ORIGINAL

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January 6, 2004

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

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

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to Supra Telecommunications and Information Systems, Inc.'s Motion for Reconsideration, 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 (EA)

Enclosures

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

AUS
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CMP
COM 3
CTR
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OPC
MMS
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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 6th day of January, 2004 to the following:

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James Meza III (KA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Supra Telecommunications and Information Systems, Inc. Regarding BellSouth's Alleged Use of Carrier to Carrier Information	)	Docket No. 030349-TP
		Filed: January 6, 2004

BELLSOUTH'S OPPOSITION TO SUPRA'S MOTION FOR RECONSIDERATION

BellSouth Telecommunications, Inc. ("BellSouth") files this Opposition to the Motion for Reconsideration ("Motion") of Order No. PSC-03-0392-TP ("Sunrise Order" or "Order") filed by Supra Telecommunications and Information Systems, Inc. ("Supra") on December 23, 2003. For the reasons discussed in detail in below, the Florida Public Service Commission ("Commission") should deny Supra's Motion.

INTRODUCTION

BellSouth attempts to compete in the telecommunications industry by identifying and marketing to former BellSouth customers through a program of activities called Operation Sunrise or Sunrise. BellSouth consumer marketing developed this program to address three specific issues: "(1) retail residential local service reacquisition; (2) residential local toll reacquisition; and (3) retail residential product or feature reacquisition." Order at 17. In the Sunrise Order, the Commission correctly held that Operation Sunrise, as it is designed to work, does not improperly share CLEC wholesale information with BellSouth's retail operations and thus complied with all applicable federal and state laws regarding the sharing of wholesale information.

In reaching this conclusion, the Commission thoroughly reviewed and digested how Sunrise works, Supra's arguments regarding Sunrise, and the applicable legal authority, including the Telecommunications Act of 1996 (the "Act"), Federal Communications Commission ("FCC") orders, and various Commission orders. After this detailed analysis, the Commission rejected Supra's arguments, finding that they were not supported by the law. Specifically, the Commission found that BellSouth "should be allowed to receive equivalent information regarding lost customers just as it provides to the CLECs through the PMAP reports" and that "once CRIS is updated showing Supra as the new provider, the information regarding the switch of a BellSouth customer to Supra is no longer wholesale information . . . ." See Sunrise Order 20 and 26-27.

In its Motion for Reconsideration (which is longer than its post-hearing brief), Supra seeks to persuade this Commission to reconsider its decision in the Sunrise Order through confusion, redundancy, and visual clutter consisting of numerous bolded, underlined, and italicized arguments. While Supra's arguments are difficult to decipher, one thing is clear: Supra's Motion is meritless and provides no justification for reconsideration either because (1) the Commission previously considered and rejected the asserted arguments; or (2) Supra raises new arguments that are procedurally improper and devoid of any merit.

II. SUPRA FAILS TO MEET THE STANDARD FOR RECONSIDERATION.

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 Diamond Cab Co. v. King, 146 So. 2d 889, 891 (Fla. 1962). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. See Sherwood v. State, 111 So. 2d 96, 97 (Fla. 3rd DCA 1959) (citing State ex. Rel. Jayatex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Moreover, a motion for reconsideration is not intended to be "a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order." Diamond Cab Co., 394 So.2d at 891. Indeed, a motion for reconsideration should not be granted based upon an arbitrary feeling that a mistake may have been made, but should be based on specific factual matter set forth in the record and susceptible to review." Steward Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

Further, it is well settled that it is inappropriate to raise new arguments in a motion for reconsideration. In re: Establish Nondiscriminatory Rates, Terms, and Conditions, Docket No. 950984-TP, Order No. PSC 96-1024-FOF-TP, Aug. 7, 1996, 1996 WL 470534 at *3 ("It is not appropriate, on reconsideration, to raise new arguments not mentioned earlier."); In re: Southern States Utilities, Inc., Docket No. 950495-WS, Order No. PSC-96-0347-FOF-WS, Mar. 11, 1996, 1996 WL 116438 at *3 ("Reconsideration is not an opportunity to raise new arguments."). As set forth in detail below, pursuant to these standards, Supra's Motion must be denied.

III. THE COMMISSION CONSIDERED AND REJECTED SUPRA'S ARGUMENTS.[1]

First, Supra argues that "several sentences contained in ¶¶ 27-28 of FCC Order 03-42 were completely ignored in the Commission's decision in this docket" and, without citing to any authority in support, boldly states that the "Commission is duty bound to explain in writing why these sentences are not controlling and inapplicable in this instance." Motion at 2 (emphasis in original). This assertion is simply not accurate. The Commission fully considered the entirety of paragraphs 27 and 28 in rejecting Supra's arguments and even cited to the full text of each paragraph in two separate instances in the Order. See Sunrise Order at 9-10, 20-21. Further, Supra made these identical arguments regarding its interpretation of FCC Order 03-42 in its post-hearing brief, in its pre-filed testimony, and in Mr. Nilson's summary at the hearing. Compare Motion at 2-4 with Supra Post-Hearing Brief at 4-6 with Tr. 112, 115, and 129. Consequently, there can be no question that the Commission fully considered Supra's arguments regarding the cited authority and rejected them. Simply because Supra disagrees with the Commission's interpretation of paragraphs 27 and 28 of FCC Order 03-42 does not warrant reconsideration of the Sunrise Order or a duty to further elaborate as to why Supra's arguments were rejected.

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[1] Supra raises the same or similar arguments on several different occasions in the Motion. For instance, Supra essentially asserts the same grounds and cites to the same authority for the following arguments: (1) the Commission ignored legal precedent (Motion at 2); (2) the Commission failed to consider specific facts (Motion at 17); and (3) Supra's interpretation of the applicable legal authority (Motion at 20). For the sake of brevity and because the arguments are substantially the same, BellSouth will address each argument only once.

Second, Supra then argues that the Commission "ignored" the following discreet arguments, all of which were previously argued by Supra in its testimony and/or in its post-hearing brief and rejected by the Commission: (1) the information contained in Sunrise is derived exclusively from BellSouth's status as an executing carrier (Motion at 7); (2) the Commission ignored the "Neutral Role of Executing Carrier" argument (Motion at 12); and (3) the customer code constitutes wholesale information (Motion at 18).[2]

A. The Commission Properly Rejected Supra's derived Exclusively Argument.

Based on paragraph 27 of FCC Order 03-42, Supra argues that the Commission "**completely ignored**" its argument that Sunrise uses information derived exclusively from BellSouth's status as an executing carrier and thus is prohibited. See Motion at 7 (emphasis in original). Paragraph 27 of FCC Order 03-42 provides:

> 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

[2] Within each of these arguments, Supra appears to raise new arguments that are derivative or similar to the arguments previously asserted by Supra and rejected by the Commission. As set forth infra, all of these new arguments are procedurally improper and, nevertheless, do not support any finding that the Commission should reconsider its Sunrise Order.

> curtailed because competitors have access to equivalent information for use in their own marketing and winback operations.

FCC Order 03-42 at ¶ 27. The Commission considered this very argument in the Sunrise Order and rejected it. Specifically, after quoting paragraph 27, the Commission expressly stated:

> We disagree with Supra's position that carrier change information obtained from an LSR remains wholesale information even after the carrier change is completed. We believe that once the information in CRIS is updated showing that Supra is now the provider of service, the information that a customer has switched to Supra is no longer wholesale information. Both parties agree that the CRIS database is located on the retail side of BellSouth. Supra agrees that certain functions on the retail side of BellSouth's operations have to be updated when a BellSouth customer is switching to Supra. However, Supra contends that the MKIS winback operations are the only people that cannot get this information. We find that once CRIS is updated showing Supra as the new provider, the information regarding the switch of a BellSouth customer to Supra is no longer wholesale information, it becomes retail information, not subject to the wholesale information rules contained in the FCC Orders, or Order Nos. PSC-02-0875-PAA=TP, and PSC-03-0726-FOF-TP. We find the information of the carrier change is obtained in the normal course of business as CRIS is updated.

See Sunrise Order at 26-27. Moreover, Supra's argument – that any information obtained from a CLEC LSR regarding the loss of a BellSouth retail customer -- renders the FCC's language useless and defies the realities of a competitive market. Commissioner Deason recognized this very point at the hearing:

> 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. Accordingly, the Commission should summarily dismiss this argument because the Commission has already considered and rejected it.

B. The Commission Did Not Ignore Supra's "Neutral Role of Executing Carrier" Argument.

Next, Supra argues that the 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." Motion at 12. In support, Supra relies on paragraph 109 of FCC Order 98-334 ("Second Report and Order"). This paragraph appears to reference retention marketing and generically prohibits "executing carriers from using information gained solely from the carrier change transaction to thwart competition by using the carrier proprietary information of the submitting carrier to market the submitting carrier's subscribers." Supra claims that the FCC, in Order 03-42 at paragraph 27, favorably cited to paragraph 109 of the Second Report and Order. See Motion at 12. This, however, is inaccurate.

To the contrary, the FCC in paragraph 27 of Order 03-42 cited to paragraph 107 of the Second Report and Order. In paragraph 107, the FCC determined that its prohibition against an executing carrier using carrier change information (in contrast to a carrier's own information) for marketing purposes did not violate the First Amendment. See Second Report and Order at ¶ 107. Thus, as an initial matter, Supra's reliance on paragraph 109 is misplaced.

In any event, the FCC's findings and policy decisions in paragraphs 107 or 109 in the Second Report and Order were fully considered and disposed of by the Commission in the Sunrise Order. That is, the Commission considered retention versus winback marketing and determined that retention marketing was not at issue in this proceeding. See Sunrise Order at 7. Further, as discussed above, the Commission properly determined that Sunrise does not use information for marketing purposes that it obtains exclusively as the executing carrier. Thus, there is nothing in paragraph 107 or 109 of the Second Report and Order that the Commission overlooked or failed to consider.

C. Supra's Customer Code Argument Should Be Rejected.

As determined by the Commission, 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. See Sunrise Order at 18. Sunrise then eliminates all orders except disconnect ("D") and change ("C") orders. Id. 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. Id.; see also, Tr. at 327.

Operation Sunrise then pulls only the following information into the permanent Sunrise table: NPA, NXX, the line, the customer code, and the date the data was extracted from SOCS. Id. Following this step, the temporary table is then purged completely. Id. "At this point, all information contained in the disconnect order that could be considered CPNI or wholesale information is

gone." See Sunrise Order at 19. 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. "The customer service record, which is actually a snapshot extract from the CRIS database, shows the last information BellSouth had concerning the customer's name, address, and subscribed-to services before the disconnection occurred." Id. If there is a match and a customer is identified, Operation Sunrise forwards the information to third-party vendors for marketing purposes. Id.

Supra argues that the Commission failed to consider its argument that use of the customer code in Sunrise is improper. However, the Commission, on two occasions in the Sunrise Order, referred to the customer code in describing Sunrise, thereby evidencing that the Commission understood and considered the impact if any of the customer code and rejected Supra's argument. See Sunrise Order at 18-19.

Further, Supra's argument is erroneous. 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. 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 and which Sunrise uses to assist in the matching of a telephone number to a particular end user.

IV. SUPRA'S NEW ARGUMENTS SHOULD BE REJECTED.

In addition, Supra raises new arguments for the first time in its Motion for Reconsideration. These arguments are not easily discernable but can be characterized as follows: (1) the working telephone number ("WTN") cannot be used for marketing purposes (Motion at 4); (2) the updating of CRIS to reflect that BellSouth lost a retail customer is not conducted in BellSouth's ordinary course of business (Motion at 11-12); and (3) Sunrise does not learn of a customer switch in the ordinary course of business (Motion at 14-15).

As an initial matter, all of these arguments should be rejected because Supra is raising them for the first time on reconsideration. Therefore, as a matter of Commission precedent, the Commission cannot consider the arguments in addressing Supra's Motion. See In re: Establish Nondiscriminatory Rates, Terms, and Conditions, Docket No. 950984-TP, Order No. PSC 96-1024-FOF-TP, Aug. 7, 1996, 1996 WL 470534 at *3; In re: Southern States Utilities, Inc., Docket No. 950495-WS, Order No. PSC-96-0347-FOF-WS, Mar. 11, 1996, 1996 WL 116438 at *3.

Even if considered, however, none of the new arguments support reconsideration of the Sunrise Order.

A. The Use of WTNs Is Permissible.

For instance, Supra's argument that paragraph 28 of FCC Order 03-42 prohibits the use of a WTN in Sunrise because the "WTN is absolutely necessary

for a carrier change request to be completed" is misplaced. See Motion at 4 (emphasis in original). Paragraph 28 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.

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, including the WTN at issue, 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. 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 and even admits in its Motion that "[u]pdating CRIS is a necessary step in order to effectuate the carrier change process." Tr. at 142; Motion at 14.

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. Thus, the Commission properly determined that "once the information in CRIS is updated showing that Supra is now the provider of service, the information that a customer has switched to Supra is no longer wholesale information." See Sunrise Order at 26.

B. The Updating of CRIS Occurs in the Normal Course.

Next, Supra argues for the first time that the Commission ignored paragraph 28 of FCC Order 03-42 in finding that BellSouth obtains the information used in Sunrise in the normal course of business. Supra further argues that the failure of the Commission to cite any specific language from previous orders to substantiate this finding "demonstrates the **capricious nature** of the Commission's conclusion." Motion at 11 (emphasis in original).

Identical to Supra's previous arguments, however, this argument is factually inaccurate as the Commission repeatedly refers to FCC Order 03-42

and specifically paragraph 28 in the Sunrise Order and even quotes this paragraph verbatim on two different occasions. This fact is fatal to Supra's argument that the Commission ignored certain legal precedent and underscores the "capricious nature" of Supra's Motion.

Moreover, the Commission properly interpreted and applied the legal authority that Supra claims the Commission ignored. Indeed, after reviewing the evidence, applicable law and the parties' arguments, the Commission correctly determined that "the information of the carrier change is obtained in the normal course of business as CRIS is updated." See Sunrise Order at 27. The Commission based this decision on the following sound analysis:

> Both parties agree that the CRIS database is located on the retail side of BellSouth. Supra agrees that certain functions on the retail side of BellSouth's operations have to be updated when a BellSouth customer is switching to Supra. However, Supra contends that the MKIS winback operations are the only people that cannot get this information. We find that once CRIS is updated showing Supra as the new provider, the information regarding the switch of a BellSouth customer to Supra is no longer wholesale information . . . .

Id. at 26-27. The decision is completely consistent with FCC Order 03-42 and the FCC's express finding that carriers can use change information obtained "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) . . . ." FCC Order 03-42 at ¶ 27.

D. Sunrise Uses Information Obtained in the Normal Course of Business.

In a new, novel argument, Supra argues that Sunrise does not obtain the carrier change information – NXX, NPA, and line of the customer – in the normal course of business and thus cannot comply with paragraph 28 of FCC Order 03-42. See Motion at 14-15. Effectively, Supra claims that, because Sunrise is not necessary to effectuate a carrier conversion, Sunrise does not learn of the switch in the ordinary course. Supra further argues that, because Sunrise does not learn of the change in the ordinary course, Sunrise is not a permissible use of carrier change information. The flaws of this argument are numerous and facially apparent.

First, contrary to Supra's new argument, the focus is not on whether Sunrise obtains the information in the ordinary course. Rather, as provided in paragraph 27 of FCC Order 03-42, the focus is on whether BellSouth's retail arm "obtains carrier change information through its normal channels in a form available throughout the retail industry, and after the carrier change has been implemented . . . ." As set forth above, effectively conceded by Supra at the hearing, and found by the Commission, there can be no question that BellSouth's retail arm, through the updating of CRIS, learns of a carrier conversion in the normal course of business. Thus, the Commission correctly determined that Sunrise complies with paragraph 27 of FCC Order 03-42. See Sunrise Order at 27.

Second, with this new argument, Supra appears to now argue that MKIS is not part of BellSouth's retail arm. The Commission found and Supra

previously asserted, however, that MKIS and Sunrise are part of the BellSouth retail group. Id. at 18 ("Operation Sunrise, or Sunrise, is a program of activities that was developed by BellSouth's consumer marketing . . . BellSouth's marketing information systems organization, MKIS, through Operation Sunrise, provides marketing support in terms of list management and distribution for target marketing. MKIS is an organization within BellSouth that supports the marketing organization by providing various statistics and information about the sales performance of various BellSouth retail products and services."). Indeed, absent a finding that MKIS and Sunrise were part of BellSouth's retail arm, Supra would have no claim that BellSouth shared information between its wholesale and retail operations. Thus, even accepting Supra's argument, it must be rejected because there is no question that BellSouth's retail arm includes MKIS and Sunrise and therefore comes within the gambit of paragraph 27 of FCC Order 03-42.

V. SUPRA'S PROPOSED FINDINGS ARE PROCEDURALLY IMPROPER.

Finally, Supra provides the Commission a "Proposed Analysis of Legal Precedent" and "Proposed Analysis" that Supra "believes is more persuasive then [sic] the recommendation adopted by the Commission" and requests that the Commission adopt this analysis on reconsideration.[3] See Motion at 23. Supra's "analysis" simply regurgitates the erroneous factual and legal arguments espoused by Supra in the preceding 22 pages of the Motion.

[3] Because the Commission rejected all of Supra's arguments, it is not surprising that Supra believes that its analysis is more persuasive than the Commission's analysis in the Sunrise Order.

Notwithstanding the substantive defects of this proposed "analysis," all of which are addressed above, there is no procedural vehicle that allows Supra to present a proposed finding of and law on reconsideration. To the contrary, the opportunity to present a proposed analysis occurred at the close of the hearing and through the submission of post-hearing briefs, which Supra filed and which included most of the instant arguments, and not on reconsideration. See Rule 28-106.215, Florida Administrative Code. Accordingly, in addition to the substantive errors discussed above, the Commission should reject Supra's proposed "analysis" because it is procedurally improper.

CONCLUSION

For the foregoing reasons, BellSouth requests that the Commission deny Supra's Motion for Reconsideration.

Respectfully submitted, this 6th day of January, 2004,

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