

ORIGINAL

1 SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

2 REBUTTAL TESTIMONY OF OLUKAYODE A. RAMOS

3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

4 DOCKET NO. 980800-TP

5 September 18, 1998

RECORDS AND REPORTING

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6
7 Q. PLEASE STATE YOUR NAME, ADDRESS AND POSITION WITH SUPRA
8 TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC. ("SUPRA")

9 A. My name is Olukayode A. Ramos. My business address is 2620 SW 27th
10 Avenue, Miami, Florida 33133. I am the Chairman and CEO of Supra.

11
12 Q. ARE YOU THE SAME OLUKAYODE A. RAMOS WHO FILED DIRECT
13 TESTIMONY IN THIS DOCKET ON SEPTEMBER 10, 1998?

14 A. Yes.

15
16 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY BEING
17 FILED TODAY?

18 A. My testimony is filed in rebuttal to direct testimony filed in this proceeding by
19 Mr. W. Keith Milner of BellSouth Telecommunications, Inc, addressing Issues 2,
20 3A, and 5 in this proceeding.

21
22 Q. IN REGARD TO ISSUE 2, MR. MILNER'S DIRECT TESTIMONY ASSERTS
23 THAT THE PERMITTING PROCESS SHOULD NOT BE COUNTED AS PART
24 OF THE THREE-MONTH INTERVAL APPROVED BY THE FPSC FOR
25 PHYSICAL COLLOCATION. HE FURTHER STATED THAT BELL SOUTH

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1 BELIEVES IT IS OPERATING WITHIN THE PARAMETERS OF THE FLORIDA
2 PUBLIC SERVICE COMMISSION'S GUIDELINES. DO YOU AGREE WITH MR.
3 MILNER'S ASSERTIONS?

4 A. No. On February 9, 1998, BellSouth filed at the FPSC a Notice and Request
5 for Approval of BellSouth Telecommunications, Inc.'s Interpretation of Order No.
6 PSC-96-1579-FOF-TL. On page 2, paragraph 3, of that document, BellSouth
7 stated:

8 ***With regard to the maximum time frame of three months,***
9 ***BellSouth seeks approval from the Commission on***
10 ***BellSouth's interpretation of two important terms so that***
11 ***BellSouth can make every effort to comply with the***
12 ***Commission's Order. First, BellSouth seeks approval of***
13 ***the triggers for the beginning and end times of the three***
14 ***months. Second, BellSouth seeks approval as to the***
15 ***meaning of "ordinary conditions." BellSouth will set***
16 ***forth herein its interpretation of these terms.***

17 Order No. PSC-98-0595-PCO-TP, issued April 27, 1998, which Mr. Milner
18 referenced and quoted from in his testimony, states:

19 ***BellSouth now asks that we approve its interpretation of***
20 ***the meaning of "ordinary conditions." BellSouth's***
21 ***interpretation is, however, beyond the scope of the***
22 ***testimony presented on this matter. We shall not,***
23 ***therefore, approve BellSouth's interpretation on this***
24 ***point because there is not a basis in the record for that***
25 ***interpretation. We also do not believe that it is necessary for***

1 **any further interpretation of our use of the phrase “ordinary**
2 **conditions.” Our Order states, “If MCI and BellSouth cannot**
3 **agree to the required time for a particular collocation request,**
4 **BellSouth must demonstrate why additional time is**
5 **necessary.”**

6 In Order No. PSC-98-0595-PCO-TP, the Commission rejected BellSouth’s
7 interpretation of the three-month time frame as excluding the permitting process.
8 BellSouth has failed to demonstrate to Supra why it cannot meet the three-month
9 time frame as directed by the Commission. BellSouth has also refused to
10 provide collocation to Supra in parity to what it provides to itself and its affiliates
11 as the evidence in this proceeding will demonstrate. It is very clear that there is
12 no commitment on the part of the management of BellSouth to provide timely
13 collocation to Supra in parity to what BellSouth provides to itself.

14
15 Q. MR. MILNER’S DIRECT TESTIMONY CITES PARAGRAPH 604 OF THE
16 FCC’S FIRST REPORT AND ORDER AS CONTAINING THE FACTORS TO BE
17 ASSESSED IN DETERMINING SPACE ALLOCATION OR AVAILABILITY IN
18 BELLSOUTH’S CENTRAL OFFICES. HOW DO YOU INTERPRET
19 PARAGRAPH 604 IN THE CONTEXT OF THIS PROCEEDING?

20 A. MR. MILNER’S DIRECT TESTIMONY, AT PAGE 8, STATES:

21 **To determine space allocation or availability for**
22 **collocation in any of BellSouth’s central offices, several**
23 **factors have to be assessed. These factors are outlined**
24 **in the FCC’s First Report and Order, Paragraph 604, et**
25 **al.**

1 Mr. Milner is correct that the Commission should consider the factors in
2 Paragraph 604. However, Mr. Milner's application of the factors in Paragraph
3 604 to Supra's request for physical collocation in the North Dade Golden Glades
4 and the West Palm Beach Gardens Central Offices has several flaws. For one
5 thing, Mr. Milner does not include in his analysis the provisions of the
6 Telecommunications Act of 1996 as well as the FCC's Orders that relate to the
7 implementation of local competition pursuant to the Telecommunications Act of
8 1996. Paragraph 604 of the FCC's First Report and Order states:

9 ***Incumbent LECs are allowed to retain a limited amount of floor***
10 ***space for defined future uses. Allowing competitive entrants***
11 ***to claim space that incumbent LECs had specifically planned***
12 ***to use could prevent incumbent LECs from serving their***
13 ***customers effectively. Incumbent LECs may not, however,***
14 ***reserve space for future use on terms more favorable than***
15 ***those that apply to other telecommunications carriers seeking***
16 ***to hold collocation space for their own future use.***

17 Mr. Milner does not plainly address the real reason why BellSouth rejected
18 Supra's applications for physical collocation in the North Dade Golden Glades
19 and West Palm Beach Gardens central offices. Mr. Milner does not admit that
20 the reason for the rejection of these applications is that BellSouth has reserved
21 space for its own future use in these central offices without providing Supra the
22 chance of reserving space in these central offices for Supra's current or future
23 use.

24

25

1 Q. DO YOU AGREE WITH MR. MILNER'S CONCLUSION, BASED ON MR.
2 BLOOMER'S SPACE ASSESSMENT, THAT THERE IS NOT SUFFICIENT
3 SPACE TO PERMIT SUPRA PHYSICAL COLLOCATION IN THE NORTH DADE
4 GOLDEN GLADES AND WEST PALM BEACH GARDENS CENTRAL
5 OFFICES?

6 A. No. Mr. Milner's testimony is admittedly based on BellSouth Witness
7 Bloomer's testimony. Mr. Bloomer's testimony has many internal
8 inconsistencies. Moreover, the space assessment form provided by BellSouth
9 for the North Dade Golden Glades central office attached to Mr. Bloomer's
10 testimony contradicts that provided by BellSouth in response to Supra's First
11 Request for Production of Documents. Supra's Witness Nilson will deal with the
12 inconsistencies in Witness Bloomer's direct testimony in Witness Nilson's rebuttal
13 testimony. Mr. Milner certainly did personally visit these central offices, on two
14 occasions when Supra and the Commission Staff had walk throughs of these
15 central offices on July 24, 1998 and September 16, 1998. Mr. Milner observed
16 the generous space BellSouth has reserved for its own future use. Mr. Milner
17 simply refuses to acknowledge that Supra has the same right as BellSouth to at
18 least a reasonable portion of the 3,197 sq. ft. and 4,035 sq. ft. currently reserved
19 in the North Dade Golden Glades and West Palm Beach Gardens central offices,
20 respectively, by BellSouth for its own future use.

21

22 Q. DO YOU AGREE WITH MR. MILNER THAT BELL SOUTH HAS NOT
23 PROVIDED COLLOCATION SPACE TO ANY TELECOMMUNICATIONS
24 CARRIER IN EITHER OF THESE CENTRAL OFFICES?

25

1 A. Yes, I agree. Documents received from BellSouth in response to Supra's
2 *First Set of Production of Documents*, as well as BellSouth's own testimony, have
3 confirmed that Supra is the only company seriously interested in these tandem
4 offices. In fact, BellSouth's own information clarifies that Supra's interest in
5 physical collocation at the Daytona Beach Point Orange and the Boca Raton
6 Boca Teeca central offices was the motivating factor for BellSouth filing a *Petition*
7 for Waiver of the Physical Collocation requirement at those central offices.
8 BellSouth indicated to Supra that physical collocation space was "disappearing
9 fast" so Supra should make its intentions clear. Supra did communicate its
10 intentions and BellSouth promptly filed a *Petition for Waiver* for these two central
11 offices. The anti-competitive motivation indicated by this course of events is very
12 clear and disturbing.

13 Supra is the only telecommunications carrier that has filed a complaint
14 with the Commission when its application for physical collocation was rejected by
15 BellSouth. Supra deserves to be first in line to physically collocate in these
16 central offices.

17

18 Q. DO YOU AGREE WITH MR. MILNER THAT BELLSOUTH'S POSITION
19 REGARDING SUPRA'S EQUIPMENT REQUESTS IS CONSISTENT WITH
20 BELLSOUTH'S STATED POLICY?

21 A. No, I do not agree with Mr. Milner that BellSouth's position regarding Supra's
22 equipment requests is consistent with BellSouth's stated policy as the evidence
23 in this proceeding demonstrates. The documents produced by BellSouth indicate
24 that BellSouth has an internal policy that certain types of equipment are to be
25 permitted in the virtual collocation arrangement. The only argument Mr. Milner

1 provided in his testimony regarding BellSouth's rejection of Supra's request to
2 physically collocate remote access concentrators is that remote access
3 concentrators can also perform enhanced services. In the attachment to Mr.
4 Milner's testimony marked as exhibit WKM-44, BellSouth cited the recently
5 released FCC 98-188, Memorandum Opinion and Order and Notice of Proposed
6 Rulemaking in CC Docket No. 98-147, paragraph 132, that provides:

7 ***We tentatively conclude that we should continue to decline to***
8 ***require collocation of equipment used to provide enhanced***
9 ***services.***

10 The footnote to paragraph 35 of that same document stated:

11 ***The Commission has concluded that the definitions of***
12 ***"information service" and "enhanced service" should be***
13 ***interpreted to extend to the same functions.***

14 As I testified in my direct testimony, 47 CFR Section 51.100 (b) states:

15 ***A telecommunications carrier that has interconnected or***
16 ***gained access under Sections 251 (a) (1), 251 (c) (2), or 251 (c)***
17 ***(3) of the Act, may offer information services through the same***
18 ***arrangement, so long as it is offering telecommunications***
19 ***services through the same arrangement as well.***

20 Section 51.100 (b) of the CFR is very clear on this subject. Supra will be
21 providing telecommunications services through the same arrangement in which it
22 intends to provide information services and enhanced services. However,
23 BellSouth still insists that it will not permit Supra to collocate its remote access
24 concentrators.

25

1 BellSouth has provided no legal definition or authority for its interpretation
2 of the term "arrangement." BellSouth has no authority to support its view that the
3 term "arrangement" refers to a technical aspect of the equipment and not the
4 legal terms on which the agreement to physically collocate the equipment are
5 based. BellSouth simply categorically proclaims that a piece of equipment that
6 can provide enhanced services or information services on a stand-alone basis is
7 considered by BellSouth as not part of the same "arrangement" as the other
8 equipment to be physically collocated by an ALEC.

9 This position, of course, ignores the fact that each piece of equipment
10 physically collocated by an ALEC is going to be connected to every other piece
11 of equipment physically collocated in the same space. It also ignores the fact
12 that BellSouth refers to each contractual agreement for physical collocation as an
13 "arrangement."

14 It is interesting to note that the equipment BellSouth is prohibiting Supra
15 as an ALEC to collocate in these central offices is currently in use by BellSouth to
16 provide its own local exchange telecommunications services.

17 It is very simple for BellSouth to take this position or, indeed, any position
18 that results in delaying or obstructing an ALEC from placing particular pieces of
19 equipment in a central office. It is simple for BellSouth to take this position
20 because the only way an ALEC can push BellSouth on any issue is to file a
21 complaint with the Florida Public Service Commission and fight an expensive and
22 time-consuming battle. Most ALECs either cannot afford to fight such a battle or
23 simply do not choose to apply their resources, practically always severely limited
24 in comparison to BellSouth's, to fighting each issue that arises. Either way,
25 without any penalty for causing other parties such expense and delay, BellSouth

1 can simply throw out any argument on any issue and suffer no real negative
2 consequence, all the while maintaining its stranglehold on the local services
3 market.

4 BellSouth's position is contrary to the intent of the Telecommunications
5 Act of 1996 that ALECs be permitted the opportunity to physically collocate in the
6 incumbent LECs' central offices so that the ALECs might be able to provide true
7 competition in the local services market. The Act recognized that the
8 tremendous amount of financial investment and time involved in purchasing real
9 estate and buildings to create a facilities-based network would be such a barrier
10 to entry that there would never be any company that could seriously challenge
11 the incumbent LECs' provision of local telecommunications services. The
12 economies of scale achieved by the physical collocation of an ALEC's
13 telecommunications equipment are profound from an engineering and financial
14 standpoint. It is for this reason that the Act provided that physical collocation
15 must be provided by the incumbent LEC unless it can prove that there is a lack of
16 technical feasibility or a lack of space available in the central office. As the
17 evidence in this proceeding clearly demonstrates, BellSouth has not proven
18 either a lack of technical feasibility or a lack of available space. Therefore, the
19 Commission should order BellSouth to immediately grant Supra's requests for
20 physical collocation for the equipment Supra has indicated it wants to place in the
21 space it has requested in the North Dade Golden Glades and the West Palm
22 Beach Gardens Central Offices.

23

24 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

25 A. Yes.