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ORIGINAL

July 25, 2003

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

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RE: Docket No. 030349-TP -
SUPRA's REBUTTAL TESTIMONY OF DAVID A. NILSON

Dear Mrs. Bayo:

Enclosed is the original and seven (7) redacted copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Rebuttal Testimony of David A. Nilson and confidential exhibits are filed in a sealed envelope in the above captioned docket. Confidentiality is being claimed to Exhibit DAN-RT-2 in their entirety.

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

Sincerely,

Jorge Cruz-Bustillo

Jorge Cruz-Bustillo
Assistant General Counsel

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CERTIFICATE OF SERVICE
Docket No. 030349-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Facsimile, Hand Delivery, U.S. Mail and/or Federal Express this 25TH day of July 2003 to the following:

Ms. Linda Dodson, Esq.
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By: Jorge Cruz-Bustillo/VWA
JORGE CRUZ-BUSTILLO

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

REBUTTAL TESTIMONY OF DAVID A. NILSON

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030349-TP

JULY 25, 2003

1 Q PLEASE STATE YOUR NAME AND ADDRESS

2 A. My name is David A. Nilson. My address is 2620 SW 27th Avenue, Miami,
3 Florida 33133.

4

5 Q BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

6 A. I am the Chief Technology Officer of Supra Telecommunications and
7 Information Systems, Inc. ("Supra").

8

9 Q ARE YOU THE SAME DAVID A. NILSON WHO FILED DIRECT
10 TESTIMONY IN THIS DOCKET?

11 A. I am.

12

13 Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?

14 A. The purpose of my rebuttal testimony is to respond directly to several matters
15 raised in BellSouth's direct testimony filed by Mr. John A. Ruscilli. My rebuttal
16 testimony will address BellSouth's actual practices as opposed to BellSouth's
17 claimed policy positions made in its direct testimony. My rebuttal testimony will

1 directly address Mr. Ruscilli's interpretation of the FCC decisions that this
2 Commission expressly incorporated into Commission Order No.
3 PSC-03-0726-FOF-TP. I will also respond directly to BellSouth's claim that its retail
4 division and/or in-house marketers, in particular its Marketing Information Support
5 ("MKIS") group, does not obtain carrier-to-carrier information for marketing
6 purposes as well as BellSouth's claim that BellSouth does not share carrier-to-carrier
7 information without third-party marketers, in particular outside Letter Shop(s)
8 employed by BellSouth.

9
10 **Q. DO YOU AGREE WITH MR. RUSCILLI'S CONCLUSION, ON PAGE 3**
11 **OF HIS DIRECT TESTIMONY, THAT THE COMMISSION HAS ALREADY**
12 **EXAMINED THE ISSUES, RAISED IN THIS DOCKET, IN A PREVIOUS**
13 **DOCKET AND FOUND BELL SOUTH'S POLICIES TO BE APPROPRIATE?**

14
15 A. No, I do not agree with Mr. Ruscilli's conclusion. First, Docket Nos. 020119-TP,
16 020578-TP, and 021252-TP ("Key Customer Tariff Docket") and this Docket involve
17 two different and distinct matters. The Key Customer Tariff Docket did examine the
18 use of CPNI and Wholesale information. The specific examination, however, was
19 limited to the scenario in which a customer calls into a BellSouth service center to
20 lift a PIC freeze or a request to move or remove DSL. The question posed, in the
21 Key Customer Tariff Docket, to the Commission was whether further marketing
22 restrictions were warranted in regards to in-bound calls to BellSouth service centers.

1 The limitation on the scope of this issue can be found in Commission Order No.
2 PSC-03-0726-FOF-TP, pg. 48, 1st .

3 This Commission stated in its “Conclusion” paragraph of Order No.
4 PSC-03-0726-FOF-TP, pg. 47, 2nd , that the “FCC has sufficiently addressed
5 retention marketing when a customer calls in to lift a carrier freeze.” Given the
6 parameters set by the FCC and incorporated into the Order of the Key Customer
7 Tariff Docket, this Commission chose to place no further marketing restrictions –
8 other than those already imposed by the FCC – on BellSouth’s efforts to engage in
9 marketing retention efforts after the triggering event of “an in-bound” call to lift a
10 carrier freeze or to move or remove DSL.

11 The questions raised in this docket (i.e. Docket No. 030349-TP) are quite different
12 from the Key Customer Tariff Docket. This docket involves a specific admitted
13 “practice” – not addressed in any way in the former docket – in which BellSouth’s
14 Marketing Information Support (“MKIS”) group: (1) utilizes information that
15 originates from a carrier change request (Local Service Request “LSR”) for purposes
16 of triggering market retention efforts, and (2) then shares that same information with
17 an outside third party for market retention efforts. The question is whether this
18 admitted practice is legal. This question was not addressed in any way in the Key
19 Customer Tariff Docket.

1 **Q. HOW DO YOU VIEW MR. RUSCILLI'S INTERPRETATION OF THE**
2 **COMMISSION'S CONCLUSION IN THE KEY CUSTOMER TARIFF**
3 **DOCKET REGARDING BELL SOUTH'S POLICIES?**

4
5 A. Mr. Ruscilli's interpretation of the Commission's conclusion in the Key
6 Customer Tariff Docket is incorrect and out of context. On the bottom of page 3 and
7 on the top of page 4 of Mr. Ruscilli's direct testimony, he states that with respect to
8 the Key Customer Tariff Docket the Commission was "satisfied that BellSouth has
9 the appropriate policies in place."

10 For the purposes of this docket, this Commission has made no findings whatsoever
11 regarding BellSouth's admitted practice of utilizing carrier-to-carrier information,
12 such as switch (a.k.a. conversion) orders, to trigger market retention efforts.
13 Therefore, as I have already pointed out previously in my rebuttal testimony, this
14 statement is out of context with respect to the issues raised in this specific docket.

15
16 **Q. DO YOU AGREE WITH MR. RUSCILLI'S INTERPRETATION OF THE**
17 **THIS COMMISSION'S ORDER PSC-03-0726-FOF-TP AND FCC ORDER**
18 **03-42 WHEN HE CLAIMS THAT SUCH DECISIONS ALLOW BELL SOUTH**
19 **TO PROVIDE CARRIER CHANGE ORDERS (I.E. SWITCH ORDERS)**
20 **FROM ITS WHOLESALE OPERATION TO ITS RETAIL OPERATIONS**
21 **FOR THE PURPOSE OF TRIGGERING MARKET RETENTION EFFORTS?**

1 A. No. I do not agree with Mr. Ruscilli's interpretation. There is an absolute
2 prohibition against the use of carrier-to-carrier information, such as switch orders, to
3 trigger market retention efforts. This statement can be found on page 45 of
4 Commission Order No. PSC-03-0726-FOF-TP, 2nd indented paragraph. The
5 statement regarding the prohibition is from FCC Order No. 99-223, incorporated into
6 Order No. PSC-03-0726-FOF-TP, which also states that: "We [the FCC] conclude
7 that competition is harmed if any carrier uses carrier-to-carrier information, such as
8 switch or PIC orders, to trigger retention marketing campaigns, and consequently
9 prohibit such actions accordingly." (Emphasis added). This quote can also be found
10 on page 45 in Order No. PSC-03-0726-FOF-TP. This FCC decision is clear that the
11 use of switch orders to trigger market retention efforts is a "harm to competition" and
12 as such anti-competitive.

13 Despite the "outright prohibition" and the anti-competitive nature of the use of
14 carrier-to-carrier information, Mr. Ruscilli nevertheless, concludes his direct
15 testimony by admitting that BellSouth's wholesale operations do in fact provide
16 information to its retail division arising out of a carrier switch order. The precise
17 admission is as follows: "It is clear that BellSouth's process for providing disconnect
18 reports to its retail divisions is consistent with rulings of this Commission and the
19 FCC."

1 **Q. ON PAGE 4, LINES 17 THROUGH 19, MR. RUSCILLI TESTIFIES**
2 **THAT “IT IS AGAINST BELLSOUTH POLICY FOR ANY EMPLOYEE OR**
3 **AUTHORIZED REPRESENTATIVE OF BELLSOUTH TO MISUSE**
4 **WHOLESALE INFORMATION,” DO YOU AGREE WITH HIS**
5 **STATEMENT?**

6
7 A. Although Mr. Ruscilli testifies that it is against BellSouth’s policy for any
8 employee to misuse wholesale information, Mr. Ruscilli did not testify that it is
9 against BellSouth’s policy to “harvest” information from ALEC wholesale requests
10 electronically, as is the case with the direct feed from BellSouth’s OSS to its
11 Operation Sunrise program. On the contrary, Mr. Ruscilli admits that BellSouth does
12 “share” information originating in its wholesale operations with its Marketing
13 Information Support (“MKIS”) group.

14 Mr. Ruscilli’s argument is essentially that harvesting of ALEC change information
15 from its wholesale operations is not considered by BellSouth to violate any
16 applicable CPNI laws, or FCC and Commission Orders prohibiting the sharing of this
17 type of information – since the ALEC change information is “harvested” using a
18 direct mechanical computerized feed as opposed to BellSouth personnel actually
19 “system surfing” for the information. BellSouth stated policy prohibits the “system
20 surfing”, but condones and promotes the use of the mechanical computerized feed
21 to “harvest” the wholesale information on a nightly basis for the purpose of triggering
22 marketing efforts targeted at the customer that had just switched away from

1 BellSouth. Frankly, BellSouth's prohibition against "system surfing" is a distinction
2 without a difference as it is just as illegal to have wholesale information fed to
3 BellSouth's retail operations by mechanical means as it is to do so by human means.
4 BellSouth was specifically asked whether apart from the "Harmonize" feed, was
5 there any other method by which the MKIS group was notified that a customer was
6 switching or had switched to another voice competitor. BellSouth said "no." This
7 admission can be found on page 30, lines 21-25 of my direct testimony.

8 The "Harmonize" feed Mr. Ruscilli characterizes as a disconnect report was
9 developed by BellSouth to "harvest" wholesale carrier change information directly
10 from the Service Order Communications System ("SOCS"). This feed removes this
11 proprietary wholesale information from SOCS on a "nightly basis," which in turn
12 flows directly to BellSouth's Marketing Information Support (MKIS) group. See
13 #DAN9, bate stamp 001055.

14 BellSouth personnel in charge of the MKIS group admitted that the specific data
15 elements supplied by SOCS through the mechanical feed known as Harmonize
16 included, but was not limited to, the following: (1) the date an order was generated
17 and (2) order type – whether it was a change order or a new connect order. See my
18 Direct Testimony on page 28, lines 5-15 for the BellSouth admission.

19 Mr. Ruscilli's direct testimony affirms the prior BellSouth admission that the
20 disconnect report contains information identifying when a customer has chosen to
21 drop BellSouth as its voice provider. Mr. Ruscilli is clear in his direct testimony that:
22 "A few examples of possible disconnect reasons are . . . changing local service

1 providers . . .” Page 6, line 22 of Ruscilli Direct Testimony. This information is
2 derived exclusively from BellSouth’ status as the underlying wholesale executing
3 carrier. There can be no dispute as to this fact.

4 Mr. Ruscilli is clear that the information that is shared with its retail operations, from
5 its wholesale operations, is “assumed to be customers that switched to a local service
6 provider other than BellSouth.” Mr. Ruscilli goes on to admit, at the bottom of page
7 6 and the top of page 7 of his direct testimony, that those records that “reflect a
8 non-competitive disconnect reason code are removed and the remaining retail
9 customers are assumed to be customers that switched to a local service provider other
10 than BellSouth.” (Underline added for emphasis).

11 The documentation of Operation Sunrise clearly shows the carrier change orders are
12 removed on a nightly basis from SOCS and funneled directly to the Marketing
13 Information Support (MKIS) group. This information, again, is derived exclusively
14 from BellSouth’ status as the underlying wholesale executing carrier.

15
16 **Q. DOES MR. RUSCILLI’S DIRECT TESTIMONY CONFLICT WITH ANY**
17 **PRIOR TESTIMONY THAT MR. RUSCILLI HAS MADE TO THIS**
18 **COMMISSION?**

19
20 A. Yes. Mr. Ruscilli’s direct testimony in this docket is exactly the opposite of what
21 Mr. Ruscilli testified to in the Commission’s Key Customer Tariff Docket. The
22 hearing in the docket was held on February 27, 2003. On that day Mr. Ruscilli was

1 asked what BellSouth's policy was "regarding the sharing of wholesale information
2 with its retail division." See Supra Rebuttal Exhibit DAN-RT-1 (Hearing Transcript,
3 pg. 195). In response to this direct question Mr. Ruscilli stated the following:
4 "BellSouth's wholesale operations do not provide leads to its retail operations. Any
5 documentation used by BellSouth's retail operations to develop lists of former
6 customers that are potentially eligible for promotional offerings are obtained from
7 retail information sources - not wholesale sources." See pg. 195 of Ruscilli Direct
8 Testimony in Key Customer Tariff Docket. This statement does not include his new
9 modification that such wholesale information can be used to trigger marketing
10 retention efforts, so long as the marketing efforts are not initiated until after the
11 conversion is complete.

12 I will note the language I quoted from Mr. Ruscilli's direct testimony in the Key
13 Customer Tariff Docket is identical to the statement Mr. Ruscilli included in his
14 direct testimony in this docket. The two sentences, in this docket, can be found at the
15 bottom of page 4 and the top of page 5 of his direct testimony in this docket. The
16 substantive difference between his testimony in the Key Customer Tariff Docket and
17 this docket, however, is his new modification that it is legal to use carrier change
18 information exclusively derived from BellSouth's status as the executing carrier
19 because the marketing retention efforts do not begin until after the conversion is
20 completed.

1 **Q. IS MR. RUSCILLI THE PERSON WITH THE MOST KNOWLEDGE**
2 **OF HOW OPERATION SUNRISE ACTUAL FUNCTIONS?**

3
4 A. No. In another forum Supra had served BellSouth with a Federal Rules of Civil
5 Procedure 30(b)(6) Subpoena for deposition. A 30(b)(6) Subpoena requires the
6 opposing party to produce a witness with knowledge regarding the subject matter so
7 requested. In this case, the subject matter was Operation Sunrise. The witness
8 produced by BellSouth on June 7, 2002, was Mr. John A. Ruscilli. He was asked the
9 following questions:

10 Q Are you familiar with a program entitled Operation Sunrise?

11 A I heard the name for the first time yesterday.

12 Q In what context did you hear the name yesterday?

13 A Matt Brown, an associate of Ned here, asked me the same question you
14 just asked me.

15 Q I don't want to get into conversations between you and counsel. You
16 had a meeting with your counsel yesterday?

17 A Yes, and I heard that term for the first time, and I apologize.

18 Q You had not heard about that program Operation Sunrise prior to
19 yesterday; is that correct?

20 A No, sir, I had not.

21 Q Are you aware that BellSouth has such a program?

22 A Only to the extent that I was asked that question, but I don't know

1 anything about the program.

2 (Exhibit #DAN-RT-2, pg 105 – 106.)

3 Supra raised an objection with BellSouth that Mr. Ruscilli did not satisfy the
4 requirements of Rule 30(b)(6). BellSouth subsequently produced Ms. Michelle N.
5 Summers on October 9, 2003, in order to comply with the federal requirements of
6 Rule 30(b)(6). Ms. Summers is the director of BellSouth's Marketing Information
7 Support ("MKIS") group. This group is charged with, among other things, local
8 service win-back. MKIS is the group that actually utilizes the information that is
9 harvested from SOCS by the Harmonize feed. Mr. Ruscilli is proffered by
10 BellSouth, in this proceeding, as an expert on BellSouth's policies. But the issues
11 before the Commission involve BellSouth's actual practices - not policies - and how
12 the Harmonize feed actually works and what is done with the switch information
13 after it is removed from SOCS and sent to the MKIS marketing group.

14
15 **Q. DO YOU AGREE WITH MR. RUSCILLI'S DIRECT TESTIMONY, ON**
16 **PAGE 7, THAT AN INCUMBENT CARRIER CAN UTILIZE CARRIER**
17 **CHANGE INFORMATION SO LONG AS THE MARKETING RETENTION**
18 **EFFORTS DO NOT BEGIN UNTIL AFTER THE CONVERSION IS**
19 **COMPLETE?**

20
21 A. No. I do not agree with Mr. Ruscilli's interpretation. The FCC does allow
22 incumbents to use carrier-to-carrier information, but only after the incumbent's retail

1 division has “learned” of the conversion from an independent retail source that is
2 available throughout the retail industry and which is also available to competitors at
3 the same time. Let me explain.

4 The Florida Commission states on page 46 of Order No. PSC-03-0726-FOF-TP, that
5 “[t]he FCC made it clear that there is no prohibition against an ILEC initiating
6 retention marketing as long as the information regarding a customer switch is
7 obtained from independent retail means.” (Emphasis added). This Florida
8 Commission's conclusion is supported by a reference to FCC Order 99-223 in which
9 the FCC addresses this issue. FCC Order 99-223 78 reads in part: “. . . section
10 222(b) is not violated if the carrier has independently learned from its retail
11 operations that a customer is switching to another carrier . . . If the information about
12 a customer switch were to come through independent retail means, then a carrier
13 would be free to launch a ‘retention’ campaign under the implied consent conferred
14 by section 222(c)(1).” (Emphasis added).

15 The sole exception, to the outright prohibition, is therefore limited to circumstances
16 where a customer switch is learned from independent retail means.

17
18 **Q. DOES THE EXCEPTION ITSELF HAVE LIMITING LANGUAGE THAT**
19 **WOULD PROVIDE SOME CONCRETE PARAMETERS FOR THE SCOPE**
20 **OF THIS EXCEPTION?**

21
22 A. Yes. The FCC has clarified what it meant by the phrase “independent retail

1 means.” The Florida Commission incorporates by reference FCC Order No. 03-42,
2 27, on page 46 of Order No PSC-03-0726-FOF-TP. The language cited by this
3 Commission provides as follows: “We [the FCC] clarify that, to the extent that the
4 retail arm of an executing carrier obtains carrier change information through its
5 normal channels in a form available throughout the retail industry, . . .” (Emphasis
6 added). The clarifying language is quite specific. The carrier change information
7 that BellSouth obtains from Supra, and all other competitors, by virtue of its status
8 as the underlying wholesale network service provider cannot be used to trigger
9 marketing retention efforts. The only time such change, also known as conversion,
10 information can be used to trigger market retention efforts is if BellSouth’s MKIS
11 group can first learn of this switch “in a form available throughout the retail
12 industry.” My direct testimony includes testimony from BellSouth personnel,
13 supported by documentation, which demonstrates that the MKIS group first learns
14 of a change order through the Harmonize feed connected to SOCS – and not from
15 some outside independent source which compiles this data into a list in a form
16 available throughout the retail industry. In fact, it is impossible for another party to
17 learn this information so as to be able to make it available throughout the retail
18 industry unless that third party is informed of the change by either Supra or
19 BellSouth.

20 Supra makes no such notifications to any carrier.

21 If BellSouth’s MKIS group cannot obtain this information from “independent retail
22 means in a form available throughout the retain industry,” then BellSouth’s MKIS

1 group or any other in-house marketers are prohibited from targeting those customers.

2
3 **Q. MUST THE INDEPENDENT RETAIL INFORMATION THAT**
4 **BELLSOUTH SEEKS TO UTILIZE ALSO BE AVAILABLE TO**
5 **COMPETITORS AS WELL?**

6
7 A. Yes, carrier change information can only be considered to be derived from
8 independent retail means if competitors also have access to the same, or substantially
9 the same, information for use in their own marketing efforts.

10 Within the same paragraph in which the FCC clarifies that “independent retail
11 means” is limited to information obtained “in a form available throughout the retail
12 industry,” the FCC goes on to state the following: “Under these circumstances, the
13 potential for anti-competitive behavior by an executing carrier is curtailed because
14 competitors have access to equivalent information for use in their own marketing and
15 winback operations.” (Emphasis added). This quote can be found on page 47 of
16 Commission Order No. PSC-03-0726-FOF-TP.

17 This language does not necessarily mean that competitors must actually gain access
18 to that information before the information could be considered derived from
19 “independent retail means.” A fair reading of this statement, however, requires at a
20 minimum that wherever BellSouth obtains its carrier change information, that source
21 must also be a source that is available to competitors – whether actually accessed or
22 not - at the time BellSouth obtains the carrier change information. No competitor has

1 direct access on a nightly basis to BellSouth's Service Order Communication System
2 (SOCS). Accordingly, BellSouth cannot be obtaining the information it uses to
3 trigger marketing efforts, to win-back local voice customers, from an independent
4 retail source that is also available to competitors. This fact is undisputed.

5
6 **Q. WHAT ABOUT CAR AND CARE RECORDS? ARE THEY**
7 **"INDEPENDENT RETAIL MEANS"?**

8
9 A. Not at all. CARE and derivative records are a notice to IXC's that a local
10 exchange customer has changed their long distance provider. Such change can only
11 be affected by the LEC that "owns" the customer. Bellsouth cannot and will not
12 change the PIC on a Supra customer, even if requested by the customer of the IXC.
13 All IXC initiated PIC changes must be requested of Supra by the IXC. All customer
14 initiated PIC changes must be requested by the customer to Supra. Upon receipt of
15 such a request Supra must then issue an LSR requesting the change. Thus these
16 records are generated by the ALEC LSR and then fed to the long distance company
17 by BellSouth. It is a bit disingenuous for BellSouth to then claim that they buy back
18 the very same records BellSouth originally sold to the IXC as a result of the ALEC
19 LSR, and then maintain that such a record is "Independent."
20
21
22

1 **Q. HOW DID THE FCC AND THEREFORE THIS COMMISSION DEFINE**
2 **THE PHRASE “INDEPENDENT RETAIL MEANS” AS IT RELATES TO**
3 **BELLSOUTH’S MARKETING RETENTION EFFORTS?**

4
5 A. Commission Order No. PSC-03-0726-FOF-TP, incorporating the FCC decisions,
6 defined “independent retail means” to be information that BellSouth’s MKIS group,
7 or other in-house marketing apparatus, can obtain that (1) is in a form available
8 throughout the retail industry, and (2) competitors have access to this same
9 equivalent information for use in their own marketing and winback operations.
10 Competitors must have access to the information no later than the time in which
11 BellSouth obtains access to it.

12
13 **Q. THANK YOU FOR EXPLAINING THAT CUSTOMER CONVERSION**
14 **INFORMATION MUST BE DERIVED FROM “INDEPENDENT RETAIL**
15 **MEANS” BEFORE AN EXECUTING CARRIER CAN INITIATE**
16 **MARKETING EFFORTS. CAN YOU TELL ME IF THE FCC SET OUT A**
17 **SECOND CONDITION BEFORE AN EXECUTING CARRIER CAN**
18 **INITIATE MARKETING RETENTION EFFORTS?**

19
20 A. Yes, there is a second condition that must occur before the executing carrier can
21 initiate market retention efforts. This second condition is separate and distinct from
22 the first condition, which involved “where” the carrier change information must be

1 obtained from. The second condition involves “when” the marketing retention
2 efforts can begin.

3 The second condition can be found in the same previous sentence I quoted earlier in
4 my rebuttal testimony involving “where” the carrier change information must be
5 obtained before that independently secured information can be used in retention
6 efforts. The sentence can be found on the bottom of page 46 and top of 47 in Order
7 No. PSC-03-0726-FOF-TP, which reads in its entirety as follows: “We [the FCC]
8 clarify that, to the extent that the retail arm of an executing carrier obtains carrier
9 change information through its normal channels in a form available throughout the
10 retail industry, and after the carrier change has been implemented (such as in
11 disconnect reports), we do not prohibit the use of that information in executing
12 carrier’s winback efforts.” I emphasize the term “and.” This word is a conjunctive
13 term requiring those parties obligated to comply with this clarification to understand
14 that both conditions must be met before knowledge of the customer’s conversion can
15 be employed to initiate marketing retention efforts to regain that customer.

16
17 **Q. HOW IS THE PHRASE “DISCONNECT REPORTS” USED IN THE**
18 **CONTEXT OF THE FCC CLARIFICATION?**

19
20 A. The phrase is used to identify “when” the incumbent carrier, in this case
21 BellSouth, can begin to initiate its marketing retention efforts. The words
22 immediately following the conjunctive term - “and” - are very specific. It reads:

1 “after the carrier change has been implemented.” The plain import of the language
2 is that the FCC is setting a benchmark for the incumbents that the FCC, and in turn
3 this Commission, do not want any marketing retention efforts to begin before the
4 conversion process is complete.

5 This condition regarding “when” marketing retention efforts can begin, however,
6 does not obviate or negate the FCC’s legal requirement that carrier change
7 information (i.e. switch orders) may not be relied upon for marketing purposes,
8 unless BellSouth can first secure that customer change information from some
9 “independent retail means available throughout the retail industry that is also
10 available to competitors in an equivalent form.”

11 Mr. Ruscilli, in his direct testimony, also underlines the words “after the carrier
12 change has been implemented.” His direct testimony, however, draws the wrong
13 conclusion regarding the plain import of the sentence.

14 His direct testimony focuses on the claim that his underlined language permits
15 BellSouth to rely solely on carrier change information derived exclusively from
16 BellSouth’s status as the executing carrier (i.e. its wholesale operations), so long as
17 the marketing effort does not begin until after the customer’s conversion is complete.

18 This BellSouth conclusion eviscerates the FCC’s standard that such marketing
19 information must first be derived from independent retail means. To reach this
20 conclusion, Mr. Ruscilli has focused on the two words “disconnect reports” included
21 within the parentheses.

1 **Q. DO YOU AGREE WITH MR. RUSCILLI’S INTERPRETATION OF THE**
2 **TWO WORDS “DISCONNECT REPORTS” THAT ARE INCLUDED**
3 **WITHIN THE PARENTETICALS?**

4
5 A. No. I do not agree with Mr. Ruscilli’s direct testimony because it is contrary to
6 the plain reading of the FCC’s clarification. The FCC purposely uses parentheses
7 to set off the phrase “(such as in disconnect reports).” Parentheticals are used to
8 include an illustration for the general principle outside of a parenthetical. In this
9 case, the FCC is providing incumbent executing carriers an objective evidentiary
10 device for determining the demarcation point. The demarcation point establishes
11 “when” the change order “has been implemented.” To the extent that some
12 competitor brings an enforcement action claiming that the incumbent initiated market
13 retention efforts prior to the completion of the conversion, the incumbent in defense
14 can proffer an internal report, however characterized (i.e. disconnect reports),
15 identifying all of the carrier switches and the dates upon which those switches were
16 completed. Utilizing the disconnect report to refute a claim that BellSouth has begun
17 marketing efforts prior to the completion of the conversion, is separate and distinct
18 from the FCC condition that information regarding carrier change information must
19 first be learned from independent retail means, available throughout the retail
20 industry that is also available to competitors in a an equivalent form, before such
21 marketing efforts can begin.

1 **Q. IS IT YOUR POSITION THAT THE WORDS EMPHASIZED BY MR.**
2 **RUSCILLI SIMPLY ESTABLISH A DEMARCATION POINT?**

3
4 A. Yes. As I just stated, the language BellSouth seeks to rely upon does nothing
5 more than establish a demarcation point regarding “when” marketing retention efforts
6 can begin. Support for this plain reading of the language can be found in 28 of Order
7 03-42, found on page 47 of Commission Order PSC-03-0726-FOF-TP, which reads
8 as follows: “Executing carriers may not at any time in the carrier marketing process
9 rely on specific information they obtained from submitting carriers due solely to their
10 position as executing carrier.” (Emphasis added). This statement dovetails with and
11 substantively supports the FCC’s insistence that executing carriers seeking to market
12 to customers that have switched voice providers only utilize information regarding
13 a customer switch that is first secured from an independent retail source available
14 throughout the retail industry that is also available to competitors.

15 BellSouth documentation establishes, and Mr. Ruscilli’s direct testimony admits, that
16 the carrier change information that originates with its wholesale operations is filtered
17 so that BellSouth can market to the customers who have just switched to other
18 providers. The FCC language I quoted just a moment ago states clearly that this
19 carrier change information cannot be solely relied upon as the basis for targeting the
20 switched customer(s). Mr. Ruscilli offers no independent retail source for the
21 origination of the customer switch information. On the contrary, Mr. Ruscilli admits
22 that BellSouth utilizes a mechanical computerized feed to obtain the marketing

1 information. Accordingly, Mr. Ruscilli's direct testimony is substantive evidence,
2 alone, that BellSouth is violating Commission Orders, Section 364.01(4)(g), Florida
3 Statutes and 47 USC §222.

4
5 **Q. WHAT DID THE FCC MEAN BY THE PHRASE "WE DO NOT**
6 **PROHIBIT THE USE OF THAT INFORMATION?"**

7
8 A. The use of "that information" refers back to the information that is secured from
9 independent retail means. In examining the sentence relied upon by BellSouth the
10 FCC does include the phrase ". . . we do not prohibit the use of that information . .
11 ."

12 Let me identify, again, the sentence in its entirety which reads as follows: "We clarify
13 that, to the extent that the retail arm of an executing carrier obtains carrier change
14 information through its normal channel in a form available throughout the retail
15 industry, and after the carrier change has been implemented (such as in disconnect
16 reports), we do not prohibit the use of that information in executing carrier's winback
17 efforts."

18 After the parentheticals the FCC states specifically: "we do not prohibit the use of
19 that information . . ." The question that immediately leaps forth is "what
20 information?" Are we talking about (1) the carrier change information that must be
21 obtained from independent retail means in a form available throughout the retail
22 industry and also available to competitors in equivalent form from the same source

1 or (2) are we discussing, as claimed by BellSouth, the internal disconnect reports –
2 identifying the completion date, among other information, of a competitive switch
3 – exclusively derived from BellSouth status as the executing carrier.

4 The only reasonable conclusion that can be drawn from the operative phrase “that
5 information” is that the FCC was referring to the first of the two choices I have just
6 outlined.

7 This conclusion is evident from the very next sentence, of the FCC order,
8 immediately following the sentence including the words “that information.” The
9 FCC writes:

10 “This is consistent with our finding in the Second Report and Order that an executing
11 carrier may rely on its own information regarding carrier changes in winback
12 marketing efforts, so long as the information is not derived exclusively from its status
13 as an executing carrier.” (Emphasis added).

14 The key language in this sentence that reads: “so long as the information is not
15 derived exclusively from its status as an executing carrier.” This language dovetails
16 and strengthens the proposition that the “information” being referred to that can be
17 used is the independent retail information available throughout the retail industry that
18 is also available to competitors - and not the disconnect report simply setting out
19 “when” the customer conversion was completed.

20 Mr. Ruscilli’s direct interpretation is further undermined by the very next sentence
21 found in the same FCC paragraph included on page 47 of Order No.
22 PSC-03-0726-FOF-TP, which reads as follows:

1 “Under these circumstances [i.e. the circumstances where the incumbent is required
2 to obtain information on the customer switch from an independent retail source
3 available throughout the retail industry], the potential for anti-competitive behavior
4 by an executing carrier is curtailed because the competitors have access to equivalent
5 information for use in their own marketing and winback operations.” (Emphasis
6 added).

7 The language is straight forward, namely, that competitors must also have access to
8 the customer switch information in an equivalent form. Mr. Ruscilli’s direct
9 testimony totally ignores this legal pre-requisite in justifying his conclusion that
10 BellSouth can use carrier change information for marketing purposes, so long as the
11 marketing effort is initiated after the completion of the conversion. BellSouth’s
12 conclusion is wrong and their admitted practice is a violation of the law.

13 The disconnect report as described by Mr. Ruscilli that allegedly only tracks the dates
14 that a conversion or change order was completed is a report, by Mr. Ruscilli’s own
15 admission, that is derived exclusively from BellSouth’s status as the underlying
16 wholesale executing carrier. If BellSouth were able to use such a report to trigger
17 market retention efforts, then that act alone would emasculate and absolutely abolish
18 the FCC’s careful articulation and clarification that carrier change information
19 triggering marketing retention efforts must, without exception, be derived from
20 independent retail means in a form available throughout the retail industry that is also
21 available to competitors, in an equivalent form from the same source, for use in their
22 own competitive marketing efforts.

1 **Q. SHOULD THE COMMISSION ACCEPT MR. RUSCILLI'S**
2 **INTERPRETATION OF THIS COMMISSION'S ORDER?**

3
4 A. No. This Commission should reject Mr. Ruscilli's interpretation of the language
5 in Commission Order No. PSC-03-0726-FOF-TP. There is a rule of statutory
6 construction that provides that courts should disfavor interpretations of statutes, and
7 presumably Commission orders, that render the language superfluous and
8 meaningless. In this docket, should the Commission accept BellSouth's
9 interpretation of the FCC language, incorporated into Order No.
10 PSC-03-0726-FOF-TP, this Commission will in fact negate, undermine and make
11 meaningless the FCC's emphasis as well as the Commission's emphasis that
12 customer switch information used for market retention purposes must be derived
13 from independent retail means.

14
15 **Q. ON PAGES 4, LINE 23 THROUGH PAGE 5, LINE2, MR. RUSCILLI**
16 **TESTIFY THAT "ANY INFORMATION USED BY BELLSOUTH'S RETAIL**
17 **OPERATIONS TO DEVELOP LISTS OF FORMER CUSTOMERS THAT**
18 **ARE POTENTIALLY ELIGIBLE FOR PROMOTIONAL OFFERINGS ARE**
19 **OBTAINED FROM RETAIL INFORMATION SOURCES - NOT**
20 **WHOLESALE SOURCES." DO YOU AGREE WITH HIM?**

21
22 A. No, I do not agree with him. Again Mr. Ruscilli is mistaken to believe that when

1 BellSouth's marketing information support group is directly fed ALEC end user
2 change information from SOCS as the ALEC's LSR is processed by BellSouth's
3 OSS, that such information is not wholesale information, and therefore not obtained
4 through wholesale activities.

5 BellSouth is of the mindset that so long as wholesale information is fed to its retail
6 operations via mechanical feed (i.e. BellSouth's OSS) as opposed to BellSouth
7 personnel, that this "activity" - of sharing information between wholesale and retail
8 operations - is not in violation of Commission policies, as well as state and federal
9 law, with respect to the handling of wholesale information. Again the FCC is clear
10 as it reiterates that change information submitted by an ALEC in order to effectuate
11 end user conversion is proprietary to the ALEC and is subject to the protection of
12 CPNI pursuant to Section 222 of the Act. As noted by this Commission, the FCC
13 stated that:

14 We emphasize that when engaging in such [winback] marketing, an executing carrier
15 [i.e., BellSouth] may only use information that its retail operations obtain in the
16 normal course of business. Executing carrier [i.e. BellSouth] may not at any time in
17 the carrier marketing process rely on specific information they obtained from
18 submitting carriers due solely to their position as executing carriers. We reiterate our
19 finding in the Second Reconsideration Order that carrier change request information
20 transmitted to executing carriers in order to effectuate a carrier change cannot be used
21 for any purpose other than to provide the service requested by the submitting carrier.
22 (FCC 03-42, 28) (Emphasis added)

1 Indeed, according to 28, it is safe to conclude that an ALEC's LSR submitted to an
2 ILEC primarily for the purpose of converting an end user to that ALEC is considered
3 proprietary to the ALEC. Thus, any such use of CPNI information (information
4 extracted from an ALEC's LSR and fed to BellSouth's retail operation) is a violation
5 of Commission Orders, Section 364.01(4)(g), Florida Statutes, and Section 222 of the
6 Act.

7
8 **Q. ON PAGE 6, LINES 15 THROUGH 17, MR. RUSCILLI TESTIFIES**
9 **THAT: "THE INFORMATION BELLSOUTH'S RETAIL DIVISION USES**
10 **TO TARGET POSSIBLE "WINBACK" ACTIVITY IS OBTAINED FROM**
11 **THE RETAIL CUSTOMER'S RECORDS AFTER THE DISCONNECTION**
12 **OF THE RETAIL CUSTOMER'S BELLSOUTH LOCAL SERVICE." IS**
13 **THIS TRUE TO YOUR KNOWLEDGE? PLEASE EXPLAIN.**

14
15 A. No, this is not true. BellSouth's marketing information used to target local voice
16 customers is obtained exclusively from carrier change orders. Mr. Ruscilli's
17 testimony appears to suggest that its retail operations obtained its marketing
18 information from "retail" sources. But as I noted in my rebuttal testimony earlier, the
19 source of the marketing information must be derived from "independent retail
20 means" available throughout the retail industry that is also available to competitors.
21 Mr. Ruscilli's testimony does not meet this test. Oddly enough, Mr. Ruscilli seems
22 to make a distinction that if its retail operations obtain marketing data from internal

1 BellSouth “retail” records instead of internal BellSouth “wholesale” records, that
2 some how by taking this information from retail records BellSouth has met the
3 requirement that such information be derived from “independent retail means.”

4 There is no legal authority to substantiate this BellSouth theory.

5 Presumably, BellSouth believes that if its wholesale division “populates” its retail
6 records with a date that a switch order was completed, that the “retail” record some
7 how becomes “available” for use in marketing retention efforts. Under this theory,
8 however, the internal BellSouth “retail” record is still not available to other
9 competitors. Nor is it a record that is “available throughout the retail industry.” If
10 the information is not available to other competitors and is not available throughout
11 the retail industry, then it is not information that was obtained from independent
12 retail sources. The FCC was absolutely specific when it stated that competitors must
13 also have access to the same carrier change information in an equivalent form,
14 available throughout the retail industry, before the information can be considered to
15 obtained from “independent retail means. See Page 47 of Commission Order No.
16 PSC-03-0726-FOF-TP.

17 Although BellSouth insists that it is not using wholesale information in a manner that
18 violates Commission policy, Florida Statutes and Federal law, there is ample
19 documentation from BellSouth itself demonstrating otherwise. BellSouth’s
20 Operation Sunrise illustrates that as the ALEC’s LSR is processed for local service,
21 the change information is electronically fed directly to Operation Sunrise via SOCS
22 (an integral part of the BellSouth’s OSS that is utilized in processing ALECs’ LSRs).

1 My direct testimony, page 13, lines 5-12, outlines in detail that an ALEC LSR is
2 processed through two interfaces which provide edit formatting and translation of the
3 industry standard LSR format into that of a service order format that can be accepted
4 by the Service Order Communications Systems (“SOCS”) for further downstream
5 provisioning. Once an LSR is translated into a service order, page 12, lines 7-13, the
6 ALEC order and BellSouth retail order follow the same provisioning process. My
7 direct testimony – page 30, lines 29-39 and page 31, lines 1-3 - also demonstrates that
8 the Harmonize feed cannot distinguish between an ALEC order and a BellSouth
9 order.

10 The evidence is that SOCS cannot discriminate between a BellSouth retail order and
11 wholesale ALEC order. The law requires that BellSouth must maintain a firewall
12 between wholesale information and retail information. BellSouth does not maintain
13 that firewall. There is no authority to support BellSouth's contention that it may use
14 internal BellSouth retail records, populated with information from its wholesale
15 operation, to trigger marketing retention efforts. The retail division must learn of
16 carrier change information from independent outside sources. If the retail record
17 contains an entry that the customer switched his voice service on a certain date, this
18 information could not have been known but for BellSouth's status as the underlying
19 executing wholesale carrier. To allow BellSouth's theory to prevail is to undermine
20 and negate the entire prohibition preventing incumbents from utilizing wholesale
21 information to trigger market retention efforts.

22 BellSouth should not be utilizing a computerized feed to harvest wholesale

1 information for marketing purposes. This process is prohibited under the law.

2
3
4 **Q. ON PAGE 6, LINES 18 THROUGH 20, MR. RUSCILLI TESTIFIES THAT**
5 **“WHEN A BELLSOUTH END USERS’ LOCAL SERVICE IS**
6 **DISCONNECTED A “DISCONNECT REASON” CODE (“DCR”) IS**
7 **REFLECTED ON THE DISCONNECT ORDER. THIS DCR PROVIDES AN**
8 **INDICATION AS TO WHY THE END USERS’ SERVICE IS BEING**
9 **DISCONNECTED.” PLEASE COMMENT.**

10
11 A. This testimony reflects a practice that is utilized by BellSouth retail customer
12 service representatives (“CSRs”) who may process a disconnect order through RNS
13 (residential retail) or ROS (business retail). This testimony does not address switch
14 orders from ALECs. In those cases a DCR would not be entered by a BellSouth
15 retail CSR. This information would not, and could not, be entered by an ALEC as
16 the ATIS / OBF format LSR does not make any provision of fields wherein this
17 information is captured.

18 If a BellSouth customer representative did take an in-bound call from a retail
19 customer, that hypothetically informed the BellSouth CSR that the customer was
20 leaving to another competitor, then presumably the CSR could theoretically enter a
21 DCR stating that the customer was changing local providers, but only if the customer
22 was requesting that their service be disconnected (and inoperative) for a period before

1 the ALEC was able to provide service. This scenario is unrealistic and would almost
2 never happen. Virtually every customer that switches voice providers calls the newly
3 chosen local service provider directly. The competitor then submits an LSR. If
4 BellSouth has a “disconnect report” that reflects a category entitled “changing local
5 service providers” (i.e. page 6, line 22 Ruscilli testimony), then that category must
6 have been exclusively derived from BellSouth’s status as the executing wholesale
7 carrier. In either case, BellSouth has already acknowledged that the Harmonize feed
8 cannot distinguish between an ALEC order and a BellSouth order.

9 While Mr. Ruscilli may be correct that BellSouth retail CSRs have the ability to enter
10 a DCR for a customer switch where the information is learned from an in-bound call,
11 the reality is that in almost every switch the BellSouth retail CSR will not be in a
12 position to know of this information until informed of the switch by the ALEC.
13 Accordingly, the code will not be entered by the BellSouth retail CSR. As previously
14 noted, the only remaining source for the switch is the ALEC LSR and harvested
15 through the Harmonize feed.

16
17
18 **Q. DO YOU AGREE WITH MR. RUSCILLI, PAGE 5, LINES 11-15, WHEN**
19 **HE TESTIFIES THAT BELLSOUTH DOES NOT SHARE INFORMATION**
20 **WITH THIRD PARTIES?**

21
22 A. BellSouth’s own documentation – Supra Exhibit DAN9, bate stamp 001055 –

1 demonstrates that BellSouth harvests switch orders from SOCS on a nightly basis.
2 This information is then provided to outside third party vendors known as Letter
3 Shops. I have detailed prior BellSouth testimony in which the Director of the
4 Marketing Information Support group stated explicitly that: “We send information
5 from the Sunrise Table to outside vendors for the purpose of mailing direct mail
6 pieces. So they don’t – they are not able to go get. We push information to them.
7 Does that make sense?” See my direct testimony, page 29, lines 23-30.

8 The “Sunrise Table” resides in the Strategic Information Warehouse where all
9 information regarding every customer can be found. The Harmonize feed takes
10 carrier change order information from SOCS and populates the Sunrise Table. There
11 is a program that then executes off of that Table for local service win-backs. It is this
12 process that feeds the switch order information to the Marketing Information Support
13 group. Supra Exhibit DAN9, bate stamp 001055, demonstrates that every Friday the
14 switch order information is “pushed” out to the Letter Shop for the purpose of
15 mailing direct mailing pieces.

16 When the Director of the MKIS group was asked explicitly whether BellSouth
17 pushes data out to third parties related to local service win-back, she responded:
18 “Yes, we do.” This admission can be found on page 29, lines 33-37 of my Direct
19 Testimony.

20 The evidence demonstrates that BellSouth does indeed share its wholesale
21 information with its retail operations as well as with outside third party marketers.
22

1 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

2 Yes, this concludes my rebuttal testimony.

3

4

5

6 Exhibits

7 Supra Exhibit # DAN-RT-1 Direct Testimony of John A. Ruscilli – in Key
8 Customer Tariff Docket.

9 Supra Exhibit # DAN-RT-2 Deposition Testimony of John Ruscilli.

10

FURTHER AFFIANT SAYETH NAUGHT.

(Handwritten signature)
David Nilson

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STATE OF FLORIDA)

) ss:

COUNTY OF MIAMI-DADE)

SWORN to and subscribed before me this 24th day of July, 2003.

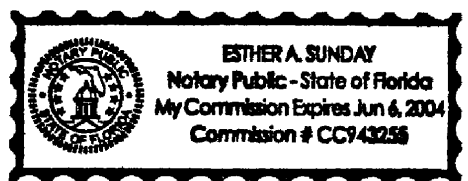
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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

PETITION FOR EXPEDITED REVIEW
AND CANCELLATION OF BELL SOUTH
TELECOMMUNICATIONS, INC.'S
KEY CUSTOMER PROMOTIONAL
TARIFFS AND FOR INVESTIGATION
OF BELL SOUTH'S PROMOTIONAL
PRICING AND MARKETING PRACTICES,
BY FLORIDA DIGITAL NETWORK, INC.

DOCKET NO. 020119-TP

PETITION FOR EXPEDITED REVIEW AND
CANCELLATION OF BELL SOUTH
TELECOMMUNICATIONS, INC.'S KEY
CUSTOMER PROMOTIONAL TARIFFS BY
FLORIDA COMPETITIVE CARRIERS
ASSOCIATION

DOCKET NO. 020578-TP

PETITION FOR EXPEDITED REVIEW AND
CANCELLATION OR SUSPENSION OF
BELL SOUTH TELECOMMUNICATIONS,
INC.'S KEY CUSTOMER TARIFF FILED
12/16/02 BY FLORIDA DIGITAL
NETWORK, INC. /

DOCKET NO. 021252-TP

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VOLUME 2
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FLORIDA PUBLIC SERVICE COMMISSION

1 PROCEEDINGS: HEARING
2
3 BEFORE: CHAIRMAN LILA A. JABER
4 COMMISSIONER J. TERRY DEASON
5 COMMISSIONER BRAULIO L. BAEZ
6 COMMISSIONER CHARLES M. DAVIDSON
7 COMMISSIONER RUDOLPH "RUDY" BRADLEY
8
9 DATE: Wednesday, February 19, 2003
10 TIME: Commenced at 9:35 a.m.
11 PLACE: Betty Easley Conference Center
12 Room 148
13 4075 Esplanade Way
14 Tallahassee, Florida
15
16 REPORTED BY: LINDA BOLES, RPR
17 Official FPSC Reporter
18 (850) 413-6734
19
20 APPEARANCES: (As heretofore noted.)
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I N D E X
WITNESSES

NAME: PAGE NO.

JOHN A. RUSCILLI

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Prefiled Rebuttal Testimony Inserted 199

CERTIFICATE OF REPORTER 228

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EXHIBITS

NUMBER:		ID.	ADMTD.
12	JAR-1 through JAR 3	151	
13	JAR-4 through JAR-7	153	

1 Q. WHAT IS BELLSOUTH'S POSITION REGARDING THIS ISSUE?

2

3 A. The Commission determined in its June 28, 2002 order in Docket No. 020119-TP,
4 that BellSouth is prohibited from sharing information with its retail division, such as
5 informing the retail division when a customer is switching from BellSouth to an
6 ALEC. (See FPSC Order No. PSC-02-0875-PAA-TP at page 21).

7

8 Q. WHAT IS BELLSOUTH'S POLICY REGARDING THE SHARING OF
9 WHOLESALE INFORMATION WITH ITS RETAIL DIVISION?

10

11 A. It is the policy of BellSouth to treat all Customer Proprietary Network Information
12 ("CPNI") and Wholesale Information in a confidential manner. Wholesale
13 Information is information that BellSouth has in its possession because it provides
14 services to other carriers that provide services to end user customers.

15

16 Further, it is the policy of BellSouth to limit disclosure and the use of CPNI and
17 Wholesale Information in a manner consistent with the requirements of the FCC
18 rules, Section 222 of the Act, and any applicable state or local requirement. All
19 employees of BellSouth who may have access to either CPNI or Wholesale
20 Information receive annual training with respect to the proper use of and access to
21 such information. It is against BellSouth policy for any employee or authorized
22 representative of BellSouth to misuse wholesale information. It is the policy of
23 BellSouth that no BellSouth personnel shall access any BellSouth IT system unless
24 that person has a legitimate and authorized business purpose for such access.
25 Without limitation, this means that BellSouth personnel are prohibited from "system

Docket No. 030349-TP
Supra Exhibit – DAN-RT-2

CONFIDENTIAL