



ORIGINAL

Telephone: (850) 402-0510

Fax: (850) 402-0522

www.supratelecom.com

1311 Executive Center Drive, Suite 220
Tallahassee, FL 32301-5027

August 6, 2004

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

COMMISSION
CLERK

04 AUG - 6 PM 4: 26

RECEIVED-FPSC

**RE: Docket No. 040353 -TP
SUPRA'S RESPONSE TO BELL SOUTH'S EMERGENCY MOTION
TO SUSPEND PROCEEDINGS OR MOTION FOR EXTENSION
OF TIME**

Dear Mrs. Bayo:

Enclosed are the original and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Response to BellSouth's Emergency Motion to Suspend Proceedings or Motion for Extension of Time to be filed in 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.

Sincerely,

Brian Chaiken
Executive V.P Legal Affairs

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH _____

RECEIVED & FILED
h
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
08610 AUG-6 04
FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

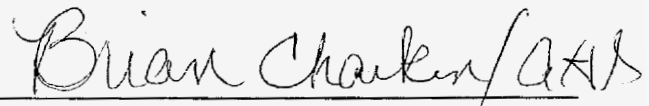
Docket No. 040353-TP

I HEREBY CERTIFY that a true and correct copy of the following was served via Facsimile hand-delivery and/or U.S. Mail this 6th day of August 2004 to the following:

*Adam Teitzman
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850*

*BellSouth Telecommunications, Inc.
James Meza III
c/o Ms. Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556
Phone: (850) 222-1201
Fax: 222-8640
Email: nancy.sims@bellsouth.com*

SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.
2620 S. W. 27th Avenue
Miami, FL 33133
Telephone: 305/ 476-4248
Facsimile: 305/ 443-1078



By: Brian Chaiken, ESQ.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to review and)
cancel, or in the alternative) Docket No.: 040353-TP
immediately suspend or postpone,)
BellSouth Telecommunications, Inc.'s) Filed: August 6, 2004
PreferredPack Plan tariffs, by Supra)
Telecommunications and Information)
Systems, Inc.)

**SUPRA'S RESPONSE IN OPPOSITION TO
BELLSOUTH'S EMERGENCY MOTION TO SUSPEND
PROCEEDINGS OR MOTION FOR EXTENSION OF TIME**

Supra Telecommunications and Information Systems, Inc. ("**Supra**") hereby files its response in opposition to BellSouth's Emergency Motion to Suspend Proceedings or Motion for Extension of Time, ("**BellSouth's Motion**"). As has become its pattern and practice, BellSouth's Motion is nothing more than an attempt to delay the ultimate resolution of this proceeding, with absolutely no legal authority cited to support the requested relief. For the reasons set forth hereinbelow, BellSouth's Motion should be denied in its entirety.

BellSouth has failed to make any factual showing that an "emergency" exists.

The only emergency in this proceeding is the fact that BellSouth has been allowed to anti-competitively buy back customers it has lost to Supra for the last 8 months. BellSouth has not even bothered to allege any facts which have created an emergency in this case. Now, BellSouth, a Fortune 100 company with billions of dollars at its disposal is somehow before the Commission arguing that it does not have the resources to timely respond to motions or discovery requests in this case. Supra finds this to be a completely

DOCUMENT NUMBER-DATE

08610 AUG-6 3

FPSC-COMMISSION CLERK

disingenuous argument in light of the sheer magnitude of the legal resources that BellSouth has at its fingertips.¹

Simply put, there is no emergency and BellSouth should be required, pursuant to Florida law and the rules of this Commission, to file, on a timely basis no less, a response to Supra's Motion for Summary Final Order and with the discovery requests issued in this proceeding.

There is no legal support for an outright suspension of these proceedings.

Incredibly, BellSouth requests that this Commission indefinitely suspend this proceeding "because the Commission is scheduled to issue a PAA on the matters in the Complaint on September 7, 2004." Of course, BellSouth has failed to cite to any legal precedent which would afford BellSouth the requested relief. As there is absolutely no legal support for BellSouth's request, BellSouth resorts to the ever popular it "could be a waste of BellSouth's time and resources to respond" defense. Clearly, this defense does not override Supra's legal right to file a Motion for Summary Final Order.

Supra, as is its right, filed a Motion for Summary Final Order on July 27, 2004, asserting that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. BellSouth should have responded to Supra's Motion by August 3, 2004. Instead, BellSouth has filed the present Motion, seeking to delay these proceedings.

Any PAA issued by the Commission should have no effect on the issues raised by Supra in its Motion for Summary Final Order. If BellSouth believes that there are genuine issues of material fact, then it should have identified them and may do so in its

¹ Besides its extensive in-house legal staff with offices throughout BellSouth's region and in Washington D.C., BellSouth retains the services of numerous law firms throughout the country (e.g., Kilpatrick Stockton, Jones Walker, Berger Singerman, Adorno & Yoss).

response, assuming one is filed. It is significant to note that, in its present Motion, BellSouth has failed to identify even one genuine issue of material fact.

Supra would be prejudiced by a suspension of these proceedings.

BellSouth actually argues that “no party would be prejudiced because the PAA procedure is the exact procedure the Commission has followed in other tariff complaints.” Even if the PAA procedure were the same, such does not preclude Supra from filing its Motion for Summary Final Order, or from having such heard on a timely basis. Of course, if this Commission were to immediately suspend BellSouth’s tariffed promotions during the pendency of these proceedings, then, and only then, would there be no prejudice to either party. As it stands, each and every day that BellSouth’s tariffed promotions remain in effect, the prejudice to Supra of BellSouth’s anti-competitive predatory pricing continues to grow.

BellSouth’s claim that awaiting the issuance of a PAA will not prejudice either party is absurd, as the non-prevailing party will inevitably protest such which will result in further delays. BellSouth recognizes such and even requests a stay until after “any potential protest of that PAA”². BellSouth will then be able to sit back and wait, and at the appropriate time down the line, whenever that may be, after reviewing the Commission’s views and analyzing all of Supra’s claims, BellSouth can then narrowly tailor its responses as it deems necessary. To state that Supra will not be prejudiced is far-fetched to say the least.

BellSouth has not timely or substantively complied with discovery in this case.

² BellSouth’s Motion at p.3 paragraph 7.

In paragraph 2 of BellSouth's Motion, BellSouth notes that it has received numerous discovery requests in this docket. The mere fact that both the Commission Staff and Supra have issued discovery in this case should come as no surprise. Discovery is the tool by which the parties can narrow the factual issues so as to focus any potential hearing to questions of law and perhaps only a few questions of fact. Yet, BellSouth argues that it is somehow overly burdened by the fact that both the Commission Staff and Supra would have the gall to actually seek discovery.

Surprisingly, while BellSouth complains that it has been "inundated" with discovery by Supra, BellSouth has not sought protection from the Commission on the basis that Supra's discovery is improper in nature or number.

Consistent with BellSouth's modus operandi, BellSouth has consistently delayed filing its discovery responses. In the Commission's Order to Initiate Expedited Discovery Procedure, Order No. PSC-0400549-PCO-TP issued on May 27, 2004, in this docket, the Commission stated:

[D]iscovery responses must be expedited in order to allow parties and Commission staff an adequate opportunity to review the information. Therefore, all discovery responses shall be due 10 calendar days after service of the request, with no additional time for mailing.

BellSouth, as evidenced in the table provided, has with but one exception, delayed the filing of each response beyond this 10 day expedited period. Notwithstanding, BellSouth now seeks to avoid any obligations whatsoever to respond to any pending discovery as well as Supra's Motion, thereby denying both Supra and the Commission staff the benefit of such information. To compound matters, BellSouth's discovery responses, when BellSouth actually provided a response as opposed to merely filing an objection, were largely non-responsive. Supra has contacted BellSouth in an attempt to

discuss such, but has been unable to find a mutually agreeable date to discuss such.

Supra surmises that it will be forced to file a Motion to Compel in short order.

Discovery	Issued	BST Responded	Days Elapsed
Staff's 1 st Set of Interrogatories to BST	5/28/04	6/14/04	17
Staff's 1 st Request for PODs to BST	5/28/04	6/14/04	17
Supra's 1 st Request for Admissions to BST	5/28/04	6/7/04	10
Supra's 1 st Set of Interrogatories to BST	6/2/04	6/14/04	12
Supra's 1 st Request for PODs to BST	6/3/04	6/14/04	11
Supra's 2 nd Set of Ints and PODs to BST	6/25/04	7/13/04	18
Staff's 2 nd Set of Interrogatories to BST	7/7/04	7/26/04	19
Supra's 2 nd Request for Admissions to BST	7/15/04	7/26/04	11
Supra's 3 rd Set of Ints and PODs to BST	7/16/04	7/30/04	14
Supra's 3 rd Request for Admission to BST	7/27/04	No response yet	

The mere fact that Supra issued discovery while simultaneously filing a Motion for Summary Final Judgment indicates nothing other than Supra's intent to move this matter to resolution as quickly as possible. Should this Commission deny Supra's Motion for Summary Final Judgment, Supra must prepare itself for a hearing in this matter. There is no rule or authority, of which Supra is aware or which BellSouth has cited,

which precludes a party from issuing discovery while a motion for summary final order is pending.

WHEREFORE, for all of these reasons set forth hereinabove, Supra requests that the Commission deny BellSouth's Emergency Motion to Suspend Proceedings or Motion for Extension of Time and order BellSouth to immediately respond.

Respectfully submitted this 6th day of August 2004.

By: Brian Chaiken/CHS
BRIAN CHAIKEN, ESQ.
FBN: 0118060

SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC.
2620 S.W. 27th Avenue
Miami, Florida 33133
Telephone: (305) 476-4248
Facsimile: (305) 443-1078