

ORIGINAL

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May 8, 2003

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COMMISSION
CLERK

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 Answer to Emergency Petition of Supra for Expedited Review and Cancellation of BellSouth's \$75 Cash Back Promotion Tariffs (T-030132) and For Investigation into BellSouth's Promotional Pricing and Marketing Practices, 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,

E. Earl Edenfield, Jr.

E. Earl Edenfield, Jr.

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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. 030349-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and First Class U.S. Mail this 8th day of May 2003 to the following:

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Florida Public Service
Commission
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E. Earl Edenfield, Jr.
E. Earl Edenfield, Jr.
(UA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra Telecommunications and)
Information Systems, Inc., for Expedited Review and) Docket No. 030349-TP
Cancellation of BellSouth's \$75 Cash Back Promotion)
Tariffs (T-030132) and For Investigation into BellSouth's)
Promotional Pricing and Marketing Practices) Filed: May 8, 2003
_____)

BellSouth Telecommunications, Inc.'s Answer to Emergency Petition of Supra for Expedited Review and Cancellation of BellSouth's \$75 Cash Back Promotion Tariffs (T-030132) and For Investigation into BellSouth's Promotional Pricing and Marketing Practices

BellSouth Telecommunications, Inc. ("BellSouth") files its Answer to the Emergency Petition of Supra for Expedited Review and Cancellation of BellSouth's \$75 Cash Back Promotion Tariffs (T-030132) and For Investigation into BellSouth's Promotional Pricing and Marketing Practices ("Petition"), and says:

BACKGROUND

Although lacking grounds therefore, Supra seeks to convince the Florida Public Service Commission ("Commission") to open an investigation into BellSouth's "promotional pricing and marketing practices" ostensibly as a result of BellSouth's \$75 Cash Back Promotion Tariff¹ ("Cash Back Tariff"). Supra then uses this baseless attack against the Cash Back Tariff as a platform to attack virtually every competitive promotion ever filed by BellSouth. Under Supra's misguided view of competition, only Supra is empowered to compete for customers and any attempt by BellSouth to offer better terms, conditions and prices to retail consumers is anticompetitive. Supra would have the Commission stifle the very competition envisioned by the Telecommunications Act of 1996 (the "Act").

¹ T-030132.

In support of its Petition, Supra alleges five reasons why the Commission should cancel the Cash Back Tariff:

1. The Cash Back Tariff is anticompetitive and violates *Fla. Stat.* §364.01(4)(g).
2. The Cash Back Tariff is priced below cost and violates *Fla. Stat.* §364.051(5)(c).
3. The Cash Back Tariff discriminates between similarly situated customers and violates *Fla. Stat.* §364.051(5)(a).
4. The Cash Back Tariff is being financed by raising the rates of other residential ratepayers.
5. BellSouth is violating CPNI rules.

As discussed below, Supra's allegations are based on speculation, innuendo, and misrepresentation. The Commission should reject Supra's request that the Cash Back Tariff be suspended or cancelled and decline Supra's unwarranted invitation to open an investigation into BellSouth's marketing practices.

A. THE CASH BACK TARIFF IS PRO-COMPETITIVE AND CONSISTENT WITH THE REQUIREMENTS OF FLA. STAT. §364.01(4)(g).

In support of its argument, Supra alleges that BellSouth had a 90% market share and, therefore, the Cash Back Tariff "is an anticompetitive offering which can cause irreparable financial and economic harm to its ALEC competitors." Supra's erroneous conclusions are based on a prognostication of what *could* happen, and not on any allegation of actual harm. Supra then insinuates that because BellSouth withdrew a 1999 promotion (FPSC Docket No. 990043-TP), that the Cash Back Tariff is anticompetitive. Supra fails to allege even the most basic facts to support its assertions.

Apparently, Supra's entire argument is predicated on a global misconception that the Cash Back Tariff is anticompetitive because any win-back or retention programs offered by

BellSouth to Florida consumers are anticompetitive. This overreaching argument has been rejected by both this Commission and the FCC. For instance, in the FDN Complaint² the Commission was asked to review BellSouth marketing practices including those surrounding BellSouth's 2002 Key Customer Program. BellSouth acknowledges that the FDN PAA Order³ rendered in the FDN Complaint has been challenged; however, the Commission's findings in that case are instructive here as they address the same concerns raised by Supra in this docket.

The Commission concluded:

We believe a "win-back" promotion is not in and of itself detrimental to competition. In fact, "win-back" promotions can be very beneficial to Florida consumers by giving them a choice of providers with varied services at competitive prices. The Federal Communications Commission (FCC) addressed "win-back" marketing in Order FCC 99-223, stating:

Win-back facilitates direct competition on price and other terms, for example, by encouraging carriers to "out bid" each other for a customer's business, enabling the customer to select the carrier that best suits the customer's needs.

FDN PAA Order, at 16.

Clearly, this Commission does not subscribe to the notion that win-back activities, in and of themselves, are anticompetitive and, therefore, the Commission should reject Supra's unsupported claims that the Cash Back Tariff is anticompetitive and violates *Fla. Stat.* §364.01(4)(g).

² *In re: Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc.*, Docket No. 020119-TP, ("FDN Complaint").

³ *In re: Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc.*, Notice of Proposed Agency Action Order Regarding BellSouth's 2002 Key Customer Tariff Program and Winback Promotions (Order No. PSC-02-0875-PAA-TP), Docket No. 020119-TP, dated June 28, 2002 ("FDN PAA Order")

B. THE CASH BACK TARIFF IS COMPENSATORY AND CONSISTENT WITH THE REQUIREMENTS OF FLA. STAT. §364.051(5)(c).

In support of this argument, Supra concludes that the Cash Back Tariff is not compensatory because the total benefit of the Cash Back Tariff is equivalent to the price of four months of BellSouth Complete Choice service. Aside from this misguided conclusion (and yet another obscure reference to the 1999 promotion mentioned above), Supra does not offer a single fact to support its contention that the Cash Back Tariff is not compensatory. The Commission should not accept innuendo and unsupported conclusions as the basis for taking any action, much less the suspension or cancellation of a tariff. Thus, the Commission should reject Supra's claims that the Cash Back Tariff is not compensatory and violates *Fla. Stat.* §364.051(5)(c).

C. THE CASH BACK TARIFF DOES NOT DISCRIMINATE BETWEEN SIMILARLY SITUATED CUSTOMERS AND IS CONSISTENT WITH THE REQUIREMENTS OF FLA. STAT. §364.051(5)(a).

On this issue, Supra attempts to fashion an argument that BellSouth offers the Cash Back Tariff in such a manner as to discriminate between similarly situated customers. Supra's argument is self-defeating in that Supra admits that the Cash Back Tariff "is only available to residential customers that are presently served by an ALEC and switch back to BellSouth." (Petition, at 9) Supra does not allege that BellSouth refuses to offer the Cash Back Tariff to anyone that fits that definition. Instead, Supra argues that because BellSouth does not offer the Cash Back tariff to existing customers, then the Cash Back Tariff is being offered in a discriminatory manner. Obviously (at least to everyone except Supra), existing BellSouth customers are not similarly situated to former BellSouth customers that currently receive their service from an ALEC.

Supra next argues that Supra's prices "are offered to every customer regardless of where they came from...." (Petition, at 10) Apparently, Supra is not familiar with its own service

offerings, or it would not have made that false statement. Attached as Exhibit A is a page from Supra's website regarding Supra's Total SolutionsSM – 1 Line Plan, wherein Supra offers the first month's service free. Undoubtedly, Supra is not giving existing Total SolutionsSM – 1 Line Plan customers their "first month" of service for free; thus, all Supra's Total SolutionsSM – 1 Line Plan customers are not paying the same price for the service. BellSouth also refers the Commission to Supra's Price List No. 1, § 3.2.2.B (Supra Circle of Friends). Supra's Circle of Friends promotion provides a credit to a "current Supra Total Solution subscriber who refers a new Supra customer to our [Supra's] Residential Total Solution Plan." In that situation, the referring customer receives a one-time \$10 credit on their bill. Both of these promotions apply to a class of customers within a class, a practice that Supra contends is prohibited by *Fla. Stat.* §364.051(5)(a), at least as to BellSouth. The Commission should reject this dual standard that Supra seeks to impose on BellSouth.

D. THE CASH BACK TARIFF HAS NOT BEEN FINANCED BY RAISING THE RATES OF OTHER RATEPAYORS.

Supra alleges a relationship between BellSouth rate increase notices on certain products and services and the Cash Back Tariff. Supra alleges no facts to support this allegation, only innuendo and supposition about what BellSouth could do. Supra does not even claim that the rate increase notices were in any way improper. The Commission should reject these unsubstantiated hypotheses.

E. BELLSOUTH HAS NOT VIOLATED ANY CPNI RULES.

Supra alleges that BellSouth's marketing practices violate CPNI rules. In the Petition, Supra rambles for five pages to try and demonstrate some CPNI rule violation. (Petition, at 11-16) Supra appears to re-hash the very marketing activities that the Commission already considered in the FDN Complaint. After reviewing the FCC's comments on BellSouth's

marketing activities and the win-back restrictions placed on BellSouth by the Louisiana and Georgia Public Service Commissions, this Commission declined to impose a waiting period during which BellSouth would be precluded from initiating win-back activities to regain a customer. Similar to the Louisiana Public Service Commission, this Commission acknowledged BellSouth's region-wide 10-day waiting period and prohibited BellSouth from including marketing materials in the switched-customer's final bill and from sharing information between BellSouth's wholesale and retail groups. (*See*, FDN PAA Order, at 21-22)

Supra does not present a single fact demonstrating that BellSouth has in any way violated CPNI rules, or the win-back restrictions imposed by the Commission. Again, Supra resorts to misplaced assumptions and innuendo to try and create an issue where an issue does not currently exist. Therefore, the Commission should reject Supra's claims that BellSouth violated any CPNI rules or Commission directives.

In conclusion, Supra waited two and a half months to bring a challenge against BellSouth's Cash Back Tariff. Not only is the timing of the challenge suspect, Supra does not recite a single fact that supports any of the allegations upon which it bases this claim. The Commission should reject Supra's Petition and decline the offers to suspend BellSouth's Cash Back Tariff and open a generic investigation into BellSouth's marketing practices.

RESPONSE TO SPECIFIC ALLEGATIONS

Below, BellSouth responds to the allegations made by Supra in the individually numbered paragraphs in the Petition:⁴

1. BellSouth admits the allegations in paragraph 1 of the Petition.
2. Omitted intentionally.
3. Paragraph 3 of the Petition requires no response from BellSouth.

⁴ There is no paragraph 2 in the Petition, thus BellSouth will also omit paragraph 2 so that the numbering aligns.

4. BellSouth admits the allegations in paragraph 4 of the Petition.
5. BellSouth avers that the Commission's December 2002 Annual Report on Competition speaks for itself. BellSouth avers that the referenced testimony from FPSC Docket No. 960786-TP speaks for itself. BellSouth denies the remaining allegations in paragraph 5 of the Petition.
6. BellSouth avers that the Telecommunications Act of 1996 speaks for itself. BellSouth admits the remaining allegations in paragraph 6 of the Petition.
7. BellSouth denies the allegations in paragraph 7 of the Petition.
8. BellSouth admits that it filed various promotional tariffs in 2002 and 2003. BellSouth denies the remaining allegations in paragraph 8 of the Petition.
9. BellSouth admits that it has filed various promotional tariffs since August 2002. BellSouth denies the remaining allegations in paragraph 9 of the Petition.
10. BellSouth avers that the "February 5, 2003, filing" referenced by Supra speaks for itself. BellSouth denies the remaining allegations in paragraph 10 of the Petition.
11. BellSouth denies the allegations in paragraph 11 of the Petition, including the referenced footnote.
12. BellSouth denies the allegations in paragraph 12 of the Petition.
13. BellSouth denies the allegations in paragraph 13 of the Petition.
14. BellSouth avers that the referenced Florida Statute provision speaks for itself. BellSouth denies the remaining allegations in paragraph 14 of the Petition.
15. BellSouth avers that the referenced Florida Statute provision speaks for itself. BellSouth denies the remaining allegations in paragraph 15 of the Petition.

16. BellSouth avers that the referenced Florida GSST speaks for itself. BellSouth denies the remaining allegations in paragraph 16 of the Petition.
17. BellSouth denies the allegations in paragraph 17 of the Petition.
18. BellSouth avers that the Cash Back Tariff speaks for itself. BellSouth denies the remaining allegations in paragraph 18 of the Petition.
19. BellSouth avers that the referenced Florida Statute provision speaks for itself. BellSouth denies the remaining allegations in paragraph 19 of the Petition.
20. BellSouth avers that the referenced testimony from FPSC Docket No. 960786A-TP speaks for itself. BellSouth denies the remaining allegations in paragraph 20 of the Petition.
21. BellSouth denies the allegations in paragraph 21 of the Petition.
22. BellSouth admits that it has filed notices of rate increases with the Commission, but avers that any such rate increase was consistent with the provisions of Florida's Statutes governing price regulation. BellSouth denies the remaining allegations in paragraph 22 of the Petition.
23. BellSouth admits that it is both a wholesaler and competitor of ALECs. BellSouth avers that the referenced CPNI Rules speak for themselves. BellSouth denies the remaining allegations in paragraph 23 of the Petition.
24. BellSouth avers that the referenced testimony of Ms. Cox speaks for itself. BellSouth denies the remaining allegations in paragraph 24 of the Petition.
25. BellSouth avers that the referenced Operation Sunrise documentation speaks for itself. BellSouth denies the remaining allegations in paragraph 25 of the Petition.

26. BellSouth avers that the referenced Operation Sunrise documentation speaks for itself. BellSouth denies the remaining allegations in paragraph 26 of the Petition.
27. BellSouth is without knowledge of, and therefore denies, the standard practices surrounding ALEC service offerings. BellSouth denies the remaining allegations in paragraph 27 of the Petition.
28. BellSouth avers that the referenced Operation Sunrise documentation speaks for itself. BellSouth avers that the referenced deposition transcript of Michelle Summers speaks for itself. BellSouth denies the remaining allegations in paragraph 28 of the Petition.
29. BellSouth avers that the referenced CPNI Rules speak for themselves. BellSouth avers that the cited FCC decision speaks for itself. BellSouth avers that the referenced Operation Sunrise documentation speaks for itself. BellSouth denies the remaining allegations in paragraph 29 of the Petition.
30. BellSouth denies the allegations in paragraph 30 of the Petition.
31. BellSouth denies the allegations in paragraph 31 of the Petition.
32. BellSouth admits that FPSC Docket No. 990043-TP involves a petition filed by Arrow Communications regarding a BellSouth promotional tariff. BellSouth avers that the referenced Commission vote is a matter of public record and speaks for itself. BellSouth denies the remaining allegations in paragraph 32 of the Petition.
33. BellSouth admits that FPSC Docket No. 020119-TP involves a petition filed by Florida Digital Network regarding a BellSouth promotional tariff. BellSouth denies the remaining allegations in paragraph 33 of the Petition.
34. BellSouth denies the allegations in paragraph 34 of the Petition.

35. BellSouth is without knowledge of, and therefore denies, the referenced note regarding the basis of ALEC competition. BellSouth denies the remaining allegations in paragraph 35 of the Petition.
36. BellSouth denies the allegations in paragraph 36 of the Petition.
37. BellSouth denies the allegations in paragraph 37 of the Petition.
38. BellSouth denies the allegations in paragraph 38 of the Petition.
39. BellSouth denies the allegations in paragraph 39 of the Petition.
40. BellSouth avers that the referenced FCC decision speaks for itself. BellSouth denies the remaining allegations in paragraph 40 of the Petition.
41. BellSouth denies the allegations in paragraph 41 of the Petition.
42. BellSouth denies the allegations in paragraph 42 of the Petition.
43. BellSouth denies the allegations and requested relief in the ad damnum clause of the Petition.
44. BellSouth denies any allegations in the Petition not expressly admitted to by BellSouth.

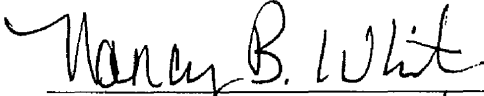
AFFIRMATIVE DEFENSES

1. As an affirmative defense, BellSouth avers that the Commission lacks jurisdiction to suspend a BellSouth tariff.
2. As an affirmative defense, BellSouth avers that Supra has failed to establish that the Cash Back Tariff (or any other BellSouth marketing practice or promotional tariff) is anticompetitive or violates any state or federal law.
3. As an affirmative defense, BellSouth avers that the Cash Back Tariff (and all BellSouth marketing practices and promotional tariffs) are compliant with state and federal laws.
4. Supra fails to state a cause of action upon which relief can be granted.

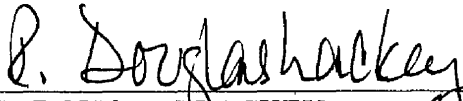
WHEREFORE, BellSouth requests that the Commission enter judgment in BellSouth's favor and dismiss Supra's Petition.

Respectfully submitted this 8th day of May 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.




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