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February 24, 2003

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

RE: Docket No. 021069-TP – Supra's Petition For Formal Proceeding In Accordance With Order No. PSC-03-0249-PAA-TP

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Petition For Formal Proceeding In Accordance With Order No. PSC-03-0249-PAA-TP in the above captioned docket pursuant to Rules 28-106.201 and 25-22.029, Florida Administrative Code and Florida Statutes § 364.058.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return it to me.

Sincerely,

Jorge Cruz-Bustillo /AFS

Jorge Cruz-Bustillo
Assistant General Counsel

CERTIFICATE OF SERVICE
Docket No. 021069-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Facsimile, Hand Delivery and/or U.S. Mail this 24th day of February, 2003 to the following:

Adam Teitzman, Esq.
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
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Nancy B. White, Esq.
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SUPRA TELECOMMUNICATIONS
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By: Jorge - Cruz Bustillo JCB
JORGE CRUZ-BUSTILLO, ESQ.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of adoption of language in existing interconnection agreement between NuVox Communications, Inc. (f/k/a Trivergent Communications, Inc.) and BellSouth Telecommunications, Inc., to serve as amendment to existing interconnection agreement between Supra Telecommunications and Information Systems, Inc. and BellSouth.	DOCKET NO. 021069-TP **FILED: February 24, 2003**

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC., PETITION FOR FORMAL PROCEEDING IN ACCORDANCE WITH ORDER NO. PSC-03-0249-PAA-TP

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra"), by and through its undersigned counsel and pursuant to Rules 28-106.201 and 25-22.029, Florida Administrative Code and Florida Statutes § 364.058,[1] files this Petition for a Formal Proceeding in accordance with Florida Statutes § 120.57(2), in Docket No. 021069-TP, and request that the matter be processed in an expedited manner.

Expedited relief[2] is necessary to carry out the principles underlying § 252(i). See Bell Atlantic-Delaware, Inc. v. Global Naps South, Inc., 77 F.Supp.2d 492, 503 (D. Delaware 1999).

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[1] Section 364.058, Florida Statutes, provides: "(1) Upon petition or its own motion, the commission may conduct a limited **or expedited proceeding** to consider and act upon any matter within its jurisdiction."

[2] In filing this Petition, Supra also seeks to invoke the procedures **for expedited processing** set out in the June 19, 2001, Commission memorandum from Noreen S. Davis to then Chairman, E. Leon Jacobs. The primary purpose of this Petition is to adopt a provision from another contract pursuant to § 252(i). The process described in Ms. Davis' memorandum was originally envisioned as applicable to complaints arising from interconnection agreements (which this would also qualify – *See* §5.2 of the present contract) it is equally useful in the context of this issue. It is critical that the Commission use **an expedited** process to **quickly resolve** this matter in order to prevent BellSouth from unreasonably delaying the adoption process and undermining the principles of the Act.

The Court in Bell-Atlantic stated that: "The FCC recognized the risk that ILECs could frustrate the purpose of the opt-in provisions by delaying negotiations with requesting carriers." Id. "In response, the FCC provided for expedited opt-in procedures. See Local Interconnection Order ¶ 1321." Id. "The FCC also authorized state regulatory commissions to establish their own expedited opt-in procedures." Id. A total of 126 days have elapsed since the filing of Supra's initial request with this Commission and the filing of this Petition for a formal proceeding.

Supra submits the Florida Public Service Commission ("Commission") employ the following process: (1) immediate issue identification within ten (10) days of granting Petition, (2) a very short briefing schedule of ten (10) days, (3) followed by a staff recommendation and a vote at the next regularly scheduled Agenda Conference. This process or some other that would bring this matter to a vote in a more expeditious fashion would be consistent with the principles of the Act and the standards set out by both the FCC and this Commission.

1. Supra is a competitive local exchange carrier certified by the Florida Public Service Commission ("Commission") to provide telecommunications services in Florida. Supra's service of process address is

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2. Supra's substantial interests are affected by Order No. PSC-03-0249-PAA-TP. Section 252(i) of the 1996 Federal Telecommunications Act ("Act") requires an Incumbent Local Exchange Carrier ("ILEC") to make, any term of interconnection, service or network element

provided under an agreement approved under § 252(e)(1)[3], available for adoption to any requesting Telecommunications carrier. Under the Act, Supra is legally entitled to make the adoption. The above referenced order denied Supra its federal rights.

Supra will suffer injury in fact if a hearing is not granted. Supra made its request for adoption on September 11, 2002. Pursuant to the parties' interconnection agreement (i.e. § 5.2) BellSouth had 30 days in which to object or the request for adoption is deemed approved. BellSouth chose not to object. Pursuant to the parties' contract, Supra filed a Petition for adoption with the Commission on October 22, 2002. Pursuant to Commission procedure, this adoption should have been administratively approved by the staff in accordance with the parties' contract. BellSouth did not file a formal objection, but simply filed a letter of objection after the time for filing such had expired.

As already noted, the principles underlying §252(i) presuppose that an adoption request will be handled expeditiously. See Bell Atlantic-Delaware, Inc. v. Global Naps South, Inc., 77 F.Supp.2d 492, 503 (D. Delaware 1999). The Court in Bell-Atlantic found that: "The FCC recognized the risk that ILECs could frustrate the purpose of the opt-in provisions by delaying negotiations with requesting carriers." Id. "In response, the FCC provided for expedited opt-in procedures. See Local Interconnection Order ¶ 1321." Id. "The FCC also authorized state regulatory commissions to establish their own expedited opt-in procedures." Id. This Commission has implemented such procedures to allow the staff to administratively approve such routine requests.

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[3] See Qwest Communications International Inc., WC Docket No. 02-89, adopted October 2, 2002, Released October 4, 2002. FCC explicitly found "dispute resolution" and "escalation" provisions were "terms of interconnection" which were directly related to §251(c) obligations and were therefore "appropriately deemed interconnection agreements" within the scope of §252(a)(1) which required approval pursuant to § 252(e)(1). Id. ¶¶ 8-9. All terms of interconnection that require approval must be made "generally available" to all competitive carriers pursuant to §252(i). Id. ¶9, lines 7-9; See also 47 C.F.R. 51.809(a).

No similar expedited procedure apparently exists, at this Commission, when an ILEC seeks to object to an adoption request.

The staff filed a recommendation on January 23, 2003, recommending approval of the adoption. The matter was heard at the Commission's February 4, 2003 Agenda Conference.

Supra's substantial interests are affected first and foremost because of the unreasonable delay that has transpired between the time of Supra's initial request and today. See 47 C.F.R. 51.809(a) (An incumbent LEC shall make available **without unreasonable delay** . . . any individual term of interconnection . . . contained in any agreement . . . that is approved by a state commission pursuant to section 252 of the Act). (Emphasis added).

Supra's substantial interests are affected because this Commission failed to articulate any reason why the adoption request was rejected. See §252(e)(1) ("A State Commission to which an agreement is submitted shall approve or reject the agreement, **with written findings as to any deficiencies**."). (Emphasis added). The Commission's Order is void of any "written findings" articulating the basis for why this adoption request was rejected. No legal basis is offered for the rejection.

Supra acknowledges that the Commission panel was more than accommodating in allowing each party the time necessary to express its views on the law. The discussion among the panel prior to the vote, unfortunately, involved only a request that Supra withdraw its petition, treat its original request as an amendment and accept less than what Supra would be entitled to under §252(i). Supra respectfully declined the offer and modestly requested that the Commission approve its pending §252(i) request based on a plethora of legal precedent as well as the Commission's own staff recommendation. Surprisingly, the panel voted to deny the request without stating any legal basis for its decision.

Section 252(e)(6) of the Act provides for an action in federal district court "to determine whether the agreement . . . meets the requirements of the Act." MCI Telecommunications Corporation v. BellSouth Telecommunications, Inc., 112 F.Supp.2d 1286, 1290 (N.D. Fla. 2000). The Northern District cannot approve the adoption request. At most, the Northern District can remand the matter back directing the Commission to make specific written findings as to the Commission's legal basis for rejection. For this reason, a Petition for a formal hearing is the only practical avenue available. Supra's substantial interests are affected because to deny the request for a formal hearing at this time will only pro-long the process Supra must follow in order to obtain that which it is entitled to under the law.

This Commission has stated in the past that "an election under § 252(i) promotes the Act's goal of a level playing field." *See* In re: Petition for Approval of GTE Agreement by Sprint, 1998 WL 85730, pg. 7 1998. The denial of Supra's modest request under § 252(i) places Supra in a competitive disadvantage and is inconsistent with the Act.

Supra's substantial interests are of the type and nature which this proceeding is designed to protect. This Commission is charged with approving such adoption requests when so requested by a telecommunications carrier. Supra's initial petition for adoption on October 22, 2002, was a matter within the jurisdiction of this Commission. Further support for this proposition can be found in the staff recommendation recommending approval of the adoption request. A formal proceeding pursuant to Section 120.57(2), Florida Statutes, involving the issues surrounding an adoption request in accordance with §252(i) is of the type and nature that this Commission is responsible for protecting.

3. Supra received notice of Order No. PSC-03-0249-PAA-TP via facsimile on February 20, 2003.

4. There are no disputed issues of material fact. This is strictly a legal issue.

5. The decision warrants reversal for several reasons. First and foremost is that the professional staff, of the Commission, has recommended approval of the adoption request pursuant to §252(i). Second is the controlling legal precedent set out in Qwest Communications International Inc., WC Docket No. 02-89, adopted October 2, 2002, Released October 4, 2002.

The FCC explicitly found that "dispute resolution" and escalation" provisions were directly related to § 251(c) obligations. The FCC reasoned that "[t]he purpose of such clauses is to quickly and effectively resolve disputes regarding section 251(b) and (c) obligations. The means of doing so must be offered and provided on a nondiscriminatory basis if Congress' requirement that incumbent LECs behave in a nondiscriminatory manner is to have any meaning." Id. ¶9, lines 5-9. (Emphasis added). There is no equivocation regarding the decision's declaration: dispute resolution and escalation provisions are directly related to the obligations under §251(c) and therefore such provisions "must be offered and provided on a nondiscriminatory basis" if §252(i) "is to have any meaning."

In summary, the FCC found that both dispute resolution and escalation provisions were "terms of interconnection" (Id. ¶8, line 11) which were directly related to §251(c) obligations and were therefore "appropriately deemed interconnection agreements" (Id. ¶9, lines 1-5) within the scope of §252(a)(1) (Id. ¶8, lines 11-14 & ¶9, lines 1-2) which required approval pursuant to § 252(e)(1). All terms of interconnection that require approval must be made "generally available" to all competitive carriers pursuant to §252(i). Id. ¶9, lines 7-9. See also 47 C.F.R. 51.809(a).

While declining to establish an exhaustive list of what provision must be submitted for approval, the FCC did state the following: "The guidance we articulate today flows directly from the statute and serves to define the basic class of agreements that should be filed." Id. ¶10. The

Qwest opinion is unequivocal that dispute resolution and escalation provisions are within the basic class of agreements that fall within the scope of §252(a)(1) which requires approval pursuant to § 252(e)(1).

In declining the opportunity to set out an all-encompassing list, the FCC did make the following observation: "Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an interconnection agreement and, if so, whether it should be approved or rejected." Id. ¶10, lines 1-4. This caveat, however, did not apply to its decision regarding "dispute resolution" and "escalation" provisions. As noted earlier, the Qwest opinion already decided the status of those provisions: both must be submitted for approval and, as such, must be made available for adoption.

The FCC did provide an example to illustrate its caveat: the FCC specifically found that "settlement agreements that simply provide for 'backward-looking consideration' (e.g. the settlement of a dispute in consideration for a cash payment or the cancellation of an unpaid bill) need not be filed" under §252(a)(1). Id. ¶12, lines 10-12. Because the terms and conditions of such "settlement agreements" were not required to be filed for approval, the FCC concluded that such terms and conditions were not required to be made available to other carriers pursuant to §252(i). See Qwest Id. ¶12, lines 1-13 & fn.26.

For these reasons, the denial of Supra's adoption requests warrants reversal.

6. There are no specific rules or statutes that require reversal or modification.

7. The relief sought by Supra is a reversal of this Commission decision in Order No. PSC-03-0249-PAA-TP, and an approval of the adoption request pursuant to §252(i).

WHEREFORE, Supra respectfully requests that this Commission grant Supra's request for a formal proceeding pursuant to Section 120.57(2), Florida Statutes, and that the Petition be processed in an expedited manner consistent with the principles of the Act.

RESPECTFULLY SUBMITTED this 24th day of February 2003.

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