

**NANCY B. WHITE**  
Assistant General Counsel-Florida

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

February 23, 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. 980155-TP Supra's Petition**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Dismiss the Petition of Supra Telecommunications and Information Systems, Inc., which we ask that you file 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. Copies have been served to the parties shown on the attached Certificate of Service.

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- GAF \_\_\_\_\_
- CMU Siranni
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 2
- LIN \_\_\_\_\_ NBW/vf
- ODP \_\_\_\_\_
- RCM \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

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

Sincerely,

*Nancy B. White (re)*  
Nancy B. White

DOCUMENT NUMBER-DATE  
**2529** FEB 23 98  
FPSC RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Supra Telecommunications ) Docket No.: 980155-TP  
and Information Systems, Inc., for a Generic )  
Proceeding to Arbitrate Rates and Selected )  
Terms and Conditions of Interconnection )  
Agreements with BellSouth )  
Telecommunications, Inc. )  
\_\_\_\_\_ ) Filed: February 23, 1998

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
MOTION TO DISMISS THE PETITION OF  
SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.**

BellSouth Telecommunications, Inc., ("BellSouth"), hereby files, pursuant to Rule 25-22.037, Florida Administrative code, Rule 1.140, Florida Rules of Civil Procedure and the 1996 Telecommunications Act ("Act"), its Motion to Dismiss the Petition of Supra Telecommunications and Information Systems, Inc. ("Supra") for a Generic Proceeding to Arbitrate Rates, Terms and Conditions of Interconnection with BellSouth, or in the Alternative, Petition of Arbitration of Interconnection Agreement, and states the following:

1. On January 30, 1998, Supra filed its Petition for Generic Arbitration, or in the alternative, for Specific Arbitration ("Petition"). The Petition is patently improper in two respects: (1) there is no authority under which Supra can request a generic arbitration proceeding and (2) Supra cannot request an individual arbitration because it has a signed interconnection agreement with BellSouth. BellSouth moves to dismiss Supra's Petition for these reasons as discussed more fully herein.

2. Part II of the Act, 47 U.S.C. § 151 et seq., provides for the development of competitive markets in the telecommunications industry. A key theme in Part II of the Act is to favor negotiations between incumbent local exchange companies and new

DOCUMENT NUMBER-DATE

02529 FEB 23 88

FPSC RECORDS/REPORTING

entrants. If parties are unsuccessful in negotiating a satisfactory resolution, they are entitled to (within certain time frames) seek arbitration of the unresolved issues from the appropriate state commission. 47 U.S.C. § 252(b)(1). When a party petitions the state commission for arbitration, it must submit documentation concerning the unresolved issues and the position of each of the parties with respect to those issues. 47 U.S.C. § 252(b)(2).

3. On November 24, 1997, BellSouth and Supra filed a request for approval of a resale, interconnection, and unbundling agreement under the Act. (See Docket No. 971555-TP). The agreement covers a two-year period and governs the relationship between BellSouth and Supra regarding resale, unbundling, and interconnection pursuant to the Act. On February 3, 1998, this Commission approved the BellSouth - Supra Agreement in Order No. PSC-98-0206-FOF-TP. The Commission found that the agreement complied with the Act.

4. As noted above, on January 30, 1998, Supra filed its Petition. This Petition was not filed in Docket No. 971555-TP and Supra did not seek to prevent the Commission from approving the BellSouth - Supra Agreement. Instead, Supra is requesting that (1) the Commission open a generic arbitration proceeding and (2) the Commission open an individual arbitration proceeding for Supra.

5. Supra's Petition should be dismissed for two reasons. First, the Act does not authorize generic arbitration proceedings as sought by Supra. As noted above,

Part II of the fact contemplates negotiations and arbitrations between individual parties. The Act does not authorize and, in fact, does not contemplate, mass proceedings between incumbent local exchange companies and all potential ALECs.

6. Supra cites no authority for its request. Instead, Supra relies on nebulous and unsupported allegations. While BellSouth agrees that the issues under the Act affect the entire industry, the fact remains that the Act contemplates one-on-one negotiations and arbitrations, not generic ones. Although this Commission may have used generic proceedings in the past, and may do so in the future, such proceedings are not appropriate under the Act. As noted by this Prehearing Officer in Order No. PSC-98-0008-PCO-TP (and later affirmed by the Commission), this Commission noted that "only the party requesting interconnection and the incumbent local exchange company may be parties to arbitration proceedings." The Prehearing Officer went on to state that "[t]he act does not contemplate participation by other entities who are not parties to the negotiations and who will not be parties to the interconnection agreement that results." Id. at pp. 2-3.

7. Supra alleges that BellSouth has "established a track record" of negotiating in bad faith. As support for this ludicrous allegation, Supra attaches to its Petition a letter dated January 15, 1998 from BellSouth to Supra. As is obvious from even a cursory reading of this letter, BellSouth is merely informing Supra that, after

signing an interconnection agreement, it cannot arbitrarily decide it wants to renegotiate the terms of that agreement.

8. Supra also argues for a generic proceeding on the basis that the Commission can combine arbitration proceedings for the sake of efficiency. BellSouth is not arguing the truth of this fact, but the fact remains is that Supra is in no arbitration proceeding to combine. Moreover, the combination of existing arbitration proceedings is a far cry from the establishment of a generic arbitration proceeding.

9. In its argument for a generic arbitration proceeding, Supra also appears to complain that the ongoing proceedings in Docket Nos. 960757-TP, 960833-TP and 960846-TP are determining Supra's rights. This is incorrect. As noted in Order No. PSC-98-0008-PCO-TP, "the decisions to be made here [in these dockets] will become part of the ultimate interconnection agreements between the parties to the initial negotiations and will be binding only upon them." (emphasis added). *Id.*, p. 3. Supra also attempts to cast the Commission's arbitration decisions in the form of "rules" subject to the Administrative Procedures Act. Such an attempt is absurd. As discussed earlier, these are decisions binding on specific parties, not on all ALECS. For the reasons cited herein, Supra's Petition for a generic arbitration proceeding should be dismissed.

10. In the alternative, Supra seeks arbitration on an individual basis. Again, this request should be dismissed. As noted earlier, Supra entered into an interconnection,

resale, and unbundling agreement with BellSouth that has been approved by this Commission under the Act. The agreement has a term of two years. Essentially, Supra is asking this Commission to abrogate an agreement which this Commission approved. This, Supra should not be allowed to do. There is no authority under the Act for Supra to seek arbitration from this Commission when it has an approved agreement. Moreover, for this Commission to abrogate the BellSouth - Supra agreement, would be a violation of the contract clause of the U.S. and Florida Constitutions.

11. Supra alleges that it was somehow bullied into the BellSouth - Supra agreement. Nothing could be further from the truth. BellSouth urged Supra to consider the agreement carefully before signing and to have it reviewed by counsel. Supra showed no hesitation in rejecting BellSouth's advice and entering into the agreement. It cannot be heard to complain now. The BellSouth - Supra agreement covers every aspect of BellSouth's relationship with Supra. There are no issues to negotiate. Moreover, Supra has not complied with the timelines required by the Act for negotiations and arbitration.

12. The remainder of Supra's arguments for an individual arbitration are a torrent of claims for which Supra cites no support and that appear to be seeking BellSouth's assistance in successfully carrying out Supra's business plans. BellSouth has made every reasonable good faith effort to provide Supra with the tools needed to complete in the local exchange market. Moreover, BellSouth has attempted to train

Supra in the use of those tools. It is not BellSouth's obligation or responsibility, however, to ensure that Supra is financially successful. Supra made the decision to enter this market. Supra supposedly proved to this Commission that it had the technical, financial and managerial skills to succeed in this market. It is up to Supra, not BellSouth, to succeed.

5

13. Supra has an existing interconnection, resale, and unbundling agreement with BellSouth. It cannot seek individual arbitration for the reasons discussed herein.

WHEREFORE, BellSouth request that this Commission dismiss Supra's Petition in all respects.

Respectfully submitted this 23rd day of February, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.

Robert G. Beatty (kr)

ROBERT G. BEATTY

NANCY B. WHITE

c/o Nancy H. Sims

150 So. Monroe Street, Suite 400

Tallahassee, FL 32301

(305) 347-5555

William J. Ellenberg II (kr)

WILLIAM J. ELLENBERG II

Suite 4300

675 W. Peachtree St., NE

Atlanta, GA 30375

(404) 335-0711

6

**CERTIFICATE OF SERVICE**  
**Docket No. 980155-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served  
by U.S. Mail this 23rd day of February, 1998 to the following:

Beth Keating  
Legal Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

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

Messer Law Firm  
Norman Horton  
P.O. Box 1876  
Tallahassee, FL 32302  
Tel. No. (850) 222-0720  
Fax. No. (850) 224-4359

Supra Telecomm. & Info. Systems  
12914 S.W. 133rd Court  
Suite B  
Miami, Florida 33186-5806  
Tel. No. (305) 234-5393  
Fax. No. (305) 234-5864

*Nancy B. White (re)*  
Nancy B. White