

NANCY B. WHITE
Assistant General Counsel-Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
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ORIGINAL

September 9, 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) and
Docket No. 980800-TP (Supra Collocation)**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to Supra Telecommunications and Information Systems, Inc.'s Motion to Dismiss and Motion to Strike for Misconduct and BellSouth's Motion to Strike Supra's Motions and for Sanctions, which we ask that you file in the 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,

Nancy B. White
Nancy B. White (pw)

cc: All parties of record
A. M. Lombardo
R. G. Beatty
William J. Ellenberg II

DOCUMENT NUMBER-DATE

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DIVISION OF RECORDS REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Supra Telecommunications) Docket No.: 980119-TP
and Information Systems, Inc., Against)
BellSouth Telecommunications, Inc.)
_____)

In Re: Petition for Emergency Relief of Supra) Docket No. 980800-TP
Telecommunications and Information)
Systems, Inc., Against BellSouth)
Telecommunications, Inc.)
_____) Filed: September 9, 1998

**BELLSOUTH'S OPPOSITION TO SUPRA'S MOTION TO DISMISS
AND MOTION TO STRIKE FOR MISCONDUCT AND BELLSOUTH'S
MOTION TO STRIKE SUPRA'S MOTIONS
AND FOR SANCTIONS**

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files its Response and Opposition to Supra Telecommunications and Information Systems, Inc.'s ("Supra") Motion to Dismiss BellSouth's Motion for Reconsideration and Clarification of Order No. PSC-98-1001-FOF-TP and Motion to Strike BellSouth's Answer in Docket No. 980800-TP for Misconduct ("Supra's Motions"). In addition, BellSouth hereby files its Motion to Strike Supra's Motions as Sham Pleadings for Sanctions. In support thereof, BellSouth states the following:

1. In its Motions, Supra accuses BellSouth of misconduct and requests dismissal of BellSouth's Motion for Reconsideration in Docket No. 980119-TP. Supra also seeks to have BellSouth's Answer in Docket No. 980800-TP stricken, as well as limitations placed on BellSouth's use of a future employee. Supra's Motions are meritless. The allegations contained therein are not supported by the facts or the law.

2. Supra's Motions are all underpinned by a single act taken by BellSouth - an offer of employment to a member of the Staff of the Florida Public Service Commission ("Commission"). Supra's accusations focus on an employment that is both legal and permitted pursuant to Chapter 112, Fla. Stat. (1997), a fact that Supra grudgingly admits in its Motions. See, Supra's Motions at ¶ 22.

3. While Supra's Motions are based on speculation, innuendo and groundless aspersions, there are several factual statements contained therein, which are important to note. First, it is true that BellSouth offered a position to a Staff member of the Commission. Second, it is true that this Staff member accepted the position. Third, it is true that this Staff member is experienced and competent in telecommunications matters. Fourth, it is true that, once BellSouth proffered the position to this Staff member, she was removed from active BellSouth dockets, as a matter of Commission policy. Fifth, it is true that this Staff member was active in the above-captioned dockets. Sixth, it is true that BellSouth has the resources to hire individuals, if those individuals desire to be hired by BellSouth. These are the only factual statements in Supra's Motions that relate to the instant employment.

4. Supra's remaining allegations are without any foundation. First, as set forth in the Affidavit of Nancy H. Sims, which is attached hereto as Exhibit "A," BellSouth did not offer the position to the Staff member in an attempt to alter or influence the outcome of these dockets. Second, BellSouth did not offer the position to the Staff member in an attempt to avoid her involvement in these dockets. Third, at no time did the potential effect that the Staff member's acceptance of the position might have on these dockets affect BellSouth's decision to offer her

the position. Supra's allegations that BellSouth had some sinister motive in hiring the Staff member does a grave injustice to both the Staff member and BellSouth.

5. Further, Supra insults the existing Staff members. Essentially, Supra is claiming that no other Staff member has the intellect, experience, or training to work on these dockets. Such a claim is ludicrous. Moreover, Supra's claim that the Commission will blindly rule in BellSouth's favor merely because a Staff member has been hired by BellSouth makes a mockery of the Commission's fiduciary responsibilities.

6. While Supra notes that the Staff member involved in the subject Motions is exempt from the application § 112.313, Supra still claims that BellSouth is guilty of "misconduct." Among Supra's multiple claims of alleged misconduct, it states:

It is critical to recognize that this misconduct by BellSouth is premeditated, targeted, and abusive of the process.

See, Supra's Motions at ¶ 32. BellSouth requests that the Commission require both Supra and its counsel to substantiate this claim with facts or face sanctions.

7. Supra's Motions should be denied as a sham pleading pursuant to Rule 1.150, Fla. R. Civ. P. A pleading is "considered a sham when it is palpably or inherently false and from the plain or conceded facts in the case, must have been known to the party interposing it to be untrue." Menke v. Southland Specialities Corp., 637 So. 2d 285 (Fla. 2nd DCA 1994). While the striking of pleadings is not favored, Supra's Motions are not pleadings. See, Rule 1.100(a), Fla. R. Civ. P. Additionally, based on the plain language of § 112.313(9), Fla. Stat., and Supra's Motions at ¶ 22, Supra knew that the complained of conduct was both lawful and proper. Accordingly, Supra's Motions should therefore be stricken.

8. Moreover, Supra's Motions are replete with "scandalous" matters, that should also be stricken pursuant to Rule 1.140, Fla. R. Civ. P. BellSouth is accused of "premeditated" wrongdoing by Supra without any factual or legal support. The accusations merely serve to wrongfully impugn the character of the Commission, the subject Staff member, and BellSouth, as well as unnecessarily taint these proceedings.

9. Scandalous allegations are defined by Florida courts to include matters as "unnecessary allegations censuring or accusing a party." Citing Burke v. Mesta Machinery Co., 5 F.R.D. 134 (Pa. 1946). Other courts have further defined scandalous as "any unnecessary allegation which reflects cruelly upon the moral character of an individual, or states anything in repulsive language which detracts from the dignity of the court." See Martin v. Hunt, 28 F.R.D. 35 (D.C. Mass. 1961).

10. In Ropes v. Stewart, 45 So. 31 (Fla. 1907), the Florida Supreme Court was faced with a very similar situation. In pleadings, the plaintiff accused the defendant of using "perjury and evil influence on the judge and jury" in order to procure a verdict against the plaintiff. Id. The Florida Supreme Court upheld the granting of defendant's motion to strike the allegations as scandalous. For this additional reason, Supra's Motions should be stricken.

11. Section 120.57(1)(b)(5), Fla. Stat., provides that pleadings in administrative proceedings should not be interposed for improper or frivolous purposes and that a violation of this requirement shall be subject to sanctions. There can be no doubt that Supra's Motions were filed for an improper and frivolous purpose. While the tactic of throwing enough mud at a person or company until some of it sticks may be a tactic condoned by the business world, it

cannot and should not, be condoned by this Commission. Supra's ascription of improper intent to BellSouth is not only unfounded, but the stuff of nightmares.

12. The statutory examples of improper purpose detailed in § 120.57(1)(b)(5), Fla. Stat., are to harass, cause unnecessary delay for a frivolous purpose, or a needless increase in the cost of litigation. The fact that there is no factual or legal basis to Supra's claims indicate that the sole purpose of the Motions is to harass.

13. In Mercedes Lighting and Electrical Supply, Inc. v. State Department of General Services, 560 So. 2d 272 (Fla. 1st DCA 1990), the Court held that "if a reasonably clear legal justification can be shown for the filing of the paper in question, improper purpose cannot be found and sanctions are inappropriate." Id. at 278. Here, there is clearly not a shred of legal justification for Supra's Motions. Even Supra admits that. See also Procacci Commercial Reality, Inc. v. Department of Health and Rehabilitative Services, 690 So. 2d 603 (1st DCA 1997). The Court in Procacci stated that a frivolous pleading is "one that is so readily recognizable as devoid of merit on the face of the record that there is little, if any, prospect whatsoever that it can ever succeed." Id. at 609.

14. Section 120.57(1)(b)(5), Florida Statutes is applicable to the Commission. The Commission has the authority to issue sanctions thereunder. See 96 FPSC 10:386, Order No. PSC-96-1320-FOF-WS, issued on October 30, 1996. BellSouth, therefore, requests that this Commission issue sanctions against Supra, including but not limited to, the striking of Supra's *Motions and for reasonable attorneys' fees and costs.*

WHEREFORE, BellSouth respectfully requests that the relief sought herein be granted.

Respectfully submitted this 9th day of September, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.



ROBERT G. BEATTY

NANCY B. WHITE

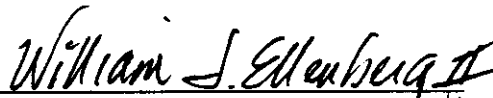
GEORGE B. HANNA

c/o Nancy Sims

150 South Monroe Street, #400

Tallahassee, Florida 32301

(305) 347-5555



WILLIAM J. ELLENBERG II

675 West Peachtree Street, #4300

Atlanta, Georgia 30375

(404) 335-0711

CERTIFICATE OF SERVICE
Docket No. 980800-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by
Federal Express this 9th day of September, 1998 to the following:

Beth Keating, Esq.
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
(850) 413-6199

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

Supra Telecommunications and
Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, FL 33133
Tel. No. (305) 476-4220
Fax. No. (305) 476-4282

Amanda Grant
BellSouth Telecommunications, Inc.
Regulatory & External Affairs
675 West Peachtree Street, N.E.
Room 38L64
Atlanta, Georgia 30375




Nancy B. White 

Exhibit A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Supra Telecommunications) Docket No.: 980119-TP
and Information Systems, Inc., Against)
BellSouth Telecommunications, Inc.)
_____)

In Re: Petition for Emergency Relief of Supra) Docket No. 980800-TP
Telecommunications and Information)
Systems, Inc., Against BellSouth)
Telecommunications, Inc.)
_____) Filed: September 10, 1998

State of Florida
County of Leon

Affidavit of Nancy H. Sims

Before me, the undersigned authority, personally appeared Nancy H. Sims, who stated that she is currently the Director of Regulatory Relations for BellSouth Telecommunications, Inc.-Florida ("BellSouth-Florida"), and further states the following:

1. My title is Director of Regulatory Relations for BellSouth-Florida. I have held that title since 1994.
2. My business address is 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301.
3. On or about June of 1998, I became aware that Elise McCabe, Manager of Regulatory Relations for BellSouth-Florida would be moving to a different position within BellSouth. The position of Manager reports to me and is under my supervision.
4. During the course of my duties, I became familiar with the quality of work, intellect, and personality of MaryRose Sirianni, an employee of the Florida Public Service Commission.

5. On or about August 3, 1998, I formally offered the job of Manager of Regulatory Relations for BellSouth-Florida to Ms. Sirianni. On or about August 19, 1998, Ms. Sirianni accepted the offer.

6. My reasons for offering Ms. Sirianni the position had nothing to do with her involvement in Docket No. 980119-TP or Docket No. 980800-TP. My sole goal was to fill the vacant position with someone I considered to be appropriate, competent, and experienced in telecommunications matters. Ms. Sirianni happened to be that person.

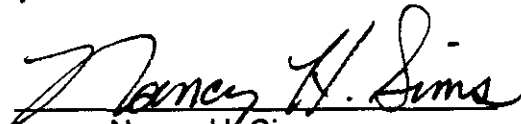
7. At no time did the potential effect that Ms. Sirianni's acceptance of the position might have on these dockets influence my decision to offer her the position.

8. I did not offer the position to Ms. Sirianni in an attempt to avoid her involvement in these dockets.


9. I did not offer the position to Ms. Sirianni in an attempt to alter or influence the outcome of these dockets.

10. Further Affiant sayeth not.

Dated this 8th day of September, 1998.


Nancy H. Sims

Sworn to and subscribed
before me this 8th day of September, 1998.


Notary Public (Signature)

Tanya W. Lynn
Notary Public (Printed Name)

Personally Known or
Produced Identification _____

My Commission expires: _____



Tanya W. Lynn
MY COMMISSION # CC673501 EXPIRES
September 8, 2001
BONDED THRU TROY FAIR INSURANCE, INC.