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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Supra Telecommunications & Information Systems against BellSouth Telecommunications, Inc. for violation of the Telecommunications Act of 1996; petition for resolution of disputes as to implementation and interpretation of interconnection, resale and collocation agreements; petition for emergency relief.

Docket No.: 980119-TP

Dated: February 25, 2000

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S MOTION FOR RECONSIDERATION OF ORDER NO. PSC-00-0288-PCO-TP REGARDING BELL SOUTH'S NOTICE OF COMPLIANCE

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra Telecom"), by and through its undersigned counsel and pursuant to and pursuant to Rule 25-22.060, Florida Administrative Code, hereby files this Motion for Reconsideration of this Commission's Order No. PSC-00-0288-PCO-TP, and in support thereof states as follows:

I. PROCEDURAL BACKGROUND

1. On or about January 23, 1998, Supra Telecom filed a complaint against BellSouth seeking an interpretation of certain agreements between the parties and alleging that BellSouth had failed to comply with certain aspects of the parties' interconnect, collocation and resale agreements. On or about April 30, 1998, a hearing was held before this Commission regarding Supra Telecom's complaint. On or about July 22, 1998, this Commission issued a final order on Supra Telecom's complaint in Order No. PSC-98-1001-FOF-TP, for which the parties moved for reconsideration and/or clarification, which was granted in part in Order No. PSC-98-1467-FOF-TP, which required in part that BellSouth modify LENS to provide for the same online edit checking capability available to BellSouth's retail ordering systems by December 31, 1998.

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2. This Commission's Order No. PSC-98-1001-FOF-TP also required BellSouth to provide Supra Telecom with certain documentation, including documentation on which USOCs were discounted and not discounted.

3. BellSouth made no effort to comply with the online edit checking capability requirement. Indeed on February 1, 1999, BellSouth filed a Response To Notice Of Supra Telecommunications And Information Systems, Inc., in which on page 2 (at paragraph 5) BellSouth claims that: "With the exception of the online edit checking capability (which is on appeal), BellSouth has complied with the Orders."

4. Despite the fact that nothing changed since February 1, 1999 with respect to BellSouth providing online edit checking capability, in April 1999 BellSouth filed a Notice of Compliance which is the subject of the instance Staff Recommendation.

5. BellSouth's Notice of Compliance was not a motion or petition under the applicable rules of procedure. Nevertheless, the Notice of Compliance requested an evidentiary hearing to resolve BellSouth's alleged compliance with the online edit checking capability and other mandates of the Commission's prior orders in this docket. On or about May 3, 1999, Supra Telecom served and subsequently filed a response to BellSouth's Notice of Compliance in which Supra Telecom asked this Commission not to render a ruling on BellSouth's Notice of Compliance, or in the alternative to conduct an evidentiary hearing on the matter.

6. To date, BellSouth has submitted no evidence in support of its Notice of Compliance, rather solely providing unsworn statements of its counsel to the Commission staff. To date, only Supra Telecom has submitted sworn declarations and/or affidavits in support of its position that BellSouth has not complied with this Commission's prior orders.

7. On or about January 20, 2000, Staff issued a recommendation which purports to make factual findings without the benefit of a hearing or the taking of any evidence from BellSouth. The recommendation concluded that with respect to "on-line edit checking capability", BellSouth was technically not in compliance with the Commissions' prior final Orders, that if other potential interfaces such as TAG or RoboTAG were considered, BellSouth might be in compliance, although a hearing would be necessary. With respect to other aspects of the prior Orders, Staff issued a recommendation that based upon a narrow interpretation of the prior Orders, BellSouth had purportedly complied. Of importance to Supra Telecom was the issue of whether or not BellSouth was obligated to provide Supra Telecom updates of the USOCs and whether or not promises in a letter by BellSouth counsel to PLATs information, constituted compliance when such information was previously denied.

8. On or about February 11, 2000, this Commission adopted the Staff recommendation without a hearing or any other opportunity to be heard on the matter. This is of particular importance since BellSouth's Notice of Compliance was not a procedurally proper vehicle and since both Supra Telecom and BellSouth had requested a hearing on the issues raised therein. The Staff recommendation and this Commission's subsequent Order adopting the recommendation was not based upon evidence in the record or discovery, but rather a simple mediation session conducted by Staff. The only discovery allowed in this matter was pursued by Staff which consisted of interrogatories to the parties, which did not even address any of the matters upon which the Staff recommended that BellSouth was in compliance. Therefore, Staff

had no basis to suggest that "it is a close call"<sup>1</sup> with respect to the "on-line edit checking capability" or that BellSouth has complied with the other aspects of the prior final Orders.

9. For the reasons stated above and below, this Commission erred in its Order No. PSC-00-0288-PCO-TP, and should reconsider such Order by either setting the matter for an evidentiary hearing, or by refusing to even address BellSouth's Notice of Compliance and letting the matter be resolved by other procedurally proper means, such as by way of the procedures set forth in Florida Statute § 120.69 or by way of an Order To Show Cause proceeding.

## II. MEMORANDUM OF LAW

The proper standard of review on a motion for reconsideration is whether or not the Commission overlooked or failed to consider a point of fact or law in rendering its order. In re: Complaint of Supra Telecom, 98 FPSC 10, 497, at 510 (October 28, 1998) (Docket No. 980119-TP, Order No. PSC-98-1467-FOF-TP). This standard necessarily includes any mistakes of either fact or law made by the Commission in its order. In re: Investigation of possible overearnings by Sanlando Utilities Corporation in Seminole County, 98 FPSC 9, 214, at 216 (September 1998) (Docket No. 980670-WS, Order No. PSC-98-1238-FOF-WS) ("It is well established in the law that the purpose of reconsideration is to bring to our attention some point that we overlooked or failed to consider or a mistake of fact or law"); see e.g. In re: Fuel and purchase power cost recovery clause and generating performance incentive factor, 98 FPSC 8, 146 at 147 (August 1998) (Docket No. 980001-EI, Order No. PSC-98-1080-FOF-EI) ("FPSC has met the standard for reconsideration by demonstrating that we may have made a mistake of fact or law when we

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<sup>1</sup> See Staff recommendation of 1/20/00 in Docket No. 980119-TP, page 11.

rejected its request for jurisdiction separation of transmission revenues").

In this instance, Supra believes that this Commission erred because the Order allegedly determining BellSouth's compliance was entered without a hearing and without any evidence being provided by BellSouth in support of its position. It is axiomatic that due process at a minimum requires the opportunity to present evidence and have issues decided based upon such evidence. Since Supra Telecom presented un rebutted evidence by way of sworn statements that BellSouth was not in compliance on numerous matters, it was erroneous for the Staff and this Commission to conclude otherwise, particularly without a hearing and without evidence presented by BellSouth on the relevant issues.

In addition to the lack of evidence, this Commission erred in adopting the recommendation of Staff regarding the provision of USOCs. During the original hearing, Supra Telecom argued that it needed to know which USOCs were discounted and which were not in order to properly set up its billing system and bill its customers. This Commission ordered BellSouth to provide Supra Telecom the USOCs so that Supra Telecom could properly bill its customers. Although BellSouth did provide Supra Telecom USOCs, the USOCs provided were old and not updated. Moreover, the USOCs used by BellSouth are constantly being updated with new codes being added every month. The Staff recommendation and this Commission's Order states that BellSouth is in compliance with the prior Order because USOCs were provided, even though it was undisputed that BellSouth refused to provide updates. The purpose of requiring BellSouth to provide USOCs was to enable Supra Telecom to properly bill its customers; refusing to require USOC information to be updated is tantamount to rescinding the original requirement all together. The Staff's conclusion that a new complaint must be filed with the Commission

every month or two to obtain updates of information already determined to be necessary and required by Supra Telecom defies all reason.

Accordingly, for the reasons stated above, this Commission erred as a matter of law in adopting the Staff recommendation and issuing Order No. PSC-00-0288-PCO-TP.

**WHEREFORE**, SUPRA TELECOMMUNICATION & INFORMATION SYSTEMS, INC., respectfully requests that this Commission reconsider its Order No. PSC-00-0288-PCO-TP and either grant a hearing on the matter, or refuse to even consider BellSouth's Notice Of Compliance as being procedurally improper.

Respectfully Submitted this 25th day of February, 2000.

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By: Mark Buechele / us  
MARK E. BUECHELE  
Fla. Bar No. 906700

**CERTIFICATE OF SERVICE**

I HEREBY Certify that a true and correct copy of the foregoing has been furnished by hand-delivery upon NANCY WHITE, ESQ. (Attorney For BellSouth), 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301 and BETH KEATING, ESQ. (FPSC Staff), 2540 Shumard Oak Boulevard, Tallahassee, Florida; and via U.S. Mail on AMANDA GRANT, BellSouth Telecommunications, Inc., Regulatory & External Affairs, 675 West Peachtree Street, N.E., Room 38L64, Atlanta, Georgia 30375; this 25th day of February, 2000.

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