

NANCY B. WHITE
Assistant General Counsel-Florida

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

April 27, 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)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Supra Telecommunications and Information Systems, Inc.'s Emergency Motion to Prehearing Officer to Issue Request to the Circuit Court of Jefferson County, Alabama to Issue Out-of-State Subpoenas, which we ask that you file in the above-referenced 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 (ke)
Nancy B. White

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG 2 _____
- LIN 3 _____
- OPC _____
- RCH _____
- SEC _____
- WAS _____
- OTH _____

Enclosures

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

RECEIVED & FILED
[Signature]
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

04644 APR 27 98

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 980119-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served
by Facsimile and Federal Express this 27th day of April, 1998 to the following:

Beth Keating
Legal Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
Tel No. (850) 413-6199
Fax No. (850) 413-6250

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

Nancy B. White (ke.)
Nancy B White

ORIGINAL

In re: Complaint of Supra Telecommunications
and Information Systems, Inc., Against
BellSouth Telecommunications, Inc.

Docket No.: 980119-TP

Filed: April 27, 1998

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

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its response to the Emergency Motion Requesting Prehearing Officer to Issue Request to the Circuit Court of Jefferson County, Alabama to Issue Out-of-State Subpoenas, dated April 27, 1998, that was filed by Supra Telecommunications and Information Systems, Inc.'s ("Supra"). BellSouth respectfully states the following:

1. In its most recent filing, Supra attempts to convert the subpoena power of the Florida Public Service Commission ("FPSC") into a Florida long-arm statute capable of withstanding constitutional scrutiny. Supra's attempt fails as a matter of law.

2. BellSouth has not contested that the Commission may require party witnesses to appear in Tallahassee for the hearing currently set in this cause. The issue before the Commission in the instant Motion, however, is whether the FPSC, through the use of its subpoena power, may require out-of-state non-party witnesses¹ to appear in Tallahassee, Florida. As the following case law demonstrates, such an extension of this

¹ Nowhere in Supra's Emergency Motion does it contest that the subject witnesses are non-parties to this docket. It merely asserts that they should be subject to the FPSC's subpoena powers because they are employees of BellSouth. These witnesses are not officers, directors or managing agents of BellSouth. See, BellSouth's Opposition to Supra's Motion for Continuance.

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FLORIDA PUBLIC SERVICE COMMISSION

Commission's subpoena power would be improper and violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

3. In Garrett v. Garrett, 668 So. 2d 991 (Fla. 1996), the Florida Supreme Court addressed the state's power to exercise personal jurisdiction over a non-Florida resident. The court stated:

A state's power to exercise personal jurisdiction is limited by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 108, 107 S. Ct. 1026, 94 L.Ed.2d 92 (1987).

Before a Florida court can exercise personal jurisdiction over a non-Florida resident, the defendant or the defendant's conduct must satisfy one of the statutory requirements [in Florida's long arm statutes].

Id. at 993 (emphasis supplied).

Additionally, it is not enough to only show that the non-resident's conduct merely satisfies the statutory requirement in the long arm statutes. Venetian Salami Co. v. Parthenais, 554 So. 2d 499, 502 (Fla. 1989). Due process also requires that the non-resident have certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. Id. at 500. In effect, the issue is whether the non-resident's conduct is such that he or she should reasonably anticipate being haled into court there. Id. at 500.

In the instant case, *Supra* cannot meet any of the requirements of the Florida long-arm statutes or the minimum contacts test. The subject non-Florida resident witnesses are non-parties to this cause. They are not officers, directors or managing agents of a party. They have not filed any testimony in this docket. If *Supra* wants to use their testimony at

the hearing in this docket, it can properly subpoena them for their deposition and utilize the depositions in accordance with Rule 1.330, Fla. R. Civ. P., which is applicable to this proceeding pursuant to Rule 25-22.034, Florida Administrative Code.

Supra is attempting to improperly add an extra-territorial service of process provision to § 350.123, Florida Statutes, and Rule 25-22.045(2), Florida Administrative Code. If the legislature had intended that the Commission have extra-territorial reach with its subpoenas, it could have granted it. See, e.g., Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings, §§ 942.01 et seq., Florida Statutes. Accordingly, Supra's attempt to "add" this provision to § 350.123, Fla. Stat., and Rule 25-22.045(2), Florida Administrative Code, without any supporting case law should fail.

Based on the foregoing, BellSouth respectfully requests that the FPSC deny Supra's Emergency Motion Requesting Prehearing Officer to Issue Request to the Circuit Court of Jefferson County, Alabama to Issue Out-of-State Subpoenas as improper.

Respectfully submitted this 27th day of April, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White (x)

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

William J. Ellenberg II (x)

WILLIAM J. ELLENBERG II
675 West Peachtree Street, #4300
Atlanta, Georgia 30375
(404) 335-0711