

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Complaint of Supra
Telecommunications and Information
Systems, Inc., Against BellSouth
Telecommunications, Inc.

) Docket No. 980119-TP

Petition for Emergency Relief of Supra
Telecommunications and Information
Systems, Inc., Against BellSouth
Telecommunications, Inc.

) Docket No. 980800-TP

) Filed: September 21, 1998

RECORDS AND
REPORTING

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SUPRA'S RESPONSE TO BELLSOUTH'S OPPOSITION TO
SUPRA'S MOTION TO DISMISS AND MOTION TO STRIKE

AND

SUPRA'S RESPONSE TO BELLSOUTH'S MOTION TO
STRIKE SUPRA'S MOTIONS AND MOTION FOR SANCTIONS

AND

SUPRA'S MOTION TO FILE RESPONSE OUT OF TIME

Supra Telecommunications and Information Systems, Inc. ("Supra"), by and through its undersigned counsel, hereby files its Response to BellSouth Telecommunications, Inc.'s ("BellSouth's") Opposition to Supra's Motion to Dismiss and Motion to Strike for Misconduct and BellSouth's Motion to Strike Supra's Motions and

ACK _____
AFA _____ Motion for Sanctions, as well as its Motion to File Response Out of Time, and as
APP _____ grounds therefor states:

CAF _____
CIAM _____ 1. Supra's Motion to Dismiss and Motion to Strike for Misconduct in the
CTR _____ above-referenced dockets includes a request for sanctions against
EAG _____ BellSouth.

LEG 1 _____
LIN 3 _____ 2. BellSouth's Opposition to Supra's Motions includes a Motion for
OPC _____ Sanctions. Although it is unnecessary for Supra to file a response to

RCH _____
SEC 1 _____
WAS _____
WFL _____

BellSouth's Motion for Sanctions as BellSouth's Motion is in actuality a response to Supra's initial motion, Supra requests that the Commission consider this Response.

3. Based on BellSouth's filing and hand delivery of its Motion for Sanctions on September 10, 1998, Supra's Response would have been due September 17, 1998. However, both Supra and BellSouth have had numerous activities and deadlines related to Docket No. 980800-TP, including a walk-through of two central offices on September 16, 1998, the issuance of interrogatories and requests for production of documents, the filing of rebuttal testimony and the filing of prehearing statements. For this reason, Supra was not able to file this Response prior to this date. Supra respectfully requests the Commission to consider this Response.
4. In paragraph 3, BellSouth admits the fundamental facts of this situation. However, BellSouth does not acknowledge that not only was this staff person "active" in these dockets, but that she was the primary and most senior staff person in these dockets. BellSouth then goes on to state that the real issue is whether BellSouth had any "intent" to influence the outcome of these proceedings. Supra's position is that it is completely unnecessary for Supra or the Commission to address any issue of "intent," in a situation that is so plainly, on its face, abusive of the process. If BellSouth had no "intent" to influence the outcome of these dockets, it is enough that BellSouth took actions that clearly suggest such "intent." To suggest that BellSouth did not take such an effect into account is to suggest that BellSouth is completely oblivious and this is simply not credible. BellSouth does not even "consider" the effect of its actions on

proceedings in which it is involved before the Commission? To attach an affidavit from an individual who is simply a regulatory liaison employee of BellSouth in an attempt to indicate that this corporation had no "intent" to influence these dockets is astoundingly inadequate in view of the facts of this situation.

5. In paragraph 7, BellSouth first says "Supra's Motions should be denied as a sham pleading pursuant to Rule 1.150, Fla.R.Civ.P." Then BellSouth states, "While the striking of pleadings is not favored, Supra's Motions are not pleadings." BellSouth cannot seem to make up its mind whether Supra's motions are pleadings or not. BellSouth goes on to state that ". . . Supra knew that the complained of conduct was both lawful and proper." Supra most vehemently contests this statement. Supra does not consider the complained of conduct as lawful and proper. Supra very definitely considers the complained of conduct to be illegal, improper and very serious.
6. BellSouth's entire response to Supra's Motions, including BellSouth's Motion for Sanctions, is based on BellSouth's basic position that Section 112.313(9), Florida Statutes, gives BellSouth the authority to hire the Commission staff person that Supra has complained about. BellSouth is under the mistaken impression that Section 112.313(9), Florida Statutes, gives **BellSouth** any type of authority. Section 112.313(9), Florida Statutes, simply exempts certain staff persons, those employed by the Commission on December 31, 1994, from the prohibition set out in Section 112.313(9)(a)4, Florida Statutes, against a Commission staff

person representing an entity before the Commission for two years after leaving the Commission's employment.

7. BellSouth is fundamentally wrong. Section 112.313(9), Florida Statutes, does not authorize or even address **BellSouth's** actions in this matter. This statutory provision is addressed to post-employment restrictions for a Commission employee. Pursuant to Section 112.313(9)(a)6c, Florida Statutes, the individual Commission staff person involved in this matter is exempt from the prohibition contained in Section 112.313(9)(a)4, Florida Statutes. There is no language in Section 112.313, Florida Statutes, addressing the legality or propriety of a party involved in a Section 120.57(1), Florida Statutes, proceeding before the Florida Public Service Commission offering a position to a Commission staff person assigned to that proceeding.
8. BellSouth attempts to accuse Supra of impugning the individual Commission staff person involved and the Commission. Nothing could be further from the truth and the statements made in Supra's Motions make that very clear. Supra stated that the Commission staff person involved has done nothing wrong. Supra also stated that this issue has nothing to do with any actions of the Commission or with other Commission staff persons not being capable and intelligent and of good character. BellSouth is simply trying to avoid the scrutiny of its actions in this matter by accusing Supra of criticizing the Commission, the individual Commission staff person involved, or the other Commission staff.
9. BellSouth's arguments seem to contend that Commission staff persons are fungible creatures and that one staff person is no different from

another. It is hard to figure how BellSouth can accuse Supra of criticizing the Commission staff when BellSouth itself seems to have so little regard for the individuality of Commission staff persons. The very existence of Section 112.313(9)(a)4, Florida Statutes, speaks to the power of an individual former Commission staff person in representing an entity before the Commission. The Commission's own policy of removing staff persons once an offer of employment has been made also speaks to the importance of the individual staff persons and the importance of avoiding the appearance of impropriety.

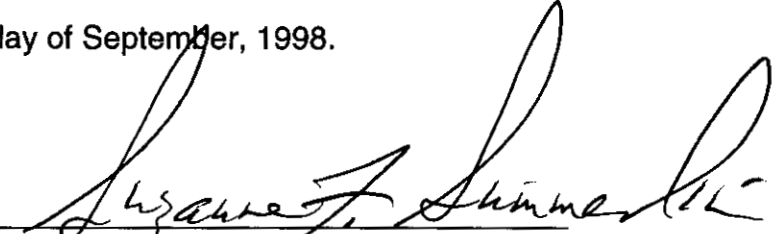
10. BellSouth's request for sanctions and striking of pleadings all flows from BellSouth's argument that Section 112.313(9), Florida Statutes, gives BellSouth authority to do what it has done in this case. BellSouth's requests also flow from BellSouth's contention that there is no "shred of legal basis" for Supra's motions. This is absolutely incorrect. Supra cited both the U.S. Constitution's and the Florida Constitution's provisions that Supra is entitled to "due process of law" in any legal proceeding. "Due process of law" means a fair and impartial hearing process. At an administrative agency, the fair and impartial hearing process is necessarily tied to the role of the staff. The Commission cannot function but by and through its staff. The Commission relies on its staff to investigate and analyze the information and evidence presented in any proceeding. The Commission relies on the staff to make recommendations regarding the action the Commission should take. The Commission relies on the staff to assist it in "testing the evidence" presented. The Commission has recognized this in its adoption of the policy of removing a staff person from

a docket once an offer of employment has been made. However, this policy does not address the harm that is experienced by the remaining party or parties to a proceeding when an individual staff person is removed from a docket. It most especially does not address the potential for abuse of the process by the party making such an offer of employment. As the Commission staff person in charge of these two dockets and as the staff person most knowledgeable and experienced on these two dockets and, therefore, the staff person most able to support and advocate the staff's position on the issues, the Commission staff person hired by BellSouth was critical to the outcome of these two dockets. This statement does not presuppose that the Commission will "blindly vote in favor of BellSouth" as a result of this staff person's removal, but that is not an argument that expunges or is even relevant to BellSouth's wrongdoing in this matter.

11. Due to the facts and circumstances in these two dockets and the role of the Commission staff person hired by BellSouth, Supra believes the Commission has no choice but to recognize that BellSouth has acted illegally and in abuse of the Commission's process.

Wherefore, Supra respectfully requests the Commission to grant its Motion for Leave to File Response Out of Time, Supra's Motion to Dismiss BellSouth's Motion for Reconsideration in Docket No. 980119-TP, Supra's Motion to Strike BellSouth's Answer in Docket No. 980800-TP for Misconduct, Supra's request that the Commission limit the role of the Commission staff person hired by BellSouth, and Supra's request that the Commission deny BellSouth's Motion for Sanctions against Supra.

Respectfully submitted, this 21st day of September, 1998.



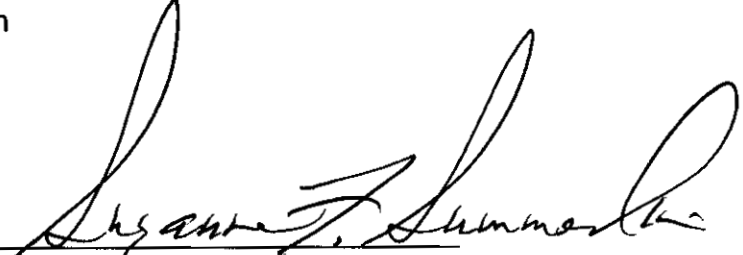
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was
furnished by hand delivery to the following individuals this 21st day of
September, 1998:

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