

VOTE SHEET

DECEMBER 2, 2003

RE: Docket No. 030349-TP - Complaint by Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc. regarding BellSouth's alleged use of carrier-to-carrier information.

ISSUE A: What is the Commission's jurisdiction regarding the alleged violations of 47 U.S.C. §222(b) of the Federal Telecommunications Act of 1996?

RECOMMENDATION: Staff believes that the Commission cannot provide a remedy (federal or state) for a violation of 47 U.S.C. §222(b). If, however, the conduct at issue also constitutes anticompetitive behavior as prohibited by Section 364.01(4)(g), Florida Statutes, the Commission may impose penalties as provided in Section 364.285, Florida Statutes, for the violation of state law. In order to ensure that its decision under state law does not conflict with the federal provision, the Commission may interpret the federal provision and apply it to the facts of this case. Findings made as a result of such federal law analysis would not, however, be considered binding on the FCC or any court having proper jurisdiction to hear and remedy complaints regarding violations of Section 222 of the Act.

APPROVED

COMMISSIONERS ASSIGNED: Deason, Bradley, Davidson

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

Charles M. Deason
John Davidson
Bradley

REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

12246 DEC-28

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ISSUE 1: Can BellSouth share carrier-to-carrier information, acquired from its wholesale Operational Support System (OSS) and/or wholesale operations, with its retail division to market to its current and potential customers?

RECOMMENDATION: No. BellSouth cannot 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. Staff recommends that the Commission affirm its findings in Order PSC-02-0875-PAA-TP, issued June 28, 2002, in Docket No. 020119-TP, and Order PSC-03-0726-FOF-TP, issued June 19, 2003, in Docket Nos. 020119-TP, 020578-TP, and 021252-TP, which prohibit BellSouth's wholesale division from sharing information with its retail division.

APPROVED

ISSUE 2: Can BellSouth 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?

RECOMMENDATION: Staff recommends that BellSouth should not be allowed to 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.

APPROVED

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?

PRIMARY RECOMMENDATION: Primary staff recommends that BellSouth, due to a manual coding error, did, between July 18, 2003 and August 27, 2003, share and/or use 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. However,

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this was an isolated incident which, when discovered, was immediately corrected by BellSouth. Since the mistake was minor, no harm was caused to Supra, and the error was corrected immediately by BellSouth, primary staff does not recommend BellSouth be penalized or fined for this coding error, but primary staff does recommend that BellSouth be put on notice that future non-compliance of Order No. PSC-02-0875-PAA-TP, or any other order or rule of this Commission, will not be tolerated.

APPROVED

ALTERNATIVE RECOMMENDATION: Alternate staff recommends that BellSouth, due to a manual coding error, did, between July 18, 2003 and August 27, 2003, share and/or use 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 in violation of Commission Order No. PSC-02-0875-PAA-TP. Therefore, alternate staff recommends that BellSouth be fined \$10,000 for each of the three instances where customers in Florida received marketing mailings based on the use of wholesale information which was provided to BellSouth's retail division. The penalty should be paid within 14 calendar days after the issuance of the Final Order to the Florida Public Service Commission and be remitted to the Department of Financial Services for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285 (1), Florida Statutes.

DENIED

ISSUE 4: Should this docket be closed?

RECOMMENDATION: The docket should be closed after the time for filing an appeal has run.

APPROVED