

ORIGINAL

Kay Flynn

From: Slaughter, Brenda [Brenda.Slaughter@BELLSOUTH.COM]
Sent: Monday, November 29, 2004 4:47 PM
To: Filings@psc.state.fl.us
Cc: Edenfield, Kip; Nancy Sims; Holland, Robyn P; Bixler, Micheale; Linda Hobbs; Fatool, Vicki; Jason Rojas; Jeremy Susac; Ann Shelfer; Brian Chaiken; Smith, Debbie N.
Subject: Docket 040301-TP
Importance: High

A. Brenda Slaughter
 Legal Secretary for E. Earl Edenfield, Jr.
 BellSouth Telecommunications, Inc.
 c/o Nancy Sims
 150 South Monroe, Rm. 400
 Tallahassee, FL 32301-1558
 (404) 335-0714
 brenda.slaughter@bellsouth.com

B. Docket No. 040301-TP: In Re: Petition of Supra Telecommunications and Information Systems, Inc. for arbitration with BellSouth Telecommunications, Inc.

C. BellSouth Telecommunications, Inc.
 on behalf of E. Earl Edenfield, Jr.

D. 10 pages total in PDF format

E. BellSouth Telecommunications, Inc. Emergency Motion for Continuance.

<<040301 Emergency Motion for Continuance.pdf>>

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

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ORIGINAL

Legal Department

E. EARL EDENFIELD, JR.
Senior Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
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(404) 335-0763

November 29, 2004

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

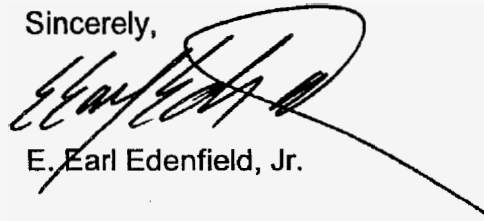
**Re: Docket No.: 040301-TP
Petition of Supra Telecommunications and Information Systems, Inc. for
Arbitration with BellSouth Telecommunications, Inc.**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Emergency Motion For
Continuance, 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,



E. Earl Edenfield, Jr.

Enclosure

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

DOCUMENT NUMBER-DATE

12648 NOV 29 04

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
Docket No. 040301-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and U.S. Mail this 29th day of November, 2004 to the following:

Jason Rojas
Jeremy Susac
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Ann H. Shelfer
Supra Telecommunications &
Information Systems, Inc.
Koger Center – Ellis Building
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Suite 220
Tallahassee, FL 32301-5067
Tel. No. (850) 402-0510
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ashelfer@stis.com

Brian Chaiken (+)
Supra Telecommunications &
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To receive discovery related material only

John Duffey
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Markets & Enforcement
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jduffey@psc.state.fl.us



E. Earl Edenfield, Jr

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra)
Telecommunications and Information)
Systems, Inc. for arbitration)
With BellSouth Telecommunications, Inc.)

Docket No. 040301-TP

Filed: November 29, 2004

BELLSOUTH'S EMERGENCY MOTION FOR CONTINUANCE

BellSouth Telecommunications, Inc. ("BellSouth") files this Emergency Motion for Continuance ("Emergency Motion") and says:

1. This matter is currently set for a two-day hearing beginning on Wednesday, December 1, 2004.
2. It has just come to BellSouth's attention that a coalition of CLECs has petitioned¹ the Commission to establish a generic docket to consider the rates, terms and conditions for the conversion of UNE-P, Resale and retail circuits to UNE-L.
3. As the Florida Public Service Commission ("Commission") is well aware, Issues 3 and 4 of this proceeding between BellSouth and Supra Telecommunications and Information Systems, Inc. ("Supra") involve the exact same issues surrounding the rates for conversions to UNE-L.
4. Clearly, the only distinguishing factors between the CLECs' Joint Petition and this case are Issues 1 and 2. For all practical purposes, however, Issues 1 and 2 are no longer relevant in this proceeding as Supra has waived and released any claims for past due amounts (if any) and agreed to dismiss Issues 1 and 2 after the hearing. The Second Amended Disclosure Statement

¹ See, Joint Petition for Generic Proceeding to Set Rates, Terms, and Conditions for Hot Cuts in the BellSouth Telecommunications, Inc. Service Area (hereinafter "Joint Petition"), filed on November 23, 2004 in Docket No. 041338-TP.

Relating to Plan of Reorganization by Supra Telecommunications and Information Systems, Inc.
provides that:

(v) In connection with the FPSC hearing known as *In re: Petition of Supra Telecommunications and Information Systems, Inc. for arbitration with BellSouth Telecommunications, Inc.*; FPSC; Docket No. 040301-TP (the "Hot Cut Claim"), the Company and the Purchaser agree that in the event that the hearings in the hot cut litigation on December 2, 2004, or any other, subsequent FPSC proceeding (including but not limited to a subsequent generic docket) results in the setting of a hot cut rate for the Company, the market in general, or otherwise, that varies from the rate now in effect for the Company, such new hot cut rate will have a prospective effect only (taking effect from and after the effective date set for such new rate), and the Company and reorganized Company will waive, release and satisfy any and all claims to a refund, credit or sanction against BellSouth in any forum in respect of hot cuts performed before the effective date of such new hot cut rate. ***Neither the Company nor the reorganized Company will obtain any ruling with respect to counts 1 and 2 set forth in the Hot Cut Claim, and prior to any judgment being issued, the Company or the reorganized Company and BellSouth will announce to the FPSC that they have reached a settlement and no order shall be entered on such counts.***² (Emphasis added)

5. By proceeding with this hearing as scheduled, the Commission will be vesting time and resources in two issues that will be withdrawn prior to any decision being made (notwithstanding that time and effort). The only issues that will be left for ultimate consideration will be the same issues in which other CLECs have now expressed an interest vis-à-vis the Joint Petition.

6. Thus, the Commission now finds itself in a situation where it can either: (1) go forward with this proceeding as scheduled, which will effectively preclude the participation of other CLECs in any decision regarding rates for UNE-L conversions, or; (2) continue this proceeding so that a decision can be made as to whether the Commission's resources and due process can best be served by having a single proceeding to address the rates for conversions to UNE-L.³

² Second Amended Disclosure Statement Relating to Plan of Reorganization by Supra Telecommunications and Information Systems, Inc. at Footnote 28, subsection (v), a copy of which is attached hereto as Exhibit A.

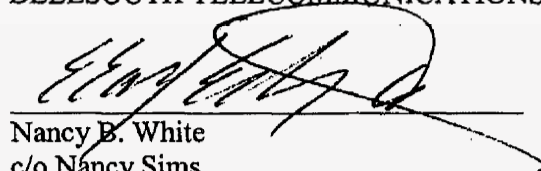
³ This very quandary was recognized by the CLECs in paragraph 18 of their Joint Petition.

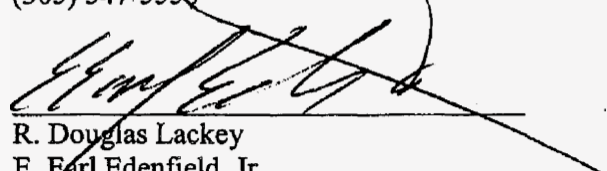
7. BellSouth has spoken to counsel for Supra, who advised that Supra does not agree to this Emergency Motion.

WHEREFORE, BellSouth respectfully requests that the Pre-Hearing Officer convene an emergency telephonic hearing today and rule that this proceeding be continued until a determination can be reached as to whether the conversion issue is best considered on a generic basis in which all CLECs can participate.

Respectfully submitted this 29th day of November 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.


Nancy B. White
c/o Nancy Sims
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301
(305) 347-5558


R. Douglas Lackey
E. Earl Edenfield, Jr.
BellSouth Center – Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375
(404) 335-0763

560551

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In re:

Case No. 02-41250-BKC-RAM

SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.,

Chapter 11

Debtor.

**SECOND AMENDED DISCLOSURE STATEMENT RELATING
TO PLAN OF REORGANIZATION BY
SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.**

Dated: November 22, 2004

Kevin S. Neiman, Esq.
LAW OFFICES OF KEVIN S. NEIMAN, LLC
Co-Counsel for the Debtor
Museum Tower
150 West Flagler Street, Penthouse
Miami, FL 33130
Telephone No.: 305.374.0065

-and-

Michael S. Budwick, Esq.
Peter D. Russin, Esq.
MELAND RUSSIN HELLINGER & BUDWICK P.A.
Co-Counsel for the Debtor
3000 Wachovia Financial Center
200 South Biscayne Blvd.
Miami, FL 33131
Telephone No.: 305.358.6363

prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor.

8. Expedited Tax Determinations.

The Reorganized Debtor may request an expedited determination of taxes under § 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, such Reorganized Debtor for all taxable periods through the Effective Date.

9. Causes of Action and Preserved Claims.

Unless as otherwise expressly provided in the Plan or the Confirmation Order, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights or Causes of Action that the Debtor may have or which the Estate Representative may choose to assert on behalf of the Estate under any provision of the Bankruptcy Code or any applicable non-bankruptcy law, including, without limitation, (i) Causes of Action against any Person; (ii) the turnover of any property of the Estate; and (iii) Causes of Action against current or former directors, officers, professionals, agents, financial advisors, underwriters, lenders, or auditors relating to acts or omissions occurring prior to or after the Petition Date.

Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or equitable defense that the Debtor had immediately prior to the Petition Date, against or with respect to any Claim left unimpaired by the Plan. The Estate Representative, or the Debtor, or Reorganized Debtor, as the case may be, shall have, retain, reserve, and be entitled to assert all such Claims, Causes of Action, rights of setoff, and other legal or equitable defenses which it had immediately prior to the Petition Date fully as if the Chapter 11 Case had not been commenced, and all the Reorganized Debtor's legal and equitable rights respecting any Claim left unimpaired by the Plan may be asserted after the Effective Date to the same extent as if the Chapter 11 Case had not been commenced.

Notwithstanding the Final Purchaser's purchase of all of the issued and outstanding capital stock of the Debtor, there shall be excluded from the Final Purchaser's acquisition as provided for herein, and the Reorganized Debtor shall not retain any of the Excluded Assets,²⁸ all

²⁸ **Excluded Assets** is defined in the Final Purchase Agreement (in § 7.1) to be (using terms defined in the Final Purchase Agreement):

(i) any and all rights, claims, credits, allowances, rebates, causes of action, known or unknown, pending or threatened (including all causes of action arising under Sections 506, 510, 542 through 551, inclusive, and 553 of the Bankruptcy Code or under similar state Laws, including preferences and fraudulent conveyance claims, and all other causes of action of a trustee and debtor-in-possession under the Bankruptcy Code) or rights of set-off (collectively, "Claims"), of the Company and the Subsidiaries, including Claims arising out of or relating to in any way to the Bankruptcy Case, or any of the transactions contemplated thereby or entered into as a consequence

of which shall be retained and preserved in the Estate following the Closing, and shall be administered by and be subject to the discretion and control of the Plan Administrator of the Debtor pursuant to the Plan, provided further that all Supra Preserved Claims²⁹ shall also be

thereof, including any claims (as defined in Section 101(5) of the Bankruptcy Code) filed, scheduled or otherwise ending in the Bankruptcy Case, and proceeds thereof whether by settlement or judgment, and whether obtained prior to, on or after the Closing Date and which shall include, with respect to officers, directors and their Affiliates of the Company and its Subsidiaries, accounts receivable, notes receivable, contract rights, rights to payment, and claims and causes of action of any kind or nature, provided that, the Company's rights to pursue the Retained Asset Claims shall be included as Assets; and

(ii) any and all rights of the Company or the Debtor against the Purchaser arising under this Agreement or any of the other Transaction Documents, including the Purchase Price, when paid at Closing; and

(iii) the Company's rights and benefits relating to insurance coverages with respect to events occurring at or prior to Closing, including but not limited to claims under liability insurance and Directors' and Officers' insurance coverages, other than any insurance coverage claims for any damages incurred to the Assets or business interruption claims, all of which shall be included in the Assets; and

(iv) all of the Company's rights and claims of any nature against Mr. K. Ramos; and

(v) to the extent not otherwise set forth above, the Supra Preserved Claims.

²⁹ Supra Preserved Claims is defined in the Final Purchase Agreement (in § 4.2), and qualified by the definition in the Plan, to be essentially all litigation and bankruptcy claims except for the Retained Asset Claims. Retained Asset Claims is defined in the Final Purchase Agreement (in § 4.2 as well) to be (using terms defined in the Final Purchase Agreement):

(i) All rights relating to True Up III and subsequent true ups on billing statements shall be retained by the Company and included in the Assets at the Closing.

(ii) All contract based claims under contracts listed on the Assumption List will be assigned to the Company and included in the Assets at the Closing, and all bankruptcy and non-contract based claims relating to the contracts listed on the Assumption List and otherwise, shall be retained by the Company's estate in bankruptcy after the Closing and be subject to the discretion and control of BellSouth, as the Estate Representative, following the Closing.

(iii) All rights against third parties for warranty and other claims relating to the Assets will be retained by the Company and included in the Assets at the Closing.

(iv) In connection with the FPSC hearing known as *In re: Petition of Supra Telecommunications and Information Systems, Inc. to Review and Cancel BellSouth's Promotional Offering Tariffs Offered in Conjunction with its New Flat Rate Service known as the Preferred Pack Plan*; FPSC; Docket No. 040353-TP (the "Preferred Pack Claim"), the Preferred Pack Claim will be assigned to the reorganized Company at the Effective Date and will be dismissed without prejudice immediately thereafter. If the Closing is extended past December 30, 2004, in accordance with the provisions of this Agreement, then the Company will take whatever action is appropriate to cause any proceedings in this litigation to be deferred until after the Effective Date (at which time it will be dismissed without prejudice for not less than 180 days). BellSouth will not assert or interpose a defense in any subsequent action alleging that it has been negatively impacted by the dismissal and refile of the Preferred Pack Claim. The parties agree that (i) they will execute any tolling agreement if necessary in connection with any statute of limitations, and (ii) all work product and other materials (such as deposition transcripts or discovery) will

retained and preserved in Estate, and shall be administered by and be subject to the discretion and control of BellSouth, as Estate Representative. The Supra Preserved Claims shall be (i) retained and preserved for the benefit of holders of Allowed General Unsecured Claims; (ii) subject to the discretion and control of BellSouth, as Estate Representative; and (iii) free and clear of any rights or claims of the Reorganized Debtor, the Final Purchaser and HIG. The Supra Preserved Claims may be prosecuted, settled or released by BellSouth, in its discretion, and the net proceeds thereof (after BellSouth first recovers from proceeds all of its legal and other fees and expenses incurred in connection with such prosecution prior to receipt of such proceeds, or retains a reasonable reserve against future fees and expenses) shall be applied in accordance with the Plan. All such settlements shall be subject the settlement standards imposed by Bankruptcy Rule 9019 and the standards set forth in *In Re Justice Oaks II, Ltd.*, 898 F. 2d 1544, 1549 (11th Cir 1990), *cert. den.*, 498 U.S. 959, 1126 L. Ed. 2d 398, 111 S.Ct. 389 (1990).³⁰

The Debtor and the Committee do not have an opinion on the amount of recoveries to be generated with respect to the Supra Preserved Claims, the amount of reasonable fees and costs that may be incurred, or whether recoveries will be sufficient to generate all or part of the additional \$300,000 for Distribution to holders of Allowed Claims in Classes 6, 8, 9, and 10. Further, the Debtor and the Committee do not have an opinion on the value of the other Excluded Assets.

To the best of the Debtor's knowledge, the Claims arising out of the Excluded Assets, including the Supra Preserved Claims (as well as the Hot Cut Order (defined herein), and the Retained Asset Claims, constitute all the Claims that the Debtor could assert against any Person arising during the Pre-Effective Period. The Claims arising out of the Excluded Assets, including the Supra Preserved Claims (as well as the Hot Cut Order (defined herein), are the sole Claims that the Debtor is either (i) releasing BellSouth from individually, or (ii) permitting BellSouth to pursue as Estate Representative and Plan Administrator.

be available for use in any subsequent proceedings regarding the same Preferred Pack Claim, subject to any evidentiary objections of the parties, none of which shall be deemed waived by the provisions of this Agreement.

(v) In connection with the FPSC hearing known as *In re: Petition of Supra Telecommunications and Information Systems, Inc. for arbitration with BellSouth Telecommunications, Inc.*; FPSC; Docket No. 040301-TP (the "Hot Cut Claim"), the Company and the Purchaser agree that in the event that the hearings in the hot cut litigation on December 2, 2004, or any other, subsequent FPSC proceeding (including but not limited to a subsequent generic docket) results in the setting of a hot cut rate for the Company, the market in general, or otherwise, that varies from the rate now in effect for the Company, such new hot cut rate will have a prospective effect only (taking effect from and after the effective date set for such new rate), and the Company and reorganized Company will waive, release and satisfy any and all claims to a refund, credit or sanction against BellSouth in any forum in respect of hot cuts performed before the effective date of such new hot cut rate. Neither the Company nor the reorganized Company will obtain any ruling with respect to counts 1 and 2 set forth in the Hot Cut Claim, and prior to any judgment being issued, the Company or the reorganized Company and BellSouth will announce to the FPSC that they have reached a settlement and no order shall be entered on such counts.

³⁰ A list of Persons already subject to pending lawsuits in Exhibit 4 hereto, and a list of Persons subject to tolling agreements is Exhibit 5 hereto.