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December 23, 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 FOR RECONSIDERATION OF ORDER NO. PSC-03-1392-TP**

Dear Mrs. Bayo:

Enclosed are the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Motion for Reconsideration of Commission Order No. PSC-03-1392-FOF-TP to be filed in the captioned docket.

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

Sincerely,

RECEIVED & FILED

Jh
FPSC-BUREAU OF RECORDS

Jorge Cruz-Bustillo /JWA

Jorge Cruz-Bustillo
Assistant General Counsel

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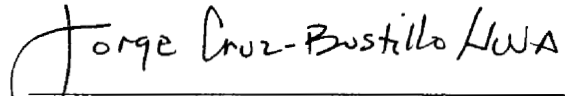
Docket No. 0303491-TP

I HEREBY CERTIFY that a true and correct copy of the following was served via e-mail, Hand Delivery, and/or U.S. Mail this 23rd day of December 2003 to the following:

*Ms. Linda Dodson
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By: Jorge Cruz-Bustillo

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Supra)	
Telecommunications)	Docket No.: 030349-TP
And Information Systems, Inc.,)	
Regarding BellSouth's Use of)	
Carrier to Carrier Information)	Filed: December 23, 2003
_____)		

MOTION FOR RECONSIDERATION
OF COMMISSION ORDER NO. PSC-03-1392-FOF-TP

Pursuant to Rule 25-22.060, Florida Administrative Code, Supra Telecommunications & Information Systems, Inc. ("Supra") submits this Motion for Reconsideration of Order No. PSC-03-1392-FOF-TP issued on December 11, 2003, by the Florida Public Service Commission ("Commission") in the above referenced docket.

Reconsideration is required because the Commission failed to apply specific controlling legal precedent, and also failed to consider specific facts. This Motion contains five sections: (1) Controlling legal precedent; (2) Specific facts ignored; (3) Argument (Legal authority imposing restrictions and exception; Despite exception MKIS cannot use information; MKIS's responsibility in identifying non-wholesale source before wholesale information can be used; Proposed analysis of legal precedent); (4) General Comments, and (5) Conclusion. In support of its Motion, Supra states as follows:

STANDARD OF REVIEW

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering an Order. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981); and *In re: Complaint of Supra Telecom*, 98 FPSC 10, 497, at 510 (October

28, 1998) (Docket No. 980119-TP, Order No. PSC-98-1467-FOF-TP). This standard necessarily includes any mistakes of either fact or law made by the Commission in its order. In re: Investigation of possible overearnings by Sanlando Utilities Corporation in Seminole County, 98 FPSC 9, 214, at 216 (September 1998) (Docket No. 980670-WS, Order No. PSC-98-1238-FOF-WS) (“It is well established in the law that the purpose of reconsideration is to bring to our attention some point that we overlooked or failed to consider or a mistake of fact or law”); see e.g. In re: Fuel and purchase power cost recovery clause and generating performance incentive factor, 98 FPSC 8, 146 at 147 (August 1998) (Docket No. 980001-EI, Order No. PSC-98-1080-FOF-EI) (“FPSC has met the standard for reconsideration by demonstrating that we may have made a mistake of fact or law when we rejected its request for jurisdiction separation of transmission revenues”).

I. CONTROLLING LEGAL PRECEDENT IGNORED

Several sentences contained in ¶¶27 and 28 of FCC Order 03-42 were completely ignored in the Commission’s decision in this docket. Therefore, the Commission is duty bound to reconsider its decision. If the Commission believes that these sentences are not controlling, then this Commission is duty bound to explain in writing why these sentences are not controlling and inapplicable in this instance.

It is undisputed that both ¶¶27 & 28 place strong limitations on marketing reacquisition efforts – as opposed to retention efforts. If ¶27 addresses certain activity after a switch is complete, then the first sentence of ¶28 is also referring to reacquisition efforts when it uses the phrase: “. . . , when engaging in such marketing, . . .” (Emphasis added).

Paragraph ¶28

With respect to targeted reacquisition efforts, the FCC makes two important statements in ¶28 that was completely ignored by this Commission. The first of the two sentences is:

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. (Emphasis added). ¶28 Order 03-42.

The “**carrier marketing process**” includes both marketing efforts **before** and **after** the switch. This controlling legal authority is important because the Commission concluded – in the absence of **any** justification – that once the conversion is complete that the wholesale information automatically becomes retail information. See Commission Order PSC-03-1392-FOF-TP, Pg. 26: (“We disagree with Supra’s position that carrier change information obtained from an LSR remains wholesale information even **after** the carrier change is completed.”). The above referenced authority (¶28) also states clearly that wholesale information may **not** be used “**at any time.**” This means before **and after** the switch. If the Commission believes this sentence is not unequivocal as to its applicability to reacquisition efforts, then the Commission is duty bound to explain in writing why this sentence is inapplicable.

The above sentence also makes reference to “specific information.” Specific information BellSouth’s wholesale operations obtained, from Supra, would be, among other information, the name, address¹ and/or working telephone number (“WTN”) of the customer. Any one of these three pieces of “specific information” would confirm the fact that a BellSouth retail voice customer has switched.

The FCC in ¶28 made sure to point out that a “carrier change request” **cannot** be used for any purpose other than to effectuate the switch. This express goal can be found in the following sentence:

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****

¹ BellSouth’s Witness admits that the name and address of a customer that switches is wholesale information. See Pg. 385 of the Official Hearing Transcript.

provide the service requested by the submitting carrier. (Emphasis added). ¶28
Order 03-42.

This controlling legal authority was **completely ignored** by the Commission. The Commission provides no explanation as to how this sentence is inapplicable.

This sentence is controlling for the following reason. First, in the absence of a working telephone number (WTN), name or address, BellSouth cannot effectuate a carrier change request. The WTN is comprised of the NPA, NXX and the Line being acted upon by the CLEC service order. See Ed Wolfe deposition, of August 22, 2003, Exhibit 11 (BellSouth field descriptions for information contained on the file that ultimately populates the Permanent Sunrise Table). According to the explicit language of the FCC - because the WTN is absolutely necessary for a carrier change request to be completed - the WTN “cannot be used for any purpose other than to provide the service requested by the submitting carrier.” See ¶28, third sentence. This restriction on the use of this wholesale information [i.e. WTN] continues to exist even after the conversion is complete. This is self-evident by the fact that this sentence [i.e. restriction] is found in ¶28.

Further support that the WTN is wholesale information comes from the Commission itself. This Commission found that when a customer switches from one CLEC to another that MKIS cannot use the information on the Permanent Sunrise Table in order to trigger a marketing lead directed at that customer. See Pg. 28 of PSC-03-1393-FOF-TP. The specific information on the Permanent Sunrise Table that MKIS is utilizing to generate that marketing lead is the WTN. Accordingly, by this Commission’s own conclusion the WTN is wholesale information.

Despite this conclusion, this Commission arbitrarily concludes that it is the completion of the conversion that changes the wholesale information to retail information under circumstances where a customer switches away from BellSouth. The triggering event for the Commission was

the update of the CRIS billing system. With no explanation, this Commission concluded that this same metamorphosis, however, does not occur when a customer moves from one CLEC to another. The substantive problem with the Commission's distinction is that the CRIS billing system is updated in the exact same manner – whether the switch is away from BellSouth or CLEC to CLEC. The Commission cannot have it both ways: either the update of CRIS turns wholesale information into retail information or it does not.

Irrespective of the Commission's inability to reconcile its distinction between the two, as will be explained below in this Motion, the update of CRIS is legally irrelevant to the use of wholesale information because it is undisputed that it is mechanically unnecessary to provide MKIS any information regarding the pending switch or completed switch in order to effectuate a change to a new carrier. Thus, it is undisputed that MKIS does not learn of a switch in the ordinary course of business. Therefore, as will further be explained below in detail, the wholesale information remains so unless and until MKIS can first identify from some other non-wholesale source that a customer has switched.

With respect to a switch away from BellSouth, if the Commission was correct that the threshold event (that turns wholesale information into retail information) was the completion of the conversion, then why would the FCC place a definitive limitation that a “carrier change request . . . cannot be used for any purpose other than to provide the service requested by the submitting carrier.” Using the WTN to trigger a notification to BellSouth's retail marketers [i.e. MKIS] of a completed switch, therefore, would violate the plain meaning of the above stated limitation. See CBS Inc. v. PrimeTime 24 Joint Venture, 245 F.3d 1217, 1224 (11th Cir. 2001) (“The ‘plain’ in ‘plain meaning’ requires that we look to the actual language used . . .”).

This question, namely, whether the working telephone number – which includes the NPA, NXX and the line - is necessary to effectuate a carrier change request, is critical to the Commission’s decision. The question is critical because if the WTN is necessary, then BellSouth cannot use this specific information for any other purpose other than to effectuate the change. See ¶28. The answer to this question is, of course, that the WTN is necessary to effectuate a carrier change request. Therefore, the WTN is wholesale information that MKIS cannot use to trigger a marketing lead.

As an aside, to the extent that BellSouth attempts to argue that MKIS does not rely on the working telephone number, but relies on the customer code to extract information from CRIS, Supra would point the Commission to the evidence in this case that demonstrates that the customer code is comprised of the working telephone number and a three or four digit number (generated by SOCS) that is attached to the end of the customer’s working telephone number. With respect to the customer code, I asked Mr. Pate (BellSouth Witness) the following during the evidentiary hearing:

Q. “What is the purpose of generating that customer code on a CLEC service order?”

A. “That becomes the account number for that particular end user.”

See Pg. 288 of the Official Hearing Transcript.² The customer’s account number, as noted by Mr. Pate, will be the telephone number, plus the customer code. See also Hearing Transcript³ Pg. 286, L 7-8. “MKIS then matches the telephone number associated with the disconnect order to BellSouth’s former customer service record for that number in CRIS.” (Emphasis added) See

² See also Ed Wolfe deposition of August 22, 2003, Page 127, Lines 5-18 for further evidentiary support for the proposition that it is the working telephone number that is utilized in extracting information from CRIS.

³ References to the hearing transcript – refer to the two (2) volumes e-mailed, to Supra, by Ruth McGill (FPSC Staff) on Monday, September 8, 2003 @4:13 pm. References to the Official transcript will be so designated.

Summers Rebuttal Testimony, Pg. 14, L 13-14. This matching is automated. HT Pg. 368, L 18-20. Thus, it is evident that the working telephone number – which is wholesale information - is relied upon by MKIS.

This Commission is duty bound to explain in writing why the above referenced controlling legal authority, found in ¶28, has no bearing on its decision. If this Commission cannot reasonably explain away the second and third sentences of ¶28, then this Commission is duty bound to reverse its decision.

Paragraph ¶27

This same limiting theme, with respect to the use of specific information supplied by a competitor, is followed in the second sentence of ¶27. In this sentence, the FCC emphasizes the prohibition against BellSouth using information of a completed switch exclusively from its status as the executing carrier. The sentence reads as follows:

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. (Underline added for emphasis).

The controlling legal nature of this sentence was, again, **completely ignored** by this Commission in reaching its decision. A couple of points must be understood before this sentence can be interpreted.

The first point is the reference to: “its own information.” This phrase is referring to BellSouth’s own CPNI, which BellSouth has been permitted to use since the issuance of FCC Order 99-223 (released in September 1999). When a lead is finally generated by MKIS in accordance with FCC restrictions, BellSouth can use information of a customer’s **former service** in order to fashion a targeted promotion. Supra does not contest the use of this information

under those circumstances. This is reasonable because this CPNI was generated during the “former customer-carrier relationship.” See Pg. 11, Supra Post Hearing Brief for authority.

Information is only considered to be BellSouth’s “own,” if that customer provided the information to BellSouth. Here the “knowledge” or “notification” of the switch is provided to BellSouth’s wholesale division from Supra – not from the customer.⁴ Therefore, the information regarding the switch cannot be considered BellSouth’s own CPNI. Thus, under the September 3, 1999 FCC Order 99-223 the information regarding the switch is **not** information that can be used by MKIS to trigger the generation of a marketing lead. The reason for this conclusion is that the knowledge of the switch is not BellSouth’s own CPNI: providing MKIS with notification – via Operation Sunrise - that a customer at a particular working telephone number has converted his or her line to a competitor generates the knowledge of the switch.

Once the above legal parameters are recognized – which they must - then it is easy to conclude that the ability to use one’s own CPNI does not in any way relieve the executing carrier of its burden to refrain from using specific information – such as the WTN, name or address - transmitted in a carrier change request for any other purpose other than to effectuate a carrier change.

Given this legal context, the remainder of the sentence can now be read in proper context: that BellSouth is allowed to use information – otherwise considered wholesale information – in its retail marketing **so long as the information is not derived exclusively** from its status as the executing carrier. It is undisputed that MKIS receives the WTN and other information directly from carrier change requests submitted to BellSouth. An objective reading of this sentence would lead to the conclusion that the use of the phrase **“not derived exclusively”** requires MKIS to

⁴ If BellSouth does learn of the switch from the customer, then BellSouth is utilizing some source other than its wholesale operations (in that case, BellSouth would not be relying exclusively on its status as an executing carrier).

identify a source - other than Operation Sunrise - for its knowledge that a specific customer has switched. Upon identifying some other non-wholesale source with respect to the WTN (working telephone number) of customers who have switched, then MKIS is free to use its list in the Permanent Sunrise Table to retrieve files from the CRIS system – in order to begin to generate leads using BellSouth’s own CPNI (to formulate promotional offerings). The controlling impact of this sentence was completely ignored by this Commission.

“Not derived exclusively”

If MKIS is explicitly prohibited from using information exclusively derived from BellSouth’s wholesale operations, then it follows that MKIS is required to “learn” of a completed switch, first, from some other source. This logic is abundantly obvious. This controlling legal authority and its obvious impact on the executing carrier was completely ignored by the Commission.

The first sentence of ¶28 sets out another source available to MKIS to legitimately obtain knowledge that a customer has switched:

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. (Emphasis added).

An example for the phrase “in the normal course of business” can be found in fn. 89, of ¶27, in which the FCC states:

we recognize that a carrier’s retail operations may, without using information obtained in violation of section 222(b), legitimately obtain notice that customer plans to switch to another carrier or contact a defecting customer in the ordinary course of business. (Emphasis added). fn. 89, of ¶27.

The example in the footnote must be contrasted with the explicit prohibition in ¶28 that the change request cannot be relied upon “at any time in the carrier marketing process” and “cannot be used for any purpose” except to effectuate a change in service. Therefore, two (2) sources

available to BellSouth's retail marketing arm (known as MKIS) could be either an external source or through an in-bound call from the former retail customer. Both sources are an exception to the prohibitions of ¶28 because the "notice" of the switch would **not** have originated with BellSouth's wholesale operations.

Once MKIS receives notice of the switch from one of these two (2) sources, then MKIS is free to match that information with its information contained in the Permanent Sunrise Table (which is information exclusively derived from BellSouth's wholesale operations) and verify that the customer has in fact switched.⁵ At this point, MKIS would not be relying on information it received exclusively from BellSouth's wholesale operations because the information would have been corroborated from some other source.

Aside from an external source and an in-bound call, footnote 89 indicates that notice of a switch can be legitimately obtained in the context of contacting "a defecting customer in the ordinary course of business." In the context of local service, Supra is unable to think of any legitimate reason that would prompt BellSouth, in the ordinary course of business, to contact a customer while a switch is pending and especially after the customer has switched. In the context of local toll service, it is possible that BellSouth might return a phone call from a customer regarding his or her local service and during that call "learn" of the toll switch. In this case, BellSouth would have "learned" of the switch "in the ordinary course of business." This information could be transmitted to BellSouth's in-house retail marketing. MKIS could then match that information with the information of the switch in the Permanent Sunrise Table.

Once the switch was confirmed, the information in the Permanent Sunrise Table could be matched with information in CRIS and a marketing lead generated. Under these circumstances,

⁵ This, however, is currently NOT the process that is presently used. At this time, MKIS exclusively relies on the information extracted from CLEC service orders and funneled to the Permanent Sunrise Table.

MKIS would not be relying on information it received exclusively from BellSouth's wholesale operations because the information would have been corroborated from some other source.

Given the above examples, the available sources to MKIS would be as follows: (1) an external source, (2) an in-bound call or (3) through contacting a defecting customer in the ordinary course of business. All three of these sources would meet the legal threshold: that BellSouth not utilize its wholesale operations as a source for targeted reacquisition efforts.

Thus, in this docket, the Commission's Order has **no analysis and no explanation** for why the FCC would go out of its way to state clearly that an executing carrier may **not** rely on information derived exclusively from its status as an executing carrier. If this Commission cannot reasonably explain the inapplicability of the second sentence in ¶27, then this Commission is duty bound to reverse its decision.

In the Normal Course of Business

The Commission makes the following finding in its Order:

"We find the information of the carrier change is obtained in the normal course of business as CRIS is updated." See Commission Order, Pg. 27.

To justify this conclusion the Commission Order cites generally to two prior Commission Orders, but does **not** cite to any specific language in those orders to substantiate its finding. This failure to identify any specific language demonstrates the **capricious nature** of the Commission's conclusion.

For reference sake, the first sentence of ¶28 reads as follows:

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. (Emphasis added).

The first observation that must be made is that if the Commission were correct, then why would the FCC write the following two sentences, in ¶28, regarding the ILECs burden **after** a

conversion is complete. The two definitive sentences that immediately follow the phrase “in the normal course of business,” contained in the first sentence of ¶28, read as follows:

“Executing carriers may not at any time in the carrier marketing process rely on specific information they obtained from the 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.”

The Commission offers “**no**” explanation of the impact of these two sentences on its unsubstantiated conclusion. The Commission ignores these sentences as if they simply did not exist. Given the explicit nature of the FCC language, the only conclusion that can reasonably be drawn is that the Commission was not correct in its conclusion.

Neutral Role of Executing Carrier

This Commission also completely ignored FCC legal precedent cited favorably by the FCC in Order 03-42, which places a specific burden on the executing carrier as a neutral administrator. The FCC explains the neutral role of the executing carrier:

The rule places a limited prohibition on executing carriers because an executing carrier should be a neutral party without any interest in the choice of carriers made by a subscriber. Because of its position as a monopoly service provider, however, it may gain access through the carrier change process to a submitting carrier’s proprietary information, *i.e.* that the submitting carrier needs service provisioning for a new subscriber. (Emphasis added).

The rule we adopt ensures that the executing carrier remains in its role as a neutral administrator of carrier changes, and prevents the executing carrier from shifting into a competitive role against the submitting carrier using carrier proprietary information. (Emphasis added).

See FCC Order 98-334, ¶109 cited favorably by FCC Order 03-42 ¶27, fn 89 cited favorably by PSC-03-0726-FOF-TP, pg. 47. The policy that the executing carrier is a neutral administrator is undermined, if the incumbent carrier – and more specifically its retail marketing arm known as

MKIS - is able to exploit its wholesale “monopoly” status by relying exclusively on information generated by Operation Sunrise. This Commission completely ignores this controlling legal precedent cited in ¶27 of FCC Order 03-42.

The joining of the above controlling legal authority with the FCC’s mandate that the executing carrier not derive its knowledge of a switch exclusively from its status as the executing carrier, leads to the compelling policy conclusion that the executing carrier maintains a slightly different and higher burden than the CLEC. This slightly higher burden is necessary in order to create an even playing field, thereby fostering a more competitive environment that will hopefully provide more choices and ultimately better prices for consumers. Leaving the executing carrier unchecked – as this Commission’s Order does - to use information directly from a CLEC service order can only undermine competition in the State of Florida.

This Commission, under Florida law, is charged with fostering a competitive environment. Ignoring the plain language of the FCC’s Orders and treating the incumbent carrier as equals to small competitors, only helps to maintain the dominant grasp that the incumbents have on the market. This present Commission decision is detrimental to the goal of a competitive environment. For this reason, the FCC placed a slightly different and higher burden on the incumbents and prohibited executing carriers from using information it obtains in the carrier change process to trigger market reacquisition efforts.

The focus is on the trigger. MKIS cannot use the fact of the switch as the trigger. This is the key point, here. MKIS can ultimately use the wholesale information to generate a lead, but only after first identifying some other non-wholesale source for the fact of the switch. This slight distinction between CLEC and executing carrier is what the FCC intended in its attempt to foster a fair competitive environment.

If the Commission cannot provide a reasonable explanation regarding the inapplicability of FCC Order 98-334 - (and its discussion regarding the incumbent's role as a neutral administrator in the carrier change process) - and the FCC's reference to this 1998 Order in a footnote to ¶27 of FCC Order 03-42, then this Commission is duty bound to reverse its decision.

Who must receive information to effectuate a change?

A necessary prerequisite to making any finding with respect to what is or what is not learned in the ordinary course of business is to examine what entities within BellSouth must receive the carrier change request information in order to effectuate a carrier change.

In this docket, the evidence demonstrated that as part of the carrier change process that the change request information is funneled to BellSouth's Customer Service Information Systems (known as CRIS). This is done so that BellSouth can stop billing the customer that switched. Updating CRIS is a necessary step in order to effectuate the carrier change process. Therefore, pursuant to the explicit language in ¶28 of FCC Order 03-42, the wholesale information - that originated from BellSouth's wholesale operations – can be used to update that CRIS billing system. MKIS is **not** a billing or carrier change conversion system or program.

This Commission has found in previous dockets that BellSouth has implemented firewalls that prevent its retail employees from surfing its network programs. If this is the case, then the fact that BellSouth updates CRIS in the ordinary course of business in order to effectuate a carrier change should not in any way allow MKIS (or any other retail employee) from breaching those firewalls. The Commission's current decision allows BellSouth retail employees to ignore any and all firewalls after the conversion is complete.

What this Commission's Order ignores or fails to acknowledge is that **MKIS does "not" learn** of the working telephone number, the NXX, the NPA or the Line of the customer that has

just switched in the normal course of business. If MKIS does not “learn” of the switch in the ordinary course of business, then MKIS cannot use the working telephone number or any other information it obtains from Operation Sunrise to generate a marketing lead. **The Commission agrees with Supra on this crucial point.** See Commission Order, Pg. 11: (where the Commission writes: “Both parties agree that BellSouth cannot share wholesale, or carrier-to-carrier, information with its retail marketing operations in order to trigger marketing reacquisition efforts.”).

The obvious conclusion that MKIS does **not** learn of a switch in the ordinary course of business is reached by engaging in the following simple analysis. First, **in the absence of Operation Sunrise and the Harmonize feed,** MKIS would **not** receive a record, file and/or other notification that a specific customer has switched. **The executing carrier can in deed effectuate a carrier change request and provide the service requested without ever having to provide any information whatsoever to MKIS of a pending switch and most certainly of a completed switch. This is the key point.** Thus, the only **meaningful** conclusion that can be reached is that BellSouth’s in-house retail marketers - known as MKIS - do **not** receive specific notification of a switch in the normal course of business.

Again, this point cannot be stressed enough. In order for the Commission to reach its policy outcome, that **after** a switch all carrier change information may be used to target a customer, the Commission’s Order must find that MKIS does in fact learn of the switch in the ordinary course of business.⁶ The problem for the Commission is that the Commission’s Order

⁶ BellSouth’s argument that the PMAP report is the equivalent to the information contained in the Permanent Sunrise Table and that because of this alleged equivalence BellSouth is entitled to use the Permanent Sunrise Table, legally **depends upon** the Commission **first** finding that MKIS receives notice of the switch in the ordinary course of business. The only evidence in the record, of course, is that MKIS DOES NOT receive notice of the switch in the ordinary course of business – because MKIS is not a necessary step in effectuating a carrier change request.

fails to cite to any evidence or testimony proving that MKIS must be provided information from the carrier change request in order for the carrier change request transaction to be completed. The **only evidence** in the record, however, **is to the contrary**: that MKIS does not even attempt to match its information in the Permanent Sunrise Table until **after** the conversion is complete. See Summers Rebuttal Testimony, Pg. 14, L 13-14. This admission, alone, proves that MKIS is **not** a necessary prerequisite to the conversion of a customer.

Even if the Commission tried to rationalize BellSouth's actions by arguing that BellSouth is only sending information it obtained from a carrier change request - that was used to update CRIS - to MKIS after a switch was complete, BellSouth would still be violating the **explicit** language found in the second and third sentences of ¶28. The sentences conveniently ignored by the Commission in its initial decision. Interestingly, under this rationalization BellSouth would also be in violation of this Commission's conclusion in this Order that: "Both parties agree that BellSouth cannot share wholesale, or carrier-to-carrier, information with its retail marketing operations in order to trigger marketing reacquisition efforts." See Pg 11, PSC-03-1392-FOF-TP.

Finally, if MKIS does not learn of the switch in the ordinary course of business, then it cannot use the records and information contained in the Permanent Sunrise Table to generate a marketing lead. Given the demonstrable flaw in the Commission's policy conclusion outlined above, this Commission is duty bound to reverse its decision and to find that BellSouth is in violation of prior Commission Orders as well as FCC Order 03-42.

II. FAILED TO CONSIDER SPECIFIC FACTS

This Commission's Order fails to consider specific facts that the records and/or files that ultimately populate the Permanent Sunrise Table all originate from BellSouth's wholesale operations and that these records and/or files do contain specific wholesale information.

The Commission writes on page 18-19 of its Order:

Next, Operation Sunrise copies into a permanent table in the Sunrise database certain data from each remaining disconnect order: the NPA, the NXX, the line, the customer code, and the date the data was extracted from SOCS. The temporary table is then purged completely. At this point, all information contained in the disconnect order that could be considered CPNI or wholesale information is gone.

This Commission Order makes this blanket finding that all wholesale information is purged – despite the “fact” that this Order is completely void of any language itemizing what is and what is not wholesale information.

In the context of a customer switching away from BellSouth, this Commission provides no explanation as to why the working telephone number and the customer code are not wholesale information. The absence of any justification for the Commission's conclusion is of course contrasted with the Commission's subsequent finding that when a customer switches from one CLEC to another that MKIS cannot use the information on the Permanent Sunrise Table in order to trigger a marketing lead directed at that customer. See Page 28 of PSC-03-1393-FOF-TP. The specific information on the Permanent Sunrise Table that MKIS is utilizing to generate that marketing lead is the WTN. Accordingly, by this Commission's own conclusion the WTN is wholesale information.

Working Telephone Number

The controlling legal precedent is that the working telephone number (“WTN”) and customer code are both wholesale information. The WTN is comprised of the NPA, NXX and

the Line of the customer seeking to switch carriers. The FCC has stated that all information contained in a carrier change request (also known as LSR) is proprietary to the submitting carrier. See FCC Order 03-42, ¶25, last sentence. The WTN is submitted in the CLEC LSR. It is also well established that any information that is necessary to effectuate a carrier change is wholesale information. See FCC Order 03-42, ¶28, third sentence. Thus, the WTN being acted upon by the carrier change request is wholesale information. This conclusion is obvious because without the WTN the executing carrier **cannot** even issue a Firm Order Confirmation (known as a FOC) that the LSR has been accepted by BellSouth's OSS system. As such, and most importantly, in the absence of the WTN the executing carrier would, also, not be able to effectuate the carrier change request.

Finally, it is undisputed that the working telephone number remains on the record or file that ultimately populates the Permanent Sunrise Table. See Ed Wolfe deposition, of August 22, 2003, Exhibit 11 (BellSouth field descriptions for information contained on the file that ultimately populates the Permanent Sunrise Table). Accordingly, the Commission's conclusion that no wholesale information remains on the record when it reaches this Table is factually incorrect. If this Commission cannot reasonably explain why the working telephone number is not wholesale information, then this Commission is duty bound to reverse its decision.

Customer Code

It is also undisputed that the **customer code** is wholesale information. This conclusion is reached in the following manner. When a customer changes ownership (i.e. BellSouth to Supra)

the customer code is changed. Hearing Transcript (“HT”) Pg. 288, L 19-25, Pg. 291, L 1-5.⁷

The customer code is electronically generated by SOCS. HT Pg. 285, L 16, Pg. 286, L 21-25.

With respect to the customer code, I asked Mr. Pate (BellSouth Witness) the following during the evidentiary hearing:

Q. “What is the purpose of generating that customer code on a CLEC service order?”

B. “That becomes the account number for that particular end user.”

See Pg. 288 of the Official Hearing Transcript – as opposed to the one noted in footnote three.

For each working telephone number (“WTN”) account CRIS will create two records: new and old. HT Pg. 278, L 4-11. The new record will have a customer code “one up” from the retail BellSouth customer code (i.e. retail code 100, wholesale code will be 101). HT Pg. 286, L 1-14. The only conclusion that can be drawn is that this customer code is generated as a part of the wholesale transaction. This new record is necessary in order for the executing carrier to bill the new retail CLEC carrier. Wholesale billing of the new retail carrier – whether the switch is away from BellSouth or from one CLEC to another - is necessary to effectuate a conversion. Therefore, because this new record is necessary to effectuate a conversion, the customer code cannot be used for any purpose other than to provide the service requested. See ¶28, Second and Third sentences.

It is undisputed that the evidence demonstrates that the customer code remains on the record that populates the Permanent Sunrise Table. HT 375, L 9-14. Accordingly, the Commission’s conclusion that no wholesale information remains on the record when it reaches

⁷ References to the hearing transcript – refer to the two (2) volumes e-mailed, to Supra, by Ruth McGill (FPSC Staff) on Monday, September 8, 2003 @4:13 pm. **You can find the customer code issue in Supra’s Post Hearing Brief @pgs. 21-22.**

this Table is factually incorrect. If this Commission cannot reasonably explain why the customer code is not wholesale information, then this Commission is duty bound to reverse its decision.

MKIS Uses Wholesale Information To Generate Leads

This customer code is then used to match [HT Pg. 344, L 10-15] the Permanent Sunrise Table record with a record contained in the monthly snapshot [HT Pg. 367, L 12-13, Pg. 368, L 16-17] of CRIS. **Without the ability to match the information with CRIS, the information in CRIS is useless to MKIS.** Thus, the evidence demonstrates that records that ultimately populate the Permanent Sunrise Table used by MKIS to generate leads do in fact contain wholesale information (i.e. a CLEC customer code) in violation of section 222(b).

III. ARGUMENT

Legal Authority Imposing Restrictions and Exception

This Commission has issued an order prohibiting: “BellSouth’s wholesale division from sharing information with its retail division.” See Commission Order PSC-02-0875-PAA-TP (“PAA Order”), P g. 1 8 [released June 28, 2002] whereby the Commission cited favorably to FCC Order 02-147 [released May 15, 2002] (which was BellSouth’s §271 long distance approval of the prior Louisiana state approval). The prior Louisiana states approval Order [released September 19, 2001] prohibits: “BellSouth’s wholesale divisions from sharing information with its retail divisions, **at any time**, . . .” The above prohibition is found in the “**reacquisition**” portion of the Florida PAA Order. The “reacquisition” prohibition was reaffirmed by this Commission in Order No. PSC-03-0726-FOF-TP [released June 19, 2003].

FCC Order 03-42 ¶28 [released March 17, 2003] reaffirmed the above referenced prohibition, while recognizing an obvious exception:

“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.” ¶28.

The obvious exception for the use of wholesale information is: if the information is necessary to effectuate a change. Updating BellSouth’s Customer Service Information Systems (known as **CRIS**), so that BellSouth can stop billing the customer that switched is a proper use of information - that originated from BellSouth’s wholesale operations – because the information is necessary to effectuate the carrier change process and provide the requested service. This proper use of wholesale information is the same whether the switch is away from BellSouth to a CLEC or a switch from one CLEC to another.

Despite Exception MKIS Cannot Use Information

MKIS cannot use information that is used to update CRIS because MKIS does “not” learn of the working telephone number, the NXX, the NPA or the Line of the customer that has just switched in the normal course of business. As such, MKIS cannot use the working telephone number or any other information it obtains from Operation Sunrise to generate a marketing lead. As noted earlier herein, **the Commission agrees with Supra on this crucial point.** See Commission Order, Pg. 11: (where the Commission writes: “Both parties agree that BellSouth cannot share wholesale, or carrier-to-carrier, information with its retail marketing operations in order to trigger marketing reacquisition efforts.”). Therefore, the obvious conclusion is that MKIS does **not** learn of a switch in the ordinary course of business.

Further support for this proposition is that **in the absence of Operation Sunrise and the Harmonize feed,** MKIS would **not** receive a record, file and/or other notification that a specific customer is switching or has switched. **The executing carrier can in deed effectuate a carrier change request and provide the service requested without ever having to provide any information whatsoever to MKIS of a pending switch and most certainly of a completed**

switch. **This is the key point.** Thus, the only meaningful conclusion that can be reached is that BellSouth's in-house retail marketers - known as MKIS - do not receive specific notification of a switch in the normal course of business. This point cannot be stressed enough.

In order for the Commission to reach its policy outcome, that *after* a switch all carrier change information may be used to target a customer, the Commission's Order must find that MKIS does in fact learn of the switch in the ordinary course of business. The problem is that the Commission's Order fails to cite to any evidence or testimony proving that MKIS must be provided information from the carrier change request in order for the carrier change request transaction to be completed. The only evidence in the record, however, is to the contrary: that MKIS does not even attempt to match its information in the Permanent Sunrise Table until *after* the conversion is complete. See Summers Rebuttal Testimony, Pg. 14, L 13-14. This admission, alone, proves that MKIS is not a necessary prerequisite to the conversion of a customer.

MKIS Responsibility In Identifying Non-Wholesale Source

The second sentence of ¶27 sets out the necessary thresholds that must be met by MKIS before it can tap into the information generated by Operation Sunrise and deposited in the Permanent Sunrise Table. An objective reading of this second sentence lead to the only conclusion that the use of the phrase "**not derived exclusively**" requires MKIS to identify a source - other than Operation Sunrise - for its knowledge that a specific customer has switched.

Upon identifying some other **non-wholesale source** with respect to the **WTN** (working telephone number) of customers who have switched, then **MKIS is free** to use its list in the Permanent Sunrise Table to retrieve files from the CRIS system – in order to begin to generate leads using BellSouth's own CPNI (to formulate promotional offerings). The controlling impact of this sentence was **completely ignored** by this Commission.

Proposed Analysis of Legal Precedent

In this part of the Motion for Reconsideration, we have provided a proposed analysis utilizing the language of the FCC Order as it applies to the facts of this docket. This proposed analysis is what the Staff recommendation could have looked like. While some people may disagree with the policy outcome of this proposed analysis, we believe that most will agree that the analysis has intellectual integrity. We also believe that overall, our proposed analysis is more persuasive than the recommendation adopted by the Commission. If the Commission agrees with this proposed analysis, Supra respectfully requests that the Commission vote to reconsider its decision and to vote to adopt this proposed analysis or some facsimile thereof.

Proposed Analysis (Recommendation)

The Commission finds that ¶¶ 27 and 28 of FCC Order 03-42 addresses the FCC's policy regarding an executing carriers obligation **after** a conversion is completed. We also find that if you accept that the first sentence of ¶27 is addressing an ILEC's burden **after** a conversion is complete, then logic dictates that the remainder of the language in ¶27 and all of the language in ¶28 is addressing the ILECs burden **after** the conversion is complete.

We find that all information contained in a carrier change request, also known as LSR, is proprietary to the submitting carrier. See FCC Order 03-42, ¶25, last sentence. We find that any information that is necessary to effectuate a carrier change is wholesale information. See FCC Order 03-42, ¶28, third sentence. We find that the WTN is comprised of the NPA, NXX and the Line of the customer seeking to switch carriers. We find that the Working Telephone Number ("WTN") being acted upon by the carrier change request is wholesale information. We reach this conclusion because without the WTN the executing carrier cannot even issue a Firm Order

Confirmation (known as a FOC). And, as such, in the absence of the WTN the executing carrier would not be able to effectuate the carrier change request.

Paragraph 28 – Order 03-42

We find that the WTN of a customer included in a carrier change request that is transmitted to an executing carrier is necessary to effectuate a carrier change request. We find that the WTN of a customer that has just switched “cannot be used for any purpose other than to provide the service requested by the submitting carrier.” The above two findings are consistent with the third sentence of ¶28, which reads as follows:

“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.”

We find that the WTN of a customer included in a carrier change request - that is transmitted to an executing carrier in order to effectuate a carrier change request - is “**specific information**” the executing carrier obtained from the submitting carrier due solely to the ILEC’s position as the executing carrier. Consistent with the second sentence of ¶28, we find that this **specific information** cannot be used at any time in the carrier marketing process. We find that the carrier marketing process includes both retention and reacquisition.

The above three (3) findings are consistent with the second sentence of ¶28:

“Executing carriers may not at any time in the carrier marketing process rely on specific information they obtained from the submitting carriers due solely to their position as executing carriers.”

In construing the first sentence of paragraph 28: We find that MKIS does not learn of the specific WTN of a customer that has just switched in the normal course of business. We reach this conclusion utilizing the following rationale: We find that in the absence of Operation Sunrise, MKIS would not receive notification that a specific customer has switched. We also

find that the executing carrier can effectuate a carrier change request and provide the service requested without ever having to notify MKIS of the switch.

Accordingly, we find that BellSouth's in-house marketers, known as MKIS, do **not** receive the WTN of a customer who has switched in the normal course of business. Because MKIS does not receive this information in the ordinary course of business, MKIS is required to identify a source - other than Operation Sunrise - for its knowledge that a specific customer has switched. Upon identifying some other non-wholesale source with respect to the WTN (working telephone number) of customers who has switched, then MKIS is free to use its list in the Permanent Sunrise Table to retrieve files from the CRIS system – in order to begin to generate leads using BellSouth's own CPNI (to formulate promotional offerings). See Second Sentence of ¶27 (and the use of “not derived exclusively”) for authority requiring MKIS to identify such other non-wholesale source.

Paragraph 27 – Order 03-42

We find that the executing carrier's in-house marketers, known as MKIS, may **not** rely on the WTN of a customer that has just switched voice carriers, in order to trigger a marketing lead, so long as the WTN is derived exclusively from the ILEC's status as an executing carrier.

The above finding is consistent with the 2nd sentence of ¶27:

“This [referring to the first sentence of ¶27] 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.”

We find that the reference to “its own information” - in the first half of the above referenced sentence - is referring to BellSouth's own CPNI which BellSouth has been permitted to use since the issuance of FCC Order 99-223. We find that the ability to use one's own CPNI does not in any way relieve the executing carrier of its burden to refrain from using the WTN transmitted in

a carrier change request for any other purpose other than to effectuate a carrier change. We find that the second sentence of ¶27 allows BellSouth to use information – otherwise considered wholesale information – in its retail marketing so long as the information is **not** derived exclusively from its status as the executing carrier.

We find that the use of the phrase “not derived exclusively” requires MKIS to identify a source - other than Operation Sunrise - for its knowledge that a specific customer has switched. Upon identifying some other non-wholesale source with respect to the WTN of customers who have switched, then MKIS is free to use its list in the Permanent Sunrise Table to begin to generate leads using BellSouth’s own CPNI (to formulate promotional offerings).

We find that one source available to MKIS is “an external source available throughout the retail industry.” This is consistent with the language used in the first sentence of ¶27. We also find that another source is an in-bound call. We conclude that these two sources meet the legal threshold regarding when an executing carrier can rely on information that a customer has switched because in this case MKIS would **not** be deriving its notice that a customer has switched exclusively from BellSouth’s wholesale operations.

First and Last Sentences of ¶27

We find that the first sentence of ¶27 is awkwardly written and ambiguous, at best, as to its applicability. The last sentence of ¶27 is likewise ambiguous. The second sentence of ¶27 and the first three sentences of ¶28, are absolutely clear with respect to the burdens and restrictions that an executing carrier must abide by. Accordingly, this Commission interprets the first sentence of ¶27 consist with our findings herein: wholesale information (such as the WTN) cannot be exclusively relied upon unless and until the executing carrier’s retail in-house marketers can identify some other non-wholesale source.

Customer Code

Next, we find that the **customer code** is wholesale information. We reach this conclusion in the following manner. We find that when a customer changes ownership (i.e. BellSouth to Supra) the customer code is changed. Hearing Transcript (“HT”) Pg. 288, L 19-25, Pg. 291, L 1-5.⁸ We find that the customer code is electronically generated by SOCS. HT Pg. 285, L 16, Pg. 286, L 21-25. For each working telephone number account CRIS will create two records: new and old. HT Pg. 278, L 4-11. The new record will have a customer code “one up” from the retail BellSouth customer code (i.e. retail code 100, wholesale code will be 101). HT Pg. 286, L 1-14.

We find that this customer code is generated as a part of the wholesale transaction. We find that this new record is necessary in order for the executing carrier to bill the new retail carrier. Wholesale billing of the new retail carrier is necessary to effectuate a conversion. We find - that because this new record is necessary to effectuate a conversion - that the customer code cannot be used for any purpose other than to provide the service requested. The evidence demonstrates that the customer code remains on the record that populates the Permanent Sunrise Table. HT 375, L 9-14.

We find that this customer code is then used to match [HT Pg. 344, L 10-15] the Permanent Sunrise Table record with a record contained in the monthly snapshot [HT Pg. 367, L 12-13, Pg. 368, L 16-17] of CRIS. We find that without the ability to match the information with CRIS, the information in CRIS is useless to MKIS.

Thus, we find that the evidence demonstrates that records that ultimately populate the Permanent Sunrise Table used by MKIS to generate leads do in fact contain wholesale information (i.e. both a WTN and a CLEC customer code) in violation of section 222(b).

⁸ References to the hearing transcript – refer to the two (2) volumes e-mailed, to Supra, by Ruth McGill (FPSC Staff) on Monday, September 8, 2003 @4:13 pm. **You can find the customer code issue in Supra’s Post Hearing Brief @pgs. 21-22.**

As noted at the outset of this proposed analysis, we believe that overall, this proposed analysis is more persuasive because it utilizes more of the language of ¶¶27 and 28 to substantiate its conclusion. If the Commission agrees with this proposed analysis, *Supra*, again, respectfully requests that the Commission vote to reconsider its decision and to vote to adopt this proposed analysis.

IV. GENERAL COMMENTS

The Commission's Order focused on only the first and last sentences of ¶27 and ignored the rest of ¶27 and all of the language of ¶28. The irony is that the language - used by the FCC in the four (4) ignored sentences - was more definitive and much clearer than the language relied upon by the Commission in the first and last sentence of ¶27.

Next, this Commission ironically found BellSouth to be in violation of its policy when a customer switched from one CLEC to another. In finding this violation, this Commission found that MKIS cannot use the information on the Permanent Sunrise Table in order to trigger a marketing lead directed at that customer. See Page 28 of PSC-03-1393-FOF-TP. This is exactly what *Supra* had been advocating. The specific information on the Permanent Sunrise Table that MKIS is utilizing to generate that marketing lead is the working telephone number ("WTN"). Accordingly, by this Commission's own conclusion the WTN is wholesale information. The peculiarity with finding BellSouth in violation is that MKIS uses the same exact information to generate a lead irrespective of where the customer is switching away from BellSouth or switching from one CLEC to another.

More ironic is that this Commission arbitrarily concludes it is the completion of the conversion that changes the wholesale information to retail information under a circumstance where a customer switches away from BellSouth. The triggering event for the Commission was

the update of the CRIS billing system. With no explanation, this Commission concluded that this same metamorphosis, however, does not occur when a customer moves from one CLEC to another. The substantive problem with the Commission's distinction is that the CRIS billing system is updated in the exact same manner – whether the switch is away from BellSouth or CLEC to CLEC.

The Commission cannot have it both ways: either the update of CRIS turns wholesale information into retail information or it does not. If it does rely on this threshold, then the Commission was wrong in finding that BellSouth was in violation of its policy. *Supra* makes this unfortunate concession because it must under the capricious nature of the Commission's conclusions.

If the Commission considers the proposed analysis offered in this Motion for Reconsideration, the Commission will recognize that it does not need to attempt to reconcile the arbitrary distinction made between switches away from BellSouth as opposed to switches between CLECs. As was explained in detail in this Motion, the update of CRIS is legally irrelevant to the use of wholesale information because it is undisputed that it is mechanically unnecessary to provide MKIS any information regarding the pending switch or completed switch in order to effectuate a change to a new carrier. If MKIS does not learn of the switch in the ordinary course of business, then the Commission never gets to the question regarding the equivalency of the PMAP versus the information contained in the Permanent Sunrise Table. Thus, the evidence dictates that MKIS does not learn of a switch in the ordinary course of business. Therefore, the wholesale information remains such, unless and until MKIS can first identify from some other non-wholesale source that a customer has switched.

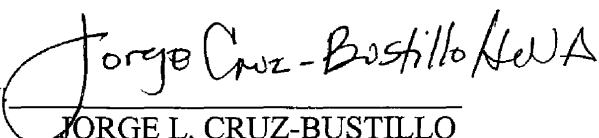
In this docket, because MKIS admittedly only uses the Permanent Sunrise Table to generate marketing leads, this Commission has no choice but to find that BellSouth is in violation of previously stated FPSC and FCC orders. BellSouth has violated these orders with respect to all leads generated whether the customer was switching away from BellSouth or from CLEC to CLEC.

V. CONCLUSION

The evidence demonstrates that this Commission ignored specific controlling legal authority. This Commission provides no explanation with respect to why the second sentence of ¶27 and the first three sentences of ¶28 have no controlling applicability to this case. This Commission completely ignored the “fact” that both the working telephone number and the customer code remain on each file and/or record that populates the Permanent Sunrise Table. The WTN and the customer code are wholesale information. If this information is not wholesale information, then this Commission provides no explanation regarding why this information is not wholesale information. Finally, the evidence in this case demonstrates that MKIS does NOT receive notice of a switch in the ordinary course of business. In all respects, this Commission’s Order must be reconsidered and reversed.

Respectfully submitted this 23rd day of December 2003.

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