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February 9, 2004

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

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Re: Docket No. 030851-TP

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Strike Supra's Surrebuttal Testimony and Exhibits and Motion for Protective Order, which we ask that you file in the above 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*  
James Meza III (UA)

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cc: All Parties of Record  
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R. Douglas Lackey  
Nancy White

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**CERTIFICATE OF SERVICE**  
**Docket No. 030851-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and FedEx® this 9<sup>th</sup> day of February 2004 to the following:

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James Meza III (UA)

**(+ )signed Protective Agreement**  
**(\*) via Hand Delivery**  
**(⊗) via FedEx**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Implementation of requirements arising )  
from Federal Communications Commission )  
triennial UNE review: Local Circuit Switching )  
for Mass Market Customers )  
\_\_\_\_\_ )

Docket No. 030851-TP

Filed: February 9, 2004

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
MOTION TO STRIKE SUPRA'S SURREBUTTAL  
TESTIMONY AND EXHIBITS AND MOTION FOR PROTECTIVE ORDER**

BellSouth Telecommunications, Inc. ("BellSouth") submits this Motion to Strike Supra Telecommunications and Information Systems, Inc.'s ("Supra") Surrebuttal Testimony Exhibits and Motion for Protective Order. In support of this Motion, BellSouth states as follows:

1. On January 28, 2004, Supra filed the "Surebuttal [sic] Testimony" of David A. Nilson wherein Mr. Nilson identifies, references, and testifies about three (3) Surrebuttal Exhibits – DAN-RT-1, DAN-RT-2, and DAN-RT-3 (collectively referred to as the "Exhibits"). Mr. Nilson describes DAN-RT-1 as Supra data that "shows that BellSouth's performance on SLI loops is much poorer than what Mr. Ainsworth states is the coordinated timeframe." See Surrebuttal Testimony at 2. In addition, Mr. Nilson describes DAN-RT-2 as an email from BellSouth to Supra allegedly pertaining to Supra's self-inflicted problems associated with its customers receiving cellular calls. Regarding DAN-RT-3, Mr. Nilson fails to describe this exhibit in any fashion other than to state, "BellSouth has admitted its culpability in writing." See Surrebuttal Testimony at 11. All of these Exhibits are used by Mr. Nilson to allegedly rebut allegations made by BellSouth witness Ken Ainsworth in his Rebuttal Testimony.

2. Supra failed to timely serve BellSouth with these Exhibits, and, upon information and belief, failed to timely file these Exhibits with the Florida Public Service Commission ("Commission").

3. In the morning of February 4, 2004, counsel for BellSouth sent an email to counsel for Supra advising Supra that BellSouth had not received Mr. Nilson's Surrebuttal Exhibits and asking for same as soon as possible. Supra never responded to this email.

4. On February 5, 2004, during or immediately after the deposition of Ms. Sherry Lichtenberg of MCI, counsel for BellSouth asked counsel for Supra a second time for Mr. Nilson's Surrebuttal Exhibits.

5. Having not received the Exhibits after the two-above requests, on February 6, 2004, after the deposition of BellSouth witness Milton McElroy, counsel for BellSouth asked counsel for Supra for Mr. Nilson's Surrebuttal Exhibits a third time. Supra's counsel stated that BellSouth would receive the exhibits sometime on February 6, 2004.

6. BellSouth did not receive the thrice requested Surrebuttal Exhibits until the evening of February 8, 2004. In addition to the three Exhibits identified in Mr. Nilson's testimony, Supra also produced to BellSouth on February 8, 2004 a new exhibit -- "DAN4" -- which consists of eleven pages and is entitled "Collocation Time Line." DAN4 is not identified or otherwise referenced in Mr. Nilson's Surrebuttal Testimony. As a result of this late production, BellSouth has been unable to adequately review and analyze the Exhibits or DAN4.

7. Supra has articulated no reason why the Exhibits or DAN4 were not originally provided to BellSouth or the Commission. Presumably, the Exhibits were already in existence at the time of the filing of the Surrebuttal Testimony or Mr. Nilson would not have referenced them in the testimony. Nevertheless, Supra produced the Exhibits ten (10) days after Supra filed Mr. Nilson's Surrebuttal Testimony and only after repeated requests by BellSouth.

8. To prevent "trial by ambush", Supra should be prevented from using or relying on the Exhibits and/or DAN4 and any testimony referencing or relating to the Exhibits and/or DAN4 at the hearing of this matter. To hold otherwise, unduly prejudices BellSouth as it prevents BellSouth from adequately defending itself from the testimony and evidence asserted by Mr. Nilson.

9. Moreover, because Mr. Nilson uses the exhibits to support his attempted rebuttal of Mr. Ainsworth testimony, Supra should be prevented from deposing Mr. Ainsworth regarding the information contained in the Exhibits as well as newly identified Exhibit DAN4. As a matter of fundamental fairness, BellSouth should have the opportunity to sufficiently review the subject Exhibits and DAN4 before having to respond to deposition questions by Supra on issues related to the Exhibits and DAN4.

10. Rule 1.280(c) of the Florida Rules of Civil Procedure provides that a protective order can be issued to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires . . . ."<sup>1</sup> Requiring Mr. Ainsworth to submit to deposition questions on matters and evidence that Supra failed to provide to BellSouth in sufficient time or otherwise identify subjects

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<sup>1</sup> Rule 28.106.206 of the Florida Administrative Code incorporates Rule 1.280 through 1.400 of the Florida Rules of Civil Procedure.



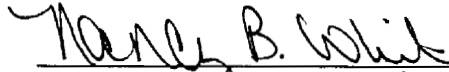
BellSouth to an undue burden and is contrary to the concepts of fundamental fairness and justice, especially when as here, there is no legitimate reason for Supra to have refused to produce the Exhibits to BellSouth.

11. Due to the upcoming depositions of Mr. Ainsworth on February 9, 2004 and Mr. Nilson on February 11, 2004 as well as the hearing of this matter, BellSouth seeks immediate consideration of this Motion.

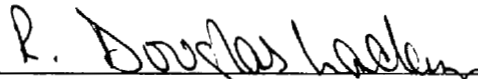
**WHEREFORE**, BellSouth respectfully requests that the Commission (1) strike Mr. Nilson's Surrebuttal Exhibits; (2) strike the following portions of Mr. Nilson's Surrebuttal Testimony because it references and discusses the Exhibits: Page 2, lines 18-22 through Page 3, lines 1-2 and Page 11, lines 9-14; (3) strike DAN4, which is not identified in Mr. Nilson's Surrebuttal Testimony and which Supra first produced on the evening of February 8, 2004; (4) prohibit Supra from relying, introducing, or using the Exhibits or DAN4 or any testimony related to the Exhibits at the hearing of this matter; and (5) prohibit Supra from deposing Mr. Ainsworth on any issue relating to the Exhibits or DAN4.

Respectfully submitted this 9<sup>th</sup> day of February, 2004.

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