



# Public Service Commission

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

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**DATE:** March 16, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF COMMUNICATIONS (WOLFE) *mw*  
DIVISION OF LEGAL SERVICES (VACCARO) *DF/PA TV*

**RE:** DOCKET NO. 000094-TP - REQUEST BY GTE FLORIDA INCORPORATED FOR APPROVAL OF AN ADOPTION OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.'S and GTE FLORIDA INCORPORATED'S INTERCONNECTION AGREEMENT BY SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.

**AGENDA:** MARCH 28, 2000 - REGULAR AGENDA - FINAL ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** I:\PSC\CMU\WP\000094.RCM

### CASE BACKGROUND

On January 26, 2000, GTE Florida Incorporated (GTEFL) filed a notice of adoption of an interconnection agreement that had previously been entered into between AT&T Communications of the Southern States, Inc.(AT&T) and GTE Florida Incorporated, by Supra Telecommunications and Information Systems, Inc.(Supra). Staff reviewed the adoption as filed but became concerned about a letter that GTEFL had included with the Notice of Adoption. Staff contacted Supra, and Supra confirmed that it did not agree with GTEFL's positions stated in its letter. Supra emphasized that it intended to adopt the agreement pursuant to Section 252(i) of the Telecommunications Act of 1996 (the Act) as written. On February 10, 2000, GTEFL filed a letter written by Supra in which Supra agreed that it was adopting the agreement, subject to the following provisions: 1) having its name substituted into the agreement where it currently reads AT&T; 2) providing an address and telephone

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number for correspondence; and 3) that Supra is certificated in the state of Florida to provide local telecommunications and the agreement is only valid in Florida. Although adoptions of agreements under Section 252(i) are usually handled administratively, staff brings this matter to the Commission's attention to clarify that GTEFL's letter has no effect on the adopted agreement.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission approve Supra Telecommunications and Information Systems, Inc.'s request to adopt in its entirety an interconnection agreement entered into by AT&T Communications of the Southern States, Inc. and GTE Florida Incorporated?

**RECOMMENDATION:** Yes. Supra's adoption of the GTEFL/AT&T agreement should be approved in its entirety with the clarification that GTEFL's letter in no way modifies the agreement. Approval of the adoption should in no way be construed as agreement by Supra or the Commission with GTEFL's positions set forth in the letter. **(WOLFE)**

**STAFF ANALYSIS:** The Notice of Adoption submitted by GTEFL included a letter in which GTEFL stated its position on issues regarding the adopted agreement. First, GTEFL states that it will continue to provide all UNEs specified in the agreement, although it believes it is not legally obligated to do so. Second, GTEFL states that Supra should not attempt to order UNE platforms or combinations of already bundled UNEs. Third, GTEFL states that if the FCC has not promulgated new rules on UNEs and related matters prior to the expiration of the agreement, GTEFL will continue to provide services under the term of the agreement until the FCC issues its new rules. Fourth, GTEFL asserts that it does not waive any rights or its current positions by entering into this agreement. Finally, GTEFL states that:

The provisions of the contract that might be interpreted to require reciprocal compensation or payment as local traffic from GTE to the telecommunications carrier for the delivery of traffic to the Internet are not available for adoption and are not part of the 252(i) adoption of the Terms pursuant to FCC Rule 809 and paragraphs 1317 and 1318 of the First Report and Order.

GTEFL Adoption Letter to Supra, p.3. GTEFL adds that:

Specifically, the definition of "Local Traffic" includes this provision: Local Traffic excludes information service provider (ISP) traffic (i.e., Internet, 900-976, etc.).

GTEFL Adoption Letter to Supra, p.3.

GTEFL further notes that the FCC allows the ILECs to deny requests for 252(i) adoptions in situations where the cost of providing an item to the requesting carrier is higher than that incurred to serve the initial carrier, or when it is technical infeasible to provide a given element. GTEFL contends that the provision of reciprocal compensation for traffic destined for the Internet falls within the scope of FCC Rule 51.809, which provides the following criteria for an ILEC to determine when a portion of an interconnection agreement is not subject to adoption:

(b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:

(1) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or

(2) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible.

GTEFL adds that it never intended for Internet traffic passing through a telecommunications carrier to be included within the definition of local traffic and, thus, subject to reciprocal compensation.

Staff emphasizes, however, that FCC Rule 51.809 allows ILECs to present evidence to state commissions on whether it costs more to provide an element to one carrier in comparison to another, or it is technically infeasible to provide the element to a requesting carrier. To date, GTEFL has not presented evidence to the FPSC demonstrating that it will incur higher costs to interconnect with Supra than GTEFL incurs to interconnect with AT&T, or it is technically infeasible. Furthermore, GTEFL acknowledges that Supra is adopting the GTEFL/AT&T agreement, and that Supra does not necessarily agree with GTEFL's positions regarding traffic to ISPs. GTEFL explains that its letter is merely a statement of its

position on these issues and that neither it nor Supra waives any position or argument either may have under the adopted agreement. GTEFL's letter concludes with a statement that by signing the letter, Supra waives no rights under the agreement and only agrees to the following provisions: 1) having its name substituted into the agreement where it currently reads AT&T; 2) providing an address and telephone number for correspondence; and 3) that Supra is certificated in the state of Florida to provide local telecommunications and the agreement is only valid in Florida.

As stated in the Case Background, in a separate letter written by Supra to GTEFL on December 23, 1999, Supra emphasized that it agreed only to the three specific provisions set forth at the conclusion of GTEFL's letter: 1) having its name substituted into the agreement where it currently reads AT&T; 2) providing an address and telephone number for correspondence; and 3) that Supra is certificated in the state of Florida to provide local telecommunications and the agreement is only valid in Florida. Supra has expressed concern that GTEFL's letter is confusing and could be misconstrued as modifying the agreement. Supra emphasizes that it has not agreed to any modifications to the agreement. Staff again notes that in GTEFL's letter, GTEFL explains that Supra does not necessarily agree with GTEFL's positions, nor does Supra waive any rights under the agreement, and that by signing the agreement, Supra has only agreed to the name substitution, the inclusion of Supra's address, and that Supra is certificated.

Based on the foregoing, staff recommends that Supra's adoption of the GTEFL/AT&T agreement be approved in its entirety with the clarification that GTEFL's letter in no way modifies the agreement. It does not appear that the letter included with the Notice of Adoption modifies or attempts to modify the terms of the GTEFL/AT&T agreement sought by Supra. Instead, the letter appears to be a preliminary statement by GTEFL of its position should disputes later arise under the adopted agreement. Approval of the adoption should in no way be construed as agreement by Supra or the Commission with GTEFL's positions set forth in the letter.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, if the Commission approves staff's recommendation in Issue 1, this docket should be closed. (VACCARO)

**STAFF ANALYSIS:** If the Commission approves staff's recommendation in Issue 1, this docket should be closed.