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February 22, 2002

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

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

Dear Ms. 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 and Overrule Objections to Supra's First Set of Interrogatories, which we ask that you file in the captioned docket.

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

Sincerely,



James Meza III (KRB)

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

DOCUMENT NUMBER DATE  
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FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE**  
**Docket No. 001097-TP**

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

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James Meza III (KA)

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of BellSouth )  
Telecommunications, Inc. against Supra )  
Telecommunications and Information )  
Systems, Inc., for Resolution of Billing )  
Disputes. )  
\_\_\_\_\_ )

Docket No. 001097-TP

Filed: February 22, 2002

**BELLSOUTH TELECOMMUNICATIONS, INC.'S OPPOSITION  
TO SUPRA'S MOTION TO COMPEL AND OVERRULE OBJECTIONS  
TO SUPRA'S FIRST SET OF INTERROGATORIES**

BellSouth Telecommunications, Inc., ("BellSouth") files this Opposition to Supra Telecommunications and Information Systems, Inc.'s ("Supra") Motion to Compel and Overrule Objections to Supra's First Set of Interrogatories, and says:

**BACKGROUND**

Between 1997 and 1999, four different agreements controlled the contractual relationship between BellSouth and Supra: (1) the June 1997 Resale Agreement ("Resale Agreement"); (2) the June 1997 Interconnection Agreement ("Interconnection Agreement"); (3) the June 1997 Collocation Agreement ("Collocation Agreement"); and (4) the 1997 AT&T/BellSouth Agreement adopted by Supra on October 5, 1999 ("AT&T/BellSouth Agreement").

On August 9, 2000, BellSouth filed a complaint against Supra for violation of the AT&T/BellSouth Agreement and the 1997 Resale Agreement for failing to pay amounts not in dispute. On August 30, 2000, Supra filed a Motion to Dismiss, arguing that, pursuant to the AT&T/BellSouth Agreement, BellSouth was required to resolve billing disputes through private arbitration and not at the Florida Public Service Commission ("Commission"). In Order No. PSC-00-2250-

FOF-TP (“Order on Motion to Dismiss”), issued on November 28, 2000, the Commission granted in part and denied in part Supra’s Motion to Dismiss, finding that it had exclusive jurisdiction over billing disputes arising under the Resale Agreement but that it had no jurisdiction over any billing disputes arising under the AT&T/BellSouth Agreement. Consequently, the Commission held that the only dispute remaining at the Commission was BellSouth’s billing claims arising prior to October 5, 1999 under the Resale Agreement.

On January 31, 2002, the Commission issued an Order Setting Matter for Rehearing and Establishing Procedure that, among other things, set forth the issues to be addressed in this proceeding. Those issues, which were adopted from the Commission’s Order Establishing Procedure (Order No. PSC-01-0388-PCO-TP) dated February 15, 2001, are:

- Issue 1: Should the rates and charges contained (or not contained) in the 1997 AT&T/BellSouth Agreement apply to the BellSouth bills at issue in this Docket?
- Issue 2: Did BellSouth bill Supra appropriately for End-User Common Line Charges pursuant to the BellSouth/Supra interconnection and resale agreement?
- Issue 3: Did BellSouth bill Supra appropriately for changes in services, unauthorized local service changes, and reconnections pursuant to the BellSouth/Supra interconnection and resale agreements?
- Issue 4: Did BellSouth bill Supra appropriately for secondary service charges pursuant to the BellSouth/Supra interconnection and resale agreement?

The scope of these issues was defined by the Commission in two Orders: (1) the Order on Motion to Dismiss (Order No. PSC-00-2250-FOF-TP); and (2) the Commission’s Order Denying Motion for Reconsideration or Clarification of

Order on Motion to Dismiss (Order No. PSC-01-0493-FOF-TP) (“Order on Reconsideration”). These Orders limited the scope of this proceeding to billing disputes arising under the 1997 Resale Agreement. In its Final Order on Complaint (Order No. PSC-01-1585-FOF-TP) dated July 31, 2001,<sup>1</sup> the Commission discussed the issue limitations imposed on this proceeding in the Order on Motion to Dismiss:

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

Final Order on Complaint at p. 3.

### ARGUMENT

On February 5, 2002, Supra propounded its First Set of Interrogatories to BellSouth. BellSouth objected to Interrogatory Nos. 1 and 2 on February 12, 2002 on the grounds that they were irrelevant to the instant proceeding because they solely dealt with Supra’s ability or inability to order UNEs or UNE combinations prior to October 5, 1999 and the rates for certain charges if Supra had ordered UNEs and UNE combinations. See First Set of Interrogatories Nos. 1 and 2. As stated above, the Commission, in Order No. PSC-01-1585-FOF-TP, issued July 31, 2001, and Order No. PSC-00-2250-FOF-TP, issued November

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

28, 2000, limited the scope of this proceeding to the 1997 Resale Agreement between Supra and BellSouth. Accordingly, whether or not Supra had the ability to order UNEs or UNE combinations and/or the charges for said UNE orders prior to October 5, 1999, the date Supra adopted the AT&T/BellSouth Agreement, is irrelevant to this complaint proceeding.

Supra now argues that said information is relevant because the issues espoused by Staff refer to the 1997 AT&T/BellSouth Agreement and the "BellSouth/Supra interconnection and resale agreements." Stated another way, Supra argues that the language used in the issues somehow trumps the Commission's explicit orders stating that the only agreement at issue is the Resale Agreement. Such an argument should be summarily rejected. The Commission has made it clear on numerous occasions that the instant complaint proceeding only addresses BellSouth's billing claims arising under the 1997 Resale Agreement. Neither the AT&T/BellSouth Interconnection Agreement, the Interconnection Agreement, nor any other agreement is relevant to this determination.

Supra also argues that information relating to the charges BellSouth could have charged Supra if it had ordered UNEs or UNE combinations prior to October 5, 1999 is relevant to determine if BellSouth properly charged Supra. This argument should be rejected because whether or not Supra could order UNEs and UNE combinations and the corresponding rates and charges for said orders are clearly not relevant to whether BellSouth properly billed and Supra improperly failed to pay resold services received pursuant to a resale agreement.

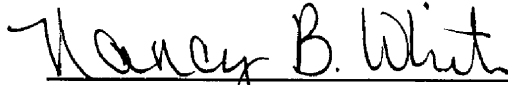
Further, notwithstanding the above argument, Supra is incorrect in stating that the requested information is relevant to Issue 1: "Should the rates and charges contained (or not contained) in the 1997 AT&T/BellSouth Agreement apply to the BellSouth bills at issue in this Docket?" That issue has nothing to do with whether or not Supra was allowed to order UNEs or UNE combinations and the corresponding rates and charges thereof; rather, the issue simply revolves around whether the rates and charges set forth in the AT&T/BellSouth Agreement should apply to Supra's resale bills arising under the 1997 Resale Agreement. This is a simple contract analysis and the rates and charges in the BellSouth/AT&T Agreement speak for themselves. Nothing in this issue "opens the door" for Supra to expand the scope of this proceeding from resale bills to fictitious and hypothetical UNE bills.

### **CONCLUSION**

Simply put, Interrogatory Nos. 1 and 2 of Supra's First Set of Interrogatories are totally irrelevant to the limited issues set forth in this complaint proceeding. Whether or not Supra had the ability to order UNEs and UNE combinations and the corresponding rates and charges for said orders has nothing to do with whether BellSouth has properly billed and Supra has failed to pay for resold services provided pursuant to the 1997 Resale Agreement. Accordingly, for the foregoing reasons, the Commission should deny Supra's Motion to Compel.

Respectfully submitted this 22<sup>nd</sup> day of February 2002.

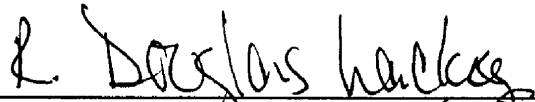
BELLSOUTH TELECOMMUNICATIONS, INC.



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