

James Meza III
Attorney

BellSouth Telecommunications, Inc.
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(305) 347-5561

May 1, 2002

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

RE: Docket No. 001305-TP (Supra)

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to Supra Telecommunications & Information Systems, Inc.'s Motion to Strike and Reply Memorandum, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return a copy to me. Copies have been served to the parties shown on the attached certificate of service.

Sincerely,



James Meza III (KA)

Enclosures

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

DOCUMENT NUMBER-DATE

04778 MAY-18

FPSC-COMMISSION CLERK

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

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Hand Delivery this 1st day of May, 2002 to the following:

Wayne Knight, Staff Counsel
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Harold Mclean, General Counsel
Florida Public Service Commission
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Tallahassee, FL 32399-0850

Ann Shelfer, Esq. (+)
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James Meza III (LA)

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection)
Agreement Between BellSouth Telecommunications,) Docket No. 001305-TP
Inc. and Supra Telecommunications & Information)
System, Inc., Pursuant to Section 252(b) of the) Filed: May 1, 2002
Telecommunications Act of 1996.)
_____)

**BELLSOUTH'S OPPOSITION TO SUPRA'S
MOTION TO STRIKE AND REPLY MEMORANDUM**

BellSouth Telecommunications, Inc. ("BellSouth") opposes Supra Telecommunications & Information Systems, Inc.'s ("Supra") Motion to Strike and Reply Memorandum ("Motion" or "Motion and Reply"). For the reasons discussed in detail below, the Florida Public Service Commission ("Commission") should refuse to consider and deny this improper Motion and Reply and should sanction Supra.

INTRODUCTION

Once again, with this latest motion, Supra is abusing the regulatory process by filing impermissible and baseless motions. Supra's Motion to Strike and Reply Memorandum, as evidenced by its title, is nothing more than an impermissible reply memorandum and should be summarily rejected. Supra continues to raise the same baseless accusations time and time again to avoid complying with the Commission's Order in this Docket and operating under the new Interconnection Agreement with BellSouth -- an Agreement that expressly gives BellSouth the right to disconnect Supra for the failure to pay undisputed amounts. The Commission should see through Supra's ploy and bad faith filings

and recognize that these meritless motions are filed solely for the purpose of delay and harassment. Clearly, Supra will use whatever tactics it can, including filing pleadings that it knows are impermissible as a matter of law, to effectuate its goal of attempting to frustrate the arbitration process, avoid entering into a new Interconnection Agreement with BellSouth, and avoid paying BellSouth for legitimate services received. Such delay tactics are sanctionable and will only stop when this Commission takes action to enforce its Final Order in this docket and approves the Interconnection Agreement timely filed by BellSouth in compliance with the Order and pursuant to the Telecommunications Act of 1996.

LAW AND ARGUMENT

I. Supra's Motion to Strike and Reply Memorandum Is an Impermissible Filing.

On April 10, 2002, Supra filed a Motion for Reconsideration for a New Hearing in Docket No. 001305-TP. BellSouth filed its Opposition on April 17, 2002. On April 24, 2002, Supra filed the instant Motion. A cursory review of Supra's Motion, including its Motion to Strike, reveals that the entire Motion and Reply is nothing more than a failed attempt to rebut and reply to the fatal arguments that BellSouth presented in its Opposition.¹ These arguments establish that, as a matter of law, the Commission should deny Supra's Motion for Reconsideration. Recognizing this fact, Supra filed this Motion to Strike and Reply Memorandum in an attempt to divert the Commission's attention from the

¹ Indeed, of the six pages dedicated to this "Motion to Strike," Supra only discusses the standard applicable to Rule 1.140 in two separate sentences, with both sentences simply stating, in a conclusory fashion and without any discussion or analysis, that the information contained in Section VI of BellSouth's Opposition should be "stricken as impertinent, immaterial and scandalous." See Motion at 2 and 7. Supra uses the remaining portion of its "Motion to Strike"

Motion for Reconsideration's legal and evidentiary deficiencies. Supra claims that this Motion and Reply is permissible because "[n]othing in the Florida Administrative Rules expressly prohibits the filing of a necessary reply." Motion at 1.

Without getting into the substantive defects of Supra's Motion and Reply, the Commission should refuse to consider and strike said Motion and Reply because it is an impermissible, bad faith filing. It is well settled that reply memorandums are not recognized by Commission rules or the rules of the Administrative Procedure Act and thus cannot be considered by the Commission. Indeed, Supra is no stranger to this rule as Supra raised this very argument against BellSouth in Docket No. 980119-TP.

In that case, BellSouth filed a reply to Supra's Opposition to BellSouth's Motion for Reconsideration, at which point Supra filed a Motion to Strike BellSouth's Reply. Supra argued that the Commission should strike BellSouth's Reply because the Commission rules do not contemplate the filing of reply memorandums. Specifically, Supra argued:

Rule 25-22.060(3), Florida Administrative Code governs motions for reconsideration of final orders. Likewise, Rule 25-22.0376(1), Florida Administrative Code, governs motions for reconsideration of non-final orders. Both rules only permit a motion for reconsideration and a response. Neither rule allows or authorizes the Reply Brief filed by BellSouth. Moreover, no reply is allowed or authorized by Rule 28-106.204, Florida Administrative Code. Accordingly, BellSouth's Reply Brief, is unauthorized and improper and thus should be stricken.

to provide new, substantive arguments in response to those arguments made in BellSouth's

See Supra's Motion to Strike at 4, Docket No. 980119-TP, filed Jul. 11, 2000, attached hereto as Exhibit A. The Commission agreed with Supra, stating:

We agree with Supra that neither the Uniform Rules nor or rules contemplate a reply to a response to a Motion. Therefore the Motion to Strike is granted.

In re: Complaint of Supra Telecommunications and Information Systems, Inc. Against BellSouth Telecommunications, Inc., Docket No. 980119-TP, Order No. PSC-00-1777-PCO-TP.

The Commission reached an identical conclusion in In re: ITC-DeltaCom, Docket No. 990750-TP, Order No. PSC-00-2233-FOF-TP, finding that "the Uniform Rules and Commission rules do not provide for a Reply to a Response to a Motion for Reconsideration." See also, In re: Petition by Florida Digital Network, Inc. for Arbitration, Docket No. 010098-TP, Order No. PSC-01-1168-PCO-TP (refusing to address arguments raised by FDN in reply memorandum because reply memorandums are "not contemplated by Commission rules.")

Accordingly, pursuant to Commission precedent, the Commission should refuse to consider and strike Supra's Motion and Reply in its entirety as an impermissible reply memorandum.

II. Supra's Motion to Strike Is Procedurally Improper.

Supra requests that the Commission strike Section VI of BellSouth's Opposition to Supra's Motion for Reconsideration pursuant to Rule 1.140(f) of the Florida Rules of Civil Procedure. Assuming arguendo that Supra's Motion to Strike is not an impermissible reply memorandum (which is denied), the

Opposition.

Commission should still reject said Motion because it is procedurally improper. This is so because Rule 1.140(f) does not apply to filings other than pleadings.

Specifically, Rule 1.140(f) provides that “[a] party may move to strike or the court make strike redundant, immaterial, impertinent, or scandalous matter from **any pleading** at any time.” (emph. added). Rule 1.110(a) provides that the term “pleadings” is limited to complaints, answers, cross claims and counter claims. See Rule 1.110 Fla. R. Civ. P; see also, Soler v. Secondary Holdings, Inc., 771 So. 2d 62, 72 n.3 (Fla. 3rd DCA 2000) (Cope, J., dissenting) (stating that the term “pleading” means complaint). Indeed, as stated by the treatise Florida Practice & Procedure:

[T]he use of the term pleadings to describe all of the various papers, filed in an action is incorrect. A pleading seeks to frame factual issues for determination. This is the meaning when the term is used in the Rules of Civil Procedure and in this book. Motions are not pleadings. Responses may be made to motions.

H. Trawick, Florida Practice & Procedure, at § 6-1 p. 85; see also, Harris v. Lewis State Bank, 436 So. 2d 338, 340 n.1 (Fla. 1st DCA 1983) (motions are not pleadings).

For instance, in Motzner v. Tanner, 561 So. 2d 1336 (Fla. 5th DCA 1990), the trial court struck the plaintiffs’ motion to dismiss because the court found it to be a “sham pleading” pursuant to Rule 1.150. The appellate court, however, found that striking the motion to dismiss was improper because the motion to dismiss was not a pleading and thus was not subject to Rule 1.150.² Id. at 1337.

² Like Rule 1.140, Rule 1.150 only applies to “pleadings.”

Although commonly employed, the use of the term “pleading” to describe all of the various papers filed in an action is incorrect. . . Accordingly, the [defendants’] use of a motion to strike the [plaintiff’s] motion to dismiss as a sham pleading was improper.

Id. at 1338.

In the instant matter, Supra filed a Motion to Strike Section VI of BellSouth’s Opposition to Supra’s Motion for Reconsideration of the Commission’s denial of Supra’s request for a rehearing. BellSouth’s Opposition, like the motion to dismiss in Motzner v. Tanner, is not a complaint, answer, cross claim, counterclaim, and does not “frame factual issues for determination.” Consequently, BellSouth’s Opposition cannot be considered a “pleading” as defined in Rule 1.140(f). Accordingly, under the express language of Rule 1.140(f) and the case of Motzner v. Tanner, supra, Supra’s Motion to Strike BellSouth’s Opposition pursuant to Rule 1.140(f) is procedurally improper and should be denied.

III. Supra Fails to Meet the Standard for Striking BellSouth’s Opposition.

Even if Supra’s Motion to Strike were procedurally proper, the Commission should deny Supra’s Motion because Supra cannot meet the standard to strike allegations under Rule 1.140(f). “A motion to strike matter as redundant, immaterial or scandalous should only be granted if the material is wholly irrelevant, can have no bearing on the equities and no influence on the decision.” McWhirter, Reeves, McGothlin, Davidson, Rief & Bakas, P.A., 704 So. 2d 214, 216 (Fla. 2nd DCA 1998) (quoting Pentecostal Holiness Church, Inc. v. Mauney, 270 So. 2d 762, 769 (Fla. App. 4th DCA 1972). In McWhirter,

Reeves, the court rejected a motion to strike certain allegations in the plaintiff's complaint pursuant to Rule 1.140(f) because it found that the "allegations [in the complaint] were relevant and definitely had a bearing on the equities." Id.

In the case at hand, Supra has taken issue with BellSouth's argument in its Opposition to the Motion for Reconsideration that Supra should not benefit from its deliberate delay in raising a complaint about the appearance of impropriety in this docket. This argument bears directly on the equities in this case. Namely, Supra knew about the alleged improprieties in Docket No. 001097-TP in October 2001 but did not complain about the alleged improprieties in this docket until after Staff issued its recommendation on February 8, 2002. BellSouth's arguments are relevant to Supra's request that the Commission reconsider its decision to deny Supra's request for a rehearing as they bear directly on the equities associated with Supra's request and thus should not be stricken.

Additionally, BellSouth is at a loss as to how its arguments in Section VI of the Opposition could be considered scandalous, which Webster's defines as "libelous" or "defamatory." In support of its argument, BellSouth simply pointed out the following undisputed, uncontroverted facts and argued that, based on these facts, the equities dictated that the Commission should not grant Supra's request for reconsideration:

- Supra knew about the alleged improprieties in Docket No. 001097-TP in early October 2001 but did not complain about its alleged impact on the present proceeding until after Staff issued its February 8, 2002 recommendation.

- Supra waited until after the Commission's vote at the March 5, 2002 agenda conference before issuing its public records request even though Supra informed the Commission at that agenda conference that Supra submitted the request prior to the agenda conference.
- Supra agreed to voluntarily dismiss without prejudice Docket 001097-TP and thus, along with BellSouth, asked the Commission to dismiss the very proceeding in which the Commission previously ordered a rehearing.

The mere fact that a party disagrees with another party's argument does not make that argument "scandalous." For a prime example of a scandalous filing, the Commission need only look at Supra's previous filings in this docket, which are based on conjecture and speculation, at best, and outright fiction, at worst.

IV. The Commission Should Sanction Supra For Attempting to Mislead the Commission.

Section 120.569, Florida Statutes requires all pleadings, motions, or other papers filed in an agency proceeding to contain a signature. Such a signature "constitutes a certificate that the person has read the pleading, motion, or other paper" and that "is it not interposed for any improper purposes, such as to harass or to cause unnecessary delay, or for frivolous purpose or needless increase in the cost of the litigation." Section 120.569, Florida Statutes. If a pleading, motion, or other paper is signed in violation of these requirements, the "presiding officer **shall** impose upon the person who signed it, the represented party, or both, an appropriate sanction. . . ." ³ Id. (emph. added). Available sanctions

³ In addition, Section 57.105, Florida Statutes requires a court to award reasonable attorney's fees to the prevailing party on "any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that the claim or defense when initially presented to the court or at any time before

include but are not limited to reasonable expenses incurred because of the pleading, motion, or other paper, including reasonable attorney's fees. Id.

Unbelievably, in its Motion and Reply, Supra deliberately refuses to inform this Commission of the well-established principle regarding the impermissibility of reply memorandums in Commission proceedings – a principle it helped to create. Instead, Supra attempts to mislead the Commission by stating that the filing is permissible because “the Florida Administrative Rules [do not] expressly prohibit[] the filing of a necessary reply.” There can be no question that Supra knows that such a statement is false as Supra has argued and the Commission found just the opposite in Docket No. 980119-TP. Accordingly, Supra Motion's and Reply constitutes a bad faith filing, not based on the accurate recitation of the law, and filed only to harass and mislead the Commission and BellSouth.

In considering the gravity of Supra's bad faith filing, the Commission should consider that this is not the first time that Supra has made accusations with no legal basis or jurisdiction. In Order No. PSC-98-1467-FOF-TP, issued on October 28, 1998, this Commission found that Supra had made allegations of misconduct concerning a BellSouth employee without any factual or legal support. While the Commission denied BellSouth's request for sanctions, the Commission stated that “further pursuit by Supra of such legally and factually deficient theories shall not be considered lightly.” Id. at p.10. Supra has ignored the Commission's admonition and once again made a filing solely intended to

trial: (a) was not supported by the material facts necessary to establish the claim or defense; or (b) would not be supported by the application of then-existing law to those material facts.” Furthermore, Section 57.105, Florida Statutes provides that if party, proves by a preponderance of the evidence, that any action taken by the opposing party “was taken primarily for the purpose

harass BellSouth and delay the decision making process of the Commission. Supra's flagrant disregard of the Commission's previous order should not be tolerated here.

In addition, the Commission should also consider the fact that Supra's attempts to mislead the Commission are not limited to its written filings. Indeed, as previously stated by BellSouth, Supra misled the Commission at the March 5, 2002 agenda conference by informing the Commission that it issued its public records request a few days prior to that agenda conference, which was false.

COMMISSIONER PALECKI: And what was your timing on that public document request?

MR. CHAIKEN: It was very recent, in the last few days.

See March 5, 2002 agenda transcript at 44. The public document request actually was filed on March 6, 2002.

Supra is now attempting to explain away this patently false statement as a simple misstatement, by blaming its employees for not following the instructions of Supra's counsel. Motion and Reply at 8. While Supra's counsel could have been mistaken at the agenda conference as to when the initial public document request was sent, Supra provides no explanation as to why it waited almost two months before informing the Commission of this alleged "error." Supra had knowledge of the misleading statement, at the latest, on April 10, 2002, when BellSouth brought the falsity to light in its Opposition to Supra's Motion for Reconsideration of Order No. PSC-02-0464-PCO-TP.

of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses"

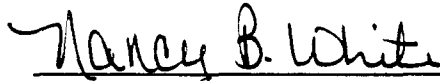
For the foregoing reasons, BellSouth respectfully requests that Supra be sanctioned for filing the Motion and Reply and attempting to mislead the Commission.

CONCLUSION

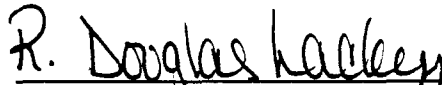
BellSouth respectfully requests that the Commission refuse to consider and deny Supra' Motion to Strike and Reply Memorandum and sanction Supra for submitting this baseless, bad faith filing.

Respectfully submitted, this 1st day of May 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.



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MARK E. BUCHELE

ATTORNEY AT LAW
P.O. BOX 398555
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ORIGINAL

June 27, 2000

FILE COPY

TELEPHONE (305) 531-5286
FACSIMILE (305) 531-5286
RECEIVED-FPSC
JUL 12 PM 11:47
RECORDS AND REPORTING

BLANCA BAYO
Director of Records & Reporting
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(850) 413-6770

Re: Supra v. BellSouth, Docket No. 980119-TP

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen (15) copies of the Petitioner Supra Telecommunication & Information Systems, Inc.'s Motion To Strike BellSouth's Reply To Supra Telecom's Response And Opposition To BellSouth's Motion For Reconsideration. Please also find enclosed an original and fifteen (15) copies of the Petitioner Supra Telecommunication & Information Systems, Inc.'s Motion To Strike BellSouth's Motion For Reconsideration. Finally, please also find enclosed an extra copy of each filing, for which we request that you stamp with the filing date and return in the enclosed postage pre-paid, self-addressed envelopes.

If you have any questions or comments, please feel free to contact me at (305) 531-5286.

Sincerely,

Mark E. Buchele

Mark E. Buchele

RECEIVED

SEP 2 1 2000

DIRECTOR-REG. RELATIONS
TALLAHASSEE, FL

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CAF
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enclosures

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FPSC BUREAU OF RECORDS *Strike BS Reply* *Strike BS Motion*
DOCUMENT NUMBER - DATE DOCUMENT NUMBER - DATE

08444 JUL 12 88445 JUL 12 8

Exhibit A

FPSC-RECORDS/REPORTING

ORIGINAL

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Complaint of Supra Telecommunications)
& Information Systems against BellSouth)
Telecommunications, Inc. for violation of)
the Telecommunications Act of 1996; petition)
for resolution of disputes as to implementation)
and interpretation of interconnection, resale)
and collocation agreements; petition for)
emergency relief.)

Docket No.: 980119-TP
Dated: July 11, 2000

**SUPRA TELECOM'S MOTION TO STRIKE
BELLSOUTH'S REPLY TO SUPRA TELECOM'S
RESPONSE AND OPPOSITION TO BELLSOUTH'S
MOTION FOR RECONSIDERATION**

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra Telecom"), by and through its undersigned counsel and pursuant to Rule 28-106.204, Florida Administrative Code, hereby files and serves this its Motion To Strike BellSouth's Reply To Supra Telecom's Response And Opposition To BellSouth's Motion For Reconsideration (dated July 10, 2000), and in support thereof states as follows:

I. PROCEDURAL BACKGROUND

1. In April 1999 BellSouth filed a Notice of Compliance in this cause.
2. On February 11, 2000, this Commission entered an Order on BellSouth's Notice of Compliance; finding in part that BellSouth had failed to comply with the on-line edit checking capability portion of this Commission's prior Order No. PSC-00-0104-PAA-TP.
3. On April 24, 2000, this Commission entered a final order on BellSouth Notice of Compliance, denying all motions for reconsideration.
4. On June 8, 2000, approximately six (6) weeks after the order denying all motions for reconsideration, BellSouth filed its Motion For Reconsideration directed towards the February

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Supra v. BellSouth, Docket No. 980119-TP

11, 2000 and April 24, 2000 Orders. Thereafter, Supra Telecom filed and served its Response And Opposition To BellSouth's Motion For Reconsideration And Request For Oral Argument.

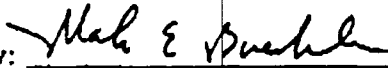
5. On or about July 10, 2000, BellSouth filed its Reply To Supra Telecom's Response And Opposition To BellSouth's Motion For Reconsideration And Request For Oral Argument ("Reply Brief").

6. Rule 25-22.060(3), Florida Administrative Code governs motions for reconsideration of final orders. Likewise, Rule 25-22.0376(1), Florida Administrative Code, governs motions for reconsideration of non-final orders. Both rules only permit a motion for reconsideration and a response. Neither rule allows or authorizes the Reply Brief filed by BellSouth. Moreover, no reply is allowed or authorized by Rule 28-106.204, Florida Administrative Code. Accordingly, BellSouth's Reply Brief, is unauthorized and improper and thus should be stricken.

WHEREFORE, SUPRA TELECOMMUNICATION & INFORMATION SYSTEMS, INC., respectfully requests that this Commission strike BELLSOUTH TELECOMMUNICATIONS, INC.'s Reply To Supra Telecom's Response And Opposition To BellSouth's Motion For Reconsideration And Request For Oral Argument (dated July 10, 2000).

Respectfully Submitted this 11th day of July, 2000.

MARK E. BUECHELE, ESQ.
Supra Telecommunications &
Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, FL 33133
Tel: (305) 476-4212
Fax: (305) 443-1078

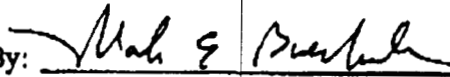
By: 

MARK E. BUECHELE
Fla. Bar No. 906700

Supra v. BellSouth, Docket No. 980119-TP

CERTIFICATE OF SERVICE

I HEREBY Certify that a true and correct copy of the foregoing has been furnished by U.S. Mail upon NANCY WHITE, ESQ. (Attorney For BellSouth), 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301; BETH KEATING, ESQ. (FPSC Staff), 2540 Shumard Oak Boulevard, Tallahassee, Florida; and AMANDA GRANT, BellSouth Telecommunications, Inc., Regulatory & External Affairs, 675 West Peachtree Street, N.E., Room 38L64, Atlanta, Georgia 30375; this 11th day of July, 2000.

By: 
MARK E. BUECHELE
Fla. Bar No. 906700

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Supra Telecommunications & Information Systems against BellSouth Telecommunications, Inc. for violation of the Telecommunications Act of 1996; petition for resolution of disputes as to implementation and interpretation of interconnection, resale and collocation agreements; petition for emergency relief.

Docket No.: 980119-TP

Dated: July 11, 2000

SUPRA TELECOM'S MOTION TO STRIKE BELLSOUTH'S MOTION FOR RECONSIDERATION

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra Telecom"), by and through its undersigned counsel and pursuant to Rule 28-106.204, Florida Administrative Code, hereby files and serves this its Motion To Strike BellSouth's Motion For Reconsideration (dated June 8, 2000), and in support thereof states as follows:

I. PROCEDURAL BACKGROUND

1. On or about January 23, 1998, Supra Telecom filed a complaint against BellSouth seeking an interpretation of certain agreements between the parties and alleging that BellSouth had failed to comply with certain aspects of the parties' interconnection, collocation and resale agreements. On July 22, 1998, this Commission issued a final order on Supra Telecom's complaint requiring BellSouth to perform several tasks including providing on-line edit checking capability in the ordering systems made available to Alternative Local Exchange Carriers ("ALECs"). On or about October 28, 1998 this Commission clarified its prior ruling to require BellSouth to modify the ALEC ordering systems by December 31, 1998.

2. On or about November 25, 1998, BellSouth filed a complaint with the United States

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Supra v. BellSouth, Docket No. 980119-TP

District Court for the Northern District of Florida ("Federal Court") purporting to appeal the Commission's decision regarding on-line edit checking capability.

3. In April 1999 BellSouth filed a Notice of Compliance in which it claimed that it had provided Supra Telecom the equivalent of on-line checking capability by making available a programming tool referred to as TAG-API (or Telecommunications Access Gateway - Applications Programmers Interface).

4. On April 29, 1999, the Federal Court set a briefing schedule for resolution of BellSouth's appeal, which at the time, anticipated concluding the appeal by the Fall of 1999. Nevertheless, after filing its Notice of Compliance, BellSouth requested and obtained an extension of the Federal Court briefing schedule, eventually moving the anticipated resolution date of the appeal until Spring 2000.

5. In the interim, the Commission Staff conducted an informal session in order to understand the issues and, without a hearing, render an opinion on BellSouth's Notice of Compliance. On February 11, 2000, this Commission ruled that BellSouth had not complied with the on-line edit checking capability requirement; but nevertheless raised the issue as to whether or not circumstances had changed such that BellSouth's offering of TAG, Robo-TAG, LENS 99 constituted equivalent compliance with the Commission's order requiring on-line edit checking capability. This Commission noted that such a determination could not be made without an evidentiary hearing and that it would be inappropriate to conduct such a hearing while BellSouth's appeal was still pending.

Supra v. BellSouth, Docket No. 980119-TP

6. On April 12, 2000, BellSouth moved to voluntarily dismiss without prejudice its appeal before the Federal Court. In its motion, BellSouth represented that it wanted to conduct an evidentiary hearing before this Commission on the issue of its compliance with the on-line edit checking capability requirement.

7. On April 24, 2000, this Commission entered a final order on BellSouth Notice of Compliance, denying all motions for reconsideration and keeping the docket opened pending conclusion of the Federal Court appeal.

8. On May 9, 2000, the Federal Court voluntarily dismissed without prejudice BellSouth's appeal based upon the representation that BellSouth was going to seek a full evidentiary hearing before the Commission on the issue of compliance.

9. On June 8, 2000, approximately six (6) weeks after the order denying all motions for reconsideration, BellSouth filed its Motion For Reconsideration wherein BellSouth requested an indefinite delay of the evidentiary hearing which BellSouth had previously represented to both this Commission and the Federal Court that it wanted to conduct immediately.

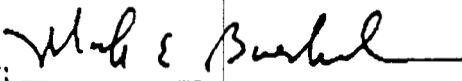
10. Rule 25-22.060(3), Florida Administrative Code states in pertinent part that "a motion for reconsideration of a final order shall be filed within 15 days after issuance of the order. Likewise, 25-22.0376(1) provides in pertinent part that a motion for reconsideration of a non-final order must be filed within 10 days of the order. Both rules also state that a failure to timely file a motion for reconsideration shall constitute a waiver of the right to do so. Based upon the above, BellSouth Motion For Reconsideration is untimely and should be stricken.

Supra v. BellSouth, Docket No. 980119-TP

WHEREFORE, SUPRA TELECOMMUNICATION & INFORMATION SYSTEMS, INC., respectfully requests that this Commission strike BELLSOUTH TELECOMMUNICATIONS, INC.'s Motion for Reconsideration (dated June 8, 2000) as having been untimely filed.

Respectfully Submitted this 11th day of July, 2000.

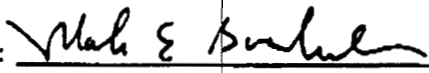
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Fla. Bar No. 906700

CERTIFICATE OF SERVICE

I HEREBY Certify that a true and correct copy of the foregoing has been furnished by U.S. Mail upon NANCY WHITE, ESQ. (Attorney For BellSouth), 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301; BETH KEATING, ESQ. (FPSC Staff), 2540 Shumard Oak Boulevard, Tallahassee, Florida; and AMANDA GRANT, BellSouth Telecommunications, Inc., Regulatory & External Affairs, 675 West Peachtree Street, N.E., Room 38L64, Atlanta, Georgia 30375; this 11th day of July, 2000.

By: 

MARK E. BUECHELE
Fla. Bar No. 906700