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November 29, 2000

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. 001097-TP (Supra Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Supra Telecommunications and Information Systems, Inc.'s Motion for Reconsideration or Clarification of Order on Supra's Motion to Dismiss, which we ask that you file in the above-referenced matter.

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,

*Michael P. Goggin*  
Michael P. Goggin  
(28)

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

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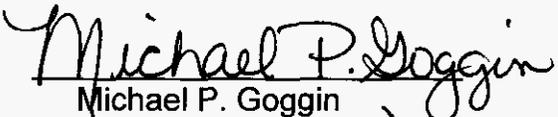
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U. S. Mail this 29th day of November, 2000 to the following:

Lee Fordham  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
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Michael P. Goggin  
(20)

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth	)	
Telecommunications, Inc. against Supra	)	Docket No. 001097-TP
Telecommunications and Information	)	
Systems, Inc., for Resolution of Billing	)	Filed: November 29, 2000
Disputes.	)	
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**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO  
 SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.'s  
 MOTION FOR RECONSIDERATION OR CLARIFICATION OF ORDER ON  
SUPRA'S MOTION TO DISMISS**

BellSouth Telecommunications, Inc., ("BellSouth") hereby responds to the Motion for Reconsideration or Clarification of Order on Supra Telecommunications and Information Systems, Inc. ("Supra's") Motion to Dismiss (the "Motion") filed on November 17, 2000. BellSouth responds to the Motion as follows.

1. There are a number of reasons that Supra's Motion should be denied. First and foremost is that the Order of which Supra seeks reconsideration had not been issued when the Motion was filed. Supra's motion to dismiss BellSouth's Complaint was heard and considered at the Commission's November 7, 2000 agenda conference. On November 17, 2000, Supra filed its Motion, claiming that the Commission had overlooked or failed to consider certain points in its order granting, in part, Supra's motion to dismiss. The Commission issued its order on Supra's motion to dismiss on November 28. Order No. PSC-00-2250-FOF-TP (Nov. 28, 2000). Accordingly, Supra sought

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reconsideration of the Commission's Order before it had even seen it. That the Motion is obviously premature is reason enough to deny it.

2. A reading of the Order the Commission issued subsequent to Supra's premature criticisms of it also demonstrates that Supra's demands for reconsideration are unfounded. Supra states that its two grounds for reconsideration are that the Commission failed to consider which party would bear the burden of proof on the remaining claims before the Commission, and that the Commission did not properly determine the cutoff date for the claims over which it has sole jurisdiction. Motion at 1. Supra is wrong on both counts.<sup>1</sup>

3. First, the burden of proof and order of the evidence are no different in this case than in any other. Billing disputes arose under the 1997 agreement. The sole forum for those disputes, according to that agreement, is this Commission. BellSouth has filed a Complaint in which it seeks a determination that certain amounts it billed (which are in dispute) were correctly billed.

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<sup>1</sup> Supra makes two incorrect assertions in its brief that, while immaterial to the issues raised by its Motion, should be set straight. First, Supra claims that BellSouth allegedly misled the Commission by stating in its Complaint that it had followed the escalation procedures for billing disputes in the 1999 agreement before filing its Complaint. Motion at 3. BellSouth's statement in its Complaint was accurate. Supra suggests, however, that BellSouth failed to follow a separate procedure, found in a different section of the agreement, that sets forth procedures to be followed prior to a demand for private arbitration. BellSouth did not claim to have followed these procedures, as it was not, at that time, pursuing private arbitration. In the wake of the Commission's dismissal of its 1999 contract claim, BellSouth has, as the letter attached to the Motion makes clear, begun that process.

The second side issue that requires correction concerns Supra's statements regarding the 1997 agreement provision it quotes on page 4 of its Motion. As Supra is, no doubt aware, this provision comes from the 1997 agreement. While BellSouth does not agree with Supra's apparent interpretation of this provision, any disputes over what it means (and how it might affect the rates charged for services provided under the 1997 contract) go to the merits of BellSouth's remaining claims and must necessarily be decided before this Commission. Supra's allegation that this provision somehow transforms 1997 contract disputes into 1999 contract disputes subject to private arbitration is illogical and incorrect.

Complaint at ¶¶ 9, 12-17. These are claims raised by BellSouth. As Supra states in its Motion, BellSouth has the burden of proving its assertions. Motion at 5.

4. As to the order of evidence, as Supra is aware, under the Commission's ordinary procedures, the parties simultaneously submit prefiled direct and rebuttal testimony. Supra will have the first opportunity to cross examine BellSouth's witnesses at the hearing, and, as the respondent, will have the opportunity to put up the last witness, and, in effect, have the last word. There is nothing unusual or prejudicial about following these established procedures.

5. Supra's discussion of federal removal jurisdiction precedent, Motion at 4-5, is merely a rehash of the arguments it raised at oral argument, and is still beside the point. BellSouth did not raise these claims "in an attempt to place jurisdiction before the FPSC." Motion at 5. As Supra is aware, because the remaining claims each arose under the 1997 agreement, this Commission is the *only* forum in which they *may* be raised.<sup>2</sup>

6. Similarly, Supra's assertions that BellSouth's remaining claims actually are affirmative defenses to BellSouth's claim that Supra has refused to pay *any* bills for the entire year of 2000, Motion at 4-5, is misleading and incorrect. A defense to a claim is something that relates to the truth or falsity of the claim or asserts a legal defense, such as laches. A claim by Supra that BellSouth allegedly overcharged Supra for services provided under the 1997

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<sup>2</sup> Order at 4-5.

agreement would not be a defense to a claim by BellSouth for payment for services rendered under the 1999 agreement. It would be separate claim.

7. Moreover, a dispute over charges for services provided under the 1997 agreement could not be raised as a counterclaim in any private arbitration of a dispute arising under the 1999 agreement. As the Commission points out in its Order, it has exclusive jurisdiction of claims arising under the 1997 agreement. Order at 4-5. Similarly, the private arbitration panel has jurisdiction only to consider contractual disputes arising under the 1999 agreement. See Complaint, at Exh. 2, Section 16 and Attachment 1; Complaint at Exh. 1, Section XI.

8. Accordingly, Supra's assertions, Motion at 5, that it might be denied an opportunity to raise affirmative defenses to any claim, or that the Commission and the arbitration panel might concurrently consider the 1997 contract claims, are incorrect. Supra may raise affirmative defenses to BellSouth's 1997 contract claims before this Commission, and it may raise affirmative defenses to BellSouth's 1999 contract claims before the private arbitration panel. It may not, however, raise 1997 contract claims as counterclaims before the private arbitration panel. This Commission has exclusive jurisdiction to hear such claims.

9. Supra's second purported ground for reconsideration evaporated when the Commission issued its order. Supra claims that the Commission failed to consider the Federal Arbitration Act because it allegedly did not adequately distinguish the claims it was to hear from those it had dismissed. Motion at 1, 5-6. In its Order, however, the Commission noted that the 1999 agreement took

effect on October 5, 1999. Order at 3. It went on to grant Supra's motion to dismiss as to claims arising under the 1999 agreement, and denying Supra's motion with respect to claims arising under the 1997 agreement. Order at 5. It seems clear enough to BellSouth that the Order means that, to the extent any claim relates to services provided on or after October 5, 1999, the Commission has dismissed them.

For the foregoing reasons, Supra's Motion should be denied.

Respectfully submitted this 29th day of November, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.



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