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Legal Department

J. PHILLIP CARVER
General Attorney

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

RECORDS AND
REPORTING

April 23, 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 Supplement To Motion for Protective Order of BellSouth Telecommunications, Inc. 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 (cc)

J. Phillip Carver

- AFA _____
- APP _____ Enclosures
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG J _____
- MAS _____
- OPC _____
- RRR _____
- SEC J _____
- WAW _____
- OTH _____

cc: All parties of record
M. M. Criser, III
N. B. White
William J. Ellenberg II (w/o enclosures)

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Done 5/04/99

CERTIFICATE OF SERVICE
Docket Nos. 981832-TP and 981833-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 23rd day of April, 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.
Rebecca A. O'Hara
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
Attys. for Supra

J. Phillip Carver (ICE)
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: April 23, 1999
251, 252 and 271 Of the)	
Telecommunications Act of 1996)	

SUPPLEMENT TO MOTION FOR PROTECTIVE ORDER
OF BELLSOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files, pursuant to Rule 1.280(c), Fla. R. Civ. Pro., and Rule 25-22.037, Florida Administrative Code, its Supplement to Motion for Protective Order, and states in support the following:

1. On February 26, 1999, BellSouth filed a Motion for Protective Order in which it requested that the Florida Public Service Commission ("Commission") enter an Order that BellSouth not be required to respond to discovery propounded by Supra Telecommunications, Inc. ("Supra") until after the Commission has ruled on BellSouth's Motion to Dismiss or Alternatively To Strike. As set forth in that motion, if the Commission determines that Supra's Petition is sufficient to proceed, then there will be only a minor delay in the discovery process, and this will not cause any harm or prejudice to Supra. If, on the other hand, the Commission grants BellSouth's Motion, and dismisses the case, then granting BellSouth's Motion for Protective Order would relieve it of the

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burden of having to respond to discovery that, under these circumstances, would be completely unnecessary. BellSouth further cited the fact that given the burdensome nature of Supra's discovery, and the frivolous nature of its petition, equity militates in favor of granting the motion. The Commission has not yet ruled on this motion.

2. Nevertheless, Supra has elected to essentially ignore the pendency of the Motion for Protective Order and file further discovery. Specifically, on March 25, 1999, Supra filed its First Request for Admissions to BellSouth, which includes 25 individually numbered requests for admission. The response to this request for admissions is due Monday, April 26, 1999. In BellSouth's previous motion, it requested that all discovery be abated until the Commission has ruled on BellSouth's Motion to Dismiss. Thus, this would include the previously filed discovery, the instant Request for Admissions, and any future discovery.

Nevertheless, BellSouth is concerned that, in the absence of its filing some response, Supra may contend that BellSouth has constructively admitted the matters addressed by the requests pursuant to Rule 1.370(a), Fla. R. Civ. Pro. Therefore, BellSouth is filing this Supplement to specifically give notice that it considers these Request for Admissions to be covered by its previous Motion, and to request again that the Commission enter an Order granting protection in regard to this discovery and future discovery that may be propounded during the pendency of BellSouth's Motion to Dismiss, as well as past discovery.

3. In the original Motion for Protective Order, BellSouth sets forth the Florida case law that establishes that this Commission has broad discretion in

discovery matters, as well as case law establishing that Florida courts have granted in a variety of circumstances motions for protective orders to prohibit discovery until it is determined whether a complaint or petition states a valid claim. BellSouth also noted specifically that the Florida Supreme Court has approved generally a brief delay in discovery pending a ruling on a motion to dismiss, but not a delay for an extended period of time. In support of this proposition, BellSouth cited Deltona Corporation v. Bailey, 336 So. 2d 1163 (1976) and Hollywood, Inc. v. Broward County, 90 So. 2d 247 (1956).

4. In response to BellSouth's Motion, Supra contended that this Commission cannot enter an order postponing discovery until BellSouth's Motion to Dismiss is ruled upon because, as a matter of law, "the existence of BellSouth's pending Motion to Strike or Dismiss is not 'good cause' for barring all discovery until the Motion is resolved." (Supra's Response, p. 2). Supra cited no additional case law in support of this contention. Instead, Supra attempted to bolster its argument by blatantly misconstruing the holding of the Florida Supreme Court in the Deltona case cited above.

5. Specifically, Supra misinterpreted Deltona to stand for the proposition that a trial court's Order prohibiting all discovery until the disposition of a motion to dismiss is necessarily overbroad, and that a protective order can properly be granted only as to individual discovery requests, based on the substance of those requests. In point of fact, this is not the proposition for which Deltona stands at all. To the contrary, the actual, pertinent language of the Florida Supreme Court's decision in Deltona is as follows:

While postponing discovery for a short period of time pending determination of material, outstanding motions may be within the discretion of the trial court under the rationale of Hollywood, supra, the pendency of such unresolved motions is not sufficient 'good cause shown' within the purview of Rule 1.280(c) to justify postponing discovery for the protracted period of time which elapsed in the case at bar.

(Id., at 1169) (emphasis added).

The "protracted period of time" was one year (Id.).

6. Therefore, contrary to Supra's assertion, Deltona does not constitute a general prohibition of a Protective Order that stays discovery until potentially dispositive motions are ruled upon. Instead, Deltona (especially when read in conjunction with Hollywood) stands for precisely the proposition that BellSouth stated originally: an Order providing for a brief delay in discovery while awaiting a ruling on a potentially dispositive motion is permissible, but a long delay is not. Further, under the circumstances of our case, it is clear both that the delay will, in fact, be short, and that BellSouth's request for this delay is reasonable.

7. Recently, the Commission Staff issued a recommendation that the instant Petition by Supra be dismissed. This item was set to be considered by the Commission on its Agenda Conference of April 20, 1999, but was deferred to the next Agenda. It will presumably be set for consideration on the May 4, 1999 Agenda. Thus, any further time spent awaiting a decision by the Commission regarding the viability of Supra's Petition will be exceedingly short. Under these circumstances, fairness militates even more strongly in favor of not allowing

Supra to embark upon further discovery during the remaining brief period of time before the Commission determines whether to dismiss the case.

WHEREFORE, for the reasons set forth above, BellSouth supplements its previous Motion to Dismiss to expressly include Supra's Request for Admissions, and requests that the Commission enter into an Order granting BellSouth's Motion for the reasons set forth above.

Respectfully submitted this 23rd day of April, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

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September 28, 1999

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket Nos. 990649-TP, 971527-TX, 980119-TP, 980253-TP, 980800-TP,
981832-TP, 981833-TP, 981834-TP, 990036-TP

Dear Mrs. Bayó:

Supra Telecommunications and Information Systems, Inc. (Supra Telecom), pursuant to Rule 28-106.106, Florida Administrative Code, hereby seeks leave of the presiding officer for Mark E. Buechele, Esq. To appear as a qualified representative in the above-referenced dockets. David Dimlich will no longer represent Supra Telecom in these dockets, and Supra Telecom respectfully requests that his name be withdrawn as qualified representative.

Mr. Buechele is located at 2620 SW 27th Avenue, Miami, Florida 33133. His telephone number is 305-531-5286. Mr. Buechele is currently Supra Telecom's General Counsel and possesses the necessary qualifications to responsibly represent the company's interests in these matters. An affidavit of Mr. Buechele is enclosed.

Thank you for your assistance.

- AFA _____
- APP _____
- CAF _____
- CMU _____ Olukayede A. Ramos
- CTR _____ Chairman and CEO
- EAG _____
- LEG 2 _____
- MAS _____
- OPC _____
- PAI _____
- SEC 1 _____
- WAW _____
- OTH lead dkt _____

Done 10/12/99

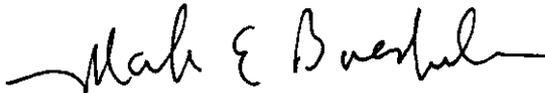
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AFFIDAVIT

Being first duly sworn, the undersigned counsel, **MARK E. BUECHELE**, states as follows:

The undersigned counsel is an attorney admitted to practice and a member in good standing of the State of Florida Bar No. 906700 and possesses the necessary qualifications to responsibly represent Supra Telecom's interests in Dockets Nos. 990649-TP, 971527-TX, 980119-TP, 980253-TP, 980800-TP, 981832-TP, 981833-TP, 981834-TP, and 990036-TP

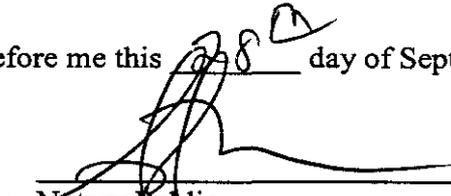
The undersigned counsel has knowledge of Florida Statutes relative to the Commission's jurisdiction; has knowledge of the Florida Rules of Civil Procedure relating to discovery in an administrative proceeding; has knowledge of the Florida Administrative Code and Florida Statutes relative to the rules of evidence, including the concept of hearsay in an administrative proceeding; has acquired knowledge of the factual and legal issues in these proceedings; and has knowledge of and compliance with the Standards of Conduct for Qualified Representatives contained in Rule 28-106.107 of the Florida Administrative Code.



Mark E. Buechele, Esq.
General Attorney
2620 SW 27 Avenue
Miami, Florida 33133

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

Sworn to and subscribed before me this 28th day of September, 1999.



Notary Public

My Commission Expires:

