

ORIGINAL

Legal Department

NANCY B. WHITE  
Assistant General Counsel-Florida

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(305) 347-5558

April 24, 1998

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

**Re: Docket No. 980119-TP (Supra Complaint)**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Emergency Motion to Quash Witness Subpoenas which we ask that you file in the above-referenced 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,

*Nancy B. White (kr)*  
Nancy B. White

- ACK
- AFA  Enclosures
- APP
- CAF  cc: All parties of record
- CMU  *Sumanna* A. M. Lombardo
- CTR  R. G. Beatty
- EAG  William J. Ellenberg II
- EAG
- LEG  *2*
- LIN  *3*
- OPC
- RCH
- SEC  *1*
- WAS
- OTH

RECEIVED & FILED  
*[Signature]*  
FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DAT  
**04614** APR 24 8  
FPSC-RECORDS/REPORTI

**CERTIFICATE OF SERVICE**  
**Docket No. 980119-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served  
by Facsimile and Federal Express this 24th day of April, 1998 to the following:

Beth Keating  
Legal Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
Tel No. (850) 413-6199  
Fax No. (850) 413-6250

Suzanne Fannon Summerlin, Esq.  
1311-B Paul Russell Rd., #201  
Tallahassee, Florida 32301  
Tel. No. (850) 656-2288  
Fax. No. (850) 656-5589

Nancy B. White (KR)  
Nancy B. White

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Supra Telecommunications  
and Information Systems, Inc., Against  
BellSouth Telecommunications, Inc.

Docket No.: 980119-TP

Filed: April 24, 1998

**BELLSOUTH TELECOMMUNICATIONS, INC.'S EMERGENCY  
MOTION TO QUASH WITNESS SUBPOENAS**

BellSouth Telecommunications, Inc.<sup>1</sup> ("BellSouth"), pursuant to Rule 25-22.045(3), Florida Administrative Code, hereby files its Emergency Motion to Quash Witness Subpoenas served by Supra Telecommunications and Information Systems, Inc.'s ("Supra"). As grounds therefore, BellSouth respectfully states the following:

1. Apparently now conceding that it is required to serve subpoenas on non-party witnesses, Supra served several of BellSouth's employees in Birmingham, Alabama, with subpoenas issued by the Florida Public Service Commission ("FPSC"). Copies of the subpoenas are attached hereto as Composite Exhibit "A."

2. As Exhibit A demonstrates, Ron Owen and Stanley Sansing were subpoenaed to attend the hearing scheduled to commence in this matter on April 30, 1998, in Tallahassee, Florida. Teresa Gentry was subpoenaed to appear for her deposition on April 27, 1998, in Birmingham, Alabama.<sup>2</sup> Due to the time limitations

<sup>1</sup> The instant Motion is brought on behalf of BellSouth and the individuals that were served with the subject subpoenas. BellSouth is authorized to bring this Motion on their behalf.

<sup>2</sup> In BellSouth's Opposition to Supra's Motion for Continuance, it addressed the status of these individuals as non-party witnesses. In the interest of brevity, BellSouth respectfully refers the FPSC to facts and law contained in said Motion.

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FPSC-REGISTRATION REPORTING

involved, BellSouth respectfully moves on an emergency basis to quash the subject subpoenas.

3. Supra is permitted to obtain discovery in this docket pursuant to Rule 25-22.034, Florida Administrative Code, which states that a party may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. Accordingly, Supra must comply with the requirements of Rules 1.280 through 1.400 in order to obtain its discovery. Additionally, pursuant to Rule 25-22.045, Florida Administrative Code, Supra may obtain a subpoena from the presiding officer or the Division of Records and Reporting to subpoena witnesses.

4. As a matter of law, the subpoenas served on the subject non-party witnesses are defective and should be quashed. Supra has failed to comply with Rule 25-22.045, Florida Administrative Code, and is attempting to serve out-of-state witnesses with *invalid* process. As Rule 25-22.045(2) states in pertinent part:

A party shall apply in writing for the issuance of subpoenas requiring the attendance of witnesses or production of records, files, and memoranda from any place in the state, at any designated place of hearing . . . (emphasis supplied)

5. As the foregoing Rule demonstrates, subpoenas issued by the FPSC may be served on witnesses within Florida. There is no authority in the Rule for extra-territorial service of process. This is consistent with the Florida courts' interpretation of the jurisdictional limits placed on discovery.

6. In Hotchkiss v. Martin, 52 So. 2d 113 (Fla. 1951), the Florida Supreme Court addressed the effect of an Ohio court's order in Florida. The court stated:

A court created within a sovereignty is necessarily limited as to its sphere of direct action on persons and things, real estate and chattels within that sovereignty.

...

By suing, as actor, on the Ohio decrees, and solely as an arm of the Ohio court, the respondent is, in effect, requesting a Florida court to put in motion its executory processes for the collection of a judgment debt without such debt first having been reduced to judgment in this state. We do not conceive that this can be done.

Id. at 114. See also, Fla. Jur. 2d, Courts and Judges § 77 (“Since jurisdiction is basically an expression of sovereign power, it is limited to the territory of the state by whose authority it is exercised. It follows that no state can issue process to be made effective beyond its borders, though such process can be sent out of the state and served.”)

7. In order for Supra to subpoena a non-party witness residing in another state for their deposition, it must comply with the laws of that state.<sup>3</sup> In the instant case, Supra was required to comply with the laws of the state of Alabama. While Alabama has not adopted the Uniform Foreign Depositions Law, it has a rule of civil procedure that sets forth the requirements that a foreign litigant must observe in order to depose an Alabama resident.

8. Rule 28(c), Alabama Rules of Civil Procedure, states in pertinent part:

**Depositions taken within this state to be used outside of this state.** A person desiring to take depositions in this state to be used in proceedings pending in the courts of any other state or country may produce to a judge of the circuit where the witness resides a commission authorizing the

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<sup>3</sup> Florida has adopted the Uniform Foreign Depositions Law, § 92.251, Florida Statutes, in order to facilitate the taking of depositions in this state by out-of-state litigants. See, Freedom Newspapers, Inc. v. Egly, 507 So.2d 1180, 1183 (Fla. 2d DCA 1987); Travelers Indem. Co. v. Hill, 388 So. 2d 648, 650 (Fla. 5th DCA 1980).

taking of such depositions or proof of notice duly served, whereupon it shall be the duty of the judge to issue, pursuant to Rule 45, the necessary subpoenas. [Emphasis supplied].

9. Based on the foregoing, it is clear that Supra has failed to comply with Rule 28(c), Alabama Rules of Civil Procedure. Accordingly, it cannot compel Ms. Gentry, a non-party witness, to appear for deposition in Alabama with the current subpoena issued by the FPSC.

10. Additionally, Supra cannot use process issued by the FPSC to compel Alabama residents, who are non-party witnesses, to attend the hearing in this matter in Tallahassee, Florida. The applicable Administrative Rule limits the Florida subpoenas to “any place in the state.” Accordingly, they cannot be used to establish personal jurisdiction over non-party witnesses in other states. The subpoenas served on Ron Owen and Stanley Sansing should, therefore, be quashed.

11. In addition to the foregoing, even assuming *arguendo* that the subject witnesses were officers, directors or managing agents of BellSouth, Florida courts have uniformly held that nonresident corporate defendants need not produce nonresident corporate officers for deposition in Florida unless the defendant is seeking affirmative relief in the proceeding. United Teachers Assoc. Insur. Co. v. Vanwinkle, 657 So. 2d 1232 (Fla. 3d DCA 1995); Fortune Insurance Co. v. Santelli, 621 So. 2d 546 (Fla. 3d DCA 1993); Madax Int’l. Corp. v. Delcher Intercontinental Moving Svcs., 342 So. 2d 1082 (Fla. 2d DCA 1977). In the instant docket, BellSouth is not seeking any affirmative relief. It should, therefore, not be required to produce these witnesses in Tallahassee, Florida.

12. Since Supra has failed to serve legally effective process on the subject witnesses, the subpoenas that were served on Ron Owen, Teresa Gentry, and Stanley Sansing, should be quashed.

Respectfully submitted this 24th day of April, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White (ke)

NANCY B. WHITE  
GEORGE B. HANNA  
c/o Nancy Sims  
150 South Monroe Street, #400  
Tallahassee, Florida 32301  
(305) 347-5558

William J. Ellenberg II (ke)

WILLIAM J. ELLENBERG II  
675 West Peachtree Street, #4300  
Atlanta, Georgia 30375  
(404) 335-0711

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In RE: Docket No. 980119-TR )  
Complaint of Supra Telecommunica- )  
tions and Information Systems, Inc. )  
against BellSouth Telecommunica- )  
tions, Inc. )

SUBPOENA


THE STATE OF FLORIDA

TO: Ron Owen, 15th Floor - LCSC Billing Department, 600 North  
15th Street, Birmingham, Alabama 35203

YOU ARE COMMANDED to appear before the Florida Public Service Commission in Room 153, Betty Easley Conference Center, 2540 Shumard Oak Boulevard, Tallahassee, Florida, on April 30, 1998, at 9:30 a.m., to testify in this action. If you fail to appear, you may be held in contempt.

YOU ARE SUBPOENAED to appear by the following attorneys and, unless excused from this subpoena by these attorneys or the Commission, you shall respond to this subpoena as directed.

DATED on April 20, 1998.



Blanca S. Bayó

Blanca S. Bayó, Director  
Records and Reporting  
Florida Public Service Commission

( S E A L )

Suzanna F. Summerlin  
Attorney at Law  
1311-B Paul Russell Rd., Suite 201  
Tallahassee, Florida 32302  
Attorney for Supra  
Telecommunications and Information  
Systems, Inc.

EXHIBIT "A"



**AUTHORITY:**

**Florida Statutes 120.58(1), (3)**

(1) (b) An agency or its duly empowered presiding officer or a hearing officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas upon the written request of any party or upon its own motion, and to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, including the imposition of sanctions, except contempt.

(3) A party may seek enforcement of a subpoena, order directing discovery, or order imposing sanctions issued under the authority of this act by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena or order resides. A failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while a subpoena is being challenged under subsection (2). The court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order whenever the court determines that such an award should be granted under the Florida Rules of Civil Procedure.

**Rule 28-22.045, Florida Administrative Code**

(1) When the proceeding is before the Commission or member thereof, subpoenas may be issued by the presiding officer or the Division of Records and Reporting on subpoena forms supplied by the Commission. When the proceeding is before a hearing officer of the Division of Administrative Hearings, subpoenas may be issued by the Hearing Officer.

(2) A party shall apply in writing for the issuance of subpoenas requiring the attendance of witnesses or production of records, files, and memoranda from any place in the state, at any designated place of hearing before the presiding officer, for the purpose of taking the testimony of such witness or inspection of documents. An application for the subpoena shall state the name and address of the witness for whom the subpoena is to be issued, and the time and place for the witness to appear.

(3) Any party or person against whom a subpoena is directed may file a motion to quash or limit the subpoena with the agency having jurisdiction of the dispute. The motion shall set forth the ground relied upon.

(4) A subpoena may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age. Service shall be made by delivering a copy thereof to the person named in the subpoena. Proof of service shall be made by affidavit of the person making service if service is not made by an officer authorized by law to do so.

(5) Service of a subpoena may also be effected by certified mail, in which case the return receipt must be signed by the person named in the subpoena.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In RE: Docket No. 980119-TP - )  
Complaint of Supra Telecommunica- )  
tions and Information Systems, Inc.)  
against BellSouth Telecommunica- )  
tions, Inc. )

SUBPOENA

THE STATE OF FLORIDA

TO: Stanley Sansing, 14th Floor - LCSC, 600 North 19th  
Street, Birmingham, Alabama 35201

YOU ARE COMMANDED to appear before the Florida Public Service Commission in Room 152, Betty Hasley Conference Center, 2540 Shumard Oak Boulevard, Tallahassee, Florida, on April 30, 1998, at 9:30 a.m., to testify in this action. If you fail to appear, you may be held in contempt.

YOU ARE SUBPOENED to appear by the following attorneys and, unless excused from this subpoena by these attorneys or the Commission, you shall respond to this subpoena as directed.

DATED on April 20, 1998.



( S B A L )

Blanca S. Bayó

Blanca S. Bayó, Director  
Records and Reporting  
Florida Public Service Commission

Suzanne F. Summerlin  
Attorney at Law  
1311-B Paul Russell Rd., Suite 201  
Tallahassee, Florida 32301  
Attorney for Supra  
Telecommunications and Information  
Systems, Inc.

**AUTHORITY:**

**Florida Statutes 120.58(1), (3)**

(1) (b) An agency or its duly empowered presiding officer or a hearing officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas upon the written request of any party or upon its own motion, and to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, including the imposition of sanctions, except contempt.

(3) A party may seek enforcement of a subpoena, order directing discovery, or order imposing sanctions issued under the authority of this act by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena or order resides. A failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while a subpoena is being challenged under subsection (2). The court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order whenever the court determines that such an award should be granted under the Florida Rules of Civil Procedure.

**Rule 25-22.045, Florida Administrative Code**

(1) When the proceeding is before the Commission or member thereof, subpoenas may be issued by the presiding officer or the Division of Records and Reporting on subpoena forms supplied by the Commission. When the proceeding is before a hearing officer of the Division of Administrative Hearings, subpoenas may be issued by the Hearing Officer.

(2) A party shall apply in writing for the issuance of subpoenas requiring the attendance of witnesses or production of records, files, and memoranda from any place in the state, at any designated place of hearing before the presiding officer, for the purpose of taking the testimony of such witness or inspection of documents. An application for the subpoena shall state the name and address of the witness for whom the subpoena is to be issued, and the time and place for the witness to appear.

(3) Any party or person against whom a subpoena is directed may file a motion to quash or limit the subpoena with the agency having jurisdiction of the dispute. The motion shall set forth the ground relied upon.

(4) A subpoena may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age. Service shall be made by delivering a copy thereof to the person named in the subpoena. Proof of service shall be made by affidavit of the person making service if service is not made by an officer authorized by law to do so.

(5) Service of a subpoena may also be effected by certified mail, in which case the return receipt must be signed by the person named in the subpoena.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Docket No. 980119-TP -  
Complaint of Supra Telecommunica-  
tions and Information Systems, Inc.  
against BellSouth Telecommunica-  
tions, Inc.

SUBPOENA FOR DEPOSITION

THE STATE OF FLORIDA

TO: Teresa Gentry, 14th Floor - LCSC, 600 North 19th Street,  
Birmingham, Alabama 35203

YOU ARE COMMANDED to appear before a person authorized by law to take depositions at Hain & Associates Court Reporting Service, 875 Financial Center, 805 20th Street North in Birmingham, Alabama, on April 27, 1998, at 1:00 p.m., for the taking of your deposition in this action. If you fail to appear, you may be held in contempt.

YOU ARE SUBPOENAED to appear by the following attorneys and, unless excused from this subpoena by these attorneys or the Commission, you shall respond to this subpoena as directed.

DATED on April 20, 1998.



( S E A L )

Blanca S. Bayó

Blanca S. Bayó, Director  
Records and Reporting  
Florida Public Service Commission

Suzanne F. Summerlin  
Attorney at Law  
1311-B Paul Russell Rd., Suite 201  
Tallahassee, Florida 32301  
Attorney for  
Supra Telecommunications and Infor-  
mation Systems, Inc.

**AUTHORITY:**

**Florida Statutes 120.58(1), (3)**

(1) (b) An agency or its duly empowered presiding officer or a hearing officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas upon the written request of any party or upon its own motion, and to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, including the imposition of sanctions, except contempt.

(3) A party may seek enforcement of a subpoena, order directing discovery, or order imposing sanctions issued under the authority of this act by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena or order resides. A failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while a subpoena is being challenged under subsection (2). The court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order whenever the court determines that such an award should be granted under the Florida Rules of Civil Procedure.

**Rule 25-23.045, Florida Administrative Code**

(1) When the proceeding is before the Commission or member thereof, subpoenas may be issued by the presiding officer or the Division of Records and Reporting on subpoena forms supplied by the Commission. When the proceeding is before a hearing officer of the Division of Administrative Hearings, subpoenas may be issued by the Hearing Officer.

(2) A party shall apply in writing for the issuance of subpoenas requiring the attendance of witnesses or production of records, files, and memoranda from any place in the state, at any designated place of hearing before the presiding officer, for the purpose of taking the testimony of such witness or inspection of documents. An application for the subpoena shall state the name and address of the witness for whom the subpoena is to be issued, and the time and place for the witness to appear.

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