

REDACTED

ATTACHMENT B

**BellSouth Telecommunications, Inc.
FPSC Docket No. 030349-TP
Request for Confidential Classification
Page 1 of 1
06/30/03**

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF PORTIONS OF SUPRA'S
AMENDED PETITION IN FPSC DOCKET 030349-TP FILED ON JUNE 9, 2003.**

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DOCUMENT NUMBER 030349-TP

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FPSC-CONFUSION CLERK

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra Telecommunications)	
and Information Systems, Inc., for Expedited)	
Review and Cancellation of BellSouth)	Docket No. 030349-TP
Telecommunications, Inc.'s \$75 Cash Back)	
Promotional Tariffs (T-030132) and For)	
Investigation into BellSouth Telecommunications,)	
Inc.'s Promotional Pricing and Marketing Practices)	Filed: June 9, 2003
_____)	

**AMENDED EMERGENCY PETITION OF SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC., AGAINST BELL SOUTH
TELECOMMUNICATIONS, INC., FOR VIOLATING 47 USC §222 AND COMMISSION
POLICY IN ITS USE OF WHOLSALE INFORMATION IN ITS MARKETING
PRACTICES**

Supra Telecommunications and Information Systems, Inc., ("Supra") by and through its undersigned counsel hereby files this AMENDED Complaint at the request of the Commission Staff and pursuant to Florida Statutes § 364.058,¹ and Rules 25-2.036(2) and 25-22.036(3)(b), Florida Administrative Code. This Amended Complaint addresses BellSouth's illegal use of wholesale information in its marketing practices in violation of 47 U.S.C. §222 and Florida Public Service Commission ("Commission") policy. Both the Federal Communications Commission ("FCC") and this Commission have found that BellSouth may use information about a customer switch if it is obtained through independent retail means in a form available throughout the retail industry. BellSouth admits that it generates lists from internal sources and not from independent retail means in a form available throughout the retail industry.

This Commission has subject matter jurisdiction to review this matter pursuant to Commission Order Nos. PSC-03-0578-FOF-TP and PSC-02-0875-PAA-TP, which was

¹ Section 364.058, Florida Statutes, provides: "(1) Upon petition or its own motion, the commission may conduct a limited or expedited proceeding to consider and act upon any matter within its jurisdiction."

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reaffirmed in Docket No. 020119-TP at the May 20, 2003 Agenda Conference. In support thereof, Supra states as follows:

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

Supra Telecommunications and Information Systems, Inc.
2620 S. W. 27th Avenue,
Miami, Florida 33133
(305) 476-4200

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

Jorge L. Cruz-Bustillo, Esq.
Adenet Medacier, Esq.
Legal Department
Supra Telecommunications and Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, Florida 33133
Telephone: (305) 476- 4252

4. 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:

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

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FACTUAL ALLEGATIONS

5. The provisions that have been violated by BellSouth are 47 USC §222(b) and Section 364.01(4)(g), Florida Statutes. Section 222(b) expressly prohibits the use of proprietary customer information for a carrier's own marketing efforts. BellSouth is violating this prohibition. The Commission Staff in Docket No. 020119-TP filed a recommendation on May 12, 2003. In this Recommendation, on page 129, the Staff quotes from the FCC with respect to the §222 prohibition: "We conclude that competition is harmed if any carrier uses carrier-to-carrier information, such as switch [orders] or PIC orders, to trigger retention marketing campaigns, and consequently prohibit such actions accordingly." (Emphasis added). The Commission approved of the Staff recommendation containing this quote at its May 20, 2003 Agenda Conference. As of this date of the filing of this amended complaint, no order has been issued.

6. This Commission has stated that: "The main thrust of the [Federal] Telecommunications Act is the promotion of fairness and competition in the telecommunications industry." See PSC-03-0578-FOF-TP, pg. 14. "Chapter 364.01, Florida Statutes, grants broad powers to this Commission in the enforcement of the intent of the [Federal Telecommunications] Act." *Id.* Section 364.01(4)(g), Florida Statutes, grants the Commission jurisdiction to ensure that all providers of telecommunications services are treated fairly, by preventing anti-competitive behavior.

7. "Thus, under Section 364.01, Florida Statutes, we [the Commission] have jurisdiction to review conduct that is alleged to violate an FCC rule [§222(b)] if such violation could be deemed anti-competitive behavior under Florida law." See PSC-03-0578-FOF-TP, pg. 15.

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8. The FCC has already found “that competition is harmed if any carrier uses carrier-to-carrier information, such as switch [orders] or PIC orders, to trigger retention marketing campaigns.” See Docket No. 020119-TP referenced above. Accordingly, because the use of carrier-to-carrier information has already been found to harm competition, this Commission has jurisdiction to review conduct that is alleged to violate §222(b), because such a violation would be anti-competitive under Section 364.01(4)(g), Florida Statutes.

9. This Commission also voted at its May 20, 2003 Agenda Conference, in Docket No. 020119-TP, to affirm its policy contained in Order No. PSC-02-0875-PAA-TP, that prohibits BellSouth's wholesale division from sharing information with its retail division, such as informing the retail division when a customer is switching from BellSouth to an ALEC.

10. Accordingly, both the FCC and this Commission have found that BellSouth may not use carrier-to-carrier information, such as switch orders, for marketing campaigns. Both the FCC and this Commission have found that BellSouth may use information about a customer switch if that information is obtained through independent retail means in a form available throughout the retail industry.

11. BellSouth has admitted that it generates lists of customers for marketing campaigns from internal sources and not from independent retail means in a form available throughout the retail industry.

12. BellSouth takes great pains to ensure that its special promotional discounts are marketed only to ALEC customers. BellSouth uses company data to identify and market to these ALEC customers. In Cindy Cox's testimony in Docket No. 960786A (BellSouth 271 Proceeding), she testified that one way BellSouth identifies ALEC customers for their win-back campaign is

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1 based on their ability to segregate disconnected customers into two classes: (1) those that still
2 maintain the same address and (2) those that have a forwarding address. The assumption is that
3 those disconnected customers that still have the same address switched to an ALEC. Ms. Cox
4 testified:

5 "What happens is there is a list that is generated at some point in time that will
6 say 'here are customers that have disconnected,' and we can determine whether
7 they moved or whether they, you know, left the area, those kinds of things. So we
8 will take those off, and all we can do is assume that the rest went to a competitor
9 somewhere. We don't know which competitor and we didn't know for sure that is
10 what happened. But that is how we use that to target customers." (Testimony of
11 Cindy Cox, Docket No. 960786A-TP, p.306).

12 13. In Ms. Cox's testimony, she stated in part that, "there is a list that is generated at some
13 point in time that will say here are customers that have disconnected, ..." Ms. Cox was careful
14 to not state how this list was generated, who generates it, and when this list is generated.

15 Supra obtained information from BellSouth that directly contradicts Ms. Cox's testimony.

16 BellSouth has a computer program known as [REDACTED]

17 [REDACTED] In this program, BellSouth created a [REDACTED]

18 [REDACTED] that enables BellSouth to [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 14. According to BellSouth, [REDACTED]

23 [REDACTED]
24 [REDACTED]
25 [REDACTED] While [REDACTED] handles and processes intraLATA [local] toll conversions

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1 from BellSouth to an ALEC, [REDACTED] handles and processes local service conversions. For ALEC
2 purposes, all of these systems are integral parts of the OSS that they use to place Local Service
3 Request (LSR) orders. These systems were created as part of BellSouth's wholesale business to
4 assist ALECs in placing local service and intraLATA toll conversion orders. BellSouth,
5 however, is illegally utilizing these systems for its retail marketing functions to winback
6 customers that have switched to an ALEC.

7 15. According to BellSouth's [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 These two
12 groups are important to BellSouth winback programs, because either of them will assist
13 BellSouth's retail marketing arm in identifying ALEC customers.

14 16. It is standard practice for an ALEC to bundle its dial tone [local] service with its local toll
15 service. This being the case, BellSouth targets customers that have migrated from its local toll
16 service in an attempt to camouflage its winback effort as though they are not going after the local
17 service disconnection. Regardless of how BellSouth seeks to disguise its efforts, it is using CPNI
18 to identify customers that have switched to an ALEC.

19 17. After BellSouth identifies these customers using the [REDACTED] targeting criteria,
20 BellSouth then decides how best to contact the customer. For local toll winback customers, part
21 of the information BellSouth uses includes the "[REDACTED]"

21 [REDACTED]" For local service, BellSouth uses "[REDACTED]"

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1 [REDACTED]

2 [REDACTED] According to the [REDACTED] document,

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 Both [REDACTED] are utilized to process migrating or "[REDACTED]" customers' change orders.

8 Additionally, both [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED] It is highly unlikely that all ALECs' customers interact with

13 BellSouth one day prior to initiating a migration to an ALEC. Hence, there is a question as to

14 how the customer's "active record at the time of the switch or prior to the date of the switch"

15 gets into SIW. However, BellSouth handles both the retail and wholesale transactions and

16 BellSouth alone has access to this CPNI information. Thus, the ALECs' conversion information

17 is obtained as they submit LSRs to BellSouth for processing.

18 2 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
29 [REDACTED]

30 [REDACTED] (Emphasis added)

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1 18. BellSouth indicates that for local toll winback, [REDACTED]

2 [REDACTED] Indeed, this [REDACTED]

3 [REDACTED] This means that BellSouth retains customer information
4 at the time it processes a customer conversion and later compares this information to the
5 customer's old information. The use of customer information obtained when processing the
6 customer's change order in this manner is a flagrant violation of CPNI rules, and the
7 anticompetitive use of BellSouth's monopoly power. The violation of the CPNI rules arises
8 because BellSouth obtains the customer's conversion information due to its ILEC status. The
9 use of such information is a direct contravention of the confidentiality provision of the Carrier
10 information, which states that:

11 A telecommunications carrier that receives or obtains proprietary information
12 from another carrier for purposes of providing any telecommunications services
13 shall use such information only for such purpose, **and shall not use such**
14 **information for its own marketing efforts.** (Section 222 (C)(1)) (Emphasis
15 added)

16 Yet, this is exactly what BellSouth does with information that it obtains during the processing of
17 a customer's conversion order to competing ALECs. To ensure that anti-competitive practices
18 such as this do not happen, the FCC concluded that:

19 ... section 222(d)(1) permits the former (or soon-to-be former) carrier to use the
20 CPNI of its former customer (*i.e.*, a customer that has placed an order for service
21 from a competing provider) for "customer retention" purposes. Consequently, a
22 local exchange carrier is precluded from using or accessing CPNI derived from
23 the provision of local exchange service, for example, to regain the business of a
24 customer that has chosen another provider. The use of CPNI in this context is
25 not statutorily permitted under section 222(d)(1), insofar as such use would be
26 undertaken to market a service to which a customer previously subscribed, rather

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than to "initiate" a service within the meaning of that provision. Nor do we believe that the use of CPNI for customer retention purposes is permissible under section 222(c)(1) because such use is not carried out "in [the] provision" of service, but rather, for the purpose of retaining a customer that had already undertaken steps to change its service provider. (FCC 98-27 in CC Docket No. 96-115, *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, ¶ 85)

8 For "[redacted]" local service, BellSouth states that [redacted]

9 [redacted]

10 [redacted] The reality is that the "[redacted]" letters that
11 BellSouth send out to ALECs' customers are really "winback" letters. (See Exhibit C, DN
12 03598-03). The "[redacted]" letter that BellSouth mailed to a Supra employee
13 that migrated from BellSouth reads as follows:

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We're always disappointed to lose a valued customer like you. So in hopes of bringing you back, we have created something new and really special - a money-saving, make-your-life-simple calling plan. Introducing the BellSouth Unlimited Answers Plan! Come back today and get unlimited long distance and local service and the BellSouth Complete Choice Plan - all for one low monthly fee of just \$49.99.

20 19. Clearly, BellSouth's letter is a marketing winback letter, not a letter that simply
21 acknowledges a customer switch. In its [redacted] literature, BellSouth intentionally mis-
22 references this winback letter as an "acknowledgement of switch" letter. The [redacted]
23 literature states that, [redacted]
24 [redacted] However,
25 as can be seen from the excerpt above, the intent of the letter is to winback the customer, not to
26 acknowledge a switch.

Conclusion

20. A review of BellSouth's marketing practices is critical to assure Florida's ALECs and the public that BellSouth is competing fairly. BellSouth must not be allowed to use CPNI to target and market to ALEC customers. The FCC has stated that ILECs cannot "use CPNI to retain soon-to-be former customer where the carrier gained notice of a customer's imminent cancellation for service through the provision of carrier-to-carrier service." BellSouth's handling and use of CPNI data must be reviewed to determine if they are complying with Federal law and Florida Commission policy which proscribes the use of such data for marketing purposes.

40. Accordingly, pursuant to Rule 25-22.036(3)(b)(4), Florida Administrative Code, Supra respectfully requests that this Commission impose a penalty in accordance with Section 364.285(1), Florida Statutes, of Twenty-Five Thousand (\$25,000.00) dollars for each day that BellSouth has been in violation of 47 USC §222 and/or Florida Commission policy.

41. Pursuant to Section 364.285(1), Florida Statutes, Supra also respectfully requests that this Commission consider, suspending or revoking any certificate(s) BellSouth must maintain in order to operate in the State of Florida.

WHEREFORE, Supra respectfully requests that this Commission enter an order against BellSouth as follows:

(1) Ordering that BellSouth shall not share customer information acquired from its wholesale OSS and/or wholesale operations with its retail division to market to its current and potential customers;

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(2) Ordering that BellSouth shall not use customer 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;

(3) Finding that BellSouth has utilized customer information derived from its wholesale OSS and/or wholesale operations in its retail division for marketing purposes, as opposed to deriving the customer information from independent retail means in a form available throughout the retail industry;

(4) Ordering BellSouth to pay penalties in accordance with Section 364.285(1), Florida Statutes, and/or suspend or revoke its certificate to operate for its violations of 47 USC §222(b) and Commission policy; and

(5) Ordering BellSouth to comply with all other relief this Commission deems appropriate.

RESPECTFULLY SUBMITTED this 9th day of June 2003.

SUPRA TELECOMMUNICATIONS
& INFORMATION SYSTEMS, INC.
2620 S.W. 27th Avenue
Miami, Florida 33133
Telephone: (305) 476-4248
Facsimile: (305) 443-9516

By: Jorge Cruz - Bustillo / JWA
JORGE L. CRUZ-BUSTILLO

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered by Hand Delivery, Facsimile, Federal Express or U.S. Mail to the persons listed below this 9TH day of June 2003.

Ms. Nancy White
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 S. Monroe Street
Suite 400
Tallahassee, FL 32301

Ms. Linda Dodson
Legal Division
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

By: Jorge Cruz - Bustillo / JWA
JORGE L. CRUZ-BUSTILLO