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March 11, 1998

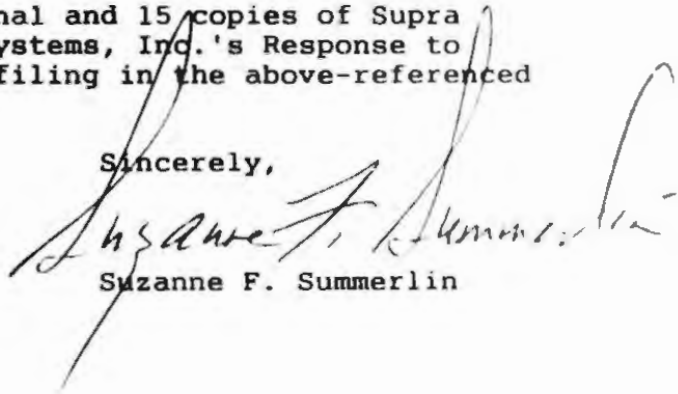
Mrs. Blanca S. Bayo  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RE: Docket No. 980155-TP

Dear Mrs. Bayo:

Enclosed please find an original and 15 copies of Supra Telecommunications & Information Systems, Inc.'s Response to BellSouth's Motion to Dismiss for filing in the above-referenced docket. Thank you.

Sincerely,



Suzanne F. Summerlin

SFS:ss  
Enclosures (16)

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- AFP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMR Suzanne
- CTP \_\_\_\_\_
- ED \_\_\_\_\_
- LE 2
- LT \_\_\_\_\_
- OP \_\_\_\_\_
- FCI \_\_\_\_\_
- SEC 1
- WT \_\_\_\_\_
- OTR \_\_\_\_\_

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of Supra Telecommunications ) Docket No. 980155-TP  
and Information Systems, Inc., for a )  
Generic Proceeding to Arbitrate Rates ) Filed: March 11, 1998  
and Selected Terms and Conditions of )  
Interconnection Agreements with )  
BellSouth Telecommunications, Inc. )  
\_\_\_\_\_ )

SUPRA'S RESPONSE TO BELL SOUTH'S MOTION TO DISMISS

COMES NOW Supra Telecommunications & Information Systems, Inc. ("Supra" hereafter), and files this Response to BellSouth Telecommunications, Inc.'s ("BellSouth" hereafter) Motion to Dismiss:

1. Apparently BellSouth's basis for its Motion to Dismiss is that the Telecommunications Act does not contemplate generic proceedings and that, even if it did, Supra has no right to an arbitration proceeding under the Act and thus, does not have standing to request such a generic proceeding. BellSouth believes Supra has no right to arbitration because Supra signed an interconnection agreement with BellSouth and did not, according to BellSouth, attempt to get BellSouth to negotiate for four and one-half months and then petition the Florida Public Service Commission ("Commission" hereafter) on or after the 135th day, but before the 160th day, after first requesting negotiations with BellSouth, for arbitration of its interconnection agreement.

2. In its petition, Supra has alleged that BellSouth's employees communicated in no uncertain terms that Supra had the opportunity to select one of the existing agreements (AT&T's or

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MCI's) or to take BellSouth's standard interconnection agreement. BellSouth's employees asserted that there would be no opportunity for BellSouth to negotiate its rates with Supra as those had been set by the Commission in a previous arbitration proceeding and, as to any other issues, the "best" deals possible had already been achieved through the previous arbitration proceedings conducted with AT&T and MCI.

3. Although BellSouth did not cite any rule as a basis for its motion to dismiss Supra's petition, either in the Commission's rules or the Florida Rules of Civil Procedure, Supra must assume that the motion is a motion to dismiss for failure to state a cause of action pursuant to Rule 1.420, Fla.R.C.P. "In testing a complaint on a motion to dismiss, all facts properly pleaded are deemed admitted." *Elliott v. Hernando County*, 281 So.2d 395 (Fla.2d DCA 1973). Therefore, in considering BellSouth's motion to dismiss Supra's petition, the Commission must assume that the allegations in the petition are true. Supra's allegations, if true, constitute a flagrant violation of BellSouth's duty under the Telecommunications Act to negotiate in good faith with Supra. It is hardly legally appropriate for the Commission to consider BellSouth's technical arguments regarding procedure and timelines under the Telecommunications Act when BellSouth's alleged actions constitute a far more serious substantive violation of the Act.

4. No court has decided that a state commission does not have the authority to consider violations of the duty to negotiate in good faith by incumbent local exchange carriers and

to fashion appropriate resolutions of such violations. In fact, the Act specifically provides that a state commission has the authority to refuse to permit implementation of an interconnection agreement that it finds not to be in the public interest. If the Commission finds that Supra entered into an interconnection agreement with BellSouth as the result of misleading and inappropriate statements and positions taken by BellSouth and as a result of BellSouth's failure to negotiate in good faith, the Commission may set aside the existing interconnection agreement and arbitrate a new interconnection agreement for Supra and BellSouth. If Supra's existing interconnection agreement is set aside, Supra has every right to individual arbitration and to request that the Commission utilize a generic proceeding to determine the appropriate rates, terms, and conditions of interconnection with BellSouth.

5. No court has decided that a state commission may not hold a generic proceeding to arbitrate certain aspects of the rates, terms, and conditions of interconnection agreements between incumbent local exchange carriers and alternative local exchange carriers. BellSouth is correct that the Act seems to contemplate one-on-one negotiation and arbitration of interconnection agreements, however the Act also seems to contemplate good faith negotiation by the incumbent local exchange carrier. When it is clear that the essential foundational component of good faith negotiation on the part of the incumbent local exchange carrier is not present, a state commission could be considered remiss if it does not take

effective corrective action. Such corrective action could logically and appropriately include utilizing a generic proceeding in which alternative local exchange carriers will have the benefit of their combined resources to negotiate effectively with a reluctant or uncooperative incumbent local exchange carrier.

6. Contrary to BellSouth's assertion that the Telecommunications Act does not contemplate generic proceedings, the State of California has found it appropriate to utilize generic proceedings to make various decisions regarding rates, terms and conditions of interconnection agreements required by the Telecommunications Act.

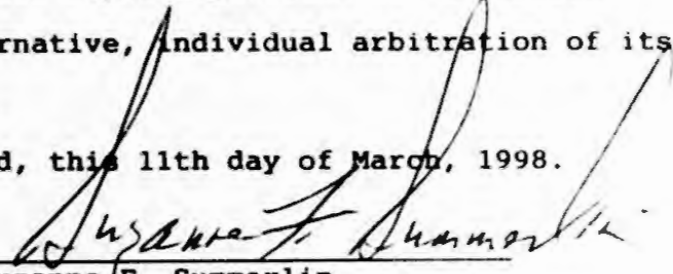
7. Based on BellSouth's interpretation of the Telecommunications Act, all BellSouth has to do is to convince alternative local exchange carriers that they have no real opportunity to negotiate or even to arbitrate anything better than what has already been determined by the Commission in previous arbitrations with AT&T and MCI or others. Once that is accomplished, BellSouth will have many ALECs who will sign interconnection agreements without ever having had any meaningful negotiation or arbitration. The Commission has chosen to insulate such arbitration proceedings between AT&T and MCI and BellSouth by not allowing others to intervene. The end result is the only ALECs who are being given the opportunity to negotiate and arbitrate are the very large carriers who got in the door first. As a result of having been the first to arbitrate, AT&T and MCI will always be ahead of other ALECs in this process.

8. A generic proceeding would provide smaller ALECs the very significant benefit of not having to bear the tremendous expense of a full scale arbitration proceeding on their own.

9. Supra has a right to a hearing to support its request for individual arbitration and to support its contention that a generic proceeding is the appropriate vehicle for the Commission to determine the appropriate rates, terms and conditions of interconnection for alternative local exchange carriers with BellSouth.

WHEREFORE, Supra requests that the Commission deny BellSouth's Motion to Dismiss Supra's petition for a generic proceeding, or in the alternative, individual arbitration of its interconnection agreement.

Respectfully submitted, this 11th day of March, 1998.

  
Suzanne F. Summerlin  
1311-B Paul Russell Road, Suite 201  
Tallahassee, Florida 32301  
(850) 656-2288  
Florida Bar No. 398586  
Attorney for Supra Telecommunications  
& Information Systems, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to the following parties of record this 11th day of March, 1998:

Beth Keating, Esquire  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

BellSouth Telecommunications, Inc.  
c/o Nancy H. Sims  
150 South Monroe Street, Suite 400  
Tallahassee, Florida 32301

  
\_\_\_\_\_  
Suzanne Fannon Summerlin