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February 1, 2002

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

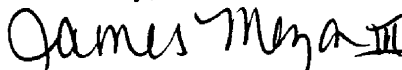
**RE: Docket No. 001305-TP (Supra)**

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition 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

01284 FEB-18

FPSC-COMMISSION CLERK

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

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
Facsimile and U.S. Mail this 1st day of February, 2002 to the following:

Wayne Knight  
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James Meza III (LA)

**(+) Signed Protective Agreement**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Arbitration of the	)	Docket No. 001305-TP
Interconnection Agreement Between	)	
BellSouth Telecommunications, Inc. and Supra	)	
Telecommunications & Information	)	
System, Inc., Pursuant to Section 252(b) of the	)	
Telecommunications Act of 1996.	)	
<hr style="border: 0.5px solid black;"/>		Filed: February 1, 2002

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

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Opposition 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 (1) the supplemental authority Supra is seeking to introduce is irrelevant and insignificant to the instant arbitration; (2) the supplemental authority is not "controlling" on this Commission; and (3) Supra's request is untimely and only results in the further delay of the resolution of this proceeding.

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. Accordingly, in order for the Commission to consider supplemental authority, said authority must be **significant** to the issues raised in the proceeding.

3. After previously requesting leave to file supplemental authority, which was granted in part and denied in part, *Supra*, on the eve of the issuance of Staff's recommendation, now wishes to file supplemental authority and a supplemental brief regarding said authority. The authority in question is the United States Court of Appeals for the Eleventh Circuit's consolidated split panel decision in BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Services, Inc., Order No. 00-12809 and BellSouth Telecommunications, Inc. v. WorldCom Technologies, Inc. and E.Spire Communications, Inc., Order No. 00-12810, rendered on January 10, 2002. In this decision, Judge Tjoflat, with one judge dissenting, essentially found that state commissions do not have the authority to interpret and enforce interconnection agreements. Rather, the appropriate authority to resolve such disputes is a court of law.

4. *Supra* argues in its Motion that this decision is "controlling legal authority with respect to Issue 1 in the pending arbitration, Docket No. 001305-

TP, which states: ‘What are the appropriate fora [sic] for the submissions of disputes under the new agreement.’” Motion at 2. Supra is wrong for several reasons.

5. First, the question in Issue 1 of the arbitration is whether the Commission should require BellSouth to go to private commercial arbitration in order to resolve a dispute over the interconnection agreement, thereby forcing BellSouth to forfeit certain constitutional and due process rights, including the right to a trial by jury and certain appeal rights. The Eleventh Circuit’s January 10, 2002 decision, however, does not even remotely address this issue. Rather, it only addresses the issue of whether a state commission has the authority to enforce and interpret interconnection agreements. Consequently, the Eleventh Circuit’s decision has no bearing whatsoever and is totally irrelevant to Issue 1. Indeed, neither party presented any evidence at the hearing or filed any testimony regarding the situation directly addressed in the Eleventh Circuit’s decision – whether the Commission or a Court should interpret and enforce the agreement. Accordingly, contrary to Rule 9.225, the Eleventh Circuit’s decision is not significant to any issue in the arbitration and the Commission should deny Supra’s request to file supplemental authority.

6. Second, Supra is incorrect in stating that the Eleventh Circuit’s decision is “controlling.” That decision is a nonfinal order, involving a split panel. Reconsideration and even reconsideration en banc is still available.

7. Additionally, Supra’s Motion is untimely and is nothing more than a veiled delay tactic. This docket has been pending for over two and one-half

years and over four months have passed since the completion of the hearing. In the interim, the companies continue to operate under an antiquated agreement that expired in 1999. Now, on the eve of Staff issuing a recommendation on the arbitration, Supra is attempting to further delay the proceeding by introducing an irrelevant and insignificant decision and filing supplemental briefs. The Eleventh Circuit's decision was rendered on January 10, 2002 and Supra's filed its motion on January 30, 2002. If Supra's motive in filing the Motion was not to delay this proceeding, then why did Supra wait over 20 days and approximately one week before Staff is scheduled to issue a recommendation to file the Motion? During that time period, the Motion could have been resolved and any supplemental briefs filed, all without postponing staff's recommendation. It is time for this docket to be resolved and for the parties to begin to operate under the new agreement. The Commission should reject Supra's latest delay tactic.

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

Respectfully submitted this 1st day of February 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

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