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November 21, 2001

Mrs. Blanca S. Bayo
Director, Division of the Commission Clerk
And Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

RE: Docket No. 001305-TP (Supra)

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Supra Telecommunications and Information Systems, Inc.'s Motion for Leave to File Supplemental Authority, which we ask that you file in the captioned docket.

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

Sincerely,


James Meza III (KA)

Enclosures

cc: All Parties of Record
Marshall M. Criser III
Nancy B. White
R. Douglas Lackey

DOCUMENT NUMBER-DATE

14864 NOV 21 5

FPCC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
Docket No. 001305-TP**

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

Federal Express this 21st day of November, 2001 to the following:

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James Meza III (KA)

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the) Docket No. 001305-TP
Interconnection Docket No. 001305-TP)
Agreement Between BellSouth)
Telecommunications, Inc. and Supra)
Telecommunications & Information)
System, Inc., Pursuant to Section 252(b) of the)
Telecommunications Act of 1996.)
_____) Filed: November 21, 2001

**BELLSOUTH'S RESPONSE TO SUPRA'S MOTION
FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Response to Supra Telecommunications & Information Systems, Inc.'s ("Supra") Motion for Leave to File Supplemental Authority. As set forth in detail below, the Florida Public Service Commission ("Commission") should deny Supra's request to file supplemental authority because Supra is using said information solely for the purpose of argument and/or because two of the three decisions Supra is presenting to the Commission were issued prior to the filing of post-hearing briefs.

1. Although the Commission has no rules or procedures for the filing of supplemental authority, the Commission has ruled in the past that, in accord with Rule 9.225, Florida Rules of Appellate Procedure, it has the authority to consider supplemental authority. In re: Complaint by BellSouth Telecommunications, Inc. against Thrifty Call, Inc. regarding practices in the reporting of percent interstate usage for compensation for jurisdictional access services, Order No. PSC-00-1568-PCO-TP at 3. Rule 9.225 provides:

Notices of supplemental authority may be filed with the court before a decision has been rendered to call attention to decisions, rules, statutes, or other authorities that are significant to the issues raised and that have been discovered after the last brief served in the cause. The notice may identify briefly the points argued on appeal to which the supplemental authorities are pertinent, **but shall not contain argument.**

2. In ruling on this issue in the past, the Commission has focused on whether the notice itself contained argument. If it did, then the Commission rejected or denied a party's request for the Commission to consider supplemental authority. For instance, in Order No. PSC-94-0982-FOF-WS, a utility filed a notice of supplemental authority regarding a newly enacted statute. In the notice, the utility argued that, because the statute addressed certain objections raised to the Commission's order approving the utility's conservation plan, the objections should be dismissed. Order No. PSC-00-1568-PCO-TP (citing Order No. 94-0982-FOF-WS). The Commission rejected the notice as argumentative. Similarly, in Order No. PSC-97-0293-FOF-WS, a utility sought to call the Commission's attention to a recent appellate court decision, arguing that the decision was additional support for its position. The Commission denied consideration of the opinion because it found that the utility submitted the opinion for the purpose of argument. Id.

3. The case at hand is no different. Although not entirely clear, Supra apparently is attempting to call the Commission's attention to three decisions: (1) an October 31, 2001 decision rendered by the United States District Court, Southern District of Florida granting Supra's Motion to Confirm Arbitration Award;

(2) the Final Award of the Tribunal issued on October 22, 2001; and (3) the Order on Motions of the Tribunal issued on October 19, 2001. See Supra's Motion at p. 5.

4. Supra presented these decisions to the Commission solely to argue that the Commission should come to the same conclusions reached by the Arbitration Tribunal.¹ Indeed, as admitted by Supra in its Motion, Supra submitted that (1) the "record in this proceeding supports and will lead to the same conclusions on the same or similar issues as the Arbitral Tribunal found in its proceeding; and (2) "its positions with respect to most of the issues in [the Commission] 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." See Supra Motion at 3.

5. As made clear by Supra's own statements, Supra has not merely called to the Commission's attention a ruling made by the Arbitration Tribunal or the United States Federal Court for the Southern District of Florida. Instead, identical to the utilities in Order Nos. PSC-94-0982-FOF-WS and PSC-97-0293-FOF-WS, Supra submitted these decisions to the Commission solely for the purpose of argument. For this reason alone, the Commission should deny Supra's Motion.

¹ Significantly, it should be noted that the United States District Court for the Southern District of Florida did not address any of the substantive findings of the Arbitration Tribunal in its June 5, 2001 award. Therefore, the Federal District Court's ruling does not touch on any of the issues presented to this Commission.

6. Additionally, the Commission should deny Supra's request to file supplemental authority for the Tribunal's Final Award, issued on October 22, 2001, and the Tribunal's Order, issued on October 19, 2001 because said request is procedurally improper.

7. As set forth above, Rule 9.225 of the Florida Rules of Appellate Procedure permits the filing of supplemental authority that is significant to the issues raised and **that has been discovered after the last brief served in the case**. Rule 9.225, Fla. R. App. P. In the case at hand, the hearing took place on September 26-27, 2001 and the parties filed post-hearing briefs on October 26, 2001. Accordingly, both of the Tribunal decisions subject to the instant motion were issued and sent to Supra prior to the date Supra filed its post-hearing brief.² Thus, pursuant to Rule 9.225, Supra's motion as to these two Tribunal decisions is improper because they were discovered by Supra prior to the last brief served.

WHEREFORE, for the foregoing reasons, BellSouth respectfully requests that the Commission deny Supra's request for leave to file supplemental authority.

² In the arbitration proceeding, the Tribunal issues all orders to the parties electronically on the date that the order is issued.

Respectfully submitted this 21st day of November, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

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