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December 15, 1998

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Re: **Supra v. BellSouth, Docket No. 980800-TP**

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen (15) copies of the Petitioner Supra Telecommunication & Information Systems, Inc.'s Exceptions\Objections To Staff Recommendations (Dated 12/3/98). Please also find enclosed an extra copy, for which we request that you stamp with the filing date and return in the enclosed postage pre-paid, self-addressed envelope.

ACK \_\_\_\_\_ If you have any questions or comments, please feel free to contact me at (305) 531-5286.

AFR \_\_\_\_\_

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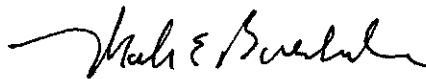
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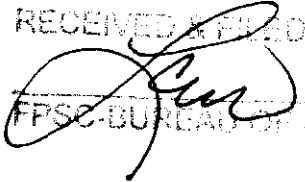
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Sincerely,



Mark E. Buechele  
General Counsel

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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.

3. In these objections, Supra seeks to have this Commission impose a good faith requirement upon BellSouth when it provides Supra collocation space in both the North Dade Golden Glades and West Palm Beach Gardens central offices.

4. Supra also objections to the Staff's recommendations on Issue 5, which relates to the type of equipment which can or cannot be physically collocated within a BellSouth central office. Under Issue No. 5, the Staff recommended that BellSouth be allowed to prohibit the collocation of Ascend TNT equipment and Cisco Systems remote access concentrators. The Staff's recommendation 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. Accordingly, Supra objections to the Staff's recommendations on Issue 5 and respectfully requests that this Commission not adopt such recommendations to the extent that collocation of such equipment is denied.

**I. Collocation In North Dade Golden Glades and West Palm Beach Gardens**

By Supra's reading of the Staff's recommendation regarding Supra's request for collocation in these two central offices, it appears that the Staff does not recommend a specific space for the collocation, but is simply recommending that BellSouth permit Supra to collocate in these two offices. Supra agrees with this position, but for clarification would request that the Commission impose a duty of good faith on BellSouth when providing the collocation space. Moreover, the requests for collocation were made in compliance with BellSouth's collocation request forms. These forms speak in terms of equipment footprint. As the staff noted there are

other items to be included in the space consideration, such as POTs bays and other infrastructure equipment. Therefore, two-hundred square feet of equipment footprint space actually translates in a large amount of physical space. See Ream TR 445-448. Finally, two difference ground planes are needed for Supra's equipment, the integrated ground plane and the isolated ground plane. For clarification purposes, Supra asks that this Commission impose a good faith requirement on BellSouth to not deliberately pick unfavorable locations for collocation and that BellSouth give good faith consideration to the ground plane needs of Supra's equipment.

## II. Collocation Of The Ascend TNT and Cisco Equipment

It is undisputed that BellSouth claims it allows the physical collocation of equipment which can and will be used for providing 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.

In its recommendations, the Staff sets forth BellSouth's position regarding the physical collocation of equipment as follows:

### "POSITIONS OF THE PARTIES

#### BellSouth:

The BellSouth-Supra Collocation Agreement allows Supra to place only equipment authorized by BellSouth and by Federal or State regulators. BellSouth permits the placement of equipment in physical collocation arrangements where such equipment is used for providing telecommunications services."

Additionally, BellSouth's own witness (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 recap, Ascend manufactures a piece of telephone equipment more commonly known 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. The Ascend TNT Switch is a more cost efficient method of handling PBX voice customers and Supra intends to provide both PBX voice services and information services through the Ascend TNT Switches.

At the October 21, 1998 hearing, the un rebutted 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" is hardly evidence at all. BellSouth did not present any facts regarding the capabilities or functions of the equipment. Moreover, it was clear that none of the BellSouth witnesses was even technically competent to give testimony in this area.

It is undisputed and even noted by the Staff that:

"[M]odern technology has tended to blur the line between switching equipment and multiplexing equipment." 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. 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.

At page 52 of the recommendation, the Staff states that, "Supra can physically collocate equipment to provide information services only if BST allows Supra to do so . . . Staff believes that based on this argument, Supra should not be allowed to physically collocate the Ascend TNT . . ." This argument is 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 information 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 Staff's belief that BellSouth has the right to approve or disapprove the collocation of particular pieces of equipment, BellSouth is still obligated to comply with its expressed policy of allowing the physical collocation of equipment which can and will be used to provide both telecommunications and information services. 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, the Staff erred in recommending that BellSouth not be required to allow the physical collocation of the Ascend TNT Switches.

The Staff's recommendations 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. 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.

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."

The Staff's recommendation 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 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). The Ascend TNT Switches are a far more economic and cost effective way of

provisioning PBX traffic than the traditional Class 5 Switch. BellSouth is prohibiting the collocation of this equipment for the obvious reason of making Supra less competitive. The FCC's First Report and Order made it clear that the FCC would not restrict collocation of equipment used in creative ways to provision telecommunications services. Yet that is precisely what the Staff's recommendation has accomplished. 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, the Staff's recommendation precludes innovative thinking; the very innovative thinking which ultimately leads to better and cheaper telecommunications service.

In any event, there can be no doubt that the Ascend TNT Switches are intended by Supra to be used (and will be useful) to provision PBX traffic by access to BellSouth unbundled network elements (i.e. unbundled 4-wire loops). Accordingly, under Section 251(c)(6), BellSouth has a duty permit collocation of the Ascend TNT Switches.

The Staff recommendation 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, the Staff's recommendation places the burden on Supra to prove the functionality and intended use of the Ascend TNT Switches. However, 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. It is undisputed that BellSouth failed to present a single shred of evidence to meet this burden of proof and therefore has no right to deny

collocation of the Ascend TNT Switches.

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. Apart from handling data traffic, the Cisco equipment is also useful in promoting network efficiency and thereby allowing Supra to provide more efficient and cheaper telecommunication services. Apart from the fact that CFR Section 51.100(b) implicitly authorizes the collocation of such equipment, support for collocation of this equipment can also be found in Section 251(c)(6) in that the equipment will be used and is useful (by way of Supra's network design) in gaining access to BellSouth unbundled network elements. 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.

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-ups to design their networks in the most cost-efficient and service orient manner, without fear that BellSouth will destroy the network design by refusing to collocate key pieces of equipment.

### III. Conclusion

With respect to the Staff's Recommendation regarding collocation at the North Dade Golden Glades and West Palm Beach Gardens central offices, Supra respectfully requests that this Commission impose a good faith requirement on BellSouth in not only picking the collocation space (or spaces), but also in dealing with Supra's ground plane requirements and in considering the total amount of space need to provision the requested 200 square feet of equipment footprint space.

With respect to Supra's request to collocate the Ascend TNT Switches and the Cisco remote access concentrators, Supra believes that the Staff erred in its recommendations;

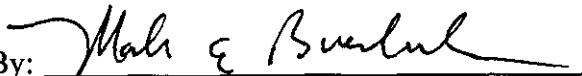
particularly with respect to the Ascend TNT Switches. It is axiomatic that where a party presents no evidence regarding an issue, it is impossible to conclude anything but the unrebutted evidence. In this instance the unrebutted evidence is that the Ascend TNT Switches are physically and technically capable of provisioning both basic telephone voice traffic from PBX customers and data traffic. 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 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 way. Accordingly, since the undisputed evidence is that the Ascend TNT Switches can provision both voice and data calls (and will be used as such), Supra should be allowed to collocate this equipment pursuant to BellSouth's own collocation policies.

In addition to BellSouth's own collocation policies, BellSouth is required to permit collocation of the Ascend TNT Switches pursuant to the FCC's First Report and Order in that the equipment is to be used to (and/or is useful to) access unbundled network elements for the provisioning of telecommunications services. The Cisco equipment also falls into this category. Additionally, 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 disputes over what equipment can or cannot be collocated.

**WHEREFORE** Petitioner SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. hereby files and serves this is objections to the Staff Recommendations of December 3, 1998 entered in this Docket, and respectfully requests that this Commission supplement the Staff Recommendations with a good faith requirement on BellSouth in granting Supra the request collocation space in the North Dade Golden Glades and West Palm Beach Gardens Central Offices, and permit Supra to physically collocate both the Ascend TNT Switches and the Cisco Remote Access Concentrators.

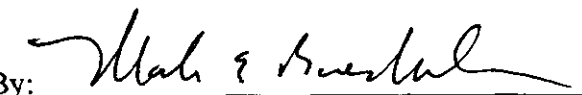
Respectfully Submitted this 15th day of December, 1998.

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By:   
MARK E. BUECHELE  
Fla. Bar No. 906700

**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 15th day of December, 1998.

By:   
MARK E. BUECHELE  
Fla. Bar No. 906700