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DATE: APRIL 3, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BUYS) DB
OFFICE OF THE GENERAL COUNSEL (FORDHAM) C.J. PAC

RE: DOCKET NO. 030200-TP - EMERGENCY PETITION OF AT&T
COMMUNICATIONS OF THE SOUTHERN STATES, LLC D/B/A AT&T
D/B/A LUCKY DOG PHONE CO. D/B/A ACC BUSINESS D/B/A
SMARTALK D/B/A UNISPEAKSM SERVICE D/B/A AT&T FOR CEASE AND
DESIST ORDER AND OTHER SANCTIONS AGAINST SUPRA
TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.

AGENDA: APRIL 15, 2003 - REGULAR AGENDA - MOTION TO DISMISS -
PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030200.RCM

CASE BACKGROUND

On February 24, 2003, AT&T Communications of the Southern States, LLC (AT&T) filed its Emergency Petition Requesting a Cease and Desist Order and Other Sanctions Against Supra Telecommunications and Information Systems, Inc. (Supra). On March 17, 2003, Supra filed its Motion to Dismiss AT&T's Emergency Petition. On March 24, 2003, AT&T timely filed its Response to Supra's Motion to Dismiss. That Motion to Dismiss is the subject of this Recommendation.

DOCUMENT NUMBER - 03-04-2

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Supra's Motion to Dismiss AT&T's Emergency Petition Requesting a Cease and Desist Order and Other Sanctions Against Supra filed in Docket No. 030200-TP?

RECOMMENDATION: No. Staff believes that AT&T's Emergency Petition for Relief, when viewed in the light most favorable to AT&T, states a cause of action cognizable under Chapter 364, Florida Statutes, and that AT&T has standing to bring this action. Therefore, the Motion to Dismiss should be denied. **(FORDHAM)**

STAFF ANALYSIS:

AT&T's Emergency Petition

On February 24, 2003, AT&T filed its Emergency Petition Requesting a Cease and Desist Order and Other Sanctions Against Supra. AT&T reports that it is a "locally available interexchange company" to residential basic local exchange telecommunications customers of Supra, as that term is used in Section 364.02, Florida Statutes. According to the Petition, beginning in October, 2002, a billing dispute arose between AT&T and Supra. AT&T alleges that it requested additional time to review a certain contested billing which was disputed, and offered to pay Supra certain undisputed amounts with additional amounts to be paid upon verification of Supra's eligibility for such payments. However, Supra refused AT&T's request and offer.

While AT&T was in the process of verifying the charges contained in ten months of access bills that Supra had belatedly provided, Supra filed an adversary complaint against AT&T before the Supra Bankruptcy Court. Then, during negotiations between Supra and AT&T to resolve the billing dispute and adversary complaint, Supra took actions to begin a process to disconnect approximately 40,000 AT&T customers from their preferred long distance provider. Beginning on January 29, 2003, Supra sent a letter (attachment A) to 10,000 AT&T customers, claiming that AT&T "refused to pay Supra for its services." The letter gave the customers 15 days from the date of the letter to select a new long distance carrier. In addition, the disconnect letter promoted Supra's own long distance services. The letter was sent in batches of 10,000 to AT&T customers on January 29, January 30, January 31 and February 1, 2003, for a total of about 40,000 AT&T customers.

AT&T asserts the use of AT&T's customers PIC information by Supra to market its own long distance services is illegal under Federal law and the orders and rules of the FCC. Supra's conduct in marketing its long distance services in the disconnect letter is prohibited by 47 U.S.C. Sec. 222(b).

In addition to the disconnect letter, AT&T alleges that Supra also apparently instituted procedures to prevent customers from switching to AT&T services (Attachment B). According to reports from customers calling AT&T, Supra refused to process PIC changes for customers requesting AT&T. In scripts used by Supra customer care representatives, customers were required to select a new provider.

AT&T alleges that Supra has not taken corrective action and still refuses to allow customers to switch their long distance service to AT&T. AT&T also contends that Supra has intentionally taken action to prevent a significant number of AT&T's customers from dialing 1+ to reach the AT&T network by placing a "no PIC" status on the customers line without consent or authorization from the customer. Additionally, AT&T believes that Supra intentionally has taken action to change the PIC of AT&T's customers to Supra and other long distance carriers without the consent or authorization for the customer. AT&T also believes that Supra's customer service representatives continue to advise AT&T customers that they cannot select AT&T as their long distance carrier and have made erroneous and outrageous claims about AT&T to AT&T customers.

Accordingly, AT&T requests that this Commission:

1. Exercise its jurisdiction under Section 364.285, Florida Statutes, and immediately issue an order directing Supra to show cause why its authority and certificates to operate as an ALEC and IXC in the state of Florida should not be revoked for violation of rules 25-24.825 and 25-24.118, Florida Administrative Code.
2. Exercise its jurisdiction under Chapter 364.058, Florida Statutes, and conduct an expedited limited evidentiary proceeding to determine the number of AT&T customers that have had their long distance service changed without their consent or authorization by Supra's actions.

3. Based on the results of the expedited limited evidentiary proceeding, the Commission should:
 - A. Exercise its jurisdiction under rule 25-24.118, Florida Administrative Code, and enter an order directing Supra to reinstate the AT&T PIC on all Supra local customers that Supra either placed in a "no PIC" status or changed the PIC without the customers' consent and authorization and provide AT&T notification through the appropriate industry Customer Account Record Exchange (CARE) that the PIC change was executed on the customer's accounts. This notification should be provided through the current established NeuStar Clearinghouse CARE interface as agreed to among AT&T, NeuStar, and Supra; and
 - B. Exercise its jurisdiction under Section 364.285, Florida Statutes, and impose fines and other available sanctions on Supra for each violation of Commission Rule 25-4.118(1)(2), Florida Administrative Code, that is found.
4. Exercise its general supervisory jurisdiction over Supra, as a certified ALEC, and its specific jurisdiction under Chapter 364.337(5), Florida Statutes, to insure "fair treatment" of all telecommunications providers and issue an emergency order requiring Supra to cease and desist from:
 - A. Preventing its current basic local exchange telecommunications service customers from choosing AT&T as their PIC'ed interexchange carrier.
 - B. Placing any further "no PIC" status indications on the lines of AT&T customers without the customer's consent and authorization;
 - C. Advising AT&T customers that they may not remain customers of AT&T and must choose another long distance provider; and

- D. Cease utilizing the CPNI of AT&T customers to conduct a marketing campaign for its own long distance services.
5. Enter a final order prohibiting Supra from violating the terms of its certificates as an ALEC or IXC in the state of Florida, pursuant to the applicable provisions of the Florida Statutes and the Commission Rules.
6. Grant such further relief as the Commission deems just and proper.

Supra's Motion to Dismiss

On March 17, 2003, Supra filed its Motion to Dismiss AT&T's Emergency Petition. In its Motion, Supra urges the dismissal of AT&T's Petition based on the following reasons:

1. NO STANDING - Supra is alleging that AT&T does not have standing to raise a claim on behalf of its customers because AT&T cannot claim to be an association with dues paying members. Supra asserts that AT&T fails the organizational test because there exists no association, no members and no charter outlining the "organizational purpose."
2. NO ACTUAL CASE OR CONTROVERSY - Supra claims that there exists no actual case or controversy because AT&T agreed to pay lawful access charges on February 6, 2003. Supra further alleges that no actual case or controversy exists because AT&T has failed to provide or proffer a list of its customers who were actually affected by any Supra action. Accordingly, AT&T is asking the Commission to enjoin Supra from engaging in a non-existent activity. Supra believes AT&T is pursuing this action for the purpose of getting an advisory opinion from this Commission.
3. FAILURE TO STATE A CAUSE OF ACTION - Supra alleges that this Commission "shall" dismiss a petition filed under Rule 28-106.201, Florida Administrative Code, if it is not in substantial compliance with the rule. Supra asserts that AT&T is not in substantial compliance because it has failed to provide the requisite information in the following paragraphs of the rule:

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- (2) (a) Name and address of each affected agency and its file number.
- (2) (b) Explanation of how petitioner's substantial interests will be affected by the agency determination.
- (2) (c) Statement of how petitioner received notice of the agency decision.
- (2) (d) Statement of disputed issues of fact.
- (2) (e) concise statement of ultimate facts alleged that warrant reversal or modification of the agency's proposed action.
- (2) (f) Statement of rules or statutes that require reversal or modification of the agency's proposed action.
- (2) (g) Statement of relief sought by petitioner stating the action petitioner wishes the agency to take with respect to the agency's proposed action.

Supra next urges that AT&T failed to identify any "act or omission" by Supra which is in violation of a statute enforced by this Commission, or any Commission rule or order. Supra asserts that its actions in response to the billing disputes were consistent with this Commission's findings in Order No. PSC-01-0824-FOF-TP:

BellSouth [or other CLEC] must be able to deny service in order to obtain payment for services rendered and/or prevent additional past due charges from accruing. It would not be a reasonable business practice for BellSouth [or other CLEC] to operate 'on faith' that an ALEC [or other carrier] will pay its bills. Indeed, a business could not remain viable if it were obligated to continue providing services to customers who refuse to pay lawful charges.

Supra next set forth in great detail the basis of the billing dispute and Supra's rights under the circumstances enumerated as a result thereof. Supra further contends that under Section 2.14.3(a) of the Supra tariff, after issuing the five day notice, Supra may refuse, suspend, or cancel service without incurring any liability when there is an unpaid balance for service that is past due. Supra urges that, under the provisions of its tariff, a customer, for example, AT&T, must submit a documented claim for a disputed amount within 60 days of the invoice date for the disputed services in order to be cognizable. AT&T did not submit its claim within that 60 day window, waiving all rights to filing a claim thereafter.

Supra again argues that, consistent with Commission precedent, it could not remain viable if it were obligated to continue providing free services to AT&T who refuses to pay lawful and undisputed charges. Supra reports that on January 8th it directed a letter to AT&T containing the following:

This is to notify you that your account is in serious delinquency and has been referred to collection . . . Starting January 13, 2003, and pursuant to our collection policies, Supra Telecom will no longer accept AT&T's long distance traffic and/or provide access services to AT&T until AT&T brings its account current with Supra.

Following that notification, AT&T did not file a valid dispute regarding any of the amounts of the October 23, 2002, invoice and amounts on that invoice had remained unpaid for over 78 days. Pursuant to Supra's tariff, no further delay in disconnection was required, and Supra could do so without incurring any liability.

As a result of AT&T's non-payment, Supra chose to inform Supra customers who utilized AT&T as their long distance provider that AT&T had voluntarily chosen to make itself "unavailable" to offer long distance service to Supra customers because of its refusal to pay past due charges for the use of Supra's lines. Supra sent those letters in batches of 10,000 on January 29, 30, 31 and February 1, 2003. Supra maintains that the issuance of the letter was an entirely reasonable means of protecting Supra's own financial interest. More importantly, though, is that the sending of these letters was justified and privileged. Indeed, Supra argues, it is common practice for CLECs and ILECs in the state of Florida to discontinue or refuse new service for nonpayment of past

due charges, and this common industry practice is also consistent with Commission precedent.

Supra next addressed in great detail the premise that this Commission does not have the authority to fix or assess money damages. Staff does not include that discussion in this recommendation because the AT&T Petition does not seek money damages in this proceeding.

Supra argues that it could not be guilty of violating Rule 25-4.118, Florida Administrative Code (Slamming), because the rule did not contemplate the scenario of what would happen to a customer in the event that an IXC refused to pay for lawful access charges for the use of a LEC's facilities. Additionally, under those circumstances, the only practical means of implementing this favored public policy is to move the customer to a No-PIC in the event the customer does not make an affirmative choice to switch to another provider. Also, at all times, AT&T customers had access to "dial-around." Supra also asserts that, as a result of the payment by AT&T of a substantial portion of the past due invoice, no customer was moved to a No-PIC status. Therefore, even taking all of AT&T allegations as true, Supra could not have violated Rule 25-4.118, Florida Administrative Code, because no customer was moved to a No-PIC.

Regarding Supra's alleged violation of 47 U.S.C. §222(b), Supra argues that jurisdiction to enforce FCC statutes resides only with that agency. In addition, even if this Commission found that it had jurisdiction to review this allegation, Supra's letter is not a winback letter and in no way rises to the level of a violation of Section 222(b). Supra urges that it only identified itself as an available alternative carrier for the purposes of providing long distance service.

Accordingly, Supra argues that AT&T's Petition must be dismissed on the grounds that AT&T failed to state a cause of action - under either Rule 28-106.201(2) or Rule 25-22.036(2), Florida Administrative Code.

AT&T's Response to Motion to Dismiss

On March 24, 2003, AT&T filed its Response to Supra Telecommunications and Information Systems Motion to Dismiss. In that response, AT&T states that in its consideration of Supra's

Motion to Dismiss AT&T's Emergency Petition, the Commission must determine if there are sufficient allegations in AT&T's Emergency Petition to state a cause of action. The Commission's consideration is to be limited to the four corners of the Emergency Petition. Rohatynsky v. Kalogiannis, 763 So. 2d 1173 (Fla. 4th DCA 2000), and that the Commission is required to treat all the allegations in the Emergency Petition as true for purposes of disposing of the Motion to Dismiss. Brown v. Moore, 765 So. 2d 749 (Fla. 1st DCA 2000). Accordingly, a motion to dismiss for failure to state a cause of action may be granted only by looking exclusively at the Emergency Petition itself, without reference to any defensive pleadings or evidence in the case. Barbado v. Breen & Murphy, PA, 758 So. 2d 1173 (Fla. 4th DCA 2000).

AT&T states that Supra completely misses the point on the issue of standing. AT&T has neither alleged nor sought associational standing in this matter. Its Petition is filed on its own behalf. AT&T requests that this Commission exercise its jurisdiction and conduct appropriate evidentiary proceedings, entering appropriate orders requiring Supra to comply with Florida law and Commission rules in order to prevent the continuation of the harm that AT&T has suffered and continues to suffer as a result of Supra's improper actions in denying or otherwise interfering with AT&T's customers' ability to choose AT&T as their preferred long distance carrier. Accordingly, AT&T claims, it clearly has standing in this matter.

AT&T states that Supra's challenge to the action based on no case or controversy is conclusory and does not establish a lack of case or controversy. Supra's claim that AT&T is merely seeking an advisory opinion is totally without merit. AT&T asserts that its recital of the facts surrounding the underlying switched access billings was simply background and AT&T is seeking no Commission action with regard to those facts. AT&T urges that there is no requirement that it produce at this stage of the proceedings a list of customers affected by Supra's actions. AT&T claims that its Petition clearly provides factual allegations based on information and belief, supported by a sworn Declaration and evidence of correspondence between Supra and AT&T customers as well as a script prepared for Supra's Customer Service representatives which support those factual allegations. Accordingly, there can be no doubt that there is a case or controversy before the Commission as to whether Supra is violating Florida law and Commission Rules or that

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immediate action is needed by the Commission to stop the continuing harm.

AT&T next argues that it is not required to provide all the information for each of the items enumerated in Rule 28-106.201(2), Florida Administrative Code. That rule, urges AT&T, generally contemplates that the initiation of an action before the agency will be in the context of a proposed agency action. In the AT&T Petition, however, there is no proposed agency action for which AT&T seeks review. Rather, AT&T's Emergency Petition seeks action from the Commission through an expedited proceeding pursuant to Section 364.058, Florida Statutes. Accordingly, the omission of information that is not applicable to AT&T's Emergency Petition clearly cannot render that Petition noncompliant with Rule 28-106.201. AT&T stresses that its Petition sets forth the jurisdictional basis for the requested Commission action to enforce Florida law and Commission rules, extensive factual allegations showing the probable violations of those laws and rules committed by Supra, a request for expedited evidentiary proceedings to test those factual allegations and a specific request for relief if violations are found.

AT&T states that it does properly state a cause of action upon which this agency could grant relief. AT&T's Emergency Petition alleges at Paragraph 17 that AT&T did properly dispute certain of the access charges billed by Supra. Treating this allegation as true requires that Supra's Motion to Dismiss be denied. AT&T questions whether Supra's tariff could shield it from Commission enforcement for actions in violation of Florida laws and Commission rules, but, even so, Supra's violations have continued beyond February 6, 2003, the date the access billing dispute was settled.

AT&T argues that Supra's attempts to rationalize its violation of 47 U.S.C. §222(b) by claiming that it is simply including itself on a list of available customers is simply wrong. Section 222(b) precludes a carrier from using a customer's proprietary network information from another carrier for its marketing purposes. Moreover, Supra was not simply including itself on a list of available carriers when it sent letters to AT&T's customers telling them that they could not have AT&T and suggesting that Supra was the appropriate alternative. AT&T alleges that these violations clearly present a cause of action.

In conclusion, AT&T argues that a proper review of Supra's Motion to Dismiss, based on well settled law and taking all the allegations in the AT&T Emergency Petition as true, the Commission should rule that AT&T has substantially complied with all the appropriate procedural rules for initiating action before the Commission requested by the Emergency Petition and that the allegations in the Emergency Petition clearly present a cause of action upon which the relief requested by AT&T can be granted.

Staff's Analysis

AT&T's Petition should be viewed in the light most favorable to AT&T, in order to determine whether its request is cognizable under the provisions of Chapter 364, Florida Statutes. As stated by the Court in Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993), "[t]he function of a motion to dismiss is to raise as a question of law the sufficiency of facts alleged to state a cause of action." The standard to be applied in disposing of a motion to dismiss is whether, with all allegations in the petition assumed to be true, the petition states a cause of action upon which relief may be granted. Id. In determining the sufficiency of the petition, the Commission should confine its consideration to the petition and the grounds asserted in the motion to dismiss. See Flye v. Jeffords, 106 So. 2d 229 (Fla. 1st DCA 1958). Furthermore, the Commission should construe all material allegations against the moving party in determining if the petitioner has stated the necessary allegations. See Matthews v. Matthews, 122 So. 2d 571 (Fla. 2nd DCA 1960).

The March 17, 2003, Motion to Dismiss filed by Supra contains a Four pronged attack on the AT&T Emergency Petition:

(1) AT&T lacks associational standing.

Supra's only challenge to AT&T standing is that AT&T does not have associational standing. Staff has reviewed this claim in great detail and is unable to determine the basis for this argument. In the AT&T Petition it is clear that the claims of harm from the actions of Supra were harms directly impacting AT&T and its customers. Those harms are clearly cognizable by this Commission. Accordingly, staff believes AT&T has standing in this proceeding.

In the AT&T Petition, it is clear that the alleged harm is that sustained by AT&T and its customers. Clearly, those harms are cognizable by this Commission.

(2) AT&T's Emergency Petition presents no actual case or controversy.

Supra alleges that there is no actual case or controversy in this proceeding because, on February 6, 2003, Supra and AT&T entered into a settlement agreement regarding the access billing dispute. Accordingly, argues Supra, there is presently no actual dispute and AT&T is merely seeking an advisory opinion. Additionally, Supra argues that there is no actual case or controversy because AT&T has not proffered a list of customers affected by Supra's actions, therefore presenting no evidence of unauthorized carrier changes. Staff believes, however, that this Commission must accept the claims in AT&T's Petition as true. Brown v Moore, 765 So. 2d 749 (Fla. 1st DCA 2000)

AT&T alleges that Supra's violations, as contained in the Petition, continued as of the filing date of the Petition. Additionally, staff agrees with AT&T that it is not required to submit all the evidence that it could provide in support of its allegations. AT&T correctly asserts that its Petition clearly provides factual allegations based on information and belief, supported by a sworn Declaration and evidence of correspondence between Supra and AT&T customers as well as a script prepared for Supra's Customer Service representatives which support those factual allegations. Staff agrees with AT&T that those factual allegations clearly establish a live case and a real controversy as to whether or not Supra is violating the Florida law and Commission rules cited by AT&T in its Petition. Also, AT&T's Petition clearly alleges that, based on information and belief, Supra's improper actions are continuing despite the settlement of the access billing dispute between Supra and AT&T. Accordingly, staff believes there is an actual case and controversy for adjudication by this Commission.

(3) AT&T's Emergency Petition fails to state a cause of action upon which relief can be granted

Supra alleges that this Commission "shall" dismiss a petition filed under Rule 28-106.201, Florida Administrative Code, if it is not in substantial compliance with the rule. As detailed earlier

in this recommendation, Supra argues that AT&T failed to provide information on the eight enumerated criteria found in subsection (2) of that rule. Also, Supra urges that Subsection (4) of Rule 28-106.201, Florida Administrative Code, provides that the applicable agency "shall" dismiss a petition "if it is not in substantial compliance with subsection (2) of this rule."

Supra acknowledges, however, that this rule contemplates that the agency, in this case this Commission, has already made some agency determination that the petitioner is seeking to challenge. Indeed, an examination of the eight referenced criteria discloses that they relate specifically to a protest of an agency action. AT&T argues, however, that in the context of its Petition there is no proposed agency action for which AT&T seeks review before this agency. Rather, the AT&T Petition seeks action from the Commission based on the Commission's regulatory authority in Chapter 364, Florida Statutes, to enforce Florida law and Commission Rules through an expedited proceeding pursuant to Section 364.058, Florida Statutes. As a result, according to AT&T, the information requested in each of the items in the Rule 28-106.201(2), Florida Administrative Code, is simply not applicable.

Supra alleges that the undisputed facts do not state a cause of action upon which this Commission could grant relief. Staff notes, however, that there are significant facts which are in dispute. AT&T alleges that it made an offer to pay undisputed portions of the billings, but Supra refused that offer of payment. Supra denies those allegations. It is also noted that the majority of the billing period over which the dispute occurred, precedes the effective date of the tariff under which Supra claims relief. AT&T sets forth alleged violations by Supra of Florida law and Commission rules which are cognizable by this Commission.

In its Motion to Dismiss, Supra makes significant arguments which go beyond the four corners of the Emergency Petition and are irrelevant to the determination of the Motion to Dismiss. In order to keep the determination of the Motion from becoming a full evidentiary proceeding, staff has not discussed those irrelevant portions of Supra's argument in this recommendation. Accordingly, viewed in the light most favorable to AT&T, staff believes that AT&T has stated a cause of action for which the Commission may grant relief.

(4) 47 U.S.C. §222(b)

The final attack on the AT&T Petition by Supra relates to letters wherein AT&T alleges that Supra violated 47 U.S.C. §222(b) by using a customer's proprietary network information from another carrier for its marketing purposes. Supra is urging that this claim be dismissed because, i) Supra did not violate the provision and, ii) this Commission has no jurisdiction to enforce FCC rules.

47 USC 222(b) reads as follows:

CONFIDENTIALITY OF CARRIER INFORMATION. - A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

Staff has reviewed the letter and believes that the letter goes beyond the practice of placing the company's name on a list of available providers, which would appear to be in violation of FCC rules. The controversial portion of the letter is as follows:

Supra provides long distance service at rates significantly below the rates of your current provider. Our 5 cents a minute anytime, anywhere in the U.S. rates is easy to use, simple to understand, saves you money and one bill with your local telephone service.

The main thrust of the Telecommunications Act is the promotion of fairness and competition in the telecommunications industry. Chapter 364.01, Florida Statutes, grants broad powers to this Commission in the enforcement of the intent of the Act. In addition to the broad general powers contained in that Chapter, 364.01(4)(g) provides:

- (4) The Commission shall exercise its exclusive jurisdiction in order to:

. . .

(g) Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior .

. . .

Thus, staff believes that under Section 364.01, Florida Statutes, the Commission has jurisdiction to review conduct that is alleged to violate a FCC rule if such violation could be deemed anti competitive behavior under Florida law.

Based on all the above, looking only within the four corners of the Petition and accepting the representations therein as true, and viewing the Petition in the light most favorable to AT&T, staff believes that AT&T's Emergency Petition does state a cause of action upon which relief can be granted. Staff further recommends that AT&T has standing to bring this action. Accordingly, staff recommends that Supra's Motion to Dismiss be denied.

DOCKET NO. 030200-TP

DATE: April 3, 2003

ISSUE 2: Should Docket No. 030200-TP be set for an evidentiary hearing?

RECOMMENDATION: Yes. If the recommendation in Issue 1 is approved, Docket No. 030200-TP should be set for an evidentiary hearing. **(FORDHAM)**

STAFF ANALYSIS: AT&T is not seeking, nor would a proposed agency action be appropriate in this matter. AT&T has styled its pleading as an Emergency Petition, alleging continuing harm. In the event the recommendation in Issue 1 is approved, staff recommends that this matter be set for an evidentiary hearing.

ISSUE 3: Should Docket No. 030200-TP be closed?

RECOMMENDATION: No. If staff's recommendation in Issue 1 is approved, Docket No. 030200-TP should remain open pending final disposition by the Commission. **(FORDHAM)**

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, Docket No. 030200-TP should remain open pending final disposition by the Commission.