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July 30, 2002

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk
And Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

**RE: Docket No. 020611-TP -Complaint of BellSouth
Telecommunications, Inc., regarding Supra
Telecommunications and Information
Systems, Inc.'s Inappropriate Use of Lens**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth 's Response to Supra's Motion to Dismiss, 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 the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,



E. Earl Edenfield Jr. (LA)

Enclosures

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

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK


CERTIFICATE OF SERVICE
Docket No. 020611-TP
Complaint regarding Supra Telecommunications
and Information Systems, Inc.'s Inappropriate Use of Lens

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express and/or Hand Delivery (*) this 30th day of July, 2002 to the following:

Beth Keating
General Counsel
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Florida Public Service Commission
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E. Earl Edenfield Jr. (KA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth)	
Telecommunications, Inc., regarding)	Docket No. 020611-TP.
Supra Telecommunications and)	
Information Systems, Inc.'s,)	Filed: July 30, 2002
Inappropriate Use of Lens)	
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BELLSOUTH'S RESPONSE TO SUPRA'S MOTION TO DISMISS

On July 18, 2002, Supra Telecommunications & Information Systems, Inc. ("Supra") filed a Motion to Dismiss directed towards the Complaint filed by BellSouth Telecommunications, Inc. ("BellSouth") on June 27, 2002. In its Motion to Dismiss, Supra challenges the subject matter jurisdiction of the Florida Public Service Commission ("Commission") over BellSouth's Complaint. For the reasons set forth below, the Commission should reject Supra's claims and deny the Motion to Dismiss.

ARGUMENT

I. Standard for Motion to Dismiss

A motion to dismiss raises as a question of law whether the petition alleges sufficient facts to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). In disposing of a motion to dismiss, the Commission must assume all of the allegations of the petition to be true and determine whether the petition states a cause of action upon which relief may be granted. Heekin v. Florida Power & Light Co., Order No. PSC-99-10544-FOF-EI, 1999 WL 521480 *2 (citing to Varnes, 624 So. 2d at 350). All reasonable inferences drawn from the petition must be made in favor of the petitioner. Id. Further, in order to determine whether the petition states a cause of action upon

which relief may be granted, it is necessary to examine the elements needed to be alleged under the substantive law on the matter. Id. Applying this standard to the case at hand, it is clear that Supra's Motion to Dismiss must be denied.

II. The Commission has subject matter jurisdiction over this Complaint

Supra's entire subject matter jurisdiction argument is premised on the faulty assumption that BellSouth's Complaint alleges a breach of the parties' Interconnection Agreement. (*See*, Motion to Dismiss at 2, 3 and 7) For the majority of the Motion to Dismiss, Supra describes how BellSouth failed to comply with the dispute resolution procedures in the interconnection agreement and that the commercial arbitrators have exclusive jurisdiction over complaints arising under the interconnection agreement. Because BellSouth did not allege a breach of the interconnection agreement, or in any other way intimate that the Complaint involves the parties' Interconnection Agreement, Supra's arguments are simply irrelevant. In fact, the jurisdictional basis for this Complaint is found in Section III of the Complaint, wherein BellSouth alleges:

Pursuant to Section 364.01(4)(g), Florida Statutes, the Florida Public Service Commission ("Commission") is granted exclusive jurisdiction to ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior. Pursuant to Section 364.337(5), Florida Statute, the Commission has continuing regulatory oversight over the provision of basic local service provided by an ALEC for purposes of ensuring the fair treatment of all telecommunications providers in the telecommunications marketplace.

Clearly, the Florida Statutes provide the Commission with jurisdiction over Complaints such as this one, which allege a generic type of injury that affects other ALECs operating in Florida. BellSouth alleges such an injury in the Complaint in Section VIII, which provides, "[t]he result of Supra's abusive activity is to degrade reliability of LENS for all ALECs. Supra's activity causes LENS to slow for all ALECs,

at times has left ALECs unable to login, has caused system lockups, and a loss of ALEC user session data.” Under Supra’s unique interpretation of the law, carriers can only file complaints under interconnection agreements. Such a result is absurd, directly contrary to the law, and should be rejected by the Commission.

The remainder of Supra’s Motion to Dismiss is a response directed to the merits of BellSouth’s Complaint and is irrelevant in the context of a Motion to Dismiss because, as discussed above, BellSouth’s allegations are deemed true. Supra’s responses to BellSouth’s factual allegations are more appropriately addressed in an Answer.

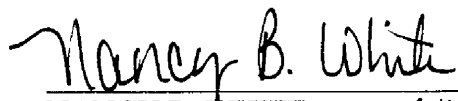
CONCLUSION

Contrary to Supra’s assertions, BellSouth is not alleging a breach of the parties’ Interconnection Agreement in this proceeding. Instead, BellSouth is seeking relief under §§ 364.01(4)(g) and 364.337(5) of the Florida Statutes, which grant the Commission the authority to prevent unfair and anti-competitive conduct.

WHEREFORE, BellSouth respectfully requests that the Commission deny Supra’s Motion to Dismiss, accept jurisdiction over this Complaint and (1) order Supra to cease and desist using the mechanized login process described in the Complaint; and (2) order Supra to reimburse BellSouth for all costs incurred by BellSouth to mitigate the damage caused by Supra’s activity.

Respectfully submitted this 30th day of July 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.



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