

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Supra Telecommunications and Information Systems, Inc., pursuant to Section 252(b) of the Telecommunications Act of 1996	Docket No. 001305-TP
Complaint of Supra Telecommunications and Information Systems Regarding BellSouth's Bad Faith Negotiation Tactics	Filed: August 23, 2001

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S  
MOTION TO COMPEL AND OVERRULE  
OBJECTIONS TO SUPRA'S FIRST SET OF INTERROGATORIES

Pursuant to Order Establishing Procedure (Order No. PSC-01-1401-PCO-TP) and Supplemental Order Establishing Procedure (Order No. PSC-01-1475-PCO-TP dated July 13, 2001), Rule 28-106.204(1) and 28-106.206, Florida Administrative Code, and Rule 1.380(a), Florida Rules of Civil Procedure, Supra Telecommunications & Information Systems, Inc. ("Supra") by and through its undersigned counsel, hereby moves for the entry of an order compelling BellSouth Telecommunications, Inc. ("BellSouth") to respond to Supra's First Set of Interrogatories for purposes of preparation for its upcoming depositions of BellSouth witnesses. In support of this Motion, Supra states as follows:

**Brief Introduction**

1. On August 10, 2001, Supra served its First Set of Interrogatories upon BellSouth. On August 20, 2001, BellSouth served its General and Specific Objections to Supra's First Set of Interrogatories.

2. BellSouth made numerous general objections, many of which were repetitive and not applicable to the individual interrogatories. More importantly, with regard to the individual

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interrogatories, BellSouth either made baseless objections or provided incomplete or non-responsive answers. Supra seeks an order overruling BellSouth's objections and compelling answers to interrogatories as set forth hereinbelow.

3. Supra's discovery requests are relevant to the issues in this cause and are generally reasonably calculated to lead to the discovery of admissible evidence concerning the issues in this proceeding. See Rule 1.280(b)(1), Florida Rules of Civil Procedure. This Commission and the parties have established a list of specific issues to be arbitrated, including Issue A. As explained below, Supra's discovery requests are well within the scope of and are reasonably calculated to lead to the discovery of admissible evidence as the information sought thereby pertains to the specific issues listed in the Commission's Order Establishing Procedure, the bad faith negotiation tactics espoused by BellSouth, and/or the lack of parity enjoyed between Supra and BellSouth.

4. Below, Supra has set forth each interrogatory, BellSouth's objection to same, and the reason why the objection should be overruled and an answer should be compelled.

### **INTERROGATORIES**

**INTERROGATORY No 1.** Please provide the name, address, telephone number, place of employment and job title of any person who has, claims to have or whom you believe may have knowledge or information pertaining to any facts alleged in the Petition for Arbitration, BellSouth's Response to Supra's Complaint and Motion to Dismiss, BellSouth's Opposition to Supra's Motion to Stay, or as to any fact underlying the subject matter of this action.

**AND**

**INTERROGATORY No 2.** Please identify each document that evidences or supports any and all claims and defenses raised by BellSouth in its Petition for

Arbitration, or in Supra's Status and Complaint Regarding BellSouth's Negotiation Tactics, whether favorable to BellSouth's or Supra's position, with sufficient particularity so they may be described in a request for production, and provide the name and address of the custodian of any such records.

**BELLSOUTH'S ANSWER:** BellSouth objects to Interrogatories 1 and 2 because they are overly broad and unduly burdensome. Subject to that objection, BellSouth will identify certain employees with knowledge about, and certain documents relating to, the issues that are in dispute in this proceeding.

**SUPRA'S POSITION** to Interrogatories No. 1 and 2: BellSouth has not provided any information responsive to these interrogatories. These interrogatories go to the heart of the Petition for Arbitration filed by BellSouth on September 1, 2000 and BellSouth's position to date in this proceeding. Supra needs BellSouth to identify the persons with knowledge or information so that Supra may, if and where necessary, depose those persons. Additionally, Supra needs to review each document that evidences or supports any and all of BellSouth's claims and defenses, in order to be adequately prepared to defend itself and support its position. These interrogatories are relevant to all the issues raised in this proceeding by this Commission and the parties. Supra requests an order compelling BellSouth to provide answers to these interrogatories and/or, in the alternative, for BellSouth to answer that no persons exist and no documents exist.

**INTERROGATORY No 4.** What is the Product Commercialization Unit ("PCU")? Please provide names of all BellSouth's employees that have worked and currently work at the PCU for the years 1999, 2000 and up to and including June, 2001.

**INTERROGATORY No 6.** State with particularity the basis for BellSouth's contention on page 4, paragraph 7 of BellSouth's Response in Opposition to Supra's Motion to Dismiss filed on February 6, 2001 that "the negotiations were attended by the same representatives of each company that would negotiate in the context of an Inter-Company Review Board Meeting." In responding to this interrogatory,

identify each representative from both companies who attended said "negotiations", each representative of both companies' Inter-Company Review Board, and every document or other evidence upon which BellSouth intends to rely to prove this contention.

**INTERROGATORY No 7.** State with particularity the basis for BellSouth's contention on page 2, paragraph 4 of BellSouth's Response to Supra's Complaint and Motion to Dismiss that "BellSouth does not believe that Supra requested these documents prior to the first week of April, 2001." In responding to this interrogatory, identify each document or other evidence upon which BellSouth intends to rely to prove this contention.

**INTERROGATORY No 8.** Since the enactment of the Telecommunications Act of 1996, has BellSouth ever been accused by an ALEC, any regulatory body, or any other person or entity, of negotiating any type of agreement, including but not limited to an Interconnection Agreement, in bad faith? If yes, identify each document that evidences or supports any and all accusations and any and all defenses raised by BellSouth.

**INTERROGATORY No 9.** Please identify each document that evidences or supports any and all claims and defenses raised by BellSouth during the informal investigation by the Federal Communications Commission ("FCC") into potential violations by BellSouth of Section 251(c)(1) of the Communications Act of 1934, as amended, and Section 51.301 of the FCC'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, whether favorable to BellSouth's or Supra's position, with sufficient particularity so they may be described in a request for production, and provide the name and address of the custodian of any such records.

**INTERROGATORY No 11.** Please state with specificity the number of resale access lines, UNE access lines and BellSouth's access lines in the State of Florida for the years 1998, 1999, 2000 and up to and including June 2001. The information provided must be broken into: (i) residential; (ii) business (iii) PBX trunks; (iv) interexchange; and (v) CPE coin. In responding to this interrogatory, identify each

document or other evidence upon which BellSouth is relying upon in its answer.

**INTERROGATORY No 12.** Please state with specificity the number of resale and UNE access lines for the years 1998, 1999, 2000 and up to and including June 2001 that BellSouth has won back from ALECs and Supra through its “winback” program, or any other similar program. The information provided must be broken into: (i) residential; (ii) business (iii) PBX trunks; (iv) interexchange; and (v) CPE coin. In responding to this interrogatory, identify each document or other evidence upon which BellSouth is relying upon in its answer.

**AND**

**INTERROGATORY No 13.** Describe the procedure, from start to finish, including the flow of any information through any computer system/program, for a Supra customer to switch to BellSouth local telephone service. (The starting point being the time the customer calls BellSouth to make the switch; the finish point being the time the customer is actually switched to BellSouth.)

**BELLSOUTH’S ANSWER:** BellSouth objects to Interrogatories 4, 6, 7, 8, 9, 11, 12, and 13 because the information sought in those interrogatories is not relevant to any of the issues that are in dispute in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

**SUPRA’S POSITION:** Interrogatory No. 4 is relevant to Issues 26, 28, 29, 31, 32A, 33, 34, 40, 46, 47, 48, 49, 51, 52, 53, 55, 61, 62 and 63. Although the interrogatory incorporates relevant information regarding the issues identified herein, Supra will address a few issues to establish its right to obtain the information requested. The Product Commercialization Unit (“PCU”) is the department within BellSouth that ensures that ALECs are able to order services and UNEs that they are lawfully entitled to as well as coordinate departments within BellSouth with the necessary expertise regarding BellSouth’s network, facilities, billing, rates and contract interpretation. Also see page 4, line 17 to page 6, line 7 of the Direct Testimony of Ms. Becky

Wellman, filed on Behalf of IDS in CC Docket No. 010740-TP dated July 23, 2001. Supra needs to have all relevant information about the PCU as it is the intention of Supra to include some language regarding this department in the follow-on agreement. Supra also needs to know the names of BellSouth's employees working in the PCU so as to depose such employees for information regarding BellSouth's product commercialization processes and procedures. BellSouth has also claimed that one of the reasons why Supra could not order the UNEs in its contract is that "BellSouth did not "productionize" the UNE combinations in the amended AT&T agreement and the amended Supra agreement."

Interrogatory No. 6 is relevant to Issues A, 5, 10, 12, 14, 15, 18, 19, 20, 25, 26, 27, 28, 29, 31, 32, 33, 34, 38, 40, 44, 46, 47, 48, 49, 51, 53, 55, 57, 59, 60, 61, 62 65, 66 and the added issue. Although the interrogatory incorporates relevant information regarding the issues identified herein, Supra will address a few issues to establish its right to obtain the information requested. On page 4, paragraph 7 of BellSouth's Response in Opposition to Supra's Motion to Dismiss filed on February 6, 2001, BellSouth states that "the negotiations were attended by the same representatives of each company that would negotiate in the context of an Inter-Company Review Board Meeting." The information requested by this interrogatory goes to the heart of Issue A as it concerns BellSouth's failure to negotiate, in good faith, the parties' Follow-On Agreement. More specifically, the requested information is relevant to the instant proceedings as it pertains to BellSouth's willful and intentional refusal to comply with the procedural requirements of the parties' current FPSC-Approved Interconnection Agreement. Evidence of BellSouth's non-compliant behavior supports Supra's need for the liability and specific performance clauses addressed in issues 65, 66 and the added issue which lends credence to

Supra's argument that BellSouth requires strong incentives in order to achieve compliance. As the interrogatory encompasses relevant, discoverable information concerning BellSouth's non-compliant behavior and attitude, which behavior was put into issue by BellSouth via their wrongful filing of the Petition for Arbitration, the objection espoused by BellSouth is without merit and should be summarily overruled.

Interrogatory No. 7 is relevant to Issues A, 5, 10, 12, 14, 15, 18, 19, 20, 25, 26, 27, 28, 29, 31, 32, 33, 34, 38, 40, 44, 46, 47, 48, 49, 51, 53, 55, 57, 59, 60, 61, 62, 65, 66 and the added issue. Although the interrogatory incorporates relevant information regarding the issues identified herein, the Defendants will address a few issues to establish their right to obtain the information requested. On page 2, paragraph 4 of BellSouth's Response to Supra's Complaint and Motion to Dismiss, BellSouth states that it "does not believe that Supra requested these documents prior to the first week of April, 2001." The information requested by this interrogatory is directly related to Issue A as it concerns BellSouth's failure to negotiate, in good faith, the parties' Follow-On Agreement. More specifically, the requested information is relevant to the instant proceedings, and is further discoverable, as it pertains to BellSouth's willful and intentional refusal to provide Supra with information regarding its network which Supra reasonably requires in order to negotiate a Follow-On Agreement. Evidence of BellSouth's non-compliant behavior supports Supra's need for the liability and specific performance clauses addressed in issues 65, 66 and the added issue which lends credence to Supra's argument that BellSouth requires strong incentives in order to achieve compliance. As the non-compliant attitude and conduct of BellSouth is directly at issue in the instant matter, the information sought by this interrogatory is not only relevant it is necessary for Supra to support the claims it has asserted in connection with the

issues identified herein.

Interrogatory No. 8 is relevant to Issues A, 65, 66 and the added issue. This interrogatory is highly relevant to Issue A and the good faith efforts, or lack thereof, elicited by BellSouth in connection with the renegotiation of the parties' Follow-On Interconnection Agreement. The fact that BellSouth can claim that the requested information is irrelevant is disingenuous since Issue A evolved out of Supra's Status and Complaint Regarding BellSouth's Bad Faith Negotiation Tactics filed on June 18, 2001. The information sought herein goes to establish a pattern of discriminatory behavior that BellSouth practices toward other ALECs competing against BellSouth including, but not necessarily limited to, Covad Communications Company ("Covad") and Supra. The \$750,000 fine imposed by the FCC concerning BellSouth's bad faith negotiation tactics with Covad and its significance were addressed on page 6 of Supra's Motion to Dismiss and Exhibit C attached thereto dated January 29, 2001 and in ¶14 of its Response in Opposition to Supra's Motion to Dismiss filed on February 6, 2001. Based upon its objection, BellSouth is apparently of the opinion that Supra should simply forget that BellSouth threatened to put Supra out of business, and simply allow for terms in the Follow-On Agreement which would allow BellSouth to conduct business in an even more egregious manner without fear of any consequences. Similarly, it also appears that BellSouth is of the opinion that Supra should dismiss the non-compliant tactics asserted by BellSouth towards other CLECs which made it nearly impossible for those CLECs to successfully compete with BellSouth as many have either filed bankruptcy or withdrawn from the market. See announcements of Covad, Bluestar, Telscape, Teligent, Winstar, Rhythms, ICG, etc. See report titled *Annus horribilis?* However



you say it, CLECs have had a bad year Published by CLEC.com., attached as **Supra Exhibit OAR 43**. Evidence of BellSouth's bad faith and otherwise non-compliant behavior towards other ALECs supports Supra's need for the liability and specific performance clauses it has proposed to the Commission and further supports Supra's argument that without strong incentives, BellSouth will continue to employ bad faith practices upon Supra and other ALECs attempting to compete against BellSouth if adequate safeguards are not put in place. As the non-compliant attitude and conduct of BellSouth is directly at issue in the instant matter, the information sought by this interrogatory is not only relevant it is necessary for Supra to support the claims it has asserted in connection with the issues identified herein.

Interrogatory No. 9 is relevant to Issues A, 65, 66 and the added issue. As set forth in Supra's response to BellSouth's objection to Interrogatory No. 8 above, which response is adopted and incorporated herein by reference, this interrogatory is highly relevant to Issue A and the good faith efforts, or lack thereof, elicited by BellSouth in connection with the renegotiation of the parties' Follow-On Interconnection Agreement. More specifically, the information sought herein goes to establish a pattern of discriminatory behavior that BellSouth employs toward other ALECs competing against BellSouth including, but not necessarily limited to, Covad Communications Company ("Covad") and Supra. Significantly, and as noted above, the FCC has found BellSouth in violation of 251(c) of the Act for bad faith negotiations with Covad. On or about November 2, 2000, BellSouth was fined \$750,000 by the FCC for the very act it has committed against Supra. See In the Matter of BellSouth Corporation, File No. EB-900-IH-0134 Acct. No. X32080035 (Adopted October 27, 2000). Copy attached as **Supra Exhibit OAR 26**.

According to the FCC:

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. ¶1

In the Matter of BellSouth Corporation, File No. EB-900-IH-0134 Acct. No. X32080035 Order (Adopted October 27, 2000).

The significance of BellSouth's bad faith negotiations with Covad was also addressed on page 6 of Supra's Motion to Dismiss and Exhibit C attached thereto dated January 29, 2001 and in ¶14 of BellSouth's Response in Opposition to Supra's Motion to Dismiss filed on February 6, 2001. Evidence of BellSouth's bad faith and otherwise non-compliant behavior towards other ALECs supports Supra's need for the liability and specific performance clauses proposed to the Commission and further supports Supra's argument that without strong incentives, BellSouth will continue to employ bad faith practices upon Supra and other ALECs attempting to compete against BellSouth if adequate safeguards are not put in place. As the non-compliant attitude and conduct of BellSouth is directly at issue in the instant matter, the information sought by this interrogatory is not only relevant it is necessary for Supra to support the claims it has asserted in connection with the issues identified herein.

Interrogatory No. 11 is relevant to Issues 26, 28, 29, 31, 32A, 33, 34, 40, 46, 47, 48, 49, 51, 52, 53, 55, 61, 62, 63, 64, 65, 66 and the added issue. Although the interrogatory incorporates relevant information regarding the issues identified herein, the Defendants will address a few issues to establish their right to obtain the information requested. This Interrogatory is directly related to BellSouth's compliance with the Telecommunications Act of 1996, or lack thereof,

and with its obligations towards ALECs pursuant to interconnection agreements it has entered into with all ALECs. BellSouth's response to this interrogatory evidences its defiance of the parity requirements of the Act of 1996, the FCC and the FPSC rules and orders, as well as its overall attitude toward the ALECs. The total number of resale versus UNE access lines, while compared to BellSouth's own access lines, depicts the inability of the ALEC community to operate as facility-based providers. Furthermore, as Issues 65, 66 and the added issues pertain to the liability and specific performance provisions proposed by Supra, BellSouth's non-compliance is directly related to Supra's arguments regarding same, including, but not limited to, Supra's request that strong enough incentives be put in place in efforts to obtain compliance from BellSouth. As BellSouth's PCU is the department that ensures that ALECs receive the proper services and UNEs, Supra adopts by reference its response to BellSouth's objection to Interrogatory 4 herein.

Interrogatory No. 12 is relevant to Issues 29, 34, 38, 46, 47, 60, 61 and 62. As set forth in its Response to BellSouth's objection to Interrogatory No. 11 above, which response is incorporated herein by reference, this Interrogatory is directly related to BellSouth's compliance with the Telecommunications Act of 1996, or lack thereof, and with its obligations toward ALECs pursuant to interconnection agreements it has entered into with all ALECs. BellSouth's response to this interrogatory evidences its defiance of the parity requirements of the Act of 1996, the FCC and the FPSC rules and orders, as well as its overall attitude toward the ALECs. As BellSouth's Winback and Full Circle campaigns prosper and are a direct result of the lack in parity and non-discriminatory access in OSS, as non-parity results in slower and inferior service, the requested information is necessary.

Interrogatory No. 13 is relevant to Issues 38, 46, 47, 51, 60, 61 and 62. This interrogatory is highly relevant as it goes to the heart of this arbitration proceeding. The information sought herein addresses BellSouth's flow through, which information can only serve to establish Supra's position espoused in the above referenced issues that BellSouth is not providing parity and is further failing to provide non-discriminatory access to its OSS. BellSouth cannot be allowed to hide behind this baseless objection as the information obtained from this interrogatory can only be used to show a substantial disparity, as to both time and manner, in switching a customer from Supra to BellSouth and visa versa.

**INTERROGATORY No 5.** State with particularity the basis for BellSouth's contention on page 5 of BellSouth's Response to Supra's Complaint and Motion to Dismiss filed by BellSouth on July 9, 2001 that:

Since the old agreement was negotiated with AT&T five years ago, BellSouth's practices have changed, the controlling law has changed, and the interconnection offerings, terms and conditions that are available have changed. Accordingly, what BellSouth offers in the current standard interconnection agreement as a starting point for negotiation is different than what BellSouth offered as a starting point when the old AT&T agreement was drafted.

In responding to this interrogatory, identify each and every BellSouth practice that has changed, the controlling law that has changed, and the interconnection offerings, terms and conditions that BellSouth provides that have changed or other evidence upon which BellSouth intends to rely to prove this contention.

**BELLSOUTH'S ANSWER:** BellSouth objects to Interrogatory 5 to the extent it requests information about changes in the law. Such information is equally available to Supra. BellSouth also objects to Interrogatory 5 to the

extent it seeks identification of changes to BellSouth's "interconnection offerings, terms and conditions." Such information is contained in the numerous interconnection agreements between BellSouth ALECs. Those agreements are on file with the Commission and therefore equally available to Supra. BellSouth objects to Interrogatory 5 to the extent it seeks information regarding "each and every BellSouth practice that has changed" in the last five years. That request is overly broad and unduly burdensome to the extent it seeks information about practices that are unrelated to any of the issues in this proceeding. Subject to the latter objection, BellSouth will identify changes to its practices since 1996 that are relevant to the issues in this proceeding.

**SUPRA'S POSITION:** Interrogatory No. 5 is relevant to Issues A, 5, 10, 12, 14, 15, 18, 19, 20, 25, 26, 27, 28, 29, 31, 32, 33, 34, 38, 40, 44, 46, 47, 48, 49, 51, 53, 55, 57, 59, 60, 61, 62 65, 66 and the added issue. Although the interrogatory incorporates relevant information regarding the issues identified herein, the Defendants will address a few issues to establish their right to obtain the information requested. On page 5 of BellSouth's Response in Opposition to Supra's Complaint and Motion to Dismiss, BellSouth states:

Since the old agreement was negotiated with AT&T five years ago, BellSouth's practices have changed, the controlling law has changed, and the interconnection offerings, terms and conditions that are available have changed. Accordingly, what BellSouth offers in the current standard interconnection agreement as a starting point for negotiation is different than what BellSouth offered as a starting point when the old AT&T agreement was drafted.

The information requested by this interrogatory goes to the heart of Issue A as it concerns BellSouth's failure to negotiate, in good faith, the parties' Follow-On Agreement. More specifically, the requested information is relevant to the instant proceedings as it pertains to BellSouth's willful and intentional refusal to negotiate from the parties' Current Interconnection

Agreement. BellSouth's refusal to identify the "controlling law" that has changed as well as the "interconnection offerings, terms and conditions" (collectively referred to as "offerings") on the lone basis that this is public information which is equally available to Supra as it is to BellSouth, cannot stand muster. Since on or about June 7, 2000, Supra requested for the execution of an agreement, which would retain the exact same terms and conditions as the Current Agreement. Since that time, BellSouth has refused to renegotiate from said agreement due, in part, to changes in the controlling law or offerings without enumerating those specific changes. The burden for ascertaining the information requested in this interrogatory is not the same for Supra as it is for BellSouth since BellSouth knows, specifically, which changes it is referring to and how those specific changes have been incorporated into Interconnection Agreements BellSouth has entered into with other ALECs. BellSouth's game of "guess what and where the changes are located" should not prevent Supra from obtaining that information which it is entitled to. Moreover, as the Current Agreement has been amended by the parties on numerous occasions to reflect changes in the law, BellSouth's continued refusal to provide such information makes no sense and raises a red flag as to the real reason behind their failure to divulge the requested material. As to obtaining information relating to changes in BellSouth's "practices," Supra is only amenable to having BellSouth, in accordance with the interrogatory, identify changes to those practices it was referring to in its Response and is entitled to such information so that said changes may, if necessary, be incorporated into the parties' Follow-On Agreement. Evidence of BellSouth's non-compliant behavior supports Supra's need for the liability and specific performance clauses addressed in issues 65, 66 and the added issue which lends credence to Supra's argument that BellSouth requires strong incentives in order to achieve compliance. As the non-compliant attitude and conduct of BellSouth is directly at issue in the instant matter, the

information sought by this interrogatory is not only relevant it is necessary for Supra to support the claims it has asserted in connection with the issues identified in this response.

**WHEREFORE**, Supra respectfully requests that the Commission enter an Order overruling BellSouth's objections to Supra's Interrogatories as set forth herein, and compelling BellSouth, forthwith, to respond fully to the Interrogatories identified herein, and for such other relief as is deemed equitable and just.

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By: Brian Chaiken / BCB  
BRIAN CHAIKEN

**CERTIFICATE OF SERVICE**

Docket No. 0013015-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal

Express this 23rd day of August, 2001 to the following:

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