

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for emergency relief by Supra Telecommunications & Information Systems against BellSouth Telecommunications, Inc., concerning collocation and interconnection agreements.

DOCKET NO. 980800-TP
ORDER NO. PSC-98-1320-PHO-TP
ISSUED: October 9, 1998

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on Monday, September 21, 1998, in Tallahassee, Florida, before Commissioner E. Leon Jacobs, as Prehearing Officer.

APPEARANCES:

SUZANNE F. SUMMERLIN, ESQUIRE, 1311-B Paul Russell Road, Suite 201, Tallahassee, Florida 32301.
On behalf of Supra Telecommunications and Information Systems, Inc.

NANCY WHITE, ESQUIRE, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301.
On behalf of BellSouth Telecommunications, Inc.

BETH KEATING, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE
11145 OCT-98
PSC-RECORDS/REPORTING

II. CASE BACKGROUND

On June 30, 1998, Supra Telecommunications & Information Systems filed a Petition for Emergency Relief Against BellSouth Telecommunications, Inc. (BellSouth). By its Petition, Supra asks that we require BellSouth to permit Supra to physically collocate its equipment in BellSouth's North Dade Golden Glades and West Palm Beach Gardens Central Offices, and that BellSouth be required to meet the three-month time frame for physical collocation in the offices for which Supra has applied. On July 20, 1998, BellSouth filed its Answer and Response to Supra's Petition. This matter has been set for an administrative hearing on October 21, 1998.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall

notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words,

set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Olukayode A. Ramos	Supra	1 - 5
David A. Nilson	Supra	1 - 5
David Thierry	BellSouth	1, 3(b), 3(c), and 5
T. Wayne Mayes	BellSouth	4
James D. Bloomer	BellSouth	2 and 3
W. Keith Milner	BellSouth	2, 3(a), 4, and 5

Rebuttal

Olukayode A. Ramos	Supra	1 - 5
David A. Nilson	Supra	1 - 5
Mark C. Graham	Supra	1 - 5
David Thierry	BellSouth	1, 3(b), 3(c), and 5
James D. Bloomer	BellSouth	2 and 3
Jerome Rubin	BellSouth	3
Guy J. Ream	BellSouth	3
W. Keith Milner	BellSouth	2, 3(a), 4, and 5

VII. BASIC POSITIONS

SUPRA: 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. BellSouth must be required to permit Supra to physically collocate the equipment Supra desires to provide local exchange telecommunications services, including remote access concentrators.

BELLSOUTH:

Because the overall purpose of the 1996 Act is to open telecommunications markets to competition, facilities, such as collocation, are available as a result of the obligations imposed upon BellSouth under Sections 251 and 252 and as a result of this Commission's orders in the arbitration proceedings between BellSouth and certain Alternative Local Exchange Carriers (ALECs). BellSouth has worked in good faith to fulfill its obligations. BellSouth has provided 13 physical collocation arrangements and 92 virtual collocation arrangements to ALECs in Florida, all of them in a non-discriminatory fashion by following consistent and well-established policies. Contrary to any assertion by Supra, BellSouth's treatment of Supra's collocation requests has been nondiscriminatory and consistent with all state and federal rules and regulations and with the BellSouth-Supra Collocation Agreement.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

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?

POSITIONS

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

BELLSOUTH:

No. The BellSouth-Supra Collocation Agreement requires BellSouth to provide physical collocation only in those offices where BellSouth has space available.

STAFF: Staff has no position at this time.

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

POSITIONS

SUPRA: 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.

BELLSOUTH:

Factors such as the existing building configuration; space usage and forecasted demand; building code regulations and local regulations all affect space allocation and availability for physical collocation.

STAFF: Staff has no position at this time.

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?

POSITIONS

SUPRA: Yes. There is sufficient space to permit physical collocation for Supra in the North Dade Golden Glades and West Palm Beach Gardens central offices.

BELLSOUTH:

No. There is insufficient space at these offices for physical collocation.

STAFF: Staff has no position at this time.

ISSUE 3(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?

POSITIONS

SUPRA: Yes. Supra filed its Complaint when its request for physical collocation was denied. Any other telecommunications carrier that was rejected physical collocation had the same opportunity to file a complaint.

BELLSOUTH:

(a) No.

STAFF: Staff has no position at this time.

ISSUE 3(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?

POSITIONS

SUPRA: BellSouth has the obligation to consider a request 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 reserve to serve its own customers as well and the Commission should order BellSouth to process an immediate proposal for expansion.

BELLSOUTH:

None. When space is not available for physical collocation, BellSouth is required to offer virtual collocation to an ALEC.

STAFF: Staff has no position at this time.

ISSUE 3(C): If there is an obligation to make space available to Supra, how should the costs be allocated?

POSITIONS

SUPRA: 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.

BELLSOUTH:

There is no obligation to make space available for Supra.

STAFF: Staff has no position at this time.

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

POSITIONS

SUPRA: 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:

The Commission set a three month guideline for the provision of physical collocation in an arbitration proceeding between BellSouth and AT&T and MCI. BellSouth has attempted to negotiate time periods on a per request basis as indicated by the Commission.

STAFF: Staff has no position at this time.

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?

POSITIONS

SUPRA: 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:

The BellSouth-Supra Collocation Agreement allows Supra to place only equipment authorized by BellSouth and by Federal or State regulators. BellSouth permits the placement of equipment in physical collocation arrangements where such equipment is used for providing telecommunications services.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Olukayode A. Ramos	Supra	_____	May 6, 1998 e-mail correspondence from Nancy Nelson of BellSouth to Dave A. Nilson of Supra
		(OAR-1)	
		_____	May 18, 1998 letter to MaryRose Sirianni
		(OAR-2)	
		_____	June 18, 1998 letter to David Nilson
(OAR-3)			
_____	BellSouth's response to Supra's 1st Set of Interrogs, No. 2		
(OAR-4)			
_____	BellSouth's response to Supra's 1st Set of Interrogs, No. 3		
(OAR-5)			

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Olukayode A. Ramos	Supra	_____	BellSouth's response to Supra's 1st Set of Interrogs, No. 4
		(OAR-6)	
		_____	BellSouth's response to Supra's 1st Set of Interrogs, No. 5
		(OAR-7)	
		_____	Space availability in square footage of West Palm Beach Gardens and North Dade Golden Glades Central Offices
		(OAR-8)	
		_____	Floor Plans of North Dade Golden Glades Central Offices
(OAR-9)			
_____	Floor Plans of West Palm Beach Gardens Central Offices		
(OAR-10)			
_____	BellSouth's response to Supra's 1st Set of Interrogatories No. 13		
(OAR-11)			
_____	June 19, 1998 letter from Marcus Cathey		
(OAR-12)			

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Olukayode A. Ramos	Supra	_____	BellSouth
		(OAR-13)	Applications
			Response for
			Physical
			Collocation
			July 1, 1998
			letter to
	Marcus Cathey		
	_____	July 14, 1998	
	(OAR-15)	letter to	
		Marcus Cathey	
	_____	BellSouth's	
	(OAR-16)	July 14, 1998	
		Customer	
		Letter/Announce	
		ment to all	
		interconnection	
		services	
		customers	
	_____	August 17, 1998	
	(OAR-17)	letter to Nancy	
		B. White, Esq.	
		and Mary Jo	
		Peed, Esq.	
	_____	August 21, 1998	
	(OAR-18)	letter from	
		Nancy B. White	
		Esq.	
	_____	August 21, 1998	
	(OAR-19)	letter from	
		Mary Jo Peed,	
		Esq.	
Mark C. Graham	Supra	_____	Mr. Graham's
		(MCG-1)	Resume

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
David Thierry	BellSouth	_____	Collocation Agreement Between BellSouth and Supra
		(DT-1)	
David Thierry	BellSouth	_____	E-mail dated May 6, 1998 from Nancy Nelson to David Nilson
		(DT-2)	
David Thierry	BellSouth	_____	Letter from Beck to Ramos dated July 16, 1997
James D. Bloomer	BellSouth	_____	Space Assessment Work Sheet
		(JBD-1)	
		_____	Space Assessment Work Sheet (Golden Glades)
		(JBD-2)	
		_____	Golden Glades Floor Plan
		(JBD-3)	
		_____	Space Assessment Work Sheet (West Palm Beach Gardens)
(JBD-4)			
_____	West Palm Beach Gardens Floor Plan		
(JBD-5)			
_____	West Palm Beach Gardens Floor Plan		
(JBD-6)			
_____	North Dade Golden Glades Floor Plan		
(JBD-7)			

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
T. Wayne Mayes	BellSouth	_____	General
		(TWM-1)	Description of Permit Routing
W. Keith Milner	BellSouth	_____	Intervals for
		(TWM-2)	Obtaining Permits in Florida
		_____	July 14, 1998 letter from M.B. Cathey to O.A. Ramos
W. Keith Milner	BellSouth	_____	August 17, 1998 letter from Suzanne Summerlin to Nancy White and Mary Jo Peed
		(WKM-2)	
		_____	August 21, 1998 letter from Nancy White to Suzanne Summerlin
(WKM-3)			
W. Keith Milner	BellSouth	_____	August 21, 1998 letter from Mary Jo Peed to Suzanne Summerlin
(WKM-4)			
Jerome Rubin	BellSouth	_____	Unknown at this time
(JR-1)			
Guy T. Ream	BellSouth	_____	Unknown at this time
(GTR-1)			

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PENDING MOTIONS

- a. Supra Telecommunications & Information Systems, Inc.'s Motion for Oral Argument, filed September 2, 1998.
- b. Supra Telecommunications & Information Systems, Inc.'s Motion to Dismiss BellSouth's Motion for Reconsideration and Clarification of Order No. PSC-98-1001-FOF-TP and Motion to Strike BellSouth's Answer in Docket No. 980800-TP for Misconduct, filed September 2, 1998.
- c. BellSouth's Opposition to Supra's Motion to Dismiss and Motion to Strike for Misconduct and BellSouth's Motion to Strike Supra's Motions and for Sanctions, filed September 9, 1998.
- d. BellSouth's Motion for Oral Argument, filed September 9, 1998.
- e. Supra's September 21, 1998, Motion for Leave to File Response Out of Time

These motions were addressed by the panel assigned to this case at our October 6, 1998, Agenda Conference.

XI. RULINGS

At the prehearing conference, BellSouth stated that the parties' have worked out a protective agreement that addresses the concerns raised by BellSouth in its Motion for Protective Order, filed September 4, 1998. BellSouth's Responses and Objection to Supra's First Request for Production of Documents and Motion for Protective Order, filed September 4, 1998, is, therefore, moot.

Supra's Motion for Leave to File Direct Testimony of Olukayode A. Ramos and David A. Nilson One Day Late, filed September 11, 1998, has been granted with no objection from BellSouth.

On September 21, 1998, Supra filed a Motion for Leave to Amend Emergency Petition to Conform to Issues Identified at Issue Identification Meeting and a Motion for Leave to File Rebuttal

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Testimony of Mark C. Graham on September 21, 1998. These motions have also been granted without objection from BellSouth.

Supra requested Opening Statements at the hearing. In view of the issues to be addressed in this proceeding, opening statements may prove to be helpful. The parties will be allowed five minutes to present opening statements at the hearing.

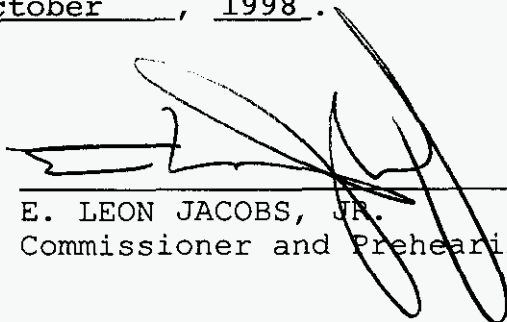
Due to the expedited process of this Docket, the parties had some difficulty meeting the filing date for rebuttal testimony set forth in Order No. PSC-98-1219-PCO-TP. That date has, therefore, been extended to September 21, 1998.

It is therefore,

ORDERED by Commissioner E. Leon Jacobs, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission. It is further

ORDERED that the motions which have not been scheduled to be addressed by the Commission at its October 6, 1998, Agenda Conference, have been disposed as set forth in the body of this Order.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 9th day of October, 1998.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.