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March 6, 1998

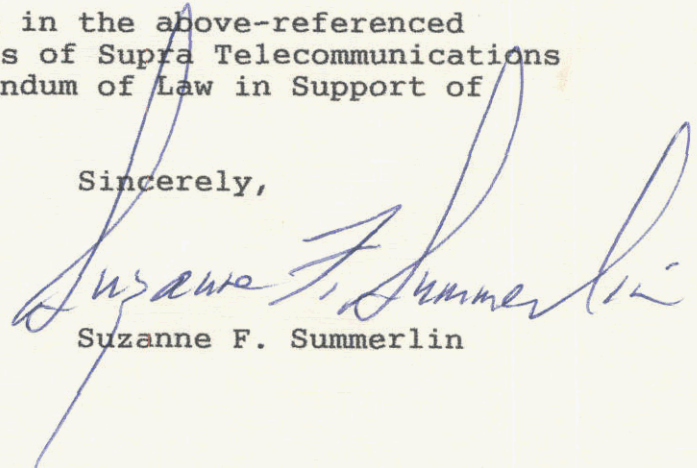
Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RE: Docket No. 980119-TP - Complaint of Supra  
Telecommunications & Information Systems, Inc., Against  
BellSouth Telecommunications, Inc.

Dear Ms. Bayo:

Please find enclosed for filing in the above-referenced  
docket an original and fifteen copies of Supra Telecommunications  
& Information Systems, Inc.'s Memorandum of Law in Support of  
Specific Issues.

Sincerely,



Suzanne F. Summerlin

ACK SFS:ss  
AFA Enclosures (16)  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU Suriani  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
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DOCUMENT NUMBER-DATE

02946 MAR -6 88

FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Supra Telecommunications ) Docket No. 980119-TP  
and Information Systems, Inc., Against )  
BellSouth Telecommunications, Inc. ) Filed: March 6, 1998  
\_\_\_\_\_ )

MEMORANDUM OF LAW IN SUPPORT OF SPECIFIC ISSUES  
BY SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

Supra Telecommunications and Information Systems, Inc., ("Supra") submits this Memorandum of Law to the Prehearing Officer in support of the inclusion of specific issues in this docket. Although the parties and staff reached agreement on the majority of the issues to be addressed in this proceeding, seven out of eleven issues, the parties and staff were unable to come to an agreement on the inclusion of four specific issues, identified as Issues 1, 2, 3, and 6, in this docket. Therefore, staff recommended that the parties submit argument in support of their respective positions on the inclusion of these issues by this date.

The Commission is legally required to grant Supra a hearing to address Issues 1, 2, 3, and 6. This hearing may be held in *this* proceeding or in the proceeding in Docket No. 980155-TP, in which the Commission is addressing Supra's Petition for a Generic Proceeding or, in the Alternative, for Arbitration of its Interconnection Agreement with BellSouth. If the Commission sets a hearing on Supra's Petition in Docket No. 980155-TP, Supra will be satisfied to address these four issues in that proceeding. However, BellSouth has filed a Motion to Dismiss Supra's Petition

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in Docket No. 980155-TP and until and unless the Commission grants Supra a hearing on that Petition, Supra believes it is essential to identify these issues to be addressed in this proceeding. Issues 1, 2, and 3 are addressed in Section I below. Issue 6 is addressed in Section II below.

I. ISSUES 1, 2, AND 3

- ISSUE 1: Has BellSouth Telecommunications, Inc., violated the provisions of the Telecommunications Act of 1996 by failing to negotiate in good faith the terms, conditions, and rates of the Resale, Collocation, and Interconnection Agreements it has entered into with Supra Telecommunications & Information Systems, Inc.?
- ISSUE 2: Has BellSouth violated the Telecommunications Act by entering into agreements with Supra and/or interpreting the agreements it has entered into with Supra such that Supra has not been provided interconnection on terms that are just, reasonable and nondiscriminatory?
- ISSUE 3: Has BellSouth violated the Telecommunications Act by failing to give Supra access to all unbundled network elements that is at least equal in quality to that provided to BellSouth, any BellSouth subsidiary or affiliate, or any other carrier?

The Telecommunications Act of 1996 created duties and obligations on the part of incumbent local exchange carriers and rights for alternative local exchange carriers (ALECs), as well as the authority for state commissions to oversee the implementation and performance of such duties and obligations.

BellSouth will argue that the only authority this Commission has is to resolve disputes regarding the implementation of the current agreements BellSouth has with ALECs or to arbitrate the rates, terms, and conditions of agreements if an ALEC comes to

this Commission on the right day (after waiting 135 days, but before the 160th day, after asking BellSouth to negotiate).

Supra asserts that the Commission has broader and more fundamental authority pursuant to the Telecommunications Act. For example, Section 252(e) provides for approval by state commissions of interconnection agreements entered into by negotiation or arbitration and states as follows:

(2) Grounds for Rejection.--The State commission may only reject--

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that--

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

**(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or**

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

The provision in bold above, Section 252(e)(2)(A)(ii) of the Act, gives the state commissions the authority to disapprove an interconnection agreement that has presumably been entered into after negotiation if it finds that the implementation of such agreement is not consistent with the public interest. It is not in the public interest to implement interconnection agreements entered into when the incumbent local exchange carrier has refused to negotiate in good faith (whether such refusal is communicated by stating that previous arbitration proceedings have determined the rates that will be included in any agreement

or in another fashion). It is not in the public interest to implement interconnection agreements that contain provisions that do not provide all necessary terms and conditions and/or are not interpreted by the incumbent local exchange carrier to require the provision of the requirements set forth in Section 251 of the Act. It is not in the public interest to implement interconnection agreements that contain rates that make it prohibitive for an ALEC to provide local telephone service.

The essential point of Section 252(e) is that state commissions have the necessary authority to implement the intention of the Telecommunications Act which is to effectuate competition in the provision of local exchange telephone service. Therefore, the Commission has the authority (and the obligation) to consider the four issues that Supra has raised in this proceeding.

If it is otherwise, BellSouth could simply meet endlessly with ALECs for four and one-half months or send letters putting off meetings until the 135th day and still technically have fulfilled the timeline requirements of the Act, all the while indicating no good faith intention to negotiate rates, terms, and conditions beyond what they have been forced to accept as a result of previous arbitration proceedings before the Commission. The U.S. Congress passed the Act to implement competition in the provision of local telephone service, delegating to the state commissions the authority to oversee such implementation. Such a strict constructionist reading of the Act by the state

commissions would turn the law into a farce. Issues 1, 2, and 3 above go to the fundamental duties set out in the Telecommunications Act for the incumbent local exchange carrier: the duty to negotiate with other carriers in good faith; the duty to enter into agreements that provide interconnection on terms that are just, reasonable, and nondiscriminatory; and the duty to provide access to unbundled network elements that is at least equal to that provided to the incumbent local exchange carrier or any other carrier. Supra's Complaint alleges violations of each of these duties.

BellSouth's argument that these issues are not appropriate for this proceeding is that there is no "fix" for these violations, no matter how flagrant, except arbitration. BellSouth then argues a competitor cannot even ask for arbitration if it has not followed the precise requirements of the Act, sending the appropriate request in writing and then waiting four and one-half months. And even then, arbitration is only available to the competitor who can afford to wait the required four and one-half months and the tremendously expensive process of arbitration before the Commission *prior* to being able to begin operation.

BellSouth's interpretation of the Act provides a very neat and tidy bulwark against any local service competition. These requirements to wait four and one-half months in the face of an incumbent local exchange carrier's articulated and demonstrated lack of intention to negotiate and to bear the substantial

expense of an arbitration proceeding before having any disputed issues resolved are known as "barriers to entry." If BellSouth is permitted to prevail on the notion that Supra cannot raise these issues in this proceeding nor can Supra have arbitration in the proceeding in Docket No. 980155-TP, BellSouth has basically been permitted to flagrantly violate the Telecommunications Act without any opportunity for redress provided to Supra. More fundamentally, BellSouth has succeeded in securing its ability to make all competitors have to overcome these barriers to entry into competition in the local telephone service market.

## II. ISSUE 6

ISSUE 6: Is BellSouth required to resell its billing service to Supra?

The issue of whether BellSouth is required to resell its billing service to Supra is of enormous significance to Supra. Indeed, the resale of the billing function was instrumental in the development of competition in the long distance market because new competitors who owned neither a network nor billing apparatus were able to enter into the market and subsequently build their own networks and billing capabilities.

BellSouth apparently takes the position that it is not required to resell its billing service because it is not a telecommunications service because BellSouth does not provide "billing" as a retail service to its customers. Supra contests this notion. BellSouth charges customers for customized billing that gives more detailed information on charges for particular telephone services. More basically, BellSouth charges all

residential and business customers for the billing services provided them as a component of the overhead within the charges for individual types of telecommunications services.

Supra has never been given an opportunity in any proceeding to make its case that BellSouth's billing service is either an unbundled network element to which Supra is entitled to equivalent access or that BellSouth's billing service is, in fact, a retail service which the Act requires BellSouth to resell. Whether the Commission finds that BellSouth's billing service is an unbundled network element or that it is a retail service, BellSouth must be required to resell its billing because BellSouth has demonstrated that it cannot give Supra the nondiscriminatory access to the billing function and information required under the Act such that Supra can provide comparable service. Supra has a right to the opportunity to put on its case to support these allegations which go to both the implementation of the current agreements it has with BellSouth and the need to modify these agreements.



Supra urges the Prehearing Officer to find that these four issues are appropriate to be addressed in this proceeding (with the recognition that, if a hearing is held in Docket No. 980155-TP, that proceeding would be more appropriate for these issues). Supra also requests oral argument before the Prehearing Officer prior to these issues being excluded from this proceeding.

Respectfully submitted this 6th day of March, 1998.

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Florida Bar No. 398586

Attorney for Supra Telecommunications  
& Information Systems, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum of Law in Support of Specific Issues of Supra Telecommunications & Information Systems, Inc., was furnished by U.S. Mail or hand delivery(\*) to the following individuals this 6th day of March, 1998:

Nancy White, Esquire  
BellSouth Telecommunications, Inc.  
150 S. Monroe St., Ste. 400  
Tallahassee, Florida 32301

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Division of Legal Services  
Florida Public Service Commission  
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& Information Systems, Inc.