

ORIGINAL

Legal Department

JAMES MEZA III  
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July 28, 2003

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COMMISSION  
CLERK

Mrs. Blanca S. Bayó  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: 030482-TP Complaint of Supra Telecommunications & Information  
Systems, Inc. Against BellSouth Telecommunications, Inc. for Filing False  
Usage Data Numbers with the Commission in Docket No. 990649A-TP**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Stay Discovery and/or Motion for Protection, 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.

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Sincerely,

*James Meza III*  
James Meza III (KA)

Enclosures

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

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FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE  
DOCKET NO. 030482-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
Electronic Mail and First Class U.S. Mail this 28th day of July, 2003 to the following:

Patty Christensen  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Tel. No.: (850) 413-6220  
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[pchrste@psc.state.fl.us](mailto:pchrste@psc.state.fl.us)

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2620 S.W. 27<sup>th</sup> Avenue  
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Fax. No. (305) 443-9516  
[jorge.cruz-bustillo@stis.com](mailto:jorge.cruz-bustillo@stis.com)

Ann Shelfer, Esq.  
Supra Telecommunications and  
Information Systems, Inc.  
1311 Executive Center Drive  
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James Meza III (KA)

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of Supra Telecommunications	)	Docket No. 030482-TP
& Information Systems, Inc. Against	)	
BellSouth Telecommunications, Inc. for Filing	)	
False Usage Data Numbers with the Commission	)	
<u>In Docket No. 990649A-TP</u>	)	Filed: July 28, 2003

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
MOTION TO STAY DISCOVERY AND/OR  
MOTION FOR PROTECTION**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Motion to Stay Discovery and/or Motion for Protection. In support, BellSouth states the following:

1. On June 3, 2003, Supra Telecommunications and Information System's Inc. ("Supra") filed its Complaint, wherein it attempts to attack the average usage charge calculations submitted by BellSouth in its April 12, 2002 post-hearing brief as well as its August 26, 2002 Response to AT&T's Petition for Interim Rates in Docket No. 990649A-TP ("UNE Docket"). Supra, claims without any basis in fact or law, that the calculations were false and misleading because the average charges articulated in BellSouth's filings were higher than what BellSouth charged Supra for usage in its April and August 2002 bills. Supra claims that BellSouth violated Section 364.01(4)(g), Florida Statutes, because the act of filing the information purportedly constituted anticompetitive behavior.

2. Supra's Complaint is the latest in a series of ill-founded attacks against BellSouth that are based upon flawed logic and Supra-created conspiracy theories and purported violations of law. Indeed, Supra's Complaint is nothing more than a harassing technique, devoid of any merit filed to continue its recent litigation strategy of

seeking to persuade the Florida Public Service Commission ("Commission") to fine BellSouth or revoke its certificate.

3. On June 23, 2003, BellSouth filed a Motion to Dismiss the Complaint, a Request for Sanctions, and an Opposition to Supra's Request for Expedited Relief ("Motion to Dismiss" or "Motion") on the following grounds: (1) Supra's Complaint fails to state a cause of action under Section 364.01(g), Florida Statutes; (2) Supra's Complaint is procedurally improper; (3) Supra's Complaint fails to state a cause of action for fraud; (4) Supra's attempt to challenge usage calculations in the UNE Docket is time-barred; and (5) Supra's Complaint is barred by the doctrine of waiver.

4. Supra filed a response to BellSouth's Motion to Dismiss on June 30, 2003. BellSouth's Motion to Dismiss is still pending and according to the most recent CASR, has yet to be set for a specific agenda.

5. The Commission has not issued an Order Establishing Procedure in this case.

6. On July 27, 2003, Supra served BellSouth with Interrogatories relating to the allegations it raised in its Complaint, a copy of which is attached hereto as Exhibit A. BellSouth's response to the Interrogatories is due on July 28, 2003.

7. All of the Interrogatories in question relate to matters at issue in the UNE Docket, including but not limited to questions regarding the computation of the average usage calculations BellSouth submitted in that docket. Specifically, Supra asked for the following:

a. Please identify with specificity the methodology and calculations used by BellSouth to derive the average Florida UNE usage amount of \$3.41 in your April 12, 2002, filing in Docket No. 990649A-TP;

b. Please identify with specificity the methodology and calculations used by BellSouth to derive the average Florida UNE usage of \$2.00 in your August 26, 2002 filing in Docket No. 990649A-TP;

c. Please identify with specificity any and all components, including but not limited to rates and types of access lines, used by BellSouth in arriving at the average Florida UNE usage amount of \$3.41 in your April 12, 2002, filing, in Docket No. 990649A-TP;

d. Please identify with specificity any and all components, including but not limited to rates and types of access lines, used by BellSouth in arriving at the average Florida UNE usage amount of \$2.00 in your August 26, 2002, filing, in Docket No. 990649A-TP;

e. Please identify the average Florida UNE usage amount on a monthly basis for CLEC UNE residential lines only, by month from 1999 to the date of your response to this interrogatory; and

f. Please identify each person who participated in any BellSouth UNE usage cost study submitted to the Florida Public Service Commission, and identify what, specifically, each person was responsible for;

g. Please identify each UNE usage cost study submitted to the Florida Public Service Commission.

8. Not surprisingly, all of the requested information is information that Supra should have solicited or obtained in the UNE Docket and not through this collateral proceeding. As set forth in detail in BellSouth's Motion to Dismiss, Supra did not attempt to challenge BellSouth's calculations in the UNE Docket, despite the fact that Supra was a party to that docket. Further, although Supra was a party, Supra chose not to participate in the UNE Docket as it submitted no filings in that proceeding after the Commission bifurcated the docket into Track A and B in October 2001. The last time Supra submitted a filing in the UNE Docket was in September 2000 and this pleading related to discovery.

9. Notwithstanding its refusal to participate or obtain the requested information in the UNE Docket and with full knowledge that BellSouth has requested dismissal of the entire proceeding, Supra issued the above-identified discovery. The discovery in question is limited to Supra's transparent attempt to relitigate issues that Supra should have litigated in the UNE Docket, chose not to litigate, and is now legally prohibited from litigating. See Order PSC-02-0117-PCO-TP at 6 (stating that "if a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.").

10. Pursuant to Rule 28-106.211, Florida Administrative Code, BellSouth requests that discovery in this proceeding, including the Supra Interrogatories identified above, be stayed until the Commission resolves BellSouth's Motion to Dismiss. A stay will be in the interest of judicial economy and prevent BellSouth from incurring the unnecessary time and expense of responding and objecting to potentially moot discovery.

11. Moreover, the parties would not be prejudiced by this request for relief because the hearing of this matter has yet to be scheduled. Further, a temporary stay in discovery would not unnecessarily delay the case because the stay would only be in effect until the Commission resolves BellSouth's pending Motion to Dismiss (assuming arguendo that BellSouth's Motion to Dismiss is denied).

12. In the alternative and for the reasons set forth in BellSouth's Motion to Dismiss, BellSouth requests, pursuant to Rule 1.280(c) of the Florida Rules of Civil Procedure, that the Commission issue a Protective Order prohibiting Supra from seeking the information in question. Responding to the Interrogatories in question at this time would subject BellSouth to undue harassment and expense, because Supra's Complaint should be dismissed as a matter of law.

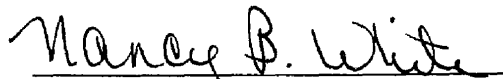
13. On July 28, 2003, BellSouth contacted Supra's counsel who advised that Supra objects to the instant Motion.

### **CONCLUSION**

For the reasons set forth above, BellSouth requests that the Commission stay discovery in this matter until BellSouth's Motion to Dismiss is resolved. Alternatively, for the reasons set forth in BellSouth's Motion to Dismiss, BellSouth requests that the Commission issue a protective order prohibiting Supra from seeking the information in question.

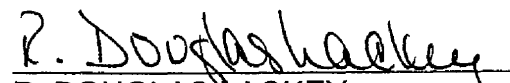
Respectfully submitted this 28th day of July 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
\_\_\_\_\_  
NANCY B. WHITE (en)  
JAMES MEZA

co Nancy Sims  
150 South Monroe Street, #400  
Tallahassee, Florida 32301  
(305) 347-5558

and

  
\_\_\_\_\_  
R. DOUGLAS LACKEY (en)  
E. EARL EDENFIELD  
675 West Peachtree Street, #4300  
Atlanta, Georgia 30375  
(404) 335-0761

499618



**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of Supra Telecommunications  
& Information Systems, Inc., against  
BellSouth Telecommunications, Inc., for Filing  
False Usage Data Numbers with the Commission  
In Docket No. 990649A-TP

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Docket No. 030482-TP

Filed: June 27, 2003

Supra Telecommunications & Information Systems, Inc. ("Supra") by and through its undersigned counsel hereby serves its First Set of Interrogatories upon BellSouth Telecommunications, Inc. ("BellSouth"), to be answered within 30 days from the date set forth herein.

**INSTRUCTIONS**

If you object to fully identifying a document or oral communication because of a privilege, you must nevertheless provide the following information, unless divulging the information would disclose the privileged information:

- (1) the nature of the privilege claimed (including work product);
- (2) if the privilege is being asserted in connection with a claim or defense governed by state law, state the privilege being invoked;
- (3) the date of the document or oral communication;
- (4) if a document: its type (correspondence, memorandum, facsimile etc.), custodian, location, and such other information sufficient to identify the document for a subpoena duces tecum or a document request, including, where appropriate, the author, the addressee, and, if not apparent, the relationship between the author and addressee;

**EXHIBIT "A"**

- (5) if an oral communication: the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and
- (6) the general subject matter of the document or oral communication.

### **INTERROGATORIES**

1. Please identify each person assisting you or with whom you have consulted in responding to these interrogatories including in your answer with respect to each such person, the person's name, employer, title and business address and telephone number and the nature of the assistance or consultation derived from each person.

**Answer**

2. Please Identify with specificity the methodology and calculations used by BellSouth to derive the average Florida UNE usage amount of \$3.41 in your April 12, 2002, filing, in Docket No. 990649A-TP.

**Answer**

3. Please Identify with specificity the methodology and calculations used by BellSouth to derive the average Florida UNE usage amount of \$2.00 in your August 26, 2002, filing, in Docket No. 990649A-TP.

**Answer**

4. Please Identify with specificity any and all components, including but not limited to rates and types of access lines, used by BellSouth in arriving at the average Florida UNE usage amount of \$3.41 in your April 12, 2002, filing, in Docket No. 990649A-TP.

Answer

5. Please Identify with specificity any and all components, including but not limited to rates and types of access lines, used by BellSouth in arriving at the average Florida UNE usage amount of \$2.00 in your August 26, 2002, filing, in Docket No. 990649A-TP.

Answer

6. Please Identify the average Florida UNE usage amount on a monthly basis for CLEC UNE residential lines only, by month from 1999 to the date of your response to this interrogatory.

Answer

7. Please identify each person who participated in any BellSouth UNE usage cost study submitted to the Florida Public Service Commission, and identify what, specifically, each person was responsible for.

Answer

8. Please identify each UNE usage cost study submitted to the Florida Public Service Commission.

Answer

\_\_\_\_\_  
Authorized Agent of BellSouth

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The execution of the foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, authorized agent of BellSouth, who ☐ is personally known to me or who ☐ produced \_\_\_\_\_ as identification and who did take an oath.

My Commission Expires:

NOTARY PUBLIC  
State of \_\_\_\_\_

Print Name:

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was delivered by Hand Delivery, Facsimile, Federal Express or U.S. Mail to the persons listed below this 27<sup>th</sup> day of June 2003.

Ms. Nancy White  
c/o Nancy Sims  
BellSouth Telecommunications, Inc.  
150 S. Monroe Street  
Suite 400  
Tallahassee, FL 32301

SUPRA TELECOMMUNICATIONS  
& INFORMATION SYSTEMS, INC.  
2620 S.W. 27<sup>th</sup> Avenue  
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Facsimile: (305) 443-9516

By: George Cruz-Bustillo /JWA  
JORGE L. CRUZ-BUSTILLO