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May 16, 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

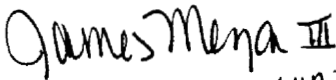
RE: Docket No. 001305-TP (Supra)

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to Supra's Motion for Leave to File Reply to BellSouth's Opposition to Supra's Motion to Strike, or, in the Alternative, to Strike New Issues Raised in BellSouth's Opposition, 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 (JA)

Enclosures

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

DOCUMENT NUMBER DATE

05293 MAY 16 02

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 16th day of May, 2002 to the following:

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James Meza (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 16, 2002
Telecommunications Act of 1996.)
_____)

**BELLSOUTH'S OPPOSITION TO SUPRA'S
MOTION FOR LEAVE TO FILE PRELY TO BELLSOUTH'S OPPOSITION TO
SUPRA'S MOTION TO STRIKE, OR, IN THE ALTERNATIVE, TO STRIKE
NEW ISSUES RAISED IN BELLSOUTH'S OPPOSITION**

BellSouth Telecommunications, Inc. ("BellSouth") opposes Supra Telecommunications & Information Systems, Inc.'s ("Supra") Motion for Leave to File Reply to BellSouth's Opposition to Supra's Motion to Strike, or, in the Alternative, to Strike New Issues Raised in BellSouth's Opposition ("Motion for Leave and Strike" or "Motion"). For the reasons discussed below, the Florida Public Service Commission ("Commission") should deny Supra's Motion for Leave and Strike.

INTRODUCTION

This Motion is a classic example of how Supra abuses the regulatory process and the Commission's rules in the hopes of indefinitely postponing the execution of a new Interconnection Agreement with BellSouth by repeatedly filing baseless motions:

- On April 10, 2002, Supra file a Motion for Reconsideration of the Commission's decision to deny Supra's request for a new hearing.
- On April 17, 2002, BellSouth filed its Opposition to that Motion.
- On April 24, 2002, Supra filed a Motion to Strike BellSouth's Opposition and Reply Memorandum ("Motion to Strike and Reply").

- On May 1, 2002, BellSouth filed its Opposition to Supra's Motion to Strike and Reply.
- On May 8, 2002, Supra filed the instant Motion for Leave and Strike to address BellSouth's statement that the Commission should sanction Supra for filing the April 24, 2002 Motion to Strike and Reply.

Simply put, regardless of how Supra characterizes its "Motion of the Day," the Commission rules do not authorize the filing of reply memoranda. Further, to the extent BellSouth's assertion that Supra should be sanctioned for the filing of an impermissible reply memorandum is construed as a motion, Supra has filed an opposition to the "motion" in the current filing, thereby rendering the instant Motion to Strike moot.

LAW AND ARGUMENT

I. Supra's Motion for Leave Should Be Denied.

Supra requests that it should be granted leave to file a reply memorandum to address BellSouth's statement in its Opposition to Supra's Motion to Strike and Reply that the Commission should sanction Supra. See Motion for Leave and Strike at 2. Without citing to any authority directly in support, Supra seems to argue that it should be allowed to file a reply memorandum because BellSouth raised a new issue or argument in its Opposition – that the Commission should sanction Supra for submitting an improper motion.

Supra's rationale appears to be that, in opposing a movant's request for relief, a party is limited to addressing only the issues raised by the movant. This reasoning is nonsensical as a party can raise any argument to establish that the trier of fact should not grant the relief requested. To find that an opponent is

limited to only addressing issues raised by the movant, limits the opponent's due process rights as well as prevents the Commission from being fully informed of all relevant arguments.

Further, under Supra's rationale, Supra would be entitled to file a perpetual reply memorandum every time BellSouth raised an argument in an opposition that was not contained in Supra's motion. It is well settled, however, that reply memoranda are not recognized by Commission rules or the rules of the Administrative Procedure Act and thus cannot be considered by the Commission. See 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. Indeed, Supra is no stranger to this rule as Supra raised this very argument against BellSouth in Docket No. 980119-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, because the Commission does not authorize reply memoranda, Supra's Motion for Leave should be denied.

II. **Supra's Motion to Strike Should Be Denied.**

Next, Supra argues that BellSouth's sanctions argument in its Opposition to Supra's Motion to Strike and Reply should be stricken because it is not styled as a motion in compliance with Rule 28-106.204(1), Florida Administrative Code. See Motion for Leave and Strike at 2. Rule 28-106.204(1), requires that "[a]ll requests for relief shall be made by motion. All motions shall be in writing"

While not conceding the point, BellSouth's statement and relevant discussion as to why the Commission should sanction Supra for filing the April 24, 2002 Motion to Strike and Reply arguably could be construed as a request for relief. If the Commission were to construe BellSouth's sanctions discussion as a motion it should not be stricken for violating Rule 28-106.204(1), however, because it actually complies with the Rule. Namely, to the extent the Commission construes BellSouth's sanctions discussion as seeking affirmative relief, it is in writing and thus complies 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. 3rd DCA 1969).

Furthermore, with its Motion for Leave and Strike, Supra has essentially filed an opposition to BellSouth's sanctions discussion. Accordingly, no further pleadings are necessary to allow Supra to respond if the Commission construed the argument in question as a motion, entitling Supra to provide a response. Therefore, Supra's Motion to Strike is moot.

In no event, however, should the Commission find that Supra is entitled to file a reply memorandum. Such a finding would open the floodgates for similar

motions from other parties, including Supra, and would eviscerate the Commission's well-settled principle that reply memoranda are not permissible.

CONCLUSION

For the foregoing reasons, BellSouth respectfully requests that the Commission deny Supra's Motion for Leave to File Reply to BellSouth's Opposition to Supra's Motion to Strike, or, in the Alternative, to Strike New Issues Raised in BellSouth's Opposition.

Respectfully submitted this 16th day of May 2002.

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