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November 16, 1998

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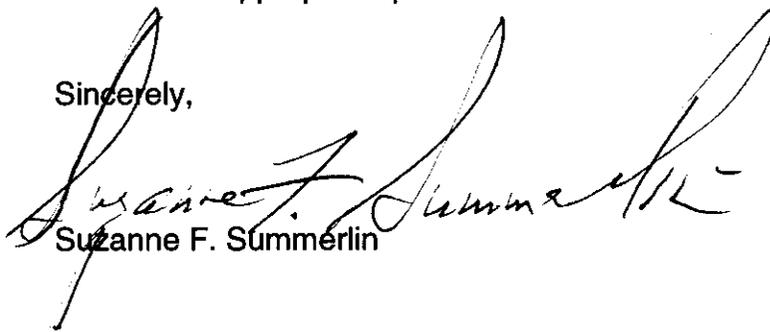
Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Docket No. 980800-TP – Petition for Emergency Relief of Supra Telecommunications and Information Systems, Inc., Against BellSouth Telecommunications, inc., Concerning Collocation and Interconnection Agreements.

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of Supra Telecommunications & Information Systems, Inc.'s Post-Hearing Brief which we ask that you file in the above-referenced docket. Copies have been served to the appropriate parties of record.

Sincerely,



Suzanne F. Summerlin

ACK SFS:bm

AFA cc: Nancy B. White, Esq.

APP _____

CAF Enclosures

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition for Emergency
Relief of Supra
Telecommunications and
Information Systems, Inc.,
Against BellSouth
Telecommunications, Inc.,
Concerning Collocation and
Interconnection Agreements.**

Docket No. 980800-TP

Filed: November 16, 1998

**SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S
POST-HEARING BRIEF**

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FPSC-RECORDS/REPORTING

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Supra Telecommunications & Information Systems, Inc. ("Supra") submits this Post-Hearing Brief to the Florida Public Service Commission ("the Commission" or "the Florida PSC") in the above-referenced docket in accordance with the post-hearing procedures of Rule 25-22.056, Florida Administrative Code.

INTRODUCTION AND SUMMARY OF ARGUMENT

Supra Telecommunications & Information Systems, Inc. ("Supra"), executed a Resale Agreement on May 28, 1997, a Collocation Agreement on July 24, 1997, and an Interconnection Agreement on October 31, 1997, with BellSouth Telecommunications, Inc. ("BellSouth"). The Petition for Emergency Relief ("Petition") Supra filed in this proceeding was prompted by the serious difficulties Supra has experienced with BellSouth regarding the implementation of its Collocation Agreement, specifically BellSouth's denial of Supra's requests for physical collocation in the North Dade Golden Glades and West Palm Beach Central Offices, as well as other related issues.

Supra filed the Petition that initiated this proceeding on June 30, 1998. In its Petition, Supra requested walk throughs of the North Dade Golden Glades and West Palm Beach Gardens Central Offices, which were conducted on two occasions, July 24, 1998, and September 16, 1998. The Commission held a one-day hearing on October 21, 1998, at which it received testimony from three Supra witnesses, O. A. Ramos, David Nilson, and Mark Graham, as well as testimony from eight BellSouth witnesses. At the hearing, the Commission received 35 exhibits into the record. Among these exhibits were transcripts of depositions from the eight BellSouth witnesses appearing at

the hearing and three other BellSouth employees deposed prior to hearing. The hearing transcript consists of 574 pages.

BellSouth has denied Supra physical collocation in the North Dade Golden Glades and West Palm Beach Gardens Central Offices contrary to the provisions of the Telecommunications Act of 1996 and the provisions of the Collocation Agreement Supra executed with BellSouth. BellSouth has prohibited Supra from physically collocating equipment that BellSouth does not want its competitors to physically collocate in its central offices. BellSouth has refused to meet the three-month time frame that the Florida Public Service Commission has established as a “reasonable” time frame in which BellSouth should be able to complete the provision of space for physical collocation.

Supra urges the Florida Public Service Commission to give BellSouth’s positions on the issues and its testimony and exhibits in this proceeding strict scrutiny for several reasons. One reason is simply the fact that BellSouth is a huge corporation with thousands of employees interacting with an extremely small new alternative local exchange carrier (ALEC) that wants to take business away from BellSouth. This is not simply a contractual dispute between two companies where one company provides goods or services that the other company needs. These companies are in an inherently adversarial relationship with each other as the purpose behind Supra’s activities is to compete with BellSouth in the provision of every service BellSouth offers and BellSouth fully recognizes this.

A second reason why BellSouth's positions and evidence should be strictly scrutinized is that Supra is demanding access to two central offices that BellSouth recognizes to be much more valuable than its other central offices in the State of Florida. As BellSouth witness Rubin indicated regarding equipment in the North Dade Golden Glades Central Office:

These are two very important – our toll switches are very important, and the operator services switch. Anyone placing an operator call in South Miami and I guess in the Keys comes through here. So we really need to allow for growth of this toll tandem and the operator services switch.

(Tr. 409)

BellSouth witness Milner testified regarding these two central offices in his deposition as follows:

Q. Can you define that for me? What is a non-wire center function?

A. That is a reference to some functions that are not necessarily required to be done in that particular wire center or Central Office, if we will, but must be performed in some Central Office.

For example, maintaining a space for emergency preparedness, what some people call a war room, might fall into that category.

Q. Now, there is one of those in one of these Central Offices?

A. I believe in West Palm Beach Gardens. You are right, one or the other.

Q. And why was that room determined to be the one to be used as the war room, rather than one in another Central Office where there was more space?

A. That's a good question.

Primarily, for the reason that that building has the greatest concentration of vital switching elements.

You will recall that in those buildings were access tandems, local tandems, operator services tandems, in some cases E199 tandems, I believe in Golden Glades. So, just the aggregation of all of that equipment, plus signal transfer points, you know, which are the signaling network, the databases, all of those things were already there. And in an emergency situation, tandems are at or near the top of the list of things that you want to ensure survival for.

End office is, obviously, very critical, but in the global scheme of things you want to keep the big tandem operational. So, often the war rooms are located in buildings where those sorts of assets are housed.

(Milner, Deposition Tr. 86-87)

The reason these two particular central offices are important to BellSouth is the same reason they are important to Supra—they are the only toll tandem switches for Dade, Broward and Palm Beach Counties and are, arguably, the most valuable central offices in the state of Florida. Physical collocation in these two central offices will give any

ALEC the opportunity to truly begin to provide facilities-based competition to BellSouth in South Florida.

A third reason why BellSouth's positions in this proceeding should be strictly scrutinized is that BellSouth has taken fundamentally contradictory positions in the filings it made with the Federal Communications Commission ("FCC") in 1993 and this Commission ("PSC") in August 1998. In its Petitions for Waiver for these two central offices that BellSouth filed with the FCC in 1993, BellSouth made the same pitch regarding how limited its space was in these two central offices and that it absolutely could not provide physical collocation. However, there is substantially more space available in these offices now, five years later. BellSouth told the FCC that it would be making additions to these central offices, but five years later in its Petitions for Waiver filed with the Florida PSC, BellSouth says it will not be making such additions. This is in spite of the ample evidence in this record that BellSouth has been internally considering making such additions as recently as August 1998. (Tr. 423-426) This is also in spite of the affirmative duty in the Telecommunications Act of 1996 for incumbent local exchange carriers (ILECs) to consider demands for physical collocation when expanding their facilities.

Throughout Supra witness Ramos' testimony, Supra has quoted the pertinent provisions of the Collocation Agreement, the Telecommunications Act of 1996, and the Code of Federal Regulations that establish the legal framework for Supra's Petition for Emergency Relief in this matter. BellSouth has violated all of these legal provisions by unjustifiably denying physical collocation in these two central offices, without even

considering its applications, and without first obtaining a waiver from the Florida Public Service Commission. Supra has put on evidence that establishes there is space available for BellSouth to grant Supra's requests for physical collocation in these two central offices. Supra witness Nilson submitted diagrams which proposed various alternatives for designing space that Supra could utilize for physical collocation in these central offices. (Tr. 111; Ex. 14) These proposed scenarios are merely examples of the many possible arrangements that Supra believes BellSouth could use to provide Supra physical collocation in these two central offices.

Supra has demonstrated that BellSouth is utilizing an excessive amount of space for its current administrative and equipment needs, that BellSouth has reserved an excessive amount of space for its own future use, and that BellSouth has failed to design the use of these central offices to maximize the space available for physical collocation.

Supra has put on evidence that demonstrates why physical collocation is an economically critical need for Supra and an equally economically detrimental option for BellSouth. BellSouth witness Tipton testified conclusively as to why physical collocation is an extremely desirable option for a ALEC because it dramatically reduces the costs of a ALEC's operation and gives a ALEC direct access to its equipment in the central office. (Tr. 296-299; Tipton, Deposition Tr. 15-20)

Supra has shown that BellSouth has put up roadblocks at every turn to explain why BellSouth is incapable of committing to a reasonable time frame for the provision of physical collocation. The BellSouth Collocation Handbook provides that physical

separation of the collocator from BellSouth's equipment is a BellSouth policy. This is a policy that unduly limits the space available for physical collocation as opposed to that available for virtual collocation.

BellSouth has not acted affirmatively to address the so-called "fire-wall" permitting issue. BellSouth states that local governmental building inspectors are requiring fire-wall enclosures around any equipment physically collocated in a central office. BellSouth has not aggressively pursued this issue with local governmental bodies to clarify that what Supra is requesting, cageless collocation, does not require enclosure by fire-walls to meet the letter or the spirit of these local ordinances. BellSouth has not communicated to these local governmental bodies that the Telecommunications Act of 1996 makes physical collocation an important element of developing competition in the provision of local exchange telecommunications services. BellSouth has not indicated to these local governmental bodies that they are preempted by the Telecommunications Act of 1996 from erecting such barriers to the development of local services competition by making physical collocation unnecessarily difficult and expensive. BellSouth has not provided aggressive oversight of the permitting process to assure that it is completed in an expeditious fashion. BellSouth has not done any of these things because it is not BellSouth that suffers the consequences of these expensive delays. Once it has put forth the appearance of permitting physical collocation, BellSouth has no compelling motivation to assist the physical collocation of its competitors in any fashion and does not act to do so.

BellSouth's witnesses have stated in this proceeding that BellSouth has made a "business decision" to prohibit physical collocation of equipment that, in BellSouth's view, provides only enhanced services. Part 47 of the Code of Federal Regulations, Section 51.100 (b), provides that a telecommunications carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Telecommunications Act may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well. BellSouth must not be permitted to make an internal "business decision" that precludes any meaningful competition by an ALEC, particularly if that decision violates 47 C.F.R. 51.100(b). An ALEC that cannot offer the same range of services that BellSouth offers cannot compete meaningfully with BellSouth. Once it is apparent that an ALEC intends to provide local exchange telecommunications services, that ALEC should be permitted to physically collocate whatever equipment it deems necessary to provide the enhanced services that complement its business as a provider of such local exchange telecommunications services

Supra requests that the Commission order BellSouth to immediately permit Supra to physically collocate in BellSouth's North Dade Golden Glades and West Palm Beach Gardens Central Offices. The Commission should order BellSouth to permit Supra to reserve an additional 200 sq. ft. in each of these central offices for Supra's future use. Supra requests that the Commission require BellSouth to complete the process of preparing the space for installation of Supra's telecommunications equipment within the three month time frame already established by the Commission as a guideline

for this process. In the alternative, the Commission should order BellSouth to permit Supra to take over the entire process of filing for the permit, competitive bidding, and the completion of the buildout of the space, using one of BellSouth's certified contractors, as Supra witness Ramos suggested in his direct testimony. The permitting process should be considered a part of the three-month time period in which BellSouth must complete physical collocation. Supra requests that the Commission require BellSouth to permit the installation of the telecommunications equipment Supra believes is appropriate to provide the services Supra wishes to provide including, but not necessarily limited to, remote access concentrators, modems and routers.

The issues raised in this proceeding are very serious because they affect Supra's ability to compete with BellSouth as a facilities-based local exchange carrier. The resolution of these issues is essential if Supra is to be able to provide any local exchange competition to BellSouth in the State of Florida.

This case presents a valuable opportunity for the Florida Public Service Commission to clarify that the implementation of the Telecommunications Act of 1996 and Supra's Collocation Agreement is not a matter left to BellSouth's discretion nor BellSouth's "business decisions."

STATEMENT OF BASIC POSITION

BellSouth's denial of Supra's applications for physical collocation in the North Dade Golden Glades and the West Palm Beach Gardens central offices violates the Collocation Agreement between the parties and the pertinent law. Supra believes there is space available for BellSouth to grant Supra's requests for these two central offices.

Supra believes BellSouth has reserved an excessive amount of space for its own future use and for administrative purposes and that BellSouth has failed to design the use of these central offices to maximize the space available for physical collocation. Supra should be the first physical collocater to be permitted in these two central offices as Supra filed the first complaint with the Florida PSC. BellSouth must be required to comply with the three-month time frame previously established by the Commission as a reasonable time frame for the completion of physical collocation, or in the alternative, permit Supra to take over this entire process. BellSouth must be required to Supra to physically collocate the equipment Supra desires to provide local exchange telecommunications services, including remote access concentrators.

A summary paragraph of Supra's position on each of the issues in this docket is set out following each issue in a separate paragraph identified with an asterisk.

STATEMENT OF POSITION ON THE ISSUES

Issue 1: Is BellSouth required to provide physical collocation in the North Dade Golden Glades and West Palm Beach Gardens Central Offices pursuant to the Collocation Agreement between BellSouth and Supra?

*****Position: Yes. BellSouth is required to provide physical collocation space to Supra in the North Dade Golden Glades and West Palm Beach Gardens central offices pursuant to the Collocation Agreement executed between BellSouth and Supra and the requirements of law as stated in the Telecommunications Act of 1996 and the Code of Federal Regulations.*****

Supra has demonstrated in this proceeding that there is adequate space available in the North Dade Golden Glades and the West Palm Beach Gardens Central Offices for BellSouth to permit Supra to physically collocate its equipment. Pursuant to the Collocation Agreement, if there is space available, BellSouth is legally required to permit Supra such physical collocation. The Collocation Agreement between BellSouth and Supra must be interpreted according to the provisions of the Telecommunications Act of 1996 which create an affirmative duty on the part of the ILEC to provide physical collocation unless it demonstrates to the state commission that such is not technically feasible or that there is no space available for physical collocation. This places the burden to prove that no space is available for physical collocation on the ILEC. It also requires that the ILEC obtain a waiver from the requirement for physical collocation **prior** to denying such requests. BellSouth admits that it did not do this and, thus, that it has violated the Telecommunications Act of 1996 and, necessarily, the Collocation Agreement it executed with Supra.

Issue 2: What factors should be considered in determining if there is adequate space for Supra in the North Dade Golden Glades and the West Palm Beach Gardens Central Offices?

*****Position: The Commission should consider the following factors in determining if there is adequate space for Supra in BellSouth's central offices:**

- a) The proper amount of administrative space to be utilized by BellSouth for its own purposes;**

- b) The appropriate amount of space for BellSouth to reserve for its own future use; and**
- c) Whether BellSouth has utilized a design for the central offices that maximizes the opportunity for physical collocation by other telecommunications service providers such as Supra.*****

Based on the testimony and evidence in this proceeding, BellSouth's witnesses do not contest that the Commission must make a determination of the appropriate amount of administrative space to be utilized by BellSouth.

BellSouth does not contest that the Commission must make a determination of the appropriate amount of future space to be reserved for BellSouth's use.

Finally, BellSouth's witnesses do not contest that the Commission needs to determine whether BellSouth has utilized the space in these central offices to maximize space available for physical collocation.

BellSouth's witnesses simply state that whatever space BellSouth believes is needed for BellSouth's current purposes and for BellSouth's future use, should be accepted at face value by the Florida Public Service Commission. This includes any space that is "convenient" to have for the monitoring and testing of equipment. BellSouth witnesses claim that the Commission must consider the need for appropriate fire aisles and space for fire-walls pursuant to local ordinances.

Issue 3: Is there sufficient space to permit physical collocation for Supra in the North Dade Golden Glades and West Palm Beach Gardens Central Offices?

*****Position: Yes. There is sufficient space to permit physical collocation for Supra in the North Dade Golden Glades and West Palm Beach Gardens Central Offices.*****

- 1) BellSouth's Petitions for Waiver From the Physical Collocation Requirement Filed With the FCC in 1993 for the North Dade Golden Glades and West Palm Beach Gardens Central Offices Contradict BellSouth's Testimony and Exhibits in this Proceeding and BellSouth's Current Petitions for Waiver for These Central Offices.**

The analysis of the issue of whether there is sufficient space to permit Supra to physically collocate in these two central offices best begins with an examination of BellSouth's Petitions for Waiver From the Physical Collocation Requirement Filed With the FCC in 1993 for the North Dade Golden Glades and the West Palm Beach Gardens Central Offices. These Petitions for Waiver are identified as Exhibits 28 and 29. A comparison of those two filings with BellSouth's testimony and exhibits presented in this proceeding demonstrates that BellSouth has consistently taken the position that there is insufficient space for physical collocation in these two central offices. However, in 1993, BellSouth represented to the FCC that it had reserved 1,000 sq. ft. for future use in the North Dade Golden Glades Central Office and 2,100 sq. ft. for future use in the West Palm Beach Gardens Central Office. These figures should be contrasted to BellSouth's testimony in this proceeding. BellSouth witness Bloomer states that BellSouth is

currently reserving 4,035 sq. ft. for future use in the North Dade Golden Glades Central Office and 3,197 sq. ft. for future use in the West Palm Beach Gardens Central Office. (Tr. 476) Witness Bloomer's testimony reflects that BellSouth is reserving 17% of the space in the North Dade Golden Glades Central Office and 18% of the space in the West Palm Beach Gardens Central Office for future use. (Tr. 476) These figures show clearly that BellSouth currently has 3,035 sq. ft. more space available for future use than it claimed it had five years ago when it filed its Petition for Waiver for the North Dade Golden Glades Central Office. BellSouth has 1,097 sq. ft. more space reserved for future use in the West Palm Beach Gardens Central Office than it claimed it had when it filed its Petition for Waiver for that central office in 1993.

What is the significance of these facts? One measure of their significance is they demonstrate that BellSouth's statements to the FCC in 1993 regarding the limited space it had in these two central offices were, at the least, completely incorrect. BellSouth stated to the FCC in 1993 that the space reserved for future use would be enough for a two-year period. It is now five years later and there is practically 400% as much space available for future use in the North Dade Golden Glades Central Office as BellSouth told the FCC it had in 1993. According to BellSouth, there is almost 200% as much space available for future use in the West Palm Beach Gardens Central Office as BellSouth told the FCC it had in 1993. This is the case even though three additional years have passed since the two-year period of growth for which BellSouth had reflected it was reserving the space.

When questioned regarding this obviously inconvenient evidence of BellSouth's past inability to accurately project its need for space for future use, BellSouth's witnesses uniformly replied that they could not provide any specific response to what occurred in these central offices since 1993. BellSouth's witnesses stated that they either did not have any knowledge of how BellSouth projected its needs in 1993 or they were not in a particular job in 1993 or they simply had no knowledge of these particular offices or the events that occurred within them. Questioned regarding the discrepancy between the 1993 Petition for Waiver with the FCC and the current space reserved for future use North Dade Golden Glades Central Office, BellSouth witness Rubin testified as follows:

Q. What I'm asking is, why would there be almost four times as much space available to be reserved for future use now, when there was, apparently, a thousand square feet left available in 1993, which was five years ago?

A. The Central Office, and every Central Office, is a dynamic thing. You have growth occurring, new technologies come in, old bays are removed, new bays are added.

You are looking at a picture in time in 1993 that I cannot address, because I don't know what the circumstances were in the office at that time. I can only address the picture in time that we're dealing

with right now. And things change. And I can address why we have the space now, not what we had in '93.

(Rubin, Deposition Tr. 10-11)

Questioned similarly, BellSouth's witness Ream testified as follows:

Q. I guess what I would ask is, how do you square up the fact that 2,000 was reserved in 1993 for two years. And today, when everything is so terrible, BellSouth has 3,000 – whatever it was in your testimony – 3,197 square feet?

A. Part of it, and I don't know the space footage, but I will say that three years ago when I walked into that Central Office, and when I was first starting out as a common systems person, three years, two and a half, I don't know, I got to talking with the Central Office foreman, and he said: "We're running out of space in this office."

And they were aware of how the offices are growing, and I agreed with them, it looked pretty tight. And I got to thinking about it, and I came up with an idea of combining two power plants.

Do you remember on our walk-through, there was one big power area, with the batteries and all of that stuff? Well, that was there.

And then in the room that we walked into just right off of that power area, we had new frames up against the wall and we said we're going to grow this way. That was a second power room.

So, about three years ago when I went in there, there was power, and batteries and things like that. I said, ah, hah, here is a good idea. We will combine. So, we cleared out that room that was a power room, and combined it into that existing one that we went into.

So, we gained space there.

Now, off the top of my head, whether or not that is enough space, I don't have a drawing to make these numbers come out, but I do know we gained space there.

Q. But apparently, 2,000 was reserved in '93 for a two-year period. And, you know, I'm just trying to ask you to resolve this, because it appears that we're now five years later.

MS. WHITE: I think he's trying to tell you that he cannot resolve it.

THE WITNESS: I can't resolve it.

(Ream, Deposition Tr. 39-40)

When BellSouth witness Cruit was questioned regarding the differences between these central offices today versus 1993, she stated that it was fair to say somebody at BellSouth made the projections that BellSouth's requests in 1993 were based on. She also stated that these central offices are "volatile dynamic offices" and "the forecasts have changed significantly". (Tr. pp. 317-326)

BellSouth witness Bloomer stated in his deposition:

Q. So, you're basically saying that the reason for the great disparity between these two figures is because they didn't account properly for aisle space back in '93?

A. I'm saying that that is a possibility, ma'am.

But, also, the building has just rolled over so fast.

Q. The buildings roll over?

A. Yes, ma'am. It is a churn, just like when you mix ingredients in a bowl; in, out, around, sideways.

(Bloomer, Deposition Tr. 28)

BellSouth, however, was fully aware that these Petitions for Waiver would be subject to examination in this proceeding. BellSouth chose not to produce any witness or testimony that addressed these startling facts that document BellSouth's grossly inaccurate predictions of its need for space in these two central offices. However, in the same breath, BellSouth asks the Commission to accept the projections provided in its testimony in this proceeding that, BellSouth witness Cruit stated very definitely, are based on less information and address a more volatile market. (Tr. 341)

There are only a few possible reasons why BellSouth's predictions regarding the growth in these central offices was so off the mark. One reason is that their projections were completely off. Another is that they really were not fully utilizing the space they claimed they were using at that point in 1993. Another is that the equipment in the central offices in 1993 was replaced by higher density equipment that took up less space than the older equipment it replaced. Any or all of these possible reasons may

be involved in the explanation for what has occurred in these central offices since BellSouth filed its Petitions for Waiver in 1993. However, whichever of these reasons explains these phenomena, all of these reasons strongly support Supra's case that there is sufficient space available if BellSouth wants there to be sufficient space available.

The much greater amount of space BellSouth **now** claims, in this proceeding, it is reserving for future use in these central offices is BellSouth's figure, without any examination of BellSouth's figures for the space it needs for its current use or the space BellSouth's states it needs for future use. As becomes apparent below, examination of these figures shows that BellSouth has a great deal more space that can be made available than it has reported to this Commission.

2) Examination of BellSouth's Currently "Occupied" Space Indicates Much More Available Space for Physical Collocation Than BellSouth Reflects in its Testimony and Exhibits.

The analysis of this issue of whether there is sufficient space should be a comparison of these two central offices as they appear right now with how they would appear if they were designed to maximize the space available for physical collocation. This analysis should not be a comparison of these two central offices with other BellSouth central offices that may have a great deal of extra space, as BellSouth would prefer the Commission to do. Analysis of the use of the space that BellSouth claims is currently "occupied" by BellSouth for its equipment and for administrative purposes

indicates that BellSouth is utilizing a good deal more space than is necessary for its own current needs.

In paragraph 4 below, there is further discussion regarding the maintenance and administrative positions spread throughout these central offices and how they impact on the configuration of these central offices to maximize the space available for physical collocation. However, it is important to note that these maintenance and administrative positions are often considered part of the switch and equipment areas and are thereby considered "occupied" space.

The space BellSouth reflects as currently "occupied" includes rooms dedicated to various activities, such as a "war room" in the North Dade Golden Glades Central Office, that appear to be seriously under-utilized. There are training rooms that are apparently used on only rare occasions. There are empty bays spread throughout the line-ups of equipment in both of these central offices. There is equipment that is under-utilized because it is convenient to leave it in place until BellSouth determines that there is a good enough reason to switch the old equipment out and replace it with higher density equipment. These types of statements were made throughout the deposition testimony of BellSouth witnesses Ream, Rubin, Cruit, and Bloomer.

Again, perhaps the most telling information is that the space indicated as "occupied" by BellSouth in 1993 to the FCC must have had enough "wiggle room" to not only handle all of BellSouth's needs for five years, but enough to increase the amount of space reserved for future use (as that figure is reflected now in BellSouth's testimony in this proceeding).

3) Examination of BellSouth's Space Reserved for Future Use Indicates That BellSouth has Reserved an Excessive Amount of Space for Future Use.

BellSouth has reserved excessive space for its own future needs. Without any further evidence, the Petitions for Waiver filed in 1993 for these two central offices establish that BellSouth's projections of its needs for space for future use are unreliable, at best. These central offices have not been expanded since the 1993 filings with the FCC. Therefore, either BellSouth's projections must have been grossly incorrect or BellSouth was able to make additional space available by dramatically reducing the size of equipment needed to serve an ever-growing demand or by redesigning the use of space in these central offices. None of BellSouth's witnesses was able or willing to provide any other explanation for how so much more space could be available in these central offices after so many years.

BellSouth's own Property Management and Physical Collocation Guidelines state that BellSouth is required to offer for physical collocation any space reserved for growth outside of a two year period. However, BellSouth's witness Ream testified that the space being reserved by BellSouth for its future use provides for growth well beyond two years in many instances. (Tr. 381, 395-396, 428-433)

BellSouth witness Cruit testified regarding BellSouth's projections of its growth which drives the need for space to be reserved for future use. Witness Cruit admitted that BellSouth's current method of projecting its growth requirements is based on much less viable information than the projections which were made by BellSouth prior to two

years ago and which were used by BellSouth in the Petitions for Waiver it filed with the FCC for these two central offices in 1993. Witness Cruik basically stated that BellSouth simply assumes an astronomical growth in demand for trunks and the tandem switches as a result of the recent demands made by ALECs and Internet providers. Witness Cruik testified that BellSouth is basing its growth projections on the trend created by the last twelve to eighteen months period. (Tr. 334) This extremely questionable basis for projecting BellSouth's growth requirements has the obvious advantage for BellSouth of assuring that BellSouth will always be able to state that any space available needs to be reserved for BellSouth's future use.

4) Examination of BellSouth's Configuration of the North Dade Golden Glades and West Palm Beach Gardens Central Offices Indicate That BellSouth Has Not Acted to Maximize the Space Available for Physical Collocation.

Although the Telecommunications Act of 1996 creates an affirmative duty for an incumbent local exchange carrier to provide physical collocation and the FCC has expressly addressed the obligation to maximize the space available for physical collocation, BellSouth has demonstrated in this proceeding that it has not acted to maximize the space available for physical collocation. When questioned whether anyone at BellSouth had ordered him to redesign the configuration of the space in the West Palm Beach Gardens Central Office to maximize the space available for physical

collocation, BellSouth witness Ream testified in his deposition that he had not been so ordered. (Ream, Deposition Tr. 35)

BellSouth has left equipment utilizing older, space-wasting technologies in place. BellSouth witness Cruit testified that BellSouth is in the process of gradually removing older larger equipment and transitioning to smaller, higher density equipment with additional functionalities. However, BellSouth is choosing to leave underutilized equipment in place until it decides to move it out on the basis that it is not necessary to remove the older equipment until a certain portion of the newer equipment is being utilized. However, if BellSouth believed that it required space for its own purposes, it is doubtful such an approach would be followed.

Exhibits 18 and 19 are the videotapes taken by BellSouth and Supra of the walk-throughs of these central offices by Supra, BellSouth and staff on July 24, 1998, and September 16, 1998. During the walk-throughs of these central offices by BellSouth, Supra and staff, Supra witnessed numerous maintenance and administrative positions, called "MAP" positions, spread throughout these central offices. BellSouth's witness Ream testified that most of the office configurations and work stations in the West Palm Beach Gardens Central Office were put in when the office was first opened, approximately 25 to 30 years ago. (Ream, Deposition Tr. 31-33) No effort has been made to update the configurations of the office areas or the MAP positions or to consolidate the functions of these office areas or MAP positions. In numerous locations, there are duplicate work stations for the same switch. BellSouth justifies these widespread MAP positions on the basis that it is convenient to have such desks

and work stations in near proximity to the switches or other equipment they are monitoring. However, BellSouth has admitted that so many MAP positions are not technically necessary. BellSouth's witnesses have admitted that all of the monitoring done within either of these central offices could be performed outside of the central offices. (Tr. 432) BellSouth's witnesses have also admitted that it is not essential to have work stations nearby to permit repair work to be done. (Tr. 433) It is doubtful that so many MAP positions would be maintained if BellSouth experienced a need for additional space for its own purposes.

In numerous locations throughout these central offices, Supra witnessed storage of supplies, filing cabinets, odds and ends of various sorts, hazardous materials storage, receiving rooms, etc. that did not appear to be organized or arranged for maximum utilization of the space available. There appears to be no effort to consolidate the storage of supplies or the utilization of the available space in these various locations in a space-maximizing fashion.

There are numerous rooms used for various types of activities, including training, which functions could easily be consolidated or reconfigured to achieve greater functionality in less space. Again, BellSouth does not have the need for this type of space maximization and apparently has not directed its employees to utilize these techniques.

A. If so, should Supra's request for physical collocation in the North Dade Golden Glades and West Palm Beach Gardens Central Offices be granted?

*****Position: Yes. Supra filed its Petition for Emergency Relief initiating this proceeding when its requests for physical collocation were denied. Any other telecommunications carrier that applied for physical collocation in these two central offices and was denied by BellSouth had the same opportunity to file a complaint.*****

If the Commission determines that there is adequate space available for physical collocation in the North Dade Golden Glades and the West Palm Beach Gardens Central Offices, the Commission should order BellSouth to permit Supra to physically collocate in these central offices. The Commission already determined in Order No. PSC-98-1417-PCO-TP, issued October 22, 1998, that Supra should have first priority in these two central offices as Supra was the first ALEC to file a complaint with the Commission upon having BellSouth deny its requests for physical collocation in these two central offices. The Commission heard oral argument from Supra, BellSouth, and the companies who had previously requested physical collocation in these two central offices and had been denied by BellSouth. The Commission decided that the other companies that had been denied physical collocation had had the same right to file a complaint with the Commission as Supra but had chosen not to do so. The Commission also determined that BellSouth had chosen not to file a petition for waiver prior to denying Supra's requests. The Commission found that BellSouth was required

by the Telecommunications Act to obtain a waiver from the requirement to provide physical collocation from the Florida Public Service Commission prior to denying requests for physical collocation.

B. If not, what obligation, if any, does BellSouth have under the Collocation Agreement to make space available at these two central offices to permit physical collocation by Supra?

*****Position: BellSouth has the obligation to consider requests for physical and virtual collocation in making its decisions regarding whether to expand its central office facilities. If the Commission determines there is insufficient space to permit Supra to have 200 square feet in these central offices, it is apparent that BellSouth has dangerously limited its own space reserves to serve its own customers as well and the Commission should order BellSouth to process an immediate proposal for expansion.*****

The evidence in the record demonstrates that BellSouth represented to the FCC in 1993 that it intended to expand its North Dade Golden Glades and West Palm Beach Gardens Central Offices when it filed those requests for waiver with the FCC. BellSouth has reflected in its current Petitions for Waiver From the Physical Collocation Requirement for these two central offices, filed with the Florida PSC two months ago in August 1998, that it does not intend to expand these central offices. The Petitions for Waiver filed in August 1998 contradict a good deal of evidence in this proceeding that

BellSouth has been seriously considering expanding both of these central offices very recently.

It is interesting to note that BellSouth witness Ream testified as follows:

Q. Okay. Does BellSouth consider the lack of space to provide physical collocation when it determines whether or not to do a building expansion?

A. Not to my knowledge. Not to my knowledge.

(Tr. 426)

At some point, the Florida PSC must determine who should bear the burden of BellSouth's protracted delay in expanding these admittedly important central offices. Also, if BellSouth misrepresented to the FCC its intention to expand these central offices in order to obtain a waiver from the requirement for physical collocation, it would be completely inappropriate for BellSouth to benefit from such misrepresentation at this point in time.

C. If there is an obligation to make space available to Supra, how should the costs be allocated?

*****Position: Any costs associated with BellSouth's efforts to make space available should be allocated as is already provided for pursuant to Supra's Collocation Agreement with BellSouth.*****

The Collocation Agreement between Supra and BellSouth already addresses the costs for making physical collocation space available to Supra. The provisions of this Agreement should control in any situation where BellSouth is required to make space

available for physical collocation for Supra. BellSouth would like the Commission to make Supra pay for any building addition BellSouth makes to permit physical collocation. However, BellSouth is not in a position to give Supra responsibility for the costs of building additions where BellSouth has represented to the FCC as long ago as 1993 that it needed to expand these two central offices for its own purposes. The Collocation Agreement provides the mechanism for costs for physical collocation and BellSouth should be required to abide by those terms.

Issue 4: In what time frame is BellSouth required to provide physical collocation to Supra pursuant to the Collocation Agreement?

*****Position: Pursuant to the Collocation Agreement and Order No. PSC-98-0595-PCO-TP, issued April 27, 1998, the maximum time period in which BellSouth is required to provide Supra physical collocation is three months.*****

BellSouth argues that the Collocation Agreement with Supra requires that it provide physical collocation within a reasonable period of time, but that what the term "reasonable" means is completely within BellSouth's discretion. BellSouth's witnesses Thierry, Bloomer, and Mayes all stated that there are many complications that could arise that would prevent BellSouth from completing physical collocation within the three-month guideline established by the Florida PSC. BellSouth's witnesses Mayes and Bloomer aggressively argued that the Florida PSC should remove the permitting process from the three-month guideline period.

Supra has shown in this proceeding that BellSouth has put up roadblocks at every turn to explain why BellSouth is incapable of committing to a reasonable time frame for the provision of physical collocation. BellSouth has not acted affirmatively to address the so-called "fire-wall" permitting issue. BellSouth states that local governmental building inspectors are requiring fire-wall enclosures around any equipment physically collocated in a central office. BellSouth has not aggressively pursued this issue with local governmental bodies to clarify that what Supra is requesting, cageless collocation, does not require enclosure by fire-walls to meet the letter or the spirit of these local ordinances. In some fashion, BellSouth has been able to avoid this issue being raised by local governmental inspectors for virtual collocation arrangements. This is because BellSouth much prefers virtual collocation arrangements. In virtual collocation, BellSouth retains a basis for charging the virtual collocator for the maintenance of the equipment. BellSouth has provided virtual collocation to other companies in what can only be described as a cageless collocation arrangement in which no fire-wall issue has arisen, in spite of the fact that the equipment is "owned" by the virtual collocator and not BellSouth.

BellSouth has not pursued the obvious exceptions in the building codes that could easily be applied to the type of physical collocation arrangement that Supra has requested. BellSouth has not chosen to present these exceptions to these local governmental inspectors or city or county commissions. BellSouth has not communicated to these local governmental bodies that the Telecommunications Act of 1996 makes physical collocation an important element of developing competition in the

provision of local exchange telecommunications services. BellSouth has not indicated to these local governmental bodies that they are preempted by the Telecommunications Act of 1996 from erecting such barriers to the development of local services competition by making physical collocation unnecessarily difficult and expensive. BellSouth has not provided aggressive oversight of the permitting process to assure that it is completed in an expeditious fashion. BellSouth has not done any of these things because it is not BellSouth that suffers the consequences of these expensive delays. Once it has put forth the appearance of permitting physical collocation, BellSouth has no compelling motivation to assist the physical collocation of its competitors in any fashion and does not act to do so.

The bottom line is that Supra and any other ALEC is simply at BellSouth's mercy as to when physical collocation will be provided.

However, the Collocation Agreement between BellSouth and Supra is a contract and the Florida PSC has been given legal authority by the Telecommunications Act of 1996 to interpret and resolve disputes regarding these types of contracts. A necessary component of such resolution is the interpretation of terms such as "reasonable." The three-month guideline for the completion of physical collocation space already established in Order No. PSC-98-0595-PCO-TP, issued April 27, 1998, is a perfectly appropriate interpretation of the term "reasonable" and BellSouth should be required to perform within that time frame with exceptions for only catastrophic situations. For the Florida PSC to permit anything less will assure that BellSouth will have no reason to be concerned about how long the permitting process takes, how long the construction work

takes, or any other factor regarding providing physical collocation space that is within BellSouth's control. To place ALECs in a position where they must "negotiate" with BellSouth is to give BellSouth complete discretion and control of the situation. Not one BellSouth witness could give any explanation of what options the ALEC has when it does not agree with BellSouth's given date for completion of physical collocation space, except to go to the Florida PSC. If an ALEC's only option regarding a particular application for physical collocation is to come to the Florida PSC and file a complaint and go through months of litigation and tremendous expense, local services facilities-based competition will never have a chance to develop in Florida. The Commission should order BellSouth to complete physical collocation in the three-month time frame or permit Supra to take over this process for itself.

Issue 5: Pursuant to the Collocation Agreement, what telecommunications equipment can and what telecommunications equipment cannot be physically collocated by Supra in BellSouth's central offices?

*****Position: BellSouth has no legal right to limit the types of equipment that Supra can collocate in BellSouth's central offices in any physical collocation arrangement as Supra is an ALEC providing local exchange telecommunications services.*****

BellSouth's witnesses have stated in this proceeding that BellSouth has made a "business decision" to prohibit physical collocation of equipment that, in BellSouth's view, provides only enhanced services. This "business decision" was made after BellSouth's own Strategic Management Organization recommended that it permit physical collocation of switches, routers and modem pools, as demonstrated in

BellSouth witness Tipton's testimony. (Tr. 289-295) BellSouth views collocators as companies that wish to take BellSouth's business away. (Tr. 304-306) BellSouth must not be permitted to make an internal "business decision" that precludes any meaningful competition by an ALEC. An ALEC that cannot offer the same range of services that BellSouth offers cannot compete meaningfully with BellSouth. Once it is apparent that an ALEC intends to provide local exchange telecommunications services, that ALEC should be permitted to physically collocate whatever equipment it deems necessary to provide the enhanced services that complement its business as a provider of such local exchange telecommunications services.

BellSouth has no legal right to limit the types of equipment that an ALEC chooses to physically collocate in BellSouth's central offices if that ALEC will be providing local exchange telecommunications services as an alternative local exchange carrier. If the ALEC intends to provide enhanced services as well as local exchange telecommunications services, BellSouth's primary motivation will be to limit the ALEC's opportunity to compete with BellSouth by limiting the ALEC's ability to physically collocate all of the equipment it needs to provide its services. BellSouth wishes to do just this in *Supra's* case, all the while its own subsidiaries provide the enhanced services and Internet services that complement BellSouth's local exchange telecommunications services, from BellSouth's central offices. There is no collocation agreement on record with the Florida PSC that incorporates an agreement between BellSouth and BellSouth.net that permits BellSouth.net to physically collocate its equipment in BellSouth's central offices. However, the Comparably Efficient

Interconnection (CEI) requirements of the Computer III Inquiry require that whatever an ILEC permits an affiliate to do, that ILEC must let any other requesting telecommunications carrier do. BellSouth is refusing to comply with these requirements. The simple fact of the matter is that BellSouth will choose to prohibit physical collocation of any type of equipment the state commissions permit it to prohibit. It is only because BellSouth believes it has no choice that it has allowed the types of equipment to be physically collocated that it has permitted. BellSouth argues that an ALEC that wishes to provide enhanced services is an enhanced services provider and BellSouth must treat all enhanced services providers equally. The provision in the Code of Federal Regulations stating that an incumbent local exchange carrier (ILEC) need not permit physical collocation of equipment that provides enhanced services simply goes to the FCC's concern that companies who are only enhanced services providers should not physically collocate in ILEC central offices. This provision does not apply in a situation such as this where an ALEC is providing local exchange telecommunications services to residential and business customers and wishes to also provide enhanced services.

BellSouth should not be permitted to pass on each and every piece of equipment an ALEC wishes to physically collocate. Pursuant to Supra's Collocation Agreement, Supra is permitted to physically collocate any equipment it desires. BellSouth should not be permitted to treat an ALEC as an enhanced services provider simply because that ALEC wishes to provide enhanced services in conjunction with local telecommunications services. BellSouth's witness Milner admitted that BellSouth

provides enhanced services and Internet services from its own central offices. The following interchange from BellSouth witness Milner's deposition transcript conveys BellSouth's position on these issues:

Q. And you believe that it is appropriate for BellSouth to dictate what a CLEC can use equipment for? I'm asking the question.

MS. WHITE: Go for it.

THE WITNESS: BellSouth is not in the business of dictating to other companies what they may or may not do with their networks.

We're talking about space in BellSouth's central office. Space that neither Federal law, nor State law, nor municipal law says must be used in the manner that Supra has proposed.

We are not required to do it. We have made a business decision not to do it. Supra has other alternatives. Just as there are many ESPs and ISPs in business today who do not collocate in BellSouth Central Offices, Supra has, exactly, that same right.

We don't dictate to Supra what its business plans are. We do control the space in our Central Offices to the best use of telecommunication service providers, of which we're one.

*** * * * ***

Q. What is the business decision that has been made here?

The business decision, which predates the Telecommunications Act, is to not allow collocation of equipment used for ESP and ISP purposes.

Q. If a company is an alternative local exchange company and wants to provide telecommunications services, why does BellSouth view that company as an enhanced services provider?

A. BellSouth does not view a company as one category or another. We're talking about the equipment and to what purpose the equipment may be put.

Again, let me refresh the categories. If it only serves telecommunications, then that equipment may be collocated in physical arrangements.

If it serves both purposes, and the collocator uses it for both, we then allow it, which we're not required to do, but we do allow that.

If it services only ESP or ISP purposes, we're not required to do that and we don't allow it.

Q. Does BellSouth provide enhanced services from its Central Office?

A. Under open network architecture rules set forth by the FCC, yes we do.

Q. Does BellSouth provide information services from the Central Office?

A. Probably so. As we're allowed to by Federal law.

(Ex. 11, Milner, Deposition Tr. 73-76)

The above excerpt clearly demonstrates BellSouth's "business decision" regarding prohibiting the physical collocation of certain types of equipment. Witness Milner points out that this "business decision" **predates** the Telecommunications Act of 1996. This very fact is enough to show the invalidity of BellSouth's actions. The Telecommunications Act of 1996 has fundamentally altered the universe of telecommunications, but BellSouth is still operating on anti-competitive legal theories and tactics that predate its passage. It is not a philanthropic desire to encourage competition by other ALECs that motivates BellSouth's decisions. It is a desire to mortally handicap any ALEC that tries to compete with BellSouth that motivates BellSouth's "business decisions".

Although Supra objects to such an analysis, Supra's witness Nilson demonstrated in his direct and rebuttal testimony, as well as during his cross-examination by BellSouth, that each piece of equipment that Supra desires to physically collocate provides local exchange telecommunications services as well as enhanced services.

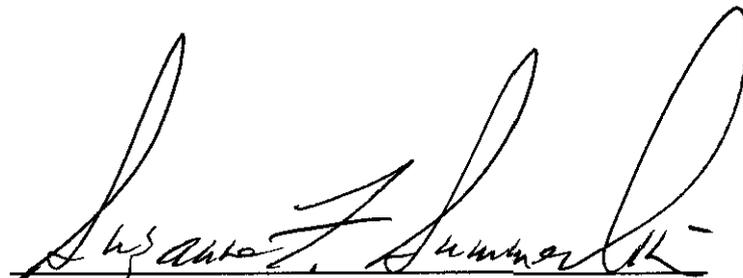
CONCLUSION

In conclusion, Supra requests that the Commission order BellSouth to immediately provide physical collocation to Supra in the North Dade Golden Glades and West Palm Beach Gardens Central Offices within the three-month time frame. Supra

requests that the Commission order BellSouth to permit Supra to physically collocate the equipment Supra believes is necessary to provide local exchange telecommunications services, as well as enhanced services, including Internet services. Supra requests that the Commission order BellSouth to permit Supra to reserve an additional 200 sq. ft. for Supra's future use in each of these central offices. Supra also requests that the Commission order BellSouth to immediately and aggressively pursue, at the highest level of BellSouth and the highest level of these local governmental bodies, the proper resolution of any local government ordinances or interpretations of ordinances that result in the requirement of fire-walls that are unnecessary in the case of the cageless physical collocation as Supra is requesting. If BellSouth cannot comply with a reasonable time frame in which to complete physical collocation and cannot effectively pursue the permitting process, the Commission should order BellSouth to permit Supra to take over this entire process for itself.

Respectfully submitted this 16th day of November, 1998.

**SUPRA TELECOMMUNICATIONS &
INFORMATION SYSTEMS, INC.**

A handwritten signature in black ink, appearing to read 'Suzanne Fannon Summerlin', is written over a horizontal line.

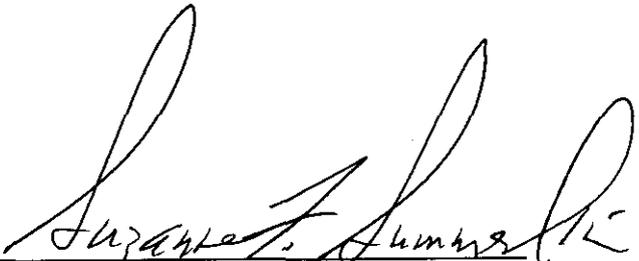
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by hand delivery this 16th day of November, 1998, to the following:

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