

ORIGINAL

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October 21, 2002

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

COMMISSION  
CLERK

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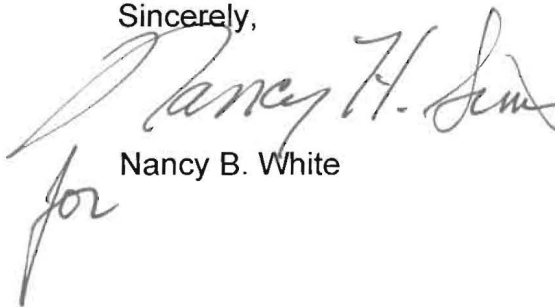
**Re: Petition by BellSouth Telecommunications, Inc. for  
Implementation of BellSouth's Emergency Service  
Continuity Tariff and Emergency Rule Waiver**

Dear Ms. Bayó:

Enclosed for filing are an original and fifteen copies of BellSouth's Petition for Implementation of BellSouth's Emergency Service Continuity Tariff and Emergency Rule Waiver.

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 to the parties shown on the attached Certificate of Service.

Sincerely,



Nancy B. White

Enclosures

cc: All parties of record  
Marshall M. Criser, III  
R. Douglas Lackey

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**CERTIFICATE OF SERVICE**

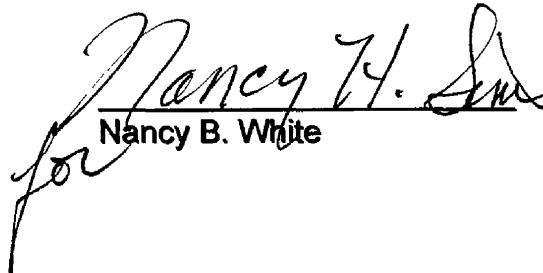
I HEREBY CERTIFY that a true and correct copy of Petition by BellSouth Telecommunications for Implementation of BellSouth's Emergency Service Continuity Service Tariff and Emergency Rule Waiver via Federal Express this 21st day of October 2002 to the following:

Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

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Nancy B. White

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth )  
Telecommunications, Inc. for )  
Potential Implementation of )  
BellSouth's Emergency Service, )  
Continuity Tariff and Emergency )  
Rule Waiver )  
\_\_\_\_\_ )

Docket No.: 021062

Filed: October 21, 2002

**PETITION BY BELLSOUTH TELECOMMUNICATIONS, INC.  
FOR IMPLEMENTATION OF BELLSOUTH'S EMERGENCY  
SERVICE CONTINUITY TARIFF AND EMERGENCY RULE WAIVER**

BELLSOUTH TELECOMMUNICATIONS, INC. ("BellSouth"), pursuant to Section 120.542, Florida Statutes, and Rule 28-104.004, Florida Administrative Code, hereby petitions the Florida Public Service Commission ("Commission") to determine whether sufficient justification exists to implement BellSouth's Emergency Service Continuity Plan, and if so, to waive Rule 25-4.118, Florida Administrative Code; to obtain customer record information concerning Supra's end users; and to waive any preferred carrier freezes in place. Specifically, BellSouth seeks the following:

1. Pursuant to the current interconnection agreement dated July 15, 2002 ("Agreement"), Supra is obligated to pay all undisputed amounts. Pursuant to the Agreement, when Supra fails to pay undisputed amounts that are past due, BellSouth may provide notice that it may, fifteen days after the notice, refuse new orders for service and refuse to complete pending orders for service. Supra failed to pay the undisputed past due

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amounts contained in BellSouth's August billing to Supra. BellSouth, pursuant to Attachment 6, Sections 15.5 and 17 of the Interconnection Agreement between BellSouth and Supra, gave notice to Supra by letters dated September 20, 2002, and September 24, 2002, that failure to pay the undisputed amount within the time frames set forth in Section 17.2.2 of the Agreement, would lead to BellSouth's refusal to accept additional orders for service or to complete pending orders for service, and would ultimately result in discontinuance of service to Supra.

2. As of the filing of this petition, Supra has not made payment of the undisputed sums due. Neither the Commission nor any court of competent jurisdiction has granted a stay of the required payment. Therefore, BellSouth has the contractual right to discontinue service to Supra.

3. Supra is an Alternative Local Exchange company ("ALEC") certificated to provide local exchange service in the state of Florida. Supra's principal place of business is located at 2620 S.W. 27<sup>th</sup> Avenue, Miami, Florida 33133. The designated contact for service of process is Esther A. Sunday, Registered Agent, located at 2620 S.W. 27<sup>th</sup> Avenue, Miami, Florida 33133. The designated regulatory contact is Ann Shelfer, 1311 Executive Center Drive, Suite 200, Tallahassee, Florida 32301-5027. Supra's attorney is Brian Chaiken located at 2620 S.W. 27<sup>th</sup> Avenue, Miami, Florida 33133.

4. BellSouth's Emergency Service Continuity Plan (Section A5.8 of the General Subscriber Service Tariff) was filed on August 6, 2002, specifically to deal with the situation wherein an ALEC has effectively abandoned its end user customers or when some other sufficient emergency exists. Under this tariff, and upon Commission order, BellSouth will continue to provide each end user with the telecommunications services existing at the end user's premises as of the date of the abandonment or emergency (BellSouth suggests that date should be October 21, 2002) for a specified period of time to allow the end user to select a new service provider. Moreover, BellSouth will, upon Commission determination of abandonment or sufficient emergency, provide notice to the end users in an orderly scheduled fashion that BellSouth will maintain the service for a minimum of fourteen (14) days from the date that initial notice to the end user is given while the end user transitions to a new service provider. The tariff applies only where BellSouth has been the underlying facilities provider for ALEC customers that are served through resale or UNE-P.

5. BellSouth seeks a Commission determination as to whether sufficient emergency exists to justify implementation of BellSouth's Emergency Service Continuity Plan. BellSouth is within its rights under the Interconnection Agreement to immediately disconnect wholesale services to Supra, and to place all Supra end users in denial for fourteen days before disconnecting those end users who have not chosen an alternative provider

within that fourteen day period. If that disconnection occurred, end users of Supra services could experience disruption of service and frustration in obtaining connection to a new service provider. The Commission may prefer that those end users have the option, through the process specified in the tariff, to choose a new service provider without having their service interrupted by being placed into immediate denial.

6. If the Commission determines that the Emergency Service Continuity Plan should be implemented, effective implementation by BellSouth requires a waiver of the following:

- A. Rule 25-4.118, Florida Administrative Code, states that before submitting a preferred carrier change, carriers must verify the subscriber's authorization of the change via one of the methods prescribed in the rule.
- B. Customer action is usually required to place or lift a local preferred carrier (PC) freeze.
- C. Section 364.24(2), Florida Statutes, prohibits telecommunications companies from disclosing customer account records, except as authorized by customers, or as necessary for billing purposes, or required by subpoena, court order, other process of court, or as otherwise allowed by law. BellSouth is not seeking a

waiver of the statute, but a Commission order allowing use of customer account information.

7. BellSouth's waiver request meets the standards of Section 120.542, Florida Statutes. The purpose of the underlying statutes 364.01 and 364.19 is, in part, to ensure that basic local telecommunications services are available to all consumers. BellSouth's Emergency Service Continuity Plan, if the Commission determines it should be implemented, will do just that. It would ensure that affected end users are given the necessary time to make an informed choice of a new service provider, while maintaining their existing service. BellSouth's Emergency Service Continuity Plan also would ensure the widest possible range of consumer choice in the provision of telecommunications services.

8. BellSouth would use an automated system that can deliver prerecorded messages to an inputted series of telephone numbers to provide affected end users with notice of the implementation of BellSouth's Emergency Service Continuity Plan. A script of the prerecorded message BellSouth would provide affected end users is attached hereto as Exhibit "A".

9. BellSouth submits that its petition serves the public interest. Specifically, BellSouth's Emergency Service Continuity Plan, if the Commission determines it should be implemented, will eliminate the immediate threat of disruption of service to end users who could lose service

due to Supra's failure to pay for services rendered by BellSouth. If the Commission determines that sufficient emergency exists, expedited approval of the waiver and Plan will allow end users to move to a new service provider in a timely fashion.

10. The Commission's verification and PC freeze rules would not be served by obtaining prior authorization and verification in order to switch the affected customers to a new service provider. Customers who may not understand the need to authorize the change in their local service provider and/or lift their PC freeze and, who, therefore, fail to respond to such a request, could lose their service.

11. Moreover, Section 364.24(2), Florida Statutes, prohibits BellSouth from reviewing the customer information of Supra. It is essential that BellSouth's wholesale division be permitted to access Supra's customer record information for the purpose of end user notification and providing repair service should an end user's line require maintenance, given the importance of continuing service to Supra's end users. BellSouth shall use such information to notify end users of their obligation to select a new service provider and to respond to maintenance calls. BellSouth shall not use the information for the purposes of marketing BellSouth's service. Therefore, BellSouth requests that the Commission order the use of such information.



12. If the Emergency Service Continuity Plan is implemented, BellSouth will charge the end user's new service provider a rate equivalent to the appropriate 2-wire loop, port and feature rates in that provider's interconnection agreement from the abandonment date through the last date BellSouth provides service continuity for each end user who selects a new provider other than BellSouth. If no interconnection agreement for such rate exists, BellSouth will charge the new provider and collect the rates most recently approved by the Commission in Docket No. 990649A-TP for the appropriate 2-wire port, loop and features. All retail providers, ALECs, as well as BellSouth, should have the authority to bill the end user for the service received during the period of abandonment.

13. Expedited action on this waiver is requested. If the Commission determines that a sufficient emergency exists, time is of the essence in the implementation of the Emergency Service Continuity Plan in order to accommodate the needs of Supra's end users by maintaining their existing services and providing a reasonable amount of time for each to choose a new service provider, as well as to protect the financial health of BellSouth by halting the provision of wholesale services to a non-paying ALEC.

14. To that end, BellSouth respectfully requests that the Commission resolve the petition soon as possible. Due to the gravity of the situation, BellSouth must have a decision quickly. To the extent that the

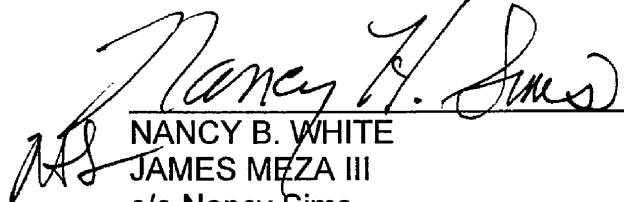
Commission does not act expeditiously, BellSouth will proceed to assert its contractual rights.

15. Simultaneous with this filing, BellSouth is also filing a waiver with the Wireline Competition Bureau (formally the Common Carrier Bureau) of the Federal Communications Commission ("FCC") seeking a waiver of the customer notification rules set forth in 47 C.F.R. §64.1120(e). A copy of waiver BellSouth is filing with the FCC is attached as Exhibit "B".

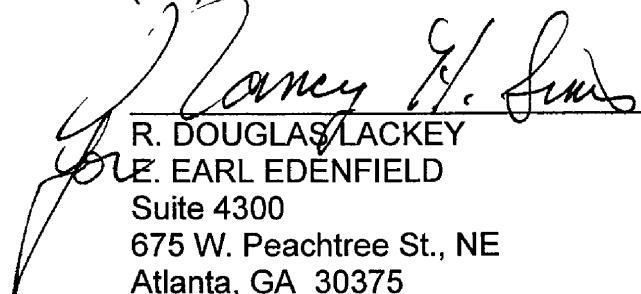
WHEREFORE, BellSouth asks that the Commission determine whether sufficient emergency exists to justify use of the Emergency Service Continuity Plan tariff, and if so, that the Commission grant our Petition for Emergency Rule Waiver for the good cause shown by this Petition.

Respectfully submitted this 21<sup>st</sup> day of October, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
\_\_\_\_\_  
NANCY B. WHITE

JAMES MEZA III  
c/o Nancy Sims  
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(305) 347-5558

  
\_\_\_\_\_  
R. DOUGLAS LACKEY  
E. EARL EDENFIELD  
Suite 4300  
675 W. Peachtree St., NE  
Atlanta, GA 30375  
(404) 335-0763

This is an important message to Supra Telecom customers. If you have placed an order to transfer your service to another provider, you may hang up now. **(Short Pause)** We will deliver this message in English and then in Spanish. **(Pause)**

Attention Supra Telecom customers. Fourteen days from today, service provided by Supra will be interrupted due to Supra's failure to pay for services provided to it by BellSouth and you will not be able to make or receive normal calls. To avoid service disruption and keep your same telephone number, you must contact a new service provider in the next 2 to 3 days. You have the option of choosing any new local service provider providing service in your area. **(Pause)**

EXHIBIT "A"

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

Implementation of the Subscriber Changes	)	
Provisions of the Telecommunications Act	)	
of 1996	)	CC Docket No. 94-129
	)	
In the Matter of 2000 Biennial Review – Review	)	
of Policies and Rules Concerning Unauthorized	)	
Changes of Consumers Long Distance Carriers;	)	
Implementation of Subscriber Carrier Selection	)	
Changes Provisions of the Telecommunications	)	
Act of 1996; Policy and Rules Concerning	)	
Unauthorized Changes of Consumers	)	
Long Distance Carrier	)	CC Docket No. 00-257
	)	
BellSouth Telecommunications Inc.,	)	
Petition for Waiver	)	

**EXPEDITED PETITION FOR WAIVER**

BellSouth Telecommunications, Inc. (“BellSouth”), pursuant to Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, requests a limited waiver of the Commission’s carrier-change authorization and verification rules, 47 C.F.R. §§ 64.1100-64.1190, where necessary to allow BellSouth to temporarily provide service to certain local exchange residential and business subscribers of Supra Telecommunications and Information Systems, Inc. (“Supra”) without prior customer approval for such service transfer as a result of BellSouth’s discontinuance of service to Supra for Supra’s failure to pay undisputed amounts owed to BellSouth. BellSouth respectfully requests expedited treatment of this Petition to ensure that these customers do not experience any service interruption and that the seamless transfer of Supra’s customers to a new carrier occurs.

**EXHIBIT “B”**

Expedited Petition for Waiver  
CC Docket No. 94-129  
and CC Docket No. 00-257  
October 21, 2002

## **I. Background**

BellSouth is the incumbent local exchange carrier operating in the States of Alabama, Georgia, Florida, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. Supra a competitive local exchange carrier ("CLEC") providing local exchange, long distance, and other telecommunications services in the State of Florida, primarily through resale and unbundled network element platform ("UNE-P") arrangements with BellSouth. At present Supra serves in excess of 300,000 end users in the State of Florida.

Pursuant to Attachment 6, Sections 15.5 of the Interconnection Agreement between BellSouth and Supra, dated July 15, 2002 ("Agreement"),<sup>1</sup> Supra is obligated to pay all undisputed amounts owed to BellSouth. Additionally, Section 17.2.2 of the Agreement states that 15 days after providing notice of nonpayment of past due undisputed amounts, BellSouth may refuse acceptance of any new applications for service and not complete any pending orders for service. The Agreement also states that 30 days after providing notice of nonpayment of past due undisputed amounts, BellSouth can discontinue providing existing services. Pursuant to the terms of the Agreement, BellSouth has provided Supra with notice of the undisputed past due amounts by letters dated September 20, 2002, and September 24, 2002. Such notices stated that failure to pay the past due undisputed amounts specified in the notices within the time frames set forth in Section 17.2.2 of the Agreement would lead to BellSouth's refusal of additional applications for service or to complete pending orders for service, and would ultimately result in discontinuance of service to Supra.

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<sup>1</sup> The Florida Public Service Commission ("FPSC") approved the Agreement pursuant to section 252(e) of the Telecommunications Act of 1934, as amended.

As of the filing of this petition, Supra has not made payment of the past due undisputed sums due. Neither the FPSC nor any court of competent jurisdiction has granted a stay of the required payment. Therefore, BellSouth considers its obligation to provide service to Supra to be terminated pursuant to Section 17 of Attachment 6 of the Agreement.

On August 6, 2002, BellSouth filed an Emergency Service Continuity Plan ("Plan") in the Florida General Subscriber Service Tariff specifically to deal with the situation wherein a CLEC has effectively abandoned its end user customers or when some other sufficient emergency exists. The Plan became effective on August 21, 2002.<sup>2</sup> This Plan ensures that affected end users are given the necessary time to make an informed choice of a new service provider, while maintaining their existing service. The Plan also ensures the widest possible range of consumer choice in the provision of telecommunications services. Under the tariffed Plan, and upon FPSC order,<sup>3</sup> BellSouth will temporarily provide each end user with the telecommunications services existing at the end user's premises as of the date of the abandonment or emergency for a specified period of time to allow the end user to select a new service provider.<sup>4</sup> Moreover, BellSouth will, upon FPSC determination of abandonment or sufficient emergency, provide notice to the end users in the manner described in the tariffed Plan that BellSouth will maintain the service for a minimum of fourteen (14) days from the date that

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<sup>2</sup> See Section A5.8 of BellSouth's General Subscriber Service Tariff in Florida, attached as Attachment A.

<sup>3</sup> Simultaneous with this filing, BellSouth also is filing a Petition For Emergency Rule Waiver And Implementation Of Bellsouth's Emergency Service Continuity Tariff with the FPSC. A copy of the Petition that BellSouth is filing with the FPSC is attached as Attachment B.

<sup>4</sup> BellSouth will use an automated system that can deliver prerecorded messages to an inputted series of telephone numbers to provide affected end users with notice of the implementation of BellSouth's Emergency Service Continuity Plan. A script of the prerecorded message BellSouth would provide affected end users is attached as Exhibit A to the Petition BellSouth is filing with the FPSC at Attachment B.

initial notice is given to the end user while the end user transitions to a new service provider (“Notice Period”). The tariff applies only where BellSouth has been the underlying facilities provider for a resale or UNE-P CLEC.

BellSouth will charge the end user’s new carrier a rate equivalent to the appropriate 2-wire loop, port and feature rates in that carrier’s interconnection agreement from the abandonment date through the last date BellSouth provides service continuity for each end user who selects a new carrier other than BellSouth. If no interconnection agreement for such rate exists, BellSouth will charge the new carrier and collect the rates approved by the FPSC for the appropriate 2-wire port, loop and features. Pursuant to FPSC rules and orders, all retail providers, CLECs, as well as BellSouth, should have the authority to bill the end user for the service received during the period of abandonment.

Pursuant to the tariffed Plan, an end user will not be permanently transferred to BellSouth. Instead, BellSouth will provide all Supra end users temporary phone service for a period of time while the end user selects a new carrier. The carrier the end user selects as its permanent service provider, whether it is BellSouth or any other CLEC, will be responsible for complying with the Commission’s carrier change requirements.<sup>5</sup> No end user will become a BellSouth customer unless the end user specifically contacts and selects BellSouth as his or her carrier. If an end user fails to select a carrier, that end user’s service will be disconnected at the end of the Notice Period. Accordingly, BellSouth’s request for waiver of the slamming rules

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<sup>5</sup> Thus, once end users receive notice that they must select a new carrier, they will then need to contact their carrier of choice directly and make arrangements for service delivery. During the course of this contact, the selected carrier will be responsible for complying with all carrier change rules, including without limitation, third party verification.

applies only to the provision of temporary service for the period of time that the end users need to select a new permanent carrier.

The temporary transfer of the customers from Supra to BellSouth is not pursuant to a voluntary agreement with Supra but is caused by discontinuance of service as a result of Supra failing to comply with its obligations under the Agreement. Thus, BellSouth is providing these end users with temporary service in order to avoid these end users losing service. Supra has not provided a list of its end users to BellSouth. Indeed, BellSouth must search its records to determine who the end users are. Therefore, BellSouth seeks a waiver of the Commission's 30-day notification and self-certification requirements set forth in the Commission's *Fourth Report and Order*.<sup>6</sup>

## II. Discussion

Section 1.3 of the Commission's rules authorizes the agency to waive any Commission rule if good cause is shown.<sup>7</sup> Pursuant to Commission rules 64.1100 *et seq.*,<sup>8</sup> a change in a subscriber's selection of a provider of telecommunications service shall not be made except in conformance with authorization and verification procedures prescribed by the Commission.<sup>9</sup> Because of Supra's failure to pay undisputed amounts owed to BellSouth and the resultant discontinuance of service to Supra in accordance with the parties' interconnection agreement,

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<sup>6</sup> *In the Matter of 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers; Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policy and Rules Concerning Unauthorized Changes of Consumers Long Distance Carrier*, CC Docket Nos. 00-257 and 94-129, *First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129*, FCC 01-156, released May 15, 2001 (“*Fourth Report and Order*”).

<sup>7</sup> 47 C.F.R. § 1.3.

<sup>8</sup> 47 C.F.R. §§ 64.1100 *et seq.*

<sup>9</sup> *Id.* § 64.1100(a).



Supra's end users will lose service unless BellSouth is permitted to implement its Service Continuity Tariff and continue to provide end users with service on a temporary basis while the end users obtain a new carrier. BellSouth is providing this temporary service so that Supra's end users will avoid losing service. BellSouth therefore seeks a limited waiver of Commission's rules 64.1100 *et seq.* to allow BellSouth to provide those customers with temporary service without their prior approval until they select a permanent carrier.

It is well settled that the Commission has authority to grant a request for waiver of its rules for good cause shown.<sup>10</sup> There is good cause for waiver of Sections 64.1100 *et seq.* First, grant of the waiver is necessary to ensure that Supra end users do not incur a disruption in local exchange service. Because of the special circumstances – the fact that BellSouth did not know Supra would fail to meet its obligations pursuant to the Agreement and thus result in discontinuance of service to Supra, and the fact that Supra will likely not notify its end users on its own accord -- it would have been impossible for BellSouth to contact each of Supra's approximately 300,000 end users and obtain verification of the end user's approval prior to the abandonment date. Without this waiver, the only alternative for BellSouth to avoid non-compliance with the slamming rules would be to allow Supra's end users to lose service on the date of abandonment. BellSouth was forced to make a Hobson's choice of either providing service directly to Supra's end users without obtaining the end users' prior authorization to do so or allow the end users' service to be cut off. BellSouth believes that the public interest is best served by ensuring that these end users continue to receive phone service from BellSouth for a period of time to allow them to select a new carrier.

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<sup>10</sup> *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

Second, the affected customers will receive post-transfer notification of the change and be allowed to select a new carrier that will comply with the Commission's carrier change requirements. Thus, the overriding policy goals of the Commission's carrier-change rules will be fully addressed.

### **III. Conclusion**

For the foregoing reasons, BellSouth requests that the Commission expeditiously grant its request for a limited waiver of the Commission's carrier-change authorization and verification rules and any other relief the Commission deems appropriate. Such a grant will allow Supra's end users an opportunity to select a new carrier without incurring an interruption of service.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: \_\_\_\_\_

Stephen L. Earnest  
Richard M. Sbaratta

Its Attorneys

BellSouth Telecommunications  
Suite 4300  
675 West Peachtree Street, N. E.  
Atlanta, Georgia 30375  
(404) 335-0711

Dated: October 21, 2002

**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 19th day of August 2002 served the parties of record to this action with a copy of the foregoing **EXPEDITED PETITION FOR WAIVER** by hand delivery, addressed to the parties listed below:

Magalia Roman Salas  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S. W.  
Room TW-B204  
Washington, DC 20554

Qualex International  
Portals II  
445 12<sup>th</sup> Street, SW  
Room CY-B402  
Washington, DC 20554

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**Lynn Barclay**