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January 12, 2004

Mrs. Blanca Bayo, Director  
Division of Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
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**RE: Docket No. 030851-TP -  
SUPRA'S RESPONSE TO BELLSOUTH'S MOTION TO STRIKE PORTIONS OF  
SELECT PARTIES' DIRECT TESTIMONY**

Dear Mrs. Bayo:

Enclosed is the original and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Response To Bellsouth's Motion To Strike Portions Of Select Parties' Direct Testimony to be filed in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return it to me.

Sincerely,

RECEIVED & FILED

*Oh*  
FPSC-BUREAU OF RECORDS

*Jorge Cruz-Bustillo*  
Jorge Cruz-Bustillo  
Assistant General Counsel

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**CERTIFICATE OF SERVICE**

**Docket No. 030851-TP**

**I HEREBY CERTIFY** that a true and correct copy of the following was served via E-mail, Hand Delivery, and/or U.S. Mail this 12<sup>th</sup> day of January 2004 to the following:

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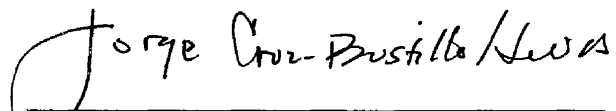
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By: Jorge Cruz-Bustillo

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Implementation of requirements arising )  
from Federal Communications Commission ) Docket No. 030851-TP  
Triennial UNE Review: Local Circuit Switching )  
For Mass Market Customers ) Served: January 12, 2004  
)  
)  
\_\_\_\_\_ )

**SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.,  
RESPONSE TO  
BELLSOUTH'S MOTION TO STRIKE PORTIONS OF SELECT  
PARTIES' DIRECT TESTIMONY**

Supra Telecommunications and Information Systems, Inc., ("Supra"), by and through its undersigned attorney files this Response to BellSouth's Motion to Strike David E. Stahly's Direct Testimony filed on December 4, 2003. And in response thereto, state as follows:

Mr. David E. Stahly's Direct Testimony ("Testimony") is directly relevant to the issues set forth in the Commission's November 7, 2003 Order. The portions of Testimony BellSouth wishes to strike deal directly with the Commission's forthcoming decisions in context of the law as it stands. BellSouth groups the Testimony into four categories: A - D.

The first group "A", beginning on Page 6, Line 21 through Page 10, Line 6, is relevant to issue 2(a) and 2(c). The first issue involves the location of mass market customers; and the second issue involves the CLEC's ability to target and serve specific markets profitably and efficiently using current available technologies. The Testimony in group A addresses: (1) that this docket is fundamentally about competition; (2) The goals of the 1996 Act, (3) that Supra is following the model of competition set out in the 1996 Act; (4) BellSouth's repeated material breaches of the parties' interconnection agreement, especially involving collocation; and finally (5) competition is harmed if UNE-P is eliminated. The issue involving whether a CLEC can

serve a particular market profitably and efficiently using current available technologies, cannot be examined without an understanding of competition as envisioned by the 1996 Act and Chapter 364, Florida Statutes. This accounts for parts (1) and (2) above. The Testimony regarding Supra and how it is competing using today's available technologies is therefore also directly relevant. Commission issue 5(c)(2) addresses a CLECs ability to collocate. The Testimony on Page 9 directly addresses BellSouth material breach of the parties' interconnection agreement to deny Supra the right to collocate. Addressing BellSouth's past bad acts with respect to its failure to meet its legal obligations is extremely relevant to this Commission's examination regarding whether BellSouth can realistically meet any new legal obligations this Commission decides to implement. BellSouth wants this Commission to ignore the real world experiences of Supra and other CLECs and to make its decision on a very narrow consideration of selected facts. Such an approach would do a disservice to consumers and would directly undermine the explicit intent of Chapter 364, Florida Statutes. Last but certainly not least, Commission issue 6 addresses whether CLECs impairment would be cured if unbundled local switching were made available for 90 days or more. The explicit language used by the Commission in its issues, specifically those Commission issues cited herein, invites Testimony from CLEC's regarding what would happen if UNE-P were eliminated. To be clear, the answer is no: 90 days will not cure a CLEC's impairment for all the reasons outlined in the Testimony – the same Testimony BellSouth seeks to strike.

Group "B", beginning on Page 11, Line 5 through Page 13, Line 5, is relevant to issue 2(a) and 2(c) and issue 3. This third issue in particular addresses whether BellSouth can develop a batch hot cut process. Supra's Testimony is directed at addressing specifically those concerns held by all CLECs. BellSouth wants this Commission to do away with UNE-P. All CLECs are

concerned that BellSouth will ignore implementing any “cures” ordered by the Commission and that CLECs could be stuck with the worst of both worlds - no UNE-P and hopelessly impaired markets. In establishing any processes (i.e. Issue 3(c)) this Commission must look beyond the ILECs’ empty promises to comply and take serious consideration of past compliance of the ILECs, in particular BellSouth, because the mere legal right to enjoy UNE Combinations, collocation, and other contractual and regulatory imposed access or services does not mean that the CLEC who request these services will receive them. The Testimony BellSouth’s seeks to strike addresses Supra’s experience – and shows that BellSouth is willing to go to great lengths to deny CLECs access to the services they need to compete. BellSouth is very likely to do the same in this instance.

BellSouth lumps Testimony on Page 12, L 19 – Page 13, L 12, into Group B. This Testimony is directly relevant to Commission issue 5 involving potential for self-provisioning. BellSouth would like for the Commission to ignore the real world experiences of the past seven years and simply consider BellSouth’s sanitized formulations on why it is possible to self-deploy. For this reason, this Testimony should not be stricken.

Group “C”, beginning on Page 13, Line 7 through Page 14, Line 2, is relevant to issue 3(f) and issue 6. In establishing any rates that the Commission may set, this Commission must consider the “alleged” market rates BellSouth now charges in other areas. Market rates presume that the rates have some relation to prices being charged by other entities in the same market. In this case, BellSouth has a wholesale monopoly in its territory. Therefore, the prices are not market rates. Nevertheless, the information is relevant for this Commission’s consideration of future costs.

Finally, Group “D”, beginning on Page 16, Line 5 through Page 16 is relevant to all matters raised in issue 3(a) – (f) and relevant to issue 6. The Testimony that begins on Page 16, Line 5 is headed: **SUPRA’S EXPERIENCE WITH BELLSOUTH’S CUT OVER PROCESS AND WHY CUT OVERS ARE CRUCIAL TO CLECS**. BellSouth seeks to strike this Testimony. Why? Because BellSouth does not want this Commission to consider the real world experiences of a CLEC with respect to the issues set forth in Commission issue No. 3(a) – (f). BellSouth only wants this Commission to consider its own sanitized, narrow explanation on why its alleged batch hot cut process works just fine. BellSouth’s present system does not work. The evidence is overwhelming on this point. So BellSouth is now seeking to strike the evidence that contradicts its unsubstantiated claims that its current system does work.

### **Conclusion**

The above referenced Testimony is very relevant to the issues set forth in the Commission’s November 7, 2003 Order. Moreover, in this Motion, Supra has explained why the Testimony is relevant. For this primary reason, BellSouth’s motion to strike must be denied.

The motion can also be denied on another ground. Tellingly, BellSouth fails, in its initial motion, to articulate with particularity why the Testimony is irrelevant and immaterial to the scope of the proceeding - simply stating that the Testimony is not relevant is insufficient to meet its burden. For this reason, also, BellSouth’s motion to strike must be denied. The Commission’s procedures do not allow for a Reply from BellSouth – so the failure to articulate the lack of nexus between the Testimony and issues cannot be remedied by BellSouth.

WHEREFORE, for the foregoing reasons, Supra respectfully requests that the Commission deny BellSouth’s motion to strike.



Respectfully submitted this 12<sup>th</sup> day of January 2004.

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