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ORIGINAL

July 25, 2003

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

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**RE: Docket No. 030349-TP -
SUPRA's PREHEARING STATEMENT**

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Prehearing Statement in the above captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return it to me.

Sincerely,

Jorge Cruz-Bustillo/JWA

Jorge Cruz-Bustillo
Assistant General Counsel

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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 Facsimile, Hand Delivery, U.S. Mail and/or Federal Express this 25TH day of July 2003 to the following:

Ms. Linda Dodson, Esq.
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Ms. Nancy B. White, Esq.
c/o Nancy H. Sims
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Tallahassee, FL. 32301
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By: Jorge Cruz-Bustillo/JWA
JORGE CRUZ-BUSTILLO

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Supra Telecommunications) Docket No.: 030349
And Information Systems, Inc., regarding)
BellSouth's Use of Carrier to Carrier Information)
_____) Filed: July 25, 2003

SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.'S
("SUPRA")
PREHEARING STATEMENT

Supra hereby files this Pre-hearing Statement, pursuant to the Order Setting Matter For Rehearing and Establishing Procedure (Order No. PSC-03-0718-PCO-TP) issued June 17, 2003.

A. **Known Witnesses:** Supra has pre-filed the testimony of the following witnesses:

<u>Witness</u>	<u>Issues</u>
1. David Nilson (Direct) * Supra employee	1-3
2. Michelle N. Summers (Direct) * BellSouth employee	1-3
3. Conrad Ponder (Direct) * BellSouth employee	1-3
4. Ronald M. Pate (Direct) * BellSouth employee	1-3
5. Richard A. Anderson (Direct) * BellSouth employee	1-3

Supra reserves the right to call additional witnesses, including witnesses to respond to Commission inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Pre-Hearing Officer at the Pre-Hearing Conference to be held on August 4, 2003. Supra reserves the right to supplement this witness list if necessary.

B. **Known Exhibits:** Supra has pre-filed the following exhibits:

David Nilson

Supra Exhibit # DAN1 “Old Letter” (with an old BellSouth bate stamp 18221) from Supra Exhibit # DAN7. Bate Stamped 000001.

Supra Exhibit # DAN2 Example of a BellSouth mailing to a customer stating “Here's important information about your new telephone service!” This letter was mailed twice to the same recipient. The first time was when Supra sought to convert the line from resale to UNE. Nothing gets provisioned without first flowing through SOCS. The second time was when the Supra customer's number had been placed on a list of lines scheduled to be disconnected for non-payment. When the line was re-connected as if payment had been made, a second letter was triggered. BellSouth's retail marketing and outside Letter Shop vendor sent a direct marketing mail piece on two occasions. The only way for this to occur was if the information of the conversion in the wholesale division of BellSouth operations fed this information to its retail marketing support personnel. This is a violation of Commission Orders, Florida Statutes, and Section 22 CPNI rules. Bate Stamped 000002-000003.

Supra Exhibit # DAN3 BellSouth “complete choice” letter, late 2002. This letter was the product of BellSouth's local service win-back marketing efforts. The customer received this letter within days of the conversion to a competitive provider. Bate Stamped 000004-000006.

Supra Exhibit # DAN4 BellSouth “unlimited Answers” Winback letter. Early 2003. This letter was triggered by a Supra conversion of this line from resale to

UNE. The wholesale conversion from resale to UNE was the only triggering event. Nothing gets provisioned without first flowing through SOCS. BellSouth's retail marketing and outside Letter Shop vendor sent a direct marketing mail piece shortly after the conversion. The only way for this to occur was if the information of the conversion in the wholesale division of BellSouth operations fed this information to its retail marketing support personnel. This is a violation of Commission Orders, Florida Statutes, and Section 22 CPNI rules. Bate Stamped 000007-0000013.

Supra Exhibit # DAN5 DAN5 Intentionally left Blank.

Sunrise Documents

Supra Exhibit # DAN6 Document is entitled -- Competitive Landscape Operating Requirements. This is the Sunrise training material provided by Dick Anderson, a BellSouth employee, in Arbitration V. Bate Stamped 000015-000690.

Supra Exhibit # DAN7 BellSouth meeting minutes and accompanying documentation regarding overall Sunrise project. This material was provided by BellSouth in response to a request for production in Arbitration V. Bate Stamped 000691-000986.

Supra Exhibit # DAN8 Operation Sunrise Program Overview Document. April 27, 2000 version D. This material was provided by BellSouth in Arbitration V. Bate Stamped 000987-001048.

Supra Exhibit # DAN9 Operation Sunrise Program Overview Document. June 14, 2001, Version E. This material was provided by BellSouth in Arbitration V. Bate stamped 001049-001060.

Supra Exhibit # DAN10 BellSouth document demonstrating how switchers are contacted. This material was provided by BellSouth in Arbitration V. Bate Stamped 001061-001114.

OSS Schematics

Supra Exhibit # DAN11 DAN 11 Intentionally left Blank. Bate Stamped 001115.

Supra Exhibit # DAN12 CLEC Ordering Process Flow. This material was provided by BellSouth in Arbitration II. Bate Stamped 001116.

Supra Exhibit # DAN13 Residential Customer Flow / Share Tracking. This material was provided by BellSouth in Arbitration II. Bate Stamped 001117-001118.

Supra Exhibit # DAN14 ALEC Pre-ordering Interface Flow. This exhibit is derived from #DAN17. This material was provided by BellSouth in Arbitration II. Bate Stamped 001119-001125.

Supra Exhibit # DAN15 Intentionally left Blank. Bate Stamped 001126.

Supra Exhibit # DAN16 Intentionally left Blank. Bate Stamped 001127.

Depositions

Supra Exhibit # DAN17 Deposition of Ron Pate. This deposition was taken on March 2001 in Arbitration II. Bate Stamped 001128-001548.

Supra Exhibit # DAN18 Deposition of Michelle Summers was taken October 9, 2002 in Arbitration V. Bate Stamped 001549-001667.

Supra Exhibit # DAN19 Deposition of Conrad Ponder was taken on June 5, 2002 in Arbitration V. Bate Stamped 001668-001836.

Supra Exhibit # DAN20 Deposition of Richard A. Anderson was taken on June 12, 2002 in Arbitration V. Bate Stamped 001837-001930.

Rebuttal Exhibits

Supra Exhibit # DAN-RT-1 Hearing Transcript, February 27, 2003; Key Customer Tariff Docket No. 020119-TP. Ruscilli testimony.

Supra Exhibit #DAN-RT-2 Deposition of Mr. John A. Ruscilli.

Supra reserves the right to file exhibits with any additional testimony that may be filed under the circumstances identified above. Supra also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

C. Basic Position:

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.

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?

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.

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?

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.

Issue 3: Whether 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?

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 the 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.

Sub-part of issue 3: If such practices are improper, what penalties should be imposed?

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.

D. Questions of Fact.

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.

E. Questions of Law.

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 a 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 win-back 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." (Emphasis added).

Position. Yes.

7. Is the legal significance of placing the phrase "disconnect reports" within parentheses 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 switched?

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 parentheticals 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.

F. Policy Questions.

None.

G. Statement of issues that have been stipulated.

None.

H. Statement of all pending motions.

BellSouth's Motion to Dismiss.

I. Statement identifying the party's pending requests for confidentiality.

In connection with David Nilson's Direct Testimony Supra has designated the following pages and lines as confidential and has redacted same from the pre-filed testimony: Page 12, L 1-24, and footnote 7; Page 13, L 1-12, 22-23; Page 14, L 11-22; Page 15, L 9, 10 and 11 (A single term on each line. While initially designated as confidential, Supra withdraws that request and intends to use the term publicly. This term was not redacted and made public in BellSouth's direct testimony. BellSouth's direct testimony is presently on the Commission's website. Commission policy is that once the chicken is out of the egg, the chicken is out. So Supra intends to use the term publicly. The term is "Sunrise" with reference to "Operation Sunrise" which BellSouth admits in its direct testimony is a program which feeds its marketing personnel with information that a customer has switched from BellSouth to another voice provider. The feed used is known as Harmonize. The practice is already public. Therefore the mere name of the feed cannot possibly be considered proprietary. Supra intends to use the term Harmonize); Page 16, L 1-27; Page 17, L 16-25; Page 18, L 4-19, 24-26; Page 20, L 5-21, 25-34; (footnote 9 should not have been designated as confidential because it simply references an exhibit); Page 21, L 2-10, 13-25; Page 26, L 19 (two words); Page 27, L 6-13, 20-29; Page 28, L 4-15, portions of 17-18 (with the exception to the term Sunrise), 19-23, 28-32, 35 (a single term);

Page 29, L 1-5, 8 (single term), 9-14, 17 (single word with the exception of Sunrise), 22-37; Page 30, L 1-5, 11 (single term), 13-25, 28-39; Page 31, L 1-2, 7 (single term “Sunrise” no longer designated as confidential), 10-12, 16 (single term “Sunrise” no longer designated as confidential); Page 32, L 10, 11, 17, 20 (each line only a single term is designated as confidential); and Page 33, L 2 (only a single terms is designated as confidential).

Supra has also designated the following exhibits in their entirety as confidential: #DAN6; #DAN7, #DAN8, #DAN9, #DAN 10, #DAN13; #DAN 14; #DAN17, #DAN 18, #DAN19, #DAN20; #DAN-RT-2.

Request to make confidential information, so designated, public upon a finding that BellSouth has indeed violated Commission policy, Florida Statutes, and federal law. The basis for Supra’s request to designate certain items as confidential arises from a non-disclosure provision in Supra and BellSouth’s prior interconnection agreement. The prior interconnection agreement required that all disputes be resolved in commercial arbitration. The non-disclosure provision of the prior agreement operates to keep the proceedings before arbitrators confidential, but not the Awards issued by the Tribunal. Primarily because the exhibits Supra will introduce at the hearing, in this docket, were provided by BellSouth during proceedings before the commercial Tribunal, Supra has sought in good-faith to so designate those items as confidential in this proceeding. It is “well-settled in the principles of general contract law that courts may not enforce contracts that are contrary to public policy.” Fomby-Denson v. Department of the Army, 247 F.3rd 1366, 1374 (Fed. Cir. 2001) citing MCMullen v. Hoffman, 174 U.S. 639, 19 S.Ct. 839, 43 L.Ed. 1117 (1899). State courts have similarly declined to enforce private agreements that barred the reporting of another’s alleged misconduct to authorities for investigation and prosecution. Id. at 1376, 1377-1378. See also W.R. grace & Co. v. Local Union 759, 461 U.S.

757, 766, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983) (upholding arbitrators interpretation of collective bargaining agreement, but recognizing that if that interpretation “violates some explicit public policy, we are obliged to refrain from enforcing it.”). This is the same as in our case where the Commission should preliminary uphold the non-disclosure provision of the parties’ prior interconnection agreement, so long as the provision is not used by BellSouth to shield itself from any public knowledge that it engaged in illegal conduct. Once it is determined by this Commission that BellSouth’s practices did indeed violate Commission policy, Florida Statutes, and federal law, the Commission should no longer recognize nor enforce the non-disclosure provision of the parties’ prior interconnection agreement with respect to this issue. In the absence of the parties’ prior non-disclosure provision, BellSouth cannot articulate a basis for why information regarding its illegal practice is proprietary. If it is illegal, then the information detailing the improper conduct must be made public. The United States Supreme Court has noted that the concealment of a violation of the law has been condemned throughout our history. See Fomby-Denson v. Department of the Army, 247 F.3rd 1366, 1375 (Fed. Cir. 2001) citing Roberts v. United States, 445 U.S. 552, 557, 100 S.Ct. 1358, 63 L.Ed.2d. 622 (1980). “The citizen’s duty to raise the ‘hue and cry’ . . . was an established tenet of the Anglo Saxon law at least as early as the 13th century.” Id. at 1375.

Non-disclosure provisions cannot be used as a shield to protect against Commission regulation, and then as a sword to continue to engage in anti-competitive conduct such as the use of carrier switch information to trigger marketing retention efforts. Nor can the non-disclosure provision be used to as a shield against the government (in this case the Commission) informing the public of the specific basis for why BellSouth is being penalized for violating the law. **Once the Commission finds that BellSouth’s practices do violate Commission policy, Florida**

Statutes, and federal law, Supra requests that this Commission order that all of the exhibits and testimony of this evidentiary hearing be made public as a matter of public policy.

J. Statement of requirement that cannot be complied with.

Supra expects to introduce into evidence its exhibits which include depositions, under oath and penalty of perjury, of BellSouth employees explaining specifically how Operation Sunrise works with respect to marketing retention efforts directed at customers that switch from BellSouth to another voice provider. If BellSouth chooses to object to these exhibits, for whatever reason, Supra will call these individuals to the stand to affirm their testimony previously taken under oath.

The Commission's rules regarding confidentiality usually require that the confidential information remain in a sealed envelope and that the parties are only privy to. In this instance, the previous questions and answers sworn to under oath would not be transcribed into the record by the Commission court reporter. **Request:** Supra requests that the Commission consider allowing only those specific questions and answers that Supra so designates to be asked during the evidentiary hearing – as opposed to the entire deposition - and allow the witness to answer and affirm those prior sworn to answers. Those questions and answers will then be transcribed by the court reporter and the Commission staff will be able to rely on that specific information in drafting its recommendation to the Commission. **An alternative** is that the questions and answers of the depositions remain in the confidential “red folders,” and that the witness simply be asked to look at the questions and answers and affirm their previous answer under oath. The Commission will then order that both the question and answer so asked by Supra will be

considered part of the record upon which staff can rely – even though the question and answer was not articulated in open session so that the court reporter could transcribe the exchange.

K. Statement identifying any decision or pending decision that has or may preempt or otherwise impact the Commission’s ability to resolve any of the issues or the relief requested.

None.

L. Objections to a witness’ qualification as an expert.

Supra objects to the qualifications of BellSouth Witness John A. Ruscilli. In another forum Supra had served BellSouth with a Federal Rules of Civil Procedure 30(b)(6) Subpoena for deposition. A 30(b)(6) Subpoena requires the opposing party to produce a witness with knowledge regarding the subject matter so requested. In this case, the subject matter was Operation Sunrise. The witness produced by BellSouth on June 7, 2002, was Mr. John A. Ruscilli. He was asked the following questions:

Q. Are you familiar with a program entitled Operation Sunrise?

A. I heard the name for the first time yesterday.

Q. In what context did you hear the name yesterday?

A. Matt Brown, an associate of Ned here, asked me the same question you just asked me.

Q. I don't want to get into conversations between you and counsel. You had a meeting with your counsel yesterday [June 6, 2003]?

A. Yes, and I heard that term for the first time, and I apologize.

Q. You had not heard about that program Operation Sunrise prior to yesterday; is that correct?

A. No, sir, I had not.

Q. Are you aware that BellSouth has such a program?

A. Only to the extent that I was asked that question, but I don't know anything about the program.

Supra raised an objection with BellSouth that this witness did not satisfy the requirements of Rule 30(b)(6). BellSouth subsequently produced Ms. Michelle N. Summers on October 9, 2003, in order to comply with the federal requirements of Rule 30(b)(6). Ms. Summers is the

director of BellSouth's Marketing Information Support ("MKIS") group. This group is charged with, among other things, local service win-back. MKIS is the group that actually utilizes the information that is harvested from SOCS by the Harmonize feed. BellSouth is now proffering Mr. Ruscilli, in this proceeding, as an expert on BellSouth's policies. But the issues before the Commission involve BellSouth's actual practices - not policies - and how the Harmonize feed actually works and what is done with the switch information after it is removed from SOCS and sent to the MKIS marketing group.

Respectfully Submitted this 25th day of July 2003.

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

By: _____
JORGE L. CRUZ-BUSTILLO

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 25TH day of July 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