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January 27, 1999

**VIA HAND-DELIVERY**

BLANCA BAYO  
Director of Records & Reporting  
Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
(850) 413-6770

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 Response And Opposition To BellSouth's Motion For Reconsideration. Please also find enclosed an extra copy of the filing, for which we request that you stamp with the filing date and return in the enclosed postage pre-paid, self-addressed envelope.

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

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Sincerely,

Mark E. Buechele

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FPSD-RECORDS/REPORTING

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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

\_\_\_\_\_  
Petition For Emergency Relief By Supra )  
Telecommunications & Information Systems, )  
Inc. Against BellSouth Telecommunications, )  
Inc. Concerning Collocation And )  
Interconnection Agreements )  
\_\_\_\_\_)

Docket No.: 980800-TP

Dated: January 27, 1999

**SUPRA'S RESPONSE AND OPPOSITION  
TO BELLSOUTH'S MOTION FOR RECONSIDERATION**

PETITIONER, SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra"), by and through its undersigned counsel, and pursuant to Florida Administrative Code § 25-22.060, hereby files and serves this its Response And Opposition To BellSouth's Motion For Reconsideration relating to the final order (PSC-99-0060-FOF-TP) entered in this docket on or about January 6, 1999, and in support thereof states as follows:

1. On or about June 30, 1998, Supra filed a Petition for Emergency Relief ("Petition") against BELLSOUTH TELECOMMUNICATIONS, INC. ("BellSouth"). The Petition requested that the Commission require BellSouth to permit Supra to physically collocate in BellSouth's North Dade Golden Glades and West Palm Beach Gardens tandem central offices.

2. On or about July 20, 1998, BellSouth filed its Answer and Response to Supra's Petition. The Commission subsequently conducted an administrative hearing regarding this matter on October 21, 1998. On or about November 16, 1998, the parties filed their post-hearing briefs on the evidence submitted. Thereafter, on or about December 3, 1998, the Staff issued its recommendations on this matter and on or about January 6, 1999 this Commission entered its final order regarding Supra's petition. In the final order this Commission held that

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there was sufficient space within the two central offices to permit Supra to collocate, without specifically requiring collocation at any specific room or area within the buildings.

3. In its motion for reconsideration, BellSouth does not challenge the Commission's ruling that sufficient space exists for collocation, but rather BellSouth argues that some of the locations identified by the Commission as being available for collocation are in fact not suitable due to BellSouth's professed needs.

### I. LEGAL STANDARDS

The proper standard of review on a motion for reconsideration is whether or not the Commission overlooked or failed to consider a point of fact or law in rendering its order. In re: Complaint of Supra Telecom, 98 FPSC 10:497, at 510 (October 28, 1998) (Docket No. 980119-TP, Order No. PSC-98-1467-FOF-TP). A motion for reconsideration is not an appropriate venue for rehashing matters which were already considered, or for raising immaterial matters which even if adopted would not materially change the outcome of the case. In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes by Gulf Power Company, 94 FPSC 3:600, at 601 (March 28, 1994) (Docket No. 930613-EI, Order No. PSC-94-0345-FOF-EI).

### II. ARGUMENT

The arguments raised by BellSouth do not rise to the standards required of a motion for reconsideration. In particular, the arguments raised by BellSouth do not identify either fact or law, which this Commission either overlooked or failed to consider. Indeed, BellSouth simply seeks to reargue the same points already fully developed in the record. Moreover, the points

addressed by BellSouth would not alter the outcome of this Commission's ruling.

Apart from simply rearguing points fully addressed by the Commission and fully supported by the evidence, BellSouth misinterprets this Commission's ruling. This Commission did not order BellSouth to make available specific areas within the central offices, but rather that space for collocation was available in both offices. Apart from a one-line statement that this Commission "committed error in determining that space was available in the two central offices", BellSouth does not identified how this Commission erred. In fact, BellSouth does even attempt to argue how or why this Commission erred in determining that space was available. Florida Administrative Code § 25-22.060(2) states in pertinent part that *"Any motion or response filed pursuant to this rule shall contain a concise statement of the grounds for reconsideration . . ."* A one-line sentence that this Commission erred by finding that space is available for collocation is simply not sufficient to justify a reconsideration.

Notwithstanding the fact that BellSouth does not and cannot seriously dispute that space is available in both central offices to accommodate Supra, the record evidence is clear that there is considerable space available in both offices. Indeed, the evidence suggests that BellSouth has space reserved for use far in excess of two years of growth and that BellSouth has wasted and under-utilized space in both central offices. Indeed, this Commission specifically found, based upon sound evidence, that BellSouth was not efficiently utilizing administrative space in both central offices; nor was BellSouth utilizing available technologies which could easily reduce the number of terminals and desks scattered throughout the central offices. During the hearing Supra identified numerous locations within both central offices for which Supra would consider

useful for collocation. This Commission only identified a portion of those areas in its final order to demonstrate that sufficient and suitable space is available. This Commission did not hold that the areas set forth in the final order are the only areas suitable for collocation, or that the other locations identified by Supra at the hearing were not available or suitable for collocation; rather only that space was available for collocation. With respect to the North Dade Golden Glades central office, this Commission stated as follows:

"Based on the foregoing, we find that BellSouth has enough space in the North Dade Golden Glades central office to allow Supra to collocate. We shall not require BellSouth to provide Supra with physical collocation in a specific room or area discussed herein. It is appropriate for BellSouth to determine where in this central office Supra shall be allowed to physically collocate. Nevertheless, we emphasize that BellSouth shall be required to allow Supra to physically collocate as set forth herein.

Based on our determination that there is space in this office, we shall require BellSouth to allocate 200 square feet of space in the North Dade Golden Glades central office to Supra for collocation. We shall also require BellSouth to allocate space to Supra for the POT bays and other infrastructure equipment necessary for Supra to interconnect with BellSouth's network." PSC-99-0060-FOF-TP, at page 20.

Likewise, with respect to the West Palm Beach Gardens central office, this Commission stated as follows:

"We shall not require BellSouth to provide Supra with physical collocation in a specific room or area discussed herein. It is appropriate for BellSouth to determine where in this central office Supra shall be allowed to physically collocate. Nevertheless, we emphasize that BellSouth shall be required to allow Supra to physically collocate as set forth herein.

Based on our determination that there is space in this office, we shall require BellSouth to allocate 200 square feet of space in the West Palm Beach Gardens central office to Supra for collocation. We shall also require BellSouth to allocate space to Supra for the POT bays and other infrastructure equipment necessary for Supra to interconnect with BellSouth's network." PSC-99-0060-FOF-TP, at page

26.

As is clear from the final order, this Commission only determined that space was available and left the determination to BellSouth as to where to provide the collocation space. Because this finding and determination is reasonable and based upon the record evidence, this Commission did not err in this portion of the final order.

Rather than seriously challenging this Commission's ruling that space is available, BellSouth disputes the suitability of only a few of the many spaces identified by Supra at the hearing. BellSouth does not argue or show how there is no other space available within these central offices, other than the few areas mentioned by this Commission. The fact that Supra identified other areas at the hearing demonstrates that even if this Commission were to consider BellSouth's arguments and reverse the final order on these spaces, the outcome would in all likelihood still be the same (i.e. that space is still available at both offices for Supra to collocate). As stated previously, a motion for reconsideration is not an appropriate venue for raising immaterial matters which even if adopted would not materially change the outcome of the case. In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes by Gulf Power Company, supra, 94 FPSC at 3:601. Since this Commission examined more than just the few spaces noted by BellSouth, even if BellSouth's arguments had merit (which they don't), the outcome of the ruling would still be the same. Accordingly, BellSouth's motion for reconsideration should be denied.

Additionally, BellSouth's arguments regarding the North Dade Golden Glades and West Palm Beach Gardens central offices are nothing new. At the hearing Supra challenged the

requirement of fire-rated walls and BellSouth conceded that it had denied the applications without even checking with the local code enforcement authorities on this issue. This Commission heard all of the arguments and made its findings taking this issue into consideration, stating as follows:

"We are concerned about Supra's allegations that BellSouth allows caged collocation in one central office and requires fire wall construction in another, when both central offices are in the same county. The evidence in this proceeding is, however, inconclusive as to whether a building permit request for non-fire wall collocation would be denied for either of these two central offices.

As previously explained, we will not consider at this time the specific question of whether fire rated walls are a factor in determining space. If the local building code authorities determine that fire wall construction is required, Supra may make a determination at that time regarding whether physical collocation is financially reasonable for Supra." PSC-99-0060-FOF-TP, at page 16.

Based upon the above, BellSouth's argument that fire-rated walls are necessary is baseless since even BellSouth concedes that the issue has not yet even been addressed with the local authorities, and therefore is not even ripe for consideration.

BellSouth's other arguments about how much space is needed in both offices for future growth is also nothing new. This Commission weighed all of the evidence and factored into its ruling the reasonable amount of space needed for future growth. Indeed, with respect to future growth space, BellSouth conceded that such estimates are only guesswork and that history has proven that the rapid advancements in technology serve to actually free-up central office space as time progresses. The fact that BellSouth disagrees with this Commission's interpretation of the evidence does not make that determination erroneous. BellSouth's arguments about the need for uncrating space in the West Palm Beach Gardens central office were not only also previously considered, but are baseless as well; particularly in light of the finding that BellSouth currently

wastes space in these central offices (a finding which BellSouth does not dispute). The solution to BellSouth's arguments are not a reconsideration of evidence that has already been properly weighed, but rather better utilization of the wasted space currently in these central offices. Accordingly, this Commission did not err in its findings.

### **III. CONCLUSION**

For the reasons stated above, BellSouth has not shown that this Commission overlooked any evidence or erred as a matter of fact or law in determining that space is available in both central offices for Supra to collocate; accordingly the motion for reconsideration should be denied. See In re: Complaint of Supra Telecom, supra, 98 FPSC at 10:510. Moreover, the matters raised by BellSouth were at the hearing hotly contested, thoroughly litigated and full of conflicting facts and opinions which this Commission properly considered in concluding that space is available for collocation. Accordingly, BellSouth's motion for reconsideration is nothing more than a rehashing of matters already considered and the raising of immaterial matters which even if adopted would not materially change the outcome of the case; and thus should be denied for this reason as well. See In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes by Gulf Power Company, supra, 94 FPSC at 3:601. Therefore, for the reasons stated above, Supra respectfully requests that this Commission deny BellSouth's motion for reconsideration.

**WHEREFORE** Petitioner SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. hereby files and serves this its Response And Opposition To BellSouth's Motion For Reconsideration, and respectfully requests that this Commission deny BELLSOUTH



TELECOMMUNICATIONS, INC.'s Motion For Reconsideration.

Respectfully Submitted this 27th day of January, 1999.

MARK E. BUECHELE, ESQ.  
Supra Telecommunications &  
Information Systems, Inc.  
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By: Mark E Buechle  
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 27th day of January, 1999.

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