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ORIGINAL

1311 Executive Center Drive, Suite 220  
Tallahassee, FL 32301-5027

September 9, 2003

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

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**RE: Docket No. 030349-TP - SUPRA'S MOTION TO PUBLICLY DISCLOSE ALL INFORMATION RELATED TO OPERATION SUNRISE IMMEDIATELY UPON THE ISSUANCE OF A FINAL ORDER**

Dear Mrs. Bayo:

Enclosed are the original and seven copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Motion to Publicly Disclose All Information Related to Operation Sunrise Immediately Upon the Issuance of a Final Order. Supra's Motion was served on the parties on August 27<sup>th</sup> by e-mail (see E-Mail Notice), but Supra inadvertently did not file this Motion until Staff Counsel called our attention to this. Please accept this Motion and file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return it to me.

Sincerely,

*Jorge Cruz-Bustillo/LWA*  
Jorge Cruz-Bustillo  
Assistant General Counsel

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**CERTIFICATE OF SERVICE**

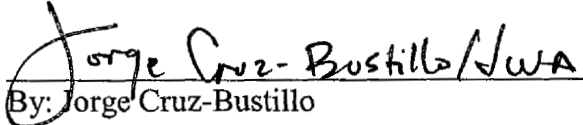
**Docket No. 030349-TP**

**I HEREBY CERTIFY** that a true and correct copy of the following was served via Hand Delivery, Facsimile, U.S. Mail, and/or Federal Express this 9<sup>th</sup> day of September 2003 to the following:

Linda H. Dodson, Esq.  
Staff Counsel  
Florida Public Service Commission  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
850/ 413-6199

Nancy B. White, Esq.  
c/o Nancy Sims  
BellSouth Telecommunications, Inc.  
150 S. Monroe Street, Suite 400  
Tallahassee, FL 32301

SUPRA TELECOMMUNICATIONS  
& INFORMATION SYSTEMS, INC.  
2620 S. W. 27<sup>th</sup> Avenue  
Miami, FL 33133  
Telephone: 305/ 476-4252  
Facsimile: 305/ 443-1078

  
By: Jorge Cruz-Bustillo

## Shelfer, Ann

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**From:** Cruz-Bustillo, Jorge  
**Sent:** Wednesday, August 27, 2003 11:09 AM  
**To:** 'Linda Dodson'  
**Cc:** James Meza III (E-mail); Nancy Sims; Audu, Jonathan; Shelfer, Ann  
**Subject:** Response to Motion to Strike & Motion to Publicly Disclose

Linda:

Attached, please find Supra's Response to BellSouth's Motion to Strike and Supra's Motion to Publicly Disclose all information related Operation Sunrise upon a finding that BellSouth has violated a Commission Order, Florida Statutes, and/or Federal Law. Our Tallahassee Office will file the hard copies by tomorrow.

Also, with respect to Supra's Motion to Compel. BellSouth has provided either documentation or satisfactory responses to all of Supra's requests **except Supra's RFP NO. 5**. The request is still outstanding.

I will note that BellSouth has promised and I am yet to receive the documentation regarding RFP NO. 4 and documentation regarding 64.2009.



08-27-03 Motion Publicly Discl...



08-27-03 Response to Mot Strik...

If you have any questions, please let me know.

Jorge L. Cruz-Bustillo  
Supra Telecom  
2620 SW 27th Ave.  
Miami, FL 33133-3005  
Tel. 305.476.4252  
Fax 305.443.1078

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

|  |   |  |
|--|---|--|
| In re: Complaint by Supra Telecommunications )<br>And Information Systems, Inc., regarding )<br>BellSouth's Use of Carrier to Carrier Information )<br>_____ ) | ) | Docket No.: 030349<br><br>Filed: August 27, 2003 |
|--|---|--|

**SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.'S**  
**("SUPRA") MOTION TO PUBLICLY DISCLOSE**  
**ALL INFORMATION RELATED TO OPERATION SUNRISE**  
**IMMEDIATELY UPON THE ISSUANCE OF A FINAL ORDER**  
**IN THIS DOCKET**

Supra Telecommunications & Information Systems, Inc. ("Supra") by and through its undersigned counsel hereby files this Motion to Publicly Disclose. In support of this Motion, Supra states as follows:

1. Supra respectfully requests that this Commission publicly disclose all information related to Operation Sunrise, that this Commission has presently ordered to be confidential, immediately upon a finding that BellSouth has indeed violated Commission Orders, Florida Statutes, and/or federal law.

2. The basis for Supra's request to designate certain items as confidential arises from a non-disclosure provision in Supra and BellSouth's prior interconnection agreement. The prior interconnection agreement required that all disputes be resolved in commercial arbitration. The non-disclosure provision of the prior agreement operates to keep the proceedings before arbitrators confidential, but not the Awards issued by the Tribunal. Primarily because the exhibits Supra will introduce at the hearing, in this docket, were provided by BellSouth during proceedings before the commercial Tribunal, Supra has sought in good-faith to so designate those items as confidential in this proceeding. It is "well-settled in the principles of general contract law that courts may not enforce contracts that are contrary to public policy." Fomby-Denson v. Department of the Army, 247 F.3<sup>rd</sup> 1366, 1374 (Fed. Cir. 2001) citing MCMullen v.

Hoffman, 174 U.S. 639, 19 S.Ct. 839, 43 L.Ed. 1117 (1899). State courts have similarly declined to enforce private agreements that barred the reporting of another's alleged misconduct to authorities for investigation and prosecution. Id. at 1376, 1377-1378. See also W.R. Grace & Co. v. Local Union 759, 461 U.S. 757, 766, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983) (upholding arbitrators interpretation of collective bargaining agreement, but recognizing that if that interpretation "violates some explicit public policy, we are obliged to refrain from enforcing it.").

3. This is the same as in our case where the Commission should preliminary uphold the non-disclosure provision of the parties' prior interconnection agreement, so long as the provision is not used by BellSouth to shield itself from any public knowledge that it engaged in illegal conduct. Once it is determined by this Commission that BellSouth's practices did indeed violate Commission Orders, Florida Statutes, and/or federal law, the Commission should no longer recognize nor enforce the non-disclosure provision of the parties' prior interconnection agreement with respect to this issue.

4. In the absence of the parties' prior non-disclosure provision, BellSouth cannot articulate a basis for why information regarding its illegal practice is proprietary. If it is illegal, then the information detailing the improper conduct must be made public. The United States Supreme Court has noted that the concealment of a violation of the law has been condemned throughout our history. See Fomby-Denson v. Department of the Army, 247 F.3<sup>rd</sup> 1366, 1375 (Fed. Cir. 2001) citing Roberts v. United States, 445 U.S. 552, 557, 100 S.Ct. 1358, 63 L.Ed.2d. 622 (1980). "The citizen's duty to raise the 'hue and cry' . . . was an established tenet of the Anglo Saxon law at least as early as the 13<sup>th</sup> century." Id. at 1375.

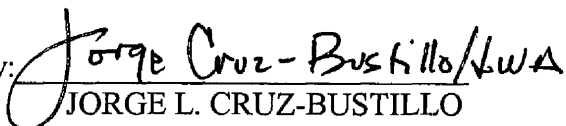
5. Non-disclosure provisions cannot be used as a shield to protect against Commission regulation (i.e. moving to dismiss this action on the basis that Supra is prohibited

from disclosing to the Commission the existence of Operation Sunrise), and then as a sword to continue to engage in anti-competitive conduct such as the use of carrier switch information to trigger marketing efforts. Nor can the non-disclosure provision be used to as a shield against the government ( in t his case t he C ommission) i nforming t he p ublic o f t he s pecific b asis f or w hy BellSouth is being penalized for violating the law. Once the Commission finds that BellSouth's practices do violate Commission Orders, Florida Statutes, and/or federal law, Supra respectfully requests that this Commission order that all of the exhibits and testimony of this evidentiary hearing be made public as a matter of public policy.

WHEREFORE, for the foregoing reasons, Supra respectfully requests that this Commission grant this motion and order that all of the exhibits and testimony of this evidentiary hearing be made public, as a matter of public policy, immediately upon the issuance of a final order in this docket.

Respectfully Submitted this 27<sup>th</sup> day of August 2003.

SUPRA TELECOMMUNICATIONS  
& INFORMATION SYSTEMS, INC.  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, Florida 33133  
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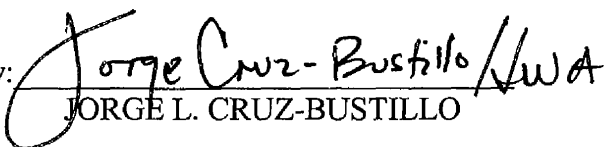
By:  LWA  
JORGE L. CRUZ-BUSTILLO

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was delivered by Hand Delivery, Facsimile, Federal Express, E-mail or U.S. Mail to the persons listed below this 27<sup>TH</sup> day of August 2003.

Jim Meza  
c/o Nancy Sims  
BellSouth Telecommunications, Inc.  
150 S. Monroe Street  
Suite 400  
Tallahassee, FL 32301

Ms. Linda Dodson  
Legal Division  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

By:  JORGE L. CRUZ-BUSTILLO