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April 26, 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 –
Verified Supplemental Motion to Disqualify and Recuse FPSC
From All Further Consideration of This Docket and to Refer
This Docket to the Division Of Administrative Hearings For
All Further Proceedings**

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Verified Supplemental Motion to Disqualify and Recuse FPSC From All Further Consideration of This Docket and to Refer This Docket to the Division of Administrative Hearings for All Further Proceedings.

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

04636 APR 26 8

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 26th day of April, 2002 to the following:

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By: Brian Chaiken/ALS
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. 00-1305-TP

Dated: April 26, 2002

**VERIFIED SUPPLEMENTAL MOTION TO DISQUALIFY AND RECUSE
FPSC FROM ALL FURTHER CONSIDERATION OF THIS DOCKET
AND TO REFER THIS DOCKET TO THE DIVISION OF
ADMINISTRATIVE HEARINGS FOR ALL FURTHER PROCEEDINGS**

RESPONDENT SUPRA TELECOMMUNICATIONS & INFORMATION

SYSTEM'S INC. ("Supra"), by and through its undersigned counsel and pursuant to Florida Statute § 120.665, hereby files this Verified Supplemental Motion To Disqualify And Recuse FPSC From All Further Consideration Of This Docket And To Refer This Docket To The Division Of Administrative Hearing For All Further Proceedings ("Supplemental Motion To Recuse"), and herein moves this Commission to disqualify and recuse itself from the consideration of any and all further matters in this docket, and to refer this docket to the Division of Administrative Hearings ("DOAH") for all further proceedings, and in support thereof states as follows:

I. PROCEDURAL BACKGROUND

1. On April 17, 2002, Supra filed its Motion To Disqualify And Recuse Commission Staff And Commission Panel From All Further Consideration Of This Docket And To Refer This Docket To The Division Of Administrative Hearings For All Further Proceedings ("Motion to Recuse").

2. The purpose of this Supplemental Motion To Recuse is two part. First, to *Supplement* the original Motion to Recuse by attaching exhibits referenced in the Motion to Recuse which although found elsewhere in the docket, for convenience should have been attached again in the

Motion to Recuse. The exhibits referenced in the Motion to Recuse which are provided herein for convenience are attached hereto as Composite Exhibit "1" and include relevant pages from the March 5, 2002 Agenda Conference, together with Exhibits "K", "M", "N", "R", "U", "W" and "Y" to Supra's Motion for Reconsideration for Rehearing (file April 10, 2002).

3. The second purpose of this Supplemental Motion To Recuse is to provide a further basis for recusal based upon Supra's recent discovery that *ex-parte* communications at the Florida Public Service Commission appear to be a problem with both Commissioners and Staff Members, such that it undermines the very integrity of the system. As set forth herein, the *ex-parte* communications uncovered by Supra as part of its public records request indicate that both Staff and the Commission think nothing about contacting BellSouth concerning substantive matters in disputed dockets. The fact that these *ex-parte* communications occurred and undoubtedly continue to occur leaves Supra with an absolute fear that it can never get a fair hearing before the FPSC.

4. For purposes of the record, Supra incorporates herein by reference the Motion to Recuse of April 17, 2002, and submits that the reasons set forth in the Motion to Recuse and this Supplemental Motion to Recuse require this Commission to recuse the FPSC from all further consideration of this docket.

II. THE *EX-PARTE* COMMUNICATIONS UNCOVERED

5. As this Commission is well aware, in October 2001, Supra was informed that Ms. Kim Logue (a FPSC Staff Supervisor) had in Docket No. 001097-TP sent BellSouth the Staff's cross-examination questions the day before the evidentiary hearing. Supra was led to believe that this *ex-parte* communication was an isolated incident.

6. On February 11, 2002, the investigation of Ms. Kim Logue was terminated prematurely.

A memorandum dated February 11, 2002, from John Grayson to Commission Jaber (Exhibit "Y" to Supra's Motion for Reconsideration for Rehearing) states in pertinent part as follows:

"Effective October 10, 2001, Ms. Logue reported for active duty in the US Air Force. Her absence and the inability to interview her has rendered my investigation incomplete.

However, on January 21, 2002, an order setting Docket No. 001097-TP for rehearing was issued. Thus, I am closing my file on this investigation with the recommendation that training in the area of staff communications be conducted on an ongoing basis."

7. It is interesting to note that John Grayson believed that **"training in the area of staff communications [should] be conducted on an ongoing basis"** (thus alluding to a greater problem within the FPSC regarding *ex-parte* communications). According to the memo, it is apparent that FPSC Commission and Staff are not provided regular training in the area of staff communications. Supra's public records request of the FPSC has recently revealed other *ex-parte* communications which demonstrate a total disregard for the *ex-parte* rules and impartiality in FPSC proceedings.

8. Beginning in late March 2002 and continuing to the present, the FPSC (through David Smith of the Office of General Counsel) began delivering in bits and pieces, documents in response to Supra's public records requests upon the FPSC. Included in those documents produced were various series of e-mails attached hereto as Composite Exhibits "2", "3" and "4" to this Supplemental Motion to Recuse.

9. The first group of e-mail communications (attached as Composite Exhibit "2") occurred between Nancy Sims of BellSouth and Kim Logue of the FPSC Staff and comprises two sets of

communications occurring on May 2, 2001, the day before the evidentiary hearing in Docket No. 001097-TP. The first e-mail is from Kim Logue to Nancy Sims on the morning of May 2, 2002, which was subsequently answered by Nancy Sims. That e-mail states as follows:

"Nancy:

1. Regarding specifically the 1997 agreement, what is the total amount Bell believes it is owed? 35,000

2. Does this amount include interest? no If not, what amount of interest does Bell believe it would be due? Or, in the alternative, what interest rate does Bell normally use? Is this amount not also listed in its tariffs for past due amounts? yes

3. What amount of money has Bell received as payment regarding the terms of the 1997 agreement? Does this constitute payment in full? no If not, what does Bell believe to remain outstanding? 35K

If you could provide the answers to these questions this afternoon, it would be greatly appreciated?

Kim"

The second set of e-mail communications reflects the following question by Kim Logue to Nancy Sims: **"is the amount in dispute still \$306,559.94?"**; and answer from Nancy Sims back to Kim Logue: **"Yes - this is the amount."** These e-mails were never sent to Supra when exchanged between Staff and BellSouth and were provided only after Supra made its recent public records request upon the FPSC.

10. The second group of e-mail communications are between Staff and the Commissioners, but which reflect *ex-parte* communications with BellSouth. Composite Exhibit "3" is a series of e-mails dated March 1, 2002, the Friday before the March 5, 2002 agenda conference wherein Supra's motion for a new hearing and deferral was to be argued and voted upon. This e-mail group begins with an exchanged between the Commission's General Counsel (Harold McLean) and Legal Division Chief (Beth Keating), which was then forwarded to Commissioner Palecki and his

assistant Katrina Tew. That e-mail begins by reciting a request from Commissioner Palecki for information about how much does Supra owe BellSouth versus how much does BellSouth owe Supra. It is clear that the Commission wanted this information in anticipation of the Tuesday, March 5, 2002 Agenda Conference in Docket No. 00-1305. The e-mail had a response from Beth Keating which appears to have been sent at 9:25 a.m. stating as follows:

"The first one's easy – from the commercial arbitration, Supra owes BellSouth \$3.5 million – none of which has been paid and BST has apparently not sought enforcement. (This amount does not include any amounts accrued since the commercial arbitration for service provided by BellSouth to Supra)

The second is somewhat less clear. . . Supra claims BST owes them \$305,560.04 plus interest of approximately \$150,000. . . Regardless, though, it doesn't appear to be enough to offset much of the amount owed under the commercial arbitration award."

The e-mail from Beth Keating was then forwarded by Harold McLean to Commissioner Palecki with the question: **"Commissioner, is this what you are asking for?"** However, this information apparently did not answer Commissioner Palecki's question because at approximately 12:07 p.m. Harold McLean sent another e-mail to Palecki's assistant (Katrina Tew) which stated as follows:

"Katrina, the answer is 'yes' -- \$4.2 million. Bell claims a much higher amount due, however, 'between 50 and 70 million'. Lets talk this afternoon."

This response apparently answered Commissioner Palecki's question since Katrina Tew then responded at 12:54 p.m. to Harold McLean stating: **"Sounds good. I'm here the rest of the day. Feel free to call or drop in whenever. Thanks again!"**

11. The response from Harold McLean that **"Bell claims a much higher amount due, however, 'between 50 and 70 million'"** could only have come through either a written or oral communication with someone at BellSouth. This is because this amount is what BellSouth's

improper billing was reflecting as of March 1st without any consideration that such billing was found to not only be grossly overstated, but absolutely wrong. Supra was never consulted by staff on this inquiry and had there been such an inquiry, Supra would have informed staff that the \$4.2 million awarded during the prior arbitrations had already been paid and that the arbitrators had ruled that no further amounts were due until such time as BellSouth drastically reduces and restates its billing to reflect service through UNEs and various other credits.¹

12. The questions and answers in these e-mails were obviously relevant and significant to the Commission's decision-making process on March 5th, otherwise they would not have been important enough to discuss just prior to the Agenda conference. Moreover, an underlying theme of BellSouth during the evidentiary hearing in Docket 001305-TP was that Supra was withholding payment under the current agreement and that BellSouth was allegedly not being paid. Accordingly, prior to the March 5th Agenda, the Commission was under the impression (albeit a false impression gathered through an *ex-parte* communication with BellSouth), that Supra purportedly owed BellSouth \$4.2 million under an arbitration award and in total between \$50 and \$70 million. In reality, Supra had paid in full **all** amounts deemed rightfully owed.

13. The third group of e-mail communications are also between Staff and the Commissioners, and also reflect *ex-parte* communications with BellSouth. Composite Exhibit "4" is a series dated between March 13, 2001 and March 16, 2001 and reflect communications between Kim Logue and Lee Fordham, together with reference to a previous *ex-parte* communication

¹ In fact, BellSouth has been collecting and withholding facilities-based revenues which rightfully belong to Supra. Supra believes the amount of such will exceed a correct UNE bill from BellSouth to Supra, which is why BellSouth refuses to provide Supra with any information as to how much it has collected on Supra's UNE lines.

between Lee Fordham and BellSouth. In these e-mails, Kim Logue and Lee Fordham are discussing Supra's then pending motion to reschedule a prehearing conference in Docket No. 001097-TP. At that time, Supra had legitimate conflicts with the prehearing conference and in good faith had sought to reschedule the same to a mutually convenient date. In the final e-mail (dated March 16, 2001 at 11:00 a.m.) Lee Fordham writes Kim Logue as follows:

"Good morning, Kim. Commissioner Jaber came up with what I thought was an excellent plan on this Motion. Obviously, Supra's real motive was to get the Prehearing so late that the Hearing would need to be continued. However, we called their hand and granted the Motion to Reschedule, but made it EARLIER. The Prehearing is now scheduled on April 6 instead of April 16. BellSouth is delighted with this resolution."

Subsequent to this e-mail, on March 20, 2001, Commissioner Jaber entered an order rescheduling the prehearing conference to April 6, 2001. This e-mail is important because nowhere in the record is it claimed that Supra's real motive was to get the hearing continued as stated by Lee Fordham. Supra had real, verifiable and undisputed conflicts with the date of April 16th. Either this notion came from inherent prejudice and bias which Fordham had against Supra or yet another *ex-parte* communication with BellSouth. Moreover, the e-mail states that "**we called their hand**", an obvious reference to Fordham and Commissioner Jaber. Apparently, Commission Jaber and Fordham felt that they were in an adversarial role and getting the better of Supra. It is also worth noting that the order was issued on March 20, 2001 and that as of the morning of March 16th, Fordham had already sought BellSouth's approval and noted that "**BellSouth is delighted.**"

14. At the March 5, 2002 Agenda Conference, Commissioner Jaber had the following comments for Supra's General Counsel Brian Chaiken:

CHAIRMAN JABER: And I say all of this to you because I want you to know that this is a new Commission with a new set of Commissioners and a new staff executive management team. We have a new General Counsel that you have gotten to know really well. We have a new Executive Director that has articulated completely to her staff the team philosophy and the role that these Commissioners have and the role that this staff has in serving the public. And I know this staff, Mr. Chaiken.

And I know that what Ms. Kim Logue did that I now can say definitely, because we have the affidavit from Ms. Sims, was completely inappropriate, and for that I want to publicly apologize to you. I want to apologize to you on behalf of this agency and on behalf of staff, because it was completely wrong to send cross-examination questions prior to the hearing.

But, BellSouth, I want to send you a strong message too. It was inappropriate for you to receive the cross-examination questions, not just Supra's questions, but you should have returned BellSouth's questions too.

But we've lived and we've learned, and those kinds of things will not happen anymore. It's for that reason we will have a rehearing in the complaint docket.

* * * * *

And, you know, all you have is the message I'm sending you. I realize that. But I also want to send you my gratitude, because you pointing out to us these sorts of situations is the feedback that I have. You've shown me where it was broken. We will fix it.

And the other place I think that we've let someone down, to some degree, I think I've let staff down, or we've let staff down. Whatever Ms. Logue did, whatever she was thinking, I have to believe there was a lack of staff training, because it is wrong to send out cross-examination questions on the eve of the hearing. I have to believe she didn't realize it was wrong, so that's where we failed. But live and learn."

See March 5, 2002 Hearing Transcript in Docket No. 00-1305-TP, at page 40, lines 16-25, page 41, lines 1-19, and page 42, lines 1-16 (copies of these transcript pages are attached hereto as Composite Exhibit "5"). The above comments by Commissioner Jaber, in light of the *ex-parte* communications uncovered, clearly indicate that Commission Jaber knows there is a problem with

ex-parte communications within the FPSC and that Ms. Logue providing BellSouth with cross-examination questions was wrong an inappropriate. However, not only was it wrong to pass cross-examination questions, but all *ex-parte* communications are wrong because they deprive parties of a fair opportunity to address the FPSC. *Ex-parte* communications obviously infect the decision-making process and thus produce unfair results.

15. Based upon the above, it is evident that, in this docket and in Docket No. 001097-TP, *ex-parte* communications between staff and BellSouth were involved in decisions and rulings made by the Commission. Because of the one-sided nature of such communications, it a fair and reasonable to conclude that a bias exists in favor of BellSouth.

III. MEMORANDUM OF LAW

The parties to an administrative adjudicatory proceeding are entitled to a fair hearing before an impartial tribunal, and to a determination made without bias, hostility, or prejudgment. 2 Fla.Jur.2d, Administrative Law, § 273. In this regard, an agency head (whether individually or collectively), can be disqualified from serving in any agency proceeding for bias, prejudice, or interest. 2 Fla.Jur.2d, Administrative Law, § 277.

In Florida, administrative proceedings are, in general, governed by the Florida Administrative Procedure Act ("APA"). Except where specifically provided for in superseding provisions of law, the Florida Public Service Commission is subject to the APA. 2 Fla.Jur.2d Administrative Law, § 23. With respect to recusals and disqualifications of FPSC Commissioners, the APA applies. In this regard, Florida Statute § 120.68 states in pertinent part as follows:

"(1) . . . any individual serving alone or with others as an agency head may be

disqualified from serving in any agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. If the disqualified individual was appointed, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified.

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution."

In the FPSC docket of In Re: Southern States Utilities, Inc. (Order No. PSC-95-1438-FOF-WS) (Docket Nos. 95-0495-WS, 93-0880-WS, 92-0199-WS) (1995 Fla.PUC LEXIS 1467), this Commission held that the procedural statutes and rules dealing with the recusal of court officials do not apply to recusals of Commissioners. Rather that the time constraints and procedure to be used in seeking to recuse Commissioners is that set forth by the APA. Southern States, supra, PSC-95-1438 at pages 9-11. Pursuant to the statute, the standard is "**when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding.**"

In Bay Bank & Trust Co. v. Lewis, 634 So.2d 672, 678, n.6 (Fla. 1st DCA 1994), the Court held that the reference to "within a reasonable time prior to the agency proceeding" in the ADA recusal statute should be read as applying to all future matters at issue before the administrative officer. Thus a motion for recusal is timely as to all future matters to be decided in the docket. Accordingly, this motion for recusal applies to all pending and future motions in this docket and is thus timely with respect to these matters.

In further defining the standard under the predecessor APA statute (i.e. Fla.Stat. § 120.71),

this Commission stated in In Re: Southern States Utilities, Inc. as follows:

"We note that the holding of Bundy v. Rudd, supra, still states the law with respect to a motion for the disqualification of a trial judge, i.e., a judge presented with a motion for his disqualification shall not pass on the truth of the facts alleged nor adjudicate the question of disqualification, but shall limit his inquiry to the legal sufficiency of the motion."

Southern States, supra, PSC-95-1438 at pages 9-10. See also Bay Bank & Trust Co. v. Lewis, 634 So.2d 672, 678 (Fla. 1st DCA 1994) ("We do not decide disputed issues of fact in such a proceeding, but assume, as must the agency head, that all allegations of fact in the motion are true . . . [it is thus] a proceeding to review the legal sufficiency of the motion for disqualification") and Bundy v. Rudd, 366 So.2d 440 (Fla. 1978); see also 2 Fla.Jur.2d, Administrative Law, § 277 ("In determining whether to grant or deny a motion for disqualification, the presiding officer must assume that all allegations of fact in the motion are true").

In Southern States this Commission further stated that, **"The applicable test for legal sufficiency for recusal in any event is enunciated in Hayslip v. Douglas, supra, i.e., whether the facts alleged would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial."** Southern States, supra, PSC-95-1438 at page 10. This standard has also been enumerated in Pelham v. School Board of Wakulla County, Florida, 451 So.2d 1004, 1005 (Fla. 1st DCA 1984) (recusal require where there was a "well-grounded fear that he will not receive a fair hearing at the hands of the respondent agency").

With respect to procedural matters, the DOAH employs administrative law judges ("ALJ") to conduct hearings required by the Florida APA. 2 Fla.Jur.2d, Administrative Law, § 280. Florida Statute Section 120.569(2)(a) allows any agency covered by the APA to request an ALJ from the

division. Florida Statute Section 120.65(7) further empowers the DOAH to provide ALJs on a contract basis to any other governmental entity not covered by the APA. Additionally, Florida Statute Section 350.125 also contemplates the FPSC's use of the DOAH from time to time.

In World Transportation, Inc. v. Central Florida Regional Transportation, 641 So.2d 913, 914 (Fla. 5th DCA 1994), the Court held that where an adverse posture exists between the petitioners and the agency, the better procedure is not to select another agency member, but rather to request an independent hearing officer from the DOAH. Likewise, in Ridgewood Properties, Inc. v. Department of Community Affairs, 562 So.2d 322, 324 (Fla. 1990) the Florida Supreme Court stated that where the agency head has been appointed by the Governor, the procedure under the APA is to have any recommended orders be decided upon by a substitute appointed by the Governor, who is not a member of the agency. See Florida Statute § 120.68(1); see also 2 Fla.Jur.2d, Administrative Law, § 280. Thus the procedure to be followed upon recusal is to refer this docket for further proceedings to the DOAH for the preparation of a recommended order. It should be noted that Commission Staff can present its views and testimony (if any is required) to the DOAH hearing officer. Thereafter, the recommended order will be reviewed by a person appointed by the Governor pursuant to Fla.Stat § 120.68, whose decision will stand in place of the agency head (i.e. the FPSC Commissioners) and will thereafter be treated as a decision of the FPSC.

With respect to the merits of Supra's Motion, Florida Statute § 350.042(1) states in pertinent part as follows:

"(1) A commissioner should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider *ex parte*

communications concerning the merits, threat, or offer of reward in any proceeding other than a proceeding under s. 120.54 or s.120.565, workshops, or internal affairs meetings."

Florida Statute § 350.042 further provides in subsection (4) that if a Commissioner knowingly receives an *ex-parte* communication, he or she must thereafter place it on the record of the proceeding, notify the parties, and thereafter allow all other parties to respond to the communication within 10 days thereafter. Subsection (5) also requires persons making an *ex-parte* communication to provide copies of the communication all parties, with the same thereafter being place upon the record by the Commission.

Florida Administrative Code Section 25-22.033 governs communications between staff employees and parties, and states in pertinent part as follows:

"(2) Written Communications -- Notice of any written communication between Commission employees and parties shall be transmitted to all other parties at the same times as the written communication, whether by U.S. Mail or other means.

* * * * *

(4) Response to Communications -- Any party to a proceeding may prepare a written response to any communication between a Commission employee and another party. Notice of any such response shall be transmitted to all parties.

(5) Prohibited Communications -- No Commission employee shall directly or indirectly relay to a Commissioner any communication from a party or an interested person which would otherwise be a prohibited *ex parte* communication under section 350.042, Fla.Stat. Nothing in this subsection shall preclude non-testifying advisory staff members from discussing the merits of a pending case with a Commissioner, provided the communication is not otherwise prohibited by law."

The few documents provided to Supra demonstrate that in the two most recent dockets involving Supra and BellSouth, a definite bias exists within the Commission against Supra and in favor of BellSouth. For example, the e-mails exchanged between Kim Logue and Nancy Sims the

day before the hearing in Docket No. 001097-TP clearly violated Florida Administrative Code Section 25-22.033(2). These communications involved substantive questions posed by Kim Logue, with the sole purpose of obtaining BellSouth's position on the matter without any input from Supra. This demonstrates a bias in that the Commission staff was only interested in BellSouth's position. Given the familiar and casual nature of the e-mails, one can only conclude that Kim Logue was openly biased and probably engaged in *ex-parte* communications with BellSouth on more than one occasion, and in more than one docket. Similarly, the communications on March 1, 2002 involving Harold McLean, Katrina Tew and Commissioner Palecki undoubtedly involved a knowing *ex-parte* contact with BellSouth for purpose of having BellSouth provide the "facts" – albeit false in this instance - as to how much was purportedly owed between the Supra and BellSouth. The e-mails reflect that when Commissioner Palecki was provided the information made available via the Commission's e-mail system, his assistant Katrina Tew advised Harold McLean that Commissioner Palecki wanted more information. Thereafter, an *ex-parte* communication ensued which is reflected in this response: **"Katrina, the answer is 'yes' -- \$4.2 million. Bell claims a much higher amount due, however, 'between 50 and 70 million'. Lets talk this afternoon."** This information appears to satisfy Commissioner Palecki's request. Without a doubt, Commissioner Palecki knew that staff was initiating an *ex-parte* communication with BellSouth in order to provide him the information requested, for the simple reason that the request for this information commenced with the Commissioner. Thus this series of e-mails reflects violations of both Florida Statute § 350.042(1), (4) and Florida Administrative Code § 25-22.033(5).

These March 1, 2002 e-mails demonstrate the inherent danger in *ex-parte* communications.

First, the BellSouth *ex-parte* contact person may not have either current or correct information. Second, any information provided by BellSouth will obviously be biased in BellSouth's favor. In this instance, the *ex-parte* information received by Commissioner Palecki was simply wrong, heavily biased in favor of BellSouth, and unfortunately was obviously used in rendering a Commission decision the following week at the March 5, 2002 Agenda.

Finally, the e-mail of March 16, 2001 between Lee Fordham and Kim Logue reflects yet another *ex-parte* communication with BellSouth. This e-mail clearly evidences that either Lee Fordham or Commissioner Jaber were involved in an *ex-parte* communication with BellSouth in order to discuss, inform and possibly seek the approval of BellSouth on a matter to be decided by the Commission. The e-mail reflects that Commissioner Jaber's March 20, 2001 Order resetting the prehearing conference was a product of Lee Fordham's *ex-parte* communication with BellSouth. Lee Fordham's e-mail claims that "**we called their hand**", i.e. Commissioner Jaber and himself, thus implying that Lee Fordham and Commissioner Jaber worked together in producing the March 20, 2001 Order. Lee Fordham's statement that "**BellSouth is delighted with this resolution,**" speaks for itself and reflects the fact that Fordham and Commissioner Jaber were not only seeking *ex-parte* information from BellSouth, but also their approval on a proposed Commission Order. Thus this series of e-mails shows further violations of both Florida Statute § 350.042(1), (4) and Florida Administrative Code § 25-22.033(5). Lastly, the e-mail demonstrates a heavy bias by Lee Fordham, at a minimum, against Supra in that ulterior motives are ascribed to Supra's motion which cannot be found anywhere in the public record. Either the ulterior motives were the product of further *ex-parte* communications with BellSouth, or were conjured in the bias minds of Fordham

and/or Commission Jaber. The statement by Fordham that, "**we called their hand**" envisions an adversarial contest between Supra on one side, and Fordham and Commissioner Jaber on the other. Clearly this description demonstrates prejudice and bias against Supra. The FPSC is supposed to be a neutral agency and not engaged in an adversarial contest with anyone.

The facts set forth in this motion demonstrate the following. First, that when Commissioners and staff need information quickly concerning a docket, they simply turn to BellSouth for that information. Commissioners and staff members seem to have to little regard for the *ex-parte* rules and prohibitions. When information is needed, staff members are used as a buffer to violate the prohibitions of Fla.Stat. § 350.042(1). Second, that turning to BellSouth for *ex-parte* information (and approval in some instances) demonstrates a bias at the Commission in favor of BellSouth. Clearly when the Commission seeks and obtains information regarding a disputed matter from only one side, the standards of fairness has been violated.

Kim Logue appears to have been investigated not because she was an isolated incident, but rather because she was reckless in her open bias favoring BellSouth. Although FPSC management appear to acknowledge that a problem exists with *ex-parte* staff communications, the sending of staff's cross-examination questions to BellSouth on the eve of a hearing was simply too much. No reasonable person could have viewed this act as anything other than a Commission staff member working openly in favor of BellSouth.

The few documents provided to Supra demonstrate a certain casualness by staff members in initiating *ex-parte* communications with BellSouth. Although the FPSC investigation focused primarily upon Kim Logue's sharing of strategic information with Nancy Sims of BellSouth, it is

clear that some management at the FPSC believe that a real problem exists with *ex-parte* communications. This is confirmed by Grayson's notes about an August 20, 2001 director's meeting called by Walter D'Haeseleer to discuss "**ethics in dealing w/ utilities.**" (See Exhibit "R" to Supra's Motion for Reconsideration for Rehearing at paragraph 4; attached herein as part of Composite Exhibit "1") and John Grayson's February 11, 2002 memorandum closing the investigation "**with the recommendation that training in the area of staff communications be conducted on an ongoing basis**" (See Exhibit "Y" to Supra's Motion for Reconsideration for Rehearing at paragraph 4; attached herein as part of Composite Exhibit "1").

The above evidence shows that BellSouth's tentacles of influence stretch deep into the Commission and its staff. Moreover, that under the circumstances, no reasonable person could believe that in any dispute with BellSouth, they would ever be afforded a fair hearing. Given the rampant bias in favor of BellSouth and the secret influence that BellSouth has over the Commission and its staff (allowed to flourish through repeated *ex-parte* communications), Supra has clearly demonstrated a "well-grounded fear that [it] will not receive a fair hearing at the hands of the respondent agency". Southern States, supra, at LEXIS page 17; and Pelham, supra, 451 So.2d at 1005.

On March 5, 2002, Commissioner Jaber stated to Brian Chaiken as follows:

"And, you know, all you have is the message I'm sending you. I realize that. But I also want to send you my gratitude, because you pointing out to us these sorts of situations is the feedback that I have. You've shown me where it was broken. We will fix it.

And the other place I think that we've let someone down, to some degree, I think I've let staff down, or we've let staff down. Whatever Ms. Logue did,

whatever she was thinking, I have to believe there was a lack of staff training, because it is wrong to send out cross-examination questions on the eve of the hearing. I have to believe she didn't realize it was wrong, so that's where we failed. But live and learn."

See March 5, 2002 Hearing Transcript in Docket No. 00-1305-TP, at page 42, lines 1-16 (attached as Composite Exhibit "5"). In light of everything now known, it appears that Commission Jaber herself realizes the existence of a problem with bias within the Commission and its staff. Moreover, as of March 5, 2002, the system was still broken with only a promise from Commissioner Jaber that **"We will fix it."** Given the fact that only a few days prior to this comment (i.e. on March 1, 2002) Commissioner Palecki and General Counsel Harold McLean had themselves violated the *ex-parte* rules to the detriment and prejudice of Supra, it impossible to believe that this problem will be fixed anytime soon. Moreover, given Commissioner Jaber's fixation solely on the sending of cross-examination questions (rather than the whole problem of *ex-parte* communications) and her closing comments of **"live and learn"**, it appears that this problem will never be fixed.

When individuals reach a certain level in politics or certain managerial level in government their actions must have consequences. There are no mulligans, second chances or promises that it will not happen again. If this is the case, then what is the point in the Florida legislature declaring that Public Officers are bound to observe the highest standards of ethics? The only way the public can have confidence in the regulatory process of this agency, is if consequences are attached to these examples of bias. This will send the unequivocal message that this Commission, when confronted with evidence of bias and wrongdoing, will not tolerate this kind of behavior of its public officers or employees. Any other remedial finding can only be

evidence of “business as usual.”

The *ex-parte* rules were created to insure fair hearings. When those rules are breached, not only is favoritism and bias allowed to infect the Commission, but also the very trust of the public and the litigants are violated, and the whole credibility of the Commission called into doubt. When a Commissioner and the General Counsel engage in this conduct, the Commission has lost all credibility. Under the circumstances, neither Supra nor any other CLEC could ever believe that they would get a fair hearing before the FPSC; at least until such time as the whole FPSC house is swept clean of the improper outside influence of large utilities such as BellSouth and procedures are adopted to prevent (rather than just merely hide) future *ex-parte* communications. Given the above, it impossible for any CLEC to reasonably trust the Commission to provide it a fair hearing.

Accordingly, for the reasons set forth in Supra's Motion to Recuse and in this Supplemental Motion to Recuse, Supra respectfully requests that the FPSC recuse itself and all Commission Staff members and refer this docket to the DOAH for all further proceedings, with a substitute appointed by the Governor reviewing the recommendations of the DOAH hearing officer.

IV. VERIFICATION AND DECLARATION OF OLUKAYODE A. RAMOS

1. Pursuant to Florida Statute § 92.525, I, OLUKAYODE A. RAMOS, hereby verify and state under the pains and penalty of perjury that the following declaration is true and correct.
2. This declaration is based upon direct and personal knowledge.
3. I am the Chairman and Chief Executive Officer of Supra Telecommunications and Information Systems, Inc. ("Supra").
4. My business is located at 2620 S.W. 27th Avenue, Miami, Florida 33133.

5. I have reviewed Supra's April 17, 2002 Motion To Disqualify And Recuse Commission Staff And Commission Panel From All Further Consideration Of This Docket And To Refer This Docket To The Division Of Administrative Hearings For All Further Proceedings ("Motion to Recuse") and this Verified Supplemental Motion To Disqualify And Recuse FPSC From All Further Consideration Of This Docket And To Refer This Docket To The Division Of Administrative Hearing For All Further Proceedings ("Supplemental Motion To Recuse").

6. I agree with the factual assertions and conclusions made in the Motion to Recuse and this Supplemental Motion to Recuse and incorporate them herein as the basis for the opinions and fears expressed in this verification and declaration.

7. I have reviewed the exhibits attached to the Motion to Recuse and this Supplemental Motion to Recuse. These exhibits are true and correct copies of: (a) documents obtained from the FPSC; (b) communications involving Supra; and (c) transcripts of proceedings before the FPSC.

8. After reviewing the e-mails of the Commission Staff and Commissioners, I can only conclude that the Commission Staff and Commissioners have shown bias in favor of BellSouth and that they have engaged in secretive *ex-parte* communications with BellSouth regarding substantive matters in disputed dockets, including this docket. Furthermore, I have no way of knowing how many other, undocumented *ex-parte* communications may have taken place, as it appears from the e-mails that Ms. Logue, at a minimum, was instructed not to include such communications in e-mail form. After seeing these e-mails and the other documents recently provided in response to Supra's public records requests, and in light of everything else that has occurred recently with respect to Kim Logue, I have a reasonable and well-grounded fear that

Supra cannot receive a fair hearing at the hands of the Florida Public Service Commission.

9. Based upon the facts set forth in the Motion to Recuse and the Exhibits thereto, some of the reasons for Supra's fear that it cannot receive a fair hearing from the FPSC are as follows:

First, that Commissioners and Commission Staff have violated *ex-parte* communication rules this docket and in the prior docket involving Supra and BellSouth (i.e. Docket No. 001097-TP).

Second, that the violation of these *ex-parte* rules, together with the tone of the e-mails reflect a bias within the Commission in favor of BellSouth and against Supra.

Third, that although the FPSC appears to acknowledge a problem regarding *ex-parte* communications between staff employees and the utilities, the investigation into Kim Logue was short, terminated prematurely and limited solely to the passing of the cross-examination questions. Moreover, when faced with the Kim Logue dilemma, FPSC management first contacted BellSouth in order to discuss how to handle the situation. This shows a bias by the whole institution in that although some at the FPSC thought that Kim Logue's conduct was intolerable, the initial response was to consult with BellSouth (rather than the FPSC general counsel, and/or both BellSouth and Supra).

Fourth, that the timing of the FPSC in notifying Supra about Kim Logue's misconduct appears to have been calculated to avoid having to reschedule the evidentiary hearing held in this docket in late September, 2001. This conduct demonstrates that the FPSC was willing to wait until the hearing had concluded and thereafter force a decision upon Supra which was knowingly the product of a biased Commission. In Docket No. 001097-TP it was clear that Ms. Logue never even read Supra's post-hearing brief and thus, together with the *ex-parte* communications with BellSouth, was an openly biased individual. This timing discrepancy demonstrates a bias at the FPSC in favor of BellSouth and against Supra.

Fifth, the fact that Commissioner Jaber herself recognized that a problem still exists within the Commission that needs to be fixed.

Sixth, that Commissioner Jaber herself did not disclose, or even consider, factual information about Kim Logue and the FPSC's investigation into Kim

Logue. Commissioner Jaber's actions appear to have been directed more towards hiding and covering up problems at the FPSC from public view, rather than insuring that litigants receive fair and impartial hearings.

Finally, that Commissioner Palecki himself challenged Supra at the March 5, 2002 Agenda Conference to find evidence of misconduct in this Docket, when in fact just a few days prior to the Agenda, Commissioner Palecki himself was involved in the some of the very *ex parte* communications Supra had brought to the attention of the Commission.

10. After reviewing the e-mails of the Commission Staff and Commissioners, I can only conclude that the Commission Staff and Commissioners are biased in favor of BellSouth and that they regularly engage in *ex-parte* communications with BellSouth regarding substantive matters in disputed dockets, including this docket. After seeing these e-mails and the other documents recently provided in response to Supra's public records requests, and in light of everything else that has occurred recently with respect to Kim Logue, I have a reasonable and well-grounded fear that Supra cannot receive a fair hearing at the hands of the Florida Public Service Commission.

11. For the reasons stated above and in Supra's Motion to Recuse and Supplemental Motion to Recuse, Supra has a well-grounded fear that it will not and cannot receive a fair hearing before the FPSC and therefore asks that the Commission recuse and disqualify the Commission Staff and itself from all further proceedings in this docket.

12. Pursuant to Florida Statute § 92.525, I, OLUKAYODE A. RAMOS, hereby declares, certifies, verifies and states under the pains and penalty of perjury that I have read the foregoing and that the facts stated herein are true and correct.

that the facts stated herein are true and correct.

Olukayode A Ramos/ARAS
OLUKAYODE A. RAMOS

4/26/02
EXECUTED ON (DATE)

V. CERTIFICATE OF GOOD FAITH BY COUNSEL

The undersigned counsel of record, Brian Chaiken, hereby certifies that this motion and the attached exhibits and affidavit are made in good faith and well grounded in both fact and law.

Brian Chaiken / a78
BRIAN CHAIKEN, ESQ.

Dated: 4/26/02

1 on the rest of the recommendations?

2 I would note that we've disposed of Roman
3 numeral I and Roman numeral number II with
4 granting oral argument. Roman numeral number
5 III goes to heart of what Mr. Chaiken has
6 requested and again reinforced in his oral
7 argument, which would be the motion for
8 rehearing, appointment of a special master, and
9 an indefinite deferral.

10 Mr. Chaiken, I got the impression that you
11 modified today your request to ask that the case
12 go to DOAH in lieu of a special master.

13 MR. CHAIKEN: That's correct.

14 CHAIRMAN JABER: Okay. Commissioners, do
15 you have any questions on --

16 COMMISSIONER PALECKI: Chairman Jaber, I do
17 have a few questions for the parties that I
18 would like to ask.

19 CHAIRMAN JABER: Go ahead.

20 COMMISSIONER PALECKI: First, I would like
21 to ask Supra -- I understand that based upon the
22 events that happened in the other docket that
23 Supra believes it cannot get a fair hearing
24 before this Commission. My question is, has
25 Supra done any discovery to indicate whether

1 impropriety occurred in this docket?

2 MR. CHAIKEN: I believe we've made a public
3 document request asking for phone records,
4 facsimile records, e-mails.

5 COMMISSIONER PALECKI: Has there been any
6 indication that you can show us that there was
7 impropriety in this docket?

8 MR. CHAIKEN: I have not received the
9 documents back yet. So at this point in time,
10 other than the fact that Ms. Logue has shown a
11 predisposition to favor BellSouth and that she
12 did participate in 1305 and was present at the
13 hearing, as well as the evidence regarding Issue
14 1 that I presented earlier, that's all I have at
15 this time, but we're waiting for the document
16 request to come back.

17 COMMISSIONER PALECKI: Thank you.

18 CHAIRMAN JABER: Mr. Chaiken, there's
19 something that has been -- let me back up. I
20 want to commend you for how you handled yourself
21 this morning. One attorney to another attorney,
22 I know this can't be easy, and I really
23 appreciate how you've done this this morning.

24 But there's something that has been nagging
25 at me as I read these pleadings and as I just

1 on further, though, that the complaint docket
2 has been disposed of or remedied in the sense
3 that there will be a rehearing in that docket,
4 and it will be a expedited rehearing?

5 MR. CHAIKEN: Correct. We're on that track
6 right now.

7 CHAIRMAN JABER: All right. Can we stop
8 talking about the complaint docket for a moment?
9 Let's turn to the arbitration docket. Let's
10 turn to this. -

11 There isn't a doubt in my mind that this
12 staff conducted -- and I say this to you for
13 what it's worth to you. And you don't know
14 these Commissioners, and you certainly don't
15 know me, so you're going to have to take my word
16 for it. There isn't a doubt in my mind that
17 these dispositions are fair and not biased and
18 that we do our homework and participate in the
19 hearings and in the process wholeheartedly.

20 And as I recall this case in particular,
21 because you and Mr. Medacier had not
22 participated in Commission proceedings, I
23 remember feeling like I was holding your hands
24 throughout the entire process, and I remember
25 articulating -- and I went back last night and

1 read the transcript, every page of the
2 transcript, wherein I indicated to you all we
3 were going to be flexible in cross-examination,
4 because I think you had represented to me that
5 there wasn't a deposition and adequate
6 discovery, in your opinion. And we articulated
7 right there on the record that we were going to
8 be flexible in allowing sufficient
9 cross-examination. And cross-examination was
10 had, and you had ample opportunity to bring out
11 in the record whatever it was you wanted to
12 bring out. And I remember, and I again looked
13 it up last night, that the Commissioners asked
14 questions. I also know in my heart of hearts
15 that staff has relied on this record.

16 And I say all of this to you because I want
17 you to know that this is a new Commission with a
18 new set of Commissioners and a new staff
19 executive management team. We have a new
20 General Counsel that you have gotten to know
21 really well. We have a new Executive Director
22 that has articulated completely to her staff the
23 team philosophy and the role that these
24 Commissioners have and the role that this staff
25 has in serving the public. And I know this

1 staff, Mr. Chaiken.

2 And I know that what Ms. Kim Logue did that
3 I now can say definitely, because we have the
4 affidavit from Ms. Sims, was completely
5 inappropriate, and for that I want to publicly
6 apologize to you. I want to apologize to you on
7 behalf of this agency and on behalf of staff,
8 because it was completely wrong to send
9 cross-examination questions prior to the
10 hearing.

11 But, BellSouth, I want to send you a strong
12 message too. It was inappropriate for you to
13 receive the cross-examination questions, not
14 just Supra's questions, but you should have
15 returned BellSouth's questions too.

16 But we've lived and we've learned, and
17 those kinds of things will not happen anymore.
18 It's for that reason we will have a rehearing in
19 the complaint docket.

20 I don't have that concern with this docket.
21 The arbitration docket is different. I'm
22 comforted with the record. I know that everyone
23 asked questions that they were entitled to ask.
24 I have faith in this staff. They have not let
25 me down.

1 And, you know, all you have is the message
2 I'm sending you. I realize that. But I also
3 want to send you my gratitude, because you
4 pointing out to us these sorts of situations is
5 the feedback that I have. You've shown me where
6 it was broken. We will fix it.

7 And the other place I think that we've let
8 someone down, to some degree, I think I've let
9 staff down, or we've let staff down. Whatever
10 Ms. Logue did, whatever she was thinking, I have
11 to believe there was a lack of staff training,
12 because it is wrong to send out
13 cross-examination questions on the eve of the
14 hearing. I have to believe she didn't realize
15 it was wrong, so that's where we failed. But
16 live and learn.

17 With that, Commissioners, I need a motion
18 on Roman numeral number III.

19 COMMISSIONER BAEZ: Madam Chair, for
20 starters, I just want to ask staff. Your
21 recommendation doesn't change based on
22 Mr. Chalken's modification of their request as
23 concerns a special master?

24 MS. CHRISTENSEN: No, Commissioner, our
25 recommendation would not change. It would still

State of Florida



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: January 3, 2002
TO: HAROLD MCLEAN, GENERAL COUNSEL
FROM: RICHARD C. BELLAK, DIVISION OF APPEALS *RCB*
RE: INTERNAL INVESTIGATION AND REPORT; KIM LOGUE'S FURNISHING OF
DRAFT CROSS-EXAMINATION QUESTIONS TO BELL SOUTH IN DOCKET NO.
001097-TP

BACKGROUND

My review of this matter begins with information supplied to Ms. Nancy White of BellSouth and Mr. Brian Chaiken of Supra Telecommunications in a letter from the Commission's General Counsel dated October 5, 2001. In pertinent part, the letter states:

On the evening of May 2, 2001, Ms. Kim Logue, a Commission staff employee, undertook to draw cross-examination questions for the use of staff counsel, but in the course of that preparation, provided a draft of cross-examination questions to Nancy Sims of BellSouth for the stated purpose of having Ms. Sims advise her as to "which witness a given question should be directed". Ms. Logue sent Ms. Sims a draft of questions intended for BellSouth's witnesses and a draft of questions intended for Supra's witnesses. While Ms. Logue maintains that she sent Supra the same package that she sent BellSouth, we are unable to verify that this was the case.

In a responsive letter dated October 8, 2001, Mr. Chaiken stated two primary concerns:

First, let me confirm that Supra did not receive an e-mail from Ms. Logue on May 2, 2001, or at any other time. Second, a close reading of the cross-examination questions attached to your letter raises some question as to the neutrality and impartiality of Ms. Logue.

Later, Mr. Chaiken states two additional concerns:

We are particularly interested to know why BellSouth never informed the Commission that it had received the e-mail from Ms. Logue back in May 2001.... Supra is now left to wonder what impact Ms. Logue may have had on other FPSC BellSouth decisions.

This Report will consider whether the result in this docket was affected by the circumstances concerning the e-mail described above and whether the cross-examination questions drafted by Ms. Logue raise some question as to her neutrality and impartiality. This Report will, however, leave to BellSouth any response to the suggestion that it should have informed the Commission about receipt of Ms. Logue's e-mail.

EXHIBIT

K

HAROLD MCLEAN - GENERAL COUNSEL

January 3, 2002

Page 2

DISCUSSION

I. Effect of provision of draft cross-examination questions to BellSouth.

Neither Ms. Logue, who is not currently employed at the Commission, nor anyone else associated with the Commission claims that e-mailing draft cross-examination questions to one party and not the other is correct or reasonable. Ms. Logue, in fact, denied having done so. Moreover, the better way to find out which witnesses to direct questions to would be to ask about each witness's area of expertise rather than to send any draft cross-examination questions to the parties. However, assuming the worst case scenario that the draft questions were, whatever the cause, only sent to BellSouth, the issue remains as to the effect of the error. In the undersigned's view, the effect was de minimus and the error, therefore, harmless. The reason for this conclusion is that in most instances, the actual questions asked on cross-examination at the hearing by Mr. Fordham in representing Commission staff were not the questions drafted by Ms. Logue.

In a memorandum dated October 5, 2001 from Mr. Fordham to the General Counsel, Mr. Fordham noted that of 33 questions he asked BellSouth's witnesses, only 2 were substantially the same as those drafted by Ms. Logue. Of 39 questions he asked Supra's witness, only 8 were substantially the same as those drafted by Ms. Logue. While this is not surprising, given that technical staff are not attorneys, it does have the effect of minimizing whatever error may have occurred. Though, arguably, no party should have been given the draft questions, or at the least, both should have been given them, where they were substantially not the questions asked at the hearing, the error was harmless.

II. Effect of the draft cross-examination questions as to raising the issue of Ms. Logue's neutrality and impartiality.

In his letter of October 8, 2001, Mr. Chaiken lists questions 8, 10, 11B, 12, 13 and 15 for BellSouth and questions 1 and 2 for Supra, with particular emphasis on 1B and the comment "who knows what she will say...", as raising some question as to Ms. Logue's neutrality and impartiality. Although this Report concludes that furnishing the draft questions only to BellSouth was an error, though a harmless error for the reasons stated, the undersigned does not conclude that the questions listed by Mr. Chaiken raise doubts as to Ms. Logue's neutrality and impartiality. In this regard, it is important to note that the Commission is required to be neutral and impartial as to parties, but not as to the legal arguments presented by parties. Indeed, no tribunal could adjudicate the issues brought before it if it were neutral and impartial as to the arguments presented.

Specifically as to this case, Mr. Chaiken asserts that questions 10, 11B, 12, 13 and 15 for BellSouth concern whether BellSouth should have the right to disconnect Supra's service and that the line of questioning had no relevance to the proceeding. However, in Order No. PSC-01-1585-FOF-TP, the Commission discussed "Termination of Service" at Part VI of the order and concluded that "BellSouth may exercise its right to terminate service to Supra in the event timely payment is not made". Order 1585 at p. 10. Moreover, question 8 for BellSouth as to "...why does BellSouth continue to provide service to Supra" is, by inference, a challenge to BellSouth's compliance with Section 364.10, Florida Statutes, prohibiting undue preferences, since providing service where bills remain unpaid could be characterized as an undue preference for the purposes of the statute.

HAROLD MCLEAN - GENERAL COUNSEL

January 3, 2002

Page 3

Finally, questions 1 and 2 for Supra, including the remark "who knows what she will say" referring to witness Bentley, appear benign in context. Ms. Logue, who is not an attorney, was apparently affording Supra an opportunity to further explain and assert its theory that the charges at issue were governed by the 1999, rather than 1997, agreement between Supra and BellSouth. In so doing, Ms. Logue was more generous to Supra than the Commission ultimately was on that issue. In Order 1585, the Commission noted:

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....

Order 1585 at p. 4. The Commission further noted, with evident disapproval, that

...even after this Commission's specific ruling in Order No. PSC-00-2250-FOF-TP, Supra continued to urge the BellSouth/AT&T [i.e., 1999] agreement as controlling.

Order 1585 at p. 6. Ms. Logue's questions, which would have afforded Supra the opportunity to continue asserting issues the Commission considered legally foreclosed by its prior ruling, hardly show some lack of impartiality or neutrality as to Supra as a party, even if the parenthetical comments demonstrate skepticism as to Supra's position on the issue addressed by those questions.

CONCLUSION

The undersigned views the alleged furnishing of draft cross-examination questions only to BellSouth as an error. However, the error was harmless where the questions actually asked both parties at the hearing by the attorney representing the Commission staff were, substantially, not the draft cross-examination questions.

The undersigned views the questions listed in Supra's October 8, 2001 letter as not raising an issue as to Ms. Logue's impartiality or neutrality for the reasons stated in the body of this Report.

RCB

John Grayson

From: John Grayson
Sent: Wednesday, October 24, 2001 3:58 PM
To: Shirley Jeff
Subject: RE: Investigation

We discussed it in passing today. All is well.

-----Original Message-----

From: Shirley Jeff
Sent: Wednesday, October 24, 2001 3:53 PM
To: John Grayson
Subject: RE: Investigation

John:
I mentioned this to the Chairman. Has he discussed it with you yet? If not, do I need to schedule another hearing with him?

-----Original Message-----

From: John Grayson
Sent: Monday, October 22, 2001 10:10 AM
To: E. Leon Jacobs
Cc: Shirley Jeff
Subject: Investigation

Have not heard back from you regarding initiating the investigation.



State of Florida

Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: October 25, 2001
TO: E. Leon Jacobs, Chairman
FROM: John M. Grayson, Inspector General *JMG*
RE: FPSC Docket No. 001097-TP / Cross examination questions distribution investigation

It has come to my attention that on May 2, 2001, Ms. Kim Logue, a staff employee in the Division of Competitive Services, Bureau of Market Development, provided a draft of cross examination questions to Ms. Nancy Sims of BellSouth prior to the hearing in the above referenced proceeding.

In response to this information, I have initiated an investigation to determine the following:

- Whether Ms. Logue violated any statute, rule, or internal policy/procedure.
- Whether anyone with managerial responsibility over Ms. Logue had knowledge of the distribution of the cross examination questions. If so, who was this knowledge communicated to, in what manner, and what if anything was done in response.
- BellSouth's response to receiving the information.
- Whether Ms. Logue provided similar communications in other dockets to which she was assigned.

It is important to note that effective October 10, 2001, Ms. Logue reported for active duty in the US Air Force. Her absence and the inability to interview her will make it difficult to complete this investigation until she returns.



BETH SOLAK

Wed, Nov 7, 2001 @ 11 AM

11/20

logos by miss
with the violation
incident

Informant by person in confidence
that Mrs Logue had provided
info to Bell South.

alleged email

Talked to Gully & Walter
- neither knew -

Decided to check e-mails, and to
not inform Mrs. Logue for fear of
e-mail deletion.

globally

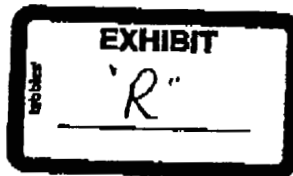
Walter called after meeting to explain
look about strike in dealing w/
utilities

Wanted to do e-mail research.

?

1/2/02

Dr. Bone called BELL regarding
situation. Ask whether she had
any knowledge.



Note 2.

Loi Bone requests that Bell
perform e-mail research to confirm
or deny allegations.

Supra was a critical recommendation for Logre
as documented in prof review.

Karen provided e-mail w/ questions
provided to Bell South.
(Verified)

Provided info to Mary / Wylder

Conducted search - looking through
e-mail files for evidence of
similar communication in
other cases. None found.

Tuesday Nov 2, 2000

Gally Simmons - Chief Market Development

Shoreness -

date

late July - after the fact / before div meeting
verify date

from Beth Solak

will output / no -

Response / what was done (nothing personally)

Walter / Beth / minimize damage

date

Decision meeting called by Walter
(the 20th)

note: case to be conducted as
stated in PIP

may have wanted to
ensure that questions were
worded as best as possible
and directed to best
possible witnesses

Call with best equip to help

EXHIBIT
"U"

CE.MA meeting / LEE Jackson .. may have knowledge

@ reconsideration req. what to do?

Middle Sept.

CRISER tucked w/ Gore

↳ heightened level of importance

his
name
9/18

meeting w/ Walter, Beth, Sally
and Dr. Kane

9/21/01

? - what is going to be
done

Resignation
letter / Oct 12

ASK for resignation on 9/24

AKL issued on 25th

resignation rescinded / copy held by
if called to Dr. Kane
before
effective date of
resignation



State of Florida

**Public Service Commission**
-M-E-M-O-R-A-N-D-U-M-

DATE: February 11, 2002
TO: Lila A. Jaber, Chairman
FROM: John M. Grayson, Inspector General *JMG*
RE: IN-01/02-03 [Logue Investigation]

On October 9, 2001, I was provided information regarding Ms. Kim Logue, a staff employee in the Division of Competitive Services, providing cross-examination questions to BellSouth, a party to Docket No. 001097-TP. On October 25, 2001, an investigation into this matter was initiated.

I have completed all aspects of this investigation except an interview of Ms. Logue. Effective October 10, 2001, Ms. Logue reported for active duty in the US Air Force. Her absence and the inability to interview her has rendered my investigation incomplete.

However, on January 31, 2002, an order setting Docket No. 001097-TP for rehearing was issued. Thus, I am closing my file on this investigation with the recommendation that training in the area of staff communications be conducted on an ongoing basis.

cc: Harold McLean, General Counsel
Mary A. Bane, Executive Director



MAR-29-02 16:49

FROM-SUPRA TELECOMS

+3854431078

T-78

To: 'nancy.sims@bellsouth.com'
Subject: questions

Composite Exhibit 2

Importance: High

Nancy:

1. Regarding specifically the 1997 agreement, what is the total amount Bell believes it is owed?35,000
2. Does this amount include interest? no If not, what amount of interest does Bell believe it would be due? Or, in the alternative, what interest rate does Bell normally use? Is this amount not also listed in its tariffs for past due amounts? yes
3. What amount of money has Bell received as payment regarding the terms of the 1997 agreement? Does this constitute payment in full? no If not, what amount does Bell believe to remain outstanding?35k

If you could provide the answers to these questions this afternoon, it would be greatly appreciated.

Kim

MAR-28-02 18:50 FROM-SUPRA TELECOMS

+3064431070

T-785 P 018/018 F-598

Sent: Wednesday, May 02, 2001 5:31 PM
To: Kim Logue
Subject: RE: disputed amount

Yes - this is the amount.

-----Original Message-----

From: Kim Logue [mailto:KLogue@PSC.STATE.FL.US]
Sent: Wednesday, May 02, 2001 2:03 PM
To: 'nancy.sims@bellsouth.com'
Subject: disputed amount

is the amount in dispute still \$306,559.94?

1

03-29-02 17:02

RECEIVED FROM:+3064431070

P.15

Michael A. Palecki

Composite Exhibit 3

From: Harold McLean
Sent: Friday, March 01, 2002 11:24 AM
To: Katrina Tew; Michael A. Palecki
Subject: FW: supra/bellsouth

Commissioner, is this what you are asking for?

-----Original Message-----

From: Beth Keating
Sent: Friday, March 01, 2002 9:25 AM
To: Harold McLean
Subject: RE: supra/bellsouth

Sorry, for the delay. Tried to catch you yesterday before you left. The first one's easy - from the commercial arbitration, Supra owes BellSouth \$3.5 million - none of which has been paid and BST has apparently not sought enforcement. (This amount does not include any amounts accrued since the commercial arbitration for service provided by BellSouth to Supra)

The second is somewhat less clear. Before she went home sick yesterday, Patty left me a note that indicated in the complaint docket Supra claims BST owes them \$305,560.04, plus interest of approximately \$150,000. Lee is confirming this again for me, because the note wasn't entirely clear and Beth S. said she thought the amount was more like \$256,000. Regardless, though, it doesn't appear to be enough to offset much of the amount owed under the commercial arbitration award. I'll get back to you on this second number as soon as I get confirmation from Lee.

-----Original Message-----

From: Harold McLean
Sent: Friday, March 01, 2002 8:22 AM
To: Beth Keating
Subject: supra/bellsouth

Hey, I need those numbers I asked you about yesterday -- the what does bell owe supra v. what does supra owe bell -- for Commissioner Palecki.

Katrina Tew

From: Katrina Tew
Sent: Friday, March 01, 2002 12:54 PM
To: Harold McLean
Subject: RE: Your question

Sounds good. I'm here the rest of the day. Feel free to call or drop in whenever.
Thanks again!

-----Original Message-----

From: Harold McLean
Sent: Friday, March 01, 2002 12:07 PM
To: Katrina Tew
Subject: Your question

Katrina, the answer is 'yes' -- \$4.2 million.

Bell claims a much higher amount due, however, 'between 50 and 70 million'.

Lets talk this afternoon.

From: Lee Fordham
Sent: Friday, March 16, 2001 11:01 AM
To: Kim Logue
Subject: RE: Docket 001097

Good morning, Kim. Commissioner Jaber came up with what I thought was an excellent plan on this Motion. Obviously, Supra's real motive was to get the Prehearing so late that the Hearing would need to be continued. However, we called their hand and granted the Motion to Reschedule, but made it EARLIER. The Prehearing is now scheduled on April 6 instead of April 16. BellSouth is delighted with this resolution.

-----Original Message-----

From: Kim Logue
Sent: Wednesday, March 14, 2001 8:28 AM
To: Lee Fordham
Subject: RE: Docket 001097

Excellent. Happy Camper here.

-----Original Message-----

From: Lee Fordham
Sent: Wednesday, March 14, 2001 8:19 AM
To: Kim Logue
Subject: RE: Docket 001097

On prehearing motions, we just prepare a proposed order for the prehearing officer and present it to them. I will be preparing a proposed Order on this one by the end of the week, hopefully today.

-----Original Message-----

From: Kim Logue
Sent: Wednesday, March 14, 2001 8:13 AM
To: Lee Fordham
Subject: RE: Docket 001097

Will a reply to Supra's Motion be filed? What is the process for denying such a motion?

-----Original Message-----

From: Lee Fordham
Sent: Wednesday, March 14, 2001 8:03 AM
To: Kim Logue
Subject: RE: Docket 001097

Good morning, Kim. I have already had some discussions with Comm. Jaber regarding this Motion. My position is the same as yours. 2 weeks ago I had provided Supra with several options, including telephonic appearance. We do not intend to create trauma to everyone else to accommodate Supra. Thanks for your input.

-----Original Message-----

From: Kim Logue
Sent: Tuesday, March 13, 2001 4:20 PM
To: Lee Fordham
Subject: Docket 001097

Lee:

I see from the documents filed that Supra is requesting a postponement of the prehearing

conference until sometime in May because of "conflicts." As you know, the hearing is scheduled for May 3rd. To not stick to the schedule already established months and months ago will cause an undue burden on the scheduling of resources all the way around, especially when the 271 docket hits. We're having a hard enough time scheduling hearings, and to adjust the prehearing conference will result in an adjustment of the entire schedule. At this point, I'm not willing to buy into Supra's motion. And I'm aggravated that Supra waited until March 2001 to advise of a "scheduling conflict", when the Florida schedule was set a month before the Texas schedule, two months before the schedule for the first arbitration in Atlanta, and three months before the second arbitration in Atlanta. While I would, in most cases be amenable to adjusting scheduling conflicts, this isn't one of those times. At a minimum, Supra should have advised us in December of the first conflict, or should have even advised Texas and Georgia of the conflicts with the already set Florida schedule.

There is a one week gap in Supra's alleged conflicts in April (April 2-6) that would permit a prehearing conference, but again, we'd have to run this through the scheduling hoopla in order to get it changed.

Not surprisingly, BellSouth has filed its objections to Supra's Motion, and having read Bell's opposition, I believe it has not only merit, but suggested resolution as well. I'm sure that Supra has more than one attorney. I also believe that the prehearing could be held the first week of April, if Comm. Jaber's schedule permits. This would preclude having to rearrange the remaining schedule. I also like Bell's suggestion that Supra could participate by phone.

As I see it, there are two options: 1) no, hell no. and 2) have the prehearing the first week of April.

I'd like to get this matter resolved this week, if possible. To that end, and to see if there truly are two options, i.e., #2, could you please check with Joanne Chase to see if Comm. Jaber's schedule could entertain a prehearing the first week of April? Please advise.

Kim