

ORIGINAL

Matilda Sanders

From: Slaughter, Brenda [Brenda.Slaughter@BELLSOUTH.COM]  
 Sent: Monday, May 17, 2004 1:00 PM  
 To: Filings@psc.state.fl.us  
 Cc: Nancy Sims; Holland, Robyn P.; Fatool, Vicki; Linda Hobbs; Meza, James; Bixler, Micheale  
 Subject: Docket No. 040353-TP  
 Importance: High

- A. Brenda Slaughter  
 Legal Secretary to James Meza III  
 BellSouth Telecommunications, Inc.  
 c/o Nancy Sims  
 150 South Monroe, Rm. 400  
 Tallahassee, Florida 32301-1558  
 (404) 335-0714  
[brenda.slaughter@bellsouth.com](mailto:brenda.slaughter@bellsouth.com)
- B. Docket No. 040353-TP: Petition of Supra Telecommunications and Information Systems, Inc. to Review and Cancel BellSouth's Promotional Offering Tariffs Offered in Conjunction With Its New Flat Rate Service Known as Preferred Pack
- C. BellSouth Telecommunications, Inc.  
 on behalf of James Meza III
- D. 14 pages total - PDF (filing with signature)  
 12 pages total - WORD (in lieu of disk)
- E. BellSouth's Answer

Brenda Slaughter (sent on behalf of James Meza)  
 BellSouth Telecommunications, Inc.  
 Suite 4300 - Legal Department  
 675 W. Peachtree Street  
 Atlanta, GA 30375-0001  
 Phone: (404) 335-0714

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Legal Department

JAMES MEZA III  
Attorney  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0769

May 17, 2004

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: Docket No.: 040353-TP**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Answer to Supra Telecommunications and Information Systems, Inc.'s Petition to Review and Cancel, or in the Alternative Immediately Suspend or Postpone Tariffs, 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,

  
James Meza III (BSS)

Enclosures

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

DOCUMENT NUMBER-DATE

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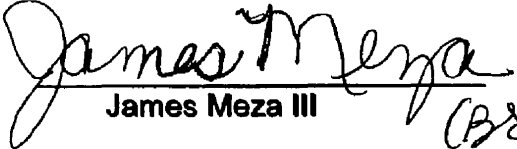
**CERTIFICATE OF SERVICE  
DOCKET NO. 040353-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
Electronic Mail and First Class U.S. Mail this 17th day of May, 2004 to the following:

Beth Keating  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Telephone: (850) 413-6212  
Fax: (850) 413-6250  
[bkeating@psc.state.fl.us](mailto:bkeating@psc.state.fl.us)

Ann Shelfer, Esq.  
Supra Telecommunications and  
Information Systems, Inc.  
1311 Executive Center Drive  
Koger Center - Ellis Building  
Suite 200  
Tallahassee, FL 32301-5027  
Telephone: (850) 402-0510  
Fax: (850) 402-0522  
[ashelfer@stis.com](mailto:ashelfer@stis.com)

Brian Chaiken, Esq.  
Supra Telecommunications & Info Sys  
Legal Department  
2620 S.W. 27th Avenue  
Miami, Florida 33133  
Telephone: (305) 476-4248  
Fax: (305) 443-1078  
[bchaiken@stis.com](mailto:bchaiken@stis.com)

  
James Meza III (BSS)

Jorge Cruz-Bustillo  
Assistant General Counsel  
Supra Telecommunications &  
Information Systems, Inc.  
2620 S.W. 27th Avenue  
Miami, FL 33133  
Telephone: (305) 476-4252  
Fax: (305) 443-1078  
[Jorge.cruz-bustillo@stis.com](mailto:Jorge.cruz-bustillo@stis.com)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Supra Telecommunications	)	Docket No. 040353-TP
And Information Systems, Inc. to Review	)	
And Cancel BellSouth's Promotional	)	
Offering Tariffs Offered in Conjunction With	)	
Its New Flat Rate Service Known as	)	
<u>Preferred Pack</u>	)	Filed: May 17, 2004

**BELLSOUTH'S ANSWER**

BellSouth Telecommunications, Inc. ("BellSouth") submits this Answer to the Petition of Supra Telecommunications and Information Systems, Inc.'s ("Supra") to Review and Cancel BellSouth's Promotional Offering Tariffs Offered in Conjunction with Its New Flat Rate Service Known as Preferred Pack ("Petition"). As explained below, the Florida Public Service Commission ("Commission") should summarily deny Supra's request for cancellation, suspension, postponement, and/or other modification of any of BellSouth's tariffs. The Commission also should deny all other claims for relief.

**GENERAL RESPONSE**

Based on nothing more than conclusory allegations and "Supra math", Supra requests that this Commission cancel or suspend several BellSouth tariffs and promotions that are in effect and have been in effect for several months under the guise that, through these offerings, BellSouth is providing free telephone service in violation of Florida Statutes. See Petition at 1. The services and promotions challenged by Supra include:

- **PreferredPack Plan.** This service offers a flat rate access line with several vertical features for \$26.95 a month. Supra had notice of this

offering at its current price since November 2003 and the current offering has been in effect since January 9, 2004.

- **Line Connection Charge Waiver.** With this offering, certain new BellSouth customers who switch from a CLEC to BellSouth are eligible to receive a waiver of the line connection charge when they switch to BellSouth. Supra had notice of this offering since November 5, 2003 and the offering has been in effect since January 2, 2004.
- **\$100 Cash Back Offer.** With this promotion, certain eligible new BellSouth customers who switch from a CLEC to BellSouth are entitled to receive a \$100 cash back coupon upon switching to BellSouth, meeting certain conditions, and completing and returning the applicable paper work and coupons. Supra had notice of this offering since December 17, 2004 and the promotion has been in effect since January 2, 2004.
- **\$25 Gift Card Promotion.** Under this promotion, certain eligible new BellSouth customers who switch to BellSouth from a CLEC can receive a \$25 gift card upon switching to BellSouth, meeting certain conditions, and completing and returning the applicable paper work and coupons. Supra had notice of this offering since December 17, 2004 and the promotion has been in effect since January 2, 2004.

According to Supra, BellSouth is violating Sections 364.08, 364.051(5)(c), and 364.01(4)(g), Florida Statutes, because “the combination of these

promotional offerings offered in conjunction with the PreferredPack Plan has the effect of providing free service to the consumer for several months and one month of non-compensatory below cost service.” Petition at ¶¶9. To reach this conclusion, Supra performs its own flawed, incomplete, and inapplicable calculation of what it believes BellSouth’s costs are in Florida, totals up the perceived value of the promotions and service offerings, and then boldly states that the net effect of the PreferredPack Plan and the promotions results in BellSouth providing Florida consumers free or below cost-service for at least four months. This assertion is absolutely false as BellSouth does not provide any service for free. And, contrary to Supra’s impotent theory, BellSouth provides all of these services and offerings, even when combined, above its costs.

This is not the first time that Supra has attempted to use this Commission to prohibit Florida consumers from enjoying the benefits of a competitive telecommunications market by attacking BellSouth’s tariffs. Indeed, in Docket No. 030349-TP (“Sunrise Proceeding”), Supra initially filed a complaint regarding BellSouth \$75 cash back promotion and others, wherein it alleged, as it does here, that BellSouth’s tariffs, including some of the ones that are at issue here, violated Florida law because the promotions resulted in BellSouth providing service below its costs. See Emergency Petition of Supra for Expedited Review and Cancellation of BellSouth’s \$75 Cash Back Promotion, Docket No. 030349-TP at ¶¶ 12 and 13. Supra ultimately withdrew these allegations.

Furthermore, this Commission has already determined in In re: Petition for Expedited Review and Cancellation of BellSouth Telecommunications, Inc.’s Key

Customer Tariffs, Docket No. 020119-TP, Order No. PSC-03-0726-FOF-TP, June 19, 2003 (Key Customer Order) that winback efforts benefit Florida consumers. See Order No. PSC-03-0726-FOF-TP at 40. In support of this finding, the Commission cited to In the Matter of Implementation of the Telecommunications Act of 1996, FCC Order 99-223 (Sept. 3, 1999), wherein the Federal Communications Commission ("FCC") held:

Winback 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.

Some commenters argue that ILECs should be restricted from engaging in winback campaigns, as a matter of policy, because of the ILEC's unique historic position as regulated monopolies. Several commenters are concerned that the vast stores of CPNI gathered by ILECs will chill potential local entrants and thwart competition in the local exchange. We believe that such action by an ILEC is a significant concern during the time subsequent to the customer's placement of an order to change carriers and prior to the change actually taking place. . . . However, once a customer is no longer obtaining services from the ILEC, the ILEC must compete with the new service provider to obtain the customer's business. We believe that such competition is in the best interest of the customer and see no reason to prohibit ILECs from taking part in this practice.

Because winback campaigns can promote competition and result in lower prices to consumers, we will not condemn such practices absent a showing they are truly predatory.

FCC Order 99-32 at ¶¶ 68-70 (emphasis added).

Supra's Petition is a calculated effort to prohibit BellSouth from competing and providing Florida consumers with choices and lower prices. Apparently, 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"). Indeed, Supra appears to be offended that BellSouth offers a product that beats Supra's prices:

The PreferredPack Plan retails for \$26.95 a month. This price is not arbitrary. It is exactly \$1.00 less than the price of Supra's Total Solutions product, which service package is very comparable to BellSouth's PreferredPack Plan.

Petition at ¶14.

Simply put, with this Petition, Supra is attempting to insulate its end-user customers from competition by BellSouth. This is regulatory gamesmanship at its worst, and the Commission should not allow Supra to use such tactics to deprive Florida customers of one of the intended benefits of the vibrant competition that exists in the local exchange market in Florida – lower prices.

**RESPONSE TO REQUEST FOR  
IMMEDIATE SUSPENSION OF TARIFFS**

Without any supporting evidence or legal support, Supra boldly requests that the Commission "review and cancel, or in the alternative, immediately suspend or postpone the effectiveness" of the BellSouth promotions and services identified above solely on the basis of its allegations in the Petition. Supra claims that such relief is required because "the alleged anticompetitive or discriminatory



effect of the above tariffs . . . will cause significant harm that cannot be adequately redressed if the tariffs are ultimately determined to be invalid.”  
Petition at 11.

Notwithstanding the fact that Supra presents no evidence to establish how it has been harmed, there is no procedure that allows a CLEC to use conclusory allegations that are flatly refuted to shut down a competitor’s lawfully filed and effective tariffs that offers lower prices to Florida customers. Indeed, the very fact that the promotions and tariffs that Supra seeks to immediately suspend or cancel have been in effect **FOR OVER FIVE MONTHS** belies Supra’s claims. If Supra’s alleged harm was real, Supra would have filed its Petition prior to or immediately after the tariffs’ and promotions’ effective dates instead of waiting for several months.

Also refuting Supra’s claim of “significant harm” and request for immediate relief is the fact that Supra asserted the same claims of anticompetitive behavior and harm and requested the same immediate relief of suspending or canceling BellSouth’s \$75 cash back tariff in the Sunrise Proceeding, only to ultimately withdraw those allegations and request for relief. Apparently, the immediate harm that Supra alleged in that case was not that real or immediate.

The instant claims are no different. Once again, Supra is “crying wolf.” The Commission, therefore, should summarily deny Supra’s request for expedited review and its request that the Commission suspend, cancel, or postpone any of BellSouth’s tariffs while it considers Supra’s Petition.

## RESPONSE TO SPECIFIC ALLEGATIONS

1. BellSouth admits the allegations contained in paragraph 1 of the Petition, except to deny that Supra is an ALEC. All competitive local exchange carriers in Florida are now known as CLECs. See Section 364.02(4), Florida Statutes.

2. BellSouth admits the allegations contained in paragraph 2 of the Petition.

3. BellSouth admits the allegations contained in paragraph 3 of the Petition.

4. BellSouth admits that it offers a service entitled the PreferredPack Plan in its tariff and that this service became effective on January 9, 2004. BellSouth's tariff speaks for itself and is the best evidence of its terms and conditions. BellSouth denies the remaining allegations of paragraph 4.

5. BellSouth denies the allegations of paragraph 5 of the Petition, except to admit that certain new BellSouth customers who switch from a CLEC to BellSouth are eligible for certain promotions if the new customer purchases the PreferredPack Plan or other BellSouth services.

6. BellSouth admits that it has an offering entitled "\$100 Cash Back Offer" in its tariff and that this offering has been effective as of January 2, 2004. BellSouth's tariff speaks for itself and is the best evidence of its terms and conditions. BellSouth denies the remaining allegations contained in Paragraph 6 of the Petition.

7. BellSouth admits that it has an offering entitled "25 Gift Card" in its tariff and that this offering has been effective as of January 2, 2004. BellSouth's tariff speaks for itself and is the best evidence of its terms and conditions. BellSouth denies the remaining allegations contained in Paragraph 7 of the Petition.

8. BellSouth admits that it has an offering entitled "Line Connection Charge Waiver" in its tariff and that this offering has been effective as of January 2, 2004. BellSouth's tariff speaks for itself and is the best evidence of its terms and conditions. BellSouth also admits that Exhibit B to the Petition is a BellSouth mail piece, which speaks for itself and is the best evidence of its terms and conditions. BellSouth denies the remaining allegations contained in Paragraph 8 of the Petition.

9. BellSouth denies the allegations contained in paragraph 9 of the Petition.

10. BellSouth denies the allegations contained in paragraph 10 of the Petition, except to admit that Section 364.08(2), Florida Statutes exists and that this statute speaks for itself and is the best evidence of its terms and conditions.

11. BellSouth denies the allegations contained in paragraph 11 of the Petition, except to admit the existence of Docket No. 990043-TP and that the Commission voted on matters filed in Docket No. 990043-TP. The documents filed in Docket No. 990043-TP and orders or findings of the Commission speak for themselves and are the best evidence of their terms and conditions.

BellSouth states, however, that Docket No. 990043-TP is inapplicable to this proceeding.

12. BellSouth denies the allegations contained in Paragraph 12 of the Petition, upon information and belief.

13. BellSouth denies the allegations contained in Paragraph 13 of the Petition.

14. BellSouth admits (1) that the price of the PreferredPack Plan in Florida is \$26.95; (2) that TELRIC pricing for UNEs set by state commissions requires BellSouth to sell its network to competitors below its costs; and (3) that Exhibit B to the Petition is a BellSouth mail piece, which speaks for itself and is the best evidence of its terms and conditions. BellSouth denies the remaining allegations, including any footnotes, contained in paragraph 14 of the Petition.

15. BellSouth denies the allegations contained in paragraph 15 of the Petition.

16. BellSouth denies the allegations contained in paragraph 16 of the Petition.

17. BellSouth denies the allegations contained in paragraph 17 of the Petition, except to admit that Section 364.051(c), Florida Statutes exists and that this statute speaks for itself and is the best evidence of its terms and conditions.

18. BellSouth denies the allegations contained in paragraph 18 of the Petition, except to admit that the quoted language from Order No. PSC-03-0726-FOF-TP is a partial quote from the Commission's Order. That Order speaks for itself and is the best evidence of its terms and conditions.

19. BellSouth admits that the quoted sentence appears in Order No. PSC-03-0726-FOF-TP.

20. BellSouth denies the allegations, including any footnotes, contained in paragraph 20 of the Petition, except to admit that BellSouth's post-hearing brief and BellSouth's witness testimony in Docket No. 990649A-TP speak for themselves and are the best evidence of their terms and conditions. BellSouth denies any implication that any of the quoted or cited information is relevant or applicable to this proceeding.

21. BellSouth denies the allegations contained in paragraph 21 of the Petition, except to admit that the Orders, post-hearing briefs, and testimony referenced in footnote 8 speak for themselves and are the best evidence of their terms and conditions. BellSouth denies any implication that any of the quoted or cited information is relevant or applicable to this proceeding.

22. BellSouth denies the allegations contained in paragraph 22 of the Petition.

23. BellSouth denies the allegations contained in paragraph 23 of the Petition.

24. BellSouth denies the allegations contained in paragraph 24 of the Petition, except to admit that there are certain eligibility conditions that must be satisfied before receiving the PreferredPack Plan service set forth in BellSouth's tariff. Said tariff speaks for itself and is the best evidence of its terms and conditions.

25. BellSouth denies the allegations contained in paragraph 25, except to admit that, pursuant to Commission practice and procedure, BellSouth includes the Subscriber Line Charge ("SLC") in calculating whether the promotional offering is compliant with Florida law.

26. BellSouth denies the allegations contained in paragraph 26 of the Petition.

27. BellSouth denies the allegations contained in paragraph 27 of the Petition.

28. BellSouth denies the allegations contained in paragraph 28 of the Petition.

29. BellSouth denies the allegations contained in paragraph 29 of the Petition.

30. BellSouth denies the allegations contained in paragraph 30 of the Petition.

31. BellSouth denies the allegations contained in paragraph 31 of the Petition.

32. BellSouth denies that Supra is entitled to any of the relief requested by Supra in the WHEREFORE clause.

33. Any allegation not expressly admitted herein, is denied.

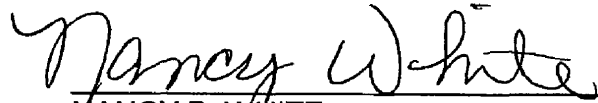
#### **AFFIRMATIVE DEFENSE**

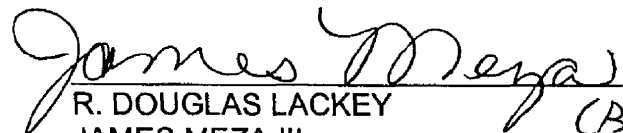
1. Supra's Petition fails to state a cause of action upon which relief can be granted.

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

Respectfully submitted this 17th day of May 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
NANCY B. WHITE (BSS)  
c/o Nancy H. Sims  
150 So. Monroe Street, Suite 400  
Tallahassee, FL 32301  
(305) 347-5558

  
R. DOUGLAS LACKEY (BSS)  
JAMES MEZA III  
Suite 4300  
675 W. Peachtree St., NE  
Atlanta, GA 30375  
(404) 335-0769

538152