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January 26, 2001

ORIGINAL
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 1 JAN 29 PM 2:36
 RECORDS AND REPORTING

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

Re: FPSC Docket No. 001305; Motion to Dismiss

Dear Ms. Bayo:

Enclosed please find an original and 15 copies of Supra Telecom's Motion to Dismiss, which we ask that you file in the above-referenced matter.

We have enclosed a copy of this letter, and ask that you mark it to indicate that the original was filed, and thereupon return it to me.

Very truly yours,

BRIAN CHAIKEN
 Assistant General Counsel
 Supra Telecom

Enclosures

cc: Nancy B. White, Esq.
 R. Douglas Lackey, Esq.
 J. Phillip Carver, Esq.

APP
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01269 JAN 29

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

Petition for Arbitration of the)
Interconnection Agreement between Bell-)
South Telecommunications, Inc. and)
Supra Telecommunications & Information)
Systems, Inc. pursuant to Section 252(b))
of the Telecommunications Act of 1996)
_____)

Docket No. 00-1305-TP

Dated: January 26, 2001

**SUPRA TELECOMMUNICATIONS AND INFORMATION
SYSTEMS, INC.'S MOTION TO DISMISS**

NOW COMES Supra Telecommunications & Information Systems, Inc. ("Supra"), by and through its undersigned counsel, pursuant to Florida Administrative Code Rule 28-106.204 and Florida Rule of Civil Procedure 1.140(b), moves to Dismiss the Complaint of BellSouth Telecommunications, Inc. ("BellSouth") for lack of subject matter jurisdiction as well as BellSouth's violations of Section 251(c)(1) of the Communications Act of 1934, as amended (47 U.S.C. § 201, *et seq.*), and 47 C.F.R. § 51.301, and in support hereof states as follows:

I. BRIEF INTRODUCTION

On or about October 25, 1999, Supra adopted an Interconnection Agreement ("Current Agreement") entered into by BellSouth and AT&T of the Southern States, such Current Agreement having been approved by the Florida Public Service Commission. The Current Agreement provides for the term of the agreement, a termination date, and a time frame for the negotiations of a "Follow-On Agreement." Most importantly, the Current Agreement provides for a procedure to be followed **before** either party files a petition with the FPSC for arbitration of such. BellSouth has failed to follow this

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FPSC-RECORDS/REPORTING

procedure, and, therefore, the FPSC lacks subject matter jurisdiction over the present dispute.

Additionally, BellSouth prematurely filed this petition in that, pursuant to 47 U.S.C. § 252(b)(1), BellSouth was only entitled to file such “during the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation . . .” BellSouth did not receive a request for negotiation from Supra until on or about June 9, 2000. Therefore, BellSouth’s filing on September 1, 2000 was premature, and did not give the parties sufficient time to negotiate a Follow-On Agreement.

Furthermore, on or about April 26, 2000, Supra sent a letter to BellSouth requesting that BellSouth provide Supra with information regarding its network which Supra reasonably required in order to negotiate with BellSouth. A true copy of this letter is attached hereto as **Exhibit A**. Furthermore, on or about August 8, 2000, Supra handed a copy of the same document request to representatives of BellSouth, asking for the responsive documents. Again, BellSouth ignored the request. BellSouth ignored these requests, in violation of Section 251(c)(1) of the Communications Act of 1934, as amended, and 47 C.F.R. § 51.301. As a result, Supra has been severely disadvantaged in that it does not have the necessary, and required, information from which to even begin negotiations. BellSouth has made it impossible for Supra to negotiate on equal-footing with BellSouth.

II. ARGUMENT

A. LACK OF SUBJECT MATTER JURISDICTION

Florida Rule of Civil Procedure 1.140(h)(2) provides, in pertinent part:

The defense of lack of subject matter jurisdiction may be raised at any time.

The FPSC lacks subject matter jurisdiction over this action for 2 reasons: (1) BellSouth failed to comply with the procedural requirements of the parties' current, FPSC-approved Interconnection Agreement, and (2) BellSouth prematurely filed its Petition, in violation of 47 U.S.C. 252(b).

First, Section 2.3 of the General Terms and Conditions of the parties' current Interconnection Agreement, which was arbitrated by BellSouth and AT&T of the Southern States before the FPSC, provides, in pertinent part:

Prior to filing a Petition [with the FPSC] pursuant to this Section 2.3, the Parties agree to utilize the informal dispute resolution process provided in Section 3 of Attachment 1.

Section 3 of Attachment 1 provides

The Parties to this Agreement shall submit any and all disputes between BellSouth and [Supra] for resolution to an Inter-Company Review Board consisting of one representative from [Supra] at the Director-or-above level and one representative of BellSouth at the Vice-President-or-above level (or at such lower level as each Party may designate).

BellSouth failed to even request that this matter be submitted to an Inter-Company Review Board prior its filing the present Petition. In fact, BellSouth raised this very same point against Supra via a letter dated September 22, 2000, in response to Supra's filing of a Complaint for commercial arbitration pursuant to Attachment 1 of the current agreement. A true copy of said letter is attached hereto as **Exhibit B**.

BellSouth has not made a good faith attempt to honor the parties' current agreement, much less a good faith effort to negotiate a Follow-On Agreement. Unless or until the parties follow the procedures of their current agreement, by submitting the

matter to an Inter-Company Review Board, this Commission lacks jurisdiction to resolve the issues raised by BellSouth.

Second, and perhaps even more importantly, BellSouth has prematurely filed its petition, in violation of 47 U.S.C. § 252(b)(1), which provides, in pertinent part:

During the period from the 135th to the 160th day (inclusive) after the date on *which an incumbent local exchange carrier receives a request for negotiation* under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues. (Emphasis added.)

BellSouth did not **receive a request** for renegotiation until June 9, 2000. In fact, prior to that time, the parties had discussed the possibility of simply extending the term of the current Interconnection Agreement. Admittedly, BellSouth did send Supra correspondence on March 29, 2000 regarding renegotiations. However, after that correspondence, Supra's CEO, Kay Ramos, spoke with one of BellSouth's negotiators, Pat Finlen, regarding Supra's ability to simply extend the parties' current agreement. It was Supra's understanding that BellSouth agreed to the extension. As a result, the parties did not enter into any negotiations between March 29, 2000 and June 9, 2000. Only on June 8, 2000 did BellSouth first take the position that it would refuse to extend the parties' current agreement. The very next day, Supra notified BellSouth of its request for renegotiation. Supra raised this issue in paragraph 6 of its Response to BellSouth's Petition for Arbitration, dated October 16, 2000.

Furthermore, ¶149 of the FCC First Report and Order (adopted August 1, 1996) on the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, provides, in pertinent part that:

Because section 252 permits parties to seek mediation "at any point in the negotiation," and also allows parties to seek arbitration as early as 135 days after an incumbent LEC **receives a request** for negotiation under section 252, we conclude that Congress specifically contemplated that one or more of the parties may fail to negotiate in good faith, and created at least one remedy in the arbitration process.

Because BellSouth prematurely filed its petition, the parties have not been able to fully identify and discuss the issues for arbitration existing between the parties. This fact was made very clear at the issue identification conferences at the Commission, as the parties have not even had an opportunity to discuss any proposed language. The FPSC simply does not have jurisdiction to arbitrate interconnection agreements before 135 days after an incumbent LEC receives a request for negotiation under section 252, whether such an action is filed by the incumbent LEC or by a competitive LEC. As such, the present petition should be dismissed.

B. BELLSOUTH HAS ACTED IN BAD FAITH.

Despite numerous requests, BellSouth has refused to provide information about its network necessary to reach an agreement. See **Exhibit A**. BellSouth's lack of response is a violation of: (a) 47 U.S.C. § 252, (b) Paragraph 155 of the FCC First Report and Order, and (c) 47 CFR §51.301(c)(8), which provides:

If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following practices, among others, violate the duty to negotiate in good faith:

(8) Refusing to provide information necessary to reach an agreement. Such refusal includes, but is not limited to:

(i) Refusal by an incumbent LEC to furnish information about its network that a requesting telecommunications carrier reasonably

requires to identify the network elements that it needs in order to serve a particular customer;

Furthermore, paragraph 148 of the FCC First Report and Order defined good faith as:

The Uniform Commercial Code defines "good faith" as "honesty in fact in the conduct of the transaction concerned." When looking at good faith, the question "is a narrow one focused on the subjective intent with which the person in question has acted." Even where there is no specific duty to negotiate in good faith, certain principles or standards of conduct have been held to apply. For example, parties may not use duress or misrepresentation in negotiations. Thus, the duty to negotiate in good faith, at a minimum, prevents parties from intentionally misleading or coercing parties into reaching an agreement they would not otherwise have made. We conclude that intentionally obstructing negotiations also would constitute a failure to negotiate in good faith, because it reflects a party's unwillingness to reach agreement. (Emphasis added.)

BellSouth has ignored Supra's request for information, has prematurely filed a petition (knowing that it had not followed contractual and statutory procedures), has intentionally obstructed negotiations and has filed a never-before seen template agreement as its proposed language in this proceeding, all in an attempt to rush Supra and this Commission into an arbitration for an agreement which will substantially favor BellSouth to the detriment of Supra and Florida telephone subscribers who have not benefited from the promotion of competition promised by the Communications Act, as amended by the Telecommunications Act of 1996 (codified at 47 U.S.C. 201, et seq.). BellSouth should not be allowed to benefit from this type of conduct.

Significantly, this is not the first time BellSouth has engaged in such conduct. On or about November 2, 2000, the Federal Communications Commission ("FCC") entered a consent decree against BellSouth for BellSouth's violations of section 251(c)(1) of the Communications Act of 1934, as amended, and section 51.301 of the Commission's rules, in connection with BellSouth's alleged failure to negotiate in good faith the terms

and conditions of an amendment to an interconnection agreement with Covad Communications Company (Covad) relating to BellSouth's provision of unbundled copper loops in nine states. A copy of the news release and consent decree are attached as **Exhibit C**. BellSouth was fined \$750,000 by the FCC for the very act it has committed against Supra.

It is interesting to note that Covad and other Alternative Local Exchange Carriers are about to go out of business. Please see **Exhibit D**, "Dead Companies Walking", an article in the Business Week of January 22, 2001. Aside from Covad, other companies mentioned in that article as going out of business are Rhythms NetConnections, Intermedia Communications, Northpoint Communications, RSL Communications and ICG Communications. All these companies have either filed complaints or participated in proceedings against BellSouth before this very Commission. It appears that BellSouth is winning its battle to prevent competition in the local telephone industry.

It should also be noted that, in addition to the present proceeding, Supra is currently battling BellSouth on many fronts:

- a. Supra Telecommunications & Information Systems, Inc. v. BellSouth Telecommunications, Inc., Case No. 99-1706 – CIV-SEITZ, before the Southern District Court of Florida, Miami Division, for anti-trust violations, breach of contract, fraud, etc.
- b. Supra v. BellSouth, Before the CPR Institute for Dispute Resolution Arbitral Tribunal, re: enforcement of interconnection agreement, filed in September 2000.
- c. In re: Complaint of BellSouth Telecommunications, Inc. against Supra Telecommunications and Information Systems, Inc., for Resolution of Billing Disputes, Docket No. 001097-TP, regarding a billing dispute (BellSouth's substantial complaint in this proceeding was dismissed by this Commission to be heard at commercial arbitration proceeding pursuant to the parties' agreement.)

- d. BellSouth Intellectual Property Company v. Supra Telecommunications & Information Systems, Inc., Case No. CASE NO. 00-4205 – CIV-GRAHAM/TURNOFF, before the Southern District Court of Florida, Miami Division, for trademark infringement and dilution.

While BellSouth has the resources to litigate all of these issues, as well as numerous others, Supra's lack of resources places it at a severe disadvantage. Of course, it may well be BellSouth's strategy to spread Supra's resources as thin as possible so as to be able to force through its agenda in the present arbitration proceeding and eventually force Supra out of business as it has other CLECs (see **Exhibit D**) as well as deny Florida telephone subscribers the benefits of competition.

BellSouth's actions have been intentional and willful. Under the present circumstances, in light of BellSouth's bad faith negotiations, the present petition should be dismissed.

III. CONCLUSION

As BellSouth has failed to follow contractual and statutory procedures, this Commission lacks subject matter jurisdiction over the present controversy. As such, BellSouth's actions should be dismissed. Furthermore, BellSouth has acted in bad faith in conducting negotiations with Supra. BellSouth should immediately tender information responsive to Supra's requests contained in its April 26, 2000 letter.

WHEREFORE, Supra respectfully requests that this Honorable Commission enter an Order:

- A. Dismissing BellSouth's Complaint with prejudice;
- B. Ordering that the parties continue to operate under their current interconnection agreement until a new agreement is properly negotiated or arbitrated;

- C. Ordering BellSouth to immediately tender information responsive to Supra's requests contained in its April 26, 2000 letter;
- D. Entering a judgment against BellSouth in favor of Supra for the costs and attorney's fees Supra has incurred as a result of this proceeding, and
- E. For all such further relief as is deemed equitable and just.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been served via facsimile and/or U.S. Mail upon Nancy White, Esq., BellSouth, 150 West Flagler Street, Suite 1910, Miami, Florida 33130; R. Douglas Lackey and J. Philip Carver, BellSouth, Suite 4300, 675 W. Peachtree St., NE, Atlanta, GA 30375; and Staff Counsel, Florida Public Service Commission, Division of Legal Services, 2450 Shumard Oak Boulevard, Tallahassee, Florida; this 29th day of January, 2001.

SUPRA TELCOMMUNICATIONS
& INFORMATION SYSTEMS,
INC.

2620 S.W. 27th Ave.
Miami, Florida 33133
Telephone: 305/476-4248
Facsimile: 305/443-1078

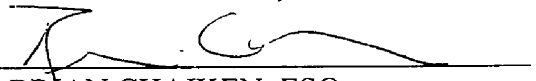
By: 
BRIAN CHAIKEN, ESQ.
Florida Bar No. 0118060

Exhibit A

April 26, 2000

VIA FACSIMILE

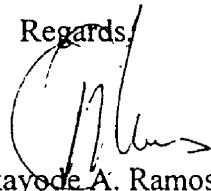
Mr. Pat Finlen
Manager – Interconnection Services
BellSouth Telecommunications, Inc.
Room 34S91 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375

Re: Request for Information Regarding Negotiations of Interconnection Agreement

Dear Mr. Finlen:

Pursuant to our telephone conversation and the FCC's First Report and Order, §155, Supra Telecom hereby requests for all the information attached as Exhibit "A" to this letter. The information so provided must cover the entire BellSouth territory. I am counting on your promise to provide the information requested in a speedy manner.

Regards,



Olukayode A. Ramos
Chairman & CEO

Cc: Mark Buechele, Wayne Stavanja and Victor Miriki (Supra Telecom)
Parkey Jordan (Esq.) (BellSouth)

Many of the recommendations contained in this report are directed toward developing standards, defining and approving industry specifications and actually interconnecting different service provider networks. Two templates are offered in this section that summarize and list activities to accomplish these goals. The first, titled "Network Interconnection Bilateral Agreement Template," is for use whenever two service providers are implementing a specification and will actually interconnect their networks. The second is titled "Network Interface Specification Template" and is proposed for use in developing standards and in defining and approving industry interconnection specifications. When used in standards, it is expected that some of the items may have options or ranges, but the important point is that a standard not be developed without consciously addressing the entire list. When used by industry fora to define and approve detailed interconnection specifications, the possible options would be narrowed to ensure reliability and network integrity of the specific interconnection type.

Custodial responsibilities are indicated on each template page to define ongoing ownership, although other industry groups may want to adopt them also.

5.6.1 NETWORK INTERCONNECTION BILATERAL AGREEMENT TEMPLATE

The following worksheet should be used during the joint planning sessions between interconnecting service providers. This is an outline of the minimum set of topics that need to be addressed in bilateral agreements for critical interconnections. These worksheets should be used as follows:

- The types of interconnections to be established are agreed upon.
- Each Service Provider develops a version of this worksheet for each interconnection type.
- Specific references, including citations, relating to industry documentation, standards and references are identified.
- Individual company practices, policies and procedures are also identified and provided to the other party.
- All significant differences in practices, policies or procedures should be reviewed and resolved in joint planning sessions. Changes in individual practices, policies or procedures may or may not be required. Procedural symmetry is not required if differing policies produce a compatible, agreed-to outcome.

The Network Operations Forum is the recommended custodian of this template. Other organizations may also find the processes that evolve from this template useful and are encouraged to make use of and enhance it.

RELIABILITY CRITERIA	CHECK OFF
Interconnection Provisioning information and guidelines	
- Tariff Identification	✓
- NOF References	✓
- Interface Specifications	✓
- Network Design	✓
- Service Interworking Requirements	✓
SS7 and Other Critical Interface Inter-network Compatibility Testing	✓
- Service Protocols/ Message Sets	✓
- Testing Plans	✓
- CCS Interconnection Questionnaires	✓
Protocol implementation Agreements	
- Timer Values	✓

- Route set congestion messages	✓
- Optional Parameters	✓
- Switch parameters	✓
- TR246, T1.114, T1.116, GR 317, GR 394	✓
- Gateway screening	✓
Diversity Requirements	
- Route identifications	✓
- Diversity definition	✓
- SS7 Diversity Verification and Validation	✓
- Committee T1 Report No. 24 on Network Survivability Performance	✓
Installation, provisioning, maintenance guidelines and responsibilities	
- NOF Reference Document	✓
Network Admin/Ops Security requirements	
- Access methodology	✓
- Functional partitioning	✓
- Applicable tariffs on confidential information	✓
- Password and encryption control	✓
Performance service level agreements	
- Interface specifications	✓
- MTBF/MTTR	
- Contact / Escalation procedures	✓
- Performance Thresholds	
Specific versions of protocol and/or interface specifications	
- Network interface standards, version control, mandatory and optional categorizations	✓
Maintenance procedures, including trouble and status reporting, etc.	
- NOF Reference Document	✓
- Contact lists	✓
Inter-network trouble resolution and escalation procedures	
- NOF Reference Document	✓
- Contact lists	✓
In-depth root cause analysis of significant failures	
- Failure analysis procedures	✓
- FCC Outage Reporting Criteria	✓
- Service configuration	✓
- Protocol tests	✓
- Compatibility testing	✓
Network Traffic Management	
- NOF Reference Document, Section VI	✓
Synchronization Design and Company-wide coordination contacts	
- Establish conformance	✓
- Identify contacts	✓

- T1.101 Digital Facility Standard	✓
- BOC Notes on the LEC Network, SR-TSY-002275	✓
Performance Requirements	
- Interface Specifications	✓
Information sharing for analysis and problem identification	
- NOF Reference Document	✓
Network Rearrangement Management	
- NOF Reference Document - notification procedures	✓
Traffic engineering design criteria and capacity management	
- Alternate routing designs	✓
- Call Blocking criteria	✓
Mutual Aid agreements	
- NOF Reference Document	✓
- National Security/Emergency Preparedness	✓
Emergency Communications plan	
- Emergency Preparedness and Response Program	✓
- NOF Reference Document - Emergency Communications	✓
- Equipment Supplier participation	✓
Equipment manufacturer responsibilities	
- Written requirements	✓
- Software validation	✓
- Optional requirements	✓
- Testing	✓
- Emergency equipment availability	✓
RELATED ISSUES	
Explicit forecasting information	
- Direct traffic	✓
- Subtending/transiting traffic	✓
Network transition	
- growth/consolidation of network elements	✓
- NPA splits	✓
- Major rehomings, rearrangement plans	✓
- NOF Reference Document	✓
Routing and screening administration	
- Network call routing administration and management	✓
Responsibility assignments	
- Facility assignment	✓
- Network control	✓
- Automatic testing	✓

Calling Party Number Privacy management	✓
Tones and Announcements for unsuccessful call attempts	
- Network interface specification	✓
- NOF Reference Document	✓
Billing Records Data Exchange	
- EMR standards	✓
- Ordering and Billing Forum documentation	✓
Pre-cutover Inter-network Connectivity testing	
- Network Interface specification	✓
- NOF Reference Document	✓
Documentation Requirements	
- Network configuration	✓
- Contact numbers	✓
- Service Level Agreements	✓
- Implementation plan/milestones	✓
- Interoperability test results	✓

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5.6.2 NETWORK INTERFACE SPECIFICATION TEMPLATE

The following template is a generic model for the development of network interface standards or specifications. It identifies the minimum list of items that must be effectively addressed by the affected service providers to establish and maintain each point of network interface. The ATIS-sponsored ICCF is the suggested custodian of this template. Other organizations may also find the processes that evolve from this template useful and are encouraged to make use of and enhance it.

INTERFACE SPECIFICATION CRITERIA	CHECK OFF
Define the physical/software interfaces in terms of existing tariffs and technical standards and government regulation.	✓
Establish a clear point of demarcation that allows for non-intrusive test access.	✓
Define the environmental operating requirements according to security and reliability needs.	✓
Develop power and grounding requirements in accordance with safety and protection regulations, codes and standards.	✓
Define diversity requirements and survivability capabilities needed.	✓
Define interference generation protection levels relative to radiated and conductive electromagnetic properties.	✓
(Radio interfaces only) Define frequencies channelization, bandwidth, power level frequencies, tolerances and adjacent channel interference levels.	✓
Identify protocol elements in terms of the seven layer model OSI protocol stack.	✓
Define the message set that will be transmitted across the interface.	✓
Develop gateway screening functional requirements to block accidental or intentional intrusion of unwanted/inappropriate messages.	✓
Build for robustness by defining error correction, re-transmission overload controls and fault migration mitigation criteria.	✓
Develop message sets to facilitate fault detection, identification, diagnosis and correction.	✓
Develop network interface performance design objectives in terms of signal transport time (delay) availability (downtime) lost message probability and transmission criteria (BER, loss, noise, phase jitter)	✓
Define synchronization and timing requirements and establish monitoring and back-up capabilities.	✓

Ensure that forward and backward compatibility of the protocol is addressed for transition management.	✓
Provide local and remote network management notification and control capabilities.	✓
Develop a network impact statement to predict/specify the backward compatibility and purpose of the standard.	✓
Develop demonstrable performance criteria at agreed stages of specification development.	✓
Define and conduct acceptance testing to validate the defined stages of specification development.	✓

###

Exhibit B

MICHAEL P. GOGGIN
General Attorney

BellSouth Telecommunications, Inc
150 West Flagler Street
Suite 1910
Miami, FL 33130
(305) 347-5561

September 22, 2000

Via Facsimile and Federal Express

Mr. John F. Kelly
Vice President of Panels Manager Group
CPR Institute for Dispute Resolution
366 Madison Avenue
14th Floor
New York, New York 10017

Dear Mr. Kelly:

As you may be aware, BellSouth, contrary to the agreed upon contractual process, received a Notice of Arbitration and Complaint from Supra Telecommunications & Information Systems, Inc. ("Supra"), a wholesale customer of BellSouth Telecommunications, Inc. ("BellSouth"), in which Supra demands arbitration by the CPR Institute pursuant to an agreement between Supra and BellSouth. I understand that Supra has scheduled a teleconference with you and BellSouth on Monday, September 25, ostensibly for the purpose of selecting arbitrators for this matter.

This letter is to inform you that Supra has failed to follow the procedures outlined in the parties' interconnection agreement with them regarding notice, the escalation of such disputes and their referral to arbitration. In particular, Supra failed to notify the designated BellSouth representatives of its request to submit its dispute to the Inter-Company Review Board, as provided in our agreement. Indeed, Supra has yet to designate an individual to serve on such a board. Moreover, the parties' agreement requires the parties to mutually agree on the prior selection of three arbitrators to hear such disputes, and Supra and BellSouth have not even begun that process. I expect that the parties will soon contact you to begin that process.

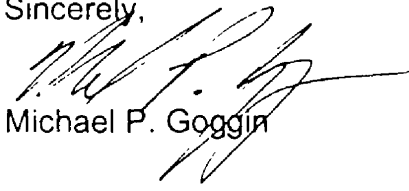
In short, although arbitration before the CPR Institute is an important part of the dispute resolution procedures we have agreed to follow, Supra's demand

for arbitration, as well as the September 25 meeting it has arranged, is premature, and BellSouth does not intend to participate at this time.

While Supra has been a very litigious customer, BellSouth remains optimistic that we can resolve our differences with Supra according to the dispute resolution mechanisms to which we have agreed without resort to arbitration. If this dispute is not resolved and either Supra or BellSouth submits a proper demand for arbitration, BellSouth expects that the parties will avail themselves of CPR's services. Until such time, however, BellSouth cannot be responsible for any expenditures CPR might incur in this matter.

BellSouth would like to apologize for any inconvenience that may have been caused by this matter. We look forward to working with you to identify potential arbitrators.

Sincerely,



Michael P. Goggin

cc: Brian Chaiken (via facsimile, FedEx and certified mail)

Exhibit C

Click here for Microsoft Word Version
Click here for Chairman Kennard's Press Statement
Click Here for Furchtgott-Roth Dissenting Statement



NEWS

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET S.W.
WASHINGTON, D.C. 20554

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Internet <http://www.fcc.gov>
<ftp://ftp.fcc.gov>

This is an unofficial announcement of Commission Action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 516 F.2d 385 (D.C. Cir. 1974).

FOR IMMEDIATE RELEASE
November 2, 2000

NEWS MEDIA CONTACT:
John Winston (202) 418-7450

FCC AND BELL SOUTH ENTER INTO A \$750,000 CONSENT DECREE IMPROVING COMPLIANCE WITH LOCAL COMPETITION RULES

Washington, D.C. -- Today the Federal Communications Commission announced that in settlement of issues uncovered during an investigation by Commission staff, BellSouth Corporation ("BellSouth") has agreed to make a voluntary payment of \$750,000 to the United States Treasury and to take important steps to improve its compliance with FCC rules relating to the negotiation of interconnection agreements between competing carriers. The investigation disclosed that, for more than six months in 1999, BellSouth failed to provide a competitor with cost data to support BellSouth's proposed prices for unbundled copper loops, despite the competitor's written request for such data. Rather, BellSouth took the position that the data was confidential and declined to provide it unless the competitor executed a non-disclosure agreement that, on its face, prevented disclosure to the FCC or a state commission of matters occurring during the negotiation process.

The Telecommunications Act of 1996 requires local exchange carriers (such as BellSouth) to negotiate in good faith the terms and conditions of interconnection agreements with their competitors. In implementing the 1996 Act, the FCC adopted a non-exclusive list of actions or practices that, if proven, would violate the requirement to negotiate in good faith. These practices include the refusal by an incumbent LEC to provide information necessary to reach agreement, such as cost data. An incumbent LEC also violates the good faith requirement by demanding that its competitor sign a non-disclosure agreement that would prevent the competitor from providing information requested by the FCC, or a state commission, or in support of a request for arbitration.

In addition to the \$750,000 voluntary payment, the Consent Decree obligates BellSouth to adopt procedures for expedited access to confidential information (including issuance of a standard non-disclosure agreement that complies with the relevant FCC rules) and to adopt procedures for competitors to elevate disputes regarding disclosure of confidential information to higher levels within BellSouth. In addition, BellSouth will provide training to its negotiators concerning the relevant statutory and regulatory requirements, as well as BellSouth's revised procedures.

Action by the Commission: October 27, 2000, by Order (FCC 00-389). Chairman Kennard, Commissioners Ness, Powell, Tristani, Commissioner Furchtgott-Roth dissenting and issuing separate statement.

-FCC-

FCC Enforcement Bureau Contact: John Winston at (202) 418-7450 or Raelynn Tibayan Remy at 202-418-2936

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	File No. EB-00-IH-0134
)	
BellSouth Corporation)	Acct. No. X32080035
)	

ORDER

Adopted: October 27, 2000

Released: November 2, 2000

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

1. In this Order, we terminate an informal investigation into potential violations by BellSouth Corporation (BellSouth) of section 251(c)(1) of the Communications Act of 1934, as amended, and section 51.301 of the Commission's rules, in connection with BellSouth's alleged failure to negotiate in good faith the terms and conditions of an amendment to an interconnection agreement with Covad Communications Company (Covad) relating to BellSouth's provision of unbundled copper loops in nine states.

2. The Commission and BellSouth have negotiated the terms of a Consent Decree that would terminate the Commission's informal investigation. A copy of the Consent Decree is attached hereto and is incorporated by reference.

3. We have reviewed the terms of the Consent Decree and evaluated the facts before us. We believe that the public interest would be served by approving the Consent Decree and terminating the investigation.

4. Based on the record before us, and in the absence of material new evidence relating to this matter, we conclude that there are no substantial and material questions of fact as to whether BellSouth possesses the basic qualifications, including its character qualifications, to hold or obtain any FCC licenses or authorizations.

5. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 251(c)(1), and 503(b) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 251(c)(1), and 503(b), that the Consent Decree, incorporated by reference in and attached to this order, is hereby ADOPTED.

6. IT IS FURTHER ORDERED that the Secretary SHALL SIGN the Consent Decree on behalf of the Commission.

7. IT IS FURTHER ORDERED that the above captioned investigation IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Exhibit D

BY PETER ELSTROM

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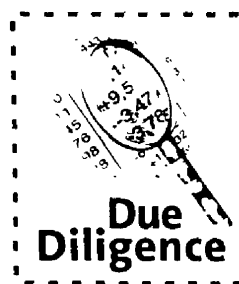
Dead Companies Walking

Don't get burned: Many cash-starved techs and telecoms won't last the year

Is the worst of it over? Investors, employees, and more than a few technology journalists are trying to figure out whether the new year will bring with it a new and improved outlook for tech companies. Perhaps, just perhaps, the steady stream of layoffs, corporate closings, and bankruptcies is winding down.

Forget about it. A close look at the financial statements of about 500 tech and telecom companies shows that the crunch is likely to get worse before it gets better. Particularly troubling are the low cash reserves at dozens of money-losing players. Nearly 50 tech and telecom companies have 18 months or less of cash, based on conservative estimates of the current rates at which they're burning through their stashes. With investors refusing to pony up more dough, many of these upstarts are likely to close their doors or sell out to rivals. "Marginal companies that are running low on money are dead," says analyst James H. Henry of Bear Stearns & Co. "Even good companies that are running low may have to sell out, because the capital markets are closed."

Who's at risk? Start with the band of upstarts that are selling speedy Net connections over telephone lines. Covad Communications, Rhythms NetConnections, and Northpoint Communications are all former highfliers that are running perilously low on cash. Northpoint is in the worst shape. The San Francisco company had \$150 million on its balance sheet at the end of September and burned through \$110 million in the third quarter. At



that rate, it could use up the money in its coffers before the end of January. The company suffered a serious blow in November, when Verizon Communications pulled the plug on a deal to invest \$800 million for a 55% stake. To make its cash last, Northpoint said in December that it would cut 19% of its workforce, or 248 jobs. Now it's suing Verizon for damages and scrambling to find another sugar daddy.

Covad and Rhythms are slightly better off. Both appear to have enough cash to last through 2001, but they're being cautious about how they spend their precious reserves. Covad is laying off about 400 people, or 13% of its workforce, and plans to cut its capital spending this year to \$250 million, from the previously planned \$350 million. Now Covad says its revenues likely will hit \$380 million to \$390 million this year, instead of the \$550 million that analysts had been expecting. "The coming months will not be easy ones for us," said Chairman Charles McMinn in a December conference call. "We believe we can weather the market conditions for at least a year."

Several fledgling phone companies may not be so fortunate.

Take RSL Communications Ltd., the telecom and Internet services company founded by Ronald S. Lauder, heir to the Estée Lauder cosmetics fortune. In 1999, RSL boasted a market cap north of \$1 billion. Now, it's delisted from Nasdaq and is worth about \$20 million. One reason RSL's prospects look so bleak is that it had only \$151 million in cash on its balance sheet as of Sept. 30, after burning through about \$100 million in the third quarter. Jim Magrone, RSL's vice-president for treasury and investor relations, says a deal that would raise cash is "imminent." The company plans to sell its stake in a German-based directory business called Telegate, which RSL said in July would bring in about \$395 million. But when asked to confirm the terms in January, Magrone said that "any deal is subject to renegotiation."

RSL is just the tip of the iceberg in the telecom sector. Hen-



ry predicts that more than half of the 31 upstart telephone players he follows will disappear through bankruptcies or mergers. I.C. Communications Inc., a once-hot telecom player based in Englewood, Colo., filed for bankruptcy last year, and its survival is unlikely. Savvis Communications Corp., which provides data and Internet services, also is in rough shape. Savvis, which had \$78 million in cash at the end of September, said in its financial statements that it only has cash through "early 2001" and may not be able to raise more. Chief Financial Officer David J. Frear says Savvis has not raised any new capital since then, and he declined to give any guidance on capital expenditures and other financial metrics going forward.

Plenty of former Net stars are feeling the cash crunch, too. On Jan. 4, eToys Inc., the much-hyped online retailer, said that it only had money to fund operations through March, and it would lay off 70% of its 1,000 person staff. Prodigy Communications, once a legitimate rival to America Online Inc. in providing Net access, said in a recent financial statement that it may not have enough cash to survive. And remember Theglobe.com? The New York community site saw its stock soar more than 600%, to \$31.75, on its first day of trading in 1998. Now it's on life-support, with shares at about 50¢. At the current burn rate, the company's \$25 million in cash will last about a year. In a recent financial filing, the company conceded that there is "substantial doubt" that it can continue in business. A spokesperson did not return phone calls.

Even Webvan Group Inc., the high-profile home-delivery company, is in a serious squeeze. After announcing aggressive plans last year to roll out its service nationwide, Webvan disclosed in a recent Securities & Exchange Commission filing that it doesn't have enough cash to last the year. It says it has funding to continue through June but needs to raise an additional \$80 million to \$100 million to make it through 2001. A company spokeswoman declined to comment beyond the financial statements.

So buckle up: 2001 won't bring a quick end to the troubles of last year. Over the next few months, the ride in tech and telecom is going to be bumpy. ●

CASH CRUNCH

With the capital markets virtually closed, tech and telecom companies are finding it harder to obtain new financing. Here's a look at companies that are running low on cash in the New Year.

COMPANY NAME	Cash on hand on Sept. 30 (millions)	Cash used last quarter (millions)	Days to depletion at current burn rates
Wavo Corp. The digital media company has sold off assets to raise about \$12 million, but that may not last through 2001.	\$0.5	\$4.4	11
Prodigy Communications The Internet service provider struck a tentative deal for a \$110 million line of credit from SBC Communications but warns there is "no assurance that we will be able to obtain sufficient financing" to continue operating.	\$4.9	\$27.2	16
Beyond.com The Santa Clara (Calif.) e-commerce player says it has enough cash to last through March and is close to lining up additional financing.	\$14.5	\$16.0	82
Northpoint Communications The provider of speedy Net connections is scrambling, since Verizon called off its investment in the company. Northpoint is suing for damages.	\$150.3	\$109.9	123
RSL Communications Cosmetics heir Ron Lauder's telecom company is selling off a German subsidiary to raise cash and has retained Wasserstein Perella for a possible sale of the company.	\$151.4	\$100.9	135
ICG Communication The telecom company has filed for bankruptcy, cut its workforce, and slashed expenditures in a bid to survive. Don't bet on it.	\$234.3	\$124.1	170
Mail.com The provider of e-mail services is selling off its advertising business and several domain names to raise cash.	\$65.2	\$32.7	180
Juno Online Services The supplier of free Net access says it has cash through September, but a deal for financing may not fly because its stock price has fallen to \$1 from more than \$80.	\$68.6	\$29.5	209
Savvis Communications The Herndon (Va.) provider of communications services says it has cash to last through "early 2001" and may not be able to raise more.	\$78.1	\$31.8	221
Egghead.com The online retailer says it has enough cash to fund its operations through 2001.	\$43.8	\$17.0	231
Theglobe.com Largest IPO pop ever? That doesn't pay the rent. Now the community site says there is "substantial doubt" that it will be able to continue in business.	\$24.8	\$9.5	235
Intermedia Communications WorldCom's deal to buy this telecom upstart may fall apart because of a legal dispute, leaving Intermedia in a serious cash bind.	\$339.1	\$84.4	362
Webvan Group The former hotshot of home delivery says that it has cash to last through June and needs at least \$80 million more to last through the end of the year.	\$376.9	\$89.9	377
Rhythms NetConnections The provider of speedy Net connections has cash to see it through "through 2001" and it's looking to raise more.	\$707.8	\$149.3	427
Covad Communications The onetime highflier is cutting spending and employees to make its cash last.	\$913.1	\$152.4	539

DATA: COMPANY REPORTS, BW