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**ORIGINAL**

May 7, 2002

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

RECEIVED-FPSC  
02 MAY -7 PM 3:50  
COMMISSION  
CLERK

**RE: Docket No. 001305-TP –  
Supra Telecommunication & Information Systems, Inc.’s  
Motion to Strike BellSouth’s Letter of April 25, 2002 to Blanco  
Bayo with Attached Proposed Interconnection Agreement.**

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.’s (Supra) Motion to Strike BellSouth’s Letter of April 25, 2002 to Blanco Bayo with Attached Proposed Interconnection Agreement.

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

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**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 7th day of May, 2002 to the following:

Wayne Knight, Esq.  
Staff Counsel  
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Telephone: (305) 476-4248  
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By: Brian Chaiken / gzh  
BRIAN CHAIKEN, ESQ.

ORIGINAL

**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: May 7, 2002

**MOTION TO STRIKE BELLSOUTH'S LETTER OF  
APRIL 25, 2002 TO BLANCA BAYO WITH ATTACHED  
PROPOSED INTERCONNECTION AGREEMENT**

**RESPONDENT SUPRA TELECOMMUNICATIONS & INFORMATION**

**SYSTEMS INC.** ("Supra"), by and through its undersigned counsel, hereby moves to strike a Letter dated April 25, 2002 to Blanca S. Bayo of the FPSC, with an attached proposed Interconnection Agreement, submitted by an attorney for BELLSOUTH TELECOMMUNICATIONS, INC.'s ("BellSouth"), and in support thereof states as follows:

**I. PROCEDURAL BACKGROUND**

1. On or about March 26, 2002, this Commission entered Order No. PSC-02-0413-FOF-TP on the arbitration in this docket. The order stated in part that the parties should finalize and jointly submit an Interconnection Agreement which incorporates the Commission's ruling on the issues brought to the Commission for arbitration. Inherent in the order was the presumption and understanding that the final Interconnection Agreement would be a combination of: (a) the issues agreed upon amongst the parties which had not been ruled upon by this Commission; and (b) a final ruling on disputed issues ruled upon in this arbitration.

2. On April 10, 2002, Supra filed motions for reconsideration and rehearing on the matters set forth in Order No. PSC-02-0413-FOF-TP.

3. On April 17, 2002, Supra filed a motion to recuse this Commission from further

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proceedings in this docket. On April 26, 2002, Supra filed a verified supplemental motion to recuse and disqualify this Commission from further proceedings in this docket. The motions were based upon perceived prejudice and bias by the Commission and Commission Staff, together with evidence of a problem with ex-parte communications between the Commission, Commission Staff and BellSouth.

4. On April 24, 2002, Supra filed a motion for extension of time in which to file an executed Interconnection Agreement. The motion was based in part upon this Commission's ruling in Order No. PSC-01-1951-FOF-TP which granted a BellSouth motion for extension of time to file an executed interconnection agreement in the AT&T\BellSouth arbitration (In re: Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C. Section 252; Docket No. 00-0731-TP). The motion for extension of time in that docket was made because of pending motions for reconsideration. In granting the extension of time, this Commission stated that "**[u]ntil the question of reconsideration is determined, the final agreement can not be drafted.**" See Order No. PSC-01-1951-FOF-TP at page 8.

5. On or about April 25, 2002, T. Michael Twomey, a Senior Regulatory Counsel for BellSouth, submitted to Blanca S. Bayo of the FPSC, a letter with a proposed Interconnection Agreement attached thereto. The letter stated in substance, that BellSouth was unilaterally submitting a proposed Interconnection Agreement for filing with the FPSC, which had only been executed by BellSouth. The proposed Interconnection Agreement attached to the letter specifically stated that BellSouth had prepared the proposed Interconnection Agreement by utilizing "**its**

**template agreement that it filed with its Petition for Arbitration in this Docket, modified only to incorporate the Commission's decisions in the Final Arbitration Order."** By BellSouth's own description of the document, the proposed Interconnection Agreement does not appear to incorporate the voluntary agreements made by the parties which had not been submitted for arbitration. More importantly though, the proposed Interconnection Agreement has not been executed by Supra, partly due to Supra's pending motions described above.

6. The April 25, 2002 Letter submitted by BellSouth was not a motion, nor did it seek any formal relief. Furthermore, the April 25, 2002 Letter cited no law or other legal precedent in support of a unilateral filing of an unsigned interconnection agreement. Rather the April 25, 2002 Letter simply accompanied BellSouth's proposed unilateral Interconnection Agreement with a statement that BellSouth intended only to provide service to Supra under this proposal.

7. The April 25, 2002 Letter should be stricken from the record for the reasons which follow in the body of this motion, and which include: (a) the filing is procedurally improper; (b) the filing does not comply with this Commission's prior rulings; (c) the filing is premature; (d) the filing is impertinent, irrelevant and immaterial; (e) the filing is not authorized by law; (f) by its own description, the filing does not fully incorporate the parties' voluntary resolutions and agreements on issues not submitted for arbitration; and (g) the filing was made for improper purposes.

## **II. MEMORANDUM OF LAW**

Rule 28-106.204(1), Florida Administrative Code, states in pertinent part as follows:

**"All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied**

**upon."** BellSouth's April 25, 2002 Letter to Blanca Bayo is not a motion and does not comply with Rule 28-106.204(1), Fla.Adm.Code. In any event, given BellSouth's experience before this Commission and the fact that it is represented by numerous able attorneys, there can be no doubt that BellSouth never intended the April 25, 2002 Letter to be a motion, rather it is simply a statement of BellSouth's intentions regarding its future dealings with Supra. Since the April 25, 2002 Letter with the attached proposed Interconnection Agreement is not a motion as required by the rules, the filing is not authorized, and is otherwise irrelevant, impertinent and immaterial.

In addition to being procedurally improper, the April 25, 2002 Letter is obviously premature given Supra's pending motions for recusal, rehearing and reconsideration. Moreover, under this Commission's ruling in Order No. PSC-01-1951-FOF-TP, "**[u]ntil the question of reconsideration is determined, [a] final agreement can not be drafted.**" Accordingly, BellSouth's April 25, 2002 Letter with attached proposed Interconnection Agreement is obviously premature and thus irrelevant, impertinent and immaterial at this time.

Moreover, the attached proposed Interconnection Agreement, by BellSouth's own description, does not fully incorporate the parties' voluntary negotiations on issues not decided by the Commission; and for disputed issues, is merely a BellSouth interpretation of Order No. PSC-02-0413-FOF-TP. In Order No. PSC-97-0550-FOF-TP (In re: Petition by Sprint Communications Company Limited Partnership d/b/a Sprint for arbitration with GTE Florida concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996; Docket No. 96-1173-TP), this Commission stated that: "**[t]he process of approving a jointly filed agreement by the Commission consists of approving language that was agreed to by the**

**parties, discarding the non-arbitrated language that was not agreed upon, and determining the appropriate contract language for those sections that were arbitrated, yet still in dispute."**

See Order No. PSC-97-0550-FOF-TP at pages 12-13. Accordingly, any final rulings by the Commission on arbitrated language is only one part of the process used in arriving at a final interconnection agreement.

Because filing an executed Interconnection Agreement at this time is premature, Supra has not had an opportunity to review the proposed Interconnection Agreement in detail. Moreover, in order to review the same, BellSouth would need to identify all changes made together with references to when and where each change was either agreed to or resulted from a final arbitration ruling. However, BellSouth's own description of the proposed Interconnection Agreement does not appear to comply with the above reference standards. The template filed at the beginning of the arbitration process has clearly been changed by agreements made between the parties which were not brought to this Commission for final resolution. Simply altering the template agreement to incorporate BellSouth's interpretation of Order No. PSC-02-0413-FOF-TP is not enough and does not comply with Section 252 of the Telecommunications Act. Accordingly, the April 25, 2002 Letter with the attached proposed Interconnection Agreement is once again an unauthorized, irrelevant, impertinent and immaterial filing.

It should be noted that Order No. PSC-97-0550-FOF-TP also requires the parties to jointly execute the final interconnection agreement before the same is submitted to the Commission for approval and that a party which fails to sign an arbitrated Interconnection Agreement may be subject to a show cause order and fines in the event there is no good cause for failing to execute the

agreement. See Order No. PSC-97-0550-FOF-TP at pages 20-21. Since execution of a final interconnection agreement is still premature at this time, and since there is no motion at this time to compel execution of any agreement, BellSouth's filing is once again unauthorized, irrelevant, impertinent and immaterial at this time.

Florida Statute § 120.569(2)(e) states in pertinent part as follows:

**"All pleadings, motions, or other papers filed in the proceeding must be signed by the party, the party's attorney, or the party's qualified representative. The signature constitutes a certificate that the person has read the pleading, motion, or other paper and that, based upon reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause delay, or for frivolous purpose or needless increase in the cost of litigation. 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 . . ."**

Furthermore, Fla.Stat. § 120.569(2)(g) states that irrelevant, immaterial, or duly repetitious matters shall be excluded. Thus it is clear that Fla.Stat. § 120.569 contemplates the striking of a motion, filing or material which is either: (a) interposed for any improper purpose, such as to harass or to cause delay, or for frivolous purposes or to needlessly increase the cost of litigation; or (b) is irrelevant, immaterial or duly repetitious.

Additionally, Florida Rules of Judicial Administration, Rule 2.060(c) states in pertinent part as follows:

**"The signature of an attorney (on any pleading or other paper filed) shall constitute a certificate by the attorney that the attorney has read the pleading or other paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading or other paper had not been served."**



Thus under Rule 2.060, Fla.R.Jud.Adm., it is proper to strike any paper filed by an attorney for which there is no good ground to support the filing or which is interposed for delay.

Given the above, it is clear that a proper sanction for an inappropriate filing is the striking of that filing from the record. In Picchi v. Barnett Bank of South Florida, N.A., 521 So.2d 1090, 1091 (Fla. 1988), the Florida Supreme Court held that a paper filed by an attorney which was not authorized by the rules of procedure or caselaw, was subject to being stricken. Likewise, the Court in Hicks v. Hicks, 715 So.2d 304, 305 (Fla. 5th DCA 1998), held that a motion filed by an attorney which violated Rule 2.060, Fla.R.Jud.Adm., was voidable and subject to be stricken.

With respect to this Commission, in Order No. PSC-98-1467-FOF-TP (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; and petition for emergency relief; Docket No. 980119-TP), this Commission ruled that a "Motion to Dismiss BellSouth's Motion for Reconsideration and Clarification of Order No. PSC-98-1001-FOF-TP for Misconduct" ("Motion to Dismiss Reconsideration") was a pleading subject to being stricken. In its motion to strike, BellSouth argued that Supra's Motion to Dismiss Reconsideration was a pleading subject to being stricken under Fla.R.Civ.P. 1.140 as containing scandalous matters, and under Fla.R.Civ.P. 1.150 as being false and a sham. In granting BellSouth's motion and striking Supra's Motion to Dismiss Reconsideration, this Commission held that Supra's motion was in-fact a pleading subject to being stricken. See Order No. PSC-98-1467-FOF-TP at pages 6-10. Florida Rule of Civil Procedure 1.140(f) authorizes the striking from the record of any redundant,

immaterial, impertinent or scandalous matter from any pleading, at any time. Likewise, Fla.R.Civ.P. 1.150(a) authorizes the striking of any pleading (or part thereof), which is a sham. Thus under this Commission's ruling in Order No. PSC-98-1467-FOF-TP, a motion or other filing may be stricken under either Fla.R.Civ.P. 1.140 or Fla.R.Civ.P. 1.150; and more particularly, if the filing contains redundant, immaterial, impertinent or scandalous matters, or is a sham filing.

Apart from the rules of procedure and administration, motions to strike have also been granted by this Commission and the Courts for other various reasons. For example, in Order No. 21710 (89-8 FPSC 270) (In re: Objection to notice by Hudson Utilities, Inc. of intent to transfer Certificate 104-S in Pasco County to Robert Bammann and Judith Bammann; Docket No. 89-0662-SU), this Commission granted a motion to strike various objections on the grounds that said objects were "**irrelevant and immaterial**". Likewise, in Order No. PSC-98-1254-FOF-GU (In re: Complaint of Mother's Kitchen Ltd. against Florida Public Utilities Company regarding refusal or discontinuance of service; Docket No. 970365-GU), this Commission struck various responses to motions as being untimely and thus not allowed under the applicable rules. Since the late-filed motions were not authorized under the applicable rules, it was proper to grant the motions to strike. Again in Order No. PSC-99-0186-FOF-GU (In re: Complaint of Mother's Kitchen Ltd. against Florida Public Utilities Company regarding refusal or discontinuance of service; Docket No. 970365-GU), this Commission struck various exhibits attached to a motion for reconsideration, which had not previously been made part of the record. Since the filing of such exhibits was not authorized, the Commission granted the motion to strike. Likewise, the Courts in overseeing administrative agencies have upheld similar motions to strike. For example, in Plante v.

Department of Business and Professional Regulation, 716 So.2d 790, 792 (Fla. 4th DCA 1998), the appellate court affirmed an agency ruling which struck evidence that had not previously been submitted during the evidentiary hearing. Finally, in Ropes v. Stewart, 45 So. 31 (Fla. 1907), the Florida Supreme Court upheld the striking of a declaration which the lower court found to be scandalous. Thus, it appears that even in the absence of any specific rules or statutes, Courts have the inherent power to strike scandalous materials from filings and other public records.

Based upon the above, it is clear that this Commission has the power to strike any material or filing from the record which is either: (a) not authorized by the rules; (b) is redundant, impertinent, irrelevant, immaterial and/or scandalous; (c) which is a sham; (d) which is interposed for any improper purpose, such as to harass or to cause delay, or for frivolous purposes, or which needlessly increase the cost of litigation; and (e) for which there is no good ground to support the filing.

Given the above, it is proper to strike BellSouth's April 25, 2002 Letter with the attached proposed Interconnection Agreement.

First, the BellSouth filing is not a motion as required by Rule 28-106.204(1), Fla.Adm.Code. Therefore the filing is not authorized by the applicable rules and thus is not permissible.

Second, the BellSouth filing does not comply with this Commission's Order No. PSC-02-0413-FOF-TP, as clarified by previous rulings of this Commission. This is so because under Order No. PSC-01-1951-FOF-TP, it is premature to compile an Interconnection Agreement until such time as any motions for reconsideration and rehearing have been disposed of and ruled upon. Moreover, under Order No. PSC-97-0550-FOF-TP, the compiled final agreement must include

those matters which had previously been agreed upon by the parties together with the issues resolved by arbitration, and exclude those matters not agreed upon by the parties which have not been submitted to arbitration. Finally, under Order No. PSC-97-0550-FOF-TP, the final agreement must be signed by all the parties (not just BellSouth).

Third, for the reasons previously stated, the BellSouth filing has no legal basis and thus was made without good ground to support the filing.

Fourth, for the reasons previously stated, the BellSouth filing is impertinent, irrelevant and immaterial.

Finally, the BellSouth filing has been interposed for an improper purpose, including harassment and needlessly increasing the cost of litigation. The true purpose of BellSouth's filing is to force an interconnection agreement upon Supra which does not comply with the law, and which BellSouth seeks to use in an attempt to circumvent prior and future rulings and orders of arbitrators and a Federal Court. Moreover, for the reasons set forth in Supra's pending motions for reconsideration, rehearing and recusal, it is clear that the proposed Interconnection Agreement which BellSouth seeks to force upon Supra was also compiled in violation of ex-parte rules and laws, and through other improper and perhaps even illegal means. Thus BellSouth's filing of an unsigned Interconnection Agreement is the epitome of bad faith and improper purpose.

Accordingly, for the reasons stated above, BellSouth's April 25, 2002 Letter together with its attached proposed Interconnection Agreement, should be stricken from the record of this docket.

**WHEREFORE** SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC., respectfully requests that this Commission strike BELLSOUTH

TELECOMMUNICATIONS, INC.'s April 25, 2002 Letter to Blanca Bayo of the FPSC, together with its attached proposed Interconnection Agreement.

RESPECTFULLY SUBMITTED submitted, this 7th day of May, 2002.

BY: Brian Chaiken / B7H

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