

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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Petition for waiver of physical collocation requirements set forth in the 1996 Telecommunications Act and the FCC's First Report and Order for the Daytona Beach Port Orange Central Office, by BellSouth Telecommunications, Inc.

Docket No. 980946-TL

Filed: October 5, 1998

RECORDS AND REPORTING

SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.'S COMMENTS ON BELL SOUTH'S PETITION FOR WAIVER OF PHYSICAL COLLOCATION REQUIREMENTS

Supra Telecommunications and Information Systems, Inc. ("Supra" or "Company"), pursuant to the Florida Administrative Weekly Notice published in this Docket, hereby files its comments on BellSouth Telecommunications, Inc.'s ("BellSouth's") Petition for Waiver of Physical Collocation Requirements at its Daytona Beach Port Orange Central Office as set forth in the 1996 Telecommunications Act:

- Supra is an alternative local exchange carrier ("ALEC") lawfully doing business in the State of Florida whose regulated operations are subject to the jurisdiction of this Commission pursuant to Chapter 364, Florida Statutes.
- BellSouth filed a Petition for Waiver of Physical Collocation Requirement for its Daytona Beach Port Orange Central Office on July 27, 1998.
- In spite of BellSouth's filing of its Petition for Waiver, because this central office is important to Supra's business and network plan, Supra filed an application with BellSouth on September 9, 1998, to physically collocate in BellSouth's Daytona Beach Port Orange Central Office. Supra filed subsequent supplemental information for this application on September 17, 1998.

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4. According to BellSouth's Petition for Waiver, BellSouth's basis for denying physical collocation in the Daytona Beach Port Orange Central Office is that there is inadequate space for physical collocation in this central office.
5. Section 251(c)(6) of the Telecommunications Act of 1996 provides:

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 at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

This language clearly states that, prior to denying a request for physical collocation, an incumbent local exchange carrier (ILEC) is required to make a showing to the state commission that there is inadequate space for physical collocation or that physical collocation is technically not feasible.

6. Pursuant to Section 251(c)(6) of the Telecommunications Act, BellSouth must carry the burden of proving that there is inadequate space for physical collocation in the Daytona Beach Port Orange Central Office before BellSouth may receive a waiver from the Florida Public Service Commission. BellSouth's Petition for Waiver simply states that there is inadequate space available to permit physical collocation in the Daytona Beach Port Orange Central Office. The sole reason for this is BellSouth is either occupying or reserving all of the space in the central office for its own purposes.

7. 47 CFR 51.323(f)(4) 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;

This language clearly indicates that BellSouth does not have a right to reserve space for its own future uses on a basis more favorable to BellSouth than the space it provides for competing providers such as Supra.

8. In Paragraph 64 of the FCC's Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188, released August 7, 1998, as set forth below, it is clear the FCC believes that incumbent LECs have a statutory duty to maximize the space available for physical collocation and to provide physical collocation in cost efficient and flexible collocation arrangements that permit new entrants to provide advanced services using equipment that the new entrants provide:

We conclude that the availability of cost efficient collocation arrangements is essential for the deployment of advanced services by facilities-based competing providers. Given incumbent LECs' statutory duty to provide physical collocation on just, reasonable, and nondiscriminatory rates, terms, and conditions, we believe that incumbent LECs have a statutory obligation to offer cost efficient and flexible collocation arrangements. In addition, we expect that incumbent LECs will fulfill that statutory collocation duty by taking steps to offer collocation arrangements that permit new entrants to provide advanced service using equipment that the new entrant provides. ***Such steps include offering collocation to competing providers in a manner that reduces unnecessary costs and delays for the competing providers and that optimizes the amount of space available for***

collocation. We conclude that measures that optimize the available collocation space and that reduce costs and delays for competing providers are consistent with an incumbent LEC's obligation under both the statute and our rules. In addition, we agree with ALTS that we should build upon our current physical and virtual collocation requirements adopted in the expended Interconnection and Local Competition proceedings to ensure that our rules promote, to the greatest extent possible, the rapid deployment of advanced telecommunications capability to all Americans. We, therefore, propose specific additional physical and virtual collocation requirements in the NPRM below.

9. Paragraphs 145 and 146 of the FCC's Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188, state:

145. One of the major barriers facing new entrants that seek to provide advanced services on a facilities basis is the lack of collocation space in many LEC central offices. Under the Act, incumbent LECs must provide physical collocation unless they demonstrate to the state commission's satisfaction that "physical collocation is not practical for technical reasons or because of space limitations." **Because incumbent LECs have the incentive and capability to impede competition by reducing the amount of space available for collocation by competitors**, the Commission, in the *Local Competition Order*, required incumbent LECs that deny requests for physical collocation on the basis of space limitations to provide the state commission with detailed floor plans or diagrams of their premises. The Commission concluded that such submissions would aid the state commission in evaluating whether the denial of physical collocation was justified.

146. **We tentatively conclude that an incumbent LEC that denies a request for physical collocation due to space limitations** should not only continue to provide the state commission with detailed floor plans, **but should also allow any competing provider that is seeking physical collocation at the LEC's premises to tour the premises. Allowing competing providers to walk through a LEC's premise will enable competing providers to identify space that they believe could be used for physical collocation. If, after the tour of the premises, the incumbent LEC and competing provider disagree about whether space limitations at that premise make collocation impractical, both carriers could present their arguments to the state**


commission. We tentatively conclude that state commissions will be better able to evaluate whether a refusal to allow physical collocation is justified if competing providers can view the LEC's premises and present their arguments to the state commission. We seek comments on these tentative conclusions.

As BellSouth has every motivation to characterize all of the space in the central office as being "occupied" (by its own equipment or administrative purposes) or as necessary for its own future use, and no motivation to provide space for physical collocation for competing providers, the Commission cannot simply take BellSouth's petition at face value.

10. Neither Supra nor the Commission can adequately examine BellSouth's petition without the opportunity to view the space BellSouth currently occupies and the space that BellSouth is reserving for its own future use and the opportunity to conduct discovery, including interrogatories, requests for production and depositions.
11. The Commission should order BellSouth to permit a walk-through of the Daytona Beach Port Orange Central Office for the Commission staff and representatives of all parties to this proceeding within the next thirty days. All parties should be permitted to conduct full discovery. This is the only method by which the Commission and the parties can determine whether BellSouth's allegations of insufficient space are accurate and whether BellSouth has presented sufficient evidence or justification to support granting BellSouth a waiver from the requirements of physical collocation in this central office pursuant to the Telecommunications Act of 1996.

Respectfully submitted, this 5th day of October, 1998.

SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC.


SUZANNE F. SUMMERLIN
1311-B/Paul Russell Road, Suite 201
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 was served via
U.S. Mail this 5th day of October, 1998, to the following:

Nancy B. White, Esq.
BellSouth Telecommunications, Inc.
c/o Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301-1556

Beth Keating, Esq.
Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32301

Steven Brown
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, Florida 33619-1309

Donna L. Canzano
Patrick Knight Wiggins
Wiggins & Villacorta, P.A.
2145 Delta Boulevard, Suite 200
P.O. Drawer 1657
Tallahassee, Florida 32302

Teleport Communications Group, Inc.
c/o Kenneth A. Hoffman, Esq.
John R. Ellis, Esq.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, Florida 32301

Floyd R. Self, Esq.
Norman H. Horton, Jr., Esq.
Messer, Capareello & Self
215 South Monroe Street, Suite 701
Post Office Box 1876
Tallahassee, Florida 32302-1876

James C. Falvey, Esq.
e.spire Communications, Inc.
133 National Business Parkway
Suite 200
Annapolis Junction, Maryland 20701

Brian Sulmonetti
WorldCom Technologies, Inc.
1515 South Federal Highway
Suite 400
Boca Raton, Florida 33432

Monica Barone, Esq.
Sprint
3100 Cumberland Circle, #802
Atlanta, Georgia 30339



SUZANNE F. SUMMERLIN