

James Meza III  
Attorney

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

June 7, 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

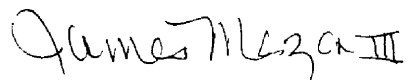
**RE: Docket No. 001305-TP (Supra)**

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to Supra Telecommunications & Information System, Inc.'s Motion for Clarification and/or Partial Reconsideration of Order No. PSC-02-0663-PCO-TP, 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 (KA)

Enclosures

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

DOCUMENT NUMBER-DATE

05983 JUN-7 2002

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 7th day of June, 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 (KA)

**(+) Signed Protective Agreement**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Arbitration of the Interconnection ) Docket No. 001305-TP  
Agreement Between BellSouth Telecommunications, )  
Inc. and Supra Telecommunications & Information )  
System, Inc., Pursuant to Section 252(b) of the )  
Telecommunications Act of 1996. )  
\_\_\_\_\_ ) Filed: June 7, 2002

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
OPPOSITION TO SUPRA'S MOTION FOR CLARIFICATION AND/OR  
PARTIAL RECONSIDERATION OF ORDER NO. PSC-02-0663-PCO-TP**

BellSouth Telecommunications, Inc. ("BellSouth") files this Opposition to Supra Telecommunications and Information Systems, Inc.'s ("Supra") Motion for Clarification and/or Partial Reconsideration ("Motion") of Order No. PSC-02-0663-PCO-TP ("Order" or "RCC Order"). BellSouth's response should not be construed as BellSouth agreeing with the Prehearing Officer's decision in the RCC Order or as BellSouth waiving the arguments set forth in its Motion for Reconsideration of the RCC Order. Rather, with this response, BellSouth simply identifies several reasons why the Prehearing Officer should summarily deny Supra's Motion.<sup>1</sup>

**INTRODUCTION AND BACKGROUND**

In the RCC Order, issued on May 15, 2002, the Prehearing Officer denied BellSouth's request to treat certain information submitted by Supra in a letter ("Supra Letter") to the Commission as confidential pursuant to Section 364.183(3), Florida Statutes. The Prehearing Officer based his decision on the belief that the information in question had already been publicly disclosed and

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<sup>1</sup> Supra also filed an Opposition to BellSouth's Motion for Reconsideration of Order No. PSC 02-0700 with its Motion. In this Opposition, BellSouth only addresses Supra's Motion for Clarification

thus could not constitute "proprietary confidential business information." On May 16, 2002, BellSouth filed an Emergency Motion to Stay the RCC Order and Notification of Exercise of Rights Pursuant to Rule 25-22.006(10). On May 23, 2002, the Prehearing Officer issued Order No. PSC-02-0700-PCO-TP, finding that BellSouth's Motion to Stay was moot because BellSouth had properly exercised its rights under Rule 25-22.006(10). Accordingly, pursuant to Rule 25-22.006(10), the Prehearing Officer ordered that the subject information be kept confidential pending exhaustion of judicial review.

Also on May 23, 2002, Supra filed its Opposition to BellSouth's Motion to Stay and Notification of Exercise of Rights. On May 29, 2002, Supra filed its Motion for Reconsideration of Order No. PSC-02-0700-PCO-TP, arguing primarily that the Prehearing Officer erred because (1) he failed to consider Supra's Opposition; and (2) because Rule 25-22.006(10) is inapplicable purportedly because the subject information was publicly disclosed prior to Supra including the information in the Supra Letter.

On May 30, 2002, Staff issued a recommendation wherein it recommended that the Commission deny Supra's Motion for Reconsideration of Order No. PSC-02-0700-PCO-TP because it failed to identify a mistake in fact or law in the Prehearing Officer's decision. BellSouth's agrees with Staff's recommendation and has filed an Opposition to Supra's Motion.

The day after Staff issued its recommendation, Supra filed the instant Motion, requesting only that the Prehearing Officer clarify and/or reconsider his

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and/or Partial Reconsideration and not the erroneous and legally deficient arguments Supra raised in its Opposition.

decision to expand his decision. Specifically, Supra is requesting that the Prehearing Officer modify or clarify his ruling to state that some of the information contained in the Supra Letter was disclosed prior to Supra disclosing it in the Supra Letter. Supra does not ask the Prehearing Officer to reconsider his decision that the subject information is not entitled to confidential treatment. And, Supra provides no reason why a finding of when the information was first disclosed is necessary or appropriate.

The only logical conclusion for the instant motion is that Supra intends to use a modified RCC Order to support its argument for reconsideration of Order No. PSC-02-0700-PCO-TP, which requires the parties and the Commission to treat the information as confidential pending exhaustion of judicial review. But, as stated by BellSouth in its Opposition to reconsideration and as succinctly articulated by Staff in its May 30, 2002 recommendation, such a finding would have no impact on the Prehearing Officer's decision that, under Rule 25-22.006(10), the information must be treated as confidential pending judicial review. Another possible reason for Supra's request is that, with the instant Motion, Supra is attempting to better Supra's defense to the enforcement action that BellSouth has implemented against Supra for the disclosure of the subject information before the appropriate forum.

In any event, for the reasons discussed in detail below, clarification and/or reconsideration is improper and unnecessary for the following reasons.

## ARGUMENT

### I. **Clarification of the Order Is Unnecessary.**

Although the Commission rules do not authorize motions for clarification, the Commission has considered such motions when it determines that further explanation or clarification of an order is necessary to make the Commission's intent fully clear. See e.g., Order No. PSC-01-2449-FOF-TP; Order No. PSC-95-0576-FOF-SU. Supra's Motion is facially deficient because it fails to satisfy this standard. Indeed, Supra's Motion does not even articulate the standard.

Supra provides no legitimate reason why the Prehearing Officer's decision denying BellSouth's request for confidential classification needs to be clarified to further explain his intent. While BellSouth respectfully disagrees with the RCC Order, it is clear: the Prehearing Officer denied BellSouth's request for confidential classification because he found that the information had already been publicly disclosed. No further clarification or explanation of this decision or the RCC Order's intent is necessary.

Further, Supra's argument that clarification is necessary because 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" (Motion at 6) should be rejected. Other than this self-serving statement, Supra cites to no authority for this proposition. Moreover, contrary to Supra's erroneous assertion, the relevant inquiry as to this request for confidential classification as stated by the Prehearing Officer was whether the information

had been previously disclosed.<sup>2</sup> According to the Prehearing Officer's analysis, it does not matter when the information was previously disclosed or how many times the information was previously disclosed.<sup>3</sup> Therefore, Supra's request that the Prehearing Officer clarify his decision to reflect when the information was first disclosed is unnecessary to determine whether the information is entitled to confidential classification.

For these reasons, Supra's Motion to Clarify the RCC Order should be denied.

## **II. Reconsideration of the Order Is Unwarranted.**

Next, Supra argues that if the Prehearing Officer determined that the information in question was first publicly disclosed with the Supra Letter, that the Prehearing Officer reconsider this finding. Motion at 6. A motion for reconsideration is appropriate if the Commission overlooked or failed to consider a point of fact or law. See Diamond Cab Co. of Miami v. King, 148 So. 2d 889 (Fla. 1962).

Supra's Motion does not meet the standard for reconsideration because it fails to identify any point of fact or law that the Prehearing Officer failed to consider. Again, while BellSouth disagrees with the analysis and decision, the Prehearing Officer held that BellSouth's request for confidential classification could not be granted because he found that the information had previously been made public. Supra does not argue that this finding is erroneous or needs to be

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<sup>2</sup> BellSouth asserts that the relevant inquiry is further limited to whether the party seeking confidential classification previously made the information public.

<sup>3</sup> BellSouth disagrees with the Prehearing Officer's analysis on this issue. Consistent with the arguments set forth in its own Motion for Reconsideration, BellSouth respectfully submits that the

reversed because the Prehearing Officer failed to consider a finding of fact or a point of law. Indeed, Supra admits in its motion that the Prehearing Officer correctly stated that “this information has otherwise been communicated publicly within the Commission.” Motion at 6. Therefore, even if procedurally proper, the Prehearing Officer considered the facts Supra has identified in its Motion.<sup>4</sup> Accordingly, Supra’s Motion for Partial Reconsideration should be denied.

With this Motion for Reconsideration, Supra is attempting to manipulate the reconsideration process to dictate to the Prehearing Officer what the contents of the RCC Order, an Order that Supra does not seek to reverse, should contain. Supra is attempting to expand the RCC Order because it wants to use the modified Order to support its prosecution or defense of other issues in this proceeding and in other forums, including BellSouth’s enforcement action against Supra for the disclosure of confidential information. The Prehearing Officer should view Supra’s Motion for what it truly is and summarily reject it.

**WHEREFORE**, for the foregoing reasons, BellSouth respectfully requests that the Commission Panel deny the Supra’s Request for Reconsideration of Order No. PSC-02-0663-PCO-TP and that the Commission Panel grant BellSouth’s Motion for Reconsideration.

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proper interpretation as to whether information had been previously disclosed is whether the party seeking confidential classification previously disclosed its own information.

<sup>4</sup> As stated in its Motion for Reconsideration, BellSouth respectfully submits that the Prehearing Officer failed to consider several other facts that warranted reversal of his decision to deny BellSouth’s request for confidential classification.



Respectfully submitted this 7th day of June, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

*Nancy B. White*

NANCY B. WHITE (KH)

JAMES MEZA III

c/o Nancy Sims

150 South Monroe Street, Suite 400

Tallahassee, FL 32301

(305) 347-5558

*R. Douglas Lackey*

R. DOUGLAS LACKEY (KLA)

T. Michael Twomey

Suite 4300

675 W. Peachtree St., NE

Atlanta, GA 30375

(404) 335-0750

449608