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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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Petition for Emergency Relief of Supra )  
Telecommunications and Information )  
Systems, Inc., Against BellSouth )  
Telecommunications, Inc. )

Docket No.

980800-TP

Filed: June 30, 1998

RECORDS AND REPORTING

PETITION FOR EMERGENCY RELIEF OF  
SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.,  
AGAINST BELL SOUTH TELECOMMUNICATIONS, INC.

Supra Telecommunications and Information Systems, Inc.

("Supra") is a Florida minority-owned corporation certificated by the Florida Public Service Commission as an alternative local exchange company. BellSouth Telecommunications, Inc.

("BellSouth") and Supra entered into a Collocation Agreement on July 24, 1997, and an Interconnection Agreement on October 23, 1997, which set forth the existing rates, terms, and conditions of the relationship between the parties.

Part XIX of the Collocation Agreement states:

Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, **the parties will petition the Commission in the state where the services are provided pursuant to this Agreement for a resolution of the dispute.** However, each party reserves any rights it may have to seek judicial review of any ruling made by the Public Service Commission concerning this Agreement.

Pursuant to Part A, Section 11, of the Interconnection

Agreement:

Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, **either**

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CNR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- LIN \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC \_\_\_\_\_
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

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**party may petition the Commission for resolution of the dispute.** However, each party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

Supra is engaged in a dispute with BellSouth at this time regarding Supra's current applications for physical collocation at seventeen of BellSouth's central offices. For this reason and pursuant to the above-quoted provisions in the Interconnection and Collocation Agreements Supra has executed with Bellsouth, Supra is petitioning the Florida Public Service Commission for emergency relief.

On May 2, 1998, Supra submitted four applications with Bellsouth for physical collocation in BellSouth's North Dade Golden Glades, Miami Palmetto, West Palm Beach Gardens, and Orlando Magnolia central offices pursuant to its Collocation Agreement with BellSouth. Subsequently, on May 16, 1998, Supra submitted thirteen additional applications for physical collocation at the following BellSouth central offices: Alhambra, Biscayne, Boca Main, Cypress, Fort Lauderdale Main, Grande, Green Acres, Hialeah, Melbourne, Pembroke, Perrine, Plantation, and West Hollywood. Supra also resubmitted the Orlando Magnolia application it had submitted initially on April 24, 1998, with corrections that had been requested by BellSouth. Pursuant to the Collocation Agreement, BellSouth was to respond to each of these applications within 30 days. BellSouth responded to the first four applications by an e-mail from Ms. Nancy Nelson dated May 6, 1998, stating that there were

informational deficiencies in the application for the Orlando Magnolia central office and that for the other three applications, for North Dade Golden Glades, West Palm Beach Gardens, and Miami Palmetto, BellSouth did not have space available for physical collocation. BellSouth stated that Supra was free to apply for virtual collocation for these three locations. BellSouth went on to state that, in a virtual collocation situation, BellSouth only allows the installation of transmission equipment, while noting that Supra's three applications had included switch equipment. BellSouth stated that switch equipment could only be installed in a physical collocation situation.

Subsequently, BellSouth sent a letter from Mr. Marcus Cathey dated June 18, 1998, in which it indicated that it would reject the applications for physical collocation for its North Dade Golden Glades and West Palm Beach Gardens central offices on the basis that floor space for physical collocation is unavailable. Mr. Cathey went on to state that BellSouth filed Petitions for Waiver for exemption from the requirement for physical collocation with the Federal Communications Commission (FCC) for the North Dade Golden Glades and West Palm Beach Gardens central offices in 1993 and that the FCC released its Memorandum Opinion and Orders June 9, 1993, and June 14, 1994, granting BellSouth exemptions for these two central offices.

On June 25, 1998, BellSouth communicated to Supra, in a telephone conference, that it will not be complying with the

three-month requirement to actually implement physical collocation in the other fifteen central offices for which Supra has applied. (See **Order No. PSC-97-1459-FOF-TL, page 44.**)

Supra hereby files this Petition for Emergency Relief against BellSouth and requests that the Florida Public Service Commission immediately compel BellSouth to permit physical collocation of Supra's switch equipment in BellSouth's Golden Glades and West Palm Beach Gardens Central Offices and to comply with the Florida Public Service Commission's three-month time frame for physical collocation for the other fifteen central offices for which Supra has applied.

I. Section 251(c)(6) of the Telecommunications Act of 1996 requires BellSouth to permit physical collocation of Supra's switching equipment in all of its central offices including Golden Glades and West Palm Beach Gardens unless BellSouth makes a **showing to the Florida Public Service Commission** that "physical collocation is not practical for technical reasons or because of space limitations."

Pursuant to Section 251(c)(6) of the Telecommunications Act of 1996, BellSouth is required to permit Supra physical collocation at its central offices. The only exception to this requirement is that BellSouth may be permitted to provide virtual collocation if it demonstrates to the Florida Public Service Commission that physical collocation is not practical for technical reasons or because of space limitations.

BellSouth is denying Supra collocation on the basis of the FCC's Orders granting BellSouth exemption from the requirement for physical collocation for these two central offices. However,

the FCC granted these exemptions for BellSouth based on the "factual showing" that it required under its Expanded Interconnection Order issued in CC Docket No. 91-141, 7 FCC Rcd 7369 (1992). The FCC's Orders were issued prior to the U.S. Congress' passage of the Telecommunications Act of 1996 and, as the Act itself expressly requires that an incumbent LEC must make a demonstration to the state commission that it should not be required to offer physical collocation, the FCC's orders issued prior to the Act are irrelevant to Supra's request at this point in time.

It is interesting to note that BellSouth's showing to the FCC in 1993 was based on nothing more than blanket statements that these two central offices did not have space available for physical collocation. In BellSouth's Petition for Waiver for exemption for the North Dade Golden Glades central office, BellSouth showed that it had reserved 1,000 square feet for its own future use. In BellSouth's Petition for Waiver for exemption for the West Palm Beach Gardens central office, BellSouth showed that it had reserved 2,100 square feet for its own future use. In 47 CFR Section 51.323(f)(4), the Federal Communications Commission provides:

An incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that the incumbent LEC may not reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use;

47 CFR 51.323(f)(5) also states:

An incumbent LEC shall relinquish any space held for future use before denying a request for virtual collocation on the grounds of space limitations, unless the incumbent LEC proves to the state commission that virtual collocation at that point is not technically feasible;

The FCC regulations set forth above implementing the Telecommunications Act of 1996 do not permit BellSouth to deny a telecommunications carrier physical collocation on the basis that, as the incumbent LEC, BellSouth is planning to reserve a significant amount of space for its own future use.

Supra strongly contests BellSouth's assertion that there is no space available in these two central offices. Pursuant to 47 CFR Section 51.321(f), BellSouth is required to provide the Florida Public Service Commission with detailed floor plans of its central offices when BellSouth intends to deny physical collocation to a requesting telecommunications carrier:

An incumbent LEC shall submit to the state commission detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations.

The Commission and Supra must have the immediate opportunity to fully investigate the basis for BellSouth's denial of access to these two central offices so that an expeditious resolution of this matter may be made. Detailed floor plans and a physical walk-through by Commission staff and Supra representatives will go a good way towards providing the necessary information for a full investigation.

It is important to remember that the environment in which

the FCC reviewed these exception requests from BellSouth in 1993 was significantly different than the current legal and industry environment, due in large part to the Telecommunications Act of 1996, but also to the evolution of the industry. BellSouth has no incentive whatsoever to make it easier for Supra to physically collocate at its central offices. The North Dade Golden Glades and West Palm Beach Gardens central offices serve a staggering number of access lines. These offices have tandem switches and BellSouth recognizes that they are critical to Supra's success.

Delay in processing applications for physical collocation and delay in actualizing the completion of physical collocation by requiring Supra to simply concede to virtual collocation or litigate each and every central office at the Florida Public Service Commission is a conscious and useful strategy by BellSouth to quash competition before it even has a chance to get any foothold. Switch vendors and financing entities cannot provide the overwhelming commitments in products and money that are essential to the establishment of a facilities-based telephone network if the ALEC cannot have any expectation of time schedules being met or complied with by BellSouth. The level of cooperation and assistance the Telecommunications Act requires of BellSouth is far greater than Supra has experienced with BellSouth. Indeed, the Telecommunications Act at Section 273(e)(3), states that:

A Bell operating company shall, to the extent consistent with the antitrust laws, engage in joint network planning and design with local exchange carriers operating in the same area

of interest. No participant in such planning shall be allowed to delay the introduction of new technology or the deployment of facilities to provide telecommunications services, and agreement with such other carriers shall not be required as a prerequisite for such introduction or deployment.

BellSouth is required to make a specific showing to the Florida Public Service Commission to justify any delay in meeting the three-month time frame for physical collocation and the actual installation and connection of a telecommunications carrier's equipment. BellSouth cannot simply choose to take whatever time is convenient to BellSouth to comply with Supra's request for physical collocation at BellSouth's central offices. BellSouth has continually placed roadblocks in Supra's way and this is yet one more example of this behavior.

II. Supra will suffer substantial, immediate, and irreparable harm if BellSouth is permitted to deny Supra immediate physical collocation in its Golden Glades and West Palm Beach Gardens central offices and if BellSouth is not required to comply with the three-month time frame established by the Florida Public Service Commission in which to implement physical collocation in the other fifteen central offices for which Supra has applied. Therefore, Supra requests the Florida Public Service Commission to order a physical walk-through of these two central offices to determine the exact situation existing in these offices and require BellSouth to immediately show cause why it cannot meet the three-month time frame for all seventeen central offices. Supra requests the Commission to then issue an order compelling BellSouth to permit physical collocation in all seventeen central offices.

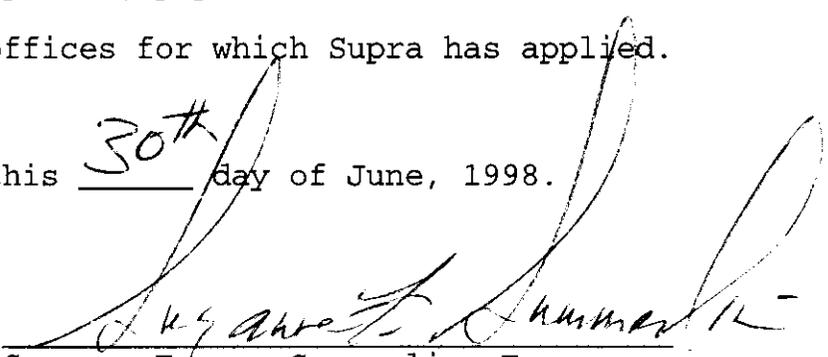
Pursuant to the above provisions, and pursuant to the

Telecommunications Act of 1996, Supra is petitioning the Florida Public Service Commission for immediate emergency relief to resolve this matter. Supra will suffer immediate and irreparable harm if BellSouth is permitted to deny physical collocation in the North Dade Golden Glades and West Palm Beach Gardens central offices. Physical collocation in these two BellSouth central offices is critical to Supra's network plans which involve actual installation and activation of Class 5ESS switches in these offices, as well as other switch equipment in fifteen other BellSouth central offices, in the next three months. Supra has millions of dollars of investment at risk in this situation. If Supra cannot install and activate its switches according to its business plan and on the schedule that it has established with its vendors, Supra will suffer great monetary losses. Supra is dependent upon the Commission's effective enforcement of Supra's rights under the Telecommunications Act of 1996.

Supra specifically requests that the Commission require BellSouth to schedule a physical walk-through of these two central offices by at least two Staff members of the Commission, Supra employees and an independent engineer of Supra's choosing, and BellSouth employees within the next ten days. Upon the completion of the walk-through, Supra requests that the Commission immediately act upon the recommendation of its staff and issue an order compelling BellSouth to provide physical collocation to Supra at these two central offices. Supra also requests that the Commission command BellSouth to comply with the

three-month time frame for completing physical collocation for all seventeen of the central offices for which Supra has applied.

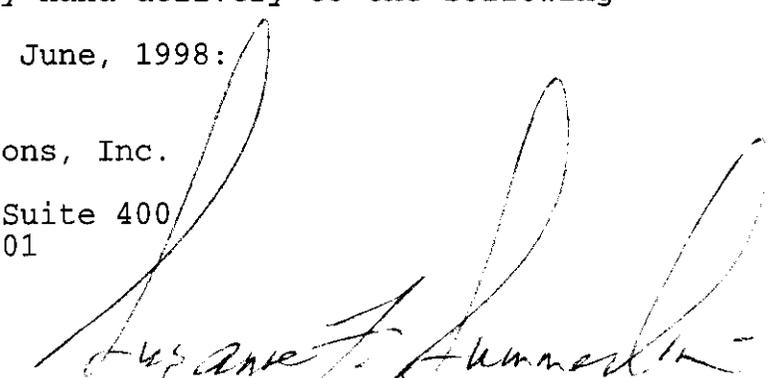
Respectfully submitted, this 30<sup>th</sup> day of June, 1998.

  
Suzanne Fannon Summerlin, Esq.  
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Tallahassee, Florida 32301  
(850) 656-2288  
Florida Bar No. 398586

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to the following individual this 30<sup>th</sup> day of June, 1998:

BellSouth Telecommunications, Inc.  
c/o Nancy H. Sims  
150 South Monroe Street, Suite 400  
Tallahassee, Florida 32301

  
Suzanne Fannon Summerlin, Esq.