

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Petition For Emergency Relief By Supra)
Telecommunications & Information Systems,)
Inc. Against BellSouth Telecommunications,)
Inc. Concerning Collocation And)
Interconnection Agreements)

Docket No.: 980800-TP

Dated: December 15, 1998

**SUPRA'S MOTION FOR RECONSIDERATION
OF FINAL ORDER (PSC-99-0060-FOF-TP)**

PETITIONER, SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra"), by and through its undersigned counsel, and pursuant to Florida Administrative Code § 25-22.60, hereby files and serves this its Motion For Reconsideration Of Final Order (PSC-99-0060-FOF-TP) entered in this docket on or about January 6, 1999, and in support thereof states as follows:

1. On or about June 30, 1998, Supra filed a *Petition for Emergency Relief* ("Petition") against BELLSOUTH TELECOMMUNICATIONS, INC. ("BellSouth"). The Petition primarily requested that the Commission require BellSouth to permit Supra to physically collocate in BellSouth's North Dade Golden Glades and West Palm Beach Gardens tandem central offices. However, Supra also requested that this Commission require BellSouth to permit the collocation of certain pieces of equipment which BellSouth had initially refused to allow in a collocation arrangement.

2. On or about July 20, 1998, BellSouth filed its Answer and Response to Supra's Petition. The Commission subsequently conducted an administrative hearing regarding this matter on October 21, 1998. On or before November 16, 1998, the parties filed their post-

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hearing briefs on the evidence submitted. Thereafter, on or about December 3, 1998, the Staff issued its recommendations on this matter and on or about January 6, 1999 this Commission entered its final order regarding Supra's petition.

3. In this motion for reconsideration, Supra asks this Commission review and reverse its ruling that certain equipment not be allowed in physical collocation within BellSouth's central offices. Under Issue No. 5, this Commission ruled that BellSouth be allowed to prohibit the collocation of Ascend TNT equipment and Cisco Systems remote access concentrators. The final order on this issue, particularly with respect to the Ascend TNT equipment, is contrary to both the relevant law and the undisputed evidence presented at the October 21, 1998 hearing. Supra also believes that this Commission erred in denying collocation of the Cisco equipment as well. Accordingly, Supra respectfully requests that this Commission reverse its ruling regarding at least the Ascend TNT equipment (if not also the Cisco Systems equipment) and permit the collocation of such equipment by Supra in BellSouth's central offices.

I. LEGAL STANDARDS

The proper standard of review on a motion for reconsideration is whether or not the Commission overlooked or failed to consider a point of fact or law in rendering its order. In re: Complaint of Supra Telecom, 98 FPSC 10, 497, at 510 (October 28, 1998) (Docket No. 980119-TP, Order No. PSC-98-1467-FOF-TP). This standard necessarily includes any mistakes of either fact or law made by the Commission in its order. In re: Investigation of possible overearnings by Sanlando Utilities Corporation in Seminole County, 98 FPSC 9, 214, at 216 (September 1998) (Docket No. 980670-WS, Order No. PSC-98-1238-FOF-WS) ("It is well

established in the law that the purpose of reconsideration is to bring to our attention some point that we overlooked or failed to consider or a mistake of fact or law"); see e.g. In re: Fuel and purchase power cost recovery clause and generating performance incentive factor, 98 FPSC 8, 146 at 147 (August 1998) (Docket No. 980001-EI, Order No. PSC-98-1080-FOF-EI) ("FPC has met the standard for reconsideration by demonstrating that we may have made a mistake of fact or law when we rejected its request for jurisdiction separation of transmission revenues").

In this instance, Supra believes that this Commission erred in both fact and law in determining that Supra may not collocate the Ascend TNT equipment in BellSouth's central offices. As for the Cisco Equipment, Supra believes that this Commission also erred in law by refusing to permit the collocation of this equipment as well.

II. COLLOCATION OF THE ASCEND TNT AND CISCO EQUIPMENT

A. Factual Determination Of The Ascend TNT Switches

It is undisputed that BellSouth claims it allows the physical collocation of equipment which can and will be used to provide telecommunications services, regardless of whether or not the equipment can also be used to provide information services. The undisputed evidence presented at the October 21, 1998 hearing is that the Ascent TNT equipment can provide telecommunications services to PBX customers through the use of an SS7 gateway, and that it is in fact Supra's intention to use such equipment to provide basic telecommunications services to business customers with PBX telephone systems.

The Collocation Agreement states in pertinent part in Section III, Paragraph A as follows:

"Nature Of Use: BellSouth shall permit Interconnector to place, maintain and operate in the Collocation Space any equipment that Interconnector is authorized

by BellSouth and by Federal or State regulators to place, maintain and operate in collocation space and that is used by Interconnector to provide services which Interconnector has the legal authority to provide."

However, it is undisputed that BellSouth's own witness on this subject (W. Keith Milner)

testified as follows:

"BellSouth permits the placement of equipment in the physical collocation arrangement where such equipment is utilized for the purposes of providing telecommunications services through interconnection or through access to unbundled network elements. Where that equipment can also provide information services, the telecommunications carrier may offer information services through that same equipment so long as that equipment offers telecommunications service." (Milner TR 554-555).

Based upon the above it is clear that the undisputed position of BellSouth is that if a particular piece of equipment can and will be used to provide both telecommunications and information services, that BellSouth will allow such equipment to be collocated. Although Supra was seeking from this Commission a broader interpretation of what type of equipment can be collocated, even BellSouth's own narrow interpretation of permissible equipment mandates a determination and ruling that the Ascend TNT equipment be allowed in physical collocation.

As a recap, Ascend manufactures a piece of telephone equipment commonly referred to as a "TNT Switch". During the October 21, 1998 hearing, only Supra presented any evidence about the capabilities of the Ascend TNT Switch. The undisputed and uncontradicted evidence presented by Supra is that the Ascend TNT Switch has the capability of directly providing basic telephone service to PBX customers together with the ability of switching data traffic. In addition to relieving costly congestion of a class 5 switch by off-loading internet traffic to the Ascend TNT switch, the TNT Switch is a more cost efficient method of handling PBX voice customers and Supra intends to provide PBX voice services with this equipment. Although the

Ascend equipment can also off-load data calls from the Class 5 Switch, this is not the equipment's only capability or intended function. The Ascend equipment follows the modern trend of combining both data and voice capability in one package and is intended as a cost-effective solution to handling both types of traffic.

At the October 21, 1998 hearing, the unrebutted and disputed testimony of Supra's David Nilson under the cross-examination of BellSouth's Ms. White was as follows:

"Q. Okay. Let's talk about the Ascend TNT piece of equipment. That's a piece of equipment that Supra wants to physically collocate; isn't that correct?"

A. Yes, ma'am.

Q. And is it your position that this piece of equipment can be used to provide information services and telecommunications services?"

A. Yes, ma'am.

Q. Okay. So is it fair to call the Ascend TNT a switch?"

A. Well, Ascend calls it that in their literature.

Q. Can you use the Ascend TNT to switch a local or toll call?"

A. If we limit my answer to strictly stating that it's possible to do that using the Ascend TNT to switch a local call provisioned across an ISDN-PRI circuit, that's correct?"

Q. Okay. Can you tell me how it does that?"

A. In combination with the Ascend SS7 gateway, an ALEC is provided to the gateway service. The TNT is then capable of directly trunking ISDN-PRI circuits for the purpose of provisioning PBX, et cetera.

Q. Okay. Does it store the digits the customer has dialed?"

A. I believe in conjunction with the SS7 gateway it does.

Q. Does it translate the digits so that the call can be routed?"

A. Yes.

Q. How many customer lines can be hooked up to the Ascend TNT?"

A. I don't know that off the top of my head, but its in their literature?"

Q. How many voice conversations can be carried on at one time using the Ascend

TNT?

A. Well, that would be 24 times the number of trunks.

Q. Does the Ascend TNT, does it also perform as an Internet protocol router?

A. It's my understanding that the Internet capability of that switch is done in switching mode, not in routing mode.

Q. Is Supra planning on using the Ascend TNT to switch a local call from one customer to another?

A. We're planning on using it to extend our capability to provision ISDN-PRI circuits to PBX customers.

Q. Okay. And believe me, I am not a technical expert, but does that mean that it will switch a local call - or you will use it to switch a local call from one customer to another?

A. Within that definition, yes.

Q. Okay. So the Ascend SS7 gateway in the central office would be connected to unbundled network elements, correct?

A. Sure, unbundled 4-wire loops, yes.

Q. Okay. Where does the switching take place?

A. The switching takes place within the TNT chassis itself.

Q. Okay. And what is the ascent TNT switching? Is it switching data? Is it switching conversations? Which?

A. It has the capability of switching both, ma'am.

Q. Okay. What will Supra be using it to switch?

A. Both, ma'am.

Q. Okay. The -- So when a customer, where the PBX is located, picks up their phone and dials a BellSouth customer 20 miles away, that call will be routed and switched through the ascent TNT?

A. Yes, using the SS7 link connection to make that call set up and call completion.

Q. Okay. But the SS7 gateway doesn't actually do any of the switching, right? It doesn't actually switch the call does, it?

A. Yes . . . I mean it would be switching it -- in your for example, you talked about switching between a Supra customer and a BellSouth customer. The system would switch the Supra customer from a Supra unbundled network element on to a trunk heading to a BellSouth tandem.

Q. Using the ascent TNT?

A. Correct. Exclusively . . . Without requiring the support of the Class 5 switch to perform that function.

See Nilson TR 171-176, 180-182.

The above testimony of Supra's David Nilson was wholly un rebutted by BellSouth. In fact, BellSouth failed to offer a single shred of evidence regarding the Ascend TNT Switches. The only mention of this equipment by BellSouth in the record is a contention by BellSouth's Milner that the Ascend TNT Switch is a remote access concentrator and thus BellSouth will not allow this piece of equipment in physical collocation. This "contention" does not give rise to any credible evidence since this naked contention has no facts in support the position. BellSouth did not present any factual evidence regarding the capabilities or functions of the TNT equipment. Moreover, it was clear that none of the BellSouth witnesses was even technically competent to give testimony in this area.

Pursuant to Fla.Stat. 120.57(1)(j), in a administrative hearing such as the one held in this case, "findings of fact shall be based upon the preponderance of the evidence." In this case, BellSouth provided no evidence whatsoever regarding the functionality or capabilities of the Ascend TNT equipment. Without a single shred of credible evidence to rebut the testimony of Supra's David Nilson that the Ascend TNT equipment has the capability of carrying PBX voice traffic and in fact will be used by Supra in that capacity, it is impossible to conclude using a preponderance of the evidence standard, that the Ascend TNT equipment cannot be used to switch and/or carry voice traffic. Accordingly, this Commission erred as a matter of fact in ruling that the Ascend TNT equipment cannot provide telecommunications services.

It is undisputed and even noted by the Commission Staff in its recommendations that:

"A current trend in manufacturing appears to be to integrate multiple functions into telecommunications equipment. This trend has benefitted service providers and their customers by reducing costs, promoting efficient network design, and expanding the range of possible service offerings."

It is clear from the testimony presented by Supra that the Ascend TNT Switches follow the modern trend of constructing equipment with multiple functions. Therefore attaching a simple label on the equipment such as "remote access concentrators" is erroneous and ignores the reality of modern communications equipment and the Ascend TNT equipment.

This Commission's ruling focuses not on the capabilities or intended uses of the Ascend TNT equipment, but rather on the fact that Supra's witness David Nilson was not sure about the number of customer lines that could be connected to the equipment or whether the equipment actually generated a dial-tone. Attached hereto as Exhibit "A" is a true and correct copy of a June 29, 1998 press release by Ascend Communications which describes the Ascend TNT equipment in conjunction with the SS7 Gateway. The press release is responsive to the items Mr. Nilson was unable to address at the October 21, 1998 hearing and Supra would ask that this Commission permit the press release to be included in the record as a late-filed exhibit. The press release is available on the internet at Ascend Communications' web page, and is located at "<http://www.ascend.com.au/3148.html>." The press release answers the questions which Mr. Nilson could not answer at the hearing and demonstrates conclusively that the Ascend TNT equipment in conjunction with the SS7 Gateway was designed and intended to carry both voice and data traffic. In this regard the press releases states in pertinent part as follows:

"Data traffic on public networks is growing at such a fast pace that in some areas of the world it has already surpassed voice traffic. To meet this growing demand, NSPs [Network Service Providers] are building carrier-class data networks to carry voice, data and video traffic. This is what Ascend refers to as the New Public Network (NPN). However, the NPN will need to interoperate with the

existing PSTN [Public Switched Telephone Network] and the key to that interoperability is the SS7 carrier-signaling network. By creating gateways, such as the Ascend Signaling Gateway, data networking vendors can allow advanced voice and data applications to work interchangeably over either network, thereby increasing functionality and reducing costs.

* * * * *

Ascend is well positioned to provide the first carrier-class SS7 solution for voice/data convergence. Delivering an end-to-end scalable approach to SS7, the ASG [Ascend Signaling Gateway] enables NSPs to leverage a broad range of capabilities such as Internet call diversion, voice/fax over data, VPNs, and high-speed 56K-modem technology. As a key component of Ascend's MultiVoice strategy, the ASG enables transparent integration of voice networks with voice and fax over Internet protocol (IP), asynchronous transfer mode (ATM), and Frame Relay networks, allowing customers to maximize their existing investments.

* * * * *

Many networking vendors have made general announcements about SS7, but only Ascend is delivering a complete, carrier-class SS7 solution that combines Ascend's market leading MAX TNT product with the Ascend Signaling Gateway.

Benefits of the Ascend Signaling Gateway include:

- **Cost-effective solution to Internet call diversion.** The ASG enables Service Providers to relieve congestion on voice networks by diverting data calls off of costly class 4/5 switches to Ascend's MAX TNT WAN Access Switches.
- **Provides a path to new revenue generating services.** The ASG will use existing SS7 voice networks to route voice, fax and data calls over IP, ATM and Frame Relay networks. This lowers infrastructure costs for Service Providers and enables the creation of new revenue generating services over integrated voice and data networks.
- **Carrier-class SS7 solution for voice and data integration.** The ASG is built on the proven SS7 HP OpenCall platform, and the NEBs compliant, high-density MAX TNT WAN Access Switch. In addition, the ASG is scalable from 10,000 ports to 200,000 and is fault tolerant with dual HP 9000 processors, dual Signal interface units and dual connections to the MAX TNT. One ASG can connect to multiple MAX TNTs.
- **Enabling transaction based billing over data networks.** By providing call setup and call duration information, NSPs can now provide transaction-based billing. The ASG produces standard Call Detail Records for billing.

* * * * *

The ASG is being developed in three phases: Phase I provides Internet call diversion, Phase II will integrate voice services across the data network, and

Phase III will enable enhanced IN [Intelligent Network-based] network services."

From the above passages from the Ascend press release regarding the SS7 Gateway in conjunction with the TNT equipment, the following is clear. First, the Ascend TNT equipment was designed for and intended to carry and switch both voice and data. Second, the Ascend equipment is a more cost efficient way of carrying voice and data traffic over networks of the future, than use of traditional class 5 switches. Finally, that the equipment is scalable from 10,000 ports to 200,000 ports and provides call setup capabilities. Therefore the equipment can provision between 10,000 and 200,000 PBX voice and/or data ports and provides the necessary signals needed to produce "dial-tone" for PBX customers. According to Newton's Telecom Dictionary (14th ed.), "dial-tone" is defined as the sound you hear over the telephone which tells the user that the telephone company is alive and ready to receive the number dialed. By providing call setup capabilities, the Ascend equipment provides the PBX a corresponding signal indicating that a call can be made across the network; thus effectively providing "dial-tone" to the customer's PBX system.

Notwithstanding the above, the issue is not how many voice customers can be connected by the Ascend equipment or how the equipment provides "dial-tone", but rather whether the equipment has the capability of carrying both voice and data traffic. BellSouth's own Keith Milner never testified that equipment must be a traditional class 5 switch before BellSouth will allow the equipment to be collocated. Rather, it is undisputed that BellSouth's only condition is that the equipment must be able to provided both telecommunications and information services and be used in part to provide telecommunication services. In other words, it is undisputed that

equipment which can and will be used to carry both voice and data traffic, will be allowed in the collocation environment.

Competition creates incentives for companies to modernize in order to become more cost efficient and to compete for consumers on a cost basis. As a monopoly, BellSouth has little incentive to modernize (and thereby reduce its costs) and it is obvious that Florida consumers suffer as a result of this sluggish mentality. The reality is that as a sluggish monopoly, which does not have to compete on the basis of costs, BellSouth has no idea what functions the Ascend TNT Switches perform; and that is why BellSouth failed to offer a single shred of evidence regarding the functions and capabilities of that equipment.

Accordingly, for the reasons stated above, this Commission erred in making the factual determination that the Ascend TNT equipment is incapable of carry voice traffic and/or providing telecommunication services. This determination is simply contrary to the greater weight of the evidence, is clearly erroneous and therefore should be reversed.

B. Prohibiting Collocation Of The Ascend TNT Switches Violates 47 U.S.C. § 251

At page 34 of the final order, this Commission states that, "*Supra can physically collocate this equipment only if BellSouth allows Supra to do so. In this particular case, BellSouth does not.*" This argument is erroneous as a matter of law and flawed for several reasons. First, although it is true that the Ascend TNT Switches can and will provision information services, the equipment can and will also be used to provision basic voice telephone service for PBX customers. Although the Collocation Agreement only permits the collocation of equipment authorized by BellSouth or by Federal or State regulators, BellSouth already admits

to having a policy of allowing the physical collocation of equipment which can and will provision both voice and data traffic.

Pursuant to 47 U.S.C. § 251(c)(6), an Incumbent Local Exchange Carrier has **"the duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements."** Therefore, if BellSouth has a policy regarding collocation, it is incumbent to apply that policy fairly among all ALECs. Accordingly, notwithstanding the Commission's belief that BellSouth has the right to approve or disapprove the collocation of particular pieces of equipment, under 47 U.S.C. § 251(c)(6), BellSouth is still obligated to apply its collocation policies in a nondiscriminatory manner. Thus BellSouth cannot have a collocation policy which allows other ALECs to collocate equipment, but which subsequently denies Supra the same collocation opportunity. Under the Telecommunications Act, this type of discrimination is prohibited. Because it is undisputed that BellSouth's collocation policy permits the collocation of equipment which can carry both voice and data traffic, and because the only competent evidence in the record is that the Ascend TNT Switches can provision PBX voice circuits, without the use of a Class 5 switch, this Commission erred as a matter of law in denying Supra the ability to physically collocate the Ascend TNT Switches.

This Commission's final order is also in err because it concludes that BellSouth has no independent duty under the Telecommunications Act to permit collocation of the Ascend TNT Switches (apart from the duty to not discriminate). In the FCC's First Report and Order, the FCC concluded that Section 251(c)(6) of the Telecommunications Act required an incumbent

LEC to permit the physical collocation of equipment which would either be "used" or "useful" for interconnection or access to unbundled network elements. See FCC 96-325 at ¶ 579 (concluding that the word "necessary" in Section 251(c)(6) actually means "used" or "useful"). The FCC further noted that the collocation requirement should be read consistent with the interconnection and access to unbundled network elements requirements. See FCC 96-325 at ¶ 581. Thus the FCC concluded that an ILEC must permit the physical collocation of equipment to be used (or which is useful) for providing telecommunications service by way of interconnection or access to unbundled network elements. See FCC 96-325 at ¶ 581. In pertinent part, the FCC stated as follows:

"Section 251(c)(6) requires incumbent LECs to allow collocation of 'equipment necessary for interconnection or access to unbundled elements. . . ."

* * * * *

We believe that section 251(c)(6) generally requires that incumbent LECs permit the collocation of equipment used for interconnection or access to unbundled network elements. Although the term 'necessary,' read most strictly, could be interpreted to mean 'indispensable,' we conclude that for purposes of section 251(c)(6) 'necessary' does not mean 'indispensable' but rather 'used' or 'useful'. . . . Thus, we read section 251(c)(6) to refer to equipment used for the purpose of interconnection or access to unbundled network elements." See FCC 96-325 at ¶¶ 576, 579.

The FCC further noted that the incumbent LEC should not be permitted to control the types of equipment which can be collocated, so long as the equipment meets the above criteria. Obviously, if the ILEC is permitted to control the types of equipment used in the collocation arrangement, the ILEC can force the collocater into using inefficient and more expensive equipment, and thus defeat the procompetitive purposes of the 1996 Act. In this regard, the FCC stated in paragraph 579 of the First Report and Order as follows:

"Even if the collocator could use other equipment to perform a similar function, the specified equipment might still be 'necessary' for interconnection or access to unbundled network elements under section 251(c)(6). We can easily image circumstances, for instances, in which alternative equipment would perform the same function, but with less efficiency or at greater cost. A strict reading of the term "necessary" in these circumstances could allow LECs to avoid collocating the equipment of the interconnectors' choosing, thus undermining the procompetitive purposes of the 1996 Act."

This Commission's final order falls into the trap which the FCC sought to avoid. In this instance, the undisputed evidence presented at the October 21, 1998 hearing is that Supra intends to provision PBX voice circuits with the Ascend TNT switches and that the Ascend TNT switches will be used to directly connect to BellSouth unbundled network elements (i.e. unbundled 4-wire loops used to carry ISDN-PRI service from the PBX customer's location to the BellSouth central office). It is costly and inefficient to provision PBX circuits using the traditional class 5 central office switch. Costly boards must be added to the class 5 switch and the switch cannot efficiently handle this type of voice traffic. Apart from freeing the traditional class 5 switch of costly congestion caused by dial-up internet traffic, the Ascend TNT Switches are a far more economic and cost efficient method of provisioning PBX traffic compared to the traditional class 5 central office switch. BellSouth is prohibiting the collocation of this equipment for the obvious reason of making Supra less competitive. In this case, it is undisputed that Supra will directly connect the PBX customers' 4-wire loops to the Ascend TNT switch (thus using the equipment to access BellSouth unbundled network elements) and that Supra will utilize this equipment to switch and carry PBX voice traffic (bypassing the traditional and costly class 5 switch). Thus Supra is attempting to design and create a cost-efficient network which will ultimately benefit the consumer in the form of lower prices. BellSouth seeks to impede this plan by denying Supra collocation of key pieces of equipment.

The FCC's First Report and Order makes it clear that the FCC will not restrict collocation of equipment used in creative ways to provision telecommunications services. Yet that is precisely what BellSouth wishes to accomplish and what this Commission has done in its final order. Because use of an Ascend TNT Switch or a comparable piece of equipment is not the traditional (and more expensive) method of provisioning PBX traffic and constructing a network which can efficiently handle both voice and data, this Commission's final order precludes innovative thinking; the very innovative thinking which ultimately leads to better and cheaper telecommunications service. In any event, and notwithstanding any other argument in the record, the undisputed evidence is that Supra intends to use the Ascend TNT Switches to provision PBX voice traffic and that such equipment will be directly connected to BellSouth unbundled network elements (i.e. unbundled 4-wire ISDN-PRI loops connected to PBX customers). Therefore, pursuant to the FCC's interpretation of 47 U.S.C. § 251(c)(6), as a matter of law, BellSouth has a duty permit collocation of the Ascend TNT Switches. Accordingly, this Commission's final order preventing Supra from collocating the Ascend TNT Switches is erroneous, contrary to law and in violation of 47 U.S.C. § 251(c)(6).

It should also be noted that this Commission's final order is also in error because it improperly shifts the burden of proof on Supra. Although the undisputed and unrefuted evidence presented at the October 21, 1998 hearing was clear that Supra intends to provision PBX voice traffic with the Ascend TNT Switches, this Commission's final order places the burden of proof on Supra to prove the functionality and intended use of the Ascend TNT Switches. In its First Report and Order, the FCC stated that where an ILEC wishes to prohibit the collocation of a particular type of equipment, the burden of proof rests on the ILEC to prove to the state

commission that the equipment will not be used (or will not be useful) for interconnection or access to unbundled network elements in provisioning telecommunications services. In this regard, the FCC stated in paragraph 580 of the First Report and Order as follows:

"[W]henver a telecommunications carrier seeks to collocate equipment for purposes within the scope of section 251(c)(6), the incumbent LEC shall prove to the state commission that such equipment is not 'necessary,' as we have defined that term, for interconnection or access to unbundled network elements."

It is undisputed that BellSouth failed to present a single shred of evidence that the Ascend TNT equipment cannot and will not be used to directly access unbundled 4-wire ISDN-PRI loops in order to provision PBX voice traffic. Since BellSouth never met this burden of proof (and in fact Supra proved its own position with unrebutted evidence), this Commission erred as matter of law in concluding that the Ascend TNT equipment cannot be used to carry voice traffic.

C. Prohibiting Collocation Of The Cisco Equipment Is Also In Error

With respect to the Cisco equipment, although this equipment cannot directly provision PBX traffic, the equipment is intended to complement Supra's planned network. Pursuant to 47 CFR Section 51.100(b), a telecommunications carrier that has interconnected or gained access to unbundled network elements (under Section 251(c)(3)) may also offer information services through the same arrangement, so long as it is offering telecommunication services through that arrangement. It is interesting to note that CFR Section 51.100(b) does not speak in terms of equipment, but rather in terms of arrangements. The undisputed evidence present by Supra is that the Cisco equipment is planned to be part of the same arrangement through which Supra will provide a substantial amount of voice traffic. The Cisco equipment is also useful in promoting network efficiency and thereby allowing Supra to provide more efficient and cheaper telecommunication services. The equipment can and will be used, for among other functions,

to provide bill provisioning and alarm monitoring. These functions are basic functions of a Class 5 Switch and are not enhanced services offered to the public, but rather are user features which permit a collocator to run its business. Accordingly, under CFR Section 51.100(b), this Commission should have allowed collocation of the Cisco equipment as well.

D. This Commission Has The Power To Unilaterally Allow The Equipment

Finally, it should be noted that the BellSouth Interconnection Agreement permits the collocation of equipment authorized by either Federal or State regulators. It should also be noted that in paragraph 580 of the FCC's First Report and Order, the FCC noted that "*State Commissions may designate specific additional types of equipment that may be collocated pursuant to Section 251(c)(6).*" Assuming arguendo that BellSouth has no obligation to permit collocation of the Ascend TNT Switches as a result of its own policies, and that no obligation exists by virtue of access to BellSouth unbundled network elements; then this Commission still has the authority to unilaterally decide to allow the collocation of such equipment. In this regard, Supra would ask that this Commission consider adopting a position that any equipment to be used in a telecommunications network should be allowed in physical collocation (even if the equipment can only be used to provide enhanced services). Such a rule would place ALECs on an even ground with ILECs, would promote creative and innovative use of equipment and new technologies, and would eliminate costly legal battles over what equipment can or cannot be collocated. Moreover, this liberal position would allow potential new start-up carriers the freedom to design their networks in the most creative, cost-efficient and service orient manner, without fear that BellSouth will destroy the network design by refusing to collocate key pieces of equipment. Adopting such a position would only further the cause of fostering true and

meaningful competition and further the spirit and goals of the Telecommunications Act.

III. CONCLUSION

With respect to Supra's request to collocate the Ascend TNT Switches, Supra believes that this Commission erred as a matter of fact and law in denying Supra the right to collocate such equipment and that it is only correct and proper for this Commission to reconsider and reverse its ruling with respect to collocation of the Ascend TNT equipment.

It is axiomatic that where a party presents no evidence regarding an issue, it is impossible to conclude anything but the unrebutted evidence. In this instance the unrebutted evidence is that the Ascend TNT Switches are physically and technically capable of provisioning telephone voice traffic from PBX customers by direct interconnection with BellSouth unbundled 4-wire loops. Moreover, that it is Supra's intention to use the Ascend TNT Switches to directly provision PBX traffic without the use of a Class 5 Switch. It is also undisputed that BellSouth's own collocation policy should allow collocation of the Ascend TNT Switches because the equipment is able to carry both voice traffic (i.e. PBX) and data traffic. Under Section 251(c)(6) of the Telecommunications Act, BellSouth must provide Supra collocation in a nondiscriminatory manner. Therefore, BellSouth's internal policy permitting the collocation of equipment capable of carrying both voice and data traffic should be enforced as a matter of both fact and law.

In addition to BellSouth's own collocation policies, BellSouth is required to permit collocation of the Ascend TNT Switches pursuant to the FCC's interpretation of 47 U.S.C. § 251(c)(6) as set forth in the FCC's First Report and Order. Pursuant to that FCC opinion, since the Ascend equipment is to be used to (and/or is useful to) access unbundled network elements for the provisioning of telecommunications services, as a matter of undisputed fact and

law, Supra must be allowed the right to collocate the Ascend equipment.

Moreover, CFR Section 51.100(b) implicitly authorizes the collocation of both the Ascend TNT Switches and the Cisco equipment. Finally, assuming arguendo that BellSouth has no obligation to permit the collocation of either piece of equipment, pursuant to the FCC's First Report and Order, this Commission has the authority to permit collocation of such equipment, and should do so in the interest of stimulating the use of innovative and new technologies, and eliminating future disputes over what equipment can or cannot be collocated.

Accordingly, for the reasons stated above, Supra believes that this Commission erred as a matter of fact and law in denying Supra the right to collocate both the Ascend TNT and Cisco equipment.

WHEREFORE Petitioner SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. hereby files and serves this its motion for reconsideration and respectfully requests that this Commission reconsider and reverse that portion of its final order entered in this proceeding which denies Supra the right to collocate both the Ascend TNT Switches and the Cisco Remote Access Concentrators.

Respectfully Submitted this 20th day of January, 1999.

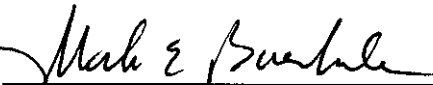
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CERTIFICATE OF SERVICE

I HEREBY Certify that a true and correct copy of the foregoing has been furnished by U.S. Mail upon NANCY WHITE, ESQ., 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301 and BETH KEATING, ESQ., 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, this 20th day of January, 1999.

By: 
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Press Release

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ASCEND DELIVERS FIRST CARRIER-CLASS SIGNALING SYSTEM 7 (SS7) SOLUTION FOR VOICE AND DATA INTEGRATION

Ascend Signaling Gateway Relieves Internet Congestion, Enables Future Revenue Generating Services for Network Service Providers

ALAMEDA, Calif., June 29, 1998 - Ascend Communications, Inc. (NASDAQ: ASND), a leader in wide area networking (WAN) solutions for providers and users of the Public Network, today announced the Ascend Signaling Gateway (ASG), a new product that allows the company's market leading WAN Access Switches to communicate directly with the SS7 carrier-signaling network.

This capability allows Network Service Providers (NSPs) to relieve congestion on central office (CO) telephone switches, thereby eliminating the need to purchase additional class 4/5 CO equipment, and will in future releases allow more interoperability between data networks and the Public Switched Telephone Network (PSTN). For end users and the corporate enterprise, the Ascend Signaling Gateway will bring greater reliability in Internet connectivity, and enable new revenue generating applications over integrated voice and data networks.

"The Ascend Signaling Gateway is a key element of Ascend's MultiVoice strategy to deliver managed toll quality, carrier-class voice and fax services for carriers and ISPs over their existing and future data networks," said David Misunas, vice president and general manager Voice and Carrier Signaling at Ascend. "We're rolling out a solution that saves NSPs money and relieves congestion problems, while extending the platform to lead the market in transparent voice/data integration."

The SS7 Market Opportunity

Data traffic on public networks is growing at such a fast pace that in some areas of the world it has already surpassed voice traffic. To meet this growing demand, NSPs are building carrier-class data networks to carry voice, data and video traffic. This is what Ascend refers to as the New Public Network (NPN). However, the NPN will need to interoperate with the existing PSTN and the key to that interoperability is the SS7 carrier-signaling network. By creating gateways, such as the Ascend Signaling Gateway, data networking vendors can allow advanced voice and data applications to work interchangeably over either network, thereby increasing functionality and reducing costs.

As a leader in the WAN Access market, ranked number one in revenue and

ports by market research firm Dell'Oro Group, Ascend is well positioned to provide the first carrier-class SS7 solution for voice/data convergence. Delivering an end-to-end scalable approach to SS7, the ASG enables NSPs to leverage a broad range of capabilities such as Internet call diversion, voice/fax over data, VPNs, and high-speed 56K-modem technology. As a key component of Ascend's MultiVoice strategy, the ASG enables transparent integration of voice networks with voice and fax over Internet protocol (IP), asynchronous transfer mode (ATM), and Frame Relay networks, allowing customers to maximize their existing investments.

"Ascend's SS7 strategy is in line with the needs of many Service Providers seeking to achieve synergies between their voice and data networks," said Christine Heckart, vice president of TeleChoice. "The Ascend Signaling Gateway is designed to help Service Providers solve the immediate problem of Internet traffic congestion from the PSTN, and position for future service opportunities like voice and fax over IP."

Features and Benefits

Many networking vendors have made general announcements about SS7, but only Ascend is delivering a complete, carrier-class SS7 solution that combines Ascend's market leading MAX TNT™ product with the Ascend Signaling Gateway.

Benefits of the Ascend Signaling Gateway include:

- **Cost-effective solution to Internet call diversion.** The ASG enables Service Providers to relieve congestion on voice networks by diverting data calls off of costly class 4/5 switches to Ascend's MAX TNT WAN Access Switches.
- **Provides a path to new revenue generating services.** The ASG will use existing SS7 voice networks to route voice, fax and data calls over IP, ATM and Frame Relay networks. This lowers infrastructure costs for Service Providers and enables the creation of new revenue generating services over integrated voice and data networks.
- **Carrier-class SS7 solution for voice and data integration.** The ASG is built on the proven SS7 HP OpenCall platform, and the NEBs compliant, high-density MAX TNT WAN Access Switch. In addition, the ASG is scalable from 10,000 ports to 200,000 and is fault tolerant with dual HP 9000 processors, dual Signal interface units and dual connections to the MAX TNT. One ASG can connect to multiple MAX TNTs.
- **Enabling transaction based billing over data networks.** By providing call setup and call duration information, NSPs can now provide transaction-based billing. The ASG produces standard Call Detail Records for billing.

"With such dramatic Internet growth, the biggest problem ISPs and carriers face is dwindling network resources," said Bob Walsh, chief information officer at Thrifty Call. "In routing traffic off the PSTN, the Ascend Signaling Gateway will not only provide optimal network efficiency, but make room for future value-added and cost-effective services. We are eager to implement this important SS7 solution."

Future releases of the ASG will integrate Ascend's MultiVoice technologies with SS7 carrier signaling, and will equip Service Providers with Intelligent Network-based (IN) enhanced services, including alternate call routing, network modem pooling, and other standard SS7 capabilities for optimal

network resource management. The ASG and MAX TNTs are managed by Ascend's NavisAccess for monitoring, provisioning, configuring, and reporting. NavisAccess provides integrated network management and control.

The ASG is being developed in three phases: Phase I provides Internet call diversion, Phase II will integrate voice services across the data network, and Phase III will enable enhanced IN network services.

HP OpenCall for Reliability and Interoperability

Ascend's SS7 solution is built on HP OpenCall, a comprehensive platform for computer-based IN functionality for carrier-class reliability and flexibility. The ASG combines Ascend's networking innovation with HP's carrier-class technology to provide a stable and interoperable environment for SS7 capabilities. HP OpenCall has been proven as a Service Control Point (SCP) in carrier networks, ensuring ASG's reliability and interoperability.

About Ascend Communications

Ascend Communications, Inc. develops, manufactures, sells and services wide area networking solutions for telecommunications carriers, Internet service providers and corporate customers worldwide.

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The foregoing statements may contain forward-looking statements that are based on current expectations and involve risks and uncertainties. Actual results could differ materially from these expectations as a result of factors including, but not limited to, the Company's success in developing, introducing or shipping new products, competition, the mix of distribution channels employed, the Company's dependence on single or limited source suppliers for certain components used in its products, risks inherent in international sales, seasonality and general economic conditions. These and other factors are discussed in Ascend's 10-K, 10-Q and other filings made periodically with the Securities and Exchange Commission.

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