

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Supra
Telecommunications and
Information Systems, Inc.
against BellSouth
Telecommunications, Inc.
regarding BellSouth's alleged
use of carrier to carrier
information.

DOCKET NO. 030349-TP
ORDER NO. PSC-03-0922-PHO-TP
ISSUED: August 11, 2003

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on August 4, 2003, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

JORGE CRUZ-BUSTILLO, ESQUIRE, 1311 Executive Center Drive, Suite 220, Tallahassee, Florida 32301-5027
On behalf of Supra Telecommunications and Information Systems, Inc.

JAMES MEZA III, ESQUIRE, 150 S. Monroe Street, Suite 400, Tallahassee, Florida 32301
On behalf of BellSouth Telecommunications, Inc.

LINDA HORTON DODSON, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

07344 AUG 11 8

FPSC-COMMISSION CLERK

II. CASE BACKGROUND

On April 18, 2003, Supra Telecommunications and Information Systems, Inc. (Supra) filed its Emergency Petition for Expedited Review of BellSouth Telecommunications, Inc.'s (BellSouth) \$75 Cash Back Promotion and Investigation into BellSouth's Pricing and Marketing Practices. On May 5, 2003, BellSouth filed its Answer to Supra's Emergency Petition. On June 9, 2003, Supra filed an Amended Emergency Petition alleging BellSouth's violation of 47 USC Section 222 and Florida Public Service Commission policies regarding the use of wholesale information in retail marketing.

On June 12, 2003, BellSouth filed a Motion for Continuance and/or Rescheduling to extend the date of the hearing. On June 17, 2003, by Order No. PSC-03-0721-PCO-TP, Supra was granted leave to amend its petition. Supra also filed its response to BellSouth's Motion for Continuance and/or Rescheduling on June 17, 2003. BellSouth's Motion for Continuance was denied by Order No. PSC-03-0763-PCO-TP, issued on June 25, 2003.

On June 20, 2003, BellSouth filed its Answer to Supra's Amended Petition and a Partial Motion to Dismiss. On June 24, 2003, Supra filed its response to the Partial Motion to Dismiss. The Partial Motion to Dismiss is scheduled for consideration at the August 5, 2003 Agenda Conference.

By Order No. PSC-03-0718-PCO-TP, issued June 17, 2003, the procedural and hearing dates were set for this docket. An administrative hearing is scheduled for August 29, 2003.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record

of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 164.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 164.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 164.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided

to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony

and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct/Rebuttal</u>		
David A. Nilson**	Supra	1-3
Michelle N. Summers*	Supra	1-3
Ronald M. Pate*	Supra	1-3
Conrad Ponder*	Supra	1-3
Richard A. Anderson*	Supra	1-3
John A. Ruscilli**	BellSouth	1-3
Ronald M. Pate	BellSouth	3
Tamra Schoech	BellSouth	3
Michelle N. Summers and Ed Wolfe (panel)	BellSouth	3

- * Supra indicates its intent to call these BellSouth employees as hostile or adverse witnesses. The deposition transcripts were filed as Exhibits DAN-17, 18, 19 and 20. Exhibits 19 and 20 have, however, been stricken.
- ** The opposing party has called into question this witness's qualifications as an expert witness. The parties may conduct voir dire at hearing may be requested.

VII. BASIC POSITIONS

SUPRA: In this docket the Commission will examine BellSouth's actual practices with respect to its use of carrier-to-carrier information, such as switch order, in triggering market retention efforts. Executing carriers (i.e. BellSouth) may not at any time in the carrier marketing process rely on information they obtain from submitting carriers (i.e. Supra) due solely to their position as the executing carrier. Carrier change request information, such as switch orders (a.k.a. Local Service Requests or "LSRs"), transmitted to the executing carrier in order to effectuate a carrier change cannot be used for any purpose other than to provide the service requested by the submitting carrier. BellSouth is sharing switch information internally and furnishing leads to outside marketing vendors, derived from the wholesale carrier switch information, in contravention of Commission policy, Florida Statutes, and federal law.

BELLSOUTH: BellSouth has not and does not use carrier-to-carrier information or wholesale information improperly. Further, BellSouth's marketing activities comply with all applicable Commission and/or FCC rules and regulations, and Supra has presented no evidence to the contrary. Instead, Supra's entire case is based upon innuendo, speculation, mischaracterization, and a lack of understanding regarding BellSouth's Operational Support System and retail reacquisition programs.

It is BellSouth's policy to limit disclosure and the use of CPNI and wholesale information in a manner consistent with the requirements of the FCC's rules,

Section 222 of the Telecommunications Act of 1996 and any applicable state or local requirement. All employees of BellSouth who may have access to either CPNI or wholesale information receive annual training with respect to the proper and prohibited use of and access to such information. It is against BellSouth's policy for any employee or authorized representative of BellSouth to misuse wholesale information. It is also BellSouth's policy that no BellSouth personnel shall have access to any BellSouth Information Technology ("IT") system unless that person has a legitimate and authorized business purpose for such access. BellSouth adopted all of these policies to ensure that it complies with the various regulatory restrictions on the use of CPNI and carrier to carrier information. And, the Commission has determined that BellSouth has the "appropriate policies in place" regarding CPNI and wholesale information. See Order No. PSC-03-0726-FOF-TP at 47.

Supra premises its case on Supra's interpretation of a BellSouth reacquisition program called Operation Sunrise. Based on the presence of disconnect codes, this database identifies those customers who left BellSouth retail service, removes those customers who left for non-competitive reasons, presumes the remaining customers left for competitive reasons (without BellSouth's retail organizations ever being allowed access to or use of the actual disconnect codes), and generates a list of potential reacquisition customers that BellSouth provides to third-party vendors. In gathering this information, Operation Sunrise does not identify the customer's new carrier or the services the customer will receive from the new carrier. Instead, Operation Sunrise uses network information - i.e. the fact that a customer left BellSouth's network and is no longer a BellSouth retail customer - and not any information that in BellSouth obtained through the provision of telecommunications services to a CLEC to create reacquisition lists. This disconnect information is no different than the information BellSouth provides CLECs in its PMAP line

loss report. CLECs use this information to generate their own customer reacquisition lists.

Accordingly, the Commission should summarily reject Supra's campaign of misinformation and find that BellSouth complies with all Commission and FCC rules relating to the use of carrier-to-carrier or wholesale information.

STAFF: Staff has no position at this time.

VIII. ISSUES AND POSITIONS

ISSUE 1: Whether BellSouth can share carrier-to-carrier information, acquired from its wholesale OSS and/or wholesale operations, with its retail division to market to its current and potential customers?

POSITIONS

SUPRA: No. BellSouth may not share carrier-to-carrier information with its retail division. This practice would be in contravention of prior Commission Order Nos. PSC-03-0578-FOF-TP and PSC-03-0726-FOF-TP, which are premised upon the Commission's authority under Section 364.01(4)(g), Florida Statutes, and 47 USC §222. As expressly noted by this Commission, in Order No. PSC-03-0726-FOF-TP pg. 45, the FCC has already found "that competition is harmed if any carrier uses carrier-to-carrier information, such as switch [orders] of PIC orders, to trigger retention marketing campaigns." (Emphasis added). In Order No. PSC-03-0578-FOF-TP pg 15, this Commission stated that: "[u]nder Section 364.01, Florida Statutes, we have jurisdiction to review conduct that is alleged to violate an FCC rule [i.e. §222] if such violation could be deemed anti-competitive behavior under Florida law." (Emphasis added). In this instance, the Commission has already recognized its jurisdiction to prohibit the "sharing" of carrier-to-carrier information between BellSouth's wholesale and retail division which "harms competition." Such practices which "harm competition"

are also "anti-competitive" under Florida law. Accordingly, such information sharing is prohibited.

Questions of Law pertinent to Issue 1:

1. Pursuant to Commission Order No. PSC-03-0726-FOF-TP, and FCC Order 99-223 ¶78 incorporated therein, is the executing carrier obligated to learn of the switch information from "independent retail means?" Position. Yes.
2. Did the FCC clarify what it meant by the phrase "independent retail means" in FCC Order No. 03-42 ¶27? Position. Yes.
3. Did the FCC state, FCC Order No. 03-42 ¶27, that "independent retail means" is clarified to mean 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, ...?" (Emphasis added). Position. Yes.
4. Did the FCC state, in FCC Order No. 03-42 ¶27, that: "Under these circumstances, the potential for anti-competitive behavior by an executing carrier is curtailed because competitors have access to equivalent information for use in their own marketing and winback operations?" (Emphasis added). Position. Yes.
5. Does Commission Order No. PSC-03-0726-FOF-TP, which incorporates FCC Orders 99-223 and 03-42, require that an executing carrier obtain customer change information, regarding a switch (i.e. conversion) away from the executing carrier, from an independent retail source that is (1) in form available throughout the retail industry, and (2) that competitors have access to this same information in an equivalent form for use in their own marketing and winback operations? Position. Yes.
6. Does the use of the term "and" in the following sentence, set out in Commission Order No. PSC-03-0726-

FOF-TP pg. 47, incorporated by reference from FCC Order 03-42 ¶27, establish a two part conjunctive test requiring both parts to be satisfied before knowledge of the customer's conversion can be employed to initiate marketing retention efforts to regain that customer? The sentence reads as follows: "We [the FCC] 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 carrier's winback efforts." Position. Yes.

7. Is the legal significance of placing the phrase "disconnect reports" within parenthetical mean that the FCC intended only to include an illustration for the general principle outside of a parenthetical? Position. Yes.

8. Does the phrase "disconnect reports" used by the FCC denote a demarcation point regarding "when" the executing carrier can initiate marketing retention efforts directed towards customers who have switch? Position. Yes. In this case, the FCC is providing incumbent executing carriers an objective evidentiary device for determining the demarcation point. The demarcation point establishes "when" the change order "has been implemented." To the extent that some competitor brings an enforcement action claiming that the incumbent *initiated* market retention efforts *prior* to the completion of a conversion, the incumbent in defense can proffer an internal report, however characterized (i.e. in this case BellSouth calls this data a "disconnect report"), identifying all of the carrier switches and the dates upon which those switches were completed. Utilizing the disconnect report to refute a claim that BellSouth has begun marketing efforts prior to the completion of the conversion, is separate and distinct from the FCC condition that information regarding carrier change information must first be learned from independent

retail means, available throughout the retail industry that is also available to competitors in an equivalent form, before such marketing efforts can begin.

9. After the parenthetical which include the phrase "disconnect reports" the FCC specifically states the following: "we do not prohibit the use of that information . . ." The question that immediately leaps forth is "what information?" Does the FCC mean (1) the carrier change information that must be obtained from independent retail means in a form available throughout the retail industry and also available to competitors in equivalent form from the same source or (2) are we discussing, as claimed by BellSouth, the internal wholesale information characterized by BellSouth as a disconnect report - identifying the conversion date, among other information, of a competitive switch - which is exclusively derived from BellSouth status as the executing carrier? Position. The only reasonable conclusion that can be drawn from of the operative phrase "that information" is that the FCC was referring to the carrier change information that must *first* be learned by BellSouth's retail operations from independent retail means in a form available throughout the retail industry and also available to competitors in equivalent form from the same source.

10. Does the establishment of a demarcation point after which marketing retention efforts can begin obviate or negate the FCC's legal requirement that carrier change information (i.e. switch orders) must *first* be learned, by BellSouth's retail operations, from an independent retail source available throughout the retail industry and also available to competitors in equivalent form from the same source. Position. No.

11. Can BellSouth rely on switch order information that is derived exclusively from its status as the executing wholesale carrier? Position. No they cannot rely on such information under those circumstances.

BELLSOUTH: Wholesale information or carrier-to-carrier information is information that BellSouth has in its possession because it provides wholesale services to other telecommunications carriers. BellSouth is prohibited from using this for any purpose other than providing service to the carrier, unless it constitutes CPNI, in which case it can be used consistent with the CPNI rules. Wholesale information or carrier-to-carrier information includes the identity of a carrier to which BellSouth is providing telecommunications services and the fact that an order has been issued and is pending that would result in the change of providers from BellSouth to another local service provider.

However, BellSouth does not use wholesale information or carrier-to-carrier information in Operation Sunrise or otherwise in identifying potential reacquisition customers. Rather, BellSouth's lists of potential reacquisition customers are based on the fact that a former BellSouth retail customer has actually disconnected service from the BellSouth network. Operation Sunrise does not identify the customer's new carrier or the services the customer will receive from the new carrier. Further, it is only triggered after a disconnect order has completed. Simply put, the reacquisition lists generated by Operation Sunrise and provided to third-party vendors are based entirely on BellSouth network disconnect information, which is no different than the data that BellSouth provides all CLECs in the CLEC line loss report.

As stated by the FCC in Order 03-42, issued March 17, 2003 at ¶ 27, "[w]e clarify, to the extent that the retail arm of an executing carrier obtains carrier change information through its normal channels in a form available through 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." Accordingly, BellSouth does not violate any Commission or FPSC rules in creating its reacquisition and/or marketing lists.

STAFF: Staff has no position at this time.

ISSUE 2: Whether BellSouth can use carrier-to-carrier information, acquired from its wholesale OSS and/or wholesale operations, to furnish leads and/or marketing data to its in-house and third party marketers?

POSITIONS

SUPRA: No. BellSouth may not use carrier-to-carrier information to furnish leads and/or marketing data to its in-house or third-party marketers. The legal basis for this prohibition is the same as that outlined under issue one above.

BELLSOUTH: Wholesale information or carrier-to-carrier information is information that BellSouth has in its possession because it provides wholesale services to other telecommunications carriers. BellSouth is prohibited from using this for any purpose other than providing service to the carrier, unless it constitutes CPNI, in which case it can be used consistent with the CPNI rules. Wholesale information or carrier-to-carrier information includes the identity of a carrier to which BellSouth is providing telecommunications services and the fact that an order has been issued and is pending that would result in the change of providers from BellSouth to another local service provider.

However, BellSouth does not use wholesale information or carrier-to-carrier information to furnish leads and/or marketing data to any third-party or in-house marketers. The list of potential reacquisition customers generated by Operation Sunrise is based entirely on the fact that a former BellSouth retail customer has actually disconnected service from the BellSouth network. Operation Sunrise does not identify the new carrier of the former BellSouth customer or the services the customer will receive from the new carrier. Further, the information is gathered

in Operation Sunrise and provided to third-party vendors only after a disconnect order has completed. Simply put, the reacquisition lists generated by Operation Sunrise and provided to third-party vendors for reacquisition efforts are based entirely on BellSouth network disconnect information, which is no different than the data that BellSouth provides all CLECs in the CLEC line loss report.

As stated by the FCC in Order 03-42, issued March 17, 2003 at ¶ 27, "[w]e clarify, to the extent that the retail arm of an executing carrier obtains carrier change information through its normal channels in a form available through 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." Moreover, there is no prohibition in providing network disconnect information as compiled by Operation Sunrise to third-party vendors for reacquisition efforts. Accordingly, BellSouth does not use wholesale information or carrier-to-carrier information through Operation Sunrise or otherwise to furnish leads and/or marketing data to any third-party or in-house marketers.

STAFF: Staff has no position at this time.

ISSUE 3: Has BellSouth shared and/or used carrier-to-carrier information, acquired from its wholesale OSS and/or wholesale operations, in its retail division, with its in-house marketers and/or third party marketers for marketing purposes? If such practices are improper, what penalties should be imposed?

POSITIONS

SUPRA: The testimony and documentary evidence will demonstrate that BellSouth employs a mechanized computer data feed program known as Harmonize. Specific data elements are downloaded on a nightly basis from the Service Order Communications System ("SOCS") utilizing the Harmonize

program. Some of the data extracted, through this nightly feed, from SOCS includes, but is not limited to: (1) the date an ALEC order was generated and (2) whether it was an ALEC change order or a new ALEC connect order. SOCS is the core-ordering engine, through which all retail and wholesale orders are processed and validated. Once a BellSouth retail order or ALEC wholesale order enters SOCS, the two orders follow the same provisioning process flow with no regard as to whether it was initiated by BellSouth or an ALEC. Once an ALEC order enters SOCS, the switch order from the ALEC is "harvested" by the Harmonize program. The data regarding the "switch" is downloaded by the Harmonize feed, which then populates a separate program known as the Sunrise Table which sits within BellSouth's Strategic Information Warehouse ("SIW"). The SIW contains information about BellSouth's retail customers, such as product and billing information as well as demographic information. BellSouth's Marketing Information Support group, known as MKIS, is an in-house group that is charged with marketing retention efforts directed at winning back customers who chose to switch from BellSouth to a new voice provider. MKIS has a computer program that executes off of the Sunrise Table that provides them with information that a customer has switched to another carrier. Apart from the Harmonize feed, there is no other method by which the MKIS is notified that a customer is switching or has switched his or her local voice service to another provider.

The name and addresses of the individual customers that "switched" their service is then furnished, on a weekly basis, to outside third party vendors which BellSouth characterizes as Letter Shops. The information from the Sunrise Table is sent to outside vendors for the purpose of mailing direct mail pieces to these customers. The marketing letters use language like "we want to serve you as our customer." This is a win-back letter - irrespective of how BellSouth may wish to characterize these letters. The issue statement above asks whether BellSouth furnishes leads to outside marketers for marketing purposes. The

evidence demonstrates that BellSouth does indeed share its wholesale information with its retail operations as well as with outside third party marketers. These BellSouth practices are a violation of Commission Order Nos. PSC-03-0578-FOF-TP and PSC-03-0726-FOF-TP, which are premised upon the Commission's authority under Section 364.01(4)(g), Florida Statutes, and 47 USC §222.

The Commission should impose the following penalties:

(1) Twenty-five Thousand (\$25,000.00) dollars for each day that the violation has been occurring until now.

(2) A revocation or suspension of BellSouth's certificate.

(3) Require BellSouth to dismantle its Harmonize feed.

(4) Require BellSouth to erect a "fire-wall" between its wholesale and retail operations. Require that BellSouth allow an OSS expert, at least twice a year and at random, to inspect BellSouth's internal systems to verify that its retail operations no longer derive conversion information from SOCS or any other internal wholesale system. Require that the expert shall be chosen by Supra, but paid for by BellSouth. This expert will provide his report to Supra and to the Commission.

(5) In the alternative, order that BellSouth provide to all CLECs a real time direct feed into SOCS - which is identical to the Harmonize feed - so that competitors can have access to the same conversion information BellSouth utilizes, allowing all CLECs to send a letter of acknowledgment or win-back letter or whatever type of direct mail piece the competitor so chooses. This suggestion is not the preferred option, because such an arrangement would still be illegal, as are the first four outlined above.

(6) Another alternative to the dismantling of BellSouth's illegal practice is to require BellSouth to

print a date on each direct-mailing sent out indicating when the letter was printed. This date must not be pre-printed or post-dated. The letter must have the actual date the letter was printed.

(7) If BellSouth is allowed to continue to harvest wholesale information through the Harmonize feed, then BellSouth should be prohibited from direct-mailing customers who switch their local voice provider for a period of at least 90 days. This will allow the customer to be with the competitor for at least three billing cycles.

Questions of Fact pertinent to Issue 1.

1. Do ALEC orders flow through SOCS? Yes. All witness.
2. Does BellSouth have a computer data feed program known as Harmonize? Yes. All witness.
3. Is carrier switch information extracted and/or downloaded from SOCS through the Harmonize feed? Yes. All witness.
4. Does the Harmonize feed remove switch information from SOCS on a nightly basis? Yes. All witness.
5. Does the Harmonize feed, that extracts the switch information from SOCS, then populate a separate program known as the Sunrise Table? Yes. All witness.
6. Does this Sunrise Table sit within BellSouth's Strategic Information Warehouse ("SIW")? Yes. All witness.
7. Does the SIW contain information about BellSouth's retail customers, such as product and billing information as well as demographic information? Yes. All witness.
8. Is BellSouth's Marketing Information Support group, known as MKIS, charged with, among other things,

marketing retention efforts directed at winning back customers who chose to switch from BellSouth to a new voice provider? Yes. All witness.

9. Does MKIS remove the switch information from the Sunrise Table for use in its marketing retention efforts? Yes. All witness.

10. Apart from the Harmonize feed, is there any other method by which the MKIS is notified that a customer is switching or has switched his or her local voice service to another provider? No. All witness.

11. Is the name and addresses of the individual customers that "switched" their service furnished, on a weekly basis, to outside third party vendors BellSouth characterizes as Letter Shops? Yes. All witness.

12. Do these outside marketing vendors send direct mail pieces to the customers identified by MKIS? Yes. All witness.

13. Does the evidence demonstrate that BellSouth does indeed share its wholesale information with its retail operations as well as with outside third party marketers? Yes. All witness.

BELLSOUTH: For the reasons discussed above in detail, BellSouth has not shared and/or used carrier-to-carrier information acquired from its wholesale OSS and/or wholesale operations with its retail division or any third-party vendors. Accordingly, no penalties should be imposed against BellSouth.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			<u>Direct</u>
David A. Nilson	Supra	_____ (DAN-1)	"Old letter" from Supra Exhibit No. DAN7.
David A. Nilson	Supra	_____ (DAN-2)	Example of BellSouth mailing to customer.
David A. Nilson	Supra	_____ (DAN-3)	BellSouth "complete choice" letter
David A. Nilson	Supra	_____ (DAN-4)	BellSouth "unlimited answers" Winback letter.
David A. Nilson	Supra	_____ (DAN-5)	(intentionally left blank).
David A. Nilson	Supra	_____ (DAN-6)	Competitive Landscape Operating Requirements.
David A. Nilson	Supra	_____ (DAN-7)	BellSouth meeting minutes and accompanying documentation regarding overall Sunrise project.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
David A. Nilson	Supra	_____ (DAN-8)	Operation Sunrise Program Overview Document. Version D.
David A. Nilson	Supra	_____ (DAN-9)	Operation Sunrise Program Overview Document. Version E.
David A. Nilson	Supra	_____ (DAN-10)	BellSouth document demonstrating how switchers are contacted.
David A. Nilson	Supra	_____ (DAN-11)	(Intentionally left blank).
David A. Nilson	Supra	_____ (DAN-12)	CLEC Ordering Process Flow.
David A. Nilson	Supra	_____ (DAN-13)	Residential Customer Flow/Share Tracking.
David A. Nilson	Supra	_____ (DAN-14)	ALEC Pre- ordering Interface Flow.
David A. Nilson	Supra	_____ (DAN-15)	(Intentionally left blank).
David A. Nilson	Supra	_____ (DAN-16)	(Intentionally left blank).
David A. Nilson	Supra	_____ (DAN-17)	Deposition of Ron Pate.*

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
David A. Nilson	Supra	_____ (DAN-18)	Deposition of Michelle Summers.*
David A. Nilson	Supra	_____ (DAN-19)	Deposition of Conrad Ponder.*+
David A. Nilson	Supra	_____ (DAN-20)	Deposition of Richard A. Anderson*+
<u>Rebuttal</u>			
David A. Nilson	Supra	_____ (DAN-RT-1)	Hearing Transcript Docket No. 020119-TP; Ruscilli Testimony.
David A. Nilson	Supra	_____ (DAN-RT-2)	Deposition of John A. Ruscilli.
Ronald M. Pate	BellSouth	_____ (RMP-1)	Diagram of Process Flow for Pre-Ordering.
Ronald M. Pate	BellSouth	_____ (RMP-2)	Diagram of RNS Pre-Order/Order Flow.
Ronald M. Pate	BellSouth	_____ (RMP-3)	Diagram of Process Flow for Provisioning (Non-Designed Circuit).
Ronald M. Pate	BellSouth	_____ (RMP-4)	Acronym List.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
John A. Ruscilli	BellSouth	_____	Line Loss
		(JAR-1)	Notification
			Report

***Supra indicates intent to call this witness as an adverse witness on direct.**

+See Section XIII. Rulings.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

On June 20, 2003, BellSouth filed a Partial Motion to Dismiss. Supra filed its response on June 24, 2003. The motion was heard at the August 5, 2003, Agenda Conference. The decision was made to hear arguments from the parties at the hearing.

XII. PENDING CONFIDENTIALITY MATTERS

Separate orders will be issued on the pending confidentiality requests prior to the hearing.

On August 1, 2003, BellSouth filed a Notice of Intent to Request Confidential Classification for portions of its Supplemental Motion to Strike Direct Testimony Exhibits.

On July 21, 2003, BellSouth filed a Request for Specified Confidential Treatment of Supra's Direct Testimony of David A. Nilson and Exhibits DAN-7, DAN-8, DAN-9, DAN-10, DAN-13, DAN-14, DAN-17, DAN-18, DAN-19, and DAN-20, Document No. 06516-03.

On July 25, 2003, Supra filed a Request for Confidential Treatment regarding David Nilson's Rebuttal Testimony Exhibit, DAN-RT-2, Document No. 06739-03.

XIII. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

None.

XIV. RULINGS

On July 25, 2003, BellSouth filed a Motion to Strike. Supra's Response was filed on July 31, 2003. BellSouth requested that Exhibits DAN-1, -6, -7, -8, and -19, attached to witness Nilson's Direct Testimony, be stricken. On August 1, 2003, BellSouth filed a Supplemental Motion to Strike Exhibit DAN-20. At the Prehearing Conference, the Motion to Strike was denied without prejudice regarding Exhibits DAN-1, -6, -7 and -8 based on an agreement reached between the parties, whereby Supra is to identify, by August 12, 2003, and state in no more than 5 pages the relevancy of, the exhibits it intends to use at the hearing. BellSouth will provide a response, in no more than 5 pages, by August 22, 2003. If Supra fails to make the requested filing by August 12, 2003, it waives the right to use Exhibits DAN-1, -6, -7, or -8 with the Direct Testimony of David Nilson but will not be precluded from using them on cross-examination. The Motion to Strike was granted with respect to Exhibits DAN-19 and 20, which contain depositions. It was acknowledged on the record that Supra has given notice of its intent to use the depositions when the live witnesses, who made the depositions, take the stand to testify.

On July 31, 2003, Supra filed a Motion to Strike a diagram on page 12 of witness Summer's Rebuttal Testimony. The Motion to Strike was withdrawn without prejudice.

Direct and Rebuttal Testimony shall be taken up at the same time.


Opening statements, if any, shall not exceed ten minutes per party.

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It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 11th day of August, 2003.



J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

LHD

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida

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Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.