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February 24, 2003

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
The Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

030200-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of AT&T Communications of the Southern States, LLC are an original and fifteen copies of AT&T Communications of the Southern States, LLC's Emergency Petition Requesting a Cease and Desist Order and Other Sanctions Against Supra Telecommunications in the above-referenced docket.

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

  
Floyd R. Self

FRS/amb  
Enclosure

DOCUMENT NUMBER - DATE

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Emergency Petition of AT&T )  
Communications of the Southern States, )  
LLC for Cease and Desist Order against )  
Supra Telecommunications )  
\_\_\_\_\_ )

Docket No.:  
Filed: February 24, 2003

**EMERGENCY PETITION OF AT&T COMMUNICATIONS  
OF THE SOUTHERN STATES, LLC  
REQUESTING A CEASE AND DESIST ORDER AND OTHER SANCTIONS  
AGAINST SUPRA TELECOMMUNICATIONS**

COMES NOW, AT&T Communications of the Southern States, LLC (“AT&T”) and hereby files this Petition requesting that the Florida Public Service Commission (“Commission”) issue an immediate Cease and Desist Order prohibiting Supra Telecommunications and Information Systems, Inc. (“Supra”) from violating Chapter 364, Florida Statutes, and Commission Rules implementing Chapter 364, Florida Statutes. In support of this petition, AT&T states:

1. The name and address of the Petitioner is:

AT&T Communications of the Southern States, LLC  
1200 Peachtree Street, NE  
Suite 8100  
Atlanta, Georgia 30309

2. All pleadings, documents, correspondence, notices, staff recommendations and orders filed, served or issued in this docket should be served on the following on behalf of Petitioners:

Tracy Hatch, Esq.  
Floyd R. Self, Esq.  
Messer, Caparello and Self, P.A.  
P.O. Box 1876  
Tallahassee, FL 32302  
(850) 222-0720

Michael J. Henry, Esq.  
AT&T Communications of the Southern States, LLC

Suite 8100  
1200 Peachtree Street, NE  
Atlanta, Georgia 30309  
(404) 810-2078

3. Petitioner is informed from Commission records that Respondent Supra Telecommunications and Information Systems, Inc.'s name and address is:

Supra Telecommunications and Information Systems, Inc.  
c/o Ms. Ann H. Shelfer  
Koger Center - Ellis Building  
1311 Executive Center Drive, Suite 200  
Tallahassee FL 32301-5027

4. Petitioner is informed from Commission records that pleadings, documents, correspondence, notices, staff recommendations and orders filed, served or issued in this docket should be served on the Respondent Supra Telecommunications and Information Systems, Inc.'s following agents:

Jorge L. Cruz-Bustillo  
Assistant General Counsel  
Supra Telecommunications and Information Systems, Inc.  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, FL 33133

5. In addition, Petitioner is further informed and believes that on October 23, 2002, Respondent Supra filed a Voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Code in the U.S. Federal District Bankruptcy Court for the Southern District of Florida (hereinafter, "Supra Bankruptcy Court"). An action by a governmental unit is not covered by the automatic stay provision. 11 U.S.C. § 362(b)(4) (creating exception from automatic stay for "the commencement or continuation of an action or proceeding by a governmental unit . . .to enforce such governmental unit's or organization's police and regulatory power"); *In re Cajun Elec. Power Co-op., Inc.*, 185 F.3d 446, 453 (5th Cir. 1999) ("Congress

created a specific exception from the automatic stay of proceedings against the debtor that occurs upon the debtor's bankruptcy filing for actions or proceedings by governmental units to enforce their police and regulatory power.”); *Brock v. Rusco Industries, Inc.*, 842 F.2d 270, 273 (11th Cir. 1988) (“The exception to the automatic stay ... recognizes that the government must be able ‘to enforce its laws uniformly without regard to the debtor's position in the bankruptcy court.’”); *In re McAtee*, 162 B.R. 574 (Bankr. N.D. Fla. 1993).

6. This Petition is filed pursuant to Chapters 120 and 364, Florida Statutes, and Rule 28-106.201, Florida Administrative Code.

#### JURISDICTION OVER THE PARTIES

7. Petitioner AT&T is certificated by the Commission as an Interexchange company (“IXC”) pursuant to Chapter 364, Florida Statutes, and Commission Rule 25-24.470, Florida Administrative Code.

8. Respondent Supra is certificated by the Commission as an Alternative Local Exchange Carrier (“ALEC”) providing basic local telecommunications services pursuant to Section 364.337, Florida Statutes, and Rule 25-24.805, Florida Administrative Code. Respondent Supra is also certificated by the Commission as an Interexchange company (“IXC”) pursuant to Chapter 364, Florida Statutes, and Commission Rule 25-24.470, Florida Administrative Code .

9. By virtue of Commission certification, the Commission retains jurisdiction over Respondent Supra to enforce the provisions of Chapter 364, Florida Statutes, and its rules and general supervisory jurisdiction over the operational practices of Respondent Supra.

#### SUBJECT MATTER JURISDICTION

10. The Commission has general supervisory jurisdiction over firms providing telecommunications services to the citizens of Florida. Chapter 364.01(4), Florida Statutes.

Specifically, with respect to an ALEC, “the commission shall have continuing regulatory oversight over the provision of basic local exchange telecommunications service provided by a certificated alternative local exchange telecommunications company ... for purposes of ... ensuring the fair treatment of all telecommunications providers in the telecommunications marketplace.” section 364.337(5), Florida Statutes.

11. “Basic local telecommunications service” is a defined term, requiring, among other functions, “access to ... all locally available interexchange companies ... .” Section 364.02(2), Florida Statutes. Rule 25-24.825, Florida Administrative Code, requires that an ALEC that provides basic local telecommunications service to residential customers must provide those services as defined in section 364.02(2).

12. Section 364.285(1), Florida Statutes, provides that the Commission may “amend, suspend, or revoke any certificate issued by it.” Rule 25-24.820, Florida Administrative Code, provides that the Commission may revoke the certificate of an ALEC for “(b) Violation of a Commission rule or Order; (c) Violation of Florida Statute... .” Rule 25-24.474, Florida Administrative Code, provides that the Commission may revoke the certificate of an IXC for “(b) Violation of a Commission rule or Order; (c) Violation of Florida Statute... .”

13. Chapter 364, Part III, Florida Statutes, “Telecommunications Consumer Protection,” provides that the Commission “shall adopt rules to prevent the unauthorized changing of a subscriber’s telecommunications service.” Section 364.603, Florida Statutes.

14. Pursuant to that mandate, the Commission promulgated Rule 25-4.118, Florida Administrative Code, which provides that the “provider of a customer shall not be changed without the customer’s authorization.” The rule further provides that a certificated LPs and IXCs

may only change a customer's service if the customer has given his or her consent and provides several methods by which that consent may be obtained and documented.

15. Section 364.058, Florida Statutes, provides that the Commission may "conduct a limited or expedited proceeding to consider and act on any matter within its jurisdiction."

#### STATEMENT OF FACTS

16. AT&T 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.

17. Beginning in late October and early November 2002, Supra presented to AT&T for the first time invoices totaling more than \$6 million for switched access services for traffic that allegedly had been routed to AT&T's network on behalf of Supra's customers who had selected AT&T as their Primary Interexchange Carrier ("PIC"). Among other defects, the invoices presented to AT&T contained switched access charges for approximately 10 months of usage dating back to January 2002 and contained usage charges for Carrier Identification Codes ("CICs") that were not associated with AT&T Long Distance or Toll Calls. After receiving the Supra invoices, AT&T promptly requested that Supra provide evidence that its rates were appropriate under the rules promulgated by the Federal Communications Commission ("FCC"), which limit the rates for switched access services that carriers like Supra may charge. Once Supra provided information responsive to AT&T's request in December 2002, AT&T realized that it would need time to review the information and determine the appropriate rates under the FCC's rules. AT&T requested such time and offered to pay Supra certain undisputed amounts, with additional amounts to be paid if and when AT&T was able to verify Supra's eligibility for higher rates as provided by the FCC's rules. However, Supra refused AT&T's request and offer.

18. While AT&T was in the process of verifying the charges contained in the ten months of access bills that Supra had belatedly provided, Supra quickly changed course, and on January 22, 2003, filed an adversary complaint against AT&T before the Supra Bankruptcy Court. Then, in late January, 2003, in the midst of negotiations between Supra and AT&T to resolve the billing dispute and the adversary complaint, Supra took actions to begin a process to disconnect approximately 40,000 AT&T customers from their preferred long distance service provider. Specifically, beginning on January 29, 2003, Supra sent a letter (Attachment 1) to 10,000 AT&T customers as an insert to Supra's local services bill. The letter falsely claimed that AT&T "refused to pay" Supra for its services. In addition, the letter stated that "[w]e recognize that you have selected AT&T as your long distance provider; however, Supra cannot continue to incur charges without receiving compensation from AT&T to cover its costs. We are allowing you fifteen (15) days from the date of this letter to select a new long distance carrier." (hereinafter, "Supra Disconnect notice letter").

19. Further, Supra's Disconnect notice letter also promoted Supra's own long distance services, stating that, "Supra provides long distance service at rates significantly below the rates of your current provider [i.e., AT&T]. Our 5 Cents a minute anytime, anywhere in the US rates is easy to use, simple to understand, save you money and one bill with your local telephone service. To change your long distance to Supra or another qualified carrier, please call our dedicated long distance customer service . . . or order on-line . . ." This same Disconnect notice letter also was sent in batches of 10,000 to AT&T customers on January 30, January 31 and February 1, 2003, reaching a total of about 40,000 AT&T customers in Florida.

20. The use of AT&T's customers PIC information by Supra to market its own long distance services is highly improper and illegal under federal law and the orders and rules of the

FCC which restrict the use by local exchange carriers of its customer's proprietary network information ("CPNI"). The conduct by Supra in marketing its long distance services in the Disconnect notice letter is prohibited by 47 U.S.C. Sec. 222(b), which provides that a "telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications services shall use such information only for such purposes and shall not use such information for its own marketing purposes." The FCC has addressed the matter on several occasions and has flatly stated that the local exchange company shall not use such PIC information for its own marketing purposes or for purposes of attempting to change a subscriber's decision to another carrier. (See, e.g. Second Report and Order, *In the Matter of Implementation of the Subscriber Carrier Selection Provisions of the Telecommunications Act*, 14 FCC Rcd.1508, Paragraphs 99 and 106).

21. In addition to the Disconnect notice letter, Supra also apparently instituted procedures to prevent customers from switching to AT&T's services – procedures that Supra apparently continues to use today. (Attachment 2, Declaration of Judith Dean). According to reports from customers calling AT&T, Supra refused to process PIC changes for customers that requested AT&T. In fact, Supra provided AT&T with scripts that Supra provided to its customer care representatives to use when AT&T customers called to inquire about the Supra Disconnect Notice letter. (Attachment 3). These scripts indicate that Supra's customer service representatives were instructed to require callers to select a new provider, and that if they failed to do so, "you may be left without Long Distance service."

22. On February 6, 2003, a Settlement and Release Agreement between AT&T and Supra was executed and filed with the Supra Bankruptcy Court (Attachment 4) that released AT&T from liability for all past claims by Supra for switched access services for the period prior



to December 21, 2002. The Settlement and Release Agreement explicitly provided that AT&T did “not release Supra from, and AT&T expressly reserves its rights to pursue, claims for damages and/or other appropriate relief arising out of letters sent by Supra to customers presubscribed to AT&T for interexchange services”.

23. On February 7, 2003, AT&T sent Supra a letter (Attachment 5) in which AT&T demanded that Supra (1) cease sending any further letters to AT&T customers and confirm that AT&T customers’ service would not be blocked or switched without their consent to another carrier, including Supra; (2) instruct its customer service representatives to respond and inform AT&T customers who inquire about the Supra Disconnect notice that the customer may continue to use AT&T services and that there is no need for the customer to switch long distance carriers; (3) cease its practice of preventing new subscribers to Supra from selecting AT&T as their long distance provider; and (4) conduct a second mailing to the AT&T customers who received the Supra Disconnect Notice advising those customers to ignore the previous letter and that there is no need for the AT&T customer to select another long distance provider. AT&T further requested that an appropriate officer of Supra certify that these actions have been taken.

24. On February 11, 2003, AT&T received a letter from the Supra’s General Counsel (Attachment 6) indicating that Supra would take some steps in an attempt to correct the inaccurate information possessed by over 40,000 consumers. However, as AT&T explained in a subsequent letter (Attachment 7), Supra’s steps were insufficient in many respects. For example, Supra did not inform customers that had already switched their services away from AT&T that the switch was not necessary and that they have the right to choose from any long distance provider, as AT&T had demanded. Further, even though Supra encouraged AT&T’s customers to switch to Supra using Supra’s web site, Supra delayed posting correct information after the

resolution of the dispute. Even now, Supra's notice to its customers is buried on its website in such a manner that there is almost no likelihood that a customer visiting the site would see the notice.

25. Meanwhile, beginning in the first week of February 2003, AT&T's Customer Service centers began receiving inquiries from AT&T customers who had received the Supra Disconnect notice letter. AT&T's customer service representatives were instructed to advise the customer that the customer did not have to change their long distance carrier; that their service would not be disconnected or changed without their consent and that AT&T and Supra were involved in a commercial billing dispute.

26. As of February 20, 2003, AT&T's Customer Service centers have received more than 350 calls from AT&T customers inquiring about the Supra Disconnect Notice. It is clear from these calls that Supra's conduct has misled consumers, created confusion and dissatisfaction, and caused substantial damage to AT&T. Even based on a preliminary investigation, AT&T estimates that more than 3,000 customers have switched away from AT&T's long distance services in the aftermath of Supra's improper conduct. Indeed, there is evidence that Supra has not taken the corrective action that it claimed it had implemented, and that, for example, it still refuses to allow customers to switch their long distance services to AT&T.

27. Based on the calls received by the AT&T Customer Service Center, AT&T is informed and believes that Supra intentionally has 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 customer's line without the consent or authorization from the customer.

28. Based on the calls received by the AT&T Customer Service Center, AT&T is informed and 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 of or authorization from the customer.

29. Based on the calls received by the AT&T Customer Service Center, AT&T is informed and 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's customers.

30. Due to the fact that Supra has not provided AT&T with minimum CARE (Customer Account Record Exchange) information concerning Supra local exchange customers who have selected AT&T as their PIC'ed long distance services carrier or who have had their PIC status changed, AT&T cannot determine the precise number of its customers that have been impacted by Supra's actions and have had their service changed without their consent or authorization.

#### REQUEST FOR EMERGENCY RELIEF

WHEREFORE, Petitioner AT&T respectfully requests that the 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:
  - (A) Rule 25-24.825, Florida Administrative Code, which requires ALECs that provide basic local exchange services to residential customers to provide access to all locally available interexchange companies; and
  - (B) Rule 25-24.118, Florida Administrative Code, which prohibits Supra from:

- (i) changing the service and PIC status of AT&T's customers' lines from a status of PIC'ed to AT&T to a status of "no PIC" without the customer's consent and authorization; and
- (ii) changing the PIC of AT&T's customers lines from AT&T to Supra or another IXC without the customer's consent and authorization.

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. In this expedited limited evidentiary proceeding, the Commission should direct Supra to provide the Commission with the following information:

- (A) A list of Supra local exchange customers who were PIC'ed to AT&T as of January 29, 2003;
- (B) A list of Supra local exchange customers who were PIC'ed to AT&T as of January 29, 2003 but who are no longer PIC'ed to AT&T as of the date of the hearing;
- (C) A list of Supra local exchange customers who were PIC'ed to AT&T as of January 29, 2003 who Supra subsequently placed in a "no PIC" status;
- (D) A list of Supra local exchange customers who were PIC'ed to AT&T as of January 29, 2003 but who are no longer PIC'ed to AT&T as of the date of the hearing and who have been PIC'ed to Supra, along with all supporting documentation (i.e. LOA's, etc.) that the PIC change was with the customer's authorization;

3. Based on the results of this 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 customers’ accounts. This notification should be provided through the current established NeuStar Clearinghouse CARE interface as agreed to between 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, Florida Administrative Code, that is found.

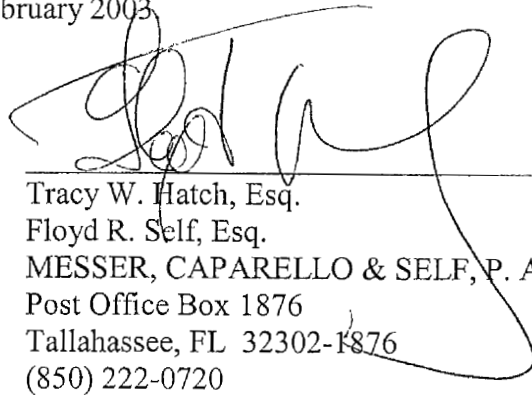
4. Exercise its general supervisory jurisdiction over Supra, as a certificated ALEC, and its specific jurisdiction under Chapter 364.337(5) to insure “fair treatment” of all telecommunications providers and issue an Emergency Order requiring Supra to Cease and Desist from:

(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.

Respectfully submitted, this 24<sup>th</sup> day of February 2003



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Tracy W. Hatch, Esq.  
Floyd R. Self, Esq.  
MESSER, CAPARELLO & SELF, P. A.  
Post Office Box 1876  
Tallahassee, FL 32302-1876  
(850) 222-0720

Attorney for AT&T Communications of the  
Southern States, LLC

Dear valued customer:

We thank you for choosing Supra Telecom as your local telephone service provider. In the course of providing telephone service to you, Supra Telecom has routed numerous AT&T long distance calls on your behalf on lines which Supra Telecom pays for. While you have paid AT&T for your long distance calls, AT&T has refused to pay Supra for use of Supra's lines. The law provides that AT&T must pay Supra Telecom for that service. Other carriers are paying their obligations.

We recognize that you have selected AT&T as your long distance carrier; however, Supra Telecom cannot continue to incur charges without receiving compensation from AT&T to cover its costs. We are allowing you fifteen (15) days from the date of this letter to select a new long distance carrier. We apologize for any inconvenience this situation may cause you.

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. To change your long distance carrier to Supra or another qualified carrier, please call our dedicated long distance customer service at 1-877-499-1385 or order on-line at [www.supratelecom.com](http://www.supratelecom.com).

Sincerely,

Russ Lambert  
Chief Operating Officer

ATTACHMENT 1

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Emergency Petition of AT&T )  
Communications of the Southern States, ) Docket No.:  
LLC for Cease and Desist Order against ) Filed: February 24, 2003  
Supra Telecommunications )

**DECLARATION OF JUDITH DEAN**

I, Judith Dean, state as follows:

1. My name is Judith Dean. My business address is 340 Mt. Kemble Avenue, Room N120, Morristown, N.J. 07962. I am employed by AT&T Corp. (“AT&T”) as Marketing Manager, AT&T Consumer. In that capacity, my responsibilities include monitoring and managing customer experiences for all billing-related issues that arise with respect to AT&T residential customers in Florida and other states in the southern region. In this role, I assess the scope and impact of billing related issues, and based on this assessment, I create methods and procedures for customer service representatives who speak directly to AT&T customers.

2. The purpose of my declaration is to describe the customer confusion and damage to AT&T that has resulted from various actions taken by Supra Telecommunications and Information Systems, Inc. (“Supra”) regarding a billing dispute between AT&T and Supra. In particular, I understand that Supra sent a letter to over 40,000 AT&T customers advising them that the customers could not retain AT&T as their long distance provider and had 15 days in which to select another provider—an opportunity that Supra then exploited by promoting its own long distance services and inviting AT&T’s customers to switch to Supra’s long distance services. Further, based



on calls that have been received by AT&T's customer services department, AT&T has learned that Supra refused to allow customers to presubscribe their services to AT&T.

3. As I describe below, Supra's letter has caused significant confusion, anger and dissatisfaction among consumers, not only with Supra but also with AT&T.

Numerous customers that received a letter from Supra or that were told they could not select AT&T as their preferred long distance carrier have called AT&T. These customers were apparently told, for example, that if they did not switch from AT&T that their long distance service would be switched by default to Supra or that they would have both their long distance and local service disconnected. Some customers even reported that Supra told them that they would be responsible for additional fees and costs if they chose to remain with AT&T.

4. Beyond the harm to consumers, AT&T also has been significantly injured by Supra's actions. Most notably, a significant but uncertain number of customers undoubtedly have switched—and continue to switch—long distance service away from AT&T because of Supra's actions. Those customers were never in fact required to switch away from AT&T's services. Moreover, AT&T has been harmed because Supra still refuses to allow customers to switch to AT&T's services.

#### **SUPRA'S LETTERS TO AT&T'S CUSTOMERS**

5. As I understand, starting on or about January 29, 2003, Supra began contacting AT&T's customers by letter. As I understand, Supra sent these letters to AT&T's customers in batches on January 29, 30, 31, and February 1, 2003. In total, approximately 40,000 AT&T customers received these letters.

6. The letter states, in part, that “AT&T has refused to pay Supra for the use of Supra’s lines.” Supra’s letter further informed these consumers that

We recognize that you have selected AT&T as your long distance provider; however, Supra cannot continue to incur charges without receiving compensation from AT&T to cover its costs. We are allowing you fifteen (15) days from the date of this letter to select a new long distance carrier.<sup>1</sup>

7. Moreover, after requiring AT&T’s customers to switch, Supra’s letter also promoted Supra’s own long distance services.

Supra provides long distance service at rates significantly below the rates of your current provider [i.e., AT&T]. Our 5 Cents a minute anytime, anywhere in the US rates is easy to use, simple to understand, save you money and one bill with your local telephone service. To change your long distance to Supra or another qualified carrier, please call our dedicated long distance customer service . . . or order on-line . . . .”

Supra’s letter then provided AT&T’s customer with Supra’s toll-free number and with Supra’s internet address so that the customers would switch long distance providers.

8. In addition to contacting AT&T’s customers and requiring them to switch to another carrier, Supra also seems to have taken steps to prevent customers from switching their services to AT&T. New customers switching to Supra’s local services that preferred to use AT&T for long distance were told that they could not select AT&T as their long distance provider. Further, for existing Supra local customers that wanted to switch from another long distance provider to AT&T were apparently prevented by Supra from doing so.

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<sup>1</sup> A copy of one of the letters is attached. This version of the letter is dated January 30, 2003. Other letters, however, were apparently sent on January 29, January 31, and February 1, 2003. Thus, it is not clear when the deadline for switching to a new carrier expired.

9. Thus, based on my understanding, there appears to be three categories of customers who have been affected by Supra's actions, both to their and AT&T's detriment.

- a. Existing AT&T customers who switched long distance carrier as a result of receiving Supra's letter telling them they had to switch from AT&T within 15 days.
- b. Existing Supra customers who wished to change their long distance provider and who were prevented by Supra from choosing AT&T as a long distance provider, either when they called Supra's customer service representatives, or when they attempted to sign up for new service online.
- c. New Supra customers who were prevented by Supra from choosing AT&T as a long distance provider, either when they called Supra's customer service representatives, or when they attempted to sign up for new service online.

10. I am aware that after Supra and AT&T settled their billing dispute on February 6, 2003, Supra agreed to, and alleges that it did, send a follow-up letter on or about February 11 and 12, 2003, to the same customers who received the initial letter. Even so, at this time, the evidence that AT&T has gathered indicates that Supra is continuing to prevent these types of customers from switching to AT&T's services.

11. Although I am not an expert on the underlying billing dispute between AT&T and Supra, I understand that Supra's letter misrepresented the basis of the dispute and AT&T's willingness to pay amounts that were not in dispute. Regardless of that

dispute, Supra's contacts with AT&T's customers were not justified. Apparently as an attempt to gain bargaining power over AT&T, Supra's decided to contact AT&T's customers and to interfere with their right to select the long distance carrier of their choice. To achieve a private gain, Supra took action that misled, and continues to mislead, thousands of Florida consumers.

#### **CALLS RECEIVED BY AT&T REGARDING SUPRA'S ACTIONS**

12. Not surprisingly, Supra's letter and refusal to implement carrier changes to AT&T generated a tremendous amount of concern, dissatisfaction and uncertainty among AT&T's customers. Substantial numbers of AT&T customers called AT&T to resolve the questions they had as a result of Supra's letter telling customers they had to switch from AT&T within 15 days. Once it learned of Supra's conduct, AT&T began to collect information from these callers, by providing information that its customer care representatives would relay to the callers and by instructing them to type a record of the callers' comments. As of February 20, 2003, AT&T's Customer Service centers have received several hundred calls from AT&T customers inquiring about the situation with Supra.

13. However, it is significant to remember that the number of callers to AT&T is just a small sample of the number of consumers affected by Supra's actions. Plainly, many customers chose not to call AT&T, but rather decided to change long distance providers by calling another provider directly or, as the letter expressly directed, by calling Supra. Thus, AT&T has no information as to how many other customers who have been misinformed or threatened by Supra have switched from AT&T as a result of

Supra's letters or other communications, or have been prevented by Supra from choosing AT&T as their long distance provider.

14. Nevertheless, the calls that AT&T has received demonstrate clearly both that Supra's actions have confused and misled AT&T's customers and have caused AT&T substantial harm.

#### **SUPRA'S UNJUSTIFIED THREATS TO AT&T'S CUSTOMERS**

15. The most egregious examples of Supra's actions involve reports by some customers that Supra threatened to cut off their local service if they did not switch from AT&T. AT&T's customer care representatives received a number of calls reporting such threats. Regardless of any billing dispute between AT&T and Supra, Supra nevertheless had no basis to threaten AT&T's customers with the loss of local service.

16. Likewise, AT&T's customer care representatives recorded instance where customers stated that Supra threatened customers that if they continued with AT&T, customers would be responsible for any charges that AT&T owed to Supra or that customers would incur a \$1.50 charge per day to remain with AT&T after the cut off date mandated by Supra's letter. Again, there is no apparent basis for Supra's threat to impose economic penalties on customers that elect to choose AT&T for their long distance provider.

#### **SUPRA'S IMPROPER MARKETING EFFORTS**

17. Further, AT&T has received reports from customers that Supra – in an apparent effort to acquire AT&T's customers – has wrongfully and unjustifiably misled consumers by telling them that if they do not switch from AT&T, Supra will change their long distance provider without their consent or authorization. Moreover, many customers

have reported to AT&T that Supra informed them that Supra will default customers to Supra as their long distance provider.

18. As a result of Supra's letter, many customers have cancelled their service with AT&T. Several customers complained that they wished to keep AT&T as their long distance provider but that they were scared by Supra's letter and other actions.

Customers believed that they would lose their service if they did not switch. Other customers told AT&T that they decided to switch from AT&T rather than deal with the confusion created by Supra's letter. AT&T, however, only has information from callers to its Customer Service line who cancelled their service with AT&T. AT&T does not know how many more customers cancelled their service with AT&T as a result of Supra's letters or other threatening statements either by calling Supra—as Supra's letter directed them to do—or by calling another long distance provider.

#### **SUPRA'S BLOCKING OF ACCESS TO AT&T**

19. According to the calls to AT&T's Customer Service, Supra also has blocked access to AT&T by disconnecting customers and by blocking customers from using AT&T through its access number. For example, customers reported to AT&T's Customer Service representatives that their AT&T service was disconnected and that they could not access AT&T in any circumstances, including if they "dialed-around," using the AT&T access code. Supra reportedly told the customers that their only option was to buy a prepaid AT&T calling card.<sup>2</sup>

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<sup>2</sup> Of course, this is not true. Even if Supra refused to do business with AT&T, these customers could continue to use AT&T if they switched local carriers away from Supra to another local carrier. Not surprisingly, callers to AT&T generally did not report that Supra had informed them that they had the option to use AT&T by switching away from Supra.


**EVEN AFTER RESOLUTION OF THE DISPUTE WITH AT&T, SUPRA  
APPARENTLY IS CONTINUING TO PROVIDE MISLEADING  
INFORMATION TO CUSTOMERS**

20. Notably, as stated above, AT&T and Supra settled their billing disputes on February 6, 2003, before the 15-day period expired per Supra's earliest letter of January 29, 2003. Even according to the terms of Supra's letter therefore, no AT&T customer should have had his or her AT&T service disconnected.

21. Based on the information from callers to AT&T's Customer Service, however, even after AT&T and Supra settled their billing dispute on February 6, 2003, Supra continued and apparently still continues to advise callers to Supra's customer service representatives that they cannot select AT&T as their long distance provider. Moreover, even well after February 11 and 12, 2003—when Supra supposedly mailed correction letters to customers—callers to AT&T's Customer Service stated that they were still not able to chose AT&T as their long distance provider, and reported that Supra told them that it was because of money that AT&T owed Supra. Likewise, customers were prevented from switching to AT&T from another long distance provider, such as Sprint. Customers were also told that they could not have AT&T as their long distance provider but that they had to choose Supra. Thus, it appears that Supra did not correct the information provided by its customer service representatives. As late as February 20, 2003, two weeks after Supra and AT&T settled their billing dispute, customers reported to AT&T's Customer Service that Supra still would not allow AT&T to be their long distance provider.

I hereby declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Dated: February 24, 2003

By:   
Judith Dean, AT&T Consumer





2620 SW 27<sup>th</sup> Avenue  
Miami, Florida 33133  
305/476-4200

facsimile transmittal

To Michael D. Warden, Esquire  
SUDLEY AUSTIN BROWN &  
WOOD, LLP

Fax (202) 736-8711  
Tel (202) 736-8000

From Chantal De Vos, Paralegal  
Voice (305) 476-4245

Date 02/20/03

Re: Supra's Customer Contact

Pages 4 Including Cover  
Sheet

CC:

Urgent  For Review  Please Comment  Please Reply  Please Recycle

Notes:  
Letter to Michael D. Warden dated 02/20/03

ATTACHMENT 3



Brian Chaiken  
General Counsel  
2620 SW 27<sup>th</sup> Avenue  
Miami, FL 33133-3001  
Phone: (305) 476-4248  
Fax: (305) 443-9516  
Email: bchaiken@stis.com

February 20, 2003

**Sent via Facsimile 202-736-8711 and U.S. Mail**

Mr. Michael D. Warden  
Sidley Austin Brown & Wood, LLP  
1501 K Street, N.W.  
Washington, D.C. 20005

Re: Supra customer contact

Dear Mr. Warden:

We are in receipt of your letter dated February 13, 2003. Again, without getting into a debate over Supra's actions to collect on amounts due and owing from AT&T for services undisputedly provided, Supra will respond to your letter and demands as follows:

First, Supra sent its initial letter to approximately 40,000 of its customers in batches of about 10,000 on January 29, 30, 31 and February 1, 2003. After AT&T executed the settlement agreement between the parties, Supra sent out its follow-up letter (a copy of which I previously sent to you) to the same customers who received the initial letter on February 11 and 12.

Second, as I advised you by telephone yesterday, Supra has placed a notice on its website regarding AT&T at <http://192.168.0.2/pr/attagreement.htm>. We believe this notice to be sufficient to inform Supra's customers that their AT&T long distance service will not be interrupted.

Third, Supra's customer service representatives, in response to questions from customers, have been provided with the FAQ list attached.

Supra denies that it did not have the right to take collection actions against AT&T, and to mitigate its own potential future losses resulting from AT&T's refusal to pay Supra any amounts towards its carrier access bills. As AT&T had not disputed any of Supra's bills while refusing to pay any portion thereof, and as Supra was faced with being unable to recover its costs of providing AT&T with service, Supra's actions were entirely justified. If you wish to discuss further, please let me know.

Very truly yours,

  
Brian W. Chaiken, Esq.

Cc: Michael Budwick, Esq.

## Long Distance Carrier Disconnection FAQ

1. Question: Why do I have to choose another provider?  
Answer: Your current Long Distance provider is being denied access onto Supra Telecom's network because it has failed and/or refused to pay for its usage.
2. Question: Why does this affect my Long Distance service?  
Answer: Your Long Distance service is affected because Supra Telecom cannot continue to incur further Long Distance traffic from your long distance provider without being compensated.
3. Question: Does this affect my local service?  
Answer: No, this does not in any way affect your local service; you can continue to make local calls as usual.
4. Question: How do I select another Long Distance provider?  
Answer: You may select the long distance carrier of your choice unless it is one of the following: (LIST OF CARRIERS PROVIDED)
5. Question: Do you recommend any specific carrier?  
Answer: I'm sorry Sir/Madam, but I'm unable to advise you as to that. We cannot recommend you any carrier as we are not familiar with their services. The only services we are familiar with are Supra Telecom Long Distance which has extremely competitive rates at 5 Cents per minute, anytime, anywhere in the US.
6. Question: What is the timeframe for me to choose a new long distance carrier?  
Answer: You will have 15 days from the date of the letter that you received, unfortunately if we have not heard from you in that time period you may be left without Long Distance service until you contact us. Also, please be advised that if you wait until the last day, the processing time for your order is approximately 3-7 days which may put you at risk of being left without a long distance service for that time period.
7. Question: What happens if I don't select a new Long Distance carrier? Will I still be able to make long distance calls?  
Answer: If you don't select a new carrier, it simply means that you will not have a long distance plan in place. You will, however, be able to make a long distance call by utilizing a calling card. I would like you to know that Supra Telecom has one of the most competitive long distance rates in the market at 5 cents per minute, anytime, anywhere in the US and great International rates. Please be informed that if you do not select a Long Distance carrier you will incur a monthly PICC fee of \$1.50 as mandated by the Federal Communications Commission

Long Distance Carrier Disconnection FAQ

8. Question: Can I use a one plus or dial around if I do not choose a carrier?  
Answer: Yes, you may use a one plus service, however be advised that the rates you received from this service will be higher than if you select a carrier.
9. Question: What is the Federal Communications Commission and what do you mean by a PICC charge?  
Answer: The Federal Communications commission is the regulatory body for all communications related issues. You can find more information on the FCC and the PICC charge on their website [www.fcc.gov](http://www.fcc.gov)
10. Question: Is there a monthly program fee to use Supra's long distance?  
Answer: Yes, there is a nominal monthly fee of \$4.95, with no contracts or hidden fees.
11. Question: How long does it take if I choose to switch long distance carriers?  
Answer: It will take approximately 3-7 days to complete the change.
12. Question: If I switch to Supra Telecom's long distance program, will I still receive two separate bills?  
Answer: No, Supra Telecom offers its Local, Long Distance and Internet Services all on one convenient, easy to read bill
13. Question: Will I still be able to receive Long Distance phone calls?  
Answer: Yes, you will be able to receive all incoming phone calls.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

In re:

Case No. 02-41250-BKC-RAM

SUPRA TELECOMMUNICATIONS  
AND INFORMATION SYSTEMS, INC.,

Chapter 11

Debtor.

**DEBTOR'S EMERGENCY MOTION TO APPROVE SETTLEMENT  
AGREEMENT WITH AMERICAN TELEPHONE & TELEGRAPH, INC.**

**<<EMERGENCY HEARING REQUESTED ON FEBRUARY 12, 2003 at 2:00 P.M.>>**

Supra Telecommunications and Information Systems, Inc., the debtor and debtor in possession (the "Debtor"), moves, on an emergency basis, for entry of an Order approving a Settlement and Release Agreement (the "Agreement"), a copy of which is attached as Exhibit A, pursuant to Fed.R.Bankr.P. Rule 9019(a) and shortening the notice period to approve this settlement pursuant to Rule 9006(c). In support, the Debtor states as follows:

**General Background**

1. On October 23, 2002, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as a debtor in possession pursuant to 11 U.S.C. §§ 1107 and 1108, which business is essentially providing local telephone services to residential customers in Florida.

2. On January 21, 2003, the Debtor an adversary proceeding against American Telephone & Telegraph, Inc. ("AT&T") under Adv. Pro. No. 03-1027-BKC-RAM-A, ultimately seeking \$5,796,508.35 for unpaid switched access services provided by the Debtor to AT&T through December 21, 2002.

Case No. 02-41250-BKC-RAM

3. On February 5<sup>th</sup> and 6<sup>th</sup> 2003, in order to avoid the time, expense, uncertainty and inconvenience of litigation, without admitting any wrongdoing or liability on the part of either the Debtor or AT&T, the Debtor and AT&T entered into the Agreement, the pertinent terms of which are:<sup>1</sup>

- (1) within five business days of the entry of a final Order approving the Agreement, AT&T will pay to the Debtor \$4,637,206.68, which is 80% of the aggregate amount sought by the Debtor;
- (2) subsequent to such payment, the Debtor and AT&T shall release each other from all claims or lawsuits arising out of or related to switched access services provided by the Debtor to AT&T through and including December 31, 2002; and
- (3) the Debtor preserves its right to pursue charges in the amount of \$683,527.83 against AT&T Wireless, a separate company from AT&T.

Applicable Law

4. A bankruptcy court may approve a compromise pursuant to Fed.R.Bankr.P. Rule 9019(a) when the settlement is fair and equitable and in the best interests of the estate. In re Southwest Telecommunications, Inc., 234 B.R. 137, 141 (Bankr. M.D. Fla. 1998) (citation omitted). The Eleventh Circuit Court of Appeals has adopted the following factors to consider in determining whether a settlement is fair, equitable, and in the interests of the estate and creditors: (i) the probability of success in the litigation; (ii) the difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of creditors and a proper deference to their reasonable views in the premise. In re Justice Oaks II, Ltd., 898 F.2d 1544, 1549 (11th Cir. 1990). "[T]he bankruptcy court's responsibility is not to decide the numerous questions of law and fact

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<sup>1</sup> This paragraph is intended merely to summarize, but not supplement, the essential terms of the Agreement. To the extent any discussion herein is inconsistent, or does not sufficiently detail, the terms of the Agreement, the Agreement shall govern.

**Case No. 02-41250-BKC-RAM**

raised by the parties, but rather to canvass the issues in order to determine whether the settlement "falls below the lowest point in the range of reasonableness." In re RIMSAT, Ltd., 224 B.R. 685, 688 (Bankr. N.D. Ind. 1997) (citations omitted). "The judge, however, is not to substitute [his] judgment for that of the trustee, and the trustee's judgment is to be accorded some deference." Hill v. Burdick (In re Moorhead Corp., MLX), 208 B.R. 87, 90 (B.A.P. 1st Cir. 1997) (citation omitted).

5. "While the court is to give deference to the reasonable views of creditors, objections do not rule. It is well established that compromises are favored in bankruptcy." In re Lee Way Holding Co., 120 B.R. 881, 891 (Bankr. S.D. Ohio 1990) (citation omitted).

**Application of Facts to Law**

6. In this instance, application of the facts to the law favors granting this Motion and approving the Agreement. First, as with any litigation there is uncertainty; thus, while the Debtor is confident that it would prevail if this adversary proceeding was tried, it cannot guarantee such a result. Second, AT&T's bond ratings have been recently downgraded and its publicly reported financial performance has appeared to deteriorate; accordingly, the Debtor is concerned that if resolution of this matter is materially delayed, the recoverability of this substantial claim may be diminished. Third, there are attendant costs associated with any delay in resolving this matter and prosecuting this case through trial and any appeals. Finally, the Agreement provides for a payment to the Debtor in excess of \$4.6 million, which will benefit the estate and its creditors.

Case No. 02-41250-BKC-RAMCOMPLIANCE WITH LOCAL RULE 9075-1

7. The Agreement provides that the Debtor shall not be paid the settlement amount until "within five (5) business days after . . . AT&T's receipt of a copy of a Final Order of the Bankruptcy Court . . . approving this Settlement Agreement." As discussed above, the Debtor is concerned about AT&T's publicly reported financial performance. Based on the substantial amount of monies at issue, the Debtor respectfully submits that it is in the best interests of the estate and its creditors for the settlement to be approved as quickly as possible in order to expedite the settlement payment.

8. Fed. R. Bankr. P. Rules 9019(a) and 2002(a)(3) contemplate 20 days notice of a motion to approve a compromise. 9006(c) permits a reduction for cause of this time period. The Debtor respectfully asserts that reduction of the time period is appropriate and in the best interests of the estate. The Debtor will serve this motion by telecopy upon the active parties in interest in this case, including the Office of the United States Trustee, BellSouth, the Official Committee of Unsecured Creditors, and Sprint. Accordingly, the Debtor requests that the Court hear and consider this motion on February 12, 2003 at 2:00 p.m., when a number of other matters are also scheduled to be heard before the Court.

WHEREFORE, the Debtor requests that this Court hearing and consider this Motion, and thereupon enter finding shortened notice to be appropriate pursuant to Rule 9006(c) and approving the Agreement, pursuant to Rule 9019(a), and for such other and further relief the Court deems appropriate.

Dated this 6<sup>th</sup> day of February, 2003.



Case No. 02-41250-BKC-RAM

**CERTIFICATE OF ADMISSION**

We hereby certify that we are admitted to the Bar of the United States District Court for the Southern District of Florida and that we are in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A).

Brian W. Chaiken  
Florida Bar No. 118060  
Paul D. Turner  
Florida Bar No. 113743  
Supra Telecommunications and  
Information Systems, Inc.  
2620 SW 27<sup>th</sup> Avenue  
Miami, FL 33133  
Telephone No.: 305.476.4248

-and-

Kevin S. Neiman  
Florida Bar No. 095079  
SHAPIRO, NEIMAN & PORRELLO, LLP  
Co-Counsel for the Debtor  
550 Brickell Avenue, Penthouse II  
Miami, FL 33131  
Telephone No.: 305.374.0092

-and-

MELAND RUSSIN HELLINGER  
& BUDWICK, P.A.  
Co-Counsel for Debtor  
200 S. Biscayne Boulevard  
3000 Wachovia Financial Center  
Miami, Florida 33131  
TEL: 305-358-6363

By:   
Michael S. Budwick  
Florida Bar No. 938777

Case No. 02-41250-BKC-RAM

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 6, 2003, I caused a true and correct copy of the foregoing Motion to be served via first-class U.S. mail (and by telecopy where indicated by "•") upon all parties on the attached Service List.

  
\_\_\_\_\_  
Michael S. Butwick

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## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Settlement Agreement") is entered into by and between AT&T Corp. ("AT&T") and Supra Telecommunications & Information Systems, Inc. ("Supra") (AT&T and/or Supra may be referred to individually as a "Party" or collectively as the "Parties").

WHEREAS, Supra has invoiced AT&T for switched access services provided by Supra to AT&T through and including December 31, 2002 (collectively all such invoices for that period of time are referred to herein as the "Access Bills") in the amount of \$5,788,325.58 (not including charges associated with the Excluded CICs as defined in paragraph 5 below); and

WHEREAS, AT&T disputed and sought to negotiate the amount of the Access Bills; and

WHEREAS, the Parties desire to effect an amicable resolution of the matters in dispute among them solely as they relate to switched access services provided by Supra to AT&T through and including December 31, 2002, in order to avoid the time, expense, uncertainty and inconvenience of litigation without admitting any wrongdoing or liability on the part of either Party to the other;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenances and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Subject to and in consideration of the mutual promises and covenants set forth in this Settlement Agreement, within five (5) business days after of AT&T's receipt of a copy of a Final Order of the Bankruptcy Court (as defined below) approving this Settlement Agreement, AT&T will pay Supra the sum of Four Million, Six Hundred and Thirty-Seven Thousand, Two Hundred and Six Dollars and Sixty Eight Cents (\$4,637,206.68) (the "Settlement Payment") in accordance with the payment instructions provided by Supra to AT&T in Supra's Vendor Information Form.

2. Subject to and upon the receipt by Supra of the Settlement Payment as set forth in paragraph 1 above, and except for claims for breach of this Settlement Agreement and except for those matters set forth in paragraph 4 below that are expressly excluded from this mutual release, Supra and AT&T and their respective predecessors, successors, assigns, agents, employees, representatives, attorneys, parents, subsidiaries, affiliates, officers, directors or shareholders shall be deemed to have mutually released each other and each other's respective predecessors, successors, assigns, agents, employees, representatives, attorneys, parents, subsidiaries, affiliates, officers, directors or shareholders from any and all claims, debts, demands, actions, causes of action, liabilities or controversies whatsoever, whether at law or in equity, whether in contract, in tort or under statute, arising out of or related to, in whole or in part, switched access services provided by Supra to AT&T through and including December 31, 2002, and any and all claims or lawsuits arising out of or related to switched access services provided by Supra to AT&T through and including December 31, 2002 that could have been brought before any state, local or federal court, or state or federal agency, or

EXHIBIT

A

in any arbitration proceeding, whether now known or unknown, liquidated or unliquidated, as of the date this Settlement Agreement is signed.

3. Nothing set forth herein this Agreement shall operate, by implication or otherwise, to prevent any party from seeking to enforce the terms of this Settlement Agreement.

4. Notwithstanding any other provision of this Settlement Agreement to the contrary, it is understood and agreed by the parties hereto that nothing set forth herein shall operate, by implication or otherwise, to terminate, modify, release or otherwise affect any of the rights or obligations of either party regarding claims arising from or related to matters other than the payment for switched access services provided by Supra to AT&T through and including to December 21, 2002. Among other things, Supra acknowledges that AT&T does not release Supra from, and AT&T expressly reserves its rights to pursue, claims for damages and/or other appropriate relief arising out of letters sent by Supra to customers presubscribed to AT&T for interexchange services, and AT&T expressly reserves its rights with respect to the appropriate rates, terms and conditions for switched access services provided by Supra from and after December 22, 2002.

5. Notwithstanding any other provision of this Settlement Agreement to the contrary, the Settlement Amount does not include any charges related to Carrier Identification Code ("CICs") 0292, 0386, 0512, 1754 and 0988 (collectively, the "Excluded CICs"), which charges are in the amount of \$683,527.83. Both parties expressly reserve their rights with respect to the appropriate rates, terms and conditions for charges, if any, associated with the Excluded CICs through and including December 21, 2002.

6. AT&T hereby represents it has all necessary authority to enter into this Settlement Agreement and perform its obligations hereunder.

7. Supra hereby represents it has all necessary authority to enter into this Settlement Agreement and perform its obligations hereunder.

8. In the event that AT&T becomes the subject of a petition for protection under United States Bankruptcy laws (whether voluntarily or involuntarily filed) and a preference action is brought against Supra wherein the full consideration paid to Supra under this Settlement Agreement is found by Final Order of a court of competent jurisdiction to be a preference payment that must be paid back to the bankruptcy estate, then Supra may in its sole discretion elect that this Settlement Agreement shall become null and void, Supra's claim shall be restored in full and the parties shall be returned to their positions prior to execution of this Settlement Agreement. For purposes of this paragraph, the term "Final Order" shall mean an order entered by a court of competent jurisdiction that is no longer subject to appeal, reconsideration or review and that has become effective and legally binding.

9. This Settlement Agreement shall become effective as of the date of its execution by authorized representatives of both parties ("Effective Date").

10. By entering into this Settlement Agreement, the Parties indicate their agreement to all of the terms and conditions set forth herein and represent and warrant that this Settlement

Agreement has been executed and delivered by a duly authorized representative of each Party, and that each Party shall be bound by its terms.

11. This Settlement Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous proposals, offers, negotiations, representations, promises, agreements, and understandings, whether oral or written, concerning the subject matter hereof. This Settlement Agreement may not be changed, amended, or otherwise modified except by a written amendment signed by all Parties, and shall be binding upon and shall inure to the benefit of the Parties and their respective successors, assigns, parents, subsidiaries, affiliates, shareholders, officers, directors, employees, general partners, limited partners, heirs, administrators and all others in privity therewith.

12. The Parties agree that this Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to its conflicts of laws provisions.


13. This Settlement Agreement is the joint work product of the Parties hereto and, in the event of any ambiguity, no presumption shall be imposed against either Party as the drafter of this agreement.

14. This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Settlement Agreement by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Settlement Agreement.


15. The parties both acknowledge that on October 23, 2002 Supra filed a Voluntary Petition for Relief Under Chapter 11 of Title 11 of the United States Code in the U.S. Bankruptcy Court for the Southern District of Florida (the "Bankruptcy Court"), Case No. 02-41250-BKI/BRM (the "Bankruptcy Case"). The parties acknowledge and agree that this Settlement Agreement is subject to approval by the Bankruptcy Court and that this Settlement Agreement may ultimately not be binding on either party despite being duly executed as set forth herein unless and until a Final Order of the Bankruptcy Court has been entered approving same and otherwise authorizing Supra and AT&T to enter into and perform under this Settlement Agreement. Supra shall file a motion to approve this Settlement Agreement with the Bankruptcy Court and upon Bankruptcy Court approval of same, Supra shall dismiss with prejudice the Adversary Complaint it filed against AT&T in the Bankruptcy Case, captioned Supra Telecommunications and Information Systems, Inc. v. American Telephone & Telegraph, Inc., Adversary Proceeding No. 03-1627 (the "Adversary Complaint"). In the event that the Bankruptcy Court does not approve this Settlement Agreement, this Settlement Agreement shall become null and void and of no further force and effect. In order to allow time for Supra to seek Bankruptcy Court approval of this Settlement Agreement, Supra agrees to provide AT&T with a thirty-day (30-day) extension of time to file an Answer to the Adversary Complaint.

In witness whereof, this Settlement Agreement is executed by a duly authorized representative of each Party as of the date set forth below.

**SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.**

By:   
Name: VICTOR DABIRI  
Title: VICE PRESIDENT  
Date: 02-03-03

**AT&T CORP.**

By:   
Name: REGINA FORD  
Title: VP LOCAL SERVICES & ACQUISITION  
Date: 2-4-03

02/24/03 13:27

**Supra Telecommunications \***  
 Attn: Brian Chalkov/Allen Baksh  
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**Paul S. Singerman, Esq. \***  
 Berger Singerman  
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**Dion W. Hayes, Esq. for Sprint \***  
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 Jacksonville, FL 32202

**Internal Revenue Service**  
 Special Procedures Function  
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 Miami, FL 33131

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 US Attorney  
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**Miami-Dade County**  
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**US Attorney General**  
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 175 NW 1st Avenue  
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 Jefferson City, MO 65105-0475

**Ross Hartog, Esq.**  
 Suite 1225  
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 Miami, FL 33156

SIDLEY AUSTIN BROWN & WOOD LLP

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BEIJING  
GENEVA  
HONG KONG  
LONDON  
SHANGHAI  
SINGAPORE  
TOKYO

February 7, 2003

**By Facsimile and Federal Express**

Brian W. Chaiken  
Supra Telecommunications and Information  
Systems, Inc.  
2620 Southwest 27th Avenue  
Miami, Florida 33133

Re: Supra Telecommunications' Contacts With AT&T Customers

Dear Mr. Chaiken:

We represent AT&T Corp. ("AT&T") and are writing with respect to certain letters that Supra Telecommunications and Information Systems, Inc. ("Supra") has sent to numerous AT&T long distance customers. The letter advised these customers, among other things, that AT&T had refused to pay for Supra's services, that the customers could not retain AT&T as their long distance provider and had 15 days in which to select another provider, and that Supra was offering to provide long distance services to those customers. We understand that Supra sent such a letter to approximately 10,000 AT&T customers in late January and sent a second set of letters earlier this week.

Supra's letter is false, misleading, and unlawful in a number of respects. By sending this letter to AT&T's customers, Supra is subject to liability for, *inter alia*, tortious interference with contract, business defamation, unfair trade practices, and violations of various provisions of the federal Communications Act and the Federal Communications Commission's ("FCC") implementing regulations. Unless Supra promptly retracts this letter and corrects the misrepresentations made to AT&T's customers in the manner set forth below, AT&T has instructed us to institute legal proceedings to obtain damages and injunctive relief for Supra's improper and unjustified interference with AT&T's customer relationships.

Specifically, AT&T demands that Supra confirm in writing by no later than 12:00 noon on February 11, 2003, that it has implemented the following procedures:

First, Supra agrees to refrain from sending additional letters to any AT&T customers. In addition, Supra should confirm that all of AT&T's customers will continue to be



Brian W. Chaiken

February 7, 2003

Page 2

able to place and receive calls, and will not have calls blocked by Supra or be switched without their consent to another carrier, including Supra.

Second, with respect to AT&T customers who have already received the letter and who contact Supra in response to that letter, Supra should immediately direct all of its customer service representatives to respond to inform such callers:

- that AT&T and Supra had been engaged in a billing dispute, but that the parties resolved the dispute;
- that the customer may continue to use AT&T as its chosen long distance provider, without service interruption;
- that there is no need for the customer to switch long distance providers; and
- that Supra no longer seeks to offer the customer long distance service.

In addition, because Supra's letter invited customers to switch to Supra via Supra's Internet web site, Supra should immediately and prominently post an identical statement on its web site. Supra should maintain and preserve all records relating to such calls and Internet visits.

Third, AT&T understands that Supra was not allowing new subscribers to Supra's services to select AT&T as their long distance provider. Again, such instructions are unlawful and unjustified. Supra should take immediate steps to instruct its customer service representatives to process promptly, as the law requires, customers' requests to select AT&T as their long distance provider. In addition, Supra must ensure that nothing on its Internet site prevents new subscribers from selecting AT&T as their long distance provider.

Fourth, Supra shall send by the close of business on February 12, 2003 a letter to all customers receiving the initial letter. The letter should read as follows:

"Dear Customer:

You recently received a letter from Supra advising that it would be necessary for you to change your long distance service from AT&T and to select a different provider. Please ignore that letter. The letter was sent because Supra and AT&T had a dispute over the proper billing of services to AT&T, which has now been resolved.

There is no need for you to choose a new provider for long distance, and you can continue to use AT&T. You will not be switched to another provider, and you will continue to receive service from AT&T without any interruption on Supra's part. If you have already switched to another

Brian W. Chaiken

February 7, 2003


Page 3

carrier, you have the right to choose from any long distance provider, including AT&T.

We apologize for any confusion that our letter may have caused.”

As part of these procedures, we expect an appropriate officer of Supra to certify under penalty of perjury that Supra has implemented these procedures and to provide additional confirmatory evidence of the implementation of these procedures.

In addition to these corrective steps to minimize future harm, AT&T reserves its rights to seek compensation for lost customer revenue and its expenses in responding to inquiries from its customer base resulting from Supra’s letter. Nevertheless, prompt implementation of these steps may help to reduce – though will not eliminate – AT&T’s damages and may also avoid any further harm to AT&T and its customers. Please contact me if you have any questions.

Sincerely,  
  
Michael D. Warden



2620 SW 27<sup>th</sup> Avenue  
Miami, Florida 33133  
305/476-4200

facsimile transmittal

**To** Michael D. Warden, Esquire  
SUDLEY AUSTIN BROWN &  
WOOD, LLP

**Fax** (202) 736-8711  
**Tel** (202) 736-8000

**From** Chantal De Vos, Paralegal  
Voice (305) 476-4245

**Date** 02/11/03

**Re:** Supra's Contacts w/ it s own  
Customers

**Pages** 3 Including Cover  
Sheet

**CC:**

**Urgent**     For Review     Please Comment     Please Reply     Please Recycle

**Notes:**  
Letter to Michael D. Warden dated 02/11/03



General Counsel  
2620 SW 27<sup>th</sup> Avenue  
Miami, FL 33133-3001  
Phone: (305) 476-4248  
Fax: (305) 443-9516  
Email: bchaiken@stis.com

February 11, 2003

VIA FACSIMILE 202-736-8711 AND FEDERAL EXPRESS

Michael D. Warden  
Sidley Austin Brown & Wood, LLP  
1501 K Street, N.W.  
Washington, D.C., 20005

Re: Supra's contacts with its own customers

Dear Mr. Warden:

We are in receipt of your letter dated February 7, 2003. We disagree with your characterization of events and your claim that Supra has somehow harmed AT&T. Notwithstanding such, and without admitting to any wrongdoing or liability, Supra is taking the following acts in light of AT&T's agreement to pay Supra for services provided:

1. Supra is no longer sending letters to its customers regarding AT&T, and any Supra customer who also has AT&T long distance service shall continue to receive such service.
2. Supra is sending a letter to all of its customers who received the initial letter. We have attached a copy of this letter hereto. We expect all such letters to go out no later than February 11, 2003. A similar notice shall be placed on Supra's website.
3. Supra is allowing all new subscribers to select AT&T as their long distance provider.
4. Supra's customer service representatives are informing all customers who call in response to Supra's initial letter that AT&T has agreed to pay for services rendered and therefore the customer may continue to use AT&T as its chosen long distance provider without service interruption.

We hope that these actions satisfy AT&T, and that the two companies may work together in the future to avoid similar episodes.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian Chaiken", is written over a horizontal line.

Brian Chaiken

cc: Victor Miriki

February 7, 2003

RE: Your Long Distance Service with AT&T

Dear valued customer:

Thank you for choosing Supra Telecom as your local telephone service provider. We are pleased to announce that an agreement has been reached with AT&T whereby they have agreed to pay a substantial amount of the money owed to Supra Telecom. Accordingly, your AT&T service will not be interrupted.

We apologize for any inconvenience or concern this situation may have caused. We are committed to providing affordable and reliable telecommunications services to the more than 260,000 Floridians that have chosen Supra Telecom.

We appreciate your support in this challenging and competitive business environment.

Sincerely,  
Russ Lambert  
Chief Operating Officer

Our Customer Service Department is available seven days a week  
Monday through Sunday - 7 AM to 11 PM  
877-499-1388

SIDLEY AUSTIN BROWN & WOOD LLP

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BEIJING  
GENEVA  
HONG KONG  
LONDON  
SHANGHAI  
SINGAPORE  
TOKYO

February 13, 2003

**By Facsimile and Federal Express**

Brian W. Chaiken, Esq.  
General Counsel  
Supra Telecommunications and Information  
Systems, Inc.  
2620 Southwest 27th Avenue  
Miami, Florida 33133

Re: Supra Telecommunications' Contacts With AT&T Customers

Dear Mr. Chaiken:

I am in receipt of your letter dated February 11, 2003, regarding the steps that Supra claims it has taken or will take to correct its prior letter that it sent to AT&T's customers (the "initial letter"), claiming that AT&T had "refused" to pay Supra and that AT&T's customers were required to choose another long distance provider. Although the steps that Supra chose to implement may mitigate some of the damages suffered by AT&T, they are by no means sufficient.

First, although your letter claims that Supra is no longer sending the initial letter to AT&T's customers, it is not certain when Supra halted sending such letters. We understand from media reports that Supra sent additional copies of the initial letter after the first mailing, and that the total number of AT&T customers that received the initial letter is about 30,000. AT&T needs to know the dates the initial letter was sent, how many customers were mailed the initial letter on each date, how Supra determined to which AT&T customers to send the initial letter, and the list of all AT&T customers that were mailed the initial letter.

Second, the second letter that Supra has sent to AT&T's customers is deficient. Most importantly, and unlike the letter that AT&T demanded that Supra send, Supra's second letter did not inform customers that had already switched their services away from AT&T that the switch was not necessary and that they have the right to choose from any long distance provider. Further, we note that Supra again used this second letter as an opportunity to tout its own services, compounding the improper marketing and promotion in Supra's initial letter, as explained below. As set forth in my previous letter to you, AT&T provided Supra with the text

ATTACHMENT 7

Brian W. Chaiken, Esq.  
February 13, 2003  
Page 2

for a letter that would correct Supra's initial letter and inform AT&T's customers that they did not and do not need to change providers. By choosing to send a different letter, Supra has failed to correct the consequences of its earlier conduct and to mitigate any damages AT&T has suffered.

Third, in your letter, you state that Supra pledges to post "a similar notice" to the second letter on Supra's website. However, posting a notice on its website similar to Supra's second letter would not provide an adequate remedy, for the same reasons just discussed. Rather, the web site should post the instructions that AT&T set forth in my previous letter. In all events, based on a check performed this morning, Supra does not appear to have posted any notice on its web site. If it has done so, the notice is certainly not prominently displayed on the web site. Supra should explain where the notice is posted on its web site, and why it believes that the chosen location would cause all customers receiving the letter and visiting the site to see the notice.

Fourth, and for the same reasons the letter is inadequate, the scripts used by Supra's customer service representatives appear to be insufficient to prevent further harm. Supra should provide those scripts to AT&T or should confirm that it will instruct its customer service representatives to use the script provided by AT&T in my previous letter to you.

Fifth, although Supra has stated that it will allow new customers to select AT&T, it should also confirm that existing Supra subscribers that wish to switch to AT&T from other carriers are being permitted to do so.

AT&T reiterates that Supra's initial letters have in fact harmed AT&T and that Supra's conduct is actionable. First, Supra's conduct caused a large but uncertain number of AT&T's customers to leave AT&T and switch to other long distance carriers, including to Supra. Further, many other customers would have selected or switched to AT&T, but could not because Supra apparently denied them the opportunity to select their preferred long distance carrier. In addition, AT&T incurred significant costs in its own customer care operations to answer customers' inquiries because of the letter.

Second, there is no doubt that Supra's conduct is actionable under a number of claims. In addition to the state law claims referred to in my February 7 letter, Supra's initial letter to AT&T's customers clearly violated federal law, including both the Communications Act (47 U.S.C. §§ 222(b)) and binding rules promulgated by the Federal Communications Commission ("FCC") that prohibit Supra from using its knowledge of an end user's long distance carrier to market competing services.<sup>1</sup> As the carrier responsible for executing the PIC

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<sup>1</sup> See Second Report and Order, *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act*, 14 FCC Rcd. 1508, ¶ 106 (1998) ("Slamming Order").

Brian W. Chaiken, Esq.  
February 13, 2003  
Page 3

requests of AT&T's customers receiving the initial letter, Supra must protect the identity of those customers' PIC from disclosure, can use that information *only* to implement the PIC change, and "shall not use such information for its own marketing purposes."<sup>2</sup>

Supra's letter flatly violated these rules. Supra generated a list of AT&T's customers, sent them the initial letter requiring them to choose a new carrier, and instructed them how "[t]o change your long distance carrier to Supra," claiming that its services are priced "at rates significantly below the rates" of AT&T. The Act and FCC's rules flatly prohibit such conduct, and provide for recovery of damages in such cases.

Supra should confirm that it has taken the steps outlined above, and should promptly provide AT&T with a list of the names and addresses of the AT&T customers that it contacted. However, AT&T reserves its rights to seek compensation for lost customer revenue and its expenses in responding to inquiries from its customer base resulting from Supra's initial letter.

Sincerely,  
  
Michael D. Warden

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<sup>2</sup> 47 U.S.C. § 222(b); see also *Slamming Order* ¶ 106; Order on Reconsideration, *In the Matter of Implementation of the Telecommunications Act of 1996*, 14 FCC Rcd. 14409, ¶¶ 76-78 (1999) ("CPNI Reconsideration Order"); Third Report and Order, *In the Matter of Implementation of the Telecommunications Act of 1996*, 17 FCC Rcd. 14860, ¶ 131 & n.300 (2002) ("CPNI Third Report and Order").



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served upon the following parties by Hand Delivery (\*) and Overnight Delivery (\*\*) this 24th day of February, 2003.

Harold McLean, Esq.\*  
Division of Legal Services  
Room 370 Gunter Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399

Mr. Rick Moses\*  
Division of Competitive Markets and  
Enforcement  
Florida Public Service Commission  
Room 270 Gunter Building  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399

Supra Telecommunications and Information Systems, Inc.\*  
c/o Ms. Ann H. Shelfer  
Koger Center - Ellis Building  
1311 Executive Center Drive, Suite 200  
Tallahassee FL 32301-5027

Jorge L. Cruz-Bustillo\*\*  
Assistant General Counsel  
Supra Telecommunications and Information Systems, Inc/  
2620 SW 27<sup>th</sup> Avenue  
Miami, Florida 33133

  
Floyd R. Self