial Circuit ruled upon a motion to disqualify one of the party's attorneys prior to ruling on the defendant's motion to disqualify the judge. Judge Davey received and ruled upon the motion to disqualify counsel before he received the motion for his own disqualification, despite the fact that the motion for disqualification was filed with the clerk's office first. The Court explained that once the motion to disqualify Judge Davey was filed with the clerk, the Judge was without authority to rule on any other pending matters, even though he was not personally aware of the motion seeking his disqualification. Id.

40. Similarly, the Commission was without authority to rule on any other pending matters once the motions for disqualification were filed on April 17, 2002. Despite this, the Commission issued Order PSC-02-637-PCO-TP on May 8, 2002; and Orders PSC-02-700-PCO-TP, PSC-02-701-PCO-TP, and PSC-02-702-PCO-TP on May 23, 2002. Accordingly, Supra is very likely to prevail on appeal.

ii. Likelihood of Irreparable Harm

41. On October 5, 1999, Supra adopted the Interconnection Agreement ("Current Agreement") entered into by BellSouth and AT&T of the Southern States, such Current Agreement having been approved by the Commission. The Current Agreement includes an **"evergreen"** clause, which provides that "[u]ntil [a] Follow-on Agreement becomes effective, BellSouth shall provide Services and Elements pursuant to the terms,

conditions and prices of this Agreement that are then in effect." Interconnection Agreement, GTC, § 2.3.

42. The evergreen provision governs the terms and conditions of the parties' business relationship until the Follow-On Agreement is approved by this Commission. Once a new hearing is ordered, BellSouth will argue that the prior agreement has completely expired and the parties at best can only operate under the new Follow-On Agreement while a new hearing is arbitrated. In order to maintain the status quo and the most equitable position for the parties, it is necessary to require the parties to continue to operate under the evergreen provision of the current agreement until the Supreme Court decides whether a new hearing is warranted.

43. The evergreen language is contained in a contract negotiated by BellSouth at arms length. This provision allows the parties to continue to operate under the status quo until the issue of a new hearing is resolved. BellSouth is not prejudiced by temporarily continuing to operate under a provision freely negotiated by the company itself.

44. The parties' interconnection agreement governs the highly complex way in which the parties interconnect and conduct business. If the Florida Supreme Court finds that a new hearing is warranted, then the parties can continue to operate under the current agreement pursuant to the "evergreen" provision. The status quo can be maintained while the parties conduct another evidentiary process. The interconnection agreement arbitrated in the new evidentiary process can then be implemented seamlessly.

45. It is incalculable how a Follow-On Agreement that is the product of a fair and impartial process will differ from the present Follow-On Agreement ordered by the Commission in Docket No. 001305-TP.

46. Forcing Supra into the present Follow-On Agreement with the prospect that the Florida Supreme Court will likely order a new hearing, places Supra in an untenable position. No amount of money damages could adequately compensate Supra since the extent of such damage inflicted by this Commission – in forcing Supra to operate under a new agreement that the Supreme Court found is the product of an unfair and biased process - would be impossible to measure accurately. See Spiegel v. City of Houston, 636 F.2d 997 (5th Circuit 1981) (where the possibility of customers being permanently discouraged from patronizing one's business equated to a substantial threat of harm that could not be undone through monetary remedies); Tally-Ho, Inc., v. Coast Community College District, 889 F.2d 1018 (11th Cir. 1990) (injury to a business' reputation and revenues equated to irreparable injury).

47. For example, unlike the new Follow-On Agreement, the Current Agreement requires BellSouth to provide Supra direct access to its Operational Support Systems (OSS).[4] This requirement was based upon the finding made by a panel of independent Commercial Arbitrators on June 5, 2001, pursuant to the dispute resolution process contained in the parties' Current Agreement. It is the electronic OSS which allows a telephone company to order and provision services to customers. If one company is able to provision services in a more timely fashion than another company, such is a competitive advantage.

[4] While the 1996 Federal Telecommunications Act ("FTA") does not mandate direct access to BellSouth's OSS, the FTA, also, does **not** prohibit Incumbent Local Exchange Companies ("ILEC") from agreeing to provide direct access to its OSS. Likewise, nothing in the FTA prohibits a state utilities commission from ordering direct access to an ILEC's OSS. Allowing competitive carriers direct access to the **same** electronic OSS that BellSouth's own retail division utilizes is the **only true way** to implement the spirit of the 1996 FTA – anything less is to leave a competitive advantage in the hands of the former monopoly.

48. The Order of the Commercial Arbitrators was affirmed in Federal Court on October 31, 2001 in the Southern District of Florida in Civil Action No. 01-3365-CIV-KING. The proceedings before the Southern District were conducted under seal with the exception of the Court's October 31, 2001 Order. In this publicly filed Order, Judge King wrote the following with respect to Supra's right to direct access to BellSouth's OSS:

> "Defendant BellSouth challenges the portion of the arbitration award in which the Arbitral Tribunal ordered BellSouth to provide Supra with non-discriminatory **direct access** to its **Operational Support System ("OSS")** and **to cooperate with and facilitate Supra's ordering of services** by no later than **June 15, 2001**. The Arbitral Tribunal found that **BellSouth did not provide Supra with OSS that is equal to or better than the OSS BellSouth provides to itself or customers in non-compliance with its contractual obligations**." (Emphasis added). *See* Oct. 31st Order attached hereto as Exhibit A.

49. As Judge King noted, BellSouth was ordered to provide Supra direct access to its OSS no later than June 15, 2001. Despite this explicit Order, as of this writing, BellSouth has refused to allow Supra direct access to its OSS. It is incalculable the number of customers Supra has lost and will continue to lose, because of BellSouth's intentional and willful refusal to allow direct access to the same OSS utilized by BellSouth's retail division for provisioning service to customers. Moreover, Supra's nearly four hundred thousand Florida customers are denied the same level of customer service and satisfaction as BellSouth's customers.

51. BellSouth is now racing to implement the new Follow-On Agreement – which is the product of the unfair and biased hearing process – to avoid implementing what was previously ordered.

50. If a new hearing is ordered, the most equitable position in which to leave the parties would be the present status quo: the present way in which the parties conduct business.

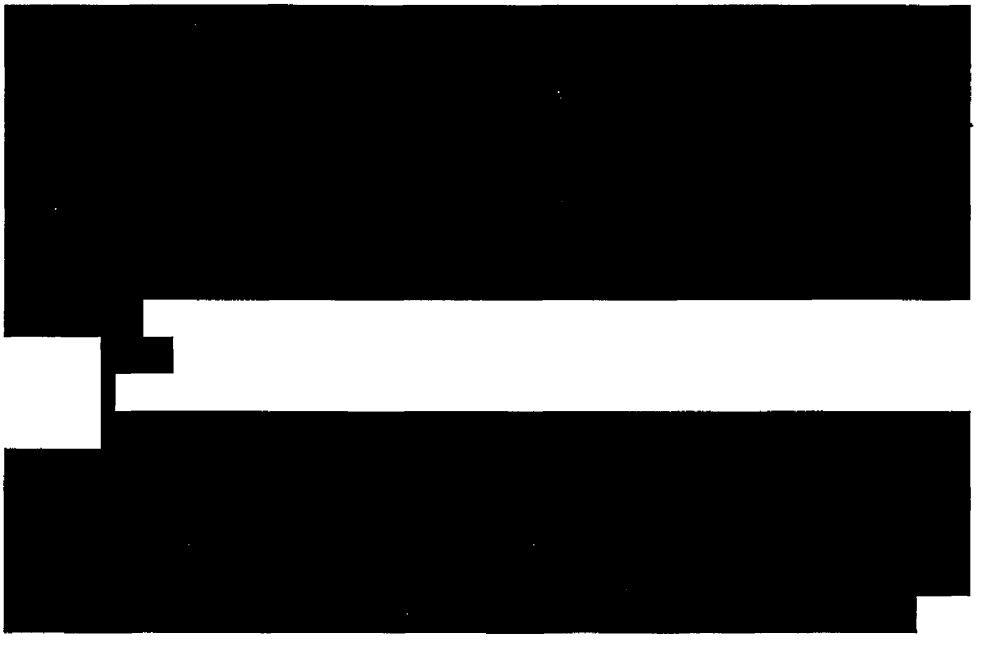
51. Another provision in the Current Agreement that the parties continue to operate under requires BellSouth to provide Supra with meet point billing in the UNE-combination environment. This provision allows Supra to bill third parties for access revenues. The new Follow-On Agreement does not contain this same provision. If the status quo is not maintained, upon the ordering of a new hearing, Supra will be denied millions of dollars that it otherwise would have been permitted to bill for under the Current Agreement.

52. Another provision in the Current Agreement that the parties continue to operate under prohibits BellSouth from disconnecting the services to Supra's nearly four hundred thousand Florida customers during a pending billing dispute. The new Follow-On Agreement does not contain this same provision. Under BellSouth's reading of the new agreement, BellSouth is allowed to disconnect the public's telecommunications service if Supra does not pay disputed bills. BellSouth's reading of the new agreement, would also allow BellSouth to disconnect the public's telecommunications service even while BellSouth, itself, refuses – as it has done for the past two years - to provide Supra with essential billing data. It must also be noted that the current dispute resolution process was the product of "negotiation" by BellSouth. These new contract provisions are a product of an arbitration process at the Florida Public Service Commission. It is incalculable the number of customers Supra will lose as a result of BellSouth's newly conferred power to unilaterally disconnect services. See Spiegel v. City of Houston, 636

F.2d 997 (5th Circuit 1981) (where the possibility of customers being permanently discouraged from patronizing one's business equated to a substantial threat of harm that could not be undone through monetary remedies); Tally-Ho, Inc., v. Coast Community College District, 889 F.2d 1018 (11th Cir. 1990) (injury to a business' reputation and revenues equated to irreparable injury). The above noted circumstances describe precisely the type of irreparable harm a stay is designed to protect against, as defined by the standards set forth in the case law noted herein.

53. If a stay is not granted and the status quo is **not** maintained while the parties arbitrate a new interconnection agreement, BellSouth will be permitted to renew, once again, its anti-competitive efforts against Supra and its customers.

54. On June 5, 2001, an independent panel of three (3) Commercial Arbitrators made the following findings:



55. As already noted at the outset, the evergreen provision of the Current Agreement between the parties governs the terms and conditions of the parties' business

relationship until the Follow-On Agreement is approved by this Commission. Once a new hearing is ordered BellSouth will argue that the prior agreement has completely expired and the parties at best can only operate under the new Follow-On Agreement while a new hearing is arbitrated. In order to maintain the status quo and the most equitable position for the parties, it is necessary to require the parties to continue to operate under the evergreen provision of the current agreement until the Supreme Court decides whether a new hearing is warranted.

iii. A Stay Will Not Cause Substantial Harm or Be Contrary to Public Interest

56. Staying this Commission's Order will not cause substantial harm to either Supra or BellSouth or be contrary to public interest. There simply is no harm to the public should the status quo be maintained.

57. Section 112.311(6), Florida Statutes, reads that public officials "are bound to observe, in their official acts, the highest standards of ethics . . . regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern." Consistent with this express legislative duty, requiring the parties to continue to operate under the status quo – pursuant to a contract freely negotiated by BellSouth - while the Supreme Court decides if a new hearing is warranted can only be characterized as an act which demonstrates that promoting the public interest and maintaining the respect of the people in their government is of the foremost concern of this Public Service Commission.

iv. A Bond Is Not Required

58. Because the orders do not award any monies to a party or otherwise require certain monies to be paid or refunded to a party, there is no need for a security bond.

59. For all the above reasons discussed herein, Supra requests that the Commission stay Commission Order Nos. PSC-02-0413-FOF-TP and PSC-02-0878-FOF-TP.

WHEREFORE, Supra respectfully requests the following:

A. The Commission Order Nos. PSC-02-0413-FOF-TP and PSC-02-0878-FOF-TP be stayed.

B. For all such further relief as is deemed equitable and just.

RESPECTFULLY submitted this 8th day of July, 2002.

SUPRA TELECOMMUNICATIONS &
INFORMATIONS SYSTEMS, INC.
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Brian Chaiken/ATS
BRIAN CHAIKEN, ESQ.

Exhibit - A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC., a Florida corporation,

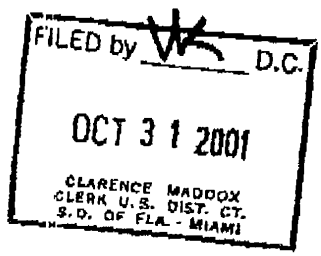
Plaintiff,

v.

BELLSOUTH TELECOMMUNICATIONS, INC., a Georgia corporation,

Defendant.
_____/

CASE NO. 01-3365-CIV-KING



FINAL ORDER GRANTING PETITION TO CONFIRM ARBITRATION AWARD, DENYING MOTION TO VACATE AND GRANTING MOTION TO SEAL

THIS CAUSE comes before this Court upon Plaintiff Supra Telecommunications & Information Systems, Inc.'s ("Supra") Petition to Confirm Arbitration Award Made by Arbitral Tribunal dated June 5, 2001 which was filed on July 31, 2001.[1] Defendant BellSouth Telecommunications, Inc.'s ("BellSouth") filed a Response in Opposition to Plaintiff Supra's Petition to Confirm Arbitration Award Made by Arbitral Tribunal and Motion to Stay on August 27, 2001. This Court heard oral arguments on the Motions to Vacate, to Stay and to Seal and the parties' responses thereto on October 11, 2001.

[1] Defendant BellSouth challenges the portion of the arbitration award in which the Arbitral Tribunal ordered BellSouth to provide Supra with non-discriminatory direct access to its Operational Support Systems ("OSS") and to cooperate with and facilitate Supra's ordering of services by no later than June 15, 2001. The Arbitral Tribunal found that BellSouth did not provide Supra with an OSS that is equal to or better than the OSS BellSouth provides to itself or customers in non-compliance with its contractual obligations.

I. Procedural Background

This instant action was commenced by Plaintiff Supra to confirm an arbitration award on July 31, 2001. Defendant BellSouth opposed the confirmation of the arbitration award and filed a Motion to Vacate on August 27, 2001. Plaintiff Supra filed a Response to Defendant BellSouth's Motions to Stay and to Vacate on September 7, 2001. Defendant BellSouth filed a Reply Memorandum in Support of its Motion to Vacate and a Reply Memorandum in Support of its Motion to Stay on October 2, 2001.

On or about October 5, 1999, the parties entered into an Interconnection Agreement (the "Agreement") pursuant to the Telecommunications Act of 1996 (the "Act").[2] Plaintiff Supra filed a Notice of Arbitration and Complaint against Defendant BellSouth on October 25, 2001. Defendant BellSouth also filed a claim for arbitration on January 31, 2001. The Agreement contained an arbitration provision which required the parties to arbitrate all disputes, claims or disagreements arising under or related to the Agreement. A dispute arose between the parties over the provision of services and alleged breaches. Pursuant to section 16.1 of the Agreement, the parties submitted their disputes to arbitration. On June 5, 2001, the Arbitral Tribunal issued an Order (the "June 5th Order"), which is the subject of this instant action. Defendant BellSouth and Plaintiff Supra both

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[2] The Act's purposes are "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act of 1996, Pub. L. No. 104 -104, 110 Stat. 56, 56 (1996) (preamble). To achieve one of its goal with respect to local telephone service, the Act required Incumbent Local Exchange Carriers ('ILECs"), which were historically granted regulated monopolies to provide local telephone services, such as BellSouth, to a host of duties to facilitate competition with Competing Local Exchange Carriers ("CLEC") such as Supra. The Act required ILECs to enter into interconnection agreements with CLECs who sought to compete in a market as the parties to this instant action did.

filed motions regarding the June 5th Order with the Arbitral Tribunal. The Arbitral Tribunal heard oral arguments on the parties' motions on July 16, 2001 and issued an Order Regarding Supra's and BellSouth's Motions for Interpretation of the June 5, 2001 Award in Consolidated Arbitrations on July 20, 2001. Subsequently, the Arbitration Tribunal entered a Final Award of the Tribunal in Consolidated Arbitration on October 22, 2001.

Defendant BellSouth argues that the Court should not confirm the arbitration award because it is not final and should vacate the arbitration award because the arbitrators exceed their authority. The Court finds that the June 5th Order was a final award. The only issue remaining before the arbitrators after their June 5th Order and July 20, 2001 Order was the calculation of Defendant BellSouth's bills based on the Audit, which is not an issue before the Court. In addition, as previously noted, the Arbitral Tribunal issued a final award on October 22, 2001. Defendant BellSouth's argument to stay the proceedings became moot upon issuance of a final award. The remaining issue is whether or not the arbitration award should be confirmed.

II. Discussion

A court has limited review of an arbitration award. See Lifecare Int'l, Inc. v. CD Medical, Inc., 68 F.3d 429, 433 (11th Cir.1995). The Federal Arbitration Act ("FAA") recognizes four statutory bases for vacating an arbitration award. See 9 U.S.C.A. §10(a). Here, Defendant BellSouth moves to vacate a portion of the arbitration award on the ground that the Arbitral Tribunal exceeded its authority by providing relief beyond the scope of the Agreement. Specifically, Defendant BellSouth contends that the direct access to its OSS awarded to Plaintiff Supra goes beyond the non-discriminatory access contemplated by the parties in their Agreement. In response, Plaintiff Supra points to specific provisions in the Agreement where Defendant BellSouth is obligated to provide

Plaintiff Supra with "non-discriminatory access". Plaintiff Supra cites sections 12.1, 23.3 and 28.6.12 of the Agreement to support the arbitration award on the direct access issue. Also, Plaintiff Supra offers sections 30.1, 30.2, 30.3, 30.5, 30.10.3 and 30.10.4 of the Agreement and section 1.2 of attachment 4 of the Agreement as provisions supporting the arbitrators' authority to make the arbitration award.

The Court concludes that the Arbitral Tribunal did not exceed its authority under the Agreement in finding for Plaintiff Supra on the direct access issue in its arbitration award. Acting in compliance with their Agreement, the parties submitted their dispute which arose from the Agreement to the Arbitral Tribunal. The Arbitral Tribunal decided the dispute within its authority. The Court concludes that the arbitrators did not exceed their authority under the Agreement of the parties. Therefore, the arbitration award at issue should be confirmed and the Motion to Vacate be denied.

1. Defendant BellSouth's Motion to Seal

Defendant BellSouth filed a Motion to Seal and an Unopposed Motion for Emergency Consideration of its Motion to Seal on August 8, 2001. Plaintiff Supra filed a Response to Defendant BellSouth's Motion to Seal on August 10, 2001. The Court ordered that all filings in this case be filed under seal in its Order on Defendant's Unopposed Motion for Emergency Consideration of BellSouth's Motion to Seal dated August 9, 2001 until further order of the Court. The Court, in its Order on Defendant's Motion to Seal BellSouth's Motion to Seal, ordered that Defendant BellSouth's Motion to Seal be sealed until a final judgment has been entered by the Court. In its Order on Defendant BellSouth's Emergency Motion to Seal dated August 14, 2001, the Court ordered that all documents which disclose any information about the arbitration order must be filed

under sealed. Defendant BellSouth's Motion to Seal is now ripe for ruling.

Defendant BellSouth wants the June 5th Order and all documents that in any way disclose any information about the arbitration order to be sealed by the Court. To supports its request, Defendant BellSouth argues that the arbitration order as well as the hearings, conferences, discovery and other related events are confidential. According to Defendant BellSouth, section 14.1 of Attachment 1 of the Agreement requires that all such information be confidential.[3] Plaintiff Supra asserts that section 14.1 of Attachment 1 of the Agreement provides an exception to the confidentiality provision. Plaintiff Supra argues that the confidentiality provision does not apply the June 5th Order since it had to seek judicial enforcement of the arbitration award and that the arbitration award contained no proprietary or confidential information.

The exception to the confidentiality provision does not permit the parties to disclose information and evidence produced during the arbitration proceedings and other related matters (including an arbitration award), beyond a judicial proceeding or unless by order of a court or a governmental body. Further, the Arbitral Tribunal, in its Order dated July 20, 2001, concluded that the arbitration award may contain proprietary or confidential information, which the parties agreed to be held in confidence in accord with the terms of the Agreement. Therefore, to unseal the filings in this case would contravene the confidentiality provision with which the parties agreed.

Plaintiff Supra also claims that sealing the June 5th Order would violate public policy on the grounds that (1) Defendant BellSouth may discriminate against other telecommunications carriers,

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[3]Section 14.1 of the Attachment 1 of the Agreement states:
BellSouth, AT&T, and the Arbitrator(s) will treat any arbitration proceeding, including the hearings and conferences, discovery, or other related events, as confidential, except as necessary in connection with a judicial challenge to, or enforcement of, an award, or unless otherwise required by an order or lawful process of a court or government body.

and (2) Plaintiff Supra cannot disclose to its past, present and future customers that Defendant BellSouth may have caused problems with their service. However, the Court is unpersuaded by Plaintiff Supra's contentions and declines to order the June 5th Order or other documents filed in this case to be unsealed, except for this Order.

III. Conclusion

Accordingly, after a careful review of the record, and the Court being otherwise fully advised, it is

ORDERED and ADJUDGED that Plaintiff Supra Telecommunications & Information Systems, Inc.'s Petition to Confirm Arbitration Award Made by Arbitral Tribunal be, and the same is hereby, GRANTED. It is further

ORDERED and ADJUDGED that the Arbitration Award Made by Arbitral Tribunal be, and the same is hereby, CONFIRMED. Defendant BellSouth Telecommunications, Inc. is directed to immediately comply with the Arbitration Award by the Arbitral Tribunal. It is further

ORDERED and ADJUDGED that Defendant BellSouth Telecommunications, Inc.'s Motion to Vacate be, and the same is hereby, DENIED. It is further

ORDERED and ADJUDGED that the Court retains jurisdiction to determine the appropriate costs and attorney's fees incurred by Plaintiff Supra Telecommunications & Information Systems, Inc. for bringing this Petition and for defending the Motion to Vacate upon proper motion by Plaintiff Supra Telecommunications & Information Systems, Inc. All other pending motions are hereby DENIED as moot. The clerk of the Court is hereby DIRECTED to close the above-styled case.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 31st day of October, 2001.

JAMES LAWRENCE KING
U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

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Exhibit – B

SUPRA'S MOTION TO STAY COMMISSION ORDER NOS. PSC-02-0413-FOF-TP AND PSC-02-0878-FOF-TP PENDING APPEAL PURSUANT TO RULE 25-22.061, FLORIDA ADMINISTRATIVE CODE

CONFIDENTIAL

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