

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of BellSouth Telecommunications, Inc. against Supra Telecommunications and Information Systems, Inc. for Resolution of Billing Disputes.

Docket No.: 001097-TP

Dated: August 30, 2000

SUPRA TELECOM'S MOTION TO DISMISS COMPLAINT OR, IN THE ALTERNATIVE, STAY PROCEEDINGS AND/OR COMPEL ARBITRATION

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra Telecom"), by and through its undersigned counsel and pursuant to Rule 28-106.204, Florida Administrative Code, hereby files and serves this its Motion To Dismiss Complaint Or, In The Alternative, Stay Proceedings And/Or Compel Arbitration, and in support thereof states as follows:

1. On or about August 9, 2000, the Petitioner BellSouth filed its Complaint of BellSouth Telecommunications, Inc. against Supra Telecommunications and Information Systems, Inc., for Resolution of Billing Disputes ("Complaint") in this proceeding.

2. The Complaint specifically alleges in paragraph 5 that this proceeding arises under "an interconnection and resale agreement filed with the Commission November 10, 1999

and approved by the Commission on November 30, 1999 in which Supra adopted the AT&T agreement" and in paragraph 6 that "[t]he AT&T agreement adopted by Supra has been in effect from October 5, 1999 to the present."

3. The Complaint further alleges in paragraph 7 that "Supra has violated Attachment 6, Section 13 of the [current] agreement by refusing to pay non-disputed sums." Paragraph 8 of

APP
CAF
CMP
COM
CTR
ECR
LEG
OPC
PAI
RGO
SEC
SER
CTH

Done 8/31/00

DOCUMENT NUMBER-DATE

2000 AUG 30 8

FPSC-RECORDS/REPORTING

the Complaint states that [s]ince January 1, 2000, Supra has failed to pay its bills, including undisputed sums," and that "BellSouth continues to provide service to Supra pursuant to the current agreement." Paragraph 9 of the Complaint alleges that "BellSouth also seeks resolution of certain billing disputes raised by Supra" and that "[i]n short, Supra claims BellSouth should pay Supra a total of \$305,560.04, plus interest in the amount of approximately \$150,000, as reimbursement for charges Supra claims were unwarranted."

4. The Complaint attaches and incorporates therein various relevant provisions of the parties current agreement. In this regard, BellSouth has attached the General Terms and Conditions, which states in paragraph 16 as follows:

**"16. Alternative Dispute Resolution**

**16.1 All disputes, claims or disagreements (collectively "Disputes") arising under or related to this Agreement or the breach hereof shall be resolved in accordance with the procedures set forth in Attachment 1, except: (i) disputes arising pursuant to Attachment 6, Connectivity Billing . . . Disputes involving matters subject to the Connectivity Billing provisions contained in Attachment 6, shall be resolved in accordance with the Billing Disputes section of Attachment 6. In no event shall the Parties permit the pendency of a Dispute to disrupt service to any AT&T [Supra Telecom] Customer contemplated by this Agreement. . ."**

5. Attachment 6 to the current interconnection agreement is also attached to the Complaint, and provides a procedure for resolving billing disputes under paragraph 14. Subparagraphs 14.1, 14.1.1 and 14.1.2 of Attachment 6, provide for an informal dispute resolution process in which the parties progressively escalate the dispute up to the fourth level of management within each respective company. Subparagraph 14.1.3 of Attachment 6 states in pertinent part that "[i]f the dispute is not resolved within one hundred and fifty (150) days of the Bill Date, the dispute will be resolved in accordance with the procedures set forth in

**Section 16 of the General Terms and Conditions of this Agreement and Attachment 1."**

6. Attachment 1 to the current interconnection agreement is also attached to the Complaint, and that attachment provides for Alternative Dispute Resolution. Paragraph 2 of Attachment 1 states in pertinent part that "**[n]egotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between BellSouth and AT&T [Supra Telecom] arising under or related to this Agreement including its breach . . .**"

7. Paragraph 11 of the Complaint alleges that "**[u]nder the parties' current agreement, there is a dispute escalation procedure. Exh. 2, Attachment 6, Section 14. These billing disputes have been escalated in accordance with this escalation procedure.**" That paragraph further goes on to allege that "**the current agreement calls for private arbitration if such dispute is not resolved after the escalation procedure.**"

8. Based upon the above, it is clear that the Complaint alleges a breach of the current interconnection agreement arising from Supra Telecom's failure to pay various BellSouth bills since January 1, 2000 (three months after the current interconnection agreement became effective). That the reason Supra Telecom has refused to pay certain bills is because Supra Telecom claims offsets as a result of prior over-billing and other wrongs. Furthermore, that BellSouth continues to provide Supra Telecom service under the dispute resolution portions of the interconnection agreement and that the parties have already started complying with the dispute resolution provisions of the current interconnection agreement. Finally, that the current interconnection agreement provides that private arbitration is the sole and exclusive remedy for all disputes arising under or related to the interconnection agreement.

9. Based upon the above it is clear that the Complaint alleges a dispute arising under or related to the current interconnection agreement, and that pursuant to that interconnection agreement, the sole and exclusive remedy available to the parties is private arbitration.

10. Under both Florida and Federal law (which is binding upon the state of Florida), private arbitration provisions are absolutely valid, binding and enforceable. *Federal Arbitration Act, 9 U.S.C. §§ 1-14; Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 74 L.Ed.2d 765, 103 S.Ct. 927 (1983); Fla.Stat. § 682.02; Cone Constructors, Inc. v. Drummon Community Bank, 754 So.2d 779 (Fla. 1st DCA 2000); Old Dominion Insurance Co. v. Dependable Reinsurance Co., 472 So.2d 1365 (Fla. 1st DCA 1985); Zac Smith & Co. v. Moonspinner Condominium Association, Inc., 472 So.2d 1324 (Fla. 1st DCA 1985); Physicians Weight Loss Centers of America, Inc. v. Payne, 461 So.2d 977 (Fla. 1st DCA 1984); Miller Construction Co. v. The American Insurance Co., 396 So.2d 281 (Fla. 1st DCA 1981).* Based upon the above cited caselaw, the proper procedure for dealing with this situation is to compel the parties to arbitrate pursuant to their agreement and then either dismiss or stay these proceedings pending resolution of the arbitration proceedings.

11. Accordingly, based upon the above, Supra Telecom respectfully requests that this Commission enter an Order compelling the parties to arbitrate this dispute, and further enter an Order either dismissing or staying this docket pending a final resolution of the arbitration proceeding.

12. In the event this Commission does not grant this motion, but rather seeks to proceed forward with this docket (as opposed to compelling arbitration), then Supra Telecom would

respectfully request an opportunity to file an answer to the Petitioner BellSouth's Complaint.

**WHEREFORE**, Respondent SUPRA TELECOMMUNICATION & INFORMATION SYSTEMS, INC., respectfully requests that this Commission enter an Order compelling the parties to arbitrate the dispute alleged in the Complaint of the Petitioner BELLSOUTH TELECOMMUNICATIONS, INC., and further enter an Order either dismissing this Complaint or staying these proceedings pending a final resolution of the arbitration proceeding.

Respectfully Submitted this 30th day of August, 2000.

MARK E. BUECHELE, ESQ.  
Supra Telecommunications &  
Information Systems, Inc.  
2620 S.W. 27th Avenue  
Miami, FL 33133  
Tel: (305) 476-4212  
Fax: (305) 443-1078  
E-Mail: mbuechele@stis.com

By: Mark E Buechele /snc  
MARK E. BUECHELE  
Fla. Bar No. 906700

**CERTIFICATE OF SERVICE**

I HEREBY Certify that a true and correct copy of the foregoing has been furnished by U.S. Mail upon NANCY WHITE (BellSouth), 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301; R. DOUGLAS LACKEY (BellSouth), BellSouth Telecommunications, Inc., 675 West Peachtree Street, N.E., Suite 4300, Atlanta, Georgia 30375; and CARRIS (LEE) FORHAM and SALLY SIMMONS (FPSC Staff), 2540 Shumard Oak Boulevard, Tallahassee, Florida; this 30th day of August, 2000.

By: Mark E. Buechele/sna  
MARK E. BUECHELE  
Fla. Bar No. 906700