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May 1, 2006

ORIGINAL

VIA HAND DELIVERY

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

RECEIVED FPSC
MAY - 1 PM 4: 18
COMMISSION
CLERK

060366-TP

Re: **COMPLAINT REGARDING BELL SOUTH'S FAILURE TO OFFER ITS PROMOTIONAL TARIFF OFFERINGS FOR RESALE AND REQUEST FOR RELIEF**

Dear Ms. Bayó:

Enclosed for filing on behalf of Supra Telecommunications and Information Systems, Inc. (Supra) are the original and fifteen copies of Supra's Complaint Regarding BellSouth Telecommunications, Inc.'s (BellSouth) Failure to Offer its Promotional Tariff Offerings for Resale and Request for Relief.

RECEIVED & FILED


FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

03844 MAY-1 06

FPSC-COMMISSION CLERK

Blanca S. Bayo, Director
May 1, 2006
Page 2

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me. Thank you for your assistance with this filing.

Sincerely,



Beth Keating, Esquire
Akerman Senterfitt
106 East College Avenue, Suite 1200
P.O. Box 1877 (32302)
Tallahassee, Florida 32301
(850) 521-8002
Fax: (850) 222-0103
beth.keating@akerman.com

Enclosures

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of:)
Complaint of Supra Telecommunications)
and Information Systems, Inc. regarding)
BellSouth Telecommunications, Inc.'s)
Failure to Offer Certain Promotional Tariff)
Offerings for Resale in violation of the)
Telecommunications Act of 1996.)

Docket No. 060366-TP
Filed: May 1, 2006

**COMPLAINT REGARDING BELLSOUTH'S FAILURE TO OFFER ITS
PROMOTIONAL TARIFF OFFERINGS FOR RESALE AND REQUEST FOR RELIEF**

Pursuant to Rule 25-22.036(2), Florida Administrative Code, Supra Telecommunications and Information Systems, Inc. ("Supra") by and through its undersigned counsel, hereby files this Complaint seeking review of certain promotional offerings and tariffs pursuant to which BellSouth Telecommunications, Inc. ("BellSouth") provides promotional discounts in the form of monetary inducements to retail customers and refuses to make the same promotional offerings available for resale subject to the same conditions. Supra seeks a remedy for BellSouth's practice of refusing to allow Supra to resell these promotions in their entirety including the same monetary inducements from BellSouth when Supra resells the identical service offerings or to apply the value of such inducements to the rates for the wholesale services Supra seeks to purchase for resale. BellSouth's actions are a clear violation of 47 U.S.C. § 251(c)(4) of the Federal Telecommunications Act of 1996 ("The Act"), Sections 364.161(2) and 364.162, Florida Statutes, Rule 47 C.F.R. 51.613(b), and the parties' interconnection agreement approved in Docket No. 001305-TP.¹

¹ Supra believes it is also highly likely that BellSouth's provision of the promotions set forth herein, in many instances, violates Section 364.051(5)(c), Florida Statutes.

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Supra requests that the Commission issue an Order requiring BellSouth to allow Supra to resale the promotions in their entirety and to provide the same monetary inducements, which are clearly integral to these promotions, to resale customers of Supra when Supra purchases these service offerings or to apply the value of such inducements to the wholesale rate for the service being purchased (i.e. apply the wholesale discount to the promotional rates); thus, requiring BellSouth to come into compliance with the resale provisions of the Telecommunications Act of 1996 ("the Act") and Chapter 364, Florida Statutes.

In support of this Complaint, Supra states as follows:

1. Supra is a competitive local exchange carrier ("CLEC") certificated by the Commission to provide telecommunications services within the State of Florida. Petitioner's name, address, and telephone number are as follows:

Supra Telecommunications and Information Systems, Inc.
1000 Legion Place
Gateway Center
Suite 1650
Orlando, Florida 32801
(407) 447-6753

2. The Petitioner's representative's name, address, and telephone number is:

Marva Brown Johnson, Esquire
General Counsel
Supra Telecommunications and Information Systems, Inc.
1000 Legion Place
Gateway Center
Suite 1650
Orlando, Florida 32801
(407) 447-6753
Fax: (407) 447-1965
E-mail: Marva.Johnson@SupraTelecom.com

and

Beth Keating, Esquire

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May 1, 2006

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3. BellSouth is a corporation organized and formed under the laws of the state of Georgia, with its principal office at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth is an Incumbent Local Exchange Carrier ("ILEC") certificated by this Commission to provide local exchange telecommunications services in the State of Florida. BellSouth's address in the State of Florida for service of process is:

James Meza, III, General Counsel
c/o Nancy H. Sims, Director of Regulatory Affairs
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301

JURISDICTION

4. The Florida Commission has clear jurisdiction in this matter pursuant to Sections 364.051, 364.161, and 364.162, Florida Statutes, and Rule 47 C.F.R. 51.613(b).

FACTUAL ALLEGATIONS

5. BellSouth currently offers a variety of monetary inducement promotions in connection with two of its base package offerings: the Complete Choice and Preferred Pack plans. These plans offer:

BellSouth Basic Package Offerings		
Service Attributes	Preferred Pack	Complete Choice
BellSouth's Product Package Price	\$27.00	\$31.00
Line Charges	Flat rate access line w/Touch Tone	Flat rate access line w/Touch Tone
Local Voice	Free unlimited local calling	Free unlimited local calling
Long Distance	5¢ per minute	Unlimited
Features Included	Unlimited use of popular features including Caller ID-Deluxe	Unlimited use of prominent features including Ring Master
Other Non-basic services	Voice Mail Companion Services Package at no additional charge when Voicemail/Memory Call is ordered; Privacy Director	N/A

BellSouth also charges its retail end –users \$6.50 for its End User Common Line Charge, for a total revenue on the package of \$33.50 for Preferred Pack and \$37.50 for Complete Choice.

BellSouth charges its retail customers \$26.95 for an individual Preferred Pack line. In addition, BellSouth charges \$6.50 for its End User Common Line Charge, for a total revenue of \$33.45.

6. BellSouth now has at least five (5) categories of promotional tariff offerings to provide discounts to its base service offerings. See Exhibit A: Summary of BellSouth Financial Inducement Promotions. These categories are:

- Cash Back promotions;
- Gift Card promotions;
- Coupons promotions;
- Fee Waiver promotions; and
- Service Credit/Discount promotions.

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BellSouth uses these promotions both individually and in different combinations with its service packages, to acquire new customers and to win-back CLEC customers, providing them with additional discounts in order to return to BellSouth.

7. The Cash Back promotional offering category:

The Cash Back promotional category includes at least five promotions pursuant to which a CLEC customer that switches back to BellSouth and purchases the Complete Choice or Preferred Pack plans is eligible to receive \$50 to \$125 cash back for switching to BellSouth. .

8. The Gift Cards promotional offering category:

The Gift Cards promotional category includes the All Connect Gift Card, the Multiple Dwelling Units ("MDU") Gift Card, and the Single Family Dwelling ("SFD") Gift Card. These promotions offer customers \$25 to \$50 in gift cards when they switch their services to BellSouth. Customers who order residential local exchange services are eligible to receive these gift cards.

9. The Coupons promotional offering category:

The Coupons promotional category includes the BellSouth Package Closer Coupon Promotion pursuant to which BellSouth may offer potential BellSouth Complete Choice, PreferredPack and Complete Choice with Area Plus customers an additional \$25 cash back "sweetener" as a closer coupon in order to encourage reluctant potential customers to "close" the deal.

10. The Fee Waiver promotional category:

The Fee Waiver category includes the Line Connection Charge Waiver for the local service connection fee, whereby when BellSouth acquires a CLEC customer and the customer subscribes to the Complete Choice or PreferredPack plan the customer will receive the added benefit of having the connection fee waived. Supra estimates that the value of this credit is \$35.88.

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11. The Service Credit/Discounted Service promotional offering category:

The Service Credit/Discounted Service promotional category includes the \$50 and \$75 one-time credit for the first and each additional line for the same location for each new BellSouth customer local exchange services customer.

12. Most of these offers can be combined with other offers, according to BellSouth's tariffs. As such, today, a customer could receive monetary inducements of as much as \$160 by combining BellSouth's promotions, such as the \$125 cash back with the waived local service connection fee. BellSouth's utilizes the monetary inducement promotions as its primary residential customer re-acquisition tool and Supra has been unable to identify any current residential promotions that BellSouth offers other than the monetary inducement-based promotions. In reviewing the current rates for BellSouth's basic packages in conjunction with these monetary inducement promotions, it is difficult to imagine that BellSouth recovers its service costs associated with providing these services.

13. Supra has made numerous requests to address this issue with BellSouth, but BellSouth refuses to provide these promotions to Supra for resale despite of Supra's efforts BellSouth to promptly do so.

LEGAL ARGUMENTS

14. While Supra certainly questions whether BellSouth can possibly be covering its costs for service under these promotions, the greatest immediate concern to Supra with regard to these promotions is the fact that they are directly targeted at CLEC customers, and yet, BellSouth refuses to resell the promotions, in clear violation of Florida Statutes and the FCC's rules implementing Section 251(c)(4) of the Act. Specifically, the pertinent provisions of which BellSouth is in violation are, as follows:

Section 364.161(2), Florida Statutes:

(2) Other than ensuring that the resale is of the same class of service, no local exchange telecommunications company may impose any restrictions on the resale of its services or facilities, except those the commission may determine are reasonable. The local exchange telecommunications company's currently tariffed, flat-rated, switched residential and business services shall not be required to be resold until the local exchange telecommunications company is permitted to provide inter-LATA services and video programming, but in no event before July 1, 1997. In no event shall the price of any service provided for resale be below cost. [Emphasis added].

47 C.F.R. §51.613 (a)(2) and (b):

(2) *Short term promotions.* An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if:

(i) Such promotions involve rates that will be in effect for no more than 90 days; and

(ii) The incumbent LEC does not use such promotional offerings to evade the wholesale rate obligations, for example by making available a sequential series of 90-day promotional rates.

(b) With respect to any restrictions on resale not permitted under paragraph (a), an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory. [Emphasis added].

Section 251(c)(4) of the Telecommunications Act of 1996 requires LECs :

- (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
- (B) not to prohibit, and to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications services,

FCC First Report and Order, FCC 96-325, at ¶948:

Section 251(c)(4) provides that incumbent LECs must offer for resale at wholesale rates "any telecommunications service" that the carriers provide at retail to noncarrier subscribers. The language makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings. We therefore conclude that no basis exists for creating a general exemption from the wholesale requirement for all promotional or discount service offerings made by incumbent LECs. A contrary result would permit incumbent LECs to avoid the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act.

- 15. Finally, the parties' Interconnection Agreement, approved in Docket No. 001305-TP, includes the following provisions in **Attachment 1 (Resale)**:

4.1.1. No terms and conditions, including use and user restrictions, shall be applicable to the resale of BellSouth's telecommunications services except for a restriction on cross-class selling and reasonable, nondiscriminatory and narrowly tailored terms, conditions and limitations in they underlying BellSouth tariffs.

4.1.4 Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual end user of BellSouth in the appropriate section of BellSouth's tariffs. Specific tariff features (e.g., a usage allowance per month) shall not be aggregated across multiple resold services unless specifically provided for in BellSouth's tariffs.

16. In addition, Exhibit B to Attachment 1 to the Agreement, includes a chart titled **Exclusions and Limitations on Services Available for Resale**, which is included as Exhibit B to this Complaint. The chart indicates that promotions greater than 90 days, as well as those that are less than 90 days, are both available for resale. The resale discount would, however, only attach to the resale of promotions that are longer than 90 days.² Footnote 2 on that page also indicates that promotions available for resale will be made available only to customers who would have qualified for the promo had it been provided by BellSouth directly, which would appear to limit Supra's provision of the promotions that are the subject of this Complaint to CLEC customers.

ADDITIONAL ARGUMENTS/FURTHER SUPPORT

17. Supra has attempted on numerous occasions to work with BellSouth on this issue, attempting to negotiate a reasonable, business solution on several occasions. Supra has, however, been rebuffed at every turn. BellSouth simply refuses to comply with the pertinent resale provisions in state and federal law, as well as the clear provisions of Supra's

² To the best of Supra's knowledge and understanding, each of the promotions at issue herein has been in effect for over 90 days at a time, or has been sequentially renewed.

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interconnection agreement with BellSouth, with little or no explanation. BellSouth's answer to Supra is merely an emphatic, "No."

18. It is undeniable that the value of the monetary-inducement promotions reduces the costs of the services to subscribers. The wholesale retail pricing methodology "provides that incumbent carriers are to recoup the full retail rate they currently charge for customers for complete telephone services minus 'any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier'... Thus... the resale pricing rule begins with the current retail rate as the proper baseline for calculation, not with cost." AT&T Communications of the Southern States, Inc., v. BellSouth Telecommunications, Inc., 268 F.3d 1294, 1297-98 (11th Cir. 2001). Given that BellSouth does not allow CLECs to resell these promotions subject to the same conditions and terms that it offers to BellSouth retail customers, there are clearly substantial avoided costs that are not accounted for in BellSouth's wholesale discount rates. Rather than offer discounted rates for services, BellSouth has focused its efforts on the monetary inducement promotions in effort to evade the wholesale rate obligations. BellSouth has abused its power as the dominant provider of telecommunications services by using these monetary inducement promotional strategies to eliminate its wholesale pricing obligations and to eviscerate consumer service options in the wireline local voice services market.

19. The promotions at issue here have already been addressed by the North Carolina Utilities Commission in Docket No. P-100, SUB 72b, which reached the same conclusions Supra suggests here.³ The promotions are, in fact, telecommunications services, and are subject to the

³ BellSouth has appealed this decision to the United States District Court for the Western District of North Carolina/Charlotte Division, Case No. 3:05-CV-345-MU. A decision is pending.

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resale discount in the Act.⁴ Specifically, in its June 3, 2005, Order Clarifying Ruling on Promotions and Denying Motions for Reconsideration and Stay, the NCUC stated:

One-time incentive gifts, including gift cards, check coupons and other merchandise, which are offered to induce customers to subscribe to telecommunications services, are promotional offerings. Therefore, if such gifts or incentives are offered for more than 90 days, as discussed in greater detail in the *Order*, they have the effect of lowering the actual, "real" retail rate. The retail rate, and thus, the wholesale rate charged to resellers, must be determined on the basis of the "real" rate charged to subscribers.

....

If an ILEC does not want to offer resellers a wholesale rate based on a retail rate adjusted to reflect the effect of a promotion on the actual retail price, then the ILEC must not offer the promotion for more than 90 days.

....

Fourth, the Commission is not persuaded by BellSouth's argument that one-time incentive gifts such as gift cards and toasters are not "telecommunications services" required to be resold pursuant to TA 96. The *Order* does not require that non-telecommunications services, such as gift cards, check coupons, or merchandise, be resold. Such items do, however, have economic value. In recognition of this fact, the *Order* requires that telecommunications services subject to the resale obligation of Section 251(c)(4) be resold at rates that give resellers the benefit of the change in rate brought about by offering one-time incentives for more than 90 days.

The situation here in Florida is identical to that addressed by the NCUC. Thus, the Florida Commission should draw the same conclusions and require BellSouth to provide the promotion to Supra, or reduce the wholesale rate for services provided to Supra by the equivalent of the applicable promotions.

20. Supra seeks resolution of this issue in accordance with Section 16.1 of the Amendment to the parties' interconnection agreement, which was filed in Docket 001305-TP on August 21, 2002. The Commission clearly has jurisdiction and authority to resolve this matter by virtue of the violation of Section 364.161, Florida Statutes, and the referenced provisions of the parties'

⁴ See Section 364.02(12), Florida Statutes, and Order No. PSC-01-1769-FOF-TL.

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approved Interconnection Agreement over which the Commission retains jurisdiction.

Furthermore, the FCC's Rule 51.613(b) clearly contemplates that the state commissions' will have a role in determining if a resale restriction imposed by an ILEC is reasonable or not.⁵

CONCLUSION

For all of the foregoing reasons and on the bases set forth herein, Supra respectfully requests that the Commission take the following action:

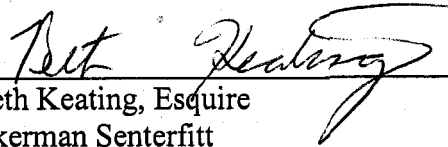
- 1) Set this matter for a Section 120.57(2), Florida Statutes, hearing based upon briefs and oral argument, as it appears that there are no material facts in dispute;
- 2) In the alternative, should the Commission believe that material facts are in dispute, require that this matter be set for a Section 120.57(1), Florida Statutes, formal proceeding;
- 3) Find that BellSouth's refusal to provide the identified promotions to Supra is unreasonable and discriminatory in violation of Section 364.161, Florida Statutes and 47 C.F.R. ¶51.613(2)(b), and is require BellSouth to provide the promotions identified herein to Supra for resale;
- 4) Require BellSouth to apply the value of the monetary inducements offered through these promotions to the wholesale rate for services purchased by Supra for resale and to apply the resale discount to the reduced "promotional" rate for the wholesale services;
- 5) In the alternative, require BellSouth to discontinue providing these promotional offerings to its own end use customers; and/or
- 6) Provide any and all such other relief as the Commission may deem appropriate.

⁵ Furthermore, the law is well-settled in Florida that the Commission has exclusive jurisdiction to make determinations regarding rates, charges, and services. Florida Interexchange Carriers Association v. Beard, 624 So. 2d 248 (Fla. 1993). The Commission should act when it has even a "colorable claim" that the matter at issue is within its jurisdiction. Florida Public Service Commission v. Bryson, 569 So. 2d 1252, 1255 (Fla. 1990).

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Respectfully submitted this 1st day of May, 2006.

Supra Telecommunications and Information Systems, Inc.



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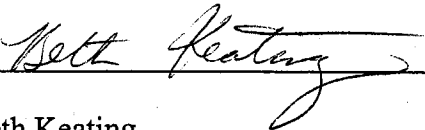
Marva Brown Johnson, General Counsel
Supra Telecommunications and Information
Systems, Inc.
2901 S.W. 149th Avenue, Suite 300
Miramar, Florida 33027
(786) 455-4209
Fax: (786) 455-4600
E-mail: Marva.Johnson@supratelecom.com

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail and U.S. Mail First Class to James Meza, III c/o Nancy H. Sims, BellSouth Telecommunications, Inc., 150 South Monroe Street, Suite 400, Tallahassee, FL 32301-1556, and that a copy has also been provided to the persons listed below this 1st day of May, 2006:

Patrick Wiggins, Supervising Attorney
Florida Public Service Commission,
Office of the General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

By: 

Beth Keating
Akerman Senterfitt
106 East College Avenue, Suite 1200
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Marva Brown Johnson
SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC.
2901 SW 149TH Ave., Suite 300
Miramar, FL 33027

EXHIBIT A

EXHIBIT A: SUMMARY OF BELL SOUTH FINANCIAL INCENTIVE PROMOTIONS

BellSouth Monetary Inducement Promotional Offerings Applicable to the Preferred Pack and Complete Choice Product Packages				
Service Attributes	Promo Description	Promotion Availability Dates	Promotional Offering Greater than 90 Days?	Does BellSouth Make this Promotions Available for Resale?
Cash Back Promotions	\$100 Cash Back (Complete Choice, Complete Choice with Area Plus, and Preferred Pack; Extended)	January 1, 2006 - December 31, 2006	Yes	No
	Reacquisition Pack Bundle Plan (\$50 Cash Back)	December 15, 2005 - December 1, 2006	Yes	No
	Single Family Dwelling Gift Card (\$50 Cash Back)	January 1, 2006 - December 31, 2006	Yes	No
	BellSouth Answers \$125 Cash Back Promotion (Extended)	January 1, 2006 - January 1, 2007	Yes	No
	BellSouth Answers (\$50 Cash Rewards)	January 6, 2006 - April 30, 2006	Yes	No
Gift Card Promotions	All Connect Gift Card (\$25 Gift Card)	January 1, 2006 - December 31, 2006	Yes	No
	Multi-Dwelling Units (\$25 Gift Card)	January 1, 2006 - December 31, 2006	Yes	No
	Single Family Dwellings (\$50 Gift Card)	July 15, 2005 - December 31, 2005	Yes	No
Coupon Promotions	BellSouth Package Closer Coupon Promotion Extension \$25 Cash Back to Close (Program for Complete Choice, PreferredPack, and Complete Choice with Area Plus)	January 6, 2006 - December 31, 2006	Yes	No
Service Credit/Discount Promotions	Welcoming Rewards Promotion (Extended; \$75 one-time credit per the first line and \$50 per each additional line for the same location)	September 1, 2005 - August 31, 2006	Yes	No
	Deluxe Rewards Promotion (\$50 per line reward on subscribers bill; Extended)	September 1, 2005 - August 31, 2006	Yes	No
Fee Waiver Promotions	Local Service Connection Fee Waiver (1) (Extended; Valued at \$35.88 based on BST's tariffed installation rates)	December 26, 2004 - December 31, 2006	Yes	No

EXHIBIT B

Attachment 1
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Exhibit B

EXCLUSIONS AND LIMITATIONS ON SERVICES AVAILABLE FOR RESALE

	Type of Service	FL	
		Resale ?	Discount ?
1	Grandfathered Services (Note 1)	Yes	Yes
2	Contract Service Arrangements	Yes	Yes
3	Promotions - > 90 Days (Note 2)	Yes	Yes
4	Promotions - < 90 Days (Note 2)	Yes	No
5	Lifeline/Link Up Services	Yes	Yes
6	911/E911 Services	Yes	Yes
7	N11 Services	Yes	Yes
8	AdWatch SM Svc (See Note 3)	Yes	No
9	MemoryCall [®] Service	Yes	No
10	Mobile Services [General Subscribers Services Tariff, Section A35]	Yes	No
11	Federal Subscriber Line Charges (also known as End User Common Line Charge)	Yes	No
12	Non-Recurring Charges	Yes	Yes
13	Customer Line Charge -- Number Portability	Yes	No

Applicable Notes:

- 1 Grandfathered services can be resold only to existing subscribers of the grandfathered service.
- 2 Where available for resale, promotions will be made available only to customers who would have qualified for the promo had it been provided by BellSouth directly.
- 3 AdWatchSM Service is tarified as BellSouth[®] AIN Virtual Number Call Detail Service.

July 15, 2002