

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

March 26, 1998

RECEIVED

MAR 26 1998
Replaced 9:15 AM
FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (BOWMAN) *RB*
DIVISION OF COMMUNICATIONS (PRUITT) *NP*
DIVISION OF CONSUMER AFFAIRS (SMITH) *ACB*

RE: DOCKET NO. 971527-TX - SUPRA TELECOMMUNICATIONS &
INFORMATION SYSTEMS - INITIATION OF SHOW CAUSE
PROCEEDINGS FOR VIOLATIONS OF RULE 25-4.043, FLORIDA
ADMINISTRATIVE CODE, RESPONSE TO COMMISSION STAFF
INQUIRIES, AND VIOLATION OF RULE 25-24.820, REVOCATION OF
A CERTIFICATE.

AGENDA: 04/07/98 REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:PSC/CMU/WP/971527TX.RCM

CASE BACKGROUND

On February 12, 1998, the Commission issued Order No. PSC-98-0279-PCO-TX initiating show cause proceedings against STIS for apparent violations of Rules 25-4.043 and 25-24.820(1)(a), Florida Administrative Code, Response to Commission Staff Inquiries and Revocation of a Certificate. On March 4, 1998, STIS filed a Response to Order to Show Cause which included a revised settlement offer. (Attachment A, pages 5-17) On March 10, 1998, staff received draft copies of the company's proposed sales and third party verification scripts. Staff requested changes to the scripts and on March 17, 1998, received the revised scripts.

This is staff's recommendation concerning the March 4, 1998, settlement offer of STIS.



DOCKET NO. 971527-TX
DATE: MARCH 26, 1998

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the March 4, 1998, settlement proposed by Supra Telecommunications & Information Systems as resolution of the apparent violations of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and Rule 25-24.820(1)(a), Florida Administrative Code, Revocation of a Certificate?

RECOMMENDATION: Yes. The monies paid will be forwarded to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (PRUITT)

STAFF ANALYSIS: Supra Telecommunications & Information Systems' settlement offer of March 4, 1998, can be summarized as follows:

1. STIS admits no intentional wrongdoing;
2. STIS will make a contribution of \$45,000 to the State General Revenue Fund;
 - a. \$15,000 paid within 30 days of the issuance of the final order
 - b. \$10,000 paid in six months
 - c. \$10,000 paid in 12 months
 - d. \$10,000 paid in 18 months
3. STIS will comply with the Commission's proposed Rule 25-4.118, Florida Administrative Code, Carrier Selection;
4. STIS assures compliance with Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.

Staff believes the STIS settlement conditions adequately address STIS' slamming complaints and the untimely responses to the Commission. The company has responded to all of the outstanding complaints previously discussed at the January 20, 1998 Agenda Conference. The revisions of the sales and verification scripts appear to staff to more accurately reflect the telecommunications service the company is selling. If the Commission fails to see a substantial reduction in the number of complaints, we have the option of opening a separate docket to address them at any time in the future.

DOCKET NO. 971527-TX
DATE: March 26, 1998

Therefore, staff believes the \$45,000 payment STIS has agreed to submit should be accepted and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285, Florida Statutes. As a first offense payment by a start-up company, this amount is reasonable in that STIS also removed all charges incurred while the consumers were with STIS, effectively providing free service to customers. Staff also notes the company's extensive efforts to correct all problems including the suspension of telemarketing solicitation until it had revised its scripts.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: With the approval of Issue 1, the docket should remain open pending remittance of the \$45,000 settlement. When the final settlement payment is made for deposit in the General Revenue Fund, the docket should be closed. (BOWMAN)

STAFF ANALYSIS: If the Commission accepts staff's recommendation in Issue 1, upon the remittance of the \$45,000 settlement by STIS, this docket may be closed.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Initiation of Show Cause Proceedings) Docket No. 971527-TX
for Violations of Rule 25-4.043,)
Florida Administrative Code, Response) Filed: March 4, 1998
to Commission Staff Inquiries, and)
Violation of Rule 25-24.820,)
Revocation of a Certificate.)

RESPONSE TO ORDER TO SHOW CAUSE
BY SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

Supra Telecommunications and Information Systems, Inc., ("Supra") hereby responds to Order No. PSC-98-0279-PCO-TX, (the "Order to Show Cause"), issued February 12, 1998, requiring Supra to show cause why it should not be fined \$55,500 for apparent violation of Rule 25-4.043, Florida Administrative Code, and \$402,000 for apparent violation of Rule 25-24.820(1)(a), Florida Administrative Code.

I. GENERAL RESPONSE

Although Supra acknowledges that the Order to Show Cause reflects the Commission received approximately 201 complaints as of January 8, 1998, alleging unauthorized changes in customers' local telephone service or misleading solicitation, Supra denies that it has knowingly or willfully violated any Commission statute, rule or order or that it has refused to comply with any Commission statute, rule or order.

Order No. PSC-98-0279-PCO-TX also states that Supra did not always respond to Commission Staff inquiries regarding these complaints within the 15 day deadline required by Rule 25-4.043, Florida Administrative Code. As a result of these apparent violations, the Order states that Supra has demonstrated that it

DOCUMENT NUMBER-DATE

02877 MAR-4 88

FPSC-RECORDS/REPORTING

4

lacks the managerial capacity that it stated it possessed in its application for an alternative local exchange company (ALEC) certificate and, therefore, the Commission may revoke Supra's certificate for violation of a term or condition upon which the authority to provide alternative local exchange carrier service was granted pursuant to Rule 25-24.820(1)(a), Florida Administrative Code. Again, Supra denies that it has knowingly or willfully failed to meet the requirements of Rule 25-4.043, Florida Administrative Code, or that it lacks the managerial capacity to operate and provide satisfactory service as an alternative local exchange carrier such that the Commission may revoke its certificate pursuant to Rule 25-24.820(1)(a), Florida Administrative Code. General information regarding Supra's operation as an alternative local exchange carrier and specific information regarding the allegations in the Show Cause Order is provided in Section II below.

II. GENERAL INFORMATION REGARDING SUPRA'S OPERATION AS AN ALTERNATIVE LOCAL EXCHANGE CARRIER AND RESPONSE TO SPECIFIC ALLEGATIONS IN THE SHOW CAUSE ORDER

1. Supra received its ALEC certificate effective July 21, 1997, just seven and one-half months ago. As a brand new entrant into the telecommunications industry, Supra has made and is continuing to make very substantial efforts and investments to become a successful provider of local telecommunications services to Florida consumers. Supra has hired employees with a great deal of telecommunications experience to improve its operations. Since receiving its certificate as an alternative local exchange carrier, Supra has resold BellSouth's local telecommunications

service. Supra's marketing efforts have targeted primarily small business and residential customers that have been served by BellSouth in South Florida. Supra is actively working towards building its own facilities. In pursuit of creating its own network, Supra is investing millions of dollars in purchasing buildings, switches and other equipment.

2. Supra's chief executive officer and primary stockholder, Mr. O. A. Ramos, has extensive technical telecommunications experience. Mr. Ramos was born and raised in Nigeria and educated in London. Mr. Ramos has, within the last several months, hired managerial employees with extensive experience in the Florida telecommunications industry.

3. Supra is providing local service which has put it in head to head competition against the largest monopoly provider in the Florida telecommunications market. Supra is still actively working out numerous issues involved in its resale and interconnection agreements with BellSouth that have had serious negative effects on Supra's relations with customers. Supra has filed a Complaint in Docket No. 980119-TP against BellSouth Telecommunications, Inc., regarding serious problems Supra has experienced with BellSouth and other unresolved issues involved in its interconnection and resale agreements. Supra has also filed a Petition for Generic Proceeding or, in the Alternative, for Arbitration of its Interconnection Agreement with BellSouth Telecommunications, Inc., in Docket No. 980155-TP to permit it to obtain rates, terms, and conditions of interconnection that will enable Supra to provide high quality local telephone service.

4. Supra's marketing efforts have, until recently, been primarily through telemarketing. Supra entered into independent contractor relationships with individuals to perform its telemarketing. These individuals were not Supra employees nor did they work for a telemarketing firm. However, Supra had an unfortunate experience with several of these independent contractor telemarketers in that a high percentage of customer complaints of alleged unauthorized switching or misleading information resulted from some of these individuals' efforts. The moment it became aware of the customer complaints and their relationship to certain independent contractor telemarketers, Supra promptly terminated its contract relationship with these individuals.

5. Supra developed its telemarketing script to inform potential customers that it was providing the same high quality service that customers would get from BellSouth, but at a 10% discount. All of Supra's services, including basic telephone service, optional telephone services, installation, billing, maintenance, and repair are performed by BellSouth. BellSouth receives 80% of the revenues collected by Supra and BellSouth is responsible for the maintenance of the services. The script, therefore, referenced BellSouth in the attempt to inform customers of the nature of Supra's service. However, Supra has subsequently revised its telemarketing script to clarify the nature of its operation as an independent alternative local exchange carrier and the nature of its relationship to BellSouth.

6. Due to the lack of sophistication of consumers regarding

telecommunications services, the apparent poor performance of some of Supra's independent contractor telemarketers, and Supra customer contacts with BellSouth through phone calls to BellSouth customer service representatives and through retention letters sent out to Supra customers by BellSouth, Supra has suffered a substantial number of customer complaints alleging unauthorized switches in customers' local service and misleading information.

7. Supra instructed its independent contractor telemarketers to obtain the appropriate customer authorization for switching local telephone service to Supra. Supra did not condone or authorize any misleading information or unauthorized switching of local telephone service nor was it aware that any such activity might have been taking place. It has been impossible for Supra to determine how many, if any, of the complaints received by the Commission were actually unauthorized switches because of problems such as buyer's remorse, the poor performance of some of the independent contractor telemarketers, misunderstandings by customers, and the disparaging and negative statements of BellSouth employees to Supra customers regarding Supra. Supra believes BellSouth employees coached customers to file complaints against Supra with the Commission without encouraging such customers to first contact Supra to attempt to resolve any problem. Nonetheless, Supra acknowledges that it is responsible for responding and resolving customer complaints filed against Supra.

8. Regardless of Supra's position that it obtained the appropriate customer consent from those customers filing

complaints with the Commission, Supra has sent letters to all of those customers apologizing for the switch in local service and waiving all charges incurred while the customers were with Supra. Supra has also responded to Commission Staff inquiries stating the amount of charges that were waived for each customer, including the fee to transfer the customer back to BellSouth Telecommunications, Inc., and the amount Supra has paid BellSouth for that customer. At this point in time, Supra has lost a total of \$85,727.96 as a result of waiving all charges and paying fees to switch customers back to BellSouth.

9. Supra has made significant changes to its operations to assure that such complaints will be completely eliminated in the future. All of the customer complaints received by the Commission to date relate to customer contacts by independent contractor telemarketers prior to the end of September 1997, which is when Supra became aware of the problems with its independent contractor telemarketers. At that time Supra took decisive action to remedy the problems. The actions Supra has taken to eliminate such customer complaints include:

a) Terminating the relationship with the independent contractor telemarketers responsible for high levels of complaints alleging unauthorized switches in local service and misleading information.

b) Hiring new employees very carefully and providing adequate training.

c) Modifying its telemarketing scripts and other marketing materials to assure that there is no misunderstanding by

potential customers that Supra is a completely separate and different provider of local telephone service and that there is no affiliation with BellSouth.

d) Putting new procedures in place to assure that any communications from the Commission are responded to in a timely manner and within the provisions of Commission Rule 25-4.043, Florida Administrative Code.

e) Complying with at least one, if not two, of the four options available in the Commission's *proposed* Rule 25-4.118, Florida Administrative Code, when obtaining each new customer.

f) Placing Supra's toll free customer service phone number on the bills sent out to customers.

10. Supra is extremely distressed over the number of customer complaints that the Commission has received and over the number of customers that believe they were mistreated. Supra's single goal as a corporation is to provide local telecommunications service to customers who knowingly and willingly choose Supra as their provider.

11. Supra may be new to the Florida telecommunications industry, but it has a great deal to offer customers. Supra will provide Florida consumers a choice of providers of quality local telephone service. Supra has faced a continuing battle with the most formidable competitor in the telecommunications market, the local exchange company, BellSouth, who also is the only source of the service Supra resells.

12. Supra has suffered great financial losses due to the problems caused by these customer complaints, including payments

of bills and change-in-service charges, and due to the problems related to its resale and interconnection agreements with BellSouth. Supra has lost well over one million dollars to date since the beginning of its operations under its resale agreement with BellSouth. The Company has paid BellSouth over \$500,000, paid employees and independent contractor telemarketers over \$300,000 in salaries and commissions, and spent over \$300,000 on travel, training, office expenses, etc.

13. The Show Cause Order states that Supra's certificate may be revoked by the Commission pursuant to Rule 25-24.820(1)(a), Florida Administrative Code, which provides for revocation when a term or condition of granting an ALEC certificate has been violated. The Show Cause Order states that Supra asserted in its application for certification as an alternative local exchange carrier that it possessed adequate managerial capacity to operate satisfactorily as an ALEC and that its performance has not demonstrated that it has this managerial capacity. The Show Cause Order also cites Rule 25-4.043, Florida Administrative Code, regarding Supra's apparent violation of the requirement to respond within 15 days to Commission Staff inquiries regarding customer complaints. The genesis of this Show Cause Order has been the Commission's receipt of customer complaints alleging unauthorized switching of local telephone service and misleading information in the solicitation process. A number of long distance telephone companies, including AT&T Communications of the Southern States, Inc., have recently been ordered to show cause by the Commission why they should not be

fined for similar customer complaints. This is because there is a specific rule that prohibits long distance carriers from switching customers' long distance service without proper authorization, Rule 25-4.118, Florida Administrative Code. However, those long distance companies have not been cited for violations of Rule 25-24.820(1)(a), Florida Administrative Code, or Rule 25-4.043, Florida Administrative Code. In other words, the Commission has not questioned their managerial capacity to operate as long distance companies simply because the Commission has received complaints from customers alleging that those companies have switched the customers' long distance service without the customers' authorization or that those companies' employees or telemarketers have provided misleading information. Rule 25-4.118, Florida Administrative Code, does not currently apply to alternative local exchange carriers. If Rule 25-4.118 did apply to Supra, the Show Cause Order against Supra would very likely reflect apparent violations of that Rule alone. Supra contests the validity of the Commission citing Supra for violation of Rules 25-24.820(1)(a) and 25-4.043, Florida Administrative Code, when the Commission has failed to cite other telecommunications companies for violations of these Rules for identical customer allegations of unauthorized switches in telephone service and misleading information and for late response to Commission Staff inquiries.

Supra asserts that it has the managerial capacity to operate as an alternative local exchange carrier and that it has responded to customer complaints in a good faith effort to

resolve all of these complaints. Supra has also responded to Commission Staff inquiries regarding these complaints. Supra has worked to improve its response time to Commission Staff inquiries.

13. Supra has spent well over \$100,000 on community relations in the State of Florida in the nature of contributions to chambers of commerce. Supra is certified as a minority owned business by the Department of Labor.

14. Supra is in the process of purchasing millions of dollars of telecommunications equipment, including switches and transmission facilities. Supra will soon be a facilities-based provider of local telephone service that will offer a real alternative to Florida consumers.

III. CONCLUSION

The actions taken by Supra itemized above demonstrate that Supra is a responsible alternative local exchange carrier that has taken every prudent action to assure that it complies with all pertinent statutes, rules, and orders. Supra reiterates that it has not knowingly or willfully violated any Commission statute, rule or order. No penalty pursuant to Section 364.285, Florida Statutes, is statutorily authorized or appropriate without a finding of a willful violation. Supra sincerely regrets that any customers found it necessary to file complaints with the Commission and will continue to do everything possible to prevent any future complaints not only because the law requires it, but because Supra intends to provide customers with high quality local telephone service.

IV. SETTLEMENT PROPOSAL

While Supra expressly denies any intentional wrongdoing, in order to avoid the time and expense of a show cause proceeding against Supra for apparent violations of the Commission's Rules 25-4.043 and 25-24.820, Florida Administrative Code, Supra again submits the following Offer of Settlement which it previously submitted to the Commission on January 8, 1998:

(a) Supra will make a contribution to the general revenue fund of the State of Florida of \$45,000 with no admission of liability or wrongdoing. Supra proposes to pay this voluntary contribution in an initial payment of \$15,000 in cash within thirty days following the issuance of a final order accepting the offer of settlement, with the balance of \$30,000 to be paid in three payments, the first of which will be in the amount of \$10,000 made in six months, the second payment will be in the amount of \$10,000 made in twelve months, and the third and final payment will be in the amount of \$10,000 made in eighteen months.

(b) Supra commits that it will comply with at least one, if not two, of the four options available in the Commission's *proposed* Rule 25-4.118, Florida Administrative Code, when it obtains each new customer in the future.

(c) Supra is actively pursuing before the Commission the resolution of the problems it has experienced with BellSouth in its interconnection and resale agreements and by way of actions by BellSouth that Supra strongly believes are anticompetitive and have contributed to these customer complaints.

Supra does not, by this Response or Offer of Settlement or

otherwise, admit any violation of any statute, Commission Rule or any other rule or regulation, or any facts which might form the basis of a cause of action against Supra. By making this Response and Offer of Settlement, Supra does not waive any of its legal rights in the event the Commission does not accept this Offer of Settlement, including the right to contest any assertions of law or fact.

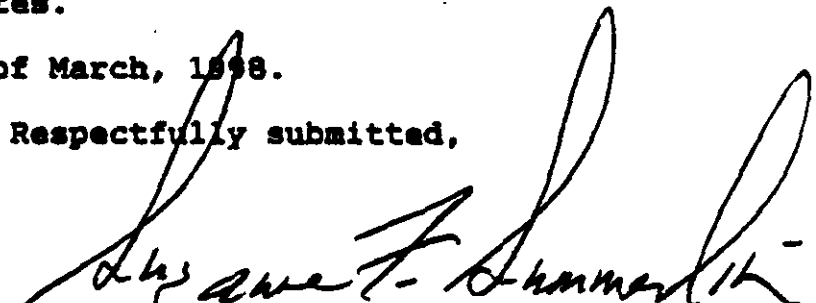
V. REQUEST FOR HEARING

Supra has already begun discussions with Staff regarding settlement of this matter and will continue to make every effort to achieve a mutually acceptable settlement. However, in the event settlement is not possible, Supra asserts that the Show Cause Order and the statements in this response raise numerous disputed issues of fact, law, and policy and Supra is entitled to a hearing pursuant to Section 120.57(1), Florida Statutes.

WHEREFORE, Supra Telecommunications and Information Systems, Inc., respectfully requests a hearing pursuant to Section 120.57(1), Florida Statutes.

Dated this 4th day of March, 1998.

Respectfully submitted,



Suzanne Fannon Summerlin
1311-B Paul Russell Road, Suite 201
Tallahassee, Florida 32301
(850) 656-2288
Florida Bar No. 398586

Attorney for Supra Telecommunications
& Information Systems, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response of Supra Telecommunications & Information Systems, Inc., to Order to Show Cause was furnished by hand delivery to the following individuals this 4th day of March, 1998:

Ms. Nancy Pruitt
Division of Communications
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

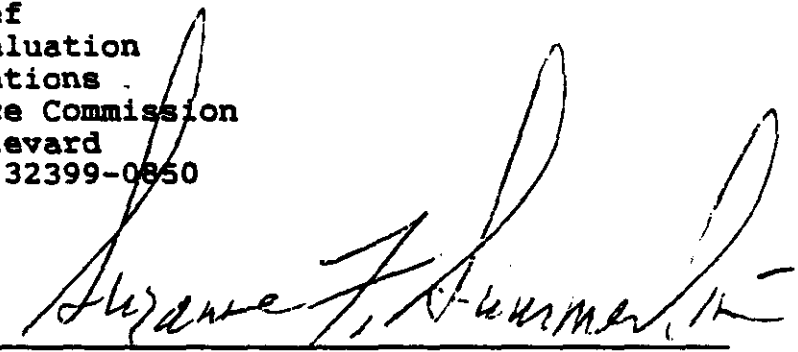
Ms. Kate Smith
Division of Consumer Affairs
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

John Bowman, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Martha Carter Brown, Esquire
Chief, Bureau of Communications
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Mr. Rick Moses, Supervisor
Division of Communications
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Mr. Alan Taylor, Chief
Bureau of Service Evaluation
Division of Communications
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850


Suzanne Fannon Summerlin
Attorney for Supra Telecommunications
& Information Systems, Inc.