



Telephone: (850) 402-0510  
Fax: (850) 402-0522  
www.supratelecom.com

1311 Executive Center Drive, Suite 200  
Tallahassee, FL 32301-5027

---

November 14, 2001

Mrs. Blanca Bayo  
Director  
Division of Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 323099-0850

Dear Mrs. Bayo:

**RE: Docket No. 001305-TP (Supra Telecom – BellSouth Arbitration)  
Motion For Leave To File Supplemental Authority**

Enclosed is original and seven (7) redacted copies of Supra Telecommunications and Information Systems, Inc.'s (Supra Telecom) Motion For Leave To File Supplemental Authority in the above captioned docket. Confidentiality is being claimed with respect to portions of this pleading in accordance with the October 31, 2001, Final Order in Case No. 01-3365-CIV-KING, United States District Court, Southern District of Florida, Miami Division.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return it to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Brian Chaiken  
General Counsel

DOCUMENT NUMBER-DATE  
14454 NOV 14 5  
FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served via Hand Delivery or by U.S. Mail on this 14th day of November, 2001, to the following

Wayne Knight, Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Nancy B. White  
James Meza III  
c/o Nancy Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301

and

R. Douglas Lackey  
T. Michael Twomey  
BellSouth Center  
675 W. Peachtree Street  
Suite 4300  
Atlanta, Georgia 30375

SUPRA TELECOMMUNICATIONS AND  
INFORMATION SYSTEMS, INC.

  
BRIAN CHAIKEN  
2620 S. W. Avenue  
Miami, Florida 33133

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: November 14, 2001

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S  
MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY

Supra Telecommunications and Information Systems, Inc. ("Supra"), by and through its undersigned counsel, hereby files a Motion For Leave to File Supplemental Authority. In support thereof, Supra states as follows:

1. Pursuant to the requirements of the Telecommunications Act of 1996, on June 10, 1997, Supra entered into a voluntarily negotiated interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth"). The three-year interconnection agreement expired on June 9, 2000.
2. On September 1, 2000, BellSouth filed a petition for arbitration of certain issues in an interconnection agreement with Supra. Supra filed its response, and this matter was set for hearing for September 26-27, 2001.
3. On July 31, 2001, Supra filed a Motion to confirm the Arbitration Award of June 5, 2001 issued by the Arbitral Tribunal. On August 27, 2001, BellSouth filed a response to oppose the confirmation of the Arbitration Award and a Motion to Vacate. Supra filed a response to BellSouth's Motions to Stay and to Vacate on

September 7, 2001. BellSouth in turn filed a Reply Memorandum in Support of its Motion to Vacate and Reply Memorandum in Support of its Motion to Stay on October 2, 2001. (see Attachment – A, page 2) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Several of the issues in the instant proceeding were either the subject of or were addressed directly or indirectly in the June 5, 2001, Award. The same June 5, 2001, Award became final on October 31, 2001 (Final Order). While Supra notes that the findings of the Arbitral Tribunal are not binding on this Commission, Supra believes that the findings of the Arbitral Tribunal are directly related to a number of the issues that the Commission is considering. Thus, Supra believes that this Final Order provides closure and finality to this Commercial Arbitration proceeding whose issues mirror some of the same issues this Commission is addressing in the instant proceeding.
5. Generally speaking, the June 5, 2001, Award covers the subject areas of non-discriminatory access to BellSouth's OSS as well as issues related to collocation

and tortious breach of Interconnection terms and conditions, etc. Among other things, the June 5, 2001, Award granted Supra direct access to BellSouth's OSS – this ruling by-itself directly or indirectly affects Issue Numbers: 5, 18, 20, 38, 46, 47, 57, 59, 60, 61, and 62. Supra believes that BellSouth's compliance with just this portion of the June 5, 2001, Award will render the above listed issues moot, and affect the parties' Follow-On Interconnection Agreement.

6. Supra believes that the record in this proceeding supports and will lead to the same conclusion on the same or similar issues as the Arbitral Tribunal found in its proceeding. While Supra recognizes that the Commission is not bound by the findings or the decisions of the Arbitral Tribunal nor of the Federal District Court (Southern District of Florida), Supra contends that its positions with respect to most of the issues in this proceeding have been reviewed by other judicial bodies and found credible, reasonable, and necessary to ensure Supra “. . . a meaningful opportunity to compete, . . .” pursuant to the Telecommunications Act of 1996.
7. The Final Order adjudged that Supra's Petition to Confirm Arbitration Ward Made by the Arbitral Tribunal “. . . , be, and the same is hereby, GRANTED.” Accordingly, Supra has complied with the findings of the confirmed Arbitration Ward Made by the Arbitral Tribunal, issued on October 22, 2001.

**WHEREFORE**, Supra respectfully moves this Commission for leave to file the attached supplementary authority (as updates to OAR-3) for its consideration in the instant proceeding.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served via U. S. Mail

this 14<sup>th</sup> day of November 2001 to the following:

Nancy B. White, Esq.  
James Meza III  
c/o Nancy Sims  
BellSouth Telecommunications, Inc.  
150 S. Monroe Street – Suite 400  
Tallahassee, Florida 32301

R. Douglas Lackey  
T. Michael Twomey, Esq.  
Suite 4300, BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375  
(404) 335-0710

via Hand Delivery

Wayne Knight  
Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

SUPRA TELECOMMUNICATIONS  
& INFORMATION SYSTEMS, INC.  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, Florida 33133  
Telephone: (305) 476-4248  
Facsimile: (305) 443-9516

By: Brian Chaiken  
BRIAN CHAIKEN

**ATTACHMENTS:**

**Attachment – A** Final Order Granting Petition to Confirm Arbitration Award, Denying Motion to Vacate and Granting Motion to Seal, issued on October 31, 2001, by the United States District Court, Southern District of Florida, Miami Division

**Attachment – B** CONFIDENTIAL

**Attachment – C** CONFIDENTIAL

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

SUPRA TELECOMMUNICATIONS &  
INFORMATION SYSTEMS, INC., a  
Florida corporation,

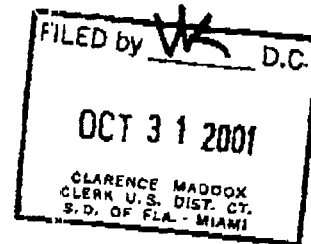
CASE NO. 01-3365-CIV-KING

Plaintiff,

v.

BELLSOUTH TELECOMMUNICATIONS,  
INC., a Georgia corporation,

Defendant.



**FINAL ORDER GRANTING PETITION TO CONFIRM ARBITRATION  
AWARD, DENYING MOTION TO VACATE AND  
GRANTING MOTION TO SEAL**

THIS CAUSE comes before this Court upon Plaintiff Supra Telecommunications & Information Systems, Inc.'s ("Supra") Petition to Confirm Arbitration Award Made by Arbitral Tribunal dated June 5, 2001 which was filed on July 31, 2001.<sup>1</sup> Defendant BellSouth Telecommunications, Inc.'s ("BellSouth") filed a Response in Opposition to Plaintiff Supra's Petition to Confirm Arbitration Award Made by Arbitral Tribunal and Motion to Stay on August 27, 2001. This Court heard oral arguments on the Motions to Vacate, to Stay and to Seal and the parties' responses thereto on October 11, 2001.

---

<sup>1</sup> Defendant BellSouth challenges the portion of the arbitration award in which the Arbitral Tribunal ordered BellSouth to provide Supra with non-discriminatory direct access to its Operational Support Systems ("OSS") and to cooperate with and facilitate Supra's ordering of services by no later than June 15, 2001. The Arbitral Tribunal found that BellSouth did not provide Supra with an OSS that is equal to or better than the OSS BellSouth provides to itself or customers in non-compliance with its contractual obligations.



## I. Procedural Background

This instant action was commenced by Plaintiff Supra to confirm an arbitration award on July 31, 2001. Defendant BellSouth opposed the confirmation of the arbitration award and filed a Motion to Vacate on August 27, 2001. Plaintiff Supra filed a Response to Defendant BellSouth's Motions to Stay and to Vacate on September 7, 2001. Defendant BellSouth filed a Reply Memorandum in Support of its Motion to Vacate and a Reply Memorandum in Support of its Motion to Stay on October 2, 2001.

On or about October 5, 1999, the parties entered into an Interconnection Agreement (the "Agreement") pursuant to the Telecommunications Act of 1996 (the "Act").<sup>2</sup> Plaintiff Supra filed a Notice of Arbitration and Complaint against Defendant BellSouth on October 25, 2001. Defendant BellSouth also filed a claim for arbitration on January 31, 2001. The Agreement contained an arbitration provision which required the parties to arbitrate all disputes, claims or disagreements arising under or related to the Agreement. A dispute arose between the parties over the provision of services and alleged breaches. Pursuant to section 16.1 of the Agreement, the parties submitted their disputes to arbitration. On June 5, 2001, the Arbitral Tribunal issued an Order (the "June 5th Order"), which is the subject of this instant action. Defendant BellSouth and Plaintiff Supra both

---

<sup>2</sup> The Act's purposes are "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 56 (1996) (preamble). To achieve one of its goal with respect to local telephone service, the Act required Incumbent Local Exchange Carriers ("ILECs"), which were historically granted regulated monopolies to provide local telephone services, such as BellSouth, to a host of duties to facilitate competition with Competing Local Exchange Carriers ("CLEC") such as Supra. The Act required ILECs to enter into interconnection agreements with CLECs who sought to compete in a market as the parties to this instant action did.

filed motions regarding the June 5th Order with the Arbitral Tribunal. The Arbitral Tribunal heard oral arguments on the parties' motions on July 16, 2001 and issued an Order Regarding Supra's and BellSouth's Motions for Interpretation of the June 5, 2001 Award in Consolidated Arbitrations on July 20, 2001. Subsequently, the Arbitration Tribunal entered a Final Award of the Tribunal in Consolidated Arbitration on October 22, 2001.

Defendant BellSouth argues that the Court should not confirm the arbitration award because it is not final and should vacate the arbitration award because the arbitrators exceed their authority. The Court finds that the June 5th Order was a final award. The only issue remaining before the arbitrators after their June 5th Order and July 20, 2001 Order was the calculation of Defendant BellSouth's bills based on the Audit, which is not an issue before the Court. In addition, as previously noted, the Arbitral Tribunal issued a final award on October 22, 2001. Defendant BellSouth's argument to stay the proceedings became moot upon issuance of a final award. The remaining issue is whether or not the arbitration award should be confirmed.

## II. Discussion

A court has limited review of an arbitration award. See Lifecare Int'l, Inc. v. CD Medical, Inc., 68 F.3d 429, 433 (11th Cir.1995). The Federal Arbitration Act ("FAA") recognizes four statutory bases for vacating an arbitration award. See 9 U.S.C.A. §10(a). Here, Defendant BellSouth moves to vacate a portion of the arbitration award on the ground that the Arbitral Tribunal exceeded its authority by providing relief beyond the scope of the Agreement. Specifically, Defendant BellSouth contends that the direct access to its OSS awarded to Plaintiff Supra goes beyond the non-discriminatory access contemplated by the parties in their Agreement. In response, Plaintiff Supra points to specific provisions in the Agreement where Defendant BellSouth is obligated to provide

Plaintiff Supra with "non-discriminatory access". Plaintiff Supra cites sections 12.1, 23.3 and 28.6.12 of the Agreement to support the arbitration award on the direct access issue. Also, Plaintiff Supra offers sections 30.1, 30.2, 30.3, 30.5, 30.10.3 and 30.10.4 of the Agreement and section 1.2 of attachment 4 of the Agreement as provisions supporting the arbitrators' authority to make the arbitration award.

The Court concludes that the Arbitral Tribunal did not exceed its authority under the Agreement in finding for Plaintiff Supra on the direct access issue in its arbitration award. Acting in compliance with their Agreement, the parties submitted their dispute which arose from the Agreement to the Arbitral Tribunal. The Arbitral Tribunal decided the dispute within its authority. The Court concludes that the arbitrators did not exceed their authority under the Agreement of the parties. Therefore, the arbitration award at issue should be confirmed and the Motion to Vacate be denied.

#### **1. Defendant BellSouth's Motion to Seal**

Defendant BellSouth filed a Motion to Seal and an Unopposed Motion for Emergency Consideration of its Motion to Seal on August 8, 2001. Plaintiff Supra filed a Response to Defendant BellSouth's Motion to Seal on August 10, 2001. The Court ordered that all filings in this case be filed under seal in its Order on Defendant's Unopposed Motion for Emergency Consideration of BellSouth's Motion to Seal dated August 9, 2001 until further order of the Court. The Court, in its Order on Defendant's Motion to Seal BellSouth's Motion to Seal, ordered that Defendant BellSouth's Motion to Seal be sealed until a final judgment has been entered by the Court. In its Order on Defendant BellSouth's Emergency Motion to Seal dated August 14, 2001, the Court ordered that all documents which disclose any information about the arbitration order must be filed

under sealed. Defendant BellSouth's Motion to Seal is now ripe for ruling.

Defendant BellSouth wants the June 5th Order and all documents that in any way disclose any information about the arbitration order to be sealed by the Court. To supports its request, Defendant BellSouth argues that the arbitration order as well as the hearings, conferences, discovery and other related events are confidential. According to Defendant BellSouth, section 14.1 of Attachment 1 of the Agreement requires that all such information be confidential.<sup>3</sup> Plaintiff Supra asserts that section 14.1 of Attachment 1 of the Agreement provides an exception to the confidentiality provision. Plaintiff Supra argues that the confidentiality provision does not apply the June 5th Order since it had to seek judicial enforcement of the arbitration award and that the arbitration award contained no proprietary or confidential information.

The exception to the confidentiality provision does not permit the parties to disclose information and evidence produced during the arbitration proceedings and other related matters (including an arbitration award), beyond a judicial proceeding or unless by order of a court or a governmental body. Further, the Arbitral Tribunal, in its Order dated July 20, 2001, concluded that the arbitration award may contain proprietary or confidential information, which the parties agreed to be held in confidence in accord with the terms of the Agreement. Therefore, to unseal the filings in this case would contravene the confidentiality provision with which the parties agreed.

Plaintiff Supra also claims that sealing the June 5th Order would violate public policy on the grounds that (1) Defendant BellSouth may discriminate against other tele-communications carriers,

---

<sup>3</sup>Section 14.1 of the Attachment 1 of the Agreement states:  
BellSouth, AT&T, and the Arbitrator(s) will treat any arbitration proceeding, including the hearings and conferences, discovery, or other related events, as confidential, except as necessary in connection with a judicial challenge to, or enforcement of, an award, or unless otherwise required by an order or lawful process of a court or government body.

and (2) Plaintiff Supra cannot disclose to its past, present and future customers that Defendant BellSouth may have caused problems with their service. However, the Court is unpersuaded by Plaintiff Supra's contentions and declines to order the June 5th Order or other documents filed in this case to be unsealed, except for this Order.

### III. Conclusion

Accordingly, after a careful review of the record, and the Court being otherwise fully advised, it is

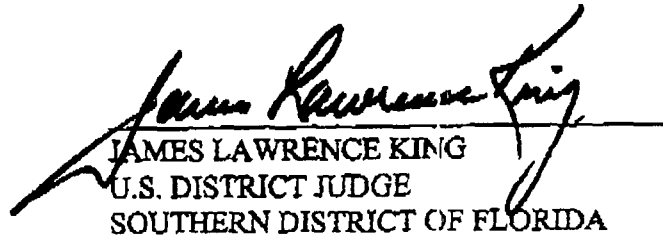
ORDERED and ADJUDGED that Plaintiff Supra Telecommunications & Information Systems, Inc.'s Petition to Confirm Arbitration Award Made by Arbitral Tribunal be, and the same is hereby, GRANTED. It is further

ORDERED and ADJUDGED that the Arbitration Award Made by Arbitral Tribunal be, and the same is hereby, CONFIRMED. Defendant BellSouth Telecommunications, Inc. is directed to immediately comply with the Arbitration Award by the Arbitral Tribunal. It is further

ORDERED and ADJUDGED that Defendant BellSouth Telecommunications, Inc.'s Motion to Vacate be, and the same is hereby, DENIED. It is further

ORDERED and ADJUDGED that the Court retains jurisdiction to determine the appropriate costs and attorney's fees incurred by Plaintiff Supra Telecommunications & Information Systems, Inc. for bringing this Petition and for defending the Motion to Vacate upon proper motion by Plaintiff Supra Telecommunications & Information Systems, Inc. All other pending motions are hereby DENIED as moot. The clerk of the Court is hereby DIRECTED to close the above-styled case.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building  
and United States Courthouse, Miami, Florida, this 31st day of October, 2001.

  
JAMES LAWRENCE KING  
U.S. DISTRICT JUDGE  
SOUTHERN DISTRICT OF FLORIDA

cc: Brian Chaiken, Esq.  
2620 S.W. 27th Avenue  
Miami, Florida 33133  
Facsimile: (305) 443-9516  
Counsel for Plaintiff Supra Telecommunications & Information Systems, Inc.

William F. Hamilton, Esq.  
Holland Knight, LLP  
701 Brickell Avenue  
Suite 3000  
Miami, Florida 33130  
Facsimile: (813) 229-0134  
Counsel for Defendant BellSouth Telecommunications, Inc.

Jennifer Shasha Kay, Esq.  
150 West Flagler Street  
Suite 1910  
Miami, Florida 33130  
Facsimile: (305) 375-0209  
Counsel for Defendant BellSouth Telecommunications, Inc.

**Attachment – B**

**CONFIDENTIAL**



**Attachment – C**

**CONFIDENTIAL**