

Timolyn Henry

From: Slaughter, Brenda [Brenda.Slaughter@BELLSOUTH.COM]  
 Sent: Friday, July 16, 2004 2:47 PM  
 To: Filings@psc.state.fl.us  
 Cc: Meza, James; Linda Hobbs; Fatool, Vicki; Nancy Sims; Holland, Robyn P; Bixler, Micheale  
 Subject: Docket 980119-TP  
 Importance: High

- A. Brenda Slaughter  
 Legal Secretary for James Meza III  
 BellSouth Telecommunications, Inc.  
 c/o Nancy Sims  
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[brenda.slaughter@bellsouth.com](mailto:brenda.slaughter@bellsouth.com)
- B. Docket No. 980119-TP: Complaint of Supra Telecommunications & Information Systems, Inc. against BellSouth Telecommunications, Inc.
- C. BellSouth Telecommunications, Inc.  
 on behalf of James Meza III
- D. 6 pages total
- E. BellSouth Telecommunications, Inc.'s Opposition to Notice of Adoption of Testimony

Brenda Slaughter (on behalf of James Meza III)  
 BellSouth Telecommunications, Inc.  
 Suite 4300 - Legal Department  
 675 W. Peachtree Street  
 Atlanta, GA 30375-0001  
 Phone: (404) 335-0714

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Legal Department

James Meza III  
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July 16, 2004

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. 980119-TP (Supra Complaint)

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Opposition to Notice of Adoption of Testimony, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

  
James Meza III

cc: All parties of record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

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**CERTIFICATE OF SERVICE  
Docket No. 980119-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and U.S. Mail this 16th day of July, 2004 to the following:

*f*  
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James Meza III (B/S)

**ORIGINAL**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of Supra Telecommunications ) Docket No.: 980119-TP  
and Information Systems, Inc., Against )  
BellSouth Telecommunications, Inc. )  
\_\_\_\_\_ ) Filed: July 16, 2004

**OPPOSITION TO NOTICE OF ADOPTION OF TESTIMONY**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully requests that the Florida Public Service Commission ("Commission") deny Supra Telecommunications and Information Systems, Inc.'s ("Supra") unilateral attempt to substitute David Nilson for Supra's original witness, David Stahly ("Adoption Notice"), at the hearing of this matter. As will be established below, Supra's Adoption Notice is procedurally improper, is not based on cause, and is nothing more than an attempt by Supra to rehabilitate its case in this proceeding to the prejudice of BellSouth. In support of this Opposition, BellSouth states the following:

**BACKGROUND**

1. On November 10, 2003, Supra initiated this proceeding by protesting Commission Order No. PSC-03-1178-PAA-TP, wherein the Commission found that BellSouth complied with its previous Orders in this docket regarding on-line edit checking capability. The hearing of this matter is scheduled for August 4, 2004.

2. Supra filed the direct testimony consisting of 19 pages of its sole witness in this proceeding, David Stahly on April 21, 2004. In this testimony, Mr. Stahly provided detailed testimony regarding Supra's positions in this docket. In addition, Mr. Stahly provided the Commission with a description of his background and experience, which consists of working for the Illinois Commerce Commission, Sprint, and Supra over the last 16 years. Mr. Stahly even boasts in his testimony that he has "filed

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testimony and/or testified before regulatory Commissions in 26 states in 60 proceedings including one proceeding before the Florida Public Service Commission." See Stahly Direct Testimony at 1-2.

3. ~~4~~ On May 26, 2004, Supra filed the rebuttal testimony of Mr. Stahly, which consisted of 14 pages. Again, in his rebuttal testimony, Mr. Stahly advances Supra's positions on the issues in this proceeding and attempts to rebut the testimony of BellSouth witness, Ron Pate.

4. On June 2, 2004, BellSouth requested the deposition of Mr. Stahly in Miami for July 7, 2004. Ultimately, the parties agreed to this date for depositions and the depositions occurred on July 7, 2004 as scheduled.

5. In his deposition, Mr. Stahly testified that he drafted his testimony and did not indicate that he was unavailable for the hearing of this matter. In addition, Mr. Stahly provided answers to questions asked by BellSouth regarding specific statements asserted in his prefiled testimony. Importantly, through his deposition, BellSouth was able to establish the scope of Mr. Stahly's knowledge and the basis for his testimony.

6. On July 12, 2004, Supra unilaterally and without seeking leave filed its Adoption Notice. Supra provided no reason or cause why, on the eve of the hearing, Mr. Nilson should be allowed to substitute for Mr. Stahly at the hearing of this matter.

### **ARGUMENT**

7. The Commission should reject Supra's Adoption Notice and refuse to permit Mr. Nilson to testify at the hearing of this matter for the following reasons:

8. First, Supra's Adoption Notice is procedurally improper because Supra did not seek leave of the Commission to substitute Mr. Nilson for Mr. Stahly. Pursuant to

Rule 28-106.204, Florida Administrative Code, all requests for relief must be made by motion. Supra has violated this rule and thus its proposed witness shuffle should be of no force and effect.

9. <sup>4</sup> Second, Supra has provided this Commission with no reason why this substitution should be allowed, especially after Mr. Stahly filed direct testimony, filed rebuttal testimony, and was deposed by BellSouth. Although the adoption of witness testimony has occurred in the past in Commission proceedings, it almost always is because of the unavailability of the initial witness. See e.g., In Re: Complaint of Florida Competitive Carriers Association Against BellSouth Telecommunications, Inc. Regarding BellSouth's Practice of Refusing to Provide FastAccess Internet Service to Customers Who Receive Voice Service from a Competitive Voice Provider, and Request for Expedited Relief, Docket No. 020507-TL, Order No. PSC-03-0636-PCO-TL (May 23, 2003) (statements of FCCA in describing the practice of witness adoption).

10. Here, Supra provides no reason for the proposed witness substitution and BellSouth submits that there is no legitimate cause for the substitution. Indeed, based on the fact that Supra filed its Adoption Notice two business days after BellSouth's deposition of Mr. Stahly, the logical conclusion is that Supra wishes to rehabilitate its case by changing witnesses at this late stage. Apparently, Supra believes that Mr. Nilson will be a better witness than Mr. Stahly. Such witness shuffling at this advanced date should not be permitted.

11. Supra made the tactical decision, whether good or bad, to have Mr. Stahly as its witness until two weeks prior to the hearing. As a result of Supra's designation of Mr. Stahly, BellSouth has prepared its case pursuant to Mr. Stahly's deposition


testimony and pre-filed testimony. BellSouth should not be forced to potentially change its defense approximately two weeks before a hearing based upon what another Supra witness may say about the testimony that Mr. Stahly drafted.

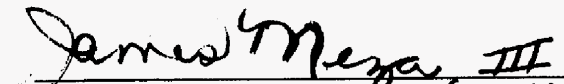
12~~6~~ Simply put, it is patently unfair for Supra to be able to reinterpret or revise Mr. Stahly's testimony through the use of another witness. Mr. Stahly wrote the testimony, Mr. Stahly was deposed regarding his testimony, and BellSouth is prepared to go to trial based on what Mr. Stahly said – not how Mr. Nilson interprets Mr. Stahly's testimony.

WHEREFORE, for the foregoing reasons, BellSouth requests that the Commission deny Supra's attempt to substitute Mr. Nilson for Mr. Stahly at the hearing of this matter.

Respectfully submitted this 15th day of July, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
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