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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.)

RECORDS AND REPORTING
Docket No. 980800-TP

Filed: November 12, 1998

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S
RESPONSE TO AMERICAN COMMUNICATIONS SERVICES,
INC. AND NEXTLINK FLORIDA, INC.'S
JOINT PETITION FOR RECONSIDERATION

Supra Telecommunications and Information Systems, Inc., ("Supra") hereby files this Response to American Communications Services, Inc. - Jacksonville ("e.spire") and Nextlink Florida, Inc.'s Joint Petition for Reconsideration of Order No. PSC-98-1417-PCO-TP ("Order") issued October 22, 1998. Pursuant to Florida Public Service Commission ("the Commission" or the "FPSC" hereafter) Rule 25-22.060(1), Florida Administrative Code, Supra moves the Commission to deny e.spire and Nextlink's Joint Petition for Reconsideration and in support thereof, states the following:

1. In their Joint Petition, e.spire and Nextlink refer to themselves as "parties."

Neither e.spire nor Nextlink are parties to this proceeding. Neither carrier has standing to intervene in this proceeding. As such, neither party has standing to file a Petition for

Reconsideration of a Commission order related to this proceeding. Therefore, the Commission should dismiss e.spire and Nextlink's Joint Petition for Reconsideration.

2. e.spire and Nextlink mention that the Florida Competitive Carriers Association

supports their joint petition for reconsideration. However, the Florida Competitive

Carriers Association is not a party to this proceeding and does not have standing to

intervene in this proceeding. Moreover, the Florida Competitive Carriers Association

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did not participate in the oral argument on September 22, 1998. Clearly, the Florida Competitive Carriers Association has no legal basis on which to involve itself in a joint petition for reconsideration of the Commission's order issued as a result of that oral argument.

3. The appropriate standard of review to be applied by the Commission when determining whether to grant a motion for reconsideration is whether the motion for reconsideration sets forth a point of fact or law that the Commission overlooked or did not consider in making its decision. See Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962) and Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). A motion for reconsideration should not be used to reargue matters that have already been addressed by the Commission.

4. In their Joint Petition for Reconsideration, e.spire and Nextlink simply restate all of the arguments they raised in the oral argument held on September 22, 1998, regarding this matter before the three-member Commission panel assigned to this docket. e.spire and Nextlink do not offer any point of fact or issue of law that was not addressed by the parties and other telecommunications carriers participating in the oral argument, by the staff in its recommendation regarding the oral argument, and by the Commission itself in its Order No. PSC-98-1417-PCO-TP.

5. In spite of their earlier opportunity on September 22, 1998, to argue their points, in their Joint Petition, e.spire and Nextlink **again** raise the "first come, first served" rule as a reason why the Commission should not grant Supra priority in the North Dade Golden Glades and the West Palm Beach Gardens Central Offices. e.spire and Nextlink argue **again** that Supra should not be able to improve its position ahead of

other telecommunications carriers by filing a complaint against BellSouth when it was denied physical collocation by BellSouth. In effect, e.spire and Nextlink argue **again** that Supra should have had to wait until BellSouth got good and ready to file its Petition for Waiver with the Florida Public Service Commission before Supra could argue about BellSouth's denial of Supra's request for physical collocation. e.spire and Nextlink **again** argue that Supra should have had to wait until another alternative local exchange carrier (ALEC) decided to actually pursue the matter before Supra should be allowed to come to the Commission and put on its case that there is enough space in these two central offices. e.spire and Nextlink argue **again** that Supra's efforts in filing its complaint should benefit other carriers who chose not to file complaints, and who simply accepted BellSouth's denials of their requests for physical collocation.

6. The only conclusion to be drawn is that it is e.spire and Nextlink's view that BellSouth, and BellSouth alone, should determine when and if any ALEC or other telecommunications carrier will be permitted to physically collocate in a BellSouth central office. e.spire and Nextlink's position seems to be that BellSouth, and BellSouth alone, should determine when and if BellSouth must comply with the requirement of obtaining a waiver from a state commission prior to denying requests for physical collocation as provided in the Telecommunications Act of 1996. e.spire and Nextlink's position effectively translates to the proposition that an ALEC or other telecommunications carrier has no right to contest at the Florida Public Service Commission BellSouth's denial of physical collocation unless that ALEC or carrier happens to be the first in line to make a request for physical collocation at a particular

central office. Of course, BellSouth has made it clear that it will not divulge what company has requested physical collocation in any central office and what the outcome of such requests have been. If an ALEC happens to be later in line and the first requester chooses not to pursue the issue, e.spire and Nextlink appear to support the position that BellSouth has no need to worry about doing anything because every other company will be denied physical collocation and, under Bellsouth's plan, will not even be permitted to file a complaint about it at the state commission. Apparently, e.spire and Nextlink's position is that BellSouth may deny requests for physical collocation without even taking the minimum steps provided in the Telecommunications Act of 1996 to review its central offices to determine which central offices it believes are space-limited and file the necessary petitions for waiver with the state commissions and present its case for exemption from the Act's physical collocation requirements. Under e.spire and Nextlink's view of this situation, only a very foolish ALEC or other carrier will ever file any complaint regarding a denial of a request for physical collocation at the Florida Public Service Commission because, if they do not happen to be first in line, they will have expended their money, time, human resources, and efforts for the benefit of other companies. Presumably the prospect that this is exactly the result BellSouth desires--to effectively remove any obligations or liabilities BellSouth may have regarding the physical collocation provisions of the Telecommunications Act of 1996--does not concern e.spire, Nextlink, or the Florida Competitive Carriers Association. The Commission must recognize that these companies, including the Florida Competitive Carriers Association, have a competitive interest in the outcome of this matter.

7. e.spire and Nextlink's arguments lead to a completely nonsensical result that would violate fundamental federal and state constitutional principles of due process. If a carrier cannot file a complaint with the state commission and obtain the relief it is legally entitled to under the Telecommunications Act of 1996, then that Act is not worth the paper it is written on. Such a decision would, in effect, permit BellSouth to continue to willfully and illegally deny requests for physical collocation without any consequences.

8. As e.spire and Nextlink are not parties to this proceeding and thus have no legal standing to file a petition for reconsideration of a decision in the context of this proceeding, the Commission should deny e.spire and Nextlink's Joint Petition for Reconsideration of Order No. PSC-98-1417-PCO-TP. In any case, e.spire and Nextlink have raised no point of fact or law that was not considered by the Commission panel in its issuance of Order No. PSC-98-1417-PCO-TP, and thus have not demonstrated any basis on which the Commission should reconsider that Order.

Respectfully submitted this 12th day of November, 1998.



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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 or *hand delivery to the following parties of record this 12th day of November, 1998:

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