

ORIGINAL

Legal Department

JAMES MEZA III
Attorney
BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5561

September 30, 2003

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

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

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence, 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,

James Meza III

James Meza III

(KA)

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 30th day of September, 2003 to the following:

Linda Dodson
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6216
Fax No. (850) 413-6217
ldodson@psc.state.fl.us

Adenet Medacier, Esq.
Jorge L. Cruz-Bustillo, Esq,
Legal Department
Supra Telecommunications and
Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, Florida 33133
Tel. No. (305) 476-4240
Fax. No. (305) 443-9516
amedacier@stis.com
jorge.cruz-bustillo@stis.com

Ann Shelfer, Esq.
Supra Telecommunications and
Information Systems, Inc.
1311 Executive Center Drive
Koger Center - Ellis Building
Suite 200
Tallahassee, FL 32301-5027
Tel. No. (850) 402-0510
Fax. No. (850) 402-0522
ashelfer@stis.com



James Meza III (JCA)

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: September 30, 2003

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
BRIEF OF THE EVIDENCE**

NANCY B. WHITE
JAMES MEZA III
150 West Flagler Street
Suite 1910
Miami, Florida 33130
(305) 347-5558

R. DOUGLAS LACKEY
E. EARL EDENFIELD JR.
675 West Peachtree Street
Suite 4300
Atlanta, Georgia 30375
(404) 335-0763

ATTORNEYS FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

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STATEMENT OF BASIC POSITION AND FACTS

This Complaint concerns Supra Telecommunications and Information Systems, Inc.'s ("Supra") attempt to prevent BellSouth Telecommunications Inc. ("BellSouth") from competing for customers in Florida.¹ It represents a classic example of a Competitive Local Exchange Company ("CLEC") stating that it wants competition but only if BellSouth cannot compete. BellSouth attempts to compete by identifying and marketing to former BellSouth customers through a computer software program of activities called Operation Sunrise ("Operation Sunrise" or "Sunrise"). Sunrise has three basic components: (1) identification and marketing to former BellSouth local toll customers; (2) identification and marketing to former BellSouth local service customers; and (3) product/feature marketing to current BellSouth retail customers. Tr. at 320. According to Supra, the use of Sunrise to perform these tasks violates federal and state law. Supra is wrong for the following reasons.

Winback Efforts Benefit Florida Consumers

As an initial matter, this Commission has already determined in In re: Petition for Expedited Review and Cancellation of BellSouth Telecommunications, Inc.'s Key Customer Tariffs, Docket No. 020119-TP, Order No. PSC-03-0726-FOF-TP, June 19, 2003 (Key Customer Order) that winback efforts benefit Florida consumers. See Order No. PSC-03-0726-FOF-TP at 40. In support of this finding, the Commission cited to In the Matter of Implementation of the Telecommunications Act of 1996, FCC Order 99-223 (Sept. 3, 1999), wherein the Federal Communications Commission ("FCC") held:

¹ BellSouth submits this brief in accordance with the Prehearing Order issued on August 11, 2003 (Order No. PSC-03-0922-PHO-TP), which provides for a 40 pages limit for post hearing statements.

Winback facilitates direct competition on price and other terms, for example, by encouraging carriers to “out bid” each other for a customer’s business, enabling the customer to select the carrier that best suits the customer’s needs.

Some commenters argue that ILECs should be restricted from engaging in winback campaigns, as a matter of policy, because of the ILEC’s unique historic position as regulated monopolies. Several commenters are concerned that the vast stores of CPNI gathered by ILECs will chill potential local entrants and thwart competition in the local exchange. We believe that such action by an ILEC is a significant concern during the time subsequent to the customer’s placement of an order to change carriers and prior to the change actually taking place. . . . However, once a customer is no longer obtaining services from the ILEC, the ILEC must compete with the new service provider to obtain the customer’s business. **We believe that such competition is in the best interest of the customer and see no reason to prohibit ILECs from taking part in this practice.**

Because winback campaigns can promote competition and result in lower prices to consumers, we will not condemn such practices absent a showing they are truly predatory.

FCC Order 99-32 at ¶¶ 68-70 (emphasis added). Contrary to the FCC’s express finding authorizing ILECs to compete for former customers, Supra’s Complaint is a calculated effort to prohibit BellSouth from competing and providing Florida consumers with choices and lower prices.²

Operation Sunrise Allows BellSouth to Compete

² Indeed, Supra’s real motivation in filing this Complaint is to obtain access to Operation Sunrise so that it can market to BellSouth’s former local service customers. See Tr. at 170-72; Exhibit 5 (Vol. II) at 70, lines 15-25; 71, lines 1-4. In light of this motivation, Mr. Nilson’s attempt to bring this Complaint on behalf of the “people of Florida” rings hollow. See Tr. at 130 (“We ask you to look past these feeble defenses and rule in favor of the people of Florida, and forever bar BellSouth from using data feeds from its wholesale operations to its marketing department in any present or future form.”).

A cursory review of the Complaint and Supra's testimony reveals that Supra is primarily complaining about BellSouth's local service reacquisition efforts through Operation Sunrise. As stated above, Sunrise identifies and markets to former BellSouth retail customers who leave BellSouth's retail network presumably to go to a competitor. Importantly, winback efforts are not unique to BellSouth as Supra admits that it has conducted winback activities in the past.³ Tr. at 136. Indeed, Mr. Nilson, Supra's sole witness, testified that he believed that it is important that carriers contact former customers and try to win them back.⁴ Id.

With Operation Sunrise, BellSouth does not know the identity of the customer's new service provider or what services he or she is receiving from the new provider. Tr. 198. All BellSouth knows is that it lost a retail customer and that it wants the customer back. This is no different than The Miami Herald attempting to winback a customer who cancelled his subscription to go to The Sun-Sentinel or has simply ceased subscribing to any newspaper. The Miami Herald does not know where or why the customer is no longer purchasing its service, just that it lost a customer. BellSouth's identification and marketing efforts through Operation Sunrise are no different.

³ At the hearing, Mr. Nilson attempted to recant his previous deposition testimony regarding Supra's past winback efforts. See Tr. at 131-34. However, on cross-examination and in responding to questions from Commissioner Davidson, Mr. Nilson confirmed his previous testimony regarding Supra's previous winback efforts. Tr. at 134-35.

⁴ Supra also believes that marketing efforts in general are important as it has implemented outbound telemarketing calls to solicit new customers in the past 60 days. See Tr. at 136. Supra employees located outside of the United States perform these outbound marketing activities. Id. Mr. Nilson could neither confirm nor dispute that Supra currently has 1,200 employees located in call centers outside of the United States. Id.

To fully understand the fallacy of Supra's argument, a brief description of Operation Sunrise is necessary. As an initial matter, there are currently two "sweeps" in Operation Sunrise: (1) a presumed competitive disconnect sweep,⁵ and (2) a noncompetitive disconnect sweep.⁶ Tr. at 344. The two "sweeps" initially operate in the same fashion but have subtle differences downstream. Nonetheless, both sweeps use disconnect service order information contained in the Service Order Communication System ("SOCS"). The information contained in SOCS results from either a BellSouth retail service order or a CLEC-initiated Local Service Request ("LSR"). Tr. at 325. The service order information contained in SOCS, which is used in Operation Sunrise, is also provided to BellSouth's retail operations to update CRIS so that retail knows that it lost a customer. Tr. at 142. Supra **concedes** this fact:

- Q. But you would agree that both Operation Sunrise and the notification to CRIS originate from service orders that reside in SOCS?
- A. I would agree to that.

Tr. at 142.

Each night, SOCS creates an extract file of all orders from the preceding 24-hour period and posts this information to a mainframe repository, which resides in a computer environment separate from the Strategic Information Warehouse ("SIW"). Tr.

⁵ BellSouth presumes that all information extracted in the competitive disconnect sweep resulted from a competitive loss, because it does not know for a fact that the information remaining after the sweep actually represents a competitive disconnect. This is so because, as stated by Mr. Wolfe, "there are more disconnect reason codes that exist than what is in [the] list" of noncompetitive disconnect reason codes that BellSouth excludes in the first "sweep." Tr. at 362-63; see also, Tr. at 365.

⁶ As testified by Mr. Wolfe, the second "sweep" began in May 2003. Tr. at 381. Although it began in May 2003, BellSouth pulled data related to the second "sweep" back to January 2003.

at 326. Using the Harmonize feed, various types of orders – including retail and wholesale disconnect orders and orders of other types – are taken from the extract file and downloaded into a database on the SIW called the Harmonize database, which is separate from the Sunrise database on the SIW. Id. Up to this point, the first and second “sweeps” operate in substantially the same manner.

For the first “sweep” or the presumed competitive disconnect sweep, Operation Sunrise, once each week, downloads only the completed residential orders from the preceding seven days from the Harmonize database and inputs that information into a Sunrise temporary table.⁷ Id. Sunrise then eliminates all orders except disconnect (“D”) and change (“C”) orders. Next, Sunrise eliminates from the temporary table those orders that do not have disconnect reason codes and those orders that have certain noncompetitive disconnect reason codes.⁸ Tr. at 327.

Operation Sunrise then pulls only the following information into the permanent Sunrise table: **NPA, NXX, the line,⁹ the customer code,¹⁰ and the date the data was extracted from SOCS.**¹¹ Id. Following this step, the temporary table is then purged

⁷ Operation Sunrise actually begins at this point. See Tr. at 369.

⁸ For a description of the various retail initiated noncompetitive disconnect reason codes, see Exhibits 3 and 14.

⁹ The NPA, the NXX, and the line comprise a ten-digit telephone number.

¹⁰ The customer code is a BellSouth “system generated code that becomes part of the [ac]count” for a particular end user. Tr. at 285. As testified by Mr. Pate, BellSouth uses the customer code for billing purposes. Tr. at 288. Further, a CLEC does not enter a customer code on its LSR; rather, the customer code is electronically assigned in SOCS. Tr. at 287. Consequently, there is nothing about the customer code that constitutes wholesale or carrier-to-carrier information. Rather, it is an internal BellSouth processing code that assists BellSouth in billing.

¹¹ By limiting the information extracted from the temporary table to the permanent table to the NPA, NXX, line, customer code, and date extracted, BellSouth ensures that no wholesale or carrier-to-carrier information is used in Operation Sunrise to identify and market to former local service customers. This practice is consistent with BellSouth’s

completely. Id. “At this point, all information contained in the disconnect order than even arguably could be considered CPNI or wholesale information is gone.” Id. As succinctly stated by Mr. Wolfe, “you don’t have order[] information, you don’t have disconnect reason codes . . .” Tr. at 375. Then, using the limited data in this permanent Sunrise table, Operation Sunrise attempts to match the information in the permanent table with a snapshot of BellSouth’s customer service records from CRIS. Id. These records “show[] the last information BellSouth had concerning the customer’s name, address, and subscribed to services while the customer was a BellSouth customer.” Id. If there is a match and a customer is identified, Operation Sunrise forwards the information to third-party vendors for marketing purposes. Id.

Once the first “sweep” is completed, Operation Sunrise conducts a second “sweep” of the Harmonize database for noncompetitive disconnects. Tr. at 344. Specifically, Operation Sunrise pulls from the Harmonize database completed D orders containing certain retail-initiated noncompetitive disconnect reason codes, such as NF (No Further Activity), CO (Competition), and AS (Abandoned Station). Tr. at 345. “All of these [noncompetitive disconnect reason codes] were previously excluded in the first sweep addressing assumed competitive disconnects.” Id.

Once identified, Sunrise extracts the selected D orders and places them in the empty temporary table and then extracts the following limited information into the

training documents, which state that (1

. . . .” See Nilson Direct Testimony, Exhibit 8 at Bates Number 000144. By stripping any competitive disconnect reason codes during the Sunrise filtration process, BellSouth guarantees that Sunrise complies with its own internal procedures and safeguards regarding carrier-to-carrier information.

permanent Sunrise table: retail noncompetitive disconnect reason code, the NPA/NXX and line, customer code, and the date the information was extracted. Id. The temporary table is then purged, and, as with the first “sweep”, Sunrise attempts to match the information in the permanent table with the CRIS snapshot. If there is a match, the information is provided to third-party vendors to generate marketing leads. Id.¹² Thus, in both of the “sweeps”, Operation Sunrise refines and filters service order information (retail-initiated and CLEC LSR-initiated) to exclude anything that can arguably be considered carrier-to-carrier information.

Supra Can Do It But BellSouth Cannot

Supra’s basic position is that, pursuant to FCC Order 99-223 and its Order in In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, FCC Order 03-42 (March 17, 2003), BellSouth is prohibited from using service order information generated from a CLEC LSR to identify a lost retail customer, even though that same information is provided to BellSouth’s retail operations to update CRIS. Tr. at 146. According to Supra, BellSouth can only use “commercially available information in a form available throughout the retail industry” or information that BellSouth learns of through an “independent retail means” to identify potential reacquisition targets. See Tr. at 147-48; 155. However, Supra readily admits that these Supra-created requirements do not exist in the applicable orders or apply only to retention marketing, which is distinct from winback marketing. See Tr. 149; 156-67. At its essence, Supra’s interpretation of the applicable FCC Orders results in a finding that BellSouth can never use disconnect information for

¹² Supra considers the second “sweep” as not being “central or relevant to this

winback purposes. As will be established below, Supra's interpretation defies the FCC's express language and renders its findings and conclusions meaningless.

Underscoring the absurdity of Supra's argument, Supra admits that, under its interpretation of the FCC's Orders, Supra can use disconnect information – information that BellSouth provides – for winback purposes but BellSouth cannot.

Q. Under your interpretation of the applicable FCC rules and orders, Supra can use the fact that it received notice that it lost a customer for winback purposes, but BellSouth can't, is that correct?

A. Yes. I do not see that the FCC places any restriction on Supra such as it has placed on BellSouth.

Tr. at 147. This interpretation cannot be what the FCC intended with FCC Order 03-42 and 99-223 as it would undermine the FCC's and this Commission's express findings regarding the competitive benefits of winback activities and results in the complete suppression of effective competition in Florida.

Supra Gets More Information and Supra Gets It Faster

Moreover, Supra conveniently fails to inform this Commission that Supra receives more information regarding the disconnection of former Supra local service customers than BellSouth obtains through Operation Sunrise and that Supra receives it faster. Specifically, through the PMAP Line Loss Report, BellSouth, on a daily basis, provides Supra with the name, date, and telephone number of a customer that left Supra to go to a competitor.¹³ See Tr. at 137-38; Exhibit 11. In contrast, BellSouth, on

proceeding." Tr. at 17.

¹³ Mr. Nilson testified that Sprint (ILEC) does not provide Supra with a report similar to the PMAP Line Loss Report. Tr. at 151. This fact highlights Supra's motivation in filing the instant Complaint: Supra is not concerned about the purported anticompetitive effects of Operation Sunrise; rather, Supra wants to prevent BellSouth from competing.

a weekly basis, receives the telephone number, customer code and date of former local service customers assumed (but not known) to be competitive losses through Operation Sunrise.

The Commission should reject Supra's attempt to prevent BellSouth from competing in Florida. Supra's "house of cards" arguments fail because (1) Supra gets more information than Operation Sunrise provides and Supra gets it faster; (2) Supra engages in winback efforts and considers winback activities important; (3) Supra admits that it can use disconnect information to market to former customers but BellSouth cannot; and (4) Supra's interpretation of the applicable law is absurd, illogical, and renders the FCC's orders and findings useless.

STATEMENT ON THE COMMISSION'S JURISDICTION

With its Complaint, Supra requests that the Commission find that BellSouth has violated 47 U.S.C. § 222(b) and that, as a result of this purported violation, "fine and/or revoke BellSouth's certificate" See Complaint at 11. Section 222(b) of the Telecommunications Act of 1996 provides:

CONFIDENTIALITY OF CARRIER INFORMATION -- A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

See 47 U.S.C. 222. As established below, the Commission does not have subject matter jurisdiction to determine if BellSouth is in violation of 47 U.S.C. § 222(b).

**The Commission Does Not Have
Unbridled Authority under State Law**

In order to hear and determine a complaint or petition, a court or agency must be vested not only with jurisdiction over the parties, but also with subject matter jurisdiction to grant the relief requested by the parties. See Keena v. Keena, 245 So. 2d 665, 666 (Fla. Dist. Ct. App. 1971). Subject matter jurisdiction arises only by virtue of law – it must be conferred by constitution or statute and cannot be created by waiver or acquiescence. Jesse v. State, 711 So. 2d 1179, 1180 (Fla. 2nd Dist. Ct. App. 1998). This Commission, therefore, must dismiss a complaint or a petition to the extent that it asks the Commission to address matters over which it has no jurisdiction or to the extent that it seeks relief that the Commission is not authorized to grant. See, e.g., Order Granting Motion to Dismiss (PSC-01-2178-FOF-TP) in Docket No. 010345-TP (Nov. 6, 2001) (granting BellSouth’s Motion to Dismiss AT&T’s and FCCA’s Petition for Structural Separation because “the Petitions fail to state a cause of action upon which relief can be granted. Namely, we have neither Federal nor State authority to grant the relief requested, full structural separation.”); Order Denying Complaint and Dismissing Petition (PSC-99-1054-FOF-EI) in Docket No. 981923-EI (May 24, 1999) (dismissing a complaint seeking monetary damages against a public utility for alleged eavesdropping, voyeurism, and damage to property because the complaint involved “a claim for monetary damages, an assertion of tortious liability or of criminal activity, any and all of which are outside this Commission’s jurisdiction.”).

Unlike a court, the Commission has a limited scope of authority as the Legislature has never conferred upon the Commission any general authority to regulate public utilities, including telephone companies. See City of Cape Coral v. GAC Util., Inc., 281 So. 2d 493, 496 (Fla. 1973). Instead, “[t]he Commission has only those powers

granted by statute expressly or by necessary implication.” See Deltona Corp. v. Mayo, 342 So. 2d 510, 512 n.4 (Fla. 1977); accord East Central Regional Wastewater Facilities Oper. Bd. v. City of West Palm Beach, 659 So.2d 402, 404 (Fla. 4th Dist. Ct. App. 1995) (noting that an agency has “only such power as expressly or by necessary implication is granted by legislative enactment” and that “as a creature of statute,” an agency “has no common law jurisdiction or inherent power . . .”).

Moreover, any authority granted by necessary implication must be derived from fair implication and intendment incident to any express authority. See Atlantic Coast Line R.R. Co. v. State, 74 So. 595, 601 (Fla. 1917); State v. Louisville & N. R. Co., 49 So. 39 (Fla. 1909). Finally, “any reasonable doubt as to the existence of a particular power of the Commission must be resolved against it.” State v. Mayo, 354 So. 2d 359, 361 (Fla. 1977). For the reasons discussed below, Supra cannot demonstrate that the Commission has the authority to grant the relief Supra requests.

As can be seen by a cursory review of Chapter 364, Florida Statutes, the Legislature has not granted the Commission any authority to regulate, interpret, or enforce federal law regarding a carrier’s use of “wholesale information” for marketing purposes. In fact, Chapter 364 is silent on this issue. Consequently, the Commission does not have any authority under state law, either express or implied, to resolve Supra’s Complaint regarding purported violations of Section 222(b) of the Act. See Deltona Corp., 342 So. 2d at 512 n.4 (Fla. 1977).

**Federal Law Does Not Provide
the Commission with Jurisdiction**

Additionally, the Commission does not have any authority under federal law to resolve Supra’s allegations concerning Section 222(b) violations, because the instant

Complaint is not a Section 252 arbitration proceeding; rather, it is an enforcement proceeding. Indeed, while the Commission has authority under Section 252 to interpret and resolve issues of federal law in arbitration proceedings, the Act does not grant the Commission any authority to resolve and enforce purported violations of Section 222(b) of the Act. See e.g., 47 U.S.C. § 251; In re: Petition of AT&T Communications of the Southern States, Inc., Docket No. 000731-TP, Order No. PSC-01-1402-FOF-TP at 22 (describing in detail the scope of the Commission’s authority in Section 252 arbitration proceedings). Simply put, because this is not a Section 252 arbitration proceeding, the Commission is not and cannot act as a “deputized federal regulator.” Accordingly, the Commission should dismiss Supra’s Complaint because the FCC and not this Commission is the appropriate forum to resolve the alleged Section 222(b) violations, especially when as here the issues to be decided are solely limited to the interpretation and enforcement of FCC rules and orders.

**Prior Commission Decisions Do Not
Provide the Commission with Jurisdiction**

Undoubtedly, Supra will argue that the Commission’s recent decision in Order No. PSC-03-0578-FOF-TP (“AT&T Slamming Order”) in Docket No. 030200-TP denying Supra’s Motion to Dismiss AT&T’s slamming complaint is dispositive of the issue. In that decision, Supra attempted to argue that the Commission did not have jurisdiction to “enforce an FCC statute.” See Supra’s Motion to Dismiss at 27. The Commission rejected Supra’s argument and determined that “under Section 364.01, Florida Statutes, we have jurisdiction to review conduct that is alleged to violate an FCC rule if such violation could be deemed anticompetitive behavior under Florida law.” See Order No. PSC-03-0578-FOF-TP.

BellSouth does not dispute the Commission's rationale in the AT&T Slamming Order – that it has the authority to review conduct that violates federal law if that conduct can also be deemed to be anticompetitive behavior under Florida law. But, such a finding does not translate into a determination that the Commission has subject matter jurisdiction to find that BellSouth has actually violated federal law.

Furthermore, the Commission's Key Customer Order does not require a different conclusion. In that decision, the Commission held that BellSouth is prohibited from sharing wholesale information with its retail operations. See Order No. PSC-03-0726-FOF-TP at 47. This holding does not support a finding that the Commission has jurisdiction to determine that BellSouth is in violation of Section 222(b) of the Act. Rather, it supports a finding that, for anticompetitive purposes, BellSouth is generally prohibited from sharing wholesale information between its retail and wholesale operations, which is consistent with the Commission's grant of authority under Florida law as well as with the pronouncements of the FCC.

Supra Presented No Evidence of Anticompetitive Behavior

Even if the Commission's inquiry is limited to an anticompetitive behavior inquiry, Supra's Complaint fails. Specifically, Supra's "jurisdictional hook" in this case is that the Commission has jurisdiction to resolve this Complaint pursuant to Section 364.01(g), Florida Statute, which provides that the Commission has jurisdiction to prevent anticompetitive behavior. Supra claims, without any evidence in support, that BellSouth is engaging in anticompetitive behavior through Operation Sunrise. However, Supra made a conscious decision not to provide evidence of a single customer leaving Supra to return to BellSouth as a result of Operation Sunrise:

- Q. Yes, sir. Supra did not present any evidence in this proceeding that Supra has, in fact, lost any customer as a result of Operation Sunrise, has it?
- A. No, sir. We made the decision going into this case that since the Public Service Commission was unable to award damages, that would not be a fundamental portion of our case.

Tr. at 140.

Further, Supra admitted on cross-examination that it has prepared reports that show why customers leave Supra, and Supra cannot tell from these reports if a particular customer left Supra to return to BellSouth. Id. Supra also admits that Supra loses customers because customers move or because of Supra's billing problems. Tr. at 140-41. In sum, there is absolutely no evidence of anticompetitive behavior in the record of this proceeding. Hypothetical claims of anticompetitive behavior based upon innuendo and Supra created conspiracy theories is insufficient to invoke the jurisdiction of this Commission. Accordingly, the Commission should dismiss Supra's Complaint.

Any Decision Must Be Consistent with Federal Law

Nevertheless, assuming arguendo that the Commission has jurisdiction to resolve Supra's Complaint regarding alleged violations of Section 222(b), the Commission is prohibited from making any findings that conflict with federal law. See Order No. PSC-01-1402 at 22; 47 U.S.C. § 252(e). In fact, the FCC expressly recognized this limitation in FCC Order 03-42, wherein it held that "our decision here is not intended to preclude individual State actions in this area that are consistent with our rules." FCC Order 03-42 at ¶ 28. Accordingly, to the extent the Commission finds it has jurisdiction under federal or state law to resolve Supra's Complaint, any decision must be consistent with the rules and orders of the FCC. And, no previous Commission

decision, including the Key Customer Order,¹⁴ can be used as a vehicle to support a finding contrary to the rules and regulations previously established by the FCC.

STATEMENT OF POSITION ON THE ISSUES

Issue 1: 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?

Position: ****BellSouth cannot share wholesale information with its retail operations; however, Operation Sunrise does not use wholesale information in identifying and marketing to former customers. Rather, Sunrise uses the fact that BellSouth lost a retail customer, which the retail operations learn of through the ordinary course and through their normal channels.***

Wholesale information or carrier-to-carrier information is information that BellSouth has in its possession because it provides wholesale services to other telecommunications carriers. See 47 U.S.C. § 222(b), (c). Under Section 222(b), BellSouth is prohibited from using information received from a carrier so that a telecommunications service can be provided to that carrier for any purpose other than providing service to the carrier. On the other hand, information generated by BellSouth in the course of providing telecommunications service to the carrier is CPNI, covered by Section 222(c). This information can only be used consistent with the CPNI rules. Wholesale information or carrier-to-carrier information covered by Section 222(b) includes the identity of a carrier to which BellSouth will provide telecommunications services and the fact that an order has been issued and is pending that would result in

¹⁴ Based on argument Supra made at the hearing, BellSouth anticipates that Supra will argue that the Key Customer Order can support a finding that Operation Sunrise violates state law even if Sunrise complies with federal law. For the reasons discussed above, however, if the Commission finds that Sunrise complies with federal law then it cannot reach any other decision under state law.

the change of providers from BellSouth to another local service provider. See FCC Order 99-223 at ¶ 1; Key Customer Order at 44; 47 U.S.C. § 222(b).

BellSouth understands and appreciates the applicable prohibitions imposed upon it regarding wholesale information and takes its responsibilities seriously.¹⁵ For instance, as testified by Mr. Ruscilli, “[i]t is BellSouth’s policy to limit disclosure and the use of CPNI and ‘wholesale information’ in a manner consistent with the requirements of the FCC’s rules, Section 222 of the [Act] and any applicable state or local requirement.” Tr. at 197. Further, all employees of BellSouth who have access to CPNI or wholesale information receive annual training on the limitations of the use of this information, and it is against BellSouth’s policy for any employee or representative of BellSouth to misuse this information. Id. Likewise, it is BellSouth’s policy to limit access to any “BellSouth Information Technology (“IT”) system unless that person has a legitimate and authorized business purpose for such access.” Id. BellSouth implemented all of these policies and safeguards to ensure that it complies with the applicable regulatory restrictions on the use of wholesale or carrier-to-carrier information. Tr. at 197. And, the Commission has already reviewed these policies and determined that BellSouth “has the appropriate policies in place.” See Order No. PSC-03-0726-FOF-TP at 47.

Contrary to Supra’s assertions, Sunrise is not designed to and in fact does not result in the use of wholesale information or carrier-to-carrier information to identify

¹⁵ Ms. Summers, the former director of the Marketing Information Support Organization (“MKIS”), echoed these sentiments on the stand: “I just want to assure you today that MKIS takes BellSouth’s policy relative to CPNI and the instructions prohibiting the use of wholesale data very seriously. We take measures to ensure that every member of

potential local service reacquisition customers.¹⁶ Rather, Operation Sunrise's reacquisition efforts are based on the fact that a former BellSouth retail customer has **actually** disconnected service from the BellSouth retail network. See Tr. at 342. "[O]peration Sunrise does not identify the customer's new carrier or the services the customer will receive from the new carrier." Tr. at 198. Further, it is only triggered after a disconnect order has completed. Tr. at 311. Indeed, Supra admits that the service order information that is used in Sunrise has to move to the temporary table and then the permanent table before a marketing lead can even be considered. Tr. at 141. In light of this concession and the undisputed facts regarding the specific information that makes it into the permanent Sunrise table (NPA, NXX, Line, customer code, and date extracted), it is clear that BellSouth is not providing wholesale information to its retail operations.

Moreover, the information collected and organized by Operation Sunrise is less complete and provided less frequently than the information that Supra receives from BellSouth through the PMAP Line Loss Report. Specifically, the PMAP Line Loss Report is provided daily to Supra and contains the date, name, and telephone number of the former Supra local service customer. See Tr. at 137-38; Exhibit 11. In contrast, Operation Sunrise, on a weekly basis, only identifies the telephone number, date extracted, and customer code of former BellSouth's customers. See Tr. at 326; 343-44. Supra does not dispute this fact. Tr. at 152. In addition, Supra admits that the

MKIS has received CPNI training, and in addition to training we have mechanized measures in which we protect information." Tr. at 341.

¹⁶ The limited coding error BellSouth previously identified in its August 27, 2003 letter is not part of Operation Sunrise and has been corrected. In any event, Supra does not

information provided in the PMAP Line Loss Report could be used by Supra to identify former Supra customers who leave for marketing purposes. Tr. at 137-38.¹⁷

Sunrise Is Consistent with FCC Orders

Notwithstanding these facts, Supra argues that BellSouth is prohibited from Sunrise to identify and market to former BellSouth local service customers. According to Mr. Nilson, who is not a lawyer, who never worked at the FCC, who never received any specialized training on wholesale information or CPNI, and who admits that his lawyers wrote a portion of his rebuttal testimony,¹⁸ Operation Sunrise violates FCC Orders 99-223 and 03-42 and the Key Customer Order because the information contained in Sunrise is not “commercially available information in a form available throughout the retail industry.” Tr. at 147-48. In other words, Mr. Nilson believes that, unless all carriers have access to the exact information that is contained in Operation Sunrise, BellSouth is prohibited from using it: “Sir, in order for it to be available throughout the retail industry it would have to be available to anyone who wanted to either acquire it or purchase it if there was a charge for acquiring it and not be something that was available only to one carrier like Supra.”¹⁹ Tr. at 150. Contrary to Mr. Nilson’s unsupported pontification, the FCC does not impose such a requirement.

consider that coding error or the second “sweep” to be relevant and thus is not at issue in the proceeding. See Tr. at 17.

¹⁷ For some unknown reason, despite acknowledging that the PMAP Line Loss Report could be used to identify former Supra customers for marketing purposes, Supra chooses to not use that information. Tr. at 147.

¹⁸ Tr. 142-44.

¹⁹ Further, undercutting Supra’s argument, Mr. Nilson admitted that his phrase “commercially available information in a form available throughout the retail industry” does not appear in FCC Order 03-42. Tr. at 148-49.

Rather than supporting Mr. Nilson's argument, the FCC, in Order 03-42, clarified that the process by which BellSouth identifies and markets to former local service customers is entirely permissible:

We clarify that, to the extent that the retail arm of an executing carrier obtains carrier change information through its normal channels in a form available throughout the retail industry, and after the carrier change has been implemented (such as in disconnect reports), we do not prohibit the use of that information in executing carriers' winback efforts. This is consistent with our finding in the Second Report and Order that an executing carrier may rely on its own information regarding carrier changes in winback marketing efforts, so long as the information is not derived exclusively from its status as an executing carrier. Under these circumstances, the potential for anti-competitive behavior by an executing carrier is curtailed because competitors have access to equivalent information for use in their own marketing and winback operations.

FCC Order 03-42 at ¶ 27. Operation Sunrise satisfies each of the above-requirements.

First, BellSouth learns of the fact that a former retail customer has disconnected service from BellSouth through its normal channels. As testified by Mr. Pate, the same service order information in SOCS that is used to notify BellSouth retail to stop billing a customer is used in Operation Sunrise:

Specifically, in the case of a CLEC migrating an end user from BellSouth to itself upon completion of a service order, SOCS provides the necessary information so that BellSouth's end user customer records will be updated to process a final bill and so that a new record will be established to bill the acquiring CLEC. Stated another way, information from completed service orders in SOCS resulting from a CLEC local service request is used to update BellSouth's retail billing systems.

Tr. at 255. Supra does not dispute this fact. Tr. at 142. Thus, because BellSouth's retail operations obtain information from SOCS regarding the disconnection of a

BellSouth customer as a result of a CLEC-initiated LSR, the use of that same information by Sunrise is permissible as it constitutes “carrier change information” that BellSouth retail obtains through its “normal channels.”

Second, the form of the information provided in Sunrise is “available throughout the retail industry” as it mirrors the information provided by BellSouth in the PMAP Line Loss Report, which CLECs can use to target potential reacquisition customers. Tr. at 137-38. Again, Supra does not dispute these facts. See Tr. at 138, 151,152. Instead, Supra takes issue with the fact that the **specific** data contained in Sunrise is not available to all carriers. Tr. at 150. Contrary to Supra’s argument, however, the FCC does not require that each carrier’s **specific** disconnect information be available to all carriers – just that the data be “available in a form throughout the retail industry” FCC Order 03-42 at ¶ 27. Clearly, through the PMAP Line Loss Report, BellSouth satisfies this requirement, and Supra can present no evidence to the contrary.

Third, Operation Sunrise only gathers data after a disconnect order is completed. Tr. at 311. In fact, Supra is not contending in this proceeding that Operation Sunrise targets pending customers. Tr. at 158. Thus, there is no dispute that the information used in Sunrise to target former local service customers was obtained “after the carrier change has been implemented. . . .” See FCC Order 03-42 at ¶ 27.

Fourth, Operation Sunrise is a BellSouth specific “disconnect report” as contemplated by the FCC when it used the phrase “(such as in disconnect reports)” in paragraph 27. Support for this conclusion can be found in SBC’s Motion for Reconsideration, which the FCC addressed in FCC Order 03-42. In that motion, SBC asked the FCC to clarify that:

[C]arriers are not prohibited from contacting those customers who have gone to competitors **after** the carrier change is completed and the customer has been disconnected, even if the disconnect order codes reveal that the customer's service was disconnected as a result of a carrier change order. The same type of code is transmitted to IXCs as part of the CARE transaction and is available to CLECs on a disconnect report. Since this same information is available to IXCs and CLECs at the same time that it becomes available to the LEC retail operations, there should be no restriction on the use of that information for LECs, CLECs, or IXCs.

See Exhibit 10 at 14 (emphasis in original). The FCC answered SBC's request for clarification with paragraph 27 of FCC Order 03-42 by agreeing with SBC and even referring to executing carrier disconnect reports as examples of permissible information to be used in winback efforts.

Supra's interpretation of the phrase "(as in disconnect reports)" renders it useless. According to Supra, the only disconnect report that would be permissible is one that is based on information BellSouth learns of through "independent retail means" – i.e. when the customer calls BellSouth retails and advises that its is disconnecting service. Tr. at 160-61. However, Supra admits that such a disconnect report would not be "commercially available" to other carriers, which Supra believes is necessary in order for the information to be used for winback purposes. In fact, when pressed to provide a example of a "disconnect report" that would satisfy Supra's imagined criteria, Mr. Nilson was stumped:

- Q. So what was the FCC referring to when it used the phrase "such as in disconnect reports"?
- A. I wish they had been more clear on that, **because I'm not aware of the specific mechanism that would meet those qualifications.**

Tr. 163 (emphasis added). Thus, using Supra's logic, there are no "disconnect reports" that BellSouth could use for winback purposes, thereby rendering the FCC's express findings meaningless. This fact alone highlights the absurdity of Supra's argument.

Fifth, Supra and other competitors have access to "equivalent information" that is used in Sunrise through the PMAP Line Loss Report. Mr. Nilson proved this fact in responding to a question from Commissioner Davidson:

Both data feeds contain the customer telephone number, both data feeds contain the date the service order was effectuated. Before BellSouth brings in their data into the permanent Sunrise Table from CRIS they don't have the customer name, Supra does have the customer name. And that is the most direct comparison I can make. Mr. Nilson's description of the difference between the two reports confirms this fact.

Tr. at 152. Further, Mr. Nilson admits that information does not have to be identical to be equivalent. See Exhibit 5 (Vol. II) at 100, lines 1-3 ("It would be my opinion that equivalent information does not necessarily have to meet the test of identical unless it's so stated"). Accordingly, Supra's own testimony establishes that the PMAP Line Loss Report is equivalent to the information gathered in Operation Sunrise.

Seventh, as established by Mr. Pate and as confirmed by Mr. Nilson, the information used in Operation Sunrise is "not derived exclusively from its status as an executing carrier."²⁰ FCC Order 03-42 at ¶ 27. Rather, BellSouth's retail side

²⁰ Mr. Pate correctly stated at the hearing that information contained on a CLEC LSR would be considered wholesale information. Tr. at 278. However, BellSouth does not use any specific information on a CLEC LSR in Operation Sunrise. Rather, Sunrise uses disconnect information residing in SOCS that BellSouth's OSS creates and processes as a result of a CLEC LSR. One such piece of information is the disconnect reason code. As testified by Mr. Pate the purpose of the disconnect reason code is to identify for BellSouth why it lost a customer: "BellSouth needs to understand why we lost a customer just like we on your line loss report provide to you information why you

independently learns that a customer has disconnected service from the retail network through service order information contained in SOCS, which is generated from a CLEC LSR. See Tr. at 142, 255. Consequently, BellSouth does not learn of the actual disconnect “exclusively” because it is the “executing” carrier; instead, it learns of the disconnect because it lost a retail customer. Under *Supra*’s logic, BellSouth will always learn of the disconnect “exclusively” as a result of its role as the “executing” carrier, notwithstanding the conceded fact that BellSouth retail is notified when it loses a customer. Again, *Supra*’s argument renders the FCC’s language useless and defies the realities of a competitive market. Commissioner Deason recognized this very point:

It just seems to me that BellSouth as an entity is going to have some basic information that their operations are going to have to be made aware of, and that it is information that could be used for a winback program, but it is not information that is due strictly to their being the executing carrier.

Tr. at 153.²¹ In sum, the basic information that BellSouth obtains – that it lost a retail customer – is what Operation Sunrise uses to identify and market to former BellSouth local service customers, and it is not information that BellSouth obtains solely because it is the executing provider.²² BellSouth has the right to know when it loses a customer and to endeavor to win that customer back. Adopting *Supra*’s argument would render this basic business principle impossible.

lost. . . It doesn’t give any more information than that. It doesn’t say who it went to, but just the fact that it was lost.” Tr. at 283.

²¹ *Supra* agrees that BellSouth can engage in winback efforts as long as it is not relying upon information exclusive to its position as an executing carrier. See Tr. at 154.

²² An example of information BellSouth obtained solely because it was the executing carrier would be information related to CLEC to CLEC migrations.

Similarly, Operation Sunrise complies with paragraph 28 of the FCC Order 03-42, which provides:

We emphasize that, when engaging in such marketing, an executing carrier may only use information that its retail operations obtain in the normal course of business. Executing carriers may not at any time in the carrier marketing process rely on specific information they obtained from submitting carriers due solely to their position as executing carriers. We reiterate our finding in the Second Reconsideration Order that carrier change request information transmitted to executing carriers in order to effectuate a carrier change cannot be used for any purpose other than to provide the service requested by the submitting carrier. . . .

FCC Order 03-42 at ¶ 28.

As established above, Operation Sunrise only uses “information that its retail operations obtain in the normal course of business.” Id. Specifically, Operation Sunrise uses disconnect service order information resulting from a CLEC LSR and retail service orders contained in SOCS to identify and market to former BellSouth local service customers. This information in SOCS is the same information that is provided to BellSouth’s retail side in the ordinary course to inform retail that it lost a customer. See Tr. at 142, 255. Further, Sunrise does not use any “specific information [that BellSouth] obtain[s] from submitting carriers due solely to [its] position as executing carrier[.]” Id. Indeed, all BellSouth knows through Sunrise is that it lost a retail customer. It does not know where the customer went or what services that customer is receiving from his/her new provider, both of which would be information that BellSouth learned as a result of being the executing carrier. See Tr. at 198.

Likewise, FCC Order 99-223 does not require a different conclusion. As an initial matter, this order is generally inapplicable to the issues at hand because it deals with

retention and not winback efforts. In FCC Order 99-223, the FCC defined “retention marketing” to mean “a carrier’s attempts to persuade a customer to remain with that carrier before the customer’s service is switched to another carrier.” FCC Order 99-223 at ¶ 65. And, Mr. Nilson does not dispute that (1) when the FCC is referring to “retention marketing” in FCC Order 99-223, the FCC is referring to marketing efforts that occur prior to a customer leaving the ILEC to go to a CLEC; and (2) Operation Sunrise does not target local service customers who have yet to leave BellSouth. Tr. at 157-58. Consequently, the provisions cited by Supra, on their face, are clearly inapplicable to Operation Sunrise. For instance, in paragraph 77, the FCC states:

We conclude that section 222 does not allow carriers to use CPNI to retain soon-to-be former customers where the carrier gained notice of a customer’s imminent cancellation of service through the provision of carrier-to-carrier service. We conclude that competition is harmed if any carrier uses carrier-to-carrier information, such as switch or PIC orders, to trigger retention marketing campaigns, and consequently prohibit such actions accordingly.

FCC Order 99-223 at ¶ 77 (emphasis added). The FCC echoed this same principle regarding retention marketing in paragraph 78:

In the Slamming Order, the Commission stated that pursuant to Section 222(b), the carrier executing a change “is prohibited from using such information to attempt to change the subscriber’s decision to switch to another carrier.” Thus, where a carrier exploits advance notice of a customer change by virtue of its status as the underlying network-facilities or service provider to market to that customer, it does so in violation of section 222(b).

FCC Order 99-223 at ¶ 78.

Simply put, Operation Sunrise does not constitute retention marketing, because Sunrise only gathers disconnect information after the former BellSouth customer

disconnects service with BellSouth. Supra does not dispute this fact in this proceeding. Accordingly, the provisions in FCC Order 99-223 regarding retention marketing are inapplicable to the instant proceeding.

Operation Sunrise Complies with Florida Law

The final legal authority Supra cites in support of its erroneous positions is the Commission's Key Customer Order.²³ In that Order, the Commission heavily cited FCC Order 99-223 regarding retention marketing because retention marketing was an issue in that proceeding. See Order No. PSC-03-0726-FOF-TP at 44-47. In the Key Customer Order, the Commission further affirmed its findings in Order No. PSC-02-0875-PAA-TP wherein it found that BellSouth's wholesale division was prohibited from sharing information with its retail division, "such as informing the retail division when a customer is switching from BellSouth to an ALEC." Id. at 47.

For the reasons set forth above, Operation Sunrise complies with the Commission's holding in the Key Customer Order as well, because there is no sharing of information between BellSouth's wholesale and retail operations. Rather, Operation Sunrise uses disconnect information that is provided to BellSouth's retail side in the ordinary course and through normal channels to identify and market to former BellSouth local service customers. No wholesale or carrier-to-carrier information is provided to BellSouth retail through Sunrise as the information provided is limited to the customer's NPA, NXX, customer code, and date extracted. Accordingly, contrary to Supra's

²³ Mr. Nilson admitted that his interpretation of the applicable law was limited to Section 222 of the Act, FCC Orders 03-42 and 99-223, and the Key Customer Order. Tr. at 143-44.

arguments, the Key Customer Order does not support a finding that Operation Sunrise violates Florida law or policy.

**Supra's Exhibits Do Not Establish that
BellSouth Shares Information Between Its Wholesale and Retail Operations**

Almost as an afterthought, Supra relies on three separate letters BellSouth purportedly sent to Supra customers to prove that BellSouth impermissibly shares wholesale information with its retail operations. First, Mr. Nilson relies on DAN No. 2, which is a letter from BellSouth to a CLEC customer advising the customer to call a toll-free number to receive new telephone directories through an automated system. See Exhibit 8, DAN No. 2; Tr. at 204. Mr. Nilson never called this toll-free number to ascertain the purpose of the letter, and other than his unsupported testimony, has no evidence to establish that BAPCO sent the letter to Mr. Nilson at the time of converting his account from UNE to resale. See Exhibit 5 (Vol. II) at 56, lines 16-18; 60, lines 21-25; 61, lines 1-3. Mr. Nilson further advised that, in a LSR, Supra must identify whether it wants directories sent to its newly acquired customers. Id. at 63, lines 17-25; 64, lines 1-4. Thus, it is entirely possible that BAPCO sent the letter to Mr. Nilson because Supra requested that directories be sent to him via a LSR.

Second, Supra relies on DAN No. 3, which is a marketing letter BellSouth sent to former customers. Tr. at 205. Supra claims that this letter was sent to a Supra attorney within a week of converting to Supra from BellSouth. Tr. at 83. However, Supra presented no evidence to support this allegation, and Mr. Nilson does not know how many days transpired from when the order completed until the Supra attorney received the letter. See Exhibit 5 (Vol. II) at 64, line 25; 65, lines 1-3. Other than making the

self-serving statement that the Supra customer received the letter “within a week” of converting, Supra makes no further allegations as to how this exhibit supports its case.

Third, Supra relies on DAN No. 4, which is another marketing letter sent to former customers. Supra claims that BellSouth sent this letter to the Supra customer even though the customer had no activity on his account for 619 days.²⁴ Tr. at 84. Mr. Nilson claims that this letter “proves” that BellSouth shares information between its wholesale and retail operations because, “[a]fter over two years, there’s no real way for BellSouth to know that that telephone number is still assigned to that person.” Exhibit 5 (Vol. II) at 67, lines 24-25; 68, line 1. Accordingly, Mr. Nilson premises his entire allegation on the fact that there was no activity on the line for two years and because BellSouth mailed the letter to Supra customer at the correct address. Id. at 70, lines 1-3. What Mr. Nilson fails to advise the Commission is that the name and address associated with the telephone number at issue did not change in the 619 day time period. Id. at 70, lines 4-8. Thus, DAN No. 4, proves nothing, other than the fact that BellSouth markets to former local service customers, a fact that is not in dispute.

For all of these reasons, it is clear that BellSouth does not share prohibited wholesale information with its retail operations. Rather, BellSouth, through Operation Sunrise, uses disconnect information, the same information that BellSouth provides Supra, to identify and market to former customers. Accordingly, Sunrise complies with all federal and state laws regarding the use of carrier-to-carrier or wholesale information.

²⁴ Mr. Ruscilli testified that BellSouth contacts assumed competitive disconnects as far back as 2001. Tr. at 206-07.

Issue 2: 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 marketers?

Position: **BellSouth cannot use wholesale information to furnish leads to its in-house and third party marketers; however, Operation Sunrise does not use wholesale information to establish a list of potential reacquisition targets.*****

It is undisputed that, if Sunrise is able to match the NPA, NXX, line, and customer code with retail residential customer service data contained in the CRIS "snapshot," BellSouth sends marketing leads, containing the customer's name, billing address, telephone number, language preference, NPA state code, and other customer specific information to third party vendors for marketing purposes. Tr. at 344. This information is sent electronically to the third-party vendors and is not reviewed by BellSouth personnel prior to its transmission. Tr. at 368.

For the reasons set forth in detail above regarding Issue 1, none of the information BellSouth sends to third party vendors for marketing purposes contains wholesale or carrier-to-carrier information, as it is limited to information contained in BellSouth's retail records. Accordingly, Operation Sunrise does not provide either in-house or third party vendors with any wholesale information.

Issue 3: 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?

Position: ***BellSouth, through Operation Sunrise, does not use or share carrier-to-carrier information with its retail operations for marketing purposes.***

For the reasons discussed in detail above, BellSouth has not shared and/or used carrier-to-carrier or wholesale information with its retail operations or any third-party vendors. Accordingly, no penalties should be imposed against BellSouth.

Furthermore, none of the penalties or relief requested by Supra are warranted. For instance, BellSouth should not be fined \$25,000 a day, because, as clearly established above, the use of Sunrise does not violate any Commission order regarding the use of wholesale information. Without a violation of a Commission order, there can be no fine. Likewise, Supra's request that the Commission revoke BellSouth's certificate should be summarily rejected because BellSouth has not violated any Commission rule or order.

In addition, granting Supra's request to dismantle the Harmonize feed would unfairly prejudice BellSouth. BellSouth uses information in the Harmonize feed to compile disconnect information regarding its former local service customers. BellSouth provides this same information to CLECs via the PMAP Line Loss Report. Thus, prohibiting BellSouth from using the data in the Harmonize feed would put BellSouth in a competitive disadvantage.

As to the request that BellSouth print a date on its marketing letter, Supra provides no explanation as to why this request is necessary. Supra's Complaint is not

about premature marketing or about retention marketing. Rather, it is about Operation Sunrise, which only uses information from **completed** disconnect orders to identify and market to former local service customers. Moreover, the Commission has already approved of BellSouth's voluntary 10 day waiting period before initiating winback activity in the Key Customer Order. See Order No. PSC-03-0726-FOF-TP at 41. This waiting period is sufficient to ensure that no marketing activity occurs prior to the completion of a conversion order.

Finally, Supra asks the Commission to impose a 90 day waiting period before BellSouth can initiate winback activities. The Commission has already rejected FDN's proposed 30 day waiting period in the Key Customer Order, and Supra has not produced any evidence as to why it should review its decision in that order. In any event, this request has absolutely nothing to do with Operation Sunrise and is an attempt by Supra to further restrict and/or prohibit BellSouth from competing for customers in Florida. Accordingly, this and Supra's other requests for relief should be summarily rejected.

CONCLUSION

For the foregoing reasons, the Commission should find in favor of BellSouth on Issues 1-3, because BellSouth, through Operation Sunrise, does not share wholesale information with its retail operations.

Respectfully submitted this 30th day of September, 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

NANCY B. WHITE (WA)
JAMES MEZA III

c/o Nancy H. Sims
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5555

R. Douglas Lackey

R. DOUGLAS LACKEY (WA)
E. EARL EDENFIELD, JR.

Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0763

505028