

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 17, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (M. Watts, McCoy)
Office of the General Counsel (Tan, McKay)

RE: Docket No. 060530-TP – Joint petition for transfer of CLEC Certificate 4861 and PATS Certificate 5922 from Supra Telecommunications and Information Systems, Inc. to Supra Telecommunications and Information Systems Acquisition Corp.; for acknowledgment of registration of Supra Telecommunications and Information Systems Acquisition Corp. as an interexchange telecommunications company effective 8/1/06; for a name change on CLEC Certificate 4861, PATS Certificate 5922 and IXC Registration TK091 from Supra Telecommunications and Information Systems Acquisition Corp. to Supra Telecommunications and Information Systems, Inc.; and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to acquisition of assets, including operations and local exchange and interexchange customers, of Supra Telecommunications and Information Systems, Inc. by Supra Telecommunications and Information Systems Acquisition Corp., a newly created, wholly owned subsidiary of Cleartel Communications, Inc.

AGENDA: 08/29/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\060530.RCM.DOC

Case Background

On August 1, 2006, Supra Telecommunications and Information Systems, Inc. (Old Supra) and Supra Telecommunications and Information Systems Acquisition Corp. (New Supra) submitted a joint petition for transfer of competitive local exchange telecommunications company (CLEC) Certificate No. 4861 and pay telephone service company (PATS) Certificate No. 5922 from Old Supra to New Supra; for acknowledgment of registration of New Supra as an intrastate interexchange telecommunications company (IXC) effective August 1, 2006; and for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection.

The Old Supra, Supra Telecommunications and Information Systems, Inc., is a facilities-based CLEC based in Miami, Florida. Old Supra is one of Florida's largest residential competitive providers. It currently provides CLEC services to 160,315 access lines in Florida and provides IXC services to 96,506 Florida customers. In addition to its Florida operations, Old Supra is authorized to provide CLEC and IXC services in four other states, but only has customers in New York.

New Supra, Supra Telecommunications and Information Systems Acquisition Corp., is a subsidiary of Cleartel Communications, Inc. (Cleartel). Cleartel has its principal offices located in Delray Beach, Florida. Cleartel is a leading provider of voice and data products serving customers in the Northeast, Southeast, Southwest, and Midwestern United States. Cleartel is a wholly owned subsidiary of MCG Capital Corporation, a publicly held financial services company that provides financing and advisory services to a variety of small to mid-sized communications, information services, media and technology companies throughout the United States. In Florida, MCG Capital Corporation holds an indirect controlling interest in Cleartel Telecommunications, Inc. d/b/a NOW Communications which is currently authorized to operate in Florida as a CLEC and IXC.

New Supra is acquiring the assets, including operations and local exchange and interexchange customers, of Old Supra. The waivers of Rule 25-4.118, Florida Administrative Code, are being sought to provide the Commission notice of the transfer of assets, for the treatment of customers in a consumer-friendly manner and to allow for a transition to occur in a smooth process protecting both the consumer and the company. Without these waivers, New Supra would be required to obtain signed letters of agency (LOAs) or third party verifications (TPVs) from each customer being transferred. These waivers are also beneficial to the customers as they will not be subject to a loss of service on the date of transfer. Thus, this recommendation addresses the requests for waiver of Rule 25-4.118, Florida Administrative Code, for both CLEC and IXC services.

On August 10, 2006, the petitioners filed an amended petition clarifying that New Supra will be acquiring the former name of Old Supra after it receives the Commission's approval of the transactions presented in this recommendation. Old Supra will change its name (yet to be determined), enabling New Supra to acquire the old name. The petitioners will notify the Commission when to change the names on CLEC Certificate No. 4861, PATS Certificate No. 5922, and intrastate interexchange company (IXC) Registration No. TH064. Upon verification of the name changes with the Secretary of State, staff will administratively process the name

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change requests in accordance with Administrative Procedures Manual 2.07.C.2.a. In addition, the petitioners have requested cancellation of Old Supra's IXC Registration No. TI635, and transfer of its tariff to New Supra (IXC Registration No. TH064). Upon notification by the petitioners, staff will cancel Old Supra's IXC registration administratively in accordance with Administrative Procedures Manual 2.07.C.5.i. and transfer its tariff to New Supra.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, 364.337, 364.345 and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission approve the name change and transfer of CLEC Certificate No. 4861 and PATS Certificate No. 5922 from Supra Telecommunications and Information Systems, Inc. to Supra Telecommunications and Information Systems Acquisition Corp.?

Recommendation: Yes, the Commission should approve the proposed certificate transfers and name changes. **(M. Watts/McCoy/Tan/McKay)**

Staff Analysis:

I. Jurisdiction

A. Section 364.345(2), Florida Statutes

Pursuant to Section 364.345(2), Florida Statutes, a telecommunications company may not sell, assign, or transfer its certificate or any portion thereof without (a) a determination by the commission that the proposed sale, assignment, or transfer is in the public interest; and (b) the approval of the Commission. Staff notes that there is little guidance on what constitutes the “public interest.” It appears that in most cases what is in the public interest is left up to the interpretation of the particular administrative body charged with upholding that interest. In developing its recommendation, staff reviewed the management, technical, and financial capability of the acquiring entity.

II. Staff’s Findings

A. Management Capability

As outlined in the Case Background, New Supra, a wholly-owned subsidiary of Cleartel, proposes to complete a series of transactions through which it will acquire all of the assets of Old Supra. New Supra will continue operating in Florida with all of the assets and facilities currently being used to provide service to customers. New Supra’s management team has extensive experience in the management and operation of telecommunications companies in Florida and elsewhere and believes that its management capabilities are sufficient to ensure quality telecommunications services to its customers.

B. Technical Capability

The same networks that currently serve Florida customers will continue to serve them after the acquisition has been completed. Cleartel has acquired other certificated CLECs and registered IXCs in Florida in the past five years. Cleartel stated in a meeting with staff that it had worked hard to reduce the number of complaints received after those acquisitions. Staff reviewed the complaints before and after the acquisitions and found Cleartel’s statement to be true. Thus, the acquisition of Old Supra should not lessen New Supra’s capability to provide quality service to Florida’s citizens.

C. Financial Capability

As stated in the Case Background, New Supra and Cleartel are wholly owned subsidiaries of MCG. MCG has access to extensive financial resources and provides financing and advisory services to a variety of small to mid-sized communications, information services, media and technology companies throughout the United States. New Supra will rely upon Cleartel's available assets for the financing and capital necessary to provide telecommunications services and to maintain the provision of the same. Thus, staff believes New Supra has the necessary financial capability to support its operations.

III. Conclusion

Based upon the past performance of the companies controlled by MCG and Cleartel, and staff's management, technical, and financial analysis, staff believes that the transfer of the CLEC and PATS certificates from Old Supra to New Supra would be in the public interest. New Supra appears to have the necessary prerequisites to provide quality telecommunications services to Florida customers at fair prices.

Therefore, staff recommends that the Commission should approve the name change and transfer of CLEC Certificate No. 4861 and PATS Certificate No. 5922 from Supra Telecommunications and Information Systems, Inc. to Supra Telecommunications and Information Systems Acquisition Corp.

Issue 2: Should the Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from Supra Telecommunications and Information Systems, Inc. to Supra Telecommunications and Information Systems Acquisition Corp.?

Recommendation: Yes, the Commission should approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. **(M. Watts/Tan)**

Staff Analysis: Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that a carrier shall submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency (LOA) . . . from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service . . . ;
- (c) A firm that is independent and unaffiliated with the provider . . . has verified the customer's requested change . . .

Pursuant to Rule 25-24.475(3), Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXC's.

Rule 25-24.455(2), Florida Administrative Code, states:

An IXC may petition for a waiver of any provision of this Part. The waiver shall be granted in whole, granted in Part or denied based on the following:

- (a) The factors enumerated in Section 364.337(4), Florida Statutes;
- (b) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived;
- (c) Alternative regulatory requirements for the company which may serve the purposes of this part; and
- (d) Whether the waiver is in the public interest.

Pursuant to Rule 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to CLECs.

Section 364.337(2), Florida Statutes, states in pertinent part;

A certificated competitive local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The commission may grant such petition if determined to be in the public interest.

The authority for Rule 25-4.118, Florida Administrative Code, is found in Section 364.603, Florida Statutes, which is a section the Commission is authorized to waive.

New Supra has attested that it will provide for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Staff has reviewed the notice that will be sent to Old Supra's customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

In addition, Old Supra and New Supra stated in their August 10, 2006, addendum to their petition that Old Supra will be responsible for all customer complaints that arise prior to the closing date, and New Supra will work to resolve all customer complaints that arise on the closing date and thereafter.

Further, Old Supra does not have any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration or its CLEC and PATS certifications.

Staff believes that in this instance it is appropriate to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their local and long distance services. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, staff recommends that the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from Supra Telecommunications and Information Systems, Inc. to Supra Telecommunications and Information Systems Acquisition Corp.

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Issue 3: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the Proposed Agency Action files a protest within 21 days of the issuance of the Proposed Agency Action order, this docket should be closed upon the issuance of the Consummating Order. If Old Supra fails to pay its 2006 regulatory assessment fees for its CLEC, PATS and IXC operations as required by Rule 25-4.0161, Florida Administrative Code, staff will bring this matter back before the Commission for resolution. **(Tan/McKay)**

Staff Analysis: If no person whose substantial interests are affected by the Proposed Agency Action files a protest within 21 days of the issuance of the Proposed Agency Action order, this docket should be closed upon the issuance of the Consummating Order. If Old Supra fails to pay its 2006 regulatory assessment fees for its CLEC, PATS and IXC operations as required by Rule 25-4.0161, Florida Administrative Code, staff will bring this matter back before the Commission for resolution.