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August 5, 2004

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

**RE: Docket 040301 -TP
SUPRA'S RESPONSE IN OPPOSITION TO BELLSOUTH'S MOTION
TO HOLD DISCOVERY IN ABEYANCE**

Dear Mrs. Bayo:

Enclosed are the original and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Response in Opposition to Bellsouth's Motion to Hold Discovery in Abeyance to be filed in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return it to me.

sincerely,

Brian Chaiken
Executive V.P. Legal Affairs

DOCUMENT NUMBER-DATE

08569 AUG-5 04

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

Docket No. 040301-TP

I HEREBY CERTIFY that a true and correct copy of the following was served via Facsimile and E-Mail this 5th day of August 2004 to the following:

Jason Rojas/Jeremy Susac
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Nancy White
c/o Ms. Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.
2620 S. W. 27th Avenue
Miami, FL 33133
Telephone: 305/ 476-4248
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By: Biran Chaiken

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra)
Telecommunications and Information) Docket No. 040301-TP
Systems, Inc.'s for arbitration)
with BellSouth Telecommunications, Inc.) Filed: August 5, 2004

**SUPRA'S RESPONSE IN OPPOSITION TO BELLSOUTH'S
MOTION TO HOLD DISCOVERY IN ABEYANCE**

Supra Telecommunications and Information Systems, Inc. ("**Supra**") hereby files its response in opposition to BellSouth's Motion to Hold Discovery in Abeyance, ("**BellSouth's Motion**"). BellSouth's Motion is nothing more than an unsupportable attempt to further delay BellSouth's obligation to perform UNE-P to UNE-L conversions at a reasonable price, by further delaying Supra's ability to narrow the issues and proceed towards final adjudication. Perhaps most important is the fact that this docket must be resolved within 120 days from the date in which Supra filed its petition, pursuant to Section 364.161(1), Florida Statutes. Delays in discovery would be prejudicial to Supra in completing the docket within this statutory time frame. For this reason alone, BellSouth's Motion should be denied.

Supra would be unduly prejudiced by any delay in discovery.

1. The Commission must set a rate within 120 days from the date of the Petition.

Supra initially filed its Petition in this Docket on April 5, 2004, seeking resolution of a contractual dispute, or, in the alternative, requesting that the Commission set a rate for UNE-P to UNE-L conversions. With respect to Supra's request for the establishment of a new rate, Section 364.161(1), Florida Statutes, provides that "either party may petition the commission to arbitrate the dispute and the commission shall make a determination within 120 days... [t]he prices, rates, terms, and conditions for the

unbundled services shall be established by the procedure set forth in Section 364.162.” (Emphasis added.) Based on this Florida law, the Commission must provide Supra with the rates, terms and conditions for this conversion process by no later than August 2, 2004.¹

In light of the ticking of the 120-day clock, any delay in the discovery process at this late date can only harm Supra and threaten the Commission’s ability to timely comply with its statutory obligation.

2. A duty of the Presiding Officer is to prevent delay.

Rule 28-106.206 of the Florida Administrative Code provides that parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The presiding officer may issue appropriate orders to effectuate the purpose of discovery **and to prevent delay**, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt.

In the instant proceeding, it is undisputed that BellSouth’s Motion seeks to delay or prolong the discovery process. The reason for BellSouth’s desire to delay and prolong this proceeding is simple – the longer it takes for the Commission to set a reasonable and proper rate (i.e., one that is not \$50 or more for a simple hot cut), the longer BellSouth can delay Florida CLECs’ transition from UNE-P to UNE-L; and, for those CLECs that decide to go forward with such a transition even in the face of an obviously improper and unjustifiable rate, the more money BellSouth can squeeze. Such a goal, which is predicated upon delaying this proceeding at all costs, is not only contrary to the objective

¹ Even assuming that the statutory clock begins to run on the date that Supra filed its First Amended Petition, the Commission is to rule by no later than October 23, 2004.

of the presiding officer to avoid delay, but also creates case management problems which will impede the Commission's responsibility to expedite discovery and cause unnecessary litigation expenses and problems.

3. Delay harms Supra and the Commission.

In delaying Supra's and the Commission's ability to conduct discovery, the Commission will severely prejudice Supra's and its own ability to narrow BellSouth's factual and legal arguments, if any. In order to resolve this matter in a timely manner, both Supra and the Commission must be able to propound discovery and receive responses to same in a timeframe that will allow Supra and the Commission to understand proper responses and to compel better responses to improper ones. In either event, Supra and the Commission should not be unduly rushed in its review or compelling of discovery responses because of the injection of delay into this proceeding as such can only harm and inhibit the ability of Supra to put forth its case and defenses as well as the ability of the Commission to see through BellSouth's smokescreen and set a just and reasonable rate.

BellSouth's Motion to Dismiss is meritless as it was filed solely for the purpose of undue delay.

As more fully set forth in Supra's Response in Opposition to BellSouth's Motion to Dismiss, filed on July 30, 2004, BellSouth's Motion to Dismiss is completely devoid of merit. Amazingly, BellSouth failed to: (i) allege the burden of proof it must meet to succeed on its Motion to Dismiss; (ii) allege any legal cause of action upon which it bases its Motion to Dismiss; and (iii) identify any facts within the four corners of Supra's First Amended Petition which would allow BellSouth to meet its burden. BellSouth could only have filed its Motion to Dismiss for the purpose of unreasonable delay.

Supra requests that Supra's discovery go forward, including the deposition set for August 12, 2004.

WHEREFORE, for all of these reasons set forth hereinabove, Supra requests that the Commission deny BellSouth's Motion to Hold Discovery in Abeyance.

Respectfully submitted this 5th day of August 2004.

By: Brian Chaiken/TWA
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