

J. PHILLIP CARVER
General Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0710

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February 1, 1999

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. 981832-TP

Dear Ms. Bayó:

Enclosed are an original and 15 copies of Motion of BellSouth to Dismiss Petition or, Alternatively, to Strike Petition as a Sham. Please file this document in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me.

Sincerely,

J. Phillip Carver
J. Phillip Carver

ACK _____

AFA _____

APP _____

CAF _____

CMU *Simmons*
Enclosures

CTR _____

EAG _____ cc: All parties of record

LEG 1 M. M. Criser, III

LIN 5 N. B. White

OPC _____ William J. Ellenberg II (w/o enclosures)

ROH _____

SEC 1

WAS _____

OTH _____

RECEIVED & FILED
[Signature]
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

01268 FEB-1 99

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 981832-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 1st day of February, 1999 to the following:

Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

William L. Hyde, Esq.
Gunster, Yoakley, Valdes-Fauli &
Stewart, P.A.
215 South Monroe Street
Suite 830
Tallahassee, FL 32301
Tel. No. (850) 222-6660
Fax. No. (850) 222-1002
Atty. for Supra



J. Phillip Carver

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition to Set Aside 2/3/98 Order)	
Approving Resale, Interconnection And)	
Unbundling Agreement Between)	
BellSouth Telecommunications and)	Docket No. 981832-TP
Supra Telecommunications &)	
Information Systems; And To Approve)	
Agreement Actually Entered Into By)	
The Parties Pursuant to Sections)	Filed: February 1, 1999
251, 252 and 271 Of the)	
Telecommunications Act of 1996)	

**MOTION OF BELL SOUTH TO DISMISS PETITION OR,
ALTERNATIVELY, TO STRIKE PETITION AS A SHAM**

BellSouth Telecommunications, Inc. ("BellSouth"), hereby respectfully moves, pursuant to Rules 1.140 and Rule 1.150, Florida Rules of Civil Procedure and Commission Rule 22.037, for the entry of an order dismissing the Petition of Supra Telecommunications ("Supra") or, alternatively striking the Petition as a Sham, and states as grounds in support thereof, the following:

1. Supra has filed two Petitions with the Florida Public Service Commission ("Commission") that are based upon a single set of allegations. The only pertinent difference between the two petitions is that the Petition filed in this docket is styled as a request to set aside an order of the Commission dated February 3, 1998, approving an interconnection agreement. The other petition (Docket No. 981833-TP) requests that the Commission "initiate an investigation into the unfair practices of BellSouth Telecommunications, Inc. . . .". Both the subject petition (to set aside the Commission Order) and the other should be

stricken as a sham or, alternatively, dismissed for failure to state a cause of action.

2. The subject petition contains an essential nugget of fact, i.e., that BellSouth made an error regarding attachments to an Interconnection Agreement that it filed with this Commission in December, 1997. Beyond this, the Petition contains a partial recitation of the relevant facts that has the effect of misrepresenting the situation at issue to the Commission. The Complaint also contains a series of outrageous conclusions to the general effect that BellSouth's simple mistake should be interpreted as some sort of plot. When all of the facts are considered, however, it is obvious that the Petition filed by Supra is simply a sham. Moreover, even if the facts alleged by Supra were true, they fail to state a cause of action upon which the requested relief can be granted.

3. The nugget of truth in Supra's Petition consists of the fact that in late September or early October of 1997, BellSouth sent to Supra for review an agreement that differed from the Agreement subsequently filed. The first version of the Agreement (which was a form agreement that did not even identify Supra by name) was federal expressed to Mr. Ramos, who executed it on behalf of Supra. The document sent to Supra was BellSouth's standard agreement sent to CLECs as a starting point for negotiations. Immediately Supra, upon receipt of the standard agreement executed the agreement sent to it and returned it to BellSouth. Mr. Finlen called Supra stating that the agreement sent to Supra was for negotiation purposes and BellSouth did not intend for Supra to execute that version in that it didn't even contain Supra's name. Mr. Ramos indicated that he

was ready to execute the agreement, and asked Mr. Finlen to send the executable contract immediately. Mr. Finlen then sent Supra an executable contract via e-mail in a zipped format (meaning the file was compressed) with instructions on how to unzip the document. The next day Mr. Ramos called Mr. Finlen stating that he was unable to "unzip" the file. Mr. Finlen agreed to overnight a paper version of the agreement for execution. It is at this point that the error was made in transmitting the agreed upon contract. The paper document was executed by Mr. Ramos and filed with the commission return. This second agreement does, in fact, have different language than the first regarding unbundled network elements. Sending two agreements with dissimilar language on this issue was BellSouth's mistake. What Supra's petition does not explain is that the mistake has been known to Supra since August of 1998, and that BellSouth has made more than one offer to appropriately remedy the situation.

4. In July of 1998, counsel for Supra expressed Supra's desire to adopt the BellSouth-MCI interconnection agreement. On July 17, 1998, counsel for BellSouth responded by providing to Supra a standard adoption contract for that purpose. (All pertinent correspondence referenced herein is attached as Composite Exhibit A.) Supra never responded to BellSouth's offer to allow it to adopt the MCI interconnection agreement.

5. On August 3, 1998, the subject mistake was discovered. On August 17, 1998, counsel for Supra (Suzanne F. Summerlin) sent to BellSouth a letter in which she expressed knowledge of the mistake and the status of the

agreement between the parties in light of this. Specifically, she stated that “Supra would like to be informed immediately as to the prices for the combination of unbundled network elements set out in Supra’s Interconnection Agreement and the timeframes in which they can be provided.” (Composite Exhibit A). Four days later, counsel for BellSouth (Mary Jo Peed) sent a letter to counsel for Supra acknowledging that an error had occurred, and providing an amendment to the agreement for acceptance by Supra. This amendment would have added to the filed Agreement the subject language, which was included in the draft Agreement, but not in the filed version. Supra did not respond to this correspondence.

6. On October 14, 1998, BellSouth again offered to amend the original BellSouth-Supra agreement to reinstate the original language or to have Supra adopt the MCI-BellSouth agreement. Supra did not respond to this correspondence either. Thus, a complete exposition of the facts demonstrates that BellSouth made a mistake, Supra has been aware of it for approximately six months, and that BellSouth offered to Supra almost immediately the only remedy that is needed, or to which Supra is entitled, to amend the agreement.

7. Moreover, this appears to be the relief that Supra is really seeking to obtain herein, to have an agreement between Supra and BellSouth that contains the subject language regarding unbundled network elements.¹ At the same time, however, Supra has also made a variety of inflammatory allegations to the effect that BellSouth has engaged in some sort of a fraud. However,

beyond the fact of a simple mistake, there is absolutely nothing set forth in the Petition to support this theory. For this reason, the Petition is a sham and should be stricken.

8. Stripped of these inflammatory allegations, Supra's Petition would appear to seek, in practical effect, what BellSouth has already offered (to amend the Interconnection Agreement) except for two things. One, this is not the relief requested by Supra. By requesting that the Commission set aside the Order approving the current Interconnection Agreement, Supra is, in effect, requesting that this agreement be rendered null and void. At the same time, the parties have treated the agreement as valid and, in fact, Supra has filed a number of complaints to enforce their view of their rights under the Agreement. These actions are both legally and practically at odds with a plea that the contract be set aside in its entirety. It is equally inappropriate for Supra to ask this Commission to replace the current agreement in toto with the "original" agreement, an e-mailed draft agreement that contained boilerplate language and did not even refer to Supra by name. Again, the remedy to the problem is what BellSouth has offered—an amendment to the agreement to capture the pertinent terms of the original Agreement.

9. The second problem with the Petition is that it appears to raise as a pivotal issue, a dispute that has nothing to do with the requested relief. The allegations of paragraphs 17 and 18 (as well as the correspondence attached hereto) reveal that BellSouth and Supra appear to have a (at least developing)

¹ The Petition generally alleges (page 7) that BellSouth did not offer to amend the agreement to include all the original language. The Petition fails, however, to identify any language that Supra wanted in

disagreement as to the meaning of the unbundled network element language. Thus, the real issue here would appear not to be the inclusion in the Interconnection Agreement of UNE combination language. This concern was addressed entirely by the offer in BellSouth's correspondence of August 21, 1998. The real issue would appear to be a difference of opinion as to contract interpretation, an issue that Supra alludes to in passing, but which is completely unaddressed by Supra's plea for relief. Again, the proper remedy for the problem that has been raised would be for the parties to negotiate to amend the current agreement to accomplish this. This is precisely what BellSouth has proposed to do.

10. In its Petition, Supra demands that the Commission impose "monetary sanctions" upon BellSouth for its conduct. There are two difficulties with this position: 1) Supra has failed entirely to set forth facts that, if proven, would demonstrate the existence of improper conduct. Instead, the facts alleged, taken in the light most favorable to Supra, reveal nothing more than a mistake by BellSouth. Moreover, the petition fails entirely to state any legal basis upon which a "monetary penalty" could be levied. The petition does note that the Commission has the ability to impose penalties for violation of its rules. It does not identify, however, any rule that has been violated, and its general citation to the language of Florida Statutes 364 is insufficient to state a legal basis for the imposition of a penalty. There is, likewise, no basis for the other relief requested by Supra.

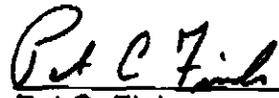
the amendment that BellSouth refused to add.

11. Supra's Petition is a sham that is premised upon a partial rendering of the facts combined with unsupportable allegations of some nefarious intent by BellSouth. It does not set forth a basis to, in effect, invalidate the current contract or substitute an earlier draft of the agreement. Accordingly, it should be dismissed.

WHEREFORE, BellSouth requests the entry of an Order striking the Petition as a sham or, alternatively, dismissing it.

VERIFICATION

I verify that the facts set forth in this Motion are true and correct to the best of my knowledge.


Pat C. Finlen

Respectfully submitted this 1st day of February, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

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

William J. Ellenberg II

WILLIAM J. ELLENBERG II
J. PHILLIP CARVER (PW)
675 West Peachtree Street, #4300
Atlanta, Georgia 30375
(404) 335-0710

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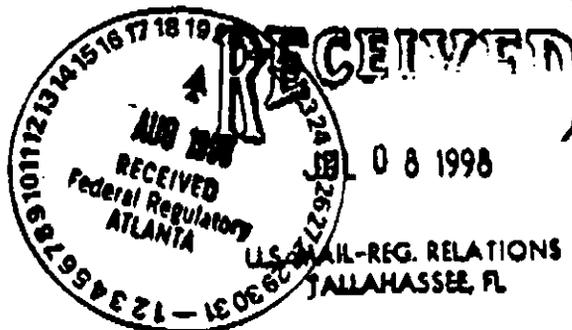
Supra Telecom & Information Systems, Inc

EXHIBIT 1

Phone: (305) 443-
Fax: (305) 443-
2620 S.W. 27th A
Miami, FL 33133
Email: sales@stis
www.stis.com

July 6, 1998

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



RE: Adoption of MCI Telecommunications Corporation's Interconnection Agreement with BellSouth Telecommunications, Inc., by Supra Telecom & Information Systems, Inc. and BellSouth Telecommunications, Inc.'s Duty to Provide Combinations of Unbundled Network Elements to Supra Telecom & Information Systems, Inc.

Dear Ms. White:

Please accept this as notification to BellSouth Telecommunications, Inc. that, pursuant to Section 252(i) of the Telecommunications Act of 1996 and Title 47 of the Code of Federal Regulations Section 51.809, Supra Telecom & Information Systems, Inc., wishes to adopt the Interconnection Agreement that has been negotiated and executed between BellSouth Telecommunications, Inc., and MCI Telecommunications Corporation. Supra Telecom & Information Systems, Inc., will be filing a petition to elect this agreement with the Florida Public Service Commission in the immediate future.

On a different matter, it is my understanding that BellSouth Telecommunications, Inc., has refused to provide combinations of unbundled network elements to Supra Telecom & Information Systems, Inc., that are provided for other telecommunications carriers at this time. Pursuant to Title 47 of the Code of Federal Regulations Section 51.809, BellSouth has an affirmative duty to provide Supra Telecom & Information Systems, Inc., any "interconnection, service, or network element arrangement" that it currently provides under any interconnection agreement approved by the Florida Public Service Commission. Supra Telecom & Information Systems, Inc., is requesting combinations of network elements that are currently being provided by BellSouth under approved interconnection agreements to other telecommunications carriers in the State of Florida. It is imperative that BellSouth immediately provide these combinations of network elements to Supra. Please provide a written response to this request stating that BellSouth will be providing these

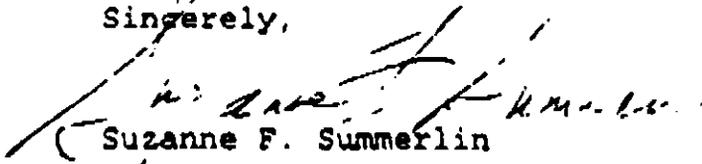
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EXHIBIT 1

FAX _____ FILE # ✓

requested combinations of network elements without unreasonable delay or explaining precisely what BellSouth's denial of this request is based on so that Supra may proceed expeditiously to the Florida Public Service Commission for emergency relief on this matter.

Sincerely,


Suzanne F. Summerlin

SFS:ss

cc: Sally Simmons, FPSC Division of Communications
Martha Carter Brown, Esq., FPSC Division of Legal Services
MaryRose Sirianni, FPSC Division of Communications
Beth Keating, Esq., FPSC Division of Legal Services



STIS

Supra Telecom & Information Systems, Inc.

Phone (305) 443-3
Fax: (305) 443-8
2620 S.W. 27th Ave
Miami, FL 33133
Email: sales@stis.com
www.stis.com

RECEIVED

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July 10, 1998

U.S. MAIL-REG. RELATIONS
TALLAHASSEE FL

VIA FAX DELIVERY TO (305) 577-4491



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

RE: BellSouth's Provision of Combinations of Unbundled Network Elements to Supra on Same Terms as Provided to MCI and AT&T

Dear Ms. White:

It is my understanding that BellSouth has indicated that it has no contractual or statutory obligation to provide combinations of unbundled network elements to Supra Telecom & Information Systems, Inc., and that any provision of such combinations would be outside the jurisdiction of the Florida Public Service Commission. Based on Marcus Cathey's letter of July 2, 1998, BellSouth indicates that it is developing a pricing proposal to send to Supra regarding Supra's request for combinations of unbundled network elements.

Supra hereby demands the provision of combinations of unbundled network elements in the same combinations and at the same rates, terms, and conditions as BellSouth is providing to MCI and AT&T. BellSouth has been made aware of Supra's intention to elect the BellSouth/MCI interconnection agreement in full and that a petition for approval of this election will be filed immediately. BellSouth also is aware that the Commission has recently approved the election of a more favorable interconnection agreement (that between GTE and AT&T) by Sprint after the conclusion of a full arbitration proceeding between Sprint and GTE. The Telecommunications Act of 1996 and the Commission's own decisions provide the legal basis for the approval of Supra's election of the BellSouth/MCI agreement.

BellSouth has no basis on which to deny Supra the immediate provision of combinations of unbundled network elements that it is providing to MCI at the same rates and on the same terms and

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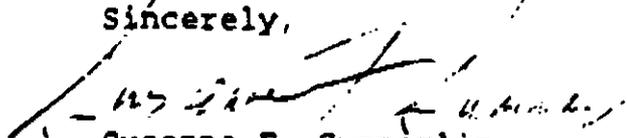
EXHIBIT 2

ED I ✓ KR

conditions that it is providing such to MCI. Supra cannot afford and will not accept delay on this matter.

Please respond to this demand immediately in writing as to when BellSouth will make the requested combinations of unbundled network elements available at the requested rates, terms and conditions or that BellSouth refuses to do so, in order that Supra can take appropriate action. Thank you.

Sincerely,


Suzanne F. Summerlin

SFS:ss

cc: Ms. Sally Simmons, FPSC Division of Communications
Ms. MaryRose Sirianni, FPSC Division of Communications
Martha Carter Brown, Esq., FPSC Division of Legal Services
Beth Keating, Esq., FPSC Division of Legal Services

08/17/98

15:51

BELL

4451
LA + 14048859920

NO. 068

Mary Jo Freed
General Attorney

BellSouth Telecommunications, Inc.
Legal Department - Suite 4300
675 West Peachtree Street
Atlanta, Georgia 30375-0001
Telephone: 404-333-0708
Facsimile: 404-666-3888

VIA HAND DELIVERY

July 17, 1998

Suzanne F. Summerlin
Supra Telecom & Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, Florida 33133



Re: Adoption of Existing Interconnection Agreement

Dear Ms. Summerlin:

The purpose of this letter is to respond to your letters to Ms. Nancy White dated July 6, 1998 and July 10, 1998. In the July 6th letter, you stated that Supra Telecom & Information Systems, Inc. wishes to adopt the Interconnection Agreement negotiated and executed between BellSouth and MCI Telecommunications Corporation. While BellSouth has not executed an agreement with MCI Telecommunications Corporation, it has negotiated and executed an agreement with MCI Metro Access Transmission Services, Inc.. It is my assumption that it is the MCI Metro agreement that was the subject of arbitration before the Florida Public Service Commission and signed by the parties on June 3, 1997 that is the subject matter of Supra's request.

In light of the decision of the Florida Commission in the Sprint/GTE proceeding, BellSouth is not opposed to proceeding with the adoption by Supra of the MCI Metro interconnection agreement. BellSouth has prepared a standard adoption contract for section 252(f) purposes and I am enclosing a copy of that standard for your review.

As you know, the MCI Metro interconnection agreement has been the subject matter of continuing litigation before the Commission as well as the federal district court. Supra's adoption of the MCI Metro agreement will be subject to the incorporation of the decisions in these proceedings, as will be the course of dealing between BellSouth and MCI Metro. Included within these decisions are the decisions of the Commission in Dockets 960757-TP, 960833-TP, 960846-TP and 971140-TP. The decisions of the Commission in Dockets 960757-TP, 960833-TP, and 960846-TP were appealed to the U.S.

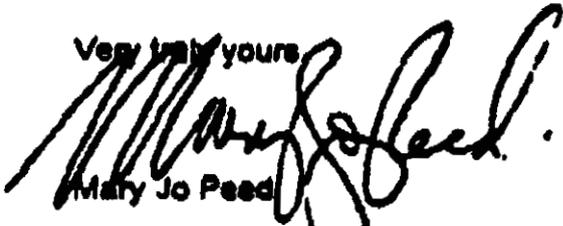
EXHIBIT 3

District Court for the Northern District of Florida, case numbers 497-CV-282 and 497-CV-141.

In response to your request in the July 10th letter that BellSouth immediately begin to provide combinations of unbundled network elements to Supra, while BellSouth has provided loop and port combinations of unbundled network elements in Florida, it has done so in a testing arrangement only and has charged the retail rate less the wholesale discount for the combination on the basis that the price of the combination was not determined by the Commission and that the combination duplicates a retail service offered by BellSouth. The issues of combinations of network elements, who provisions such combinations and at what price such combinations are offered are precisely the issues of Commission docket 980848-TP. The Commission has issued an order in that docket dated June 12, 1998. BellSouth filed a motion for reconsideration that has yet to come before the Commission. Further, BellSouth and MCImetro have not submitted to the Commission for its approval an amendment to the Interconnection Agreement that would incorporate the Commission's June 12, 1998 order. Therefore, until such time as MCImetro and BellSouth execute an amendment to the current interconnection agreement, BellSouth will provision and price combinations of unbundled network elements that duplicate retail services as resale. Supra can expect the same treatment of its orders by BellSouth.

Please let me hear from you regarding the adoption agreement.

Very truly yours,



Mary Jo Peed

cc: Nancy White
Jerry Hendrix
Pat Finlen

AGREEMENT

This Agreement, which shall become effective as of the _____ day of _____, 1998, is entered into by and between _____ ("ALEC-1") a _____ corporation on behalf of itself, and BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, having an office at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns.

WHEREAS, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1997; and

WHEREAS, section 252(i) of the Act requires BellSouth to make available any interconnection, service, or network element provided under an agreement approved by the appropriate state regulatory body to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in its entirety; and

WHEREAS, ALEC-1 has requested that BellSouth make available the interconnection agreement in its entirety executed between BellSouth and _____ ("") dated _____ for the state(s) of _____.

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Agreement, ALEC-1 and BellSouth hereby agree as follows:

1. ALEC-1 and BellSouth shall adopt in its entirety the _____ Interconnection Agreement dated _____ and any and all amendments to said agreement executed and approved by the appropriate state regulatory commission as of the date of the execution of this Agreement. The _____ Interconnection Agreement and all amendments are attached hereto as Exhibit 1 and incorporated herein by this reference.

2. The term of this Agreement shall be from the effective date as set forth above and shall expire as set forth in section _____ of the _____ Interconnection Agreement. For the purpose of determining the expiration date of this Agreement pursuant to section _____ of the _____ Interconnection Agreement, the effective date shall be **[FILL IN EFFECTIVE DATE OF THE AGREEMENT BEING ADOPTED.]**

3. At least 30 days after execution, BellSouth shall provide and make available to ALEC-1 a copy of all amendments to the _____ Interconnection Agreement executed after the effective date of this Agreement. ALEC-1 shall notify BellSouth of acceptance or rejection of the amendment within 30 days of receipt of said amendment.

4. **ALEC-1 shall accept and incorporate any amendments to the Interconnection Agreement executed as a result of any final judicial, regulatory, or legislative action.**

4. **Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:**

BellSouth Telecommunications, Inc.

**OLEC Account Team
Room E4E1
3838 Colonnade Parkway
Birmingham, Alabama 35243**

and

**General Attorney - COU
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30376**

ALEC-1

or at such other address as the intended recipient previously shall have designated by written notice to the other Party. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

BellSouth Telecommunications, Inc.

ALEC-1

DATE

DATE

Legal Department

NANCY B. WHITE
Assistant General Counsel - Florida

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



July 8, 1998

Via Facsimile (850) 658-5889

Suzanne Fannon Summerlin, Esq.
1311-B Paul Russell Rd., #201
Tallahassee, Florida 32301

RE: Adoption of MCI Telecommunications Corporation's Interconnection Agreement with BellSouth Telecommunications, Inc., by Supra Telecom & Information Systems, Inc. and BellSouth Telecommunications, Inc.'s Duty to Provide Combinations of Unbundled Network Elements to Supra Telecom & Information Systems, Inc.

Dear Ms. Summerlin:

This will acknowledge receipt of your letter of July 6, 1998 regarding Supra's desire to adopt the MCI-BellSouth Interconnection Agreement. I have forwarded your letter to Ms. Mary Jo Peed in Atlanta, Georgia. She will be responding in an expeditious manner.

Sincerely,
Nancy B. White
Nancy B. White

NBWM

cc: Sally Simmons
Martha Carter Brown, Esq.
MaryRose Siranni
Beth Keating, Esq.
Mary Jo Peed, Esq.

Legal Department

NANCY B. WHITE
Assistant General Counsel - Florida

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

July 13, 1998

Via Facsimile (850) 656-6589

Suzanne Fannon Summerlin, Esq.
1311-B Paul Russell Rd., #201
Tallahassee, Florida 32301



RE: BellSouth's Provision of Combinations of Unbundled Network Elements to Supra on Same Terms as Provided to MCI and AT&T

Dear Ms. Summerlin:

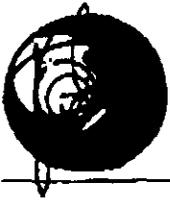
This will acknowledge receipt of your letter of July 10, 1998 regarding Supra's desire to acquire the provision of combinations of unbundled network elements in the same combinations and at the same rates, terms, and conditions as BellSouth is providing to MCI & AT&T. I have forwarded your letter to Ms. Mary Jo Peed in Atlanta, Georgia. She will be responding in an expeditious manner.

Sincerely,

Nancy B. White / v.f.
Nancy B. White

NBW/vf

cc: Sally Simmons
Martha Carter Brown, Esq.
MaryRose Sirianni
Beth Keating, Esq.
Mary Jo Peed, Esq.



STIS

Supra Telecom & Information Systems, Inc.

AUG 19 1998

Phone: (305) 443-3710
Fax: (305) 443-1078
2620 S.W. 27th Avenue
Miami, FL 33133
Email: sales@stis.com
www.stis.com

U.S. MAIL REG. RELATIONS
TALLAHASSEE, FL

August 17, 1998

VIA FAX: (305) 577-4491

Nancy B. White, Esq.
and Mary Jo Peed, Esq.
c/o Ms. Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301

Dear Nancy and Mary Jo:

I wish to address several matters that are pending between Supra Telecommunications & Information Systems, Inc., and BellSouth Telecommunications, Inc., that need to be resolved.

1. Regarding the issue of Supra's desire to physically collocate in the North Dade Golden Glades and the West Palm Beach Gardens' central offices, it is Supra's position that there is adequate space for Supra to physically collocate its Class 5 switches and other necessary equipment. I would like to set up a meeting to discuss the results of the walk-throughs and the revised central office maps and Supra's specific desires regarding space in each of these central offices.

In addition, when you and I met a few weeks ago, you stated you would obtain specific information regarding any problems with meeting the Florida Public Service Commission's three month deadline for each of Supra's applications for physical collocation. We need to have specific information regarding whether BellSouth intends to meet the deadline for each application or exactly why the deadline cannot be met for each application.

2. Regarding the issue of what equipment Supra intends to physically collocate in the 17 BellSouth central offices that Supra has applied for, it is Supra's intention to physically collocate equipment that will provide information services as well as basic telecommunications services. The "information services" equipment that Supra intends to physically collocate includes equipment that can provide anything traditionally considered "information services," as well as anything considered an "enhanced service," Internet services, etc. The specific equipment has been identified on the physical collocation applications that have already been approved by BellSouth. It is Supra's position that the Telecommunications Act and the FCC's

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EXHIBIT 4

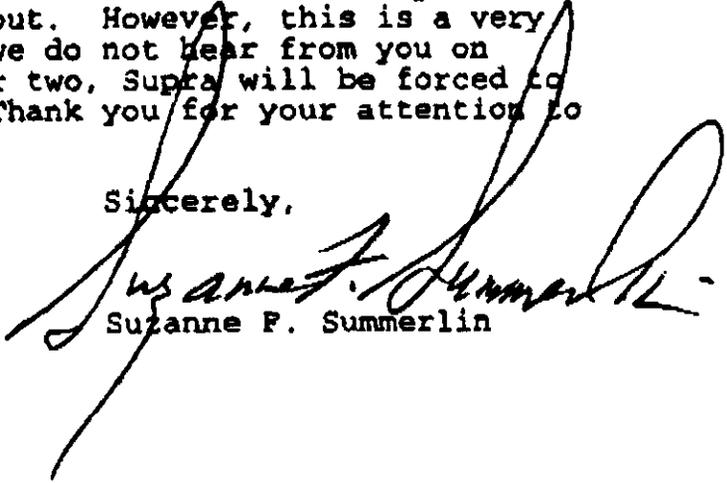
First Report and Order provide legal support for Supra's right to physically collocate this type of equipment in BellSouth's central offices. Supra would like an immediate clarification from BellSouth regarding whether BellSouth intends to object to any of Supra's equipment being physically collocated on the basis of any theory so that Supra may apply for a decision on this matter at the Florida Public Service Commission.

3. Regarding the issue of Supra's right to obtain combinations of unbundled network elements from BellSouth, it is Supra's position that Supra's interconnection agreement provides authority for Supra to obtain these combinations. The attached Section from Supra's interconnection agreement specifically provides Supra this right. To the extent BellSouth intends to rely on the fact that the version of the Interconnection Agreement filed by BellSouth with the Florida Public Service Commission does not include this particular section, Supra wishes to inform BellSouth that the draft agreement that Mr. Finlen provided Mr. Ramos and which Mr. Ramos signed immediately (according to Mr. Finlen's testimony), and that Mr. Finlen provided Supra by e-mail immediately prior to producing the final version for signing, included this provision. If there is a difference between the draft version agreed to and the version filed with the Commission (other than the removal of the Collocation and Resale Agreements which had been entered into separately and the insertion of Supra's name in appropriate spaces), Supra suggests that any such difference should not exist and BellSouth may wish to inquire internally as to how that might have happened.

Therefore, Supra would like to be informed immediately as to the prices for the combinations of unbundled network elements set out in Supra's Interconnection Agreement and the time frames in which they can be provided.

You will note that this letter is not being copied to the Commission Staff at this time to permit BellSouth and Supra the opportunity to work these matters out. However, this is a very narrow window of opportunity. If we do not hear from you on these issues within the next day or two, Supra will be forced to pursue relief at the Commission. Thank you for your attention to these matters.

Sincerely,


Suzanne F. Summerlin

SFS:ss

ACCESS TO UNBUNDLED NETWORK ELEMENTS

1. Introduction

- 1.1.1 BellSouth shall, upon request of Supra Telecommunications and Information Systems, Inc. , and to the extent technically feasible, provide to Supra Telecommunications and Information Systems, Inc. access to its unbundled network elements for the provision of Supra Telecommunications and Information Systems, Inc. 's telecommunications service.
- 1.1.2 Access to unbundled Network Elements provided pursuant to this Agreement may be connected to other Services and Elements provided by BellSouth or to any Services and Elements provided by CLEC itself or by any other vendor.
- 1.1.3 CLEC may purchase unbundled Network Elements for the purpose of combining Network Elements in any manner that is technically feasible, including recreating existing BellSouth services.
- 1.1.4 In all states of BellSouth's operation, when CLEC recombines unbundled Network Elements to create services identical to BellSouth's retail offerings, the prices charged to CLEC for the rebundled services shall be computed at BellSouth's retail price less the wholesale discount established by the Commission and offered under the same terms and conditions as BellSouth offers the service.
- 1.1.5 CLEC will be deemed to be "recombining elements to create services identical to BellSouth's retail offerings" when the service offered by CLEC contains the functions, features and attributes of a retail offering that is the subject of properly filed and approved BellSouth tariff. Services offered by CLEC shall not be considered identical when CLEC utilizes its own switching or other substantive functionality or capability in combination with unbundled Network Elements in order to produce a service offering. For example, CLEC's provisioning of purely ancillary functions or capabilities, such as Operator Services, Caller ID, Call Waiting, etc., in combination with unbundled Network Elements shall not constitute a "substantive functionality or capability" for purposes of determining whether CLEC is providing "services identical to BellSouth's retail offering."

2. Unbundled Service Combinations (USC)

10/15/87

- 2.1.1 Where BellSouth offers to Supra Telecommunications and Information Systems, Inc. , either through a negotiated arrangement or as a result of an effective Commission order, a combination of network elements priced as individual unbundled network elements, the following product combination will be made available. All other requests for unbundled element combinations will be evaluated via the Bona Fide Request Process, as set forth in Attachment 9.
- 2.1.2 2-Wire Analog Loop with 2-Wire Analog Port - Residence
- 2.1.3 2-Wire Analog Loop with 2-Wire Analog Port - Business
- 2.1.4 2-Wire Analog Loop with 2-Wire Analog Port - PBX
- 2.1.5 2-Wire Analog Loop with 2-Wire DID or 4-Wire DID
- 2.1.6 BellSouth will conform to the technical references contained in this Attachment 2 to the extent these requirements are implemented by equipment vendors and consistent with the software generic releases purchased and installed by BellSouth.

3. Unbundled Loops

- 3.1.1 BellSouth agrees to offer access to unbundled loops pursuant to the following terms and conditions and at the rates set forth in Attachment 11.
- 3.2 Definition
 - 3.2.1 The loop is the physical medium or functional path on which a subscriber's traffic is carried from the MDF, DSX, LGX or DCS in a central office or similar environment up to the termination at the NID at the customer's premise. Each unbundled loop will be provisioned with a NID.
 - 3.2.2 The provisioning of service to a customer will require cross-office cabling and cross-connections within the central office to connect the loop to a local switch or to other transmission equipment in co-located space. These cables and cross-connections are considered a separate element.
 - 3.2.3 BST will offer voice loops in two different service levels - Service Level One (SL1) and Service Level Two (SL2). SL1 loops will be non-designed, will not have test points, and will not come with any Order Coordination (OC) or Engineering Information/circuit make-up data (EI). Since SL1 loops do not come standard with OC, these loops will be activated on the due date in the same manner and time frames that BST normally activates POTS-type loops for its customers.

10/15/97

Mary Jo Ford
General Attorney

BellSouth Telecommunications, Inc.
Legal Department - Suite 4300
875 West Peachtree Street
Atlanta, Georgia 30375-0001
Telephone: 404-335-0708
Facsimile: 404-326-6388

August 21, 1998

Via Facsimile

Suzanne Fannon Summerrin, Esq.
1311-B Paul Russell Road, #201
Tallahassee, Florida 32301

Re: Your letter of August 17, 1998

Dear Ms. Summerrin:

Pursuant to your letter of August 17, 1998, this is BellSouth's response to issues 2 and 3 delineated therein. As I stated in my voice mail earlier this week, Nancy White will be responding to your issue 1 under separate cover.

With regard to Issue 2 and the type of equipment that may be placed in physical collocation space occupied by Supra, you and I had a detailed conversation regarding this matter at the end of July. Contrary to your assertion, BellSouth has never approved the placement of the equipment listed in Supra's applications for physical collocation space.

Supra's physical collocation applications request that Supra be allowed to place ATM nodes (Cisco Systems Model No. IGX-16-RM); Digital switches (Lucent Tech Model No. 5ESS); Digital Loop Carrier equipment (Lucent Tech Model No. SLC2000); and Cisco Systems equipment Model No. AS5248-56K-CH (identified by Supra as Remote Access Concentrators). Section III(A) of Supra's Collocation Agreement, executed by Mr. Ramos on July 21, 1998, states that "BellSouth shall permit Interconnector to place, maintain, and operate in the Collocation Space any equipment that Interconnector is authorized by BellSouth and by Federal or State regulators to place, maintain and operate in collocation space and that is used by Interconnector to provide services which Interconnector has the legal authority to provide." In an effort to be perfectly clear and to finally put this issue to rest, BellSouth does not authorize the placement of the remote access concentrators in the physical collocation space occupied by Supra. BellSouth does, however, authorize the placement of the ATM nodes, the digital switches, and the digital loop carrier equipment identified by the model

EXHIBIT 5

numbers in Supra's applications in the physical collocation space occupied by Supra.

BellSouth's position regarding Supra's equipment requests is consistent with the BellSouth policy sent to Mr. Ramos from Marc Cathey on July 14, 1998 and is consistent with our discussions at the end of July and the portions of the FCC's First Report and Order that I cited in those discussions.¹ ATM nodes, digital switches and digital loop carrier equipment are all capable of providing telecommunications services and information services through the same arrangement. The remote access concentrator equipment is not. BellSouth administers its policy regarding equipment placed by Interconnectors in physical collocation arrangements in a non-discriminatory manner.

With regard to Issue 3, I have researched the issue of the language regarding network element combinations cited in Mr. David Nilson's letter to Marc Cathey dated August 3, 1998. That language was not contained in the interconnection agreement executed by BellSouth and Mr. Ramos and filed with the Florida Public Service Commission. The language was contained in the e-mailed agreement sent to Mr. Ramos by Pat Finlen. Mr. Finlen did not know of the inconsistencies between the two documents when he prepared the final version of the agreement to be executed and did not become aware of the inconsistency until Mr. Nilson's letter of August 3rd. I am enclosing an amendment to the filed agreement to be executed by Mr. Ramos so that the language may be incorporated within the filed and approved document. On behalf of BellSouth, I apologize to Supra for this error.

As to the intent of the language of sections 2.1.1 through 2.1.5, this language does not give Supra authority to obtain these combinations. The language of section 2.1.1 is conditional upon two discreet events, neither of which have occurred. As you know section 2.1.1 states the following:

Where BellSouth offers to Supra Telecommunications and Information Systems, Inc., either through a negotiated arrangement or as a result of an effective Commission order, a combination of Network elements priced as individual unbundled network elements. The following product combination will be made available. All other requests for unbundled element combinations will be evaluated via the Bona Fide Request Process, as set forth in Attachment 9.

(Emphasis added). This language is consistent with BellSouth's position in regards to providing combinations of network elements to new entrants. At present, there is no effective Commission order that requires BellSouth to offer to Supra a combination of

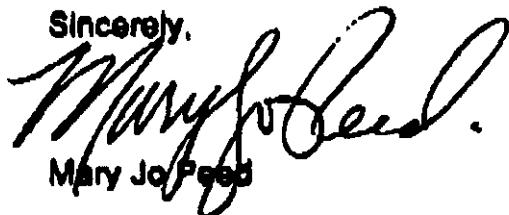
¹ In the recently issued Memorandum Opinion and Order and Notice of Proposed Rulemaking in CC Docket No. 98-147 et. al., the FCC tentatively concluded that we should decline to require collocation of equipment used to provide enhanced services." FCC 98-166 at para. 132.

network elements. BellSouth is willing, however, to negotiate with Supra and, if negotiations are successful, to provide such combinations for the price of the network elements and a negotiated professional service fee, commonly referred to as "a glue charge." If Mr. Ramos is interested in negotiating such an arrangement, Mr. Finlen would be happy to discuss this with him. In any event, the language of sections 1.3, 1.4 and 1.5 of Attachment 2 that sets forth the price of combinations of network elements where Supra does the combining and duplicates a service identical to a BellSouth retail offering will continue to apply. In those circumstances the price paid by Supra would be the retail price of the duplicated service less the wholesale discount.

Lastly, at the end of July, I sent to you, at your request, both electronically and through hand delivery, the documents necessary for Supra to adopt the MCImetro agreement. I have never received any further communication from you regarding this matter. Could you please let me know what Supra intends to do regarding the adoption of another agreement?

If you have further questions or would like to discuss the matters contained within this correspondence, please feel free to call me.

Sincerely,



Mary Jo Feed

Cc: Nancy White
Pat Finlen

Attachment

AMENDMENT

TO

**INTERCONNECTION AGREEMENT BETWEEN
SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.
BELLSOUTH TELECOMMUNICATIONS, INC. DATED OCTOBER 23, 1997**

Pursuant to this Agreement (the "Agreement"), Supra Telecommunications and Information Systems, Inc. ("Supra") and BellSouth Telecommunications, Inc. ("BellSouth") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Interconnection Agreement between the Parties dated October 23, 1997 ("Interconnection Agreement").

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Supra and BellSouth hereby covenant and agree as follows:

1. Attachment 2 shall be amended to include a new section 2 entitled Unbundled Service Combinations (USC). The section shall read as follows:

2. Unbundled Service Combinations (USC)

2.1.1 Where BellSouth offers to Supra Telecommunications and Information Systems, Inc., either through a negotiated arrangement or as a result of an effective Commission order, a combination of network elements priced as individual unbundled network elements, the following product combination will be made available. All other requests for unbundled element combinations will be evaluated via the Bona Fide Request Process, as set forth in Attachment 9.

2.1.2 2-Wire Analog Loop with 2-Wire Analog Port - Residence

2.1.3 2-Wire Analog Loop with 2-Wire Analog Port - Business

2.1.4 2-Wire Analog Loop with 2-Wire Analog Port - PBX

2.1.5 2-Wire Analog Loop with 2-Wire DID or 4-Wire DID

2.1.6 BellSouth will confirm to the technical references contained in this Attachment 2 to the extent these requirements are implemented by equipment vendors and consistent with the software generic releases purchased and installed by BellSouth.

2. The Parties agree that all of the other provisions of the Interconnection Agreement, dated October 23, 1997, shall remain in full force and effect.

3. The Parties further agree that either or both of the Parties is authorized to submit this Amendment to the Florida Public Service Commission or other regulatory body having jurisdiction over the subject matter of this Amendment, for approval subject to Section 252(e) of the federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

**SUPRA TELECOMMUNICATIONS
and INFORMATION SYSTEMS, INC.**

By: _____

DATE: _____

**BELLSOUTH TELECOMMUNICATIONS,
INC.**

By: _____

DATE: _____



BellSouth Interconnection Services
9th Floor
900 North 19th Street
Birmingham, Alabama 35203

205 321-4300
Fax 205 321-4304
Pager 1 800 848-4646 (PIN 229306)
Internet
Marcus.B.Cathey@bridge.bellsouth.com

Marcus B. Cathey
Sales Assistant Vice President
CLEC Interconnection Sales

October 14, 1998

Mr. Olukayode Ramos
President and CEO
Supra Telecom and Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, Florida 33133

Re: Conference call of September 9, 1998

Dear Mr. Ramos:

This is to confirm the conversation of September 9, 1998, between Jerry Hendrix, Pat Finlen, David Nilson, you and me concerning Supra's interconnection agreement.

Listed below is a summary of the main points we discussed during that conference call:

Differences Between Supra's Interconnection Agreement--E-Mailed and Filed

BellSouth responded to Supra's request to negotiate an interconnection agreement by sending to Supra, via electronic mail, BellSouth's then standard interconnection agreement. Supra requested no changes to the interconnection agreement provided and requested that a final agreement be provided to it for signature. During this same time frame, BellSouth adopted a new version of its standard agreement that included the deletion of sections 2.1.1 through 2.1.6 of Attachment 2. As you have been told on previous occasions, in preparing the final agreement for Supra's signature, Pat Finlen inadvertently and without any intent to do so, utilized the new standard agreement rather than the version previously provided to Supra.

As stated in Mary Jo Peed's August 21, 1998 letter to Supra's attorney, Suzanne Fannon Summerlin, BellSouth has offered to and did attach to Ms. Peed's letter a proposed amendment to the filed interconnection agreement that would, if executed by Supra, incorporate the deleted language into the existing agreement. Ms. Summerlin has not responded to Ms. Peed's letter. BellSouth reiterated the same offer in our conversation on September 9, 1998 and by this correspondence, renews the offer. BellSouth has done a comparison of the two documents and the deletion of sections 2.1.1 through 2.1.6 is the only material change. Supra has yet to respond to any of BellSouth's offers.

EXHIBIT 8

NO. 815 P022/016

10/15/98 14:45

NO. 010 P023/024

02/01/99 14:23

April 29th request for UNE prices

I believe that the letter dated September 17, 1998, from Patricia Wanner to David Nilson accurately reflects the events regarding Supra's request for UNE prices. I am attaching a copy of that letter for your ease of reference.

Request for UNE Combinations in MCImetro Agreement

During the conference call BellSouth stated that, although the Florida Public Service Commission has taken action in regard to the UNE combinations set forth in the MCImetro agreement, those combinations would only be available in the timeframe and subject to the terms and conditions negotiated between BellSouth and MCImetro. You were further advised that unbundled network element combinations were not currently available under the BellSouth/MCImetro Interconnection Agreement since the parties thereto had not yet agreed upon what competitive local telecommunications services provisioned by the combining of unbundling network elements constituted the recreation of a BellSouth retail service. BellSouth informed you that once MCImetro and BellSouth agreed on what combinations replicated a BellSouth retail service, a rate would need to be negotiated before the combinations could be provided to MCImetro. Once MCImetro and BellSouth agreed on the rates, terms and conditions for the combining of unbundled network elements, then Supra would be able to adopt the BellSouth/MCImetro agreement in its entirety and thereby order the combinations at the same rates, terms and conditions agreed to by BellSouth and MCImetro.

You indicated that your desired combinations were set forth in the original agreement e-mailed to you and, therefore, you no longer wished to adopt the BellSouth/MCImetro Interconnection Agreement. The BellSouth personnel requested that you discuss this issue further with your attorney, since your counsel had previously provided BellSouth with a different Supra position.

Sincerely,


Marcus B. Cathey
Sales Assistant Vice President

Attachment