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May 31, 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. 001305-TP –
SUPRA'S MOTION FOR CLARIFICATION AND PARTIAL RECONSIDERATION OF ORDER NO. PSC-02-0663-CFO-TP AND OPPOSITION TO BELLSOUTH'S MOTION FOR RECONSIDERATION

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Motion For Clarification and Partial Reconsideration of Order No. PSC-02-0663-CFO-TP and Opposition to BellSouth's Motion for Reconsideration 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/ GHS

Brian Chaiken
General Counsel

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 31st day of May, 2002 to the following:

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By: Brian Chaiken/ats
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 31, 2002

SUPRA'S CROSS MOTION FOR CLARIFICATION AND PARTIAL RECONSIDERATION OF ORDER NO. PSC-02-0663-CFO-TP AND OPPOSITION TO BELLSOUTH'S MOTION FOR RECONSIDERATION

Pursuant to Rule 25-22.060, Florida Administrative Code, Supra Telecommunications & Information Systems, Inc. ("Supra") submits this Cross Motion for Reconsideration and Clarification of Order No. PSC-02-0663-CFO-TP issued on May 15, 2002, by the Florida Public Service Commission ("Commission") in the above referenced docket. Clarification and/or reconsideration are required because the Prehearing Officer's Order is unclear regarding when the information *first* became public. The Prehearing Officer failed to consider and failed to reach a conclusion regarding the when the contents of the Commercial Arbitration Awards ("Awards") were first publicly disclosed. Accordingly, Supra files this Motion to have the Prehearing Officer's Order clarified, or in the alternative, reconsidered if, in fact, the Commissioner found that the contents of the Awards were first disclosed on April 1, 2002 – as opposed to March 1, 2002. In support of its Motion, Supra states as follows:

CROSS MOTION
FOR CLARIFICATION AND/OR RECONSIDERATION

Rule 25-22.060(1)(b), Florida Administrative Code, expressly permits a party to file a cross motion for reconsideration. In this matter, the Commission issued Order No. PSC-02-0663-CFO-TP issued on May 15, 2002. BellSouth filed a Motion for Reconsideration of this

Order on May 24, 2002. Rule 28-106.204(1), Florida Administrative Code allows Supra to file a response, or in this case a Cross Motion for Reconsideration, "within 7 days of service of a written motion." Seven (7) days from the date BellSouth filed its Motion would be Friday, May 31, 2002. Accordingly, this Cross Motion is timely.

STANDARD OF REVIEW

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering an Order. See *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981); and 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 necessarily includes 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 e.g. In re: Fuel and purchase power cost recovery clause and generating performance incentive factor, 98 FPSC 8, 146 at 147 (August 1998) (Docket No. 980001-EI, Order No. PSC-98-1080-FOF-EI) ("FPSC has met the standard for reconsideration by demonstrating that we may have made a mistake of fact or law when we rejected its request for jurisdiction separation of transmission revenues").

Argument

Commission Order No. PSC-02-0663-CFO-TP specifically includes Supra's position that "this information [contents of the Awards] has otherwise been communicated publicly within the

Commission." *See* page 2, first full paragraph, lines 5-6. The Order thereafter, however, fails to reach any conclusion regarding this fact. The Prehearing Officer's Order requires clarification because the Order is unclear as to "when" the contents of the Awards were *first* disclosed. In the alternative, the Prehearing Officer's Order requires reconsideration, if, in fact, the Commissioner found that the contents of the Awards were first disclosed on April 1, 2002. The facts before the Prehearing Officer **at the time he rendered his judgment** demonstrate that the contents of the Awards were *first* publicly disclosed as of March 1, 2002.

Background
Public Disclosure

On March 21, 2002, Supra submitted a public records request to the Commission. Paragraph five (5) of that request included all e-mails between Harold McLean, Commission General Counsel and all five Commissioners relating to or referencing Supra, BellSouth or Kim Logue. *See* Public Records Request attached hereto as Exhibit A.

The Commission's e-mail system is a public record pursuant to Chapter 119, Florida Statutes. *Johnson v. Butterworth*, 713 So.2d 985, 986 (Fla. 1998) *citing Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980). Evidence that e-mails are public records is the fact that on or about March 29, 2002, in response to Supra's Public Records Request, David Smith (Commission Legal Counsel) provided Supra with two pages of e-mails. *See* e-mail communications among and between Harold McLean, Beth Keating, Katrina Tew and Commissioner Palecki, attached hereto as Composite Exhibit B.

These e-mails publicly disclosed the contents of the parties Commercial Arbitration Awards ("Awards"). The $3.5 million figure, addressed in Beth Keating's e-mail, can only have come from Arbitrations I & II, June 5, 2001 Award, which was filed as a confidential exhibit in this docket. This is evident by Ms. Keating's explicit statement: "from the **commercial**

arbitration, Supra owes BellSouth $3.5 million." Notwithstanding Ms. Keating's inaccuracies, at the time of her e-mail, what is relevant is the *public* disclosure of any amounts attributed to the **commercial arbitration**. The $4.2 million figure, addressed in Harold McLean's e-mail, could likewise only have come from Arbitrations III & IV, February 4, 2002 Award. *See* Composite Exhibit B attached hereto.

These e-mails were before the Prehearing Officer at the time he rendered his judgment. The e-mails publicly disclosing the contents of the Awards were attached to the April 1, 2002 Letter. The e-mails were discussed and referenced in Supra's April 5, 2002 Response to BellSouth's Notice of Intent to Seek Confidential Classification. Supra's April 5, 2002 Response was entitled "Response to BellSouth's Request for Confidential Classification."[1] The e-mails were also discussed and referenced in Supra's May 1, 2002 filing with the Commission, entitled Supra's "Objection to BellSouth's Request for Confidential Classification."[2] The Prehearing Officer's Order PSC-02-0663-CFO-TP does make reference to this evidence, but then **fails** to reach any conclusion.

Commission Order PSC-02-0663-CFO-TP is unclear as to when the contents of the Awards were *first* made public. As noted above, the evidence demonstrates that the contents of the Awards were *first* publicly disclosed, by the Commission Staff, as early as March 1, 2002. And, the Order does make reference to this fact on page 2, first full paragraph.[3] Thereafter, unfortunately, the Order is silent with respect to this evidence of *public* disclosure.

BellSouth claims that the Prehearing Officer's Order found that the April 1, 2002 Letter was not entitled to confidential classification "solely" because Supra attempted to first publicly

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[1] *See* Document No. 03874-02, on the Commission's web-site.

[2] *See* Document No. 04771-02, on the Commission's web-site.

[3] *See* Commission Order No. PSC-02-0663-CFO-TP: "this information [contents of the Awards] has otherwise been communicated publicly within the Commission."

disclose the contents of the Awards.[4] BellSouth is trying to "hang its hat" on the ambiguous sentence found on page 3 of the Prehearing Order. The Order states in part: "The letter submitted by Supra on April 1, 2002, was submitted as a public document and as such, became a matter of public record." Read out of context, it is possible to erroneously conclude that it was Supra that *first* publicly disclosed the contents of the Awards and not the Commission Staff on March 1, 2002. The sentence is ambiguous because on the preceding page the Order includes a legal maxim which provides that: "Florida law presumes that documents submitted to governmental agencies shall be public records." Given this context, it would certainly be appropriate for the Prehearing Officer to write that at the time the Commission received the April 1, 2002 Letter that the Letter was legally considered a public document. This legal conclusion, however, still does not address the issue of "**when**" the contents of the Awards were *first* publicly disclosed.

In Commission Order PSC-02-0293-CFO-TP, the Prehearing Officer identified the same legal maxim [i.e. "Florida law presumes that documents submitted to governmental agencies shall be public records"] when discussing the filing of the parties "Joint Stipulation." The Prehearing Officer's statement that Florida Law presumes that the April 1, 2002 Letter is a public record, is consistent with his statement that the documents filed under the "Joint Stipulation" are also presumed to be a public record. Neither statement ends the analysis. In the former case, the Prehearing Officer next examined the fact that the parties were stipulating that the exhibits attached to the Motion should be treated as confidential. Because of this stipulation and the fact that the Prehearing Officer concluded that the information was not yet otherwise

[4] *See* Pg. 6, paragraph 11, BellSouth's present Motion.

public, the Prehearing Officer granted confidential classification. In the matter presently pending, the Prehearing Officer was required to determine if the contents of the Awards had already been *publicly* disclosed, by the Commission Staff, as early as March 1, 2002. The uncontroverted evidence demonstrates that the information was already publicly disclosed, by Commission Staff, first on March 1, 2002, and then again on March 29, 2002. The Prehearing Officer's Order says as much: "**this information has otherwise been communicated publicly within the Commission**."[5] Accordingly, the Prehearing Officer was correct in concluding: that "once disclosed, it is not possible to put the chicken back in the egg."[6]

Clarification

For these reasons outlined above, Supra is requesting clarification of the Prehearing Officer's Order with respect to "when" the contents of the Awards were first publicly disclosed.

Reconsideration

In the alternative, Supra moves to partially reconsider Commission Order PSC-02-0663-CFO-TP, if, in fact, the Prehearing Officer found that the contents of the Awards were first disclosed on April 1, 2002 – as opposed to March 1, 2002.

As stated, the evidence was properly before the Prehearing Officer at the time he rendered his decision. Notwithstanding, the Commission Order is void of any analysis regarding the evidence that the contents of the awards had *first* been communicated publicly by the Commission Staff. While the Order does reference this evidence, the Order reaches no conclusion. As such, the Commission did not consider this fact of public disclosure on March 1, 2002. A statement to the effect that the Commission Staff's e-mail transmission did not publicly disclose the contents of the Awards would be evidence that the Prehearing Officer did consider

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[5] *See* Page 2, first full paragraph, lines 5-6, of Order PSC-02-0663-CFO-TP.

the evidence. No such definitive statement appears in the Order. The evidence is simply contrary to the, apparent Prehearing Officer's, conclusion that the submission of the April 1, 2002 Letter was the triggering event which made the contents of the Award public. Accordingly, this Motion asking the Commission to reconsider the Order's specific conclusion – that the contents "became" public upon the filing of the April 1, 2002 Letter - is appropriate.

Opposition to BellSouth's Reconsideration

The arguments raised by BellSouth are a house of cards which must fail for the obvious reasons that the information contained in the public e-mails, among and between Commission employees, which disclosed information from the private Commercial Arbitration Awards is undoubtedly, by law, *public* information. Since the prehearing officer correctly ruled that nothing in the April 1, 2002 letter is confidential, BellSouth Motion for Reconsideration must be denied.

New arguments are improper under Reconsideration

BellSouth now raises new arguments in support of the instant Motion for Reconsideration, including: (1) that the Order effectively allows Supra to violate a Federal Court Order; (2) that the Order violates a previous Commission Order; (3) that the subject information has not been disclosed and thus eviscerates a party's rights under Chapter 364; (4) that BellSouth is attempting to enforce its rights in another forum; and (5) that the public interest requires the information in the April 1, 2002 letter be kept confidential.

Each of these arguments is new and has only now been raised by BellSouth in the instant Motion for Reconsideration for the first time. Because these arguments are new arguments which had not been raised by BellSouth in its original requests for confidential designation, such arguments should not now be considered. See In re: Application for Rate Increase by Southern States Utilities, et al., 97 FPSC 5:314, Order No. PSC-97-0552-FOF-WS at page 7 (May 14, 1997)

[6] *See* Page 3, first full paragraph, lines 6-7, of Order PSC-02-0663-CFO-TP.

(Docket No. 920199-WS); see also In re: Complaint of Florida Interexchange Carriers Association, et. al, 97 FPSC 5:88, Order No. PSC-97-0518-FOF-TP at page 6 (May 6, 1997) (Docket No. 920199-WS).

Supra will now address BellSouth's new and improper arguments in the following discussion.

No violation of Federal District Court Order

BellSouth again makes the baseless assertion that the Prehearing Officer's decision to deny confidentiality "potentially" violates an Order of the Federal District Court in the Southern District of Florida in Civil Action No. 01-3365-CIV-KING.[7] This is simply untrue. The Order BellSouth is referencing is Judge King's October 31, 2001 Order ("October 31st Order") that confirmed the parties' Commercial Arbitration Award of June 5, 2001. Judge King's October 31st Order also confirmed the two subsequent Orders entered by the Arbitration Tribunal on July 20, 2001 and October 22, 2001. None of this information is confidential because it is included in Judge King's October 31st Order, which is public.

BellSouth very graciously cites to a portion of the Federal District Court's Order on page 8 of its Motion. On line five (5) of that excerpt, the Court makes clear that the Awards may be utilized in other "judicial proceedings." This exception is without qualification. Docket No. 001305-TP is a judicial "proceeding."[8] BellSouth is well aware of the exception. BellSouth,

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[7] *See* pg. 8 of BellSouth's present Motion.

[8] *See Southern Bell Telephone and Telegraph Company v. Florida Public Service Commission*, 453 So.2d 780, 783 (Fla. 1984) (in which the Court found that the Commission in certain circumstances properly exercises "quasi-judicial" authority). *See also Reedy Creek UtilitiesCo v Florida Public Service Commission*, 418 So.2d 249, 253 (Fla. 1982) (in which the Court defined the Commission as a "quasi-judicial body"). The October 31st Order allows the parties to use the Awards in other judicial "proceedings." Docket No. 001305-TP is an adversarial proceeding, governed by the Florida rules of civil procedure as well as rules of evidence, and the outcome is to be determined by an impartial group of decision-makers. In all respects, the docket is a judicial "proceeding." The October 31st Order does not limit the use of the Awards to judicial "tribunals." *See Myers v. Hawkins*, 362 So.2d 926, 931-932 (Fla. 1978) (in which the Court found that within the strict limits of the newly amended Article II, Section 8(e) of the Florida Constitution, the term judicial "tribunal" was limited to "judges of industrial claims, the Industrial Relations

nevertheless, attempts to argue that the proceedings before this Commission cannot be considered a "judicial proceeding" because, strangely enough, Florida's Sunshine Law does not apply to the Florida Public Service Commission.[9] This is simply not the case. *See* Composite Exhibit C, attached hereto, in which David Smith (Commission legal counsel) writes to Harold McLean (Commission General Counsel) on October 8, 2001, at 3:30 pm, the following:

> "Somewhat to my surprise, it looks like there is indeed a **sunshine** exemption for discussion of security related matters per the AG [Attorney General] opinion I put on your chair. Assuming that the Cs [Chairman's] plan to do falls within this range, they can do it." (Emphasis added).

David Smith is referring to Florida's Sunshine Law. This is evident from the e-mail – within Composite Exhibit C - immediately preceding the e-mail referenced above where Section 286.011, Florida Statutes is expressly referenced. This Commission is most assuredly subject to Florida's Sunshine Law. Moreover, this Commission is also most assuredly subject to Florida's Sunshine Law with respect to the proceedings in Docket No. 001305-TP. This is another example of BellSouth playing "fast and loose" with the law.

The excerpt cited by BellSouth, from the October 31st Order, *also* references the July 20, 2001 Arbitral Award.[10] The Federal District Court correctly observed that the Awards may, or may not contain, proprietary information. The Court's October 31st Order does not include any specific findings of fact on that particular issue. Interestingly, no judicial body has ever made any specific findings of fact that the Arbitration Awards contain any proprietary information.

Commission, and all courts of the state created under Article V of the state Constitution." The Court expressly found that the FPSC fell outside the parameters of what the term "tribunal" was intended to include, and, as such, Mr. Myers [an elected State Senator at the time] was prohibited from representing clients before the FPSC while he was a current member of the state senate). *See also Myers v. Hawkins*, 362 So.2d at 929 (in which the Court presumes that "language differentiation is intentional"). The *Myers* case has absolutely nothing to do with whether the FPSC and Docket No. 001305-TP are subject to Florida's Sunshine law: s. 286.011, Florida Statutes.

[9] *See* BellSouth's present Motion, pg. 9.

[10] Supra will note, with irony, that BellSouth has disclosed the existence of the July 20, 2001 Order in making this reference. BellSouth argues, without citing to any authority, that disclosure of the mere existence of the Award is a

The Court simply concluded that with respect to "that" particular case in Federal Court, all documents must be filed under seal. This specific ruling in Federal Court did not in any way preclude Supra from continuing to utilize the Awards in proceedings before the Federal Communications Commission (FCC) or the Florida Public Service Commission (FPSC). In fact, the Tribunal's July 20, 2001 Order, confirmed by Judge King, explicitly allows the Awards to be utilized before the FPSC and the FCC.

Further evidence that the Awards can be utilized in other judicial proceedings is the fact that on November 14, 2001, Supra filed Judge King's October 31, 2001 Order along with the Tribunal's October 22, 2001 Order with the FPSC. The Commission granted Supra's request for Leave to File Supplemental Authority on December 17, 2001.[11]

If the parties file the Awards with either the FPSC or FCC, the parties are subject to the benefits and risks associated with the confidentiality rules of those agencies. Interestingly enough it was BellSouth, itself, that invoked the Commission's jurisdiction by requesting confidentiality. Florida law dictates that the Prehearing Officer has a **duty** to grant or deny a request for confidential classification. BellSouth is well aware of this fact. This statutory duty is not usurped – as suggested by BellSouth – by an Order in another forum, especially when that same Order expressly contemplates that information can be and will be used in other "judicial proceedings." BellSouth, nevertheless, is attempting to frighten and intimidate the Prehearing Officer and the Commission into believing that somehow a violation of an Order in another forum will occur simply because the Commission chooses to exercise its "own" statutory duties. BellSouth's behavior in this instances borders on malpractice.

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violation of the parties' agreement.

[11] *See* Commission Order PSC 01-2457-PCO-TP.

In the matter presently pending before this Commission, the evidence is specific and definite that the contents of the Awards were *first publicly* disclosed, by the Commission Staff, on March 1, 2002. There was a second *public* disclosure of the contents of the Awards after the Staff distributed the public e-mails pursuant to a public records request on March 29, 2002. Accordingly, under any legal scenario BellSouth wishes to depict, the Prehearing Officer's Order PSC-02-0663-CFO-TP cannot in any way be construed to be a violation of any State or Federal law or Federal Court Order.

No violation by Supra of previous Commission Orders

BellSouth in its Motion for Reconsideration introduces a **new** matter for which BellSouth seeks affirmative relief. BellSouth claims for the first time that the April 1, 2002 Letter violates previous Commission Orders. This is simply not true. BellSouth **fails** to cite to any specific language in the April 1, 2002 Letter which was granted confidential classification and remained confidential after March 1, 2002.

The facts in this case are as follows. On June 18, 2001, Supra filed a Status and Complaint Regarding BellSouth's Bad Faith Negotiations Tactics. Attached as Exhibit B to June 18, 2001 filing was Supra's redline of the proposed Follow-On Agreement between the parties. This redline draft agreement expressly includes a reference to the June 5, 2001 Award and that direct access to BellSouth's OSS was ordered.[12] This Commission issued Order No. PSC-01-1926-PHO-TP on September 25, 2001, in which the Commission wrote: "Exhibit B became a public document when filed as such on June 18, 2001."[13]

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[12] *See* Supra's Status and Complaint regarding bad faith negotiation tactics, pg 48, section 28.1.

[13] *See* pg. 73, paragraph B, of Commission Order. In this case, Supra's filing had been scanned onto the Commission website. Supra filed for confidential classification on July 19, 2001 and BellSouth filed on July 27, 2001. Because the information had been already *publicly* disclosed the request for confidential classification was denied. *See* also Composite Exhibit D, attached hereto – specifically e-mail from Beth Keating on July 20, 2001 at 3:16 pm, in which she writes: "Well, we can certainly draft an Order for Commissioner Palecki when Wayne

Chairman and CEO Olukayode A. Ramos makes four (4) references – (a) through (d) - on page four (4) of the April 1, 2002 Letter regarding matters all contained within the parties **public** October 5, 1999 Interconnection Agreement. The first and foremost matter of *public* record is the third item referencing direct access. As outlined above, this information was already public as of June 18, 2001 and affirmed by Commission Order PSC-01-1926-PHO-TP issued on September 25, 2001. More importantly, however, the issue of direct access was **publicly** affirmed by Judge King himself in his October 31st Order. This Order is **public**. The Judge makes several references to direct access. The first is on the first page of his October 31st Order, he writes:

> "Defendant BellSouth challenges the portion of the arbitration award in which the Arbitral Tribunal ordered BellSouth to provide Supra with non-discriminatory **direct access** to its Operational Support System ("OSS") and **to cooperate with and facilitate Supra's ordering of services** by no later than June 15, 2001. The Arbitral Tribunal found that **BellSouth did not provide Supra with OSS that is equal to or better than the OSS BellSouth provides to itself** or customers **in non-compliance with its contractual obligations**." (Emphasis added).

The evidence demonstrates that the information with respect to BellSouth's refusal to provide direct access in accordance with the parties October 5th 1999 Interconnection Agreement is a matter of public record. The disclosure of this information most certainly is not a violation of Judge King's Order and is not in violation of any Commission Order – especially after the Commission expressly found that such information is public in its September 25, 2001 Prehearing Order for Docket No. 001305-TP.

As noted above, the remaining three matters referenced in (a) through (d), excluding direct access, are all contained within the parties **public** October 5, 1999 Interconnection

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returns, but I do not believe that the information should be pulled back pending the ruling. It's already 'out there' and should stay that way." *See* also e-mail from Laura King to Katrina Tew on July 20, 2001, at 10:47 am, in which King writes in part: "The document was scanned in and has been out there since June 18. I spoke with Beth Keating and basically since the 'cat is out of the bag' there is really nothing we can do at this point."

Agreement. Accordingly, BellSouth cannot claim in any fashion that these references are not a matter of public record.

No violation of Commission Orders

On July 30, 2001, Supra filed the June 5, 2001 Arbitration Award as an Exhibit to the direct testimony of Olukayode A. Ramos (Chief Executive Officer for Supra) in Docket No. 001305-TP before the Florida Public Service Commission ("Commission"). The Exhibit identified as OAR-3, was filed under the Confidential Classification procedures provided for under Commission rules. But as noted earlier herein, the issues with respect to direct access, provisioning Supra's orders, collocation and branding were all contained with the June 18, 2001 filing that the Commission ruled was *public* information. Likewise the existence of the June 5th Award has been publicly mentioned in Commission Orders PSC-01-1926-PHO-TP, PSC-02-0293-CFO-TP as well as Judge King's October 31st Order. Accordingly, no violation of any Commission Order could be violated by the mention of the award or the references made on page four (4) of the April 1, 2002 Letter.

On July 30, 2001, Supra also filed the July 20, 2001 Arbitration Order as an Exhibit to the direct testimony of Olukayode A. Ramos (Chief Executive Officer for Supra) in Docket No. 001305-TP before the Florida Public Service Commission ("Commission"). The Exhibit identified as OAR-7, was filed under the Confidential Classification procedures provided for under Commission rules. Contrary to any assertion that BellSouth may make, the April 1, 2002 Letter does **not** contain the July 20, 2001 Order as an attachment. Any reference to the July 20, 2001 Order – which there is none – would not be any violation of anything since this Commission itself references the July 20, 2001 Order, in Order PSC-01-1926-PHO-TP issued on September 25, 2001 as well as Order PSC-02-0293-CFO-TP issued on March 7, 2002. Likewise,

Judge King's October 31st Order expressly makes reference to the July 20th Order, and even **quotes** from that Order.

On September 19, 2001, Supra and BellSouth filed a Joint Request for Specified Confidential Classification of documents to be utilized in the evidentiary hearing in Docket No. 001305-TP. Exhibits OAR-3 and OAR-7 to Mr. Olukayode A. Ramos' testimony were two (2) of the exhibits BellSouth stipulated to for Confidential Classification. On September 25, 2001, the Florida Public Service Commission entered its Pre-hearing Order No. PSC-01-1926-PHO-TP. This Order included Exhibits OAR-3 and OAR-7, to be utilized in the evidentiary hearing in Docket No. 001305-TP. This September 25, 2001 Prehearing Order also included a specific ruling regarding the information included in the June 18, 2001 Supra filing: "Exhibit B [to the June 18 filing] became a public document when filed as such on June 18, 2001." Accordingly, the public disclosure in the April 1, 2002 Letter of matters referenced in the June 18th filing cannot be considered a violation of any Commission Order. It must be noted that BellSouth never sought reconsideration of that ruling.

The remainder of the April 1, 2002 Letter contains information designed to refute the false information *publicly* disclosed by the Commission Staff over the Commission's e-mail system. The e-mails, attached hereto as Composite Exhibit B, publicly disclosed the contents of the parties' Commercial Arbitration Awards – commonly referred to as "Arbitrations I & II" and "Arbitrations III & IV." The contents of Arbitrations I & II were done in violation of Commission regulations: (1) Rule 25-22.006(3)(d), Florida Administrative Code, which requires that information that is deemed to be confidential must be "accorded stringent internal procedural safeguards against public disclosure;" and (2) Rule 25-22.006(8)(a), Florida Administrative Code, which requires that "reasonable precautions will be taken to segregate

confidential information in the record and otherwise protect its integrity." It is evident that Beth Keating and Harold McLean did **not** treat the information contained in OAR-3 confidential.

As noted earlier herein, the $3.5 million figure, addressed in Beth Keating's e-mail to Harold McLean, can only have come from Arbitrations I & II. This is evident by Ms. Keating's explicit statement: "from the **commercial arbitration**, Supra owes BellSouth $3.5 million." Even more troubling was Ms. Keating's reference to the following: "none of which has been paid and BST [BellSouth] has apparently not sought enforcement." This inaccurate and false **public** information was refuted in the April 1, 2002 Letter by the attachment of the October 22, 2001 Tribunal Order. The Tribunal October 22, 2001 Order demonstrates that Supra owed BellSouth only $1.6 million. The April 1, 2002 Letter also provided proof that this amount was paid in full on November 7, 2001 – nearly four (4) months *prior* to Beth Keating's e-mail to Harold McLean.

As already noted, it was Commission Staff that *first* publicly disclosed false information regarding "Commercial Arbitrations" I & II. Once this inaccurate and false information was disclosed "the cat [was] out of the bag"[14] and Supra was legally entitled to correct the **public** record. The attachment of the October 22, 2001 Tribunal Order was absolutely necessary to refute the inaccurate amount claimed to be owed as well as to demonstrate that the November 7, 2001 wire transfer to BellSouth was consistent with what was truly owed to BellSouth. Accordingly, contrary to any BellSouth assertion, this was **not** a violation of any Commission Order. No violation took place for the simple reason that the Commission Staff had already violated the confidentiality of the information with respect to Arbitrations I & II in contravention of Commission regulations.

Arbitrations III & IV

[14] *See* Laura King e-mail to Katrina Tew dated July 20, 2001, in Composite Exhibit D attached hereto.

The $4.2 million figure, addressed in Harold McLean's e-mail, likewise only could have come from Commercial Arbitrations III & IV. *See* Composite Exhibit B attached hereto. Significantly, Judge King's October 31, 2001 Order is the product of Supra exercising its rights to enforce its Awards. Supra is pleased with the Arbitration Awards. It is safe to assume that BellSouth is very unhappy with the Arbitration Awards. The law requires Supra to seek "confirmation" of its Arbitration Awards in Federal Court. On October 31, 2001, Judge King entered an Order confirming, in fact, that the Arbitrators issued three separate Orders: June 5, 2001, July 20, 2001 and October 22, 2001. All three of these Awards are identified in Judge King's October 31st Order – which Judge King **purposely** filed in the **public** record.

It is also important to note that the Arbitrator's February 4, 2002 Order (also known as Arbitrations III & IV) was not, in any way, included within the scope of Judge King's October 31st Order. Notwithstanding this fact, BellSouth's legal counsel nevertheless attempts to claim that denying confidential classification of Arbitrations III & IV could "potentially" violate Judge King's Order of October 31, 2001.[15] BellSouth is also attempting – without any legal justification – to claim that the attachment of the February 4, 2002 Order from Arbitrations III & IV somehow violated a prior Commission Order. The problem for BellSouth is the fact that the Award in Arbitrations III & IV has never been filed with the Commission. Because Arbitrations III & IV are clearly not part of the Federal confirmation or any previous Commission Order on confidentiality, the Prehearing Officer's decision with respect to the February 4, 2002 Order in Arbitrations III & IV cannot, in any way, be remotely considered a violation of Judge King's Order or any previous Commission Order. This is another example of how BellSouth plays "fast and loose" with the facts in order to mislead and deceive this Commission.

[15] *See* pg. 8, BellSouth's present Motion.

The only avenue for relief for BellSouth with respect to the February 4, 2002 Order in Arbitrations III & IV is with the Commercial Arbitrators. But, BellSouth is well aware of the Arbitrator's position with respect to the distinction between the terms "proceedings" and "Awards." Accordingly, it would not be appropriate for this Commission to reconsider its denial of confidentiality of the February 4, 2002 Order in Arbitrations III & IV, attached to the April 1, 2002 Letter, because the Award is not part of the arbitration proceedings and Supra has never agreed with BellSouth to keep this document confidential.

Given the foregoing, it is evident that BellSouth **fails** to cite to any specific language in the April 1, 2002 Letter or its attachments which was granted confidential classification by this Commission and remained confidential *after* March 1, 2002. Accordingly, Supra is in compliance with all Commission Orders – contrary to BellSouth's baseless allegations. Notwithstanding, BellSouth repeatedly asserts that Supra is in violation of a Federal Court Order, previous Commission Orders as well as its obligations to BellSouth.[16] Supra has refuted all of these false claims, with particularity, throughout this Motion.

There is only one issue before this Commission of any relevance: Did the Commission Staff disclose information from Arbitrations I & II (June 5, 2001 Award) and Arbitrations III & IV (February 4, 2002 Award) over the Commission e-mail system on March 1, 2002? The answer is yes. The disclosure of this information was also in contravention of Commission regulations: (1) Rule 25-22.006(3)(d), Florida Administrative Code, which requires that information that is deemed to be confidential must be "accorded stringent internal procedural safeguards against **public** disclosure;" and (2) Rule 25-22.006(8)(a), Florida Administrative Code, which requires that "reasonable precautions will be taken to segregate confidential

[16] *See* BellSouth's present Motion, pg. 16.

information in the record and otherwise protect its integrity." It is evident that Beth Keating and Harold McLean did **not** treat the information contained in OAR-3 confidential. Given the foregoing facts, the Prehearing Officer must clarify this ambiguous order or reconsider this inaccurate conclusion regarding "when" the contents of Arbitrations Awards were "first" publicly disclosed.

BellSouth's remaining new and improper arguments

BellSouth's remaining new and improper arguments state in part: that the subject information has not been disclosed and thus eviscerates a party's rights under Chapter 364; that BellSouth is attempting to enforce its rights in another forum; and that the public interest requires the information in the April 1, 2002 letter be kept confidential.

The facts could not be more evident that the information regarding Commercial Arbitrations I & II and III & IV were first publicly disclosed by Beth Keating and Harold McLean on March 1, 2002. As a matter of law, there can be no evisceration of a party's rights under Chapter 364, Florida Statutes. If BellSouth is unhappy with the conduct of Beth Keating and Harold McLean, then BellSouth should seek redress from those individuals.

As addressed, in particularity within this Motion, the matter in the Southern District Court of Florida has no bearing on this proceeding.

Finally, it should also be noted that it is in the interest of public policy to follow Florida law, particularly with respect to Florida's Sunshine and open records policies. BellSouth should not be allowed to hide evidence of misconduct under the guise of confidentiality. In this instance, the Commission's e-mails are public records which are open to the public for inspection. Thus public policy favors a denial of BellSouth's instant Motion for Reconsideration.

For the reasons stated above, the information in the April 1, 2002 is not subject to confidential treatment and thus the Prehearing Officer did not err in refusing to provide that document confidential treatment.

WHEREFORE, Supra respectfully requests that this Commission clarifies or reconsiders its finding with respect to "when" the contents of the Awards in Arbitrations I & II and Arbitrations III & IV were *first* publicly disclosed, and respectfully requests this Commission deny BellSouth's Motion for Reconsideration.

RESPECTFULLY submitted this 31st day of May, 2002.

SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC.
2620 S. W. 27th Avenue
Miami, FL 33133
Telephone: 305/476-4248
Facsimile: 305/443-9516

Brian Chaiken/ATS

BRIAN CHAIKEN
Florida Bar No. 0228060

Supra Telecom

1311 Executive Center Drive, Suite 200
Tallahassee, Fl 32301-5027

Telephone: (850) 402-0510
Fax: (850) 402-0522
www.supratelecom.com

Exhibit - A

March 21, 2002

RECEIVED-FPSC
02 MAR 21 PM 3:23
COMMISSION CLERK

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

Dear Mrs. Bayo:

RE: PUBLIC RECORDS REQUEST

This is a public records request pursuant to Chapter 119.07, Florida Statutes. Supra Telecom respectfully requests a copy of the following documents:

1. For the period of October 9, 2001 through March 5, 2002, a copy of all correspondence, including, but not limited to e-mails, letters, notes, voicemails, memoranda, etc. between John Grayson, Inspector General, and each of the five Commissioners relating to or referencing Supra Telecom, BellSouth or Kim Logue..

2. For the period of October 9, 2001 through March 5, 2002, a copy of all correspondence, including, but not limited to e-mails, letters, notes, voicemails, memoranda, etc. between John Grayson, Inspector General, and Mary Bane, Executive Director, relating to or referencing Supra Telecom, BellSouth or Kim Logue.

3. For the period of October 9, 2001 through March 5, 2002, a copy of all correspondence, including, but not limited to e-mails, letters, notes, voicemails, memoranda, etc. between John Grayson, Inspector General, and Harold McLean, Commission General Counsel relating to or referencing Supra Telecom, BellSouth or Kim Logue.

4. For the period of October 4, 2001 through January 3, 2002, a copy of all correspondence, including, but not limited to e-mails, letters, notes, voicemails, memoranda, etc. between Harold McLean, Commission General Counsel and Richard Bellak, Staff legal counsel, relating to or referencing Supra Telecom, BellSouth or Kim Logue.

RECEIVED & FILED
RLM
FPSC-BUREAU OF RECORDS

5. For the period of July 1, 2001 through March 5, 2002, a copy of all correspondence, including, but not limited to e-mails, letters, notes, voicemails, memoranda, etc. between Harold McLean, Commission General Counsel and all five Commissioners relating to or referencing Supra Telecom, BellSouth or Kim Logue.

6. For the period of November 1, 2000 through March 5, 2002, a copy of all e-mails to and from Mary Bane, Executive Director, that reside on the FPSC's servers, all network backup diskettes, and her computer hard drive, including but not limited to matters referencing Supra Telecom, BellSouth or Kim Logue. Supra would like the material in electronic format.

7. For the period of November 1, 2000 through March 5, 2002, a copy of all e-mails, to and from Beth Salak that reside on the FPSC's servers, all network backup diskettes, and her computer hard drive, including but not limited to matters referencing Supra Telecom, BellSouth or Kim Logue. Supra would like the material in electronic format.

8. For the period of November 1, 2000 through March 5, 2002, a copy of all e-mails, to and from Walter D'Haeseleer that reside on the FPSC's servers, all network backup diskettes, and her computer, including but not limited to matters referencing Supra Telecom, BellSouth or Kim Logue. Supra would like the material in electronic format.

9. For the period of October 25, 2001 through March 5, 2002, a list of all "projects" John Grayson, Inspector General, was working on.

10. For the period of October 25, 2001 through March 5, 2002, a copy of each "investigative" file John Grayson, Inspector General, was pursuing. If the investigation is still active, at the time of this request, then a simple statement to that affect will suffice.

11. Please provide a copy of the two (2) CD. The first CD was created by Karen Dockham on September 12, 2001 for Beth Salak. A second CD was created on September 20, 2001 for Beth Salak's review. This information is derived from an e-mail from Karen Dockham to John Grayson on November 29, 2001. Supra would like the material in electronic format.

12. Please provide a copy of all e-mails that reside on the FPSC's server, all network backup diskettes, and the computers of the 13 staff members who participated in Docket Nos. 001097-TP and 001305-TP, from November 1, 2000 until the present. Supra would like the material in electronic format.

13. Please provide copy of the computer hard drives of the 13 staff members who participated in Docket Nos. 001097-TP and 001305-TP.

14. A complete copy of all records in the employee file of the 13 staff members who participated in Docket Nos. 001097-TP and 001305-TP.

Please notify the Tallahassee Office at 850/402 – 0510 when these documents have been copied. Thank you for your assistance.

Sincerely,

Brian Chaiken /TWA

Brian Chaiken
General Counsel

Michael A. Palecki

From: Harold McLean
Sent: Friday, March 01, 2002 11:24 AM
To: Katrina Tew; Michael A. Palecki
Subject: FW: supra/bellsouth

Commissioner, is this what you are asking for?

-----Original Message-----
From: Beth Keating
Sent: Friday, March 01, 2002 9:25 AM
To: Harold McLean
Subject: RE: supra/bellsouth

Sorry, for the delay. Tried to catch you yesterday before you left. The first one's easy - from the commercial arbitration, Supra owes BellSouth $3.5 million - none of which has been paid and BST has apparently not sought enforcement. (This amount does not include any amounts accrued since the commercial arbitration for service provided by BellSouth to Supra)

The second is somewhat less clear. Before she went home sick yesterday, Patty left me a note that indicated in the complaint docket Supra claims BST owes them $305,560.04, plus interest of approximately $150,000. Lee is confirming this again for me, because the note wasn't entirely clear and Beth S. said she thought the amount was more like $256,000. Regardless, though, it doesn't appear to be enough to offset much of the amount owed under the commercial arbitration award. I'll get back to you on this second number as soon as I get confirmation from Lee.

-----Original Message-----
From: Harold McLean
Sent: Friday, March 01, 2002 8:22 AM
To: Beth Keating
Subject: supra/bellsouth

Hey, I need those numbers I asked you about yesterday -- the what does bell owe supra v. what does supra owe bell -- for Commissioner Palecki.

Katrina Tew

From: Katrina Tew
Sent: Friday, March 01, 2002 12:54 PM
To: Harold McLean
Subject: RE: Your question

Sounds good. I'm here the rest of the day. Feel free to call or drop in whenever. Thanks again!

-----Original Message-----
From: Harold McLean
Sent: Friday, March 01, 2002 12:07 PM
To: Katrina Tew
Subject: Your question

Katrina, the answer is 'yes' -- $4.2 million.

Bell claims a much higher amount due, however, 'between 50 and 70 million'.

Lets talk this afternoon.

From: Harold McLean
Sent: Tuesday, October 09, 2001 8:03 AM
To: Chris Moore; David Smith
Subject: FW: exemption

-----Original Message-----
From: E. Leon Jacobs
Sent: Monday, October 08, 2001 6:15 PM
To: Harold McLean
Subject: RE: exemption

Great find. Thanks

-----Original Message-----
From: Harold McLean
Sent: Monday, October 08, 2001 5:52 PM
To: E. Leon Jacobs
Subject: FW: exemption

Mr. Chairman, Chris Moore and David Smith researched this issue for us. I concur with their conclusion. Please let me know if you would like this opinion delivered by more formal means.

-----Original Message-----
From: David Smith
Sent: Monday, October 08, 2001 3:30 PM
To: Harold McLean
Subject: FW: exemption

Somewhat to my surprise, it looks like there is indeed a sunshine exemption for discussion of security related matters per the AG opinion I put on your chair. Assuming what the Cs plan to do falls within this range, they can do it.

Thanks go to Chris for finding this in a matter of minutes.

-----Original Message-----
From: Chris Moore
Sent: Monday, October 08, 2001 3:05 PM
To: David Smith
Subject: exemption

Here's an exemption I found on the AG's web site.
i. Security systems meetings

Meetings relating to the security systems for any property owned by or leased to the state or any of its political subdivisions or for any privately owned or leased property which is in the hands of an agency are exempt from s. 286.011, F.S. Section 281.301, F.S. This statute exempts meetings of a board when the board discusses issues relating to the security systems for any property owned or leased by the board or for any privately owned or leased property which is in the possession of the board. The statute does not merely close such meetings; it exempts the meetings from the requirements of s. 286.011, F.S., such as notice. AGO 93-86.

Chris Moore	Read: 10/9/2001 8:33 AM
David Smith	Read: 10/9/2001 8:31 AM

From: Beth Keating
Sent: Friday, July 20, 2001 3:16 PM
To: Kay Flynn
Cc: Noreen Davis; Wayne Knight; Katrina Tew
Subject: RE: 001305-TP

O.k. Well, we can certainly draft an Order for Commissioner Palecki when Wayne returns, but I do not believe that the information should be pulled back pending the ruling. It's already "out there" and should stay that way.

-----Original Message-----
From: Kay Flynn
Sent: Friday, July 20, 2001 11:32 AM
To: Beth Keating
Subject: RE: 001305-TP

Beth, Supra filed a request for confidentiality. (They responded to Bell's NOI and at the same time requested confidentiality themselves.)

-----Original Message-----
From: Beth Keating
Sent: Friday, July 20, 2001 11:29 AM
To: Kay Flynn
Cc: Katrina Tew; Noreen Davis
Subject: RE: 001305-TP

Well, generally, no ruling is made on notices of intent. Even though Supra filed a response and its own notice of intent, since the information is now public, I'm not sure that any ruling is necessary. Noreen, any thoughts or does this sound o.k. to you?

-----Original Message-----
From: Kay Flynn
Sent: Friday, July 20, 2001 11:22 AM
To: Beth Keating
Subject: RE: 001305-TP

Bell filed a notice of intent on 7/6, and SUPRA filed a "response and objection to BellSouth's notice of intent and request for confidentiality" yesterday. (Supra responded and objected to Bell's NOI, and also filed its own request for confidentiality.)

-----Original Message-----
From: Beth Keating
Sent: Friday, July 20, 2001 11:10 AM
To: Kay Flynn
Subject: RE: 001305-TP

Didn't they only file a Notice of Intent?

-----Original Message-----
From: Kay Flynn
Sent: Friday, July 20, 2001 10:36 AM
To: Beth Keating
Cc: Wayne Knight; Laura King
Subject: RE: 001305-TP

Will Legal go ahead and prepare a ruling on Supra's request?

From: Laura King
Sent: Friday, July 20, 2001 10:47 AM
To: Katrina Tew
Cc: Wayne Knight; Kay Flynn
Subject: Docket 001305-TP

Good morning Katrina. I left you a voice mail on this but since I have to leave at 11 today and I'm in a class on Monday & Tuesday, I thought it would be best to send an e-mail.

Just wanted to let your office know that the "Status and Complaint Regarding Bellsouth's Bad Faith Negotiation Tactics" filed on June 18 by Supra had attached to it a document (Exhibit B) that contains proprietary information. Supra did NOT file a notice of intent to request conf. classification when they filed the document so it was handled like any other public document. On July 6 Bellsouth filed its Notice of Intent to Request Conf. Classification of Exhibit B, then on July 19 Supra filed a Notice of Intent . . . needless to say both notices were filed too late. The document was scanned in and has been out there since it was filed on June 18. I spoke to Beth Keating and basically since the "cat is out of the bag" there is really nothing we can do at this point.

As I said I just wanted to make your office aware in case something further comes of this. If you have any questions, please let me know. I'll be back in the office Wednesday morning (7 am).

Thanks and have a good weekend.

-----Original Message-----
From: Beth Keating
Sent: Friday, July 20, 2001 10:22 AM
To: Kay Flynn
Cc: Wayne Knight; Laura King
Subject: RE: 001305-TP

Looks like it. As best as we can tell, this has been public for some time.

-----Original Message-----
From: Kay Flynn
Sent: Friday, July 20, 2001 9:57 AM
To: Beth Keating
Cc: Laura King; Wayne Knight
Subject: FW: 001305-TP

Beth, I haven't heard from Wayne. Could you respond to the question below?

Kay
-----Original Message-----
From: Kay Flynn
Sent: Friday, July 20, 2001 9:47 AM
To: Laura King; Wayne Knight
Subject: 001305-TP

Good morning.....

We received yesterday from Supra a request for confidential classification in this docket. Is Supra asking for confidentiality of something already on file in the public record?

Kay