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February 28, 2002

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 001097-TP (Supra Billing Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to Supra Telecommunications and Information Systems, Inc.'s Motion to Compel and Overrule Objections to Supra's First Set of Admissions, Second Set of Interrogatories, and Second Request for Production, 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 to the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III
(22)

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

DOCUMENT NUMBER DATE

02363 FEB 28 2002

REC'D - DIVISION CLERK

CERTIFICATE OF SERVICE
Docket No. 001097-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail, Facsimile and U.S. Mail this 28th day of February, 2002 to the following:

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James Meza III
(22)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth)
Telecommunications, Inc. against Supra)
Telecommunications and Information)
Systems, Inc., for Resolution of Billing)
Disputes.)
_____)

Docket No. 001097-TP

Filed: February 28, 2002

**BELLSOUTH TELECOMMUNICATIONS, INC.'S OPPOSITION
TO SUPRA'S MOTION TO COMPEL AND OVERRULE OBJECTIONS
TO SUPRA'S FIRST SET OF ADMISSIONS, SECOND SET OF
INTERROGATORIES AND SECOND REQUEST FOR PRODUCTION**

BellSouth Telecommunications, Inc., ("BellSouth") files this Opposition to Supra Telecommunications and Information Systems, Inc.'s ("Supra") Motion to Compel and Overrule Objections to Supra's First Set of Admissions, Second Set of Interrogatories and Second Request for Production of Documents, and says:

BACKGROUND

Between 1997 and 1999, four different agreements controlled the contractual relationship between BellSouth and Supra: (1) the June 1997 Resale Agreement ("Resale Agreement"); (2) the June 1997 Interconnection Agreement ("Interconnection Agreement"); (3) the June 1997 Collocation Agreement ("Collocation Agreement"); and (4) the 1997 AT&T/BellSouth Agreement adopted by Supra on October 5, 1999 ("AT&T/BellSouth Agreement").

On August 9, 2000, BellSouth filed a complaint against Supra for violation of the AT&T/BellSouth Agreement and the 1997 Resale Agreement for failing to pay amounts not in dispute. On August 30, 2000, Supra filed a Motion to Dismiss, arguing that, pursuant to the AT&T/BellSouth Agreement, BellSouth

was required to resolve billing disputes through private arbitration and not at the Florida Public Service Commission ("Commission"). In Order No. PSC-00-2250-FOF-TP ("Order on Motion to Dismiss"), issued on November 28, 2000, the Commission granted in part and denied in part Supra's Motion to Dismiss, finding that it had exclusive jurisdiction over billing disputes arising under the Resale Agreement but that it had no jurisdiction over any billing disputes arising under the AT&T/BellSouth Agreement. Consequently, the Commission held that the only dispute remaining at the Commission was BellSouth's billing claims arising prior to October 5, 1999 under the Resale Agreement.

On January 31, 2002, the Commission issued an Order Setting Matter for Rehearing and Establishing Procedure that, among other things, set forth the issues to be addressed in this proceeding. Those issues, which were adopted from the Commission's Order Establishing Procedure (Order No. PSC-01-0388-PCO-TP) dated February 15, 2001, are:

- Issue 1: Should the rates and charges contained (or not contained) in the 1997 AT&T/BellSouth Agreement apply to the BellSouth bills at issue in this Docket?
- Issue 2: Did BellSouth bill Supra appropriately for End-User Common Line Charges pursuant to the BellSouth/Supra interconnection and resale agreement?
- Issue 3: Did BellSouth bill Supra appropriately for changes in services, unauthorized local service changes, and reconnections pursuant to the BellSouth/Supra interconnection and resale agreements?
- Issue 4: Did BellSouth bill Supra appropriately for secondary service charges pursuant to the BellSouth/Supra interconnection and resale agreement?

The scope of these issues was defined by the Commission in two Orders: (1) the Order on Motion to Dismiss (Order No. PSC-00-2250-FOF-TP); and (2) the Commission's Order Denying Motion for Reconsideration or Clarification of Order on Motion to Dismiss (Order No. PSC-01-0493-FOF-TP) ("Order on Reconsideration"). These Orders limited the scope of this proceeding to billing disputes arising under the 1997 Resale Agreement. In its Final Order on Complaint (Order No. PSC-01-1585-FOF-TP) dated July 31, 2001,¹ the Commission discussed the issue limitations imposed on this proceeding in the Order on Motion to Dismiss:

In Order No. PSC-00-2250-FOF-TP, issued November 28, 2000, we determined that the relevant agreement in this instant matter is the resale agreement entered into by BellSouth and Supra on June 26, 1997, approved by us on October 8, 1997, and effective June 1, 1997, through December 1999. For clarification, we found that those issues in dispute arising on or after October 5, 1999, the effective date of Supra's adoption of the AT&T/BellSouth agreement, were to be addressed by the sole and exclusive remedy available, pursuant to the terms of the adopted agreement, which is private arbitration.

Final Order on Complaint at p. 3.

ARGUMENT

On February 7, 2002, Supra propounded its First Set of Admissions, Second Set of Interrogatories and Second Request for Production of Documents to BellSouth. On February 14, 2002, BellSouth objected to Interrogatory Nos. 7, 8, 9 and 10 and the Requests for Admissions Nos. 1-47.

¹ Although the Final Order on Complaint was not made a part of the re-hearing proceeding, the Commission's discussion of its interpretation of the Order on Motion to Dismiss and the Order on Reconsideration, both of which are a part of the re-hearing proceeding, is relevant here.

I. Requests for Admissions

The purpose behind requests for admissions is to “expedite the trial of the action and to relieve the parties of the time and expense entailed in proving the genuineness of documents or the truth of matters of fact which the adverse party does not intend to litigate or which can be ascertained by reasonable inquiry.” (*Fla. R. Civ. P.* 1.370, Authors’ Comment – 1967). Instead of using the Admissions as a means to expedite the hearing of this matter, Supra is using the Admissions to harass BellSouth and bring irrelevant issues into this proceeding.

Admissions 1, 2, 9, 10, 11, 12, 15, 16, 17, 18, 19, 24, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47:

These Requests for Admissions concern facts that are already a matter of public record such as: (1) the dates certain pleadings were filed; (2) quotes from those pleadings; and (3) quotes from the official transcript from the last hearing. BellSouth’s admitting or denying any of the Admissions will not in any manner expedite the resolution of this proceeding. For example, the issues to be considered by the Commission have already been determined and are set forth in the Order Establishing Procedure. It is inconceivable that BellSouth admitting the date that Supra filed its Answer (Admission 18) could in any way impact the resolution of the issues in this proceeding. The same is true for the remaining requests in which Supra asks BellSouth to admit the content of certain pleadings and/or quotes from the transcript of the prior hearing.

BellSouth’s admissions in its pleadings and filings as well as its trial testimony speaks for themselves and are matters of matter of public record. Admitting or denying these admissions serves no purpose for expediting trial.

Indeed, Supra states that it needs the admissions to file a Motion for Summary Proceeding or an additional Motion to Dismiss for Lack of Subject Matter Jurisdiction. See Motion to Compel at 3. Supra, however, can file those motions regardless of whether BellSouth admits or denies the requests for admissions because the requests all seek information that is already a matter of public record. BellSouth requests the Commission preclude discovery such as this, which is designed solely for harassment, not resolution of relevant issues.

Admissions 3, 4, 5, 6, 7, 8, 13, 20, 21, 22, 23, 29, 30, 31, 32, 33, 34 and 35:

BellSouth's objections to these Admissions fall into one of two categories: (1) they call for pure legal conclusions not associated with any fact; and/or (2) they call for legal conclusions not associated with any fact relevant to this proceeding. While Supra is allowed to ask admissions regarding the law, those admissions must relate to "the application of law to fact." [*Fla. R. Civ. P.* 1.370(a)] Implicit in this definition is the requirement that the facts to which the law applies be relevant to an issue in the proceeding. The legal conclusions that Supra is asking BellSouth to admit have no relevance to any issue in this proceeding and/or are simply legal conclusions not related to facts in this proceeding.

For example, questions about the legal standards applicable to advisory opinions and declaratory rulings are not pertinent to this proceeding. Equally inappropriate are questions concerning the proper legal foundation for: (1)

determining subject matter jurisdiction; (2) sustaining breach of contract actions; and (3) evidentiary obligations of the Commission².

Supra argues that BellSouth admitting, for instance, the legal standard for a contractual dispute, would somehow create “no argument as to the law the Commission is to apply when ruling on Supra’s Motion for Summary proceeding.” Motion at 5. Whether or not BellSouth admits the standard for a breach of contract claim has no bearing whatsoever on whether that standard applies to the particular facts in question. Therefore, Supra’s Admissions do not conform to the requirements of *Fla. R. Civ. P.* 1.370, or are simply irrelevant to this proceeding.

Admissions 14, 25, 26, 27 and 28:

BellSouth objects to these Admissions as an improper attempt by Supra to expand the issues in this proceeding and to re-litigate issues that have already been conclusively established by the Commission. For instance, Supra raises in these Admissions the issues of whether the 1999 AT&T/BellSouth Interconnection Agreement that was adopted by Supra supercedes the 1997 Supra/BellSouth Resale Agreement, and whether Section XI of the 1997 Supra/BellSouth Resale Agreement survived after termination of the Agreement (both questions going to the issue of the Commission’s jurisdiction). The Commission has already determined that it has jurisdiction to over these issues

² *Fla. R. Civ. P.* 1.370 does not provide for asking one party admissions that would be binding on a third party. Notwithstanding, that is precisely what Supra is attempting to do by asking BellSouth to admit that the Commission must make certain findings to support the Commission’s ultimate decision in this matter (Admissions 31 – 35).

in both the Order on Motion to Dismiss and the Order on Reconsideration. Supra should not be allowed to revive those arguments through improper discovery.

II. Interrogatories 7, 8, 9, 10

BellSouth objects to Interrogatories 7, 8, 9 and 10 on the grounds that the information Supra seeks is beyond the scope of the issues set forth in this proceeding, which have been defined by the Commission in a number of Orders. Any violations of the Florida statutes, Commission rules, Commission Orders, or Commission Final Agency Actions have been subsumed into the issues identified in the Order Establishing Procedure. The issue presented by Supra in Interrogatory 10 (whether the BellSouth/AT&T Agreement superceded the BellSouth/Supra Resale Agreement) was disposed of by the Commission in the Order on Motion to Dismiss and in the Order on Reconsideration, both of which have been incorporated into this proceeding.

Additionally, BellSouth objects to Interrogatories 7, 8 and 9 on the grounds that the information Supra seeks is set forth in the Complaint filed by BellSouth and is a matter of public record. That information is as accessible to Supra as it is to BellSouth, thus Supra's request is overly burdensome and harassing.


Contrary, to Supra's statements, BellSouth provided responses to Interrogatories Nos. 4, 5, and 6 on February 20, 2002. BellSouth also produced responses to Request for Production Nos. 2, 3, and 4 on that same date.

CONCLUSION

BellSouth respectfully requests that the Commission deny Supra's Motion to Compel and Overrule Objections to Supra's First Set of Admissions, Second Set of Interrogatories and Second Request for Production of Documents.


Respectfully submitted this 28th day of February 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.



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