

ORIGINAL

RECEIVED-FPSC

Legal Department

NANCY B. WHITE
General Counsel-Florida

98 NOV -6 PM 4:13

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

RECORDS AND
REPORTING

November 6, 1998

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 980800-TP (Supra Collocation)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Reconsideration By the Full Commission, which we asked that you file in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White (NR)
Nancy B. White

RECEIVED & FILED

[Signature]
FPSC-BUREAU OF RECORDS

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU *[Signature]*
- CTR _____
- EAG _____
- LEG 1
- LIN 3
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

NBW/vf
Enclosure

cc: All parties of record
A. M. Lombardo
R. G. Beatty
William J. Ellenberg II

DOCUMENT NUMBER-DATE

12524 NOV -6 88

FPSC-RECORDS/REPORTING

ORIGINAL

CERTIFICATE OF SERVICE
Docket No. 980800-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by

* Federal Express and U.S. Mail this 6th day of November, 1998 to the following:

Beth Keating, Esq. *
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
(850) 413-6199
(850) 413-6250

Suzanne Fannon Summerlin, Esq. *
Supra Telecommunications and
Information Systems, Inc.
1311-B Paul Russell Rd., #201
Tallahassee, Florida 32301
Tel. No. (850) 656-2288
Fax. No. (850) 656-5589

Supra Telecommunications and
Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, FL 33133
Tel. No. (305) 476-4220
Fax. No. (305) 476-4282

Amanda Grant
BellSouth Telecommunications, Inc.
Regulatory & External Affairs
675 West Peachtree Street, N.E.
Room 38L64
Atlanta, Georgia 30375

Nancy B. White (KR)
Nancy B. White

DOCUMENT NUMBER-DATE

12524 NOV-6 98

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Emergency Relief of Supra) Docket No. 980800-TP
Telecommunications and Information)
Systems, Inc., Against BellSouth)
Telecommunications, Inc.)
_____) Filed: November 6, 1998

**BellSouth Telecommunications Inc.'s
Motion for Reconsideration By the Full Commission**

BellSouth Telecommunications, Inc., pursuant to Rule 25-22.060(1), Florida Administrative Code, hereby files its Motion for Reconsideration By the Full Commission ("Motion") of Order No. PSC-98-1417-PCO-TP ("Order") issued on October 22, 1998. In support thereof, BellSouth states the following:

1. In 1993 and 1994, BellSouth obtained exemptions for physical collocation in the North Dade Golden Glades and West Palm Beach Gardens central offices from the Federal Communications Commission on the basis that space was not available. See. FCC Order No. 93-658, released June 9, 1993 and FCC Order No. 94-143, released February 14, 1994. These two central offices have not changed in size since the exemptions were obtained.

2. On June 30, 1998, Supra Telecommunications and Information Systems ("Supra") filed a Petition against BellSouth seeking physical collocation in BellSouth's North Dade Golden Glades and West Palm Beach Gardens central offices. BellSouth had denied collocation on the basis that space was not available in these offices and on the basis of the FCC exemptions. This matter was heard by a panel on October 21, 1998.

3. Prior to the hearing, a priority issue arose concerning which ALEC would be allowed to physically collocate in these two offices in the event that the panel decided space was available. Other ALECs had requested space in these offices and been denied prior to Supra's request.

4. The Commission Staff decided to address this issue via oral argument on September 22, 1998 and the Order was rendered on October 22, 1998. The Order holds that this is a unique situation in that Supra filed its Petition prior to BellSouth's obtaining an exemption from the Florida Public Service Commission for these offices. The order held that because Supra did so, it should be allowed to leap frog other ALECs and become the first in line for these offices if the panel determined that space was available.

5. BellSouth seeks reconsideration of the Order by the full Commission for several reasons. First, the panel committed error in interpreting and implementing 47 C.F.R. §51.321, the FCC's "first come first served rule". Second, the panel committed error in its determination that a waiver must be filed by BellSouth for a specific office before BellSouth receives requests for physical collocation and before BellSouth can deny space. Third, the panel's second error, if not corrected, will send every ALEC in Florida racing to the Commission's doorstep to file a complaint on every ILEC central office in Florida, whether that ALEC has a serious desire to collocate or not. Fourth, the panel erred in determining that this issue was brought to its attention by Supra.

6. In the FCC's First Report and Order (Docket 96-98) released in August of 1996, the FCC referenced its Expanded Interconnection proceeding for the requirement that LECs must provide space for physical collocation to requesting carriers on a first come-first served basis. BellSouth obtained its exemptions for these offices from the FCC pursuant to the FCC's Expanded Interconnection requirements. The FCC adopted this requirement in the First Report and Order, creating Section 51.323(f)(1) of the Code of Federal Regulations which states that "an incumbent LEC shall make space available to requesting telecommunications carriers on a first come-first served basis."

7. There are no exceptions to this rule. The FCC did not allow for any exceptions, must less one that says the filing of a complaint instantly gives an ALEC priority in line. The Telecommunications Act of 1996 (the "Act") also does not provide for any exceptions. Therefore, the panel erred in binding such an exception.

8. When BellSouth denied ALECs space for physical collocation in these offices, it did so in reliance upon the fact that BellSouth had existing FCC exemptions for these offices. While 47 C.F.R. 51.321(d-f) indicates that exemptions are required from state commissions, 47 C.F.R. 51.321(g) states that incumbent LECs who are Class A companies shall continue to provide expanded interconnection service in accordance with the FCC's rules. As noted above, BellSouth obtained the FCC exemptions pursuant to the expanded

interconnection rules. BellSouth, therefore, believed it was acting in accordance with the Act and the Code of Federal Regulations.

9. The Commission Staff was aware that BellSouth was acting in reliance on the FCC waivers and that BellSouth had not sought waivers from the State Commission. In Docket No. 960833-TP, the list of offices for which BellSouth had any Waiver (FCC or Florida Commission) was provided to Staff as Late Filed Deposition Exhibit No. 2 to Dorissa Redmond's deposition on January 16, 1998. No indication was made by Staff that the FCC waivers were insufficient until Supra filed its Petition. When it became apparent to BellSouth that state commission waivers were required, BellSouth immediately began to gather the detailed information necessary to support such a filing. Petitions for Waiver for these two central offices were filed on August 7, 1998 merely five weeks after Supra's Petition was filed.

10. The Order's claim that BellSouth denied physical collocation without a valid waiver is simply not correct. BellSouth did have valid waivers for these two offices from the FCC. The Order's implication that BellSouth would not have filed for waivers with the Florida Commission is also incorrect. As noted earlier, Staff was fully aware that BellSouth was relying on the FCC waivers and said nothing. The Order's premise that this situation is one where BellSouth denied physical collocation without a valid waiver, the first ALECs denied space did not complain and Supra did is thus based on at least one fact

that is not correct. Therefore, the Order's reasoning for a "less strict" application of the first come-first served rule is unsound and should be reconsidered.

11. The Order also appears to indicate that BellSouth cannot deny space unless it has filed a waiver with the Florida Commission and that a waiver must also be filed prior to BellSouth's receipt of a request for physical collocation for a particular request. Nowhere in the Act or in the pertinent federal regulations are such requirements contemplated. These requirements are patently unreasonable and unmanageable. Some examples: if BellSouth received a request for physical collocation in an office for which BellSouth has received no previous requests, how can BellSouth have reassessed the space? If BellSouth receives two requests for a specific office within two days of each other and there is space for the first request, but not the second, how can BellSouth petition for a waiver before the second request was received? Requests for physical collocation are received daily and the suggestions made by the Order are simply not feasible.

12. In addition, nothing in the act or the Federal regulations states that a waiver must be filed prior to the denial of a physical collocation request. Indeed, the FCC has indicated that when space is exhausted, then a waiver must be sought, not the other way around.

13. The Order will have a deleterious effect on physical collocation. No matter how narrow the Commission has tried to make its Order, in order to try to improve their position, every ALEC will be filing complaints. The door has

been opened and advantage will be taken. This is precisely why the FCC chose the first come-first served rule, so that the process would be rational, reasonable, and orderly. The Order singles out one carrier for special treatment. It is highly likely that other ALECs will try to obtain that same treatment.

WHEREFORE, BellSouth respectfully requests that the full Commission accept BellSouth's Motion and reconsider the Order complained of herein.

Respectfully submitted this 6th day of November, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White (KR)
NANCY B. WHITE
c/o Nancy Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558

William J. Ellenberg (KR)
WILLIAM J. ELLENBERG ID
675 West Peachtree Street, #4300
Atlanta, Georgia 30375
(404) 335-0711