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February 27, 2006

VIA HAND DELIVERY

Blanca S. Bayó, Director
Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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06 FEB 27 PM 2:51
COMMISSION
CLERK

Re: Docket No. 041269-TP - Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law, by BellSouth Telecommunications, Inc.

Dear Ms. Bayó:

CMP _____
COM 3 Enclosed for filing in the above-referenced Docket on behalf of Supra
CTR _____ Telecommunications and Information Systems, Inc. (Supra), Florida Digital Network, Inc. d/b/a
ECR _____ FDN Communications, Inc. (FDN), Nuvox Communications, Inc./NewSouth Communications
GCL _____ Corp. (Nuvox/NewSouth), Xspedius Communications, LLC (Xspedius), and DIECA
OPC _____ Communications, Inc. d/b/a Covad Communications Co. (Covad) (the "Joint Petitioners") are the
original and fifteen copies of the Joint Petitioners' Joint Petition for Rehearing and Request for
Expedited Treatment.

RCA _____

SCR _____

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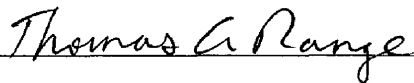
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Blanca S. Bayo, Director
February 27, 2006
Page 2

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me. Thank you for your assistance with this filing.

Sincerely,

_____

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Enclosures

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of:)
Petition to Establish Generic Docket)
To Consider Amendments to)
Interconnection Agreements)
Resulting from Changes of Law, by)
BellSouth Telecommunications, Inc.)
_____)

Docket No. 041269-TP
Filed: February 27, 2006

**JOINT PETITION FOR REHEARING AND
REQUEST FOR EXPEDITED TREATMENT**

Supra Telecommunications and Information Systems, Inc. ("Supra"), by and through its undersigned counsel, hereby files with the Florida Public Service Commission ("Commission") this Petition for Rehearing in Docket No. 041269-TP, Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes in Law, by BellSouth Telecommunications, Inc., ("the Generic Docket") on the joint behalf of Supra, Florida Digital Network, Inc., d/b/a FDN Communications ("FDN"), NuVox Communications, Inc. ("NuVox"), Xspedius Communications, LLC ("Xspedius"), and DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") (herein identified jointly as "Joint Petitioners"). The Joint Petitioners hereby submit this Petition pursuant to Rules 28-106.201 and 25-22.036, Florida Administrative Code, and in accordance with Rules 28-106.104 and 25-22.028, Florida Administrative Code. By this Petition, the Joint Petitioners respectfully request that the Commission initiate new evidentiary proceedings in this matter, which are necessary to correct a fundamental error in the assignment of Commissioners for the final resolution of this proceeding in violation of the provisions of Section 350.01(5), Florida Statutes.

The Commission is authorized to take such action in accordance with Rule 28-106.211, Florida Administrative Code, to effectuate the just resolution of this case, and such action would be entirely consistent with Section 120.68(7)(c), Florida Statutes.¹ As grounds therefor and in support thereof, the Joint Petitioners state as follows:

1. Supra is a competitive local exchange carrier ("CLEC") certificated by the Commission to provide telecommunications services within the State of Florida. Petitioner's name, address, and telephone number are as follows:

Supra Telecommunications and Information Systems, Inc.
2901 S.W. 149th Avenue, Suite 300
Miramar, Florida 33027
(786) 455-4200

2. The Petitioner's representative's name, address, and telephone number is:

Marva Brown Johnson General Counsel Supra Telecommunications and Information Systems, Inc. 2901 S.W. 149 th Avenue, Suite 300 Miramar, Florida 33027 (786) 455-4209 Fax: (786) 455-4600 E-mail: Marva.Johnson@supratelecom.com	Thomas A. Range, Esquire AKERMAN SENTERFITT 106 East College Avenue, Suite 1200 Tallahassee, FL 32302-1877 Phone: (850) 224-9634 Fax: (850) 222-0103 Email: tom.range@akerman.com
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3. FDN is a competitive local exchange carrier ("CLEC") certificated by the Commission to provide telecommunications services within the State of Florida. Petitioner's name, address, and telephone number are as follows:

¹Section 120.68 (7)(c), provides, in pertinent part: "The court shall remand a case to the agency for further proceedings consistent with the court's decision or set aside agency action, as appropriate, when it finds that: . . . [t]he fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure. . . ."

Florida Digital Network, Inc. d/b/a FDN Communications
2301 Lucien Way, Suite 200
Maitland, Florida 32751

4. The Petitioner's representative's name, address, and telephone number is:

Matthew Feil
General Counsel
FDN Communications
2301 Lucien Way, Suite 200
Maitland, Florida 32751
(407) 835-0460
mfeil@mail.fdn.com

5. NuVox is a competitive local exchange carrier ("CLEC") certificated by the Commission to provide telecommunications services within the State of Florida. Petitioner's name, address, and telephone number are as follows:

NuVox Communications, Inc.
Two North Main Street
Greenville, South Carolina 29601

6. The Petitioner's representatives' name, address, and telephone number are:

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nhorton@lawfla.com
Messer, Caparello & Self
215 S. Monroe St., Suite 701
Tallahassee, Florida 32301

P.O. Box 1876
Tallahassee, Florida 32302-
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John Heitmann
jheitmann@kelleydrye.com
Garret R. Hargrave
ghargrave@kelleydrye.com
Kelley Drye & Warren,
LLP
Suite 500
1200 19th Street, NW
Washington, DC 20036

7. Xspedius is a competitive local exchange carrier ("CLEC") certificated by the Commission to provide telecommunications services within the State of Florida. Petitioner's name, address, and telephone number are as follows:

Xspedius Communications, LLC
5555 Wingham Blvd., Suite 300
O'Fallon, Missouri 63366

8. The Petitioner's representatives' name, address, and telephone number are:

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nhorton@lawfla.com
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Tallahassee, Florida 32301

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Suite 500
1200 19th Street, NW
Washington, DC 20036

9. Covad is a competitive local exchange carrier ("CLEC") certificated by the Commission to provide telecommunications services within the State of Florida. Petitioner's name, address, and telephone number are as follows:

Covad Communications Co.
1230 Peachtree Street, NE
Suite 1900
Atlanta, Georgia 30309

10. The Petitioner's representatives' name, address, and telephone number are:

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(404) 942-3492
GWatkins@Covad.com

Vicki Gordon Kaufman
Moyle Flanigan Katz
Raymond & Sheehan, PA
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Tallahassee, Florida 32301
(850) 681-3828
vkaufman@moylelaw.com

11. BellSouth is a corporation organized and formed under the laws of the state of Georgia, with its principal office at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth is an Incumbent Local Exchange Carrier ("ILEC") certificated by this Commission to provide local

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exchange telecommunications services in the State of Florida. BellSouth's address in the State of Florida for service of process is:

Nancy B. White, General Counsel
c/o Nancy H. Sims, Director of Regulatory Affairs
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301

Background

12. In response to the decision handed down in United States Telecom Association v. FCC, decided March 2, 2004, 359 F. 3d 554 (D.C. Cir. 2004) ("USTA II"), the FCC's Triennial Review Order ("TRO") and Triennial Review Remand Order ("TRRO"), BellSouth filed on November 1, 2004, its Petition to establish a generic docket to consider amendments to interconnection agreements resulting from changes of law. Specifically, BellSouth asked that the Commission determine what changes are required in existing, approved interconnection agreements between BellSouth and CLECs in Florida as a result of changes in law.

13. The Commission promptly opened Docket No. 041269-TP to handle BellSouth's Petition. Chairman Baez and Commissioners Deason, Bradley, Davidson, and Edgar were all originally assigned to the panel.

14. On February 25, 2005, Supra requested to intervene as a party in this proceeding. That request was granted by Order No. PSC-05-0267-PCO-TP.

15. Pursuant to Order No. PSC-05-0736-PCO-TP, Order Establishing Procedure, issued on July 11, 2005, thirty-one (31) issues were identified for consideration and resolution by the Commission.

16. On September 29, 2005, parties filed prehearing statements. Thereafter, the administrative hearing was conducted on November 2-4, 2005. A reduced panel of only three Commissioners participated, which consisted of Commissioners Deason, Edgar, and Arriaga.

17. Post-hearing briefs were filed on November 30, 2005. Six issues were resolved via negotiation.

18. The Commission staff filed its ultimate recommendation addressing the 25 issues that remained in dispute on January 26, 2006. Therein, staff recommended that the Commission reject the CLECs' arguments, including those put forth by Supra, in favor of either BellSouth's position, or some combination of BellSouth's and the CLECs' arguments. Notable exceptions were Issues 13 (commingling) and Issue 22(b), wherein the staff's recommendations appeared largely favorable to the CLEC positions.

19. On February 7, 2006, the Commission panel assigned considered the staff's recommendation. The panel was, again, limited to a panel of three, rather than the full Commission.

Count I - Proper Implementation of Section 350.01(5)

20. Section 350.01(5), Florida Statutes, states in pertinent part:

(5) . . . Only those commissioners assigned to a proceeding requiring hearings are entitled to participate in the final decision of the commission as to that proceeding; provided, if only two commissioners are assigned to a proceeding requiring hearings and cannot agree on a final decision, the chair shall cast the deciding vote for final disposition of the proceeding. If more than two commissioners are assigned to any proceeding, a majority of the members assigned shall constitute a quorum and a majority vote of the members assigned shall be essential to final commission disposition of those proceedings requiring actual participation by the commissioners. **If a commissioner becomes unavailable after assignment to a particular proceeding, the chair shall assign a substitute commissioner.** In those proceedings assigned to a

hearing examiner, following the conclusion of the hearings, the designated hearing examiner is responsible for preparing recommendations for final disposition by a majority vote of the commission. A petition for reconsideration shall be voted upon by those commissioners participating in the final disposition of the proceeding. [Emphasis added].

21. As noted herein, this proceeding was originally assigned to full panel, as is Commission practice when the matters to be addressed represent a case of first impression or are likely to include legal and policy decisions with far-reaching impacts. The original panel consisted of Chairman Baez and Commissioners Deason, Bradley, Davidson, and Edgar. The original panel participated in at least two substantive decisions involving this case.

22. Prior to the hearing in this matter, Commissioner Davidson left the Commission and was replaced on the panel by Commissioner Arriaga upon his appointment to the Commission. Sometime prior to October 18, 2005, Chairman Baez was removed from the panel assignment, as was Commissioner Deason. Thereafter, between October 18, 2005, and November 14, 2005, Commissioner Bradley was removed from the assigned panel, and Commissioner Deason was re-assigned to the panel.

23. As a result, only three Commissioners actually participated in the hearing of the case: Commissioner Edgar, Commissioner Deason, and Commissioner Arriaga. This same panel made the final vote. At the time of the hearing, however, there were five (5) active members of the Florida Public Service Commission.

24. While *Supra* recognizes that certain Commissioners were anticipating leaving the Commission by the end of the year, and appointments of new Commissioners had already been made, the fact of the matter is that the Commission had a full panel of Commissioners available to hear this matter. As such, the Commission had at least two options for properly addressing this situation in accordance with Section 350.01(5), Florida Statutes: (1) the Commission could

have assigned all five sitting Commissioners for the hearing, then required that the post hearing filings and staff recommendation be expedited, and conducted a Special Agenda Conference for purposes of consideration of this matter prior to Chairman Baez and Commissioner Bradley leaving the Commission; or (2) the Commission could have conducted the hearing as scheduled, but required that the new Commissioners read the record of the case to allow them to participate in the decision on this Docket at the February 7, 2006, Agenda Conference.

25. As it stands, the case was decided by a panel of three Commissioners, even though two Commissioners, Chairman Edgar and Commissioner Arriaga, expressed regret at the February 7, 2006, Agenda Conference that a full panel of the sitting Commissioners was not available to consider the matter in view of the far-reaching impacts.

26. The Commission has the ability to remedy this error in procedure, but at this late stage in the proceeding, and with the March 11, 2006, deadline looming ever closer, can accomplish this task in only two realistic ways: (1) the Commission can vacate its decisions made at the February 7, 2006, Agenda Conference, reopen the record, conduct an expedited hearing involving all five sitting Commissioners based only upon evidence already submitted, and require an oral staff recommendation with a bench vote; or (2) the Commission can vacate its decisions made at the February 7, 2006, Agenda Conference, reopen the record to allow summations² and closing arguments by counsel for the parties, require Commissioners Carter and Tew to read the record in its entirety, require that a new recommendation be circulated addressing all issues, and require a Special Agenda for consideration of the new recommendation be conducted prior to the March 11, 2006, TRO/TRRO transition date.

27. The Joint Petitioners submit that both of these options are completely reasonable, particularly in view of the state-wide economic impact that the decisions on these issues will

² The Joint Petitioners contemplate reliance upon the record as it currently stands.

have.³ Implementation of a remedy is, in fact, necessary in accordance with Section 350.01(5), Florida Statutes.⁴ Furthermore, in view of the incidents of inappropriate conduct by former Commission staff member Doris Moss, remedial action to address the procedural error identified herein is simply the prudent thing to do.

28. Counsel for the Joint Petitioners identified herein have stated their support of this Petition. Counsel for BellSouth has indicated that BellSouth is opposed.

RELIEF REQUESTED

For all of the foregoing reasons, the Joint Petitioners request that the Commission take any or all of the following actions as appropriate:

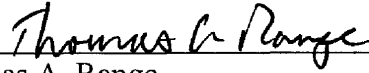
- (1) Vacate the post-hearing decision made in this Docket at the February 7, 2006, Agenda Conference, and provide a rehearing involving all five Commissioners by one of the expedited means outlined in Count I of this Petition; and
- (2) Implement any and all such other relief as may be necessary and appropriate to remedy the errors and irregularities identified herein.

³ Furthermore, in anticipation of any claim of administrative finality, neither option is precluded by the administrative law doctrine. See McCaw Communications of Florida, Inc., Appellant vs. Susan F. Clark, 679 So. 2d 1177 (Fla. 1996) (cautioning that agencies should not take "too doctrinaire" an approach to the application of the doctrine of administrative finality.)

⁴ In Order No. PSC-03-0951-FOF-TP, the Commission recognized that Section 350.01 requires assignment of a replacement Commissioner. While the Commission concluded in that Order that a panel of four was acceptable in that case, because a Commissioner had resigned and a replacement had not yet been appointed, this case is different because there were five sitting Commissioners at the time of the hearing in this Docket.

Respectfully submitted this 27th day of February, 2006.

Supra Telecommunications and Information Systems, Inc.



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on behalf of the Joint Petitioners:

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Xspedius Communications, LLC 5555 Winghaven Blvd., Suite 300 O'Fallon, Missouri 63366		Covad Communications Co. 1230 Peachtree Street, NE Suite 1900 Atlanta, Georgia 30309

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail* and U.S. Mail First Class to the persons listed below this 27th day of February, 2006:

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Filed: February 27, 2006

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Filed: February 27, 2006

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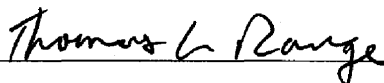
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By:



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