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February 21, 2002

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

**RE: Docket No. 001305-TP - Renewed Motion For an Indefinite Stay, and
in the alternative, Renewed Motion For Oral Arguments**

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Notice of Service of Renewed Motion For an Indefinite Stay, and in the alternative, Renewed Motion For Oral Arguments in the above captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return it to me.

Sincerely,

Brian Chaiken
General Counsel

DOCUMENT NUMBER DATE
02091 FEB 21 08
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, Hand Delivery and/or Federal Express this 21st day of February, 2002 to the following:

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By: Brian Chaiken / a7AS
BRIAN CHAIKEN, ESQ.

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: February 21, 2002

**SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S
RENEWED MOTION FOR INDEFINITE STAY OF DOCKET NO. 001305-TP,
AND IN THE ALTERNATIVE
RENEWED MOTION FOR ORAL ARGUMENTS**

Supra Telecommunications and Information Systems, Inc. ("Supra"), by and through its undersigned counsel, hereby files this Motion, to renew its REQUEST FOR AN INDEFINITE STAY OF THIS PROCEEDING until Supra's MOTION FOR REHEARING has been voted upon, and in the alternative Supra files this additional Motion, pursuant to Rule 25-22.058, Florida Administrative Code, renewing Supra's Request for Oral Arguments. In support thereof, Supra states as follows:

BRIEF INTRODUCTION

1. The pleading upon which oral argument is being requested is the Staff Recommendation, issued on February 7, 2002, in Docket No. 001305-TP.
2. Rule 25-22.058(1), Florida Administrative Code, states that a request for oral argument "shall state with particularity why oral argument would aid the Commission." In accordance with this express mandate, Supra shall state, in this document, with particularity why BellSouth has incorrectly relied on Section 364.162(1), Florida Statutes and *Southern Bell Tel. And Tel. Co. v. Florida Pub. Serv. Comm'n*, 453 So.2d 780, 781 (Fla. 1984) in opposition to Supra's position

that this Commission has **no** authority to adjudicate contractual disputes arising under a previously approved interconnection agreement¹, and why oral argument would aid the Commission in comprehending and evaluating the issues before it.

SUMMARY

3. On or about February 15, 2002, the FPSC issued an Order On Motion for Additional Briefing, granting the parties the right to submit legal briefs outlining the impact of the decision in *BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services, Inc.*, et al., 2002 U.S. App. Lexis 373 (11th Cir. 2002). (“11th Cir. BellSouth Decision”). The parties submitted legal briefs on February 19, 2002, pursuant to the February 15, 2002 FPSC Order.
4. BellSouth, in its Response to Supra’s Motion for Leave to File Supplemental Authority, originally argued, incorrectly, that the 11th Cir. BellSouth Decision was not final and therefore was not controlling. Now, instead of claiming that the FPSC is not bound by the controlling opinion of the 11th Cir. BellSouth Decision, BellSouth has changed its position and claims that said decision is inapplicable to the present case. BellSouth hinges its argument on Fla. Stat. 364.162(1), claiming that such is an express grant of authority by the Florida legislature allowing the FPSC to adjudicate disputes regarding the enforcement of interconnection agreements. As set forth below, BellSouth’s new position, much like its original position, is fatally flawed.
5. The Florida Supreme Court confirms in *Southern Bell Tel. And Tel. Co. v. Florida Pub. Serv. Comm’n*, 453 So.2d 780, 783 (Fla. 1984) that the FPSC’s essential

¹ See in *BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services, Inc.*, et al., 2002 U.S. App. Lexis 373 (11th Cir. 2002).

function is as a “regulator of rates.” The quasi-judicial authority to adjudicate disputes arising out of a contract must be expressly delegated by the Florida Legislature. An example of a proper assignment of quasi-judicial authority is set forth in s. 364.07(2), Florida Statutes. It is a well established principle of law that the Florida legislature is presumed to have intentionally and purposely acted when it excludes the same terms from one section after having included those exact terms in another section. *CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1225-1226 (11th Cir. 2001). Therefore, as a matter of law, the Florida legislature must have intended a different, more limiting, meaning for the terms used in s. 364.162(1).

6. The phrase at issue in s. 364.162(1), Florida Statutes, is “interpretation of prices and terms and conditions.” BellSouth will, of course, argue that the use of the words “terms” and “conditions” means that the FPSC is entitled to hear disputes regarding an entire interconnection contract. This conclusion is incorrect, as it fails to adhere to the rules of statutory construction. The Florida legislature could have used the phrase “such contracts,” instead of the phrase “prices and terms and conditions.” It did not. Therefore, the phrase “prices and terms and conditions” must have a more limiting nature. Because it is well established that the FPSC has, as its primary purpose, quasi-legislative rate-making authority, it follows that the “terms and conditions” must be inextricably intertwined with the FPSC’s rate-making authority. As such, the Florida legislature did not expressly grant the FPSC authority to resolve disputes for **enforcement of entire** interconnection and resale agreements.

ARGUMENT

7. *Southern Bell Tel. And Tel. Co. v. Florida Pub. Serv. Comm'n*, 453 So.2d 780, 781 (Fla. 1984), does not provide the Florida Public Service Commission (FPSC) with authority to adjudicate disputes arising out of previously approved interconnection agreements.
8. The 1984 case, which pre-dates the Telecommunications Act of 1996, involved an interexchange service contract and the proper distribution of toll revenues. This Florida Supreme Court case further substantiates Supra's position as outlined on page 8, of Supra's Legal Brief.
9. Section 364.07(2), Florida Statutes, entitled "Joint contracts; intrastate interexchange service contracts," expressly states that: "The commission is also authorized to **adjudicate disputes** among telecommunications companies **regarding such contracts** or the **enforcement thereof.**" This section refers to intrastate interexchange service contracts, not interconnection agreements.
10. The Florida Supreme Court case of *Southern Bell Tel. And Tel. Co. v. Florida Pub. Serv. Comm'n*, determined that the use of the terms "**adjudicate disputes . . . regarding such contracts** or **the enforcement thereof. . .**," was sufficient for the Court to find (1) that this was a proper assignment by the Florida legislature of quasi-judicial authority, permitting the FPSC to hear the dispute with respect to these specific types of contracts, and (2) that the FPSC had the authority "to order a change in the course of dealing followed by the two telephone companies pursuant to their contractual arrangement." *Id.* at 781.

11. It should be observed that the phrase “adjudicate disputes” is very specific, and that the phrase “regarding such contracts” is purposely broad – encompassing the entire interexchange agreement.
12. As stated in Supra’s initial brief, page 10: The Florida legislature acts “intentionally and purposely” when it includes language in one provision and then excludes the same language in another. In these circumstances, the legislature’s silence is controlling. *CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1225-1226 (11th Cir. 2001).
13. Section 364.162(1), Florida Statutes, uses none of the language found in Section 364.07(2). There is no “adjudicate disputes.” There is no “regarding such contracts.” There is no “enforcement thereof.”
14. First, Section 364.162, Florida Statutes, **expressly** deals with the Commission’s power to set prices and rates for interconnection and resale agreements. This provision uses phrases like:
 - (1) . . . **if a negotiated price is not established**, . . . party may petition the commission to **establish . . . rates**, terms and conditions . . .
 - (2) . . . **set nondiscriminatory rates**, terms and conditions, except that the rates shall not be below cost.
 - (3) In **setting the local interconnection charge** . . . determine . . . charge is **sufficient to cover the cost** of furnishing interconnection.
 - (4) **ensure that . . . if the rate it sets for a service or facility to be resold provides a discount below the tariff rate** for such service . . . The commission shall ensure that this **rate is not so high that it would serve as a barrier to competition.**
15. Second, The Florida Supreme Court confirms in *Southern Bell Tel. And Tel. Co. v. Florida Pub. Serv. Comm’n*, that the FPSC’s essential function is as a “regulator of rates.” *Id.* at pg. 783.

16. This is consistent with what the 11th Circuit stated in its opinion of January 10, 2002:

Courts give deference to the GPSC's orders on matters, like rate-setting, that fall within its distinct area of expertise:

Ratemaking is a legislative function . . . delegated to the members of the Commission. To this extent, and to this extent only, the Commission is . . . charged as a lawmaking body, and so long as it does not itself act in an unconstitutional manner the courts do not have a right to interfere. [citations omitted] (The function of making . . . rates is legislative in nature, and such rates cannot be judicially fixed by the courts.). (Emphasis added).

BellSouth Telecommunications Inc. v. MCIMetro Access Transmission Services, 00-12809 and 00-12810, at page 46.

17. Section 364.162, Florida Statutes, is consistent with the 11th Circuit holding that rate-making is a legislative function.
18. At most, s. 364.162(1) simply allows the FPSC to review a price or rate, within a resale or interconnection agreement, to ensure that the price or rate is appropriately set, in accordance with FPSC rules, statutes, past orders and in particular the guidelines set out in s. 364.162, Florida Statutes. Nothing more.
19. Third, Section 364.162, Florida Statutes, is entitled "Negotiated prices for interconnection and for the resale of services and facilities; Commission rate setting." While not controlling, this title provides further evidence of the legislature's intent of the scope of the Commission's authority under this provision.

20. Fourth, Section 364.162(1), uses phrases like: (1) “arbitrate” a dispute, as opposed to “adjudicate” a dispute. The Florida legislature could have utilized the term “adjudicate” again. It chose not to. As such, this omission requires a different meaning with respect to the power granted in this section. *CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1225-1226 (11th Cir. 2001).
21. Likewise, the Florida legislature expressly limited the scope of this provision by using the phrase: “**regarding** interpretation of . . . **prices**”, as opposed to the much broader phrase “regarding such contracts.” When read in conjunction with the phrase “arbitrate any dispute,” the phrase “regarding . . . prices” makes clear that the FPSC’s role is limited to reviewing or arbitrating disputes involving prices **only**. The word “interpretation” is simply inserted to characterize the parties’ position with respect to what should be the correct price. The FPSC is well within its jurisdiction to arbitrate or decide which of the parties’ positions is the correct one with respect to the price or rate in dispute.
22. The FPSC s. 364.162(1), is limiting in nature and does not utilize any of the same terms used in s. 364.07(2). As such, the different and much narrower language must be given different meaning. *CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1225-1226 (11th Cir. 2001).
23. Accordingly, because s. 364.162, lacks the specific terms and phrases utilized in s. 364.07(2), as a matter of law, the Florida legislature intentionally and purposely intended that s. 364.162(1) must have a different meaning and scope. As such, while s. 364.07(2) can be considered a proper delegation of quasi-judicial authority, the same cannot be said of s. 364.162.

24. Accordingly, s. 364.162(1), Florida Statutes, cannot be relied upon as authority to adjudicate disputes arising out of previously approved interconnection agreements.
25. Given all of these specific reasons set forth in particularity above, in accordance with Rule 25-22.058(1), Florida Administrative Code, Supra submits that oral argument will better aid the Commission in comprehending and evaluating the impact of the 11th Circuit's decision, as well as the applicability of Section 364.162(1), Florida Statutes, and *Southern Bell Tel. And Tel. Co. v. Florida Pub. Serv. Comm'n*, 453 So.2d 780, 781 (Fla. 1984) which BellSouth incorrectly relies upon.

WHEREFORE, Supra respectfully requests to renew its Motion for Indefinite Stay pending the Commission's decision on our Motion for Rehearing and requests the privilege of presenting oral arguments to the Commission to better aid the Commission in comprehending and evaluating the issues before it.

RESPECTFULLY SUBMITTED this 21st day of February, 2002.

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