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May 22, 2002

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. 0013005- TP –
SUPRA'S OPPOSITION TO BELL SOUTH'S MOTION FOR
RECONSIDERATION OF ORDER NO. PSC-02-0637-PCO-TP**

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Opposition to BellSouth's Motion For Reconsideration of Order No. PSC-02-0637-PCO-TP in the above captioned docket.

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

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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 U.S. Mail this 22nd day of May, 2002 to the following:

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By: Brian Chaiken *BAC*
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. 001305-TP

Dated: May 22, 2002

**OPPOSITION TO BELLSOUTH'S MOTION
FOR RECONSIDERATION OF ORDER NO. PSC-02-0637-PCO-TP**

RESPONDENT SUPRA TELECOMMUNICATIONS & INFORMATION

SYSTEMS INC. ("Supra"), by and through its undersigned counsel, hereby files and serves this its response and opposition to BELLSOUTH TELECOMMUNICATIONS, INC. ("BellSouth") Motion For Reconsideration (dated May 15, 2002), which seeks to reconsider a procedural order which granted in part Supra's motion for extension of time to file an executed agreement, 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 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 evidence of 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 noted 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 May 8, 2002, this Commission issued Order No. PSC-02-0637-PCO-TP, which granted in part, Supra's motion for extension of time. In doing so, this Commission ruled that the parties should submit a joint agreement within fourteen (14) days after resolution of Supra's April 10, 2002 motion for reconsideration on the merits of Order No. PSC-02-0413-FOF-TP. In granting the motion, this Commission relied upon Docket No. 960833-TP in which this

Commission had previously granted BellSouth a fourteen (14) day extension of time for MCI and BellSouth to file a joint interconnection agreement after resolution of a motion for reconsideration. In that docket the parties had sought reconsideration and/or clarification of various matters relating to the arbitrated interconnection agreement. Although MCI had opposed the extension of time, this Commission had nonetheless granted BellSouth's request. Both Docket No. 960833-TP and Order No. PSC-01-1951-FOF-TP stand for the proposition that this Commission has the authority to extend the time period for parties to file a joint interconnection agreement, even over the objection of one party, until a reasonable time after disposition of a motion for reconsideration directed towards the merits of the arbitration. BellSouth has not disputed this authority or rule of law.

6. On or about May 15, 2002, BellSouth filed the instant Motion For Reconsideration in which BellSouth does not dispute the rule of law addressed in Order No. PSC-02-0637-PCO-TP, but rather claims that the Commission's ruling was based upon an oversight of both fact and law. In particular, BellSouth argues that factually, Supra's request for an extension of time was based upon a sham; i.e. that granting the extension of time would prevent the parties from potentially having to negotiate language twice. BellSouth also argues that the extension granted to BellSouth (over MCI's objection) in Docket No. 960833-TP does not apply to this case. Neither argument raised by BellSouth merits the reversal of Order No. PSC-02-0637-PCO-TP.

7. BellSouth's May 15, 2002 Motion For Reconsideration also seeks alternative relief, which amounts to a request for preferential treatment. In essence, BellSouth states that if this Commission will not reverse its decision in Order No. PSC-02-0637-PCO-TP, then BellSouth asks that this Commission drop everything, rush to judgment in denying all of Supra's pending post-

hearing motions, and force Supra to enter into a new interconnection agreement or enter an order deeming that Supra has been assigned a new interconnection agreement against its will. BellSouth's requests in this regard are ludicrous, and smack of a "good ole boy" plea of favoritism by an entrenched monopoly seeking regulatory favors in hopes of being rid of the only real competition to have emerged against BellSouth since passage of the 1996 Telecommunications Act. Apart from being ludicrous and violative of due process, the alternative remedies sought by BellSouth lack any legal basis and thus should summarily be rejected.

8. Peppered throughout BellSouth's May 15, 2002 Motion For Reconsideration are vile accusations of Supra's alleged motives, none of which are based upon any truth. All that Supra seeks are Commission rulings that are not based upon prejudices, biases and/or close relationships which BellSouth has with the FPSC and its staff and commission members. For too long BellSouth has received favorable treatment from the FPSC which has ultimately served only to stifle competition at the expense of Florida consumers. When distilled to its primal elements, BellSouth's motion is nothing more than a request for more favorable treatment, even if it means compromising prior precedent in which BellSouth was provided the exact relief in other proceedings, which BellSouth now seeks to deny Supra.

9. For the reasons stated herein, BellSouth's May 15, 2002 Motion For Reconsideration should be denied in its entirety.

II. MEMORANDUM OF LAW

The proper standard of review on a motion for reconsideration is whether or not the Commission overlooked or failed to consider a point of fact or law in rendering its order. In re:

Complaint of Supra Telecom, 98 FPSC 10, 497, at 510 (October 28, 1998) (Docket No. 980119-TP, Order No. PSC-98-1467-FOF-TP). This standard requires a showing of any mistakes of either fact or law made by the Commission in its order. In re: Investigation of possible overearnings by Sanlando Utilities Corporation in Seminole County, 98 FPSC 9, 214, at 216 (September 1998) (Docket No. 980670-WS, Order No. PSC-98-1238-FOF-WS) ("It is well established in the law that the purpose of reconsideration is to bring to our attention some point that we overlooked or failed to consider or a mistake of fact or law"); see also Diamond Cab Co. of Miami v. King, 148 So.2d 889 (Fla. 1962) (motion for reconsideration requires showing that Commission overlooked or failed to consider a point of fact or law).

A. This Commission Did Not Overlook Or Fail To Consider Any Facts

BellSouth's instant Motion For Reconsideration fails to meet the standard necessary for granting a reconsideration. For example, the alleged fact which the Commission purportedly overlooked was Supra's reason for seeking a reconsideration. In its motion for extension of time, Supra argued and stated that submitting a joint interconnection agreement prior to resolution of motions for reconsideration directed to the merits, could potentially require the parties to negotiate final interconnection agreement language twice. Contrary to BellSouth's assertions in both its May 1st opposition and the instant motion, there is nothing false about this statement. Indeed, in the BellSouth/AT&T arbitration proceedings in Order No. PSC-01-1951-FOF-TP at page 8, this Commission specifically noted that "**[u]ntil the question of reconsideration is determined, the final agreement can not be drafted.**" Clearly in Docket No. 000731-TP, BellSouth argued (and this Commission accepted) the proposition that the parties cannot finalize an interconnection

agreement until resolution of any motions for reconsideration addressed to the merits of the arbitration. BellSouth can hardly argue now that such a proposition is false. Clearly, if Supra's April 10th motions for reconsideration are granted in whole or in part, the parties will have to negotiate different language. Thus there was nothing false about the reasons provided by Supra. Moreover BellSouth's aspersions about Supra's motives in seeking an extension are simply false and without any factual support. The fact that Supra did not want to negotiate a final interconnection agreement twice is not evidence of bad faith or intent, simply an acknowledgement of practical considerations. In any event, the positions taken by BellSouth in the instant motion were already addressed in both BellSouth's May 1st opposition and in the Commission's Order No. PSC-02-0637-PCO-TP. Accordingly, BellSouth has failed to show that the Commission overlooked or failed to consider any point of fact; and thus BellSouth has failed to establish a basis for reconsideration. See In re Supra Telecom, supra, Order No. PSC-98-1467-FOF-TP; In re Sanlando Utilities Corp., Order No. PSC-98-1238-FOF-WS; and Diamond Cab Co., supra.

B. This Commission Did Not Overlook Or Fail To Consider Any Issues Of Law

BellSouth's instant Motion For Reconsideration also fails to establish that the Commission overlooked or failed to consider any point of law. In fact, Order No. PSC-02-0637-PCO-TP is completely consistent with this Commission's prior rulings in the MCI-BellSouth arbitration in Docket No. 960833-TP, and the AT&T-BellSouth arbitration in Order No. PSC-01-1951-FOF-TP. In both of these proceedings, BellSouth sought and was granted an extension of time in which to file a joint interconnection agreement after resolution of pending motions for reconsideration addressed to the merits of those arbitrations. BellSouth does not now argue that the rule of law allowing such

extensions is flawed, but rather that the Commission should not have granted an extension under the purported circumstances of this case. Because BellSouth does not question the rule of law allowing such extensions of time (as established by BellSouth in the MCI-BellSouth and AT&T-BellSouth arbitrations), BellSouth has failed to demonstrate that the Commission overlooked or failed to consider any point of law; and thus BellSouth has failed to establish a basis for reconsideration. See In re Supra Telecom, supra, Order No. PSC-98-1467-FOF-TP; In re Sanlando Utilities Corp., Order No. PSC-98-1238-FOF-WS; and Diamond Cab Co., supra.

C. BellSouth's Request For Alternative Relief Should Be Denied

Finally, BellSouth requests in the alternative that this Commission: (1) decide the pending motions for reconsideration and the instant motion at the June 11, 2002 agenda conference; (2) issue a final order disposing of the motions for reconsideration and instant motion within five days of the Commission's Panel's vote at the June 11, 2002 agenda conference; (3) provide specific instructions to the parties regarding language changes and an expedited filing of a joint agreement; (4) rule that if the parties cannot agree to language changes, then BellSouth should be allowed to unilaterally file an agreement and have this Commission state that such agreement is binding upon Supra regardless of whether Supra executes the agreement; (5) sanction Supra for alleged bad faith; (6) award BellSouth attorney's fees; and (7) grant BellSouth any other appropriate relief. BellSouth's requests are ludicrous and without any basis in fact or law. Accordingly, it is not surprising that BellSouth has failed to support these requests with any legal authority or precedent. Accordingly, all such requests should be denied.

First, there is no legal basis for BellSouth's request for expedited treatment. Moreover, any

request for expedited treatment of Supra's April 10, 2002 motions for reconsideration is both untimely and would violate this Commission's obligation to first address Supra's pending motions for recusal. This Commission has an obligation to timely address Supra's motions for recusal prior to ruling on any further substantive matters. In Fuster-Escalona v. Wisotsky, 781 So.2d 1063 (Fla. 2002), the Florida Supreme Court held that courts must immediately act upon motions for recusal when presented, and that any ruling upon the merits prior to addressing a motion for recusal is reversible error. In this instance, Supra has pending motions for recusal which have not yet been addressed. The recusal motions, in part, claim that BellSouth's ex-parte communications with this Commission and its staff, have infected FPSC rulings with prejudice and bias, and that Supra does not reasonably believe it can receive a fair hearing before the FPSC. BellSouth seeks to leap-frog those recusal motions and obtain a rush to judgment on Supra's pending April 10, 2002 motions for reconsideration, in an obvious effort to force a new interconnection agreement upon Supra. However, this attempt to leap-frog the recusal motions is directly contrary to the Florida Supreme Court's ruling in Fuster-Escalona, supra. Therefore BellSouth's request for expedited rulings should be denied.

Additionally, BellSouth's request for expedited treatment are simply a plea for preferential treatment. After having been exposed for its manipulation of the hearing process before the FPSC through ex-parte communications (some of which specifically violate Florida law), BellSouth now seeks to call in more favors by requesting expedited consideration of matters which require no expedited attention. The purported basis for BellSouth's request is that Supra has failed to pay for BellSouth's improper billing and has dared to dispute such bills before an Arbitration Tribunal

called for under the prior interconnection agreement which is still in effect. BellSouth has repeatedly flaunted rulings made by that Arbitration Tribunal and simply seeks to have this Commission usurp further jurisdiction of the Arbitration Tribunal over BellSouth. It is important to note that BellSouth is not claiming that Supra will not pay BellSouth for service, but rather that Supra has disputed BellSouth's improper billing and continues to bring such improper billing to an Arbitration Panel for resolution. According to BellSouth, the fair and impartial rulings being issued by the Arbitration Panel are somehow causing BellSouth harm; perhaps because BellSouth is not accustomed to being denied biased and preferential treatment. If there is ever going to be competition in Florida, the FPSC must stop giving BellSouth (and other entrenched monopolistic utilities) preferential treatment. Thus all of BellSouth's requests should be denied.

As for BellSouth's request to force a new interconnection agreement upon Supra (irrespective of Supra's consent), there is no legal basis for any such action. 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.**" It is this document that BellSouth seeks to force upon Supra. 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, on disputed issues, the proposed Interconnection Agreement 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. 961173-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.

It should be noted that Order No. PSC-97-0550-FOF-TP also requires the parties to jointly execute a 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. This Commission has only those powers provided by Florida law. Florida Statutes §§ 350.127 and 364.015 set forth the powers of the Commission to enforce its orders and rulings. However, nothing in these statutes or any other law gives this Commission the authority to execute interconnection agreements on behalf of any

telecommunications company or to otherwise impose an interconnection agreement on any telecommunications company which has not executed such document. If BellSouth seeks to terminate the current Interconnection Agreement, it must do so under the terms and conditions set forth in that Interconnection Agreement, and not through some fiat and fiction of having the FPSC execute a disputed agreement on behalf of a party. Nothing in the current Interconnection Agreement simply allows BellSouth to terminate that agreement by having this Commission adopt a new agreement for Supra. Accordingly, there is no legal authority for any of the relief requested by BellSouth.

As for BellSouth's request for sanctions, attorneys' fees and other relief, BellSouth has provided no factual or legal basis in support of any such relief. Supra has done nothing inappropriate or violative of any rules, statutes, case law or other legal authority. Accordingly, any such request by BellSouth should be denied.

Accordingly, for the reasons stated above, BellSouth's May 15, 2002 Motion For Reconsideration should be denied in its entirety.

WHEREFORE SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC., respectfully requests that this Commission deny BELLSOUTH TELECOMMUNICATIONS, INC.'s May 15, 2002 Motion For Reconsideration in its entirety for the reasons outlined herein.

RESPECTFULLY submitted this 22nd day of May, 2002.

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