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April 24, 2001

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

**RE: Docket No. 001305-TP –  
Supra's Motion to Strike and Reply to BellSouth's Opposition  
to Supra's Motion for Reconsideration for a New Hearing in  
Docket No. 001305-TP**

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Motion to Strike and Reply to BellSouth's Opposition to Supra's Motion for Reconsideration for a New Hearing in Docket No. 001305-TP.

We have enclosed a copy of this letter, and ask that you mark it to indicate that the original was filed, and thereupon 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

04529 APR 24 01

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 24<sup>th</sup> day of April, 2002 to the following:

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By: Brian Chaiken / 2745  
BRIAN CHAIKEN, ESQ.

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

Petition for Arbitration of the )  
Interconnection Agreement between Bell- )  
South Telecommunications, Inc. and )  
Supra Telecommunications & Information )  
Systems, Inc. pursuant to Section 252(b) )  
of the Telecommunications Act of 1996 )  
\_\_\_\_\_ )

Docket No. 001305-TP

Dated: April 24, 2002

**SUPRA'S MOTION TO STRIKE AND  
REPLY TO BELL SOUTH'S  
OPPOSITION TO  
SUPRA'S MOTION FOR RECONSIDERATION  
FOR A NEW HEARING IN DOCKET NO. 001305-TP**

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEM'S INC. ("Supra"), by and through its undersigned counsel, pursuant to Rule 1.140(f), Florida Rules of Civil Procedure, hereby files this Motion to Strike certain portions of BellSouth's Response which are scandalous and designed only for purposes of harassment and embarrassment, and its Reply to BellSouth's Opposition to Supra's Motion for Reconsideration of a Rehearing in Docket No. 001305-TP. Nothing in the Florida Administrative Rules expressly prohibits the filing of a necessary reply. Accordingly, Supra files this Motion To Strike, and its Reply and states the following in support thereof:

Standard for Motion to Strike

Pursuant to Rule 1.140(f), Florida Rules of Civil Procedure a party may move to strike redundant, immaterial, impertinent or scandalous matter from any pleading at any time. This rule permits a motion to strike to be filed at any time to remove immaterial, impertinent or scandalous material.

## **MOTION TO STRIKE SECTION VI OF BELL SOUTH'S RESPONSE**

**BellSouth should not be permitted to benefit from its deliberate silence and desire to conceal information from Supra**

BellSouth disingenuously asserts that Supra deliberately held the information of wrongdoing in reserve until after the Staff recommendation in this docket, and that Supra intentionally waited until after the Commission vote before issuing its public records request. Both assertions have no merit, and are, instead, immaterial, impertinent and scandalous material. Conveniently, BellSouth ignores the fact that it failed to notify Supra of its wrongdoing back when it occurred – May 3, 2001. Had BellSouth been forthcoming with the improper communications at the time such were made, circumstances may have turned out differently. Instead, BellSouth profited from this illicit advantage, as it was a willing participant to these improper communications. Indeed, the evidence reflects that the Kim Logue e-mail was but the tip of the iceberg. A pattern of *ex-parte* dealing between BellSouth and the Commission has been discovered, which BellSouth has not denied, much less addressed in any manner.

BellSouth cites no law or legal precedent requiring Supra to file its Motion for new hearing in October 2001. Despite this lack of legal authority, BellSouth nevertheless makes its baseless assertion that Supra delayed filing for a new hearing intentionally. Accordingly, Supra will now address BellSouth's malicious and dilatory tactics designed for the purpose of undermining the fairness of these proceedings.

First, BellSouth could have notified Supra of Kim Logue's wrongdoing(s) as early as May 3, 2001, the day after Nancy Sims (BellSouth's Director of Regulatory Affairs) received cross-examination questions from Kim Logue. The sending of the cross-examination questions as well as the other e-mail communications back and forth

between these two individuals were violations of Commission *ex parte* rules and Section 112.313(8), Florida Statutes. Notwithstanding this wrongdoing, BellSouth's Director of Regulatory Affairs, as well as an unidentified BellSouth lawyer, chose to remain silent. If BellSouth is truly concerned about delay tactics, one must wonder why BellSouth did not come forward at anytime in the more than four (4) and a half months *prior* to the evidentiary hearing in Docket No. 001305-TP.

Supra has since learned that Marshall Criser, BellSouth's Vice-President of Regulatory Affairs had a private conversation with Dr. Mary Bane, Deputy Executive Director, regarding Kim Logue on or before September 21, 2001. This conversation took place prior to the evidentiary hearing in Docket No. 001305-TP. Subsequent to this conversation, Kim Logue was not asked to resign and was not reassigned from Docket No. 001305-TP. Presumably, Criser communicated to Dr. Bane the "degree of importance" BellSouth attached to Docket No. 001305-TP. Logue was therefore not terminated or reassigned. Reassigning Logue on the eve of the evidentiary hearing in Docket No. 001305-TP would have raised questions. It is evident that BellSouth had a role in concealing this information from Supra after the wrongdoing had come to the attention of Logue's Senior Managers. Now, BellSouth, ignoring its own wrongful conduct, claims that Supra is using delay tactics. This is absurd.

When Supra was notified in writing, on October 5, 2001, of Logue's wrongdoing, Harold McLean, Commission General Counsel, assured Supra that a thorough internal investigation would be conducted, and requested that Supra not take any action until after the completion of that investigation. On October 8, 2001, Supra wrote to McLean asking that he provide Supra with the answer to "why BellSouth never informed the

Commission that it had received the e-mail from Ms. Logue back in May 2001.” McLean has never answered this question – nor has BellSouth.

Richard Bellak, Staff legal counsel, issued a report on January 3, 2002, entitled “Internal Investigation and Report.”<sup>1</sup> Bellak conducted no meaningful investigation. The Bellak Report ignores Supra’s request to McLean back on October 8, 2001 – the document simply states “it will leave to BellSouth any response to the suggestion that it should have informed the Commission about the receipt of Ms. Logue’s e-mail.” BellSouth’s silence was clearly of no concern to Bellak. Inspector General John Grayson’s file explains McLean’s refusal to answer and Bellak’s disinterest in BellSouth’s silence: that Logue’s misconduct was well known, to both BellSouth and Commission Senior Managers, prior to the evidentiary hearing in Docket No. 001305-TP. Chairman Jaber relied exclusively on Bellak’s alleged “Internal Investigation” as the basis for her ordering a new hearing in Docket No. 001097-TP.

Any “delay” in Supra’s filing of its Motion for new hearing prior to February 18, 2002, is a direct consequence of the “conspiracy” and “cover-up” engaged in by both BellSouth and Senior Managers of the Commission.

In the absence of widespread bias in favor of BellSouth, Supra could have expected the Senior Managers of the Commission to have notified Supra immediately upon learning of the misconduct and to have immediately removed Logue from all cases involving BellSouth, much less BellSouth and Supra. This was not done.

It is this failure on the part of the Commission which is the only reason why the information regarding Commission Staff wrongdoing was not included in Supra’s Motion for Rehearing filed on February 18, 2002. Significantly, well before Supra filed its Motion

for Rehearing, both BellSouth and the Senior Managers of the Commission were well aware of the dates in which Logue's misconduct was discovered, and the fact that Supra was not notified until **after** the hearing in Docket No. 001305-TP. Despite this knowledge, all such parties remained silent at the Commission Agenda on March 5, 2002, at which time the Commission found no wrongdoing in Docket No. 001305-TP. Certainly, any impartial person would conclude that such conduct is and was wrongful. Yet, BellSouth would have this Commission ignore all of this indisputable evidence, to Supra's detriment.

BellSouth helped orchestrate the delay in having this information of Commission wrongdoing concealed from Supra. And now BellSouth has the gall to assert that Supra was "lying in wait," and that "Supra gives no explanation for its delay." This is outrageous. BellSouth itself has offered no explanation for its decision to conceal this information from Supra! In fact, to this day BellSouth has still not come forward with any information – leaving Supra only to wonder how many other improper communications and in what form BellSouth has had with Commission Staff.<sup>2</sup> The Commission Staff has also offered no explanation for its decision to conceal this information from Supra until the close of the evidentiary hearing in Docket No. 001305-TP.

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<sup>1</sup> See Exhibit K, Supra's Motion for Reconsideration of Re-Hearing, filed on April 10, 2002.

<sup>2</sup> See e-mail (Attached hereto as Exhibit A) from Kim Logue to Sally Simmons, dated August 8, 2001, 8:55 pm, in which Logue states: "As mentioned in your progress report in July . . . I am also being careful to follow your instructions on how to handle sensitive issues (in-person, phone, e-mail)." This e-mail was written in response to the cryptic remark Simmons included in her "progress report" of Logue dated July 11, 2001: "with respect to e-mails, I would suggest that you be more cautious in using them to address issues which may be sensitive." See *Exhibit V, page 2, last paragraph, to Supra's Motion for Reconsideration for Rehearing*. This comment by Simmons is consistent with the evidence contained in Inspector General John Grayson's investigation file, in which Inspector Grayson notes that Simmons had actual knowledge of Logue's misconduct as early as July 2001. See *Exhibit U, page 1, Supra's Motion for Reconsideration for Rehearing*.

### Joint Motion of Voluntary Dismissal

On March 26, 2002, Supra and BellSouth filed a “Joint” Motion of Voluntary Dismissal Without Prejudice of Docket No. 001097-TP. The record in said docket reflects that Supra had continuously sought to dismiss this matter since its inception. What BellSouth does not mention in its Motion is that it was BellSouth, itself, that **first** approached Supra with the idea of voluntarily dismissing that docket. It is only now Supra understands BellSouth’s motivation. BellSouth made the offer for the sole purpose of making its completely baseless argument that dismissal of Docket No. 001097-TP means that Supra is not “truly concerned about its due process rights.”<sup>3</sup>

BellSouth, after initiating, litigating, and receiving a successful ruling in Docket No. 001907-TP, suddenly does an about face and willingly agrees to dismiss its claim. Yet, according to BellSouth, despite Supra’s contention all along that the case was improperly before the Commission, it is Supra who has somehow shown disregard for its own due process rights. This bizarre logic must be seen for what it is – a scandalous red herring designed solely to cloud the issues of improper communications between BellSouth and the Commission.

The facts show that BellSouth was **eager** to dismiss Docket No. 001097-TP, as a result of Supra finally discovering evidence of wrongdoing that began in that docket and the conspiracy and cover-up that took place in Docket No. 001305-TP so as to ensure that Kim Logue remained in and participated in this latter Docket. BellSouth filed its complaint in that docket back in August of 2000. On the eve of Supra’s Motion for Rehearing in Docket No. 001305-TP BellSouth **approached** Supra to dismiss the prior

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<sup>3</sup> See Pg. 12, BellSouth’s Opposition to Supra’s Motion for Reconsideration for a new hearing in Docket No. 001305-TP filed on April 17, 2002.



case in Docket No. 001097-TP. Supra found this to be very odd and now understands why BellSouth aggressively pursued the dismissal of Docket No. 001097-TP after remaining totally and completely **silent** for two (2) and a half months – from January 31, 2001 (the date Chairman Jaber issued her order for rehearing in that docket), and April 17, 2002 (the date it made its merit less and baseless argument regarding Supra’s real intent). The basis for seeking a “Joint” motion for dismissal, was so that BellSouth’s legal department could attempt to divest itself of having to respond to inquiries regarding the improper communications with Kim Logue and the subsequent conspiracy and cover-up that followed.

#### Supra’s Public Document Requests

BellSouth, having nothing else to aim at, takes shots at Supra’s attorneys regarding the dates of its public document requests.<sup>4</sup> Not only are these dates completely impertinent and immaterial in light of BellSouth’s and the Commission’s silence regarding the substance of such e-mails, but BellSouth’s arguments regarding such are scandalous and designed merely to draw attention away from the misconduct of BellSouth.

BellSouth’s entire argument under part VI of its Motion must be stricken as impertinent, immaterial and scandalous.

## REPLY IN SUPPORT OF MOTION FOR RE-HEARING

### BellSouth Admits Wrong Standard Applied

On the question regarding whether the Commission applied the same standard for a new hearing in Docket Nos. 001097-TP and 001305-TP, BellSouth admits<sup>5</sup> that the Commission Staff recommended that the Commissioners apply a “different” standard in Docket No. 001305-TP. And, it was this different standard requiring a greater burden that was adopted by the Commission in its decision issued on March 26, 2002.<sup>6</sup>

BellSouth writes:

“ . . . in the exercise of its vast discretion, the Commission *may* grant a rehearing upon a lesser showing, such as the suggestion of an appearance of impropriety, even without a showing of prejudice, as Commissioner Jaber ordered in Docket No. 001097-TP.” (Italicize in the original, underline added for emphasis).<sup>7</sup>

First, BellSouth fails to cite to any authority for this proposition. Second, BellSouth agrees with Supra that the Commission in fact utilized the “appearance of impropriety” standard in Docket No. 001097-TP. This standard requires a “lesser showing,” as acknowledged by BellSouth above, than the standard utilized by the Commission in Docket No. 001305-TP. BellSouth is forced to make this admission in order to support its new argument that the Commission is under no obligation to apply the same standard for rehearing in this docket.<sup>8</sup> Third, BellSouth cites to no legal authority that would permit the

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<sup>4</sup> Supra, admittedly, mistakenly misstated the dates of its document requests to the Commission, and for this, it apologizes. Supra had given its employees instructions to file said document requests the week prior to the March 5, 2002 hearing, but said requests were not filed by that date.

<sup>5</sup> See Pg. 9, first full paragraph of BellSouth’s Opposition to Supra’s Motion for Reconsideration for a new hearing in Docket No. 001305-TP filed on April 17, 2002.

<sup>6</sup> Commission Decision of March 26, 2002, requires a showing of “prejudice” before the Commission will grant a new hearing. Contrary to BellSouth assertions in its April 17, 2002, filing and Chairman Jaber’s standard in Docket No. 001097-TP.

<sup>7</sup> Id.

<sup>8</sup> See Pg. 8, second full paragraph of BellSouth’s Opposition to Supra’s Motion for Reconsideration for a new hearing in Docket No. 001305-TP filed on April 17, 2002.

Commission to openly discriminate against Supra by arbitrarily applying a different standard requiring a greater burden before a new hearing will be granted in Docket No. 001305-TP.

BellSouth's only authority for its new position is the following statement:

**"The fact that the Commission *may*, upon considering all the pertinent factors, grant a rehearing pursuant to an appearance of impropriety standard does not mean that the Commission *must* grant a rehearing every time a party believes that there is an appearance of impropriety, regardless of the circumstances involved."**<sup>9</sup> (Bold and underline added for emphasis).

The operative phrase is "upon considering all the pertinent factors." Of course, there is only one difference between Docket No. 001097-TP and Docket No. 001305-TP, namely: the degree of importance that BellSouth attributes to each case.

Docket No. 001097-TP was initiated by BellSouth for the resolution of billing disputes between the parties. In fact, BellSouth's affirmative claims were all dismissed<sup>10</sup> pursuant to Supra's Motion to Dismiss. Supra sought to dismiss the entire case, but the Commission allowed BellSouth's claims raising Supra's affirmative defenses to stand. As a result, at the time of the hearing in said docket, only Supra had affirmative claims pending. Interestingly, Supra even moved for reconsideration of Order No. PSC-02-2250-FOF-TP, as it sought to dismiss the entire docket. BellSouth, on the other hand, did not seek reconsideration of such, and gladly proceeded on Supra's affirmative claims. Of course, this raises the issue as to why BellSouth would continue to litigate a case which Supra sought to dismiss and which only Supra stood to gain any affirmative relief. Supra submits that the reason is that BellSouth views the Commission as a very favorable forum, and sought to either preclude Supra from raising such claims in a different, less

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<sup>9</sup> See Pg. 9, first full paragraph of BellSouth's Opposition to Supra's Motion for Reconsideration for a new hearing in Docket No. 001305-TP filed on April 17, 2002.

BellSouth-biased venue, or to use a favorable Commission decision against Supra in a less BellSouth-biased venue.

As stated above, BellSouth had no affirmative claims pending in Docket No. 001097-TP. Docket No. 001305-TP, on the other hand, is an arbitration regarding a Follow-on Interconnection Agreement between the parties, which will significantly impact the manner in which the companies do business in the future (e.g. BellSouth seeks the right to disconnect Supra's service during pendant billing disputes). BellSouth clearly attributes a great deal of importance to Docket No. 001305-TP.

This would explain why BellSouth never made any objection when Chairman Jaber, on her own motion, ordered a new hearing in Docket No. 001097-TP. Supra has always found this odd, because BellSouth is well known for objecting to anything that appears to favor Supra. The "degree of importance" that BellSouth attaches to a case has no legal relevance whatsoever regarding whether the Commission should apply the same standard to both dockets. The "degree of importance" BellSouth attaches to Docket No. 001305-TP is the only difference between the two cases. For the Commission to even consider this as a basis for employing a different and more difficult standard for granting a rehearing is unduly discriminatory.

After eliminating BellSouth's meritless argument, the only option for the Commission is to apply the same standard in Docket No. 001305-TP that was applied in Docket No. 001097-TP. Any other decision would be unduly discriminatory.

"Appearance of Impropriety"

BellSouth suggests under part III of its Motion, that all of the evidence of "conspiracy" and "cover-up" involving Senior Managers of the Commission and

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<sup>10</sup> Commission Order PSC-02-2250-FOF-TP

BellSouth Senior Executives is “new.” The only reason why the information regarding Commission Staff and BellSouth wrongdoing was not included in Supra’s Motion for Rehearing filed on February 18, 2002, was because of the decision by Senior Commission Staff and BellSouth to conceal the truth from Supra. While the information was “new” to Supra, it certainly was **not** new to the Commission or BellSouth. The information was in the possession of the Commission at the time of the Motion for Rehearing.<sup>11</sup> As such, the evidence is not new. Accordingly, BellSouth’s argument is misplaced.

Supra need not show prejudice

BellSouth asserts that Supra cannot show prejudice in Docket No. 001305-TP. However, as Supra has already demonstrated BellSouth totally and completely contradicts itself in part IV of its own Motion. In that part, BellSouth admits that the Commission utilized a different standard – than the one used in Docket No. 001097-TP - requiring a greater burden in examining whether a new hearing was warranted in Docket No. 001305-TP. Supra has demonstrated that the Commission is duty bound to utilize the same standard in both cases. Failure to do so would be an arbitrary decision solely designed to compensate for the degree of importance that BellSouth attaches to Docket No. 001305-TP. When you eliminate the “degree of importance to BellSouth” test, the only choice is to apply the same standard for both dockets.

WHEREFORE, Supra respectfully moves this Commission to Strike Section VI of BellSouth’s Response as being scandalous and baseless, designed only to harass and

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<sup>11</sup> The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or *which the Commission failed to consider in rendering an Order*. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981); and In re: Complaint of Supra Telecom, 98 FPSC 10, 497, at 510 (October 28, 1998) (Docket No. 980119-TP, Order No. PSC-98-1467-FOF-TP).

embarrass, and Supra moves this Commission to consider the information set out herein in evaluating the misrepresentations and assumptions made by BellSouth in its Opposition to Supra's Motion for Reconsideration.

RESPECTFULLY SUBMITTED THIS 24<sup>TH</sup> DAY OF April 2002.

SUPRA TELECOMMUNICATIONS &  
INFORMATION SYSTEMS, INC.  
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Telephone: 305/476-4248  
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BY: Brian Chaiken / ATIS

BRIAN CHAIKEN  
Florida Bar No. 0118060

## Exhibit A

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**From:** Kim Logue  
**Sent:** Wednesday, August 08, 2001 5:55 PM  
**To:** Sally Simmons  
**Subject:** Follow-up

Sally,

Thank you for taking the time today to speak with me regarding my reserve schedule for FY02 and for providing an update and assurance that I am performing my duties as supervisor in a manner as you would like.

I am particularly grateful for your insight as to how you see a supervisor, i.e., as an "enabler." I believe I'm working closely with my staff to more than sufficiently fill that role. I would also welcome any ideas you may have regarding motivational tools. As I stated, I already take everyone out to lunch once a quarter, and have discussed having a cookout one afternoon, but I'd like to do other small things as well. While there is certainly more than enough work for everyone, I believe it is very important not to lose sight of my staff as individuals and persons who need feedback and encouragement to ensure they are also performing to par.

As mentioned in your progress report in July, I've been effective in delegating the agreements to staff. I fully plan to maintain that delegation through administrative support staff on a going-forward basis. I am also being careful to follow your instructions on how to handle sensitive issues (in-person, phone, e-mail).

I welcome any input you may have on areas in which you believe I could improve, and am relieved that you feel I'm performing in a satisfactory manner. Like certain members of my staff, I am a bit insecure about my performance because I've not yet had time to grow completely comfortable in my new role. Therefore, your input and on-going evaluation is important and very welcome.

Thanks again, and thanks for being a great manager.

Kim