

James Meza III  
Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(305) 347-5561

May 15, 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

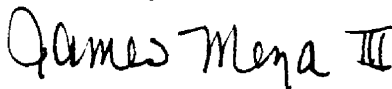
**RE: Docket No. 001305-TP (Supra)**

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to Supra Telecommunications and Information Systems, Inc.'s Motion to Strike, 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 (KAB)

Enclosures

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

DOCUMENT NUMBER - DATE  
05253 MAY 15 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  
Electronic Mail and U.S. Mail this 15th day of May, 2002 to the following:

Wayne Knight, Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Tel. No. (850) 413-6232  
Fax. No. (850) 413-6250  
[wknight@psc.state.fl.us](mailto:wknight@psc.state.fl.us)

Ann Shelfer, Esq. (+)  
Supra Telecommunications and  
Information Systems, Inc.  
1311 Executive Center Drive  
Koger Center - Ellis Building  
Suite 200  
Tallahassee, FL 32301-5027  
Tel. No. (850) 402-0510  
Fax. No. (850) 402-0522  
[ashelfer@stis.com](mailto:ashelfer@stis.com)

Brian Chaiken  
Paul Turner (+)  
Kirk Dahlke  
Supra Telecommunications and  
Information Systems, Inc.  
2620 S. W. 27<sup>th</sup> Avenue  
Miami, FL 33133  
Tel. No. (305) 476-4248  
Fax. No. (305) 443-1078  
[bchaiken@stis.com](mailto:bchaiken@stis.com)  
[pturner@stis.com](mailto:pturner@stis.com)  
[kdahlke@stis.com](mailto:kdahlke@stis.com)

  
James Meza III (KAA)

**(+) 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 15, 2002  
Telecommunications Act of 1996. )  
\_\_\_\_\_ )

**BELLSOUTH'S OPPOSITION TO SUPRA'S  
MOTION TO STRIKE**

BellSouth Telecommunications, Inc. ("BellSouth") opposes Supra Telecommunications & Information Systems, Inc.'s ("Supra") Motion to Strike BellSouth's Letter of April 25, 2002 to Blanco Bayo with Attached Proposed Interconnection Agreement ("Motion to Strike"). For the reasons discussed below, the Florida Public Service Commission ("Commission") should deny Supra's Motion to Strike.

**INTRODUCTION**

In Order No. PSC-02-0413-FOF-TP ("Final Order"), the Commission required the parties to file an executed Interconnection Agreement with the Commission by April 25, 2002. Consistent with its goal to frustrate the arbitration process and delay executing a new Interconnection Agreement with BellSouth, Supra filed a Motion for Extension of Time to file the Interconnection Agreement on April 24, 2002. Supra's request for an extension, although based on the suggestion that the extension "will ensure that the parties will not have to negotiate the necessary final language more than once," (Motion for Extension at 3) was a bad faith filing based on falsehoods meant to mislead the Commission.

BellSouth complied with the Commission's Order and filed the Agreement (executed only by BellSouth) on April 25, 2002. As discussed in detail below, BellSouth was forced to file the Agreement without Supra's signature because Supra has refused to execute the Agreement or to even discuss any of the final terms of the Agreement, despite repeated requests by BellSouth. With its Motion, Supra is now attempting to strike the contents of the transmittal letter and the filed Interconnection Agreement.

This latest Motion is just another attempt by Supra to conceal the fact that Supra has no intention of executing the new Agreement with BellSouth. This Motion is one avenue of many that Supra is utilizing 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. The Commission should view this Motion for what it truly is and summarily reject it.

### **ARGUMENT**

#### **I. BellSouth Simply Filed the Agreement for Approval.**

Supra argues that BellSouth's letter should be stricken because it is not a motion in compliance with Rule 28-106.204(1), Florida Administrative Code and thus is as an authorized filing. See Motion at 3-4. Rule 28-106.204(1), requires that "[a]ll requests for relief shall be made by motion. All motions shall be in writing . . . ."

In the April 25, 2002 transmittal letter, BellSouth did not ask for any specific relief from the Commission, other than to approve the Agreement pursuant to the Section 252 of the Telecommunications Act of 1996. The request

for the Commission to approve an interconnection agreement via a letter is standard operating procedure with the Commission. If BellSouth's April 25, 2002 Letter is procedurally improper (which is denied), then so are the hundreds of other letters and agreements submitted by carriers for approval by the Commission.

Furthermore, in filing the Interconnection Agreement, BellSouth simply (1) complied with the Commission's Final Order requiring the parties to file an executed Interconnection Agreement by a date certain; and (2) informed the Commission that Supra had refused to discuss or negotiate any final language since the Commission's March 5, 2002 vote. BellSouth submitted the Agreement pursuant to the Final Order and in accordance with the Act.<sup>1</sup>

While Supra filed a Motion for Extension of Time prior to the deadline, the extension had not been granted by the date the Final Order required the parties to file the Interconnection Agreement. Further, because BellSouth vehemently objected to the extension for numerous reasons, including the fact that it was predicated on a falsity – to avoid multiple negotiations – there was a question as to whether the extension would be granted. Accordingly, BellSouth filed the letter and the Interconnection Agreement to avoid violating the Commission's Order.

In any event, even if the Commission were to construe BellSouth's April 25, 2002 letter as a request for relief, the April 25, 2002 letter should not be

---

<sup>1</sup> It should be noted that throughout this docket, Supra has filed letters with the Commission for the purpose of attempting to inform it of certain information or to request specific relief. For instance, on April 1, 2002, Supra filed a letter that was addressed to Commissioner Palecki. Additionally, on February 12, 2002, Supra filed a letter requesting that the Commission defer a

stricken for violating Rule 28-106.204(1), because it actually complies with the Rule. Namely, to the extent the April 25, 2002 letter seeks affirmative relief, it is in writing and thus would comply with Rule 28-106.204(1). It is well settled that “courts should look to the substance of a motion and not to the title alone.” Mendoza v. Board of County Commissioners/Dade County, 221 So. 2d 797, 798 (Fla. 3<sup>rd</sup> DCA 1969). Accordingly, Supra’s argument should be rejected because even if the April 25, 2002 letter is found to seek affirmative relief, it is complies with Rule 28-106.204(1).

**II. The Filing of the April 25, 2002 Letter and the Interconnection Agreement Was Not Premature.**

Next, Supra argues that the filing of the April 25, 2002 Letter and the Interconnection Agreement was premature because of Supra’s pending Motions for Reconsideration and Motion to Recuse. See Motion at 4. The flaw in this argument is that the Final Order required the parties to file an executed Interconnection Agreement on April 25, 2002 without exception. Thus, BellSouth complied with the Commission’s Final Order by filing the Interconnection Agreement, and Supra failed to comply with the Commission’s Final Order.

Further, Supra’s filing of the Motion for Extension of Time, by itself, did not alleviate the parties obligation to file an executed agreement within the time ordered by the Commission because BellSouth opposed Supra’s request for an extension as it was a bad faith filing based on a falsehood. Specifically, Supra claimed that an extension was needed to avoid negotiating the “necessary final

---

vote on the arbitration proceeding because of “the appearance of serious irregularities that requires further investigation.” In both cases, Supra did not frame the letters as motions.

language more than once.” Motion for Extension at 3. This assertion was nothing but a ruse to divert attention from its actual intent. The uncontroverted evidence establishes that Supra has not attempted to negotiate “necessary final language” for any provision in the new Agreement, even those provisions that Supra has not sought reconsideration of,<sup>2</sup> since the Commission’s vote on March 5, 2002.

For instance, after the Commission’s March 5, 2002 vote, BellSouth commenced preparation of a proposed Interconnection Agreement incorporating the decisions of the Commission. On March 12, 2002, Greg Follensbee of BellSouth, forwarded a draft of BellSouth’s proposed Interconnection Agreement to Supra via e-mail and Federal Express. A copy of the transmittal message is attached hereto as Exhibit “A”. Paul Turner of Supra replied to Mr. Follensbee on March 15, 2002, stating that Supra believed it premature to schedule a conference call to review the proposed Agreement because the Commission had not yet issued a written order and because the parties’ rights to seek reconsideration and appeal were not yet exhausted. A copy of Mr. Turner’s correspondence is attached hereto as Exhibit “B.”

On March 27, 2002, subsequent to the Commission’s release of the Final Arbitration Order, Mr. Follensbee again contacted Mr. Turner via e-mail, citing the express requirement that the parties submit an executed Interconnection Agreement within 30 days of the Final Arbitration Order and requested that the parties meet within five (5) business days to finalize the new Interconnection Agreement. Mr. Turner responded on March 28, 2002, stating that Supra might

---

<sup>2</sup> Supra did not seek reconsideration of the Commission’s decisions on Issues H, J, R, U, and Z.

file a Motion for Reconsideration and seek a stay of the Final Arbitration Order. Supra again refused to discuss the Agreement with BellSouth. A copy of the correspondence between the parties is attached hereto as Exhibit "C."

The unrefuted evidence establishes that Supra has refused to negotiate the final provisions of the new Interconnection Agreement. Because of this very fact and because BellSouth would be prejudiced by and opposed the granting of an extension, Supra's request for an extension was distinguishable from other instances where the Commission granted parties an extension to file an executed interconnection agreement. Accordingly, BellSouth filed the Interconnection Agreement, executed only by BellSouth because Supra refused to execute or even discuss final language, in order to comply with the Final Order.

Moreover, as can be seen from the above, Supra's argument that it has "not had an opportunity to review the proposed Interconnection Agreement in detail," (Motion at 5) is completely disingenuous. It is undisputed that BellSouth forwarded a copy of the Agreement as early as March 12, 2002. Once again, this statement establishes that Supra has no intent to execute and operate under the new Interconnection Agreement.

Similarly, Supra's argument that the Interconnection Agreement filed with the Commission is improper because it fails to contain changes regarding issues agreed to by the parties and which were not subject to the Final Order should be rejected. See Motion at 5. This argument is nothing but a red herring because the filed Agreement contains all modifications or revisions that the parties agreed to and which were not brought to the Commission for final resolution. A cursory review by Supra of the Agreement would reveal this fact. Apparently, because



Supra is under the misunderstanding that the Agreement does not contain these agreed upon modifications, Supra has not even looked at the Agreement submitted by BellSouth on March 12, 2002.

Finally, BellSouth recognizes that on May 8, 2002, the Prehearing Officer granted Supra's Motion for Extension of Time in part by giving the parties 14 days from the date the Commission Panel issued a final order disposing of Supra's Motion for Reconsideration to file an executed interconnection agreement. See Order No. PSC-02-0637-PCO-TP at 2. BellSouth respectfully disagrees with the Prehearing Officer's decisions and is seeking reconsideration by the Commission Panel.

**III. The April 25, 2002 Letter and the Filed Interconnection Agreement Were Not Filed for an Improper Purpose.**

Supra argues that the Commission should strike the April 25, 2002 Letter because it was filed for an improper purpose, "including harassment and needlessly increasing the cost of litigation." See Motion at 10. As can be seen from the above, BellSouth filed the April 25, 2002 Letter and the Interconnection Agreement to comply with the Commission's Final Order. BellSouth was forced to file the Agreement executed only by BellSouth because Supra refused to execute the Agreement or even discuss final language. Indeed, as evidenced by Supra's statements in its Motion to Strike, it does not even appear that Supra has read the Interconnection Agreement even though BellSouth sent it to Supra on March 12, 2002. The Florida Administrative Code is clear, the filing of a Motion for Reconsideration, "does not serve automatically to stay the effectiveness of any such final [Commission] order." Rule 25-22.060(1)(c), Florida Administrative

Code. Thus, BellSouth had no option but to file the Agreement or risk violating the Commission's Order.

The cases cited by Supra are clearly distinguishable and have no relevance to the instant case. For instance, in Picchi v. Barnett Bank of South Fla., N.A., 521 So. 2d 1090 (Fla. 1988), the Florida Supreme Court found that the filing of a nonresponsive, impermissible "notice of appearance" to avoid a default was interposed for delay. The court recognized that the rule allowing for a "notice of appearance" was repealed in 1954 and thus the filing of such a paper to furnish record activity to avoid a default judgment was improper. Id. at 1091. Similarly, in Hicks v. Hicks, 715 So. 2d 304, 305 (Fla. 4<sup>th</sup> DCA 1998), the court held that the filing of a motion by an attorney who was not the original attorney of record and who had not been substituted as counsel pursuant to Florida Rule of Judicial Administration 1.060(j) was subject to a motion to strike. Rule 1.060(j) provides, in pertinent part, that "[n]o substitute attorney shall be permitted to appear in the absence of an order . . . The client shall be notified in advance of the proposed substitution and shall consent in writing to the substitution."

In the instant matter, the filing of the April 25, 2002 letter and the Interconnection Agreement pursuant to and in compliance with the Commission's Final Order cannot be equated to an unrecognized, impermissible filing such as a "notice of appearance" to avoid a default judgment. Further, there is no question that the April 25, 2002 Letter and the Interconnection Agreement was submitted by BellSouth's counsel of record. Thus, Rule 1.060(j) is not at issue.

Clearly, submitting a filing in order to comply with a Commission Order cannot be considered a bad faith filing or done for purposes of harassment or

delay. BellSouth was forced to submit the Agreement executed only by BellSouth because Supra refused to execute or even discuss the new Agreement since the Commission's vote on March 5, 2002. Accordingly, there is no support for finding that BellSouth's April 25, 2002 filing was filed for an improper purpose. For examples of improper filings meant only to delay the proceeding, the Commission need only look to Supra's 12 previous motions in this docket, all filed after Staff's February 8, 2002 recommendation.

**CONCLUSION**

For the foregoing reasons, BellSouth respectfully requests that the Commission deny Supra's Motion to Strike.

Respectfully submitted this 15th day of May 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

*Nancy B. White*

\_\_\_\_\_  
Nancy B. White (CWP)  
James Meza III  
150 West Flagler Street  
Suite 1910, Museum Tower  
Miami, Florida 33130  
(305)347-5568

*R. Douglas Lackey*

\_\_\_\_\_  
R. Douglas Lackey (CWP)  
T. Michael Twomey  
Suite 4300  
675 W. Peachtree Street, N.E.  
Atlanta, Georgia 30375  
(404) 335-0750

**Follensbee, Greg**

---

**From:** Follensbee, Greg  
**Sent:** Tuesday, March 12, 2002 8:09 PM  
**To:** 'Kay Ramos'  
**Cc:** 'David Nilson'; 'Brain Chaiken'; Jordan, Parkey  
**Subject:** FW: Supra Agreement

Attached you will find an electronic copy of a proposed interconnection agreement for FL, to replace the current agreement you are operating under. This proposed agreement is also being sent Federal Express. The proposed agreement incorporates all of the decisions made by the Florida PSC last Tuesday. Brian, I do not have Paul's email address so please forward on to him. Please call me to schedule time to review this proposal once you have had a chance to go over it.



agreement  
031202.zip

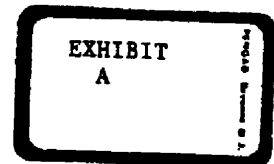


redlines 031202.zip



changes  
0301202.zip

Greg Follensbee  
Interconnection Carrier Services  
404 927 7198 v  
404 529 7839 f  
greg.follensbee@bellsouth.com



**Follensbee, Greg**

---

**From:** Turner, Paul [Paul.Turner@stis.com]  
**Sent:** Friday, March 15, 2002 11:36 AM  
**To:** 'Greg.Follensbee@BellSouth.com'  
**Cc:** Chaiken, Brian; Dahike, Kirk; Medacier, Adenet  
**Subject:** Follow-on IA

Greg:

Supra is in receipt of BellSouth's proposed follow-on IA which incorporates the findings of the FPSC. However, Supra believes that it is premature to schedule a conference call to review this proposed IA as the written order has not been issued and as both parties' ability to move for reconsideration and/or appeal has not run. When this matter is ripe, Supra is prepared to discuss any proposed follow-on IA.

Thanks.

Paul D. Turner  
Supra Telecom  
2620 SW 27th Ave.  
Miami, FL 33133-3005  
Tel. 305.476.4247  
Fax 305.443.9516

The information contained in this transmission is legally privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone call to 305.476.4247 and delete the message. Thank you.



**Follensbee, Greg**

**From:** Turner, Paul [Paul.Turner@stis.com]  
**Sent:** Thursday, March 28, 2002 1:42 PM  
**To:** 'Follensbee, Greg'  
**Cc:** Chaiken, Brian; Dahlke, Kirk; Medacier, Adenet  
**Subject:** RE: Follow-on IA

Greg:

As Supra may exercise its right to file a Motion for Reconsideration as well as for a Stay, it is still premature to schedule a conference call. I have reviewed the proposed Agreement and once the procedural matters have ended and the Stay expired, Supra will be ready to discuss this issue.

Sincerely,

Paul D. Turner  
Supra Telecom  
2620 SW 27th Ave.  
Miami, FL 33133-3005  
Tel. 305.476.4247  
Fax 305.443.9516

The information contained in this transmission is legally privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone call to 305.476.4247 and delete the message. Thank you.

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

**From:** Follensbee, Greg [mailto:Greg.Follensbee@BellSouth.com]  
**Sent:** Wednesday, March 27, 2002 6:13 PM  
**To:** 'Turner, Paul'  
**Cc:** 'Chaiken, Brian'; 'Dahlke, Kirk'; 'Medacier, Adenet'; Jordan, Parkey; White, Nancy  
**Subject:** RE: Follow-on IA

As you know, on March 12, 2002, I forwarded to Supra a proposed draft of the new Florida Interconnection Agreement for BellSouth and Supra. The proposed Agreement was based upon the decisions of the Florida Public Service Commission in Docket No. 001305-TP, as determined by the Commission on March 5, 2002. On March 15, 2002, I received your e-mail stating that you believed it premature to schedule a conference call to discuss the proposed Agreement prior to the Commission's written order and prior to the exhaustion of the time periods for reconsideration and appeal.

The Commission released its written order in Docket No. 001305-TP on March 26, 2002. The Order states that "the parties shall submit a signed agreement that complies with our decisions in this docket for approval within 30 days of issuance of this Order." The Order is effective upon its issuance, and any reconsideration or appeal rights of either party do not affect the parties' obligations to comply with the Order and to submit a written Interconnection Agreement to the Commission by April 25, 2002.

Therefore, I request that we schedule a meeting to be held in the next five (5) business days to finalize the new Interconnection Agreement. Please let me know your availability.

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

EXHIBIT  
C

From: Turner, Paul [mailto:Paul.Turner@stis.com]  
Sent: Friday, March 15, 2002 11:36 AM  
To: 'Greg.Follensbee@BellSouth.com'  
Cc: Chaiken, Brian; Dahlke, Kirk; Medacier, Adenet  
Subject: Follow-on IA

Greg:

Supra is in receipt of BellSouth's proposed follow-on IA which incorporates the findings of the FPSC. However, Supra believes that it is premature to schedule a conference call to review this proposed IA as the written order has not been issued and as both parties' ability to move for reconsideration and/or appeal has not run. When this matter is ripe, Supra is prepared to discuss any proposed follow-on IA.

Thanks,

Paul D. Turner  
Supra Telecom  
2620 SW 27th Ave. <sup>2</sup>  
Miami, FL 33133-3005  
Tel. 305.476.4247  
Fax 305.443.9516

The information contained in this transmission is legally privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone call to 305.476.4247 and delete the message. Thank you.

\*\*\*\*\*  
\*\*\*\*\*  
\*The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers.\*