

ORIGINAL

SUZANNE FANNON SUMMERLIN
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1311-B Paul Russell Road, Suite 201
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April 27, 1998

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

RE: Docket No. 980119-TP - Complaint of Supra
Telecommunications & Information Systems, Inc., Against
BellSouth Telecommunications, Inc.

Dear Ms. Bayo:

Enclosed for filing in the above-referenced proceeding is an original and fifteen copies of Supra Telecommunications & Information Systems, Inc.'s Response to BellSouth Telecommunications, Inc.'s Motion to Quash Subpoenas and Emergency Motion Requesting Prehearing Officer to Issue Request to the Circuit Court of Jefferson County, Alabama, to Issue Out-of-State Subpoenas. Please note that this filing contains an emergency matter for the Prehearing Officer's immediate attention.

Please re-issue five subpoenas for hearing in the above-referenced proceeding for the following individuals. The hearing will take place at 9:30 a.m., Thursday, April 30, 1998. Enclosed is a check for \$20.00 for the subpoena fee for the five subpoenas. Thank you very much.

- ACK
- AFA
- APP
- CAF
- CMU
- CTR
- EAG
- LEG
- LIN
- OPC
- RCH
- SEC
- WAS
- OTH

1. Ronald E. Owen
15th Floor - LCSC Billing Department
600 North 19th Street
Birmingham, Alabama 35203
2. Stanley Sansing
14th Floor - LCSC
600 North 19th Street
Birmingham, Alabama 35203

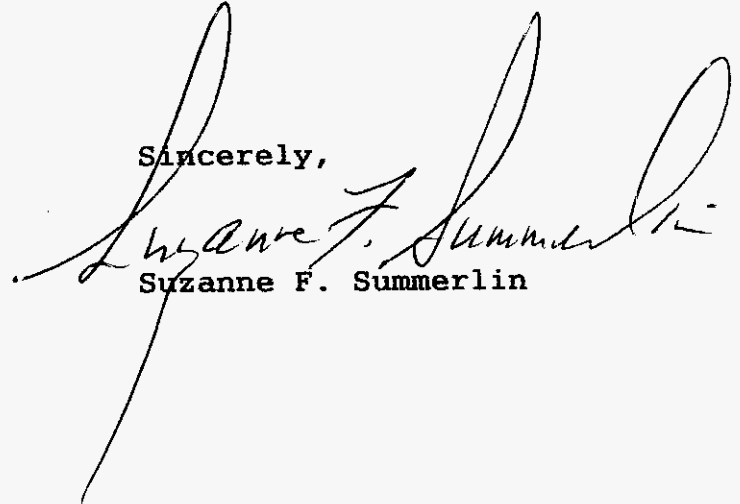
*Subpoenas issued 4/27/98
by cp (kf)*

RECEIVED & FILED
[Signature]
FPSC-BUREAU OF RECORDS

DOCUMENT NO.
064616-98
4-27-98

3. Theresia N. Gentry
14th Floor - LCSC
600 North 19th Street
Birmingham, Alabama 35203
4. Stephanie Hurt
14th Floor - LCSC
600 North 19th Street
Birmingham, Alabama 35203
5. Shirley M. Chapman
Room 237
500 North Orange Avenue
Orlando, Florida 32801

Sincerely,



Suzanne F. Summerlin

SFS:ss
Enclosures (16)

ORIGINAL

Complaint of Supra Telecommunications) Docket No. 980119-TP
 and Information Systems, Inc., Against)
 BellSouth Telecommunications, Inc.) Filed: April 27, 1998
)

**SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S RESPONSE
 TO BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO QUASH SUBPOENAS
 AND
 EMERGENCY MOTION REQUESTING PREHEARING OFFICER TO ISSUE
 REQUEST TO THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA,
 TO ISSUE OUT-OF-STATE SUBPOENAS**

Supra Telecommunications & Information Systems, Inc., ("Supra"), hereby files its response to BellSouth Telecommunications, Inc.'s ("BellSouth's") Motion to Quash Subpoenas and its Emergency Motion Requesting Prehearing Officer to Issue Request to the Circuit Court of Jefferson County, Alabama, to Issue Out-of-State Subpoenas, and as grounds therefor, states:

1. Although Supra does not concede that Supra should be required to obtain personal individual service of subpoenas for BellSouth employees to compel their attendance at depositions or at hearing, in the interests of the extremely short time before this matter goes to hearing, Supra applied for and obtained from the Florida Public Service Commission's Division of Records and Reporting subpoenas for deposition for eight individuals, employees of BellSouth, that it believed were located in Birmingham, Alabama. (Supra has subsequently learned from BellSouth that one of these individuals, Shirly M. Chapman, is located in Orlando, Florida.) These depositions are scheduled for Monday, April 27, 1998, in Birmingham, Alabama. The

DOCUMENT NUMBER-DATE

04616 APR 27 88

FPSC RECORDS/REPORTING

individuals are as follows:

- 1) Wayne Carnes
BellSouth Telecommunications, Inc.
E9E1
3535 Colonnade Parkway
Birmingham, AL 35243
- 2) Cynthia Arrington
BellSouth Telecommunications, Inc.
14th Floor
600 North 19th Street
Birmingham, AL 35203
- 3) J. C. Bledsoe
BellSouth Telecommunications, Inc.
27th Floor
600 North 19th Street
Birmingham, AL 35203
- 4) Ronald E. Owen
15th Floor
600 North 19th Street
Birmingham, AL 35203
- 5) Stanley J. Sansing
17th Floor
600 North 19th Street
Birmingham, AL 35203
- 6) Theresia N. Gentry
14th Floor - LCSC
600 North 19th Street
Birmingham, AL 35203
- 7) Stephanie Hurt
14th Floor - LCSC
600 North 19th Street
Birmingham, AL 35203
- 8) Shirley M. Chapman
Room 237
500 North Orange Avenue
Orlando, FL 32801

(This list reflects several name and address corrections subsequently provided by BellSouth.)

Whereas BellSouth has voluntarily agreed to produce these individuals for deposition on the above-noted date at the above-

noted location, with the exception of J. C. Bledsoe, whose deposition will be taken by telephone, the subpoenas for deposition have become unnecessary and BellSouth's motion to quash these subpoenas for deposition is rendered moot.

2. Supra applied for and obtained from the Florida Public Service Commission's Division of Records and Reporting subpoenas for hearing for the same eight individuals noted in paragraph 1 above. These subpoenas require these individuals to appear for the hearing in this docket set for 9:30 A.M., Thursday, April 30, 1998.

3. In order for Supra to properly serve the hearing subpoenas on seven of the above-noted individuals, the State of Alabama, by and through the Jefferson County Circuit Court in Birmingham, Alabama, will require an order from the Florida Public Service Commission requesting the Jefferson County Circuit Court to issue these subpoenas.

4. As the Prehearing Officer has been designated by the Chairman of the Commission and empowered by Rule 25-22.038, Florida Administrative Code, to handle procedural matters for this docket, Supra requests the Prehearing Officer to issue the attached request of the Jefferson County Circuit Court to issue the above-referenced hearing subpoenas.

5. BellSouth's motion to quash apparently asserts that the Florida Public Service Commission lacks the authority to subpoena out-of-state non-party witnesses to appear at a hearing in a Commission proceeding in Tallahassee, Florida.

6. BellSouth's motion to quash three hearing subpoenas that

have already been served (invalidly) on three of the eight individuals, relies *solely* on its perception that a limitation on the Commission's subpoena power is created by a phrase in Rule 25-22.045(2), Florida Administrative Code. BellSouth states that the following underlined language limits the Commission's subpoena power:

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)

7. BellSouth fails to provide the statutory language that empowers the Commission to issue subpoenas compelling the attendance of witnesses set out in Section 350.123, Florida Statutes:

The commission may administer oaths, take depositions, issue protective orders, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence necessary for the purpose of any investigation or proceeding. Challenges to, and enforcement of, such subpoenas shall be handled as provided in s. 120.569.

8. The very broad statutory grant of power in Section 350.123, Florida Statutes, cannot be limited by a provision in a rule. To the extent that any such limitation were attempted to be created in Rule 25-22.045(2), Florida Administrative Code, it would be invalid. However, the language in Rule 25-22.045(2) is not intended to be limiting, but to point out that the Commission's subpoena power would apply throughout the state as opposed to only specific locations in the state. The Rule's language merely reflects the fact that at the time of its most

recent amendment in 1981, prior to AT&T's divestiture, practically 100% of witnesses that would have been needed in Florida Public Service Commission proceedings would have been located within the state. Times have changed and utilities that traditionally served a state's residents with local employees have now spread their employees across several states.

9. The subpoena power set out in Section 350.123, Florida Statutes, is not limited by any such language as appears in Rule 25-22.045(2), Florida Statutes. Ultimately, the power to enforce any subpoena issued by the Florida Public Service Commission rests in the circuit courts of the State of Florida, and in the corresponding courts in any other state that issues subpoenas on behalf of the Florida Public Service Commission

10. The Commission has, in fact, issued subpoenas to out-of-state witnesses in the past.

11. The individuals for whom these subpoenas are being obtained are not simply Alabama citizens. These individuals are employees of BellSouth which is a local exchange telecommunications company regulated by the Florida Public Service Commission. The Commission has authority to compel the attendance of utility employees that, although they may happen to reside outside of Florida, have daily contacts and interactions in the course of doing BellSouth's business in Florida. Indeed, these individuals are BellSouth. The Commission has this subpoena power to enable it to regulate utilities like BellSouth. Any other interpretation would permit a utility to relocate relevant witnesses to frustrate the Commission's and other

parties' rights to obtain relevant information in proceedings before it.

12. The cases cited by BellSouth to support its motion to quash are irrelevant. For example, BellSouth cites *United Teachers Assoc. Insur. Co. v. Vanwinkle*, 657 So.2d 1232 (Fla. 3d DCA 1995), for the proposition that non-resident corporate defendants need not produce non-resident corporate officers for deposition in Florida unless the non-resident corporate defendant is seeking affirmative relief in the proceeding. The entire opinion consists of the following paragraph:

In the absence of extraordinary circumstances, not shown to exist here, the deposition of a non-resident officer of a non-resident corporate defendant not seeking affirmative relief is to be taken at deponent's place of residence and the trial court should not require that party to advance travel costs to counsel in connection therewith. For this reason, the order requiring the within petitioner to advance travel costs is quashed. *Madax Int'l Corp. v. Delcher Intercontinental Moving Services, Inc.*, 342 So.2d 1082 (Fla.2d DCA 1977).

This opinion clearly does not address the instant matter in which *Supra* is requesting subpoenas for witnesses to appear at a hearing before the Commission. The opinion in *United Teachers*, supra, does not address the scenario wherein the corporate defendant is a regulated utility certificated to provide services within the state in which a regulatory proceeding before a governmental body is taking place and the non-resident witnesses are employees of that utility providing the services of that utility within the state and, as such, constitute witnesses with relevant factual information. It also does not address the fact

that these subpoenas are for hearing. Although Florida and Alabama law place limitations on the physical location of depositions that require them to be taken within a certain proximity of the witness' place of residence, such limitations cannot be placed on subpoenas for appearance at a trial or hearing. This is self-evident in that it is not possible to accommodate these concerns when a hearing must take place in the location of the court or administrative body involved.

Depositions, as discovery tools, are generally permitted with minimal supervision and involvement of courts or administrative bodies and, as such, must have reasonable limitations to avoid abuse of individual witnesses. However, subpoenas compelling attendance of witnesses at trials or hearings have inherent protection against the abuse of individual witnesses as a result of the fact that the court or administrative body itself will be conducting the trial or hearing, as opposed to the attorneys and parties conducting discovery depositions.

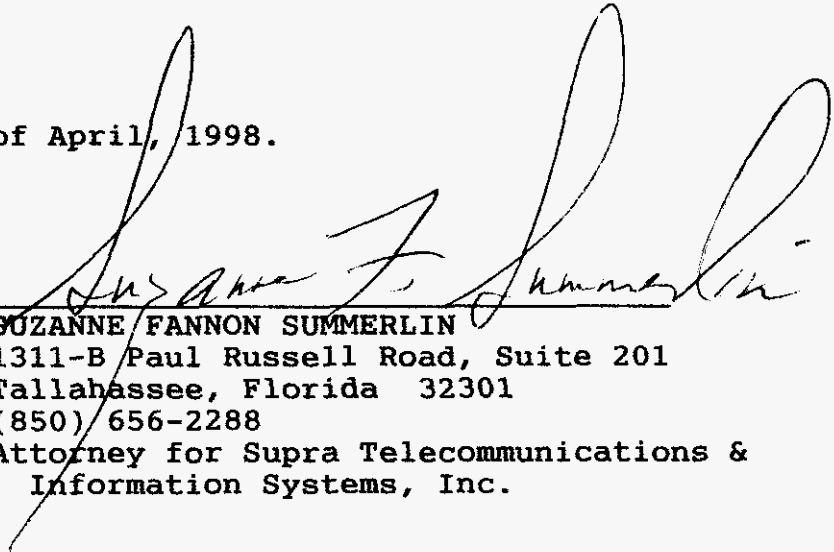
13. As noted above, Supra has served subpoenas for hearing on three of the above-mentioned individuals. However, Supra has subsequently determined that this service was invalid as the subpoenas were not first submitted for issuance by the State of Alabama through a circuit court. Therefore, Supra is obtaining new subpoenas for hearing for these three individuals and will serve these new subpoenas and the existing original subpoenas on seven of the above individuals as soon as the attached Request to the Circuit Court of Jefferson County, Alabama, to Issue Out-of-State Subpoenas is issued by the Prehearing Officer and submitted

to the Jefferson County Circuit Court. The eighth individual is not an out-of-state witness and this process is not necessary for this individual.

14. Supra respectfully requests immediate disposition of this matter as the hearing is scheduled for April 30, 1998.

WHEREFORE, Supra Telecommunications & Information Systems, Inc., respectfully requests the Prehearing Officer to deny BellSouth's motion to quash subpoenas to the extent it is not rendered moot and to immediately issue the attached Request to the Circuit Court of Jefferson County, Alabama, to Issue Out-of-State Subpoenas.

DATED this 27th day of April, 1998.



SUZANNE FANNON SUMMERLIN
1311-B Paul Russell Road, Suite 201
Tallahassee, Florida 32301
(850) 656-2288
Attorney for Supra Telecommunications &
Information Systems, Inc.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Supra Telecommunications) Docket No. 980119-TP
and Information Systems, Inc., Against)
BellSouth Telecommunications, Inc.) Filed: April 27, 1998
)

REQUEST TO THE CIRCUIT COURT OF JEFFERSON COUNTY,
ALABAMA TO ISSUE AN OUT-OF-STATE SUBPOENA

WHEREAS, the above-referenced matter is pending before the Florida Public Service Commission, in Tallahassee, Florida, and

WHEREAS, Supra Telecommunications & Information Systems, Inc., has obtained from the Florida Public Service Commission the attached subpoenas for hearing and desires to serve said subpoenas for the hearing that is set for 9:30 A.M., Thursday, April 30, 1998, before the Florida Public Service Commission, and

WHEREAS, the undersigned Prehearing Officer and Commissioner is designated by the Florida Public Service Commission to administer the procedural process of the above-referenced matter:

The Florida Public Service Commission, pursuant to the authority set out in Section 350.123, Florida Statutes, hereby petitions the Circuit Court of Jefferson County, Alabama, pursuant to the Alabama Rules of Civil Procedure, to issue a subpoena for hearing to:

- 1) Wayne Carnes
BellSouth Telecommunications, Inc.
E9E1
3535 Colonnade Parkway
Birmingham, AL 35243
- 2) Cynthia Arrington
BellSouth Telecommunications, Inc.
14th Floor
600 North 19th Street
Birmingham, AL 35203
- 3) J. C. Bledsoe
BellSouth Telecommunications, Inc.
27th Floor
600 North 19th Street
Birmingham, AL 35203
- 4) Ronald E. Owen
15th Floor
600 North 19th Street
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- 5) Stanley J. Sansing
17th Floor
600 North 19th Street
Birmingham, AL 35203
- 6) Theresia N. Gentry
14th Floor - LCSC
600 North 19th Street
Birmingham, AL 35203
- 7) Stephanie Hurt
14th Floor - LCSC
600 North 19th Street
Birmingham, AL 35203

to appear at the date and time stated therein.

DONE AND ORDERED, this the _____ day of _____,
1998.

E. LEON JACOBS, Commissioner and
Prehearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and facsimile to the following individuals this 27th day of April, 1998:

Nancy B. White, Esq.
BellSouth Telecommunications, Inc.
150 South Monroe Street, Room 400
Tallahassee, Florida 32301

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

John Bowman, Esq.
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Ms. MaryRose Sirianni
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