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Sent: Friday, September 24, 2004 3:41 PM
To: Filings@psc.state.fl.us
Cc: Meza, James; Linda Hobbs; Fatool, Vicki; Holland, Robyn P; Nancy Sims; Bixler, Micheale
Subject: Docket 040353-TP
Importance: High

- A. Brenda Slaughter
 Legal Secretary for James Meza III
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 c/o Nancy Sims
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- B. Docket No. 040353-TP: Petition of Supra Telecommunications and Information Systems, Inc. to Review and Cancel BellSouth's Promotion Offering Tariffs Offered in Conjunction with its New Flat Rate Service Known as Preferred Pack
- C. BellSouth Telecommunications, Inc. on behalf of James Meza III
- D. 8 pages total
- E. BellSouth Telecommunications, Inc.'s Opposition to Supra Telecommunications and Information Systems, Inc.'s Motion to Compel

Brenda Slaughter (sent on behalf of James Meza III)
 BellSouth Telecommunications, Inc.
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 675 W. Peachtree Street
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<<040353-TP Opposition to Motion to Compel.pdf>>

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September 24, 2004

Mrs. Blanca S. Bayó
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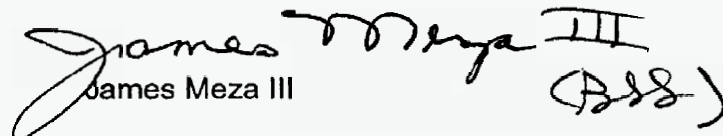
Re: **Docket No.: 040353-TP** Supra "PreferredPack"

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Opposition to Supra's Motion to Compel, which we ask that you file in the above-captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III (BSS)

Enclosures

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

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**CERTIFICATE OF SERVICE
DOCKET NO. 040353-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via First Class U.S. Mail and Electronic Mail this 24th day of September, 2004 to the following:

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(*) Signed Protective Agreement


James Meza III (BLL)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Supra Telecommunications)	Docket No. 040353-TP
And Information Systems, Inc. to Review)	
And Cancel BellSouth's Promotional)	
Offering Tariffs Offered in Conjunction With)	
Its New Flat Rate Service Known as)	
<u>Preferred Pack</u>)	Filed: September 24, 2004

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
OPPOSITION TO SUPRA'S MOTION TO COMPEL**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Opposition to Supra Telecommunications & Information Systems, Inc.'s ("Supra") Motion to Compel ("Motion"). For the reasons discussed in detail below, the Florida Public Service Commission ("Commission") should deny Supra's attempt to obtain irrelevant and moot information.

1. With this Complaint, Supra is attempting to insulate itself from the rigors of competition by claiming that BellSouth's PreferredPack Plan service in conjunction with several non-telecom promotions ("Promotions") violates, among other statutes, Section 364.051(5)(c) Florida Statutes on the grounds that BellSouth does not recover its costs. In making this argument, Supra relies on flawed mathematical calculations and interpretations of Florida law and conveniently ignores the undisputed fact that all carriers, including CLECs, use promotional offerings to entice customers to switch service providers. Indeed, as made clear by BellSouth in its Opposition to Supra's Motion for Final Summary Order ("Opposition"), these CLEC promotions establish, *inter alia*, that (1) Supra has a tariffed promotion that gives new customers who switch from BellSouth to Supra **one free month** of its Total Solutions service; (2) Supra has another promotion where it gives away the **complete DVD set of "Friends,"** a prize worth over

\$300, to new customers; and (3) other carriers offer promotions ranging from **free service**, to **credits on bills**, to **cash payments** to entice customers to switch service providers.

2. Further, as made clear in BellSouth's Opposition, BellSouth is not violating Section 364.051(5)(c) or any other Florida Statute because BellSouth recovers all of its costs associated with the subject Promotions.

3. Since the inception of this proceeding, Supra has propounded three sets of discovery on BellSouth, totaling 30 interrogatories, 18 requests for production, and 103 requests for admissions. In its Motion, Supra seeks to compel the production of a single Request for Production – RFP No. 18, wherein Supra requested the production of “BellSouth's Privacy Director Cost Study, as testified to by Daonne Caldwell before the United States Bankruptcy Court, Southern District, in Case. 02-41250.” See Motion at 3. BellSouth objected to this request on the grounds that the information requested was irrelevant and not likely to lead to the discovery of admissible evidence. It should be noted that Supra has not specifically asked for a cost study for any nonbasic feature or non-UNE service other than for Privacy Director.

4. Supra's sole argument in support of the Motion is that the “discovery request is related to the establishment of BellSouth's cost for provisioning its privacy director service (a component of the PreferredPack Plan tariff offering that is the subject of a Supra claim as plead in its Petition),” Id. at 4. The Commission should deny Supra's Motion because (1) Supra effectively argues that BellSouth's Privacy Director cost study is irrelevant to the proceeding; (3) Supra's request is moot; and (2) Supra's

request is nothing more than a veiled attempt to circumvent the ruling of the Bankruptcy Court regarding Supra's billing disputes related to Privacy Director.

5. First, according to Supra's interpretation of Section 364.051(5)(c), the relevant inquiry is not what BellSouth's costs are to provide Privacy Director but what it costs Supra to purchase Privacy Director. Indeed, in support of its Motion for Final Summary Order, Supra added its \$4.65 resale costs for Privacy Director to its average UNE costs to obtain its \$28.14 calculation of what it believes BellSouth's costs are in providing the PreferredPack Service. See Motion for Final Summary Order at ¶¶ 9-11. In fact, absent the inclusion of Supra's resale costs for Privacy Director, Supra's "house of cards" mathematical calculation proves that BellSouth recovers its costs. While BellSouth submits that this calculation is incorrect and not consistent with Section 364.051(5)(c) (as fully set forth in the BellSouth's Opposition), this argument belies Supra's claims in the instant Motion and renders its motivations suspect.

6. Second, even if relevant, BellSouth has already provided Supra with its TSLRIC costs for the Privacy Director Service. Specifically, in response to Request for Production No. 15, BellSouth identified, on a per feature basis, its TSLRIC costs for the 9 nonbasic features available with the PreferredPack Plan service as well for its Privacy Director service. Accordingly, because Supra already knows what BellSouth's TSLRIC costs are for its Privacy Director service, Supra's Motion is moot.

7. Third, Supra's sole motivation for attempting to obtain BellSouth's Privacy Director cost study is to resurrect its billing dispute that Privacy Director is a UNE and thus is available at TELRIC rather than at resale. As set forth in BellSouth's Opposition, the Bankruptcy Court has already rejected this argument.

The debtor's argument on privacy director is that it is already paying for the components of privacy director as part of the charges embodied in the UNE bills for the \$2.26 features costs and the \$1.17 local switch port charge. BellSouth has maintained from the beginning that privacy director uses components that involve costs that did not go into the UNE billing charges that Supra is paying, and, therefore, under the contract, this service has to be acquired if the debtor wants it, just as it would be acquired by a retail customer, albeit at a discount that is provided for these types of services.

The Court heard preliminary arguments and proffers on this at the last hearing, which I believe as of June 18th, and set a further evidentiary hearing for the purpose of allowing the debtor -- or I should say set a further evidentiary hearing based on the debtor's proffer that it would be able to show that all of the components of privacy director and all of the costs for those components were included in cost studies that BellSouth presented in order to obtain the UNE charges for the features component and for the local switch port.

The debtor has not met its burden. The Court has considered the exhibits that were referenced and those that are in evidence that have been referenced, the testimony of Mr. Nilson and Ms. Caldwell. The Court finds that Mr. Nilson's testimony is simply his interpretation of what's included in the cost studies. I don't believe Mr. Nilson was misrepresenting anything or was trying to deceive in any way. I just don't believe he has a full understanding of what these cost studies include.

By contrast, Ms. Caldwell is clearly an expert on the components of the cost studies and the methodology of their preparation and, in fact, a particular excerpt from Exhibit 9 that the debtor was relying on was prepared under her supervision. Specifically, I find that Ms. Caldwell was convincing and credible in her explanation of cost components for privacy director that were not included in the cost studies presented to the Public Service Commission in what I believe was the UNE docket that's been referred to. That is the Public Service Commission docket that determined the \$2.26 features charge and the \$1.17 local switch port charge.

These additional items, and my terminology is certainly not meant to be the technical terminology, include extra use of the network, including at least one, if not two, extra trips up to the SCP database, and if the query reveals that the caller has put on caller ID block or is unknown, that is, if it's identified as private or unknown, then you have, again in very lay terms, an extra round trip between the callers to require the originating caller to unblock or state their name. Second, you have access to the privacy director software, which the Court finds credible Ms. Caldwell's testimony that this is a separate application on the SCP database. Third, you have use of the CSN and access to it if the first query shows that the caller is in the private or unknown category.

That may not be a full summary of the extra components, but even if it's not, and even if it's not, as I candidly admitted, a technical explanation of everything, I am fully satisfied that the debtor has failed to meet its burden and that there are substantial additional costs inherent in the privacy director service that the debtor is not paying for under the existing UNE billing. Therefore, the debtor's objection to the privacy director portions of the disputed bills is overruled.

See Exhibit 4 to Opposition. Supra sought reconsideration of this decision and the Court denied the request without a hearing.


8. Given the undisputed fact that (1) Supra does not believe that BellSouth's Privacy Director costs are relevant; (2) BellSouth has already provided Supra with its TSLRIC cost for the Privacy Director service; and (3) Supra has specifically sought BellSouth's cost study only for its Privacy Director service and for no other feature or service, it is clear that Supra is attempting to use the Commission to obtain fodder to resurrect its Privacy Director billing dispute before the Bankruptcy Court – an argument the Court rejected twice. Supra's desire to obtain evidence relating to a billing dispute previously rejected by the Bankruptcy Court does not make the information relevant in the instant proceeding.


CONCLUSION

For the foregoing reasons, the Commission should deny Supra's Motion to Compel.

Respectfully submitted this 24th day of September, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.


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