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August 22, 2003

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

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Re: 030349-TP (Supra \$75 Cash Back Promotion)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response and Motion to Strike David Nilson's Supplemental Direct Testimony, 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 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

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**CERTIFICATE OF SERVICE
DOCKET NO. 030349-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and Federal Express this 22nd day of August, 2003 to the following:

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James Meza III (KA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Supra)
Telecommunications and Information)
Systems, Inc. Regarding BellSouth's)
Alleged Use of Carrier to Carrier)
Information)

Docket No. 030349-TP

Filed: August 22, 2003

**BELLSOUTH'S RESPONSE AND MOTION TO STRIKE
DAVID NILSON'S SUPPLEMENTAL DIRECT TESTIMONY**

BellSouth Telecommunications, Inc. ("BellSouth") submits this response and Motion to Strike the Supplemental Direct Testimony of David Nilson ("Supplemental Testimony") submitted by Supra Telecommunications and Information Systems, Inc. ("Supra"). In support, BellSouth states the following:

1. On July 25, 2003, BellSouth filed its Motion to Strike certain exhibits attached to the direct testimony of David Nilson ("Nilson Testimony") in this proceeding. On August 1, 2003, BellSouth filed its Supplemental Motion to Strike (both motions are collectively referred to hereafter as "Motions to Strike"), wherein it identified additional exhibits that should be stricken and additional grounds in support.

2. At the Prehearing Conference, the parties announced that they had reached an agreement regarding BellSouth's Motions to Strike. As announced on the record, the parties agreed that BellSouth would dismiss its Motions to Strike without prejudice and that Supra, by August 12, 2003, would file supplemental testimony for the sole purpose of identifying why the exhibits subject of the Motions to Strike were relevant to this proceeding. The parties further agreed that, if specific exhibits and/or pages within certain exhibits were not addressed in Supra's supplemental testimony, then those exhibits would be excluded from the Nilson Testimony and would not be introduced into

evidence at the hearing of this matter. Moreover, the parties agreed that BellSouth would file its response to any supplemental rebuttal testimony on August 22, 2003 and that BellSouth could reassert its request that certain exhibits be stricken.

3. As an initial matter, the Florida Public Service Commission (“Commission”) should strike page 1, lines 15-23 through page 2, lines 1-14 of the Supplemental Testimony because it exceeds the scope and agreed upon purpose of the Supplemental Testimony. Specifically, in the above-identified passage, Mr. Nilson does not provide any information as to why a certain exhibit is relevant to the issues in this proceeding. Rather, he uses the Supplemental Testimony to improperly reassert Supra’s misinformed position that Operation Sunrise violates Supra’s interpretation of federal CPNI laws. Such testimony is outside the scope of the parties’ agreement and the purpose of the Supplemental Testimony and thus should be stricken.

4. In addition, the Commission should strike Mr. Nilson’s reference to DAN # 19 on page 20 of the Supplemental Testimony. This exhibit is the deposition transcript of Conrad Ponder taken in a confidential commercial arbitration proceeding between the parties. At the Prehearing Conference, BellSouth submits that the Prehearing Officer struck DAN # 19 from the Nilson Testimony (in addition to DAN # 20) because it was an improper attempt to introduce into evidence the deposition transcript of a non-testifying witness.¹ Accordingly, Mr. Nilson’s reference to DAN # 19 is improper, as this exhibit has already been stricken.

5. Likewise, the Commission should strike Bates Nos. 798-840 of DAN # 7, because the referenced pages, contrary to Mr. Nilson’s attestations, are irrelevant to the

¹ On August 21, 2003, BellSouth attempted to obtain the hearing transcript from the Prehearing Conference to cite the Commission to this ruling. Due to Internet difficulties, BellSouth was unsuccessful in this regard.

issues in this proceeding. Specifically, Mr. Nilson asserts that this information is relevant because it shows “[t]he low cost of implementing the RNS interface to retail and other project programming, in support of my direct testimony in regard to the ease of implementing the simple programming necessary.” See Supplemental Testimony at 5. This testimony and the corresponding exhibits appear to relate solely to Mr. Nilson’s superfluous claims that BellSouth does not provide nondiscriminatory access to its Operational Support System (“OSS”) and that Supra is entitled to direct access to BellSouth’s OSS. Such a claim is not relevant to any issue in this proceeding, as clearly established by the identified list of hearing issues. In addition, this Commission in Docket No. 001305-TP and in BellSouth’s 271 proceeding determined that BellSouth provides nondiscriminatory access to its OSS and that Supra was not entitled to direct access. Likewise, the Federal Communications Commission (“FCC”) in the Florida/Tennessee 271 Order also found that BellSouth provides nondiscriminatory access to its OSS and specifically rejected Supra’s arguments relating to the purported deficiencies in LENS, which is the interface Supra uses to access BellSouth’s OSS. See Florida/Tennessee 271 Order at ¶¶ 67, 96. Thus, in addition to being irrelevant, Supra’s nondiscriminatory access claims have already been rejected by the Commission and FCC, thereby mandating that Bates Nos. 798-840 of DAN # 7 be stricken.

6. BellSouth reserves the right to object to any exhibits Supra may attempt to introduce at the hearing of this matter.

CONCLUSION

For the foregoing reasons, BellSouth requests that the Commission strike Mr. Nilson's Supplemental Testimony on page 1, lines 15-23 through page 2, lines 1-14; Mr. Nilson's attempt to reintroduce Exhibit DAN # 19 into this proceeding because it has already been stricken; and Bates Nos. 798-840 of DAN # 7 because the identified documents have no bearing whatsoever on the issues in this proceeding.

Respectfully submitted this 22nd of August 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.

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