



STIS

Supra Telecom & Information Systems, Inc.

ORIGINAL

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November 30, 1998

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

Re: Docket No. 980800-TP

Dear Ms. Bayó:

Enclosed is an original and fifteen (15) copies of Supra Telecommunication's Response to The Florida Competitive Carriers Association's Petition to Intervene on a Limited Basis, which we ask that you file in the captioned 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,

David V. Dimlich

DEC - 1 11 10:13
MAIL ROOM

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DOCUMENT NUMBER-DATE

13457 DEC-1 88

FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

)
In re: Petition for Emergency Relief of)
Supra Telecommunications and Information)
Systems, Inc. Against BellSouth)
Telecommunications, Inc.)
_____)

Docket No.: 980800-TP

Filed : December 1, 1998

**SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S
RESPONSE TO THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S
PETITION TO INTERVENE ON A LIMITED BASIS**

Supra Telecommunications and Information Systems, Inc. ("Supra") hereby files this Response to the Florida Competitive Carriers Association's ("FCCA") Petition to Intervene. Pursuant to Florida Public Service Commission ("the Commission" or the "FPSC" hereafter) Rule 25-22.039, Florida Administrative Code, Supra moves the Commission to deny FCCA's Petition to Intervene and in support thereof, states the following:

1. Rule 25-22.039 of the Florida Administrative Code sets forth the requirements for intervention in a proceeding before the Commission. That Rule states, "petition for leave to intervene must be filed at least five (5) days before the final hearing." The Commission's final hearing on this proceeding was conducted October 21, 1998, and the Commission issued its final order, No. PSC-98-1417-PCO-TP ("Order"), on October 22, 1998. FCCA's petition to intervene was not filed until November 23, 1998, thirty-three (33) days after the Commission's final hearing. According to the requirements of Rule 25-22.039 of the Florida Administrative Code, FCCA's petition to intervene is late, therefore the Commission should dismiss FCCA's petition to intervene.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

2. Another requirement of Rule 25-22.039 of the Florida Administrative Code is that the intervenor demonstrate that their substantial interests “are subject to determination or will be affected through the proceeding.” In the Order, the Commission found that Supra is entitled to first priority for physical collocation in certain of BellSouth Telecommunications, Inc.’s (“BellSouth”) central offices. In its petition to intervene, FCCA states that it has a substantial interest to intervene because the Order reflects a decision by the Commission to make a “fundamental shift” in FCC policy that will affect the entire telecommunications industry. FCCA’s Petition to Intervene at 2. This concern on the part of FCCA is misplaced, as the Order clearly states that “this is a unique issue arising out of specific circumstances.” Order, at 4. In addition, the Commission explained in its order that “we emphasize that we believe that the FCC did not contemplate the specific facts of this case, and, therefore, the deviation from the FCC’s first-come, first-served rule in this case is warranted.” Order, at 9. This language indicates that the Commission’s actions were self-admittedly an application of fundamental principles of fairness to a specific circumstance, certainly not a “fundamental shift” in FCC policy. FCCA’s proclaimed substantial interest in the alleged “fundamental shift” in FCC policy is not relevant in this proceeding, where the Commission has specifically applied fundamental principles of fairness. The Order has not affected FCC policy, therefore FCCA lacks the requisite substantial interest and the Commission should deny FCCA’s petition to intervene.

3. In its petition, FCCA alleges that the Order represents an unpromulgated rule in contravention of section 120.56(4), Florida Statutes. FCCA’s Petition to Intervene, at 3. In order to challenge the Commission’s Order pursuant to section 120.56(4), the challenging

In Re: Petition for Emergency Relief: Supra Telecom v. BellSouth

petition “shall state with particularity facts sufficient to show that the statement constitutes a rule under section 120.52.” Section 120.52(16), Florida Statutes, defines a rule as a statement of “general applicability”. Clearly, by its own admission, the Commission has issued an Order that is not a rule of general applicability, but is an application of fundamental principles of fairness to a specific circumstance. FCCA has failed to state facts sufficient to show that the Order constitutes a rule under section 120.52(4), Florida Statutes, therefore the Commission should deny FCCA’s petition to intervene.

Respectfully Submitted this 1st day of December, 1998.

DAVID V. DIMLICH, ESQ.
Legal Counsel
Supra Telecommunications &
Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, FL 33133
Tel: (305) 476-4235
Fax: (305) 443-1078

By: _____


DAVID V. DIMLICH

CERTIFICATE OF SERVICE

I HEREBY Certify that a true and correct copy of the foregoing has been furnished by U.S.

Mail or hand-delivery, this 1st day of December, 1998, to the following:

Mary Beth Keating
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Gerald L. Gunter Building, Room 390R
Tallahassee, Florida 32399-0850

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Donna Canzano
Wiggins & Villacorta, P.A.
2145 Delta Boulevard, Suite 200
P.O. Box 1657

By: _____



DAVID V. DIMLICH

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COPY

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In re: Petition for Emergency Relief of)
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Systems, Inc. Against BellSouth)
Telecommunications, Inc.)
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Docket No.: 980800-TP

Filed : December 1, 1998

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Tel: (305) 476-4235
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