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Supra Telecom & Information Systems, Inc.

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Phone: (305) 443-3710
Fax: (305) 443-1078
2620 S.W. 27th Avenue
Miami, FL 33133
Email: sales@stis.com
www.stis.com

May 6, 1999

RECORDS AND
REPORTING

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: **Docket No. 980253-TX**

Dear Ms. Bayó:

Enclosed for filing in the above referenced docket are an original and fifteen copies of the Rebuttal Testimony of Ronald C. Smith, Jr. Copies have been served on the parties listed on the attached Certificate of Service.

Sincerely,

Ava Parker
Legal Counsel
Supra Telecom
(305) 476-4236

- AFA _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Supra Telecommunications and Information Systems, Inc.'s testimony of Ronald C. Smith, Jr. in Docket No. 980253-TX has been served by U.S. Mail this 6 day of May, 1999

AT&T Communications
Ms. Rhonda P. Merritt
101 North Monroe Street, Suite 700
Tallahassee, FL 32301-1549

Ed Rankin
Room 4300
675 West Peachtree Street
Atlanta, GA 30375

Ausley Law Firm
Jeffrey Wahlen
P.O. Box 391
Tallahassee, FL 32302

Nanette Edwards
700 Boulevard So. #101
Huntsville, AL 35802

Ms. Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Florida Competitive Carriers Assoc.
c/o McWhirter Law Firm
Vicki Kaufman
117 S. Gadsden St.
Tallahassee, FL 32301

Cox Communications (VA)
Jill Butler
4585 Village Ave.
Norfolk, VA 23502

Florida Electric Cooperative Assoc.
Michelle Hershel
P.O. Box 590
Tallahassee, FL 32302

Department of Management Services
Carolyn Mason
4050 Esplanade Way
Bldg. 4030, Suite 180
Tallahassee, FL 32399-0950

GTE Florida Incorporated
Kimberly Caswell
P.O. Box 110, FLTC0007
Tampa, FL 33601-0110

DMS, Information Technology Program
Carolyn Mason, Regulatory Coordinator
4050 Esplanade Way
Bldg 4030, Rm. 180L
Tallahassee, FL 32399-0950

Joe Hartwig
480 E. Eau Gallie
Indian Harbour Beach, FL 32937

e.spire Communications
James Falvey
133 National Business Parkway
Suite 200
Annapolis Junction, MD 20701

Hopping Law Firm
Richard Melson
P.O. Box 6526
Tallahassee, FL 32314

Landers Law Firm
Scheffel Wright
P.O. Box 271
Tallahassee, FL 32302

Sprint-Florida, Incorporated
Charles J. Rehwinkel
P.O. Box 2214
Tallahassee, FL 32316-2214

McWhirter Law Firm
Vicki Kaufman
117 S. Gadsden St.
Tallahassee, FL 32301

Swidler & Berlin
Morton J. Posner
3000 K St. NW, #300
Washington, DC 20007-5116

Messer Law Firm
Norman Horton/Floyd Self
P.O. Box 1876
Tallahassee, FL 32302

TCG South Florida
c/o Rutledge Law Firm
Kenneth Hoffman
P.O. Box 551
Tallahassee, FL 32302-0551

MGC Communications, Inc.
Richard E. Heatter, Asst Legal Counsel
3301 N. Buffalo Drive
Las Vegas, NV 89129

Time Warner Communications
Ms. Rose Mary Glista
700 South Quebec Street
Englewood, CO 80111

Pennington Law Firm
Barbara Auger
P.O. Box 10095
Tallahassee, FL 32302-2095

Time Warner Communications
Carolyn Marek
233 Bramerton Court
Franklin, TN 37069

Robert Smithmidford
NationsBanc Services
8011 Villa Park Drive
VA2-125-02-09
Richmond, VA 23228

Frank Wood
3504 Rosemont Ridge
Tallahassee, FL 32312

Rutledge Law Firm
Kenneth Hoffman
P.O. Box 551
Tallahassee, FL 32302



Ava Parker, Esq.
Supra Telecom

Sprint
Monica Barone/Benjamin W. Fincher
3100 Cumberland Circle, #802
Atlanta, GA 30339

1 **SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.**

2 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

3 **REBUTTAL TESTIMONY OF RONALD C. SMITH, JR.**

4 **DOCKET NO. 980253-TX**

5 **MAY 6, 1999**

6

7 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

8 **A. My name is Ronald C. Smith, Jr. My address is 2620 SW 27th Avenue,**
9 **Miami, Florida 33133.**

10

11 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

12 **A. I am the Senior Vice President of Marketing for Supra Telecommunications**
13 **and Information Systems, Inc. (Supra).**

14

15 **Q. ARE YOU THE SAME RONALD C. SMITH, JR. WHO PROVIDED**
16 **DIRECT TESTIMONY IN THIS PROCEEDING?**

17 **A. Yes.**

18

19 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

20 **A. The primary purpose of my rebuttal testimony is to rebut the Direct**
21 **Testimony of C. Ned Johnson and the Comments of BellSouth**
22 **Telecommunications, Inc. (BellSouth) and the Direct Testimony of David E.**
23 **Robinson on behalf of GTE Florida Incorporated (GTE).**

24

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1 Q. MR. JOHNSON'S TESTIMONY ASSERTS THAT THE CONTRACTS
2 THAT ARE PROPOSED FOR COVERAGE UNDER THE RULE
3 REVISIONS WERE VIRTUALLY ALL SUBJECT TO
4 COMPETITION AT THE TIME THEY WERE INITIALLY
5 ENTERED INTO. IS THIS A CORRECT STATEMENT?

6 A. No. Given the continuing monopoly status of the Incumbent Local Exchange
7 Carriers (ILECs), this is a completely ludicrous statement. In its December
8 1998 Report to the Legislature, *Competition in Telecommunications Markets*
9 *in Florida*, the Florida Public Service Commission (FPSC) staff reports that
10 as of July 10, 1998, 191 entities were certificated as Alternative Local
11 Exchange Providers (ALECs) in Florida. The 1997 report indicated that 86
12 companies were certificated as ALECs. In 1998, only 51 ALECs were
13 providing service to a small number of customers. The FPSC staff reports
14 that these entrants only account for 1.8 percent of the total access lines in
15 Florida. How could this be considered competition?

16
17 Q. IN ITS COMMENTS FILED APRIL 23, 1999, BELLSOUTH STATES
18 THAT ALECS HAVE BEEN ACTIVELY COMPETING WITH
19 BELLSOUTH SINCE 1995. IS THIS TRUE?

20 A. No, this is certainly not true. Although the passage of the federal
21 Telecommunications Act of 1996 and state legislative action in Florida since
22 1995 supposedly opened the local telephone market to competition, local
23 competition has been slow to flourish. ILECs have persisted in setting up
24 "roadblocks" in order to protect their embedded customer base from
25 competition. ILECs have used these contract service arrangements and long-

1 term contracts to lock-in customers and prevent competitors from marketing
2 their services.

3

4 **Q. IS THERE ANY VALIDITY TO BELLSOUTH'S STATEMENT IN ITS**
5 **COMMENTS FILED APRIL 23, 1999, THAT THE COMMISSION**
6 **DOES NOT HAVE THE STATUTORY AUTHORITY TO**
7 **PROMULGATE FRESH LOOK RULES?**

8 A. No. There is no doubt that the Florida Public Service Commission has
9 statutory authority to promulgate fresh look rules. According to Section
10 364.19 of the Florida Statutes, "[t]he Commission may regulate, by
11 reasonable rules, the terms of telecommunications service contracts between
12 telecommunications companies and their patrons." In addition, Section
13 364.01 of the Florida Statutes sets forth a general framework of the
14 Commission's jurisdiction confirming that the Commission has the statutory
15 authority to promulgate fresh look rules. BellSouth's Comments state that
16 although the Commission has the authority to regulate the terms of these
17 service contracts, the Commission cannot authorize the abrogation of these
18 contracts. BellSouth apparently does not realize that the duration of a
19 contract is considered a term of the contract, and therefore subject to the
20 Commission's authority.

21

22 **Q. BELLSOUTH ASSERTS IN ITS COMMENTS THAT UNDER THE**
23 **GUISE OF FRESH LOOK, ALECS WANT TO UNDO THE RESULTS**
24 **OF THE COMPETITIVE PROCESS SO THAT THEY MAY**

1 **“CHERRY PICK” THE LARGEST AND MOST LUCRATIVE**
2 **CUSTOMERS? IS THIS CORRECT?**

3 A. No. In fact, one might assume that BellSouth has already “cherry picked” the
4 largest and most lucrative customers by binding them to long term contracts
5 before there were effective competitive offerings available. Fresh look will
6 allow those customers a window of opportunity to exit these ILEC contract
7 service arrangements or tariffed term plans that were negotiated during a time
8 when the ILEC was the only viable choice. If an ALEC has a more attractive
9 offer and possibly lower rates, consumers should be able to take advantage of
10 competition. It is important to keep in mind that there is nothing in these
11 proposed rules that would prevent an ILEC from renegotiating an existing
12 contract rather than lose the customer to an ALEC who is offering a more
13 beneficial service and perhaps lower rates.

14
15 Q. **IN HIS DIRECT TESTIMONY, MR. DAVID E. ROBINSON OF GTE**
16 **STATES THAT THERE IS NO NEED FOR A FRESH LOOK RULE.**
17 **IS THIS TRUE?**

18 A. No. ALECs are now entering the local telecommunications market in Florida
19 and are experiencing an uphill battle in attempting to compete for the
20 business of customers. Another layer of difficulty is added by the fact that
21 the ILECs have literally locked in customers for long terms by tying the
22 customers to contracts before any viable competitive alternatives were
23 available. The proposed fresh look rules will allow consumers to terminate
24 these ILEC contracts and to consider alternative offerings that may provide
25 greater benefits or lower rates than the ILEC contracts. These proposed rules

1 can only provide positive benefits to consumers and foster competition in
2 Florida.

3

4 **Q. MR. ROBINSON ASSERTS THAT THE RESALE REQUIREMENT**
5 **WOULD ELIMINATE ANY NEED FOR FRESH LOOK RULES. IS**
6 **THIS CORRECT?**

7 **A.** No. In the resale environment, ALECs are allowed to resell existing contract
8 arrangements between ILECs and consumers. However, generally there are
9 exorbitant termination charges involved in the canceling of the contract.
10 Therefore, either the ALEC or the customer would have to absorb those
11 charges. The proposed fresh look rules will allow those consumers who are
12 bound by contracts to reexamine their needs and to consider alternative
13 offerings, while providing a termination liability less than that specified in
14 the contract.

15

16 **Q. DO YOU HAVE ANY OTHER STATEMENTS TO MAKE ABOUT**
17 **THE PROPOSED FRESH LOOK RULES?**

18 **A.** Yes. I would like to support KMC Telecom’s proposal that the fresh look
19 rule should include a separate, detailed definition of “eligible contracts.” The
20 proposed rule should clarify what constitutes an eligible contract and further
21 define the term “local telecommunications service” so that contracts for the
22 provision of any local telecommunications service by the ILEC are covered
23 within the definition of eligible contracts. In addition, I also support the
24 recommendation that the Commission address more clearly the question of
25 what kinds of termination liability may be imposed under the proposed rule.

1 Disputes between the ILECs and customers regarding termination liability
2 could deter customers from taking advantage of the fresh look opportunity,
3 therefore no termination liability should exist.

4

5 Q. **DOES THIS CONCLUDE YOUR TESTIMONY?**

6 A. Yes.

7

8