

ORIGINAL

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July 25, 2003

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

Re: **030349-TP (Supra \$75 Cash Back Promotion)**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Strike Direct Testimony Exhibits, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

E. Earl Edenfield, Jr.

E. Earl Edenfield, Jr. (UA)

Enclosures

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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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
Electronic Mail and Federal Express this 25th day of July, 2003 to the following:

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E. Earl Edenfield, Jr.
E. Earl Edenfield, Jr. (KA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Supra)
Telecommunications and Information)
Systems, Inc. Regarding BellSouth's)
Alleged Use of Carrier to Carrier)
Information)

Docket No. 030349-TP

Filed: July 25, 2003

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO STRIKE DIRECT TESTIMONY EXHIBITS**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Motion to Strike certain exhibits attached to the Direct Testimony of David A. Nilson ("Nilson Exhibits") filed by Supra Telecommunications and Information Systems, Inc. ("Supra") on June 30, 2003. In support, BellSouth states the following:

1. In Order No. PSC-03-0718-PCO-TP ("Order"), issued on June 17, 2003, the Prehearing Officer (1) ordered the parties to submit direct testimony in this proceeding on June 27, 2003; and (2) identified the following issues to be addressed in this proceeding:

- a. Whether BellSouth can share carrier-to-carrier information, acquired from its wholesale OSS and/or wholesale operations, with its retail division to market to its current and potential customers?
- b. Whether BellSouth can use carrier-to-carrier information, acquired from its wholesale OSS and/or wholesale operations, to furnish leads and/or marketing data to its in-house and third party vendors?
- c. Has BellSouth shared and/or used carrier-to-carrier information, acquired from its wholesale OSS and/or wholesale operations, in its retail division, with its in-house marketers and/or third-party marketers for

marketing purposes? If such practices are improper, what penalties should be imposed?

2. BellSouth filed the direct testimony of John Ruscilli on June 27, 2003. Supra filed the direct testimony of David Nilson on June 30, 2003. On that same date, Supra filed a Motion for Leave to File Testimony One Day Late, which the Prehearing Officer granted on July 2, 2003 in Order No. 03-0786-PCO-TP.

3. Mr. Nilson's direct testimony consists of 36 pages and includes 19 identified exhibits encompassing over 1,000 pages.¹

4. Notwithstanding the voluminous nature of Mr. Nilson's testimony and exhibits, Mr. Nilson only substantively references 8 of the 13 attached exhibits in his direct testimony. Specifically, Mr. Nilson only refers to or addresses exhibits DAN # 2, 3, 4, 12, 13, 14, 17, and 18 in his testimony. Mr. Nilson makes no reference whatsoever to exhibits DAN # 1, 6, 7, 8, and 19.

5. Mr. Nilson, in the exhibit index attached to his direct testimony, describes (1) DAN # 2 as "'Old letter' Bates Stamped BST 18221 from Supra Exhibit # DAN 7; (2) DAN # 6 as "Competitive Landscape – Sunrise training material from Dick Anderson (Arb. V)"; (3) DAN # 7 as "BST response to RFI 5-15 and 5-16 (Arb. V)"; (4) DAN # 8 as "Operation Sunrise Program Overview Document"; and (5) DAN # 19 as "Deposition of Conrad Ponder 6/5/2002 (Arb V)." See Nilson Direct Testimony at 34-35.

6. The referenced exhibits should be stricken from Mr. Nilson's direct testimony for the following reasons. First, the very fact that Mr. Nilson fails to address these exhibits in his testimony is prima facie evidence that they are irrelevant to the

¹ While Mr. Nilson's direct testimony identifies 19 exhibits, exhibits DAN #5, 11, 15, and 16, for some unidentified reason, were intentionally left blank by Mr. Nilson.

issues at hand. Clearly, if the exhibits were germane to Supra's case, Mr. Nilson would have referenced them in his testimony. Second, BellSouth will be prejudiced by being forced to respond to and defend against exhibits without knowing the purpose of the exhibits and how Mr. Nilson intends to use them to support his testimony. BellSouth should not be required to speculate as to why Mr. Nilson has included certain exhibits to support his testimony. Third, it appears that Supra has used Mr. Nilson's testimony as the proverbial "kitchen sink" to get information into the record of this proceeding. Such an attempt is improper as the purpose of pre-filed direct testimony is to refine and expedite the hearing process by introducing testimony and exhibits in support of a parties' position prior to the hearing of a matter. It should not be used as a means to get any and all evidence a party wishes to use in a hearing into the record, when that information is not referenced or even addressed in the underlying testimony.

7. For these reasons, the Florida Public Service Commission ("Commission") should strike the following exhibits from Mr. Nilson's direct testimony: DAN # 1, 6, 7, 8, and 19.

Respectfully submitted this 25th day of July 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

NANCY B. WHITE (CA)

JAMES MEZA

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