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ORIGINAL

1311 Executive Center Drive, Suite 220  
Tallahassee, FL 32301-5027

July 27, 2004

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. 040353-TP  
SUPRA'S MOTION FOR SUMMARY FINAL ORDER**

Dear Mrs. Bayo:

Enclosed are the original and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Motion For Summary Final Order with exhibits to be filed 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,

Brian Chaiken  
Executive V.P. Legal Affairs

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- COM \_\_\_\_\_
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**CERTIFICATE OF SERVICE**

**Docket No. 040353-TP**

**I HEREBY CERTIFY** that a true and correct copy of the following was served via Facsimile, E-Mail, Hand Delivery, and/or U.S. Mail this 27<sup>th</sup> day of July 2004 to the following:

***Dovie Rockette-Gray/Adam Teitzman***  
*Office of the General Counsel*  
*Florida Public Service Commission*  
*2540 Shumard Oak Boulevard*  
*Tallahassee, FL 32399-0850*

***White/Lackey/Culpepper/Shore/Meza/Mays/Foshee***  
*c/o Ms. Nancy H. Sims*  
*BellSouth Telecommunications, Inc.*  
*150 South Monroe Street, Suite 400*  
*Tallahassee, FL 32301-1556*

SUPRA TELECOMMUNICATIONS  
AND INFORMATION SYSTEMS, INC.  
2620 S. W. 27<sup>th</sup> Avenue  
Miami, FL 33133  
Telephone: 305/ 476-4248  
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By: BRIAN CHAIKEN, ESQ.  
FBN: 0118060

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to review and cancel, or in the alternative immediately suspend or postpone, BellSouth Telecommunications, Inc.'s PreferredPack Plan tariffs, by Supra Telecommunications and Information Systems, Inc.

DOCKET NO. 040353-TP

FILED: July 27, 2004

**SUPRA'S MOTION FOR SUMMARY FINAL ORDER**

Supra Telecommunications and Information Systems, Inc. ("**Supra**") pursuant to Rule 28-106.204(4), Florida Administrative Code, moves for summary final order in this proceeding. Specifically, Supra requests that the Florida Public Service Commission ("**Commission**") find that, pursuant to undisputed facts and affidavits attached hereto, as a matter of law previously established by this Commission in Order No. PSC-03-0726-FOF-TP, BellSouth Telecommunications, Inc.'s ("**BellSouth**") PreferredPack Plan Tariff (General Subscriber Service Tariff, A.3.4.6) ("**Tariff**") is violative of Sections 364.08(2) and 364.051(5)(a)(2) of the Florida Statutes.

**BACKGROUND**

On April 20, 2004 Supra filed a petition against BellSouth, seeking a finding by this Commission that the Tariff is violative of Florida Statutes, and an order immediately suspending/postponing the Tariff. By its own terms, the Tariff violates Florida statutory law, as well as legal precedent established by this Commission in a recent case involving BellSouth as a party.

**STATEMENT OF UNDISPUTED FACTS**

The following facts are undisputed:

1. The Tariff provides for a calling plan which provides the following features:<sup>1</sup>
  - a. a flat-rate access line with Touch-Tone Capability;
  - b. unlimited calling to all exchange access lines within the subscriber's local calling area; and
  - c. unlimited use of the following features/services:
    - i. Call Waiting Deluxe, Three-Way Calling, Call Forwarding Busy Line, Call Forwarding Don't Answer (with or without Ring Control), Star 98 Access;
    - ii. Caller ID-Deluxe, Call Return;
    - iii. Message Waiting Indicator; and
    - iv. Privacy Director© Service.
  - d. "Savings on Select BellSouth products and Services"<sup>2</sup> of \$1 to \$7 per month tied to the purchase of the PreferredPack Plan offering ("PreferredPack") for the following amounts:
    - i. \$2 per month discount on Cingular Wireless;
    - ii. \$2 per month discount on BellSouth Dial Internet Service;
    - iii. \$2 per month discount on BellSouth FastAccess DSL Lite, Ultra or Xtreme products; and
    - iv. \$1 per month discount on BellSouth Long Distance.

2. The Tariff has the following additional special promotions:<sup>3</sup>

- a. \$100 Cash Back Offer;

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<sup>1</sup> See a copy of the Tariff, attached hereto as **Exhibit A**.

<sup>2</sup> See BellSouth's website at:

<http://www.bellsouth.com/apps/ipc/ICReqDispatcher?userEvent=displaySearchDetailsEvent&offerGroupId=691&segmentId=2>, 7/20/2004.

<sup>3</sup> See Tariff.

- b. Charges Waived (\$40.88); and
- c. \$25 Gift Card.

3. In order to be eligible to participate in the \$100 Cash Back Offer, BellSouth requires, *inter alia*, that a Customer must either (i) not currently have local service with BellSouth; or (ii) not have service with BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provisioned.<sup>4</sup>

4. In order to be eligible to participate in the \$25 Gift Card offer, BellSouth requires, *inter alia*, that a Customer must either (i) not currently have local service with BellSouth; or (ii) not have service with BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provisioned.<sup>5</sup>

5. In order to be eligible to participate in the \$100 Cash Back Offer, BellSouth requires, *inter alia*, that a Customer returns to BellSouth and purchases either BellSouth's Complete Choice family plan ("**Complete Choice**") or PreferredPack.<sup>6</sup>

6. In order to be eligible to participate in the \$25 Gift Card offer, BellSouth requires, *inter alia*, that a Customer returns to BellSouth and purchases either Complete Choice or PreferredPack.<sup>7</sup>

7. For the Charges Waived promotion, one (1) feature charge and the line connection charge to reacquisition or win-back residential customers who are not currently using BellSouth for local service and who purchase either Complete Choice, PreferredPack, or basic service, will be waived.

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<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

8. In order to provide a comparable service offering to the PreferredPack, Supra would have to purchase the following unbundled network elements (“UNEs”) from BellSouth:

- a. P.1.1 – 2 Wire loop/port Combination<sup>8</sup>; Zones 1-3 consisting of:
  - i. 2 wire Analog loop, zones 1-3 (Combined form of A.1.1<sup>8</sup>, USOC UEPLX); and
  - ii. Unbundled Local switch port<sup>9</sup> POTS service with extended area calling. (Combined form of B.1.1<sup>8</sup>, USOC UEPxx).
- b. B.4.13 CLASS features<sup>8</sup>– Complete Feature Set (USOC UEPVF);
- c. Local Number Portability (USOC LNPCX);
- d. ADUF – LD Access Billing Data records (UNE Rates);
- e. ODUF – Local toll and OS/DA billing records (UNE Rates);
- f. Directory listing charges (Non-UNE);
- g. Unbundled usage, which varies by caller – called party location consisting of<sup>8</sup>:
  - i. C.1.1 - End Office switching per MOU;
  - ii. C.1.2 - End Office Trunk Port – Shared per MOU,
  - iii. C.2.1 - Tandem Switching per MOU;
  - iv. C.2.2 - Tandem Trunk Port – Shared per MOU;
  - v. D.1.1 - Common Transport per mile, per MOU;
  - vi. D.1.2 - Common Transport – Facilities termination per MOU; and
- h. Operator services and Directory assistance services (Non-UNE).

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<sup>8</sup> FPSC designated UNE cost element per Dockets 990649-TP, 990649A-TP and 990649B-TP. FPSC designated UNE cost element per Dockets 990649-TP, 990649A-TP and 990649B-TP.

<sup>9</sup> Residential / Business

Additionally Supra would be required to purchase Privacy Director,<sup>10</sup> which BellSouth does not offer as a UNE at TELRIC rates.<sup>11</sup>

9. The average price per line for the TELRIC UNEs listed above in paragraph 8, pursuant to BellSouth's bills to Supra from January 1, 2004 to present, is approximately \$22.58.<sup>12</sup>

10. BellSouth charges Supra an additional \$5.56 in resale (non-TELRIC) charges consisting of \$4.65<sup>13</sup> per line per month for Privacy Director Services,<sup>14</sup> an average of approximately \$0.31 per line per month for Directory Listing Charges and \$0.60 for operator services and directory assistance calls.<sup>15</sup>

11. For Supra, the total recurring and average usage and non-recurring (UNE-P and retail/resale as available) costs, for the services and features to duplicate PreferredPack together with a statewide weighted average loop cost calculated based upon the actual distribution of all Supra UNE-P customers, totals \$28.14.<sup>16</sup>

12. BellSouth's retail price of \$26.95 for PreferredPack is \$1.19 **less than** Supra's cost of \$28.14 to provide the equivalent service.<sup>17</sup>

13. BellSouth does not make its accompanying promotions available to current BellSouth customers in the same wire centers as non-BellSouth customers. Per

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<sup>10</sup> Privacy Director is a component of generic switch software, software options, voice announcement units and SS7 database queries. BellSouth admits that costing for much of Privacy Director software is included in switching cost, but because there are two additional SS7 database queries involved that were supposedly not included in cost studies for 990649-TP, BellSouth claims that it is not required to offer this service as a UNE or UNE-P feature.

<sup>11</sup> See Affidavit of David Nilson, attached hereto as **Exhibit B**.

<sup>12</sup> Id.

<sup>13</sup> i.e. BellSouth GSST A3 Tariff rate times the applicable resale discount.

<sup>14</sup> BellSouth charges Supra \$5.95 out of its tariff, less a resale discount of 21.83%, arriving at a price of \$4.65.

<sup>15</sup> See Nilson Affidavit.

<sup>16</sup> Id.

<sup>17</sup> Id.

the tariff, one cannot be a BellSouth customer **anywhere** to be entitled to these promotions.

## LAW AND ANALYSIS

### **Legal Standard**

Rule 28-106.204(4), Florida Administrative Code, “[a]ny party may move for summary final order whenever there is no genuine issue of material fact.” The purpose of summary judgment or of a summary final order is to avoid the expense and delay of trial when no dispute exists as to the material facts. See Order No. PSC-01-1427-FOF-TP at 13. When a party establishes that there is no material fact on any issue that is disputed, then the burden shifts to the opponent to demonstrate the falsity of the showing. Id. “If the opponent does not do so, summary judgment is proper and should be affirmed.” Id. There are two requirements for a summary final order: (i) there is no genuine issue of material fact; and (ii) a party is entitled to judgment as a matter of law. Id. at 14-15. Regarding the inapplicability of connect and test related charges, *Supra* satisfies both requirements.

### **Legal Argument**

There is no dispute as to any fact, let alone any material fact, that the Tariff: (i) provides retail services at prices below what BellSouth charges for functionally equivalent wholesale services; (ii) provides \$165.88 in cash back and other benefits to customers which drives the price of the service even further below cost; and (iii) discriminates among similarly situated customers by providing cash back and other benefits only to certain customers within the same wire center – those customers who



currently subscribe to a BellSouth competitor's service. By virtue of these three facts alone, BellSouth is in violation of the Sections 364.08(2) and 364.051(5)(a)(2) as well as the precedent established by this Commission in Order No. PSC-03-0726-FOF-TP.

**BellSouth's predatory pricing -- Retail offerings undercut Commission wholesale rates.**

The issue is whether the pricing of the Tariff is unfair, anticompetitive, or discriminatory pursuant to the cost standards dictated by Sections 364.051(5) and 364.3381, Florida Statutes.<sup>18</sup>

The Commission has previously held that the relevant parts of Section 364.051(5), Florida Statutes, are (b) and (c), as follows:<sup>19</sup>

(5) NON-BASIC SERVICES. - - Price regulation of non-basic service shall consist of the following:

(b) . . . The cost standard for determining cross-subsidization is whether the total revenue from a non-basic service is less than the total long-run incremental cost of the service . . .

(c) The price charged to a consumer for a non-basic service shall cover the direct costs of providing the service and shall, to the extent a cost is not included in the direct cost, include as an imputed cost the price charged by the company to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service.

The Commission has further held that the only relevant portion of Section 364.3381, Florida Statutes, with respect to a cost standard is a small portion of Section 364.3381(2), Florida Statutes, which provides as follows:<sup>20</sup>

(2) . . . The cost standard for determining cross-subsidization is whether the total revenue from a non-basic service is less than the total long-run

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<sup>18</sup> See Order No. PSC -03-0726-FOF-TP at p. 20.

<sup>19</sup> Id.

<sup>20</sup> Id.

incremental cost of the service. Total long-run incremental cost means service-specific volume and non-volume sensitive costs.

As Sections 364.051(5)(b) and 364.3381(2), Florida Statutes, focus on cross-subsidization, and Supra has not yet made a specific allegation that cross-subsidization is occurring, Supra asserts that Section 364.051(5)(c), Florida Statutes, contains the applicable standard of review.

Section 364.051(5)(c) states that BellSouth must charge consumers a price higher than BellSouth's direct cost of providing the service. Section 364.051(5)(c) states that:

The price charged to a consumer for a nonbasic service shall cover the direct costs of providing the service and shall, to the extent a cost is not included in the direct cost, include as an imputed cost the price charged by the company to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service.

As BellSouth admits that there are no cost studies for retail products for review of direct costs, the proper cost standard for purposes of analyzing a competitive service in which the ILEC provides UNEs to CLECs that are essential for CLECs to use to provide a service competing against an ILEC retail service, are the imputed costs of the essential network elements plus the TSLRIC costs of monopoly or "market priced" provided elements. Therefore, direct costs are most appropriately calculated at the TELRIC prices that CLECs pay for the UNEs needed to provide a service offering comparable to the ILEC's service offering plus the TSLRIC costs of those network elements that are not competitively (UNE) provided.

TELRIC UNE prices are the correct and appropriate measure of the ILEC's "direct costs" as mandated by Section 364.051(c) because BellSouth can point to no direct cost study for its retail products which must be implemented by UNE-P elements. Furthermore, the intent of the TELRIC standard was to establish UNE prices that were

equivalent to the ILEC's costs in a competitive market situation. TELRIC provides the additional benefit of reducing anti-competitive behavior because it: (i) sets a cost level below which the ILEC should not price; and (ii) establishes a price for competitors that allows CLECs to benefit from the economies of scale and scope inherent in the ILECs' cost structure. As the FCC stated in the First Report and Order in the Local Competition Docket:

***“Description of TELRIC-Based Pricing Methodology. Adopting a pricing methodology based on forward-looking, economic costs best replicates, to the extent possible, the conditions of a competitive market. In addition, a forward-looking cost methodology reduces the ability of an incumbent LEC to engage in anti-competitive behavior. Congress recognized in the 1996 Act that access to the incumbent LECs' bottleneck facilities is critical to making meaningful competition possible. As a result of the availability to competitors of the incumbent LEC's unbundled elements at their economic cost, consumers will be able to reap the benefits of the incumbent LECs' economies of scale and scope, as well as the benefits of competition. Because a pricing methodology based on forward-looking costs simulates the conditions in a competitive marketplace, it allows the requesting carrier to produce efficiently and to compete effectively, which should drive retail prices to their competitive levels. We believe that our adoption of a forward-looking cost-based pricing methodology should facilitate competition on a reasonable and efficient basis by all firms in the industry by establishing prices for interconnection and unbundled elements based on costs similar to those incurred by the incumbents, which may be expected to reduce the regulatory burdens and economic impact of our decision for many parties, including both small entities seeking to enter the local exchange markets and small incumbent LECs.”***  
(Emphasis added, footnotes omitted).

This standard sets the floor for prices below which BellSouth would be in violation of engaging in anti-competitive pricing, thus creating an uneven playing field. In applying Section 364.051(5)(c), Florida Statutes, in Order No. PSC-03-0726-FOF-TP, the Commission held:<sup>21</sup>

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<sup>21</sup> Id., at pp. 21-22.

[A]n examination of direct cost is needed to make a determination of whether the post-discounted rates offered in a Key Customer contract remain “compensatory” for BellSouth. If a determination revealed that the (sic) such rates were “non-compensatory,” such a finding would sway us to conclude that the tariff offerings are unfair, anticompetitive, or discriminatory.

As the Commission has found previously, tariff offerings that price services below cost are unfair, anticompetitive, and discriminatory. By its own admission, PreferredPack is priced below cost and thus, is unfair, anticompetitive, and discriminatory. On this ground alone, the Commission should immediately suspend the Tariff.

**BellSouth’s \$ 100 CASH BACK, \$ 25 gift card, and Charges Waived promotional tariff offerings seriously damage competition in the local telecommunications market.**

BellSouth’s \$100 Cash Back, \$25 gift card, and \$40.88 Charges Waived promotional tariff offerings (the “**Incentive Offerings**”) seriously damage competition in the local telecommunications market. Because the Incentive Offerings are specifically and exclusively targeted to CLEC customers, they are designed solely to take customers away from CLECs and to diminish/eliminate CLEC competition. If this was not the intent, BellSouth would offer the Incentive Offerings to all customers (including current BellSouth customers), and not just to BellSouth’s competitors’ customers.

As noted in Arrow v. BellSouth and FDN v. BellSouth (Docket Nos. 990043-TP and 020119-TP respectively), CLECs, including Supra, compete with BellSouth largely on the basis of price. BellSouth’s Incentive Offerings undercut the prices Supra or any other CLEC can profitably offer a customer. Florida CLECs cannot match BellSouth’s \$165.88 Incentive Offerings extended exclusively to the CLECs’ customers. If Supra were to match the Incentive Offerings, Supra would be taking a loss on the services sold

each and every month the service was sold, and would be further burdened with the cost of the bonus and waived costs.<sup>22</sup> However, BellSouth can offset the \$165.88 Incentive Offerings because BellSouth has an expansive customer base which generates enormous revenue in excess of \$21 billion annually and profits (net income) of approximately \$4 billion annually.<sup>23</sup> These retained profits are added to the cash holdings accumulated over 100 years of cost plus accounting BellSouth was allowed to earn as the incumbent monopoly provider. Additionally, BellSouth has recently successfully petitioned the Florida state legislature and the Commission to raise the price of basic local service for its millions of captive local customers **that are ineligible to subscribe to the PreferredPack** (with its accompanying Incentive Offerings). Regardless of the rate rebalancing justification, the magnitude of the BellSouth rate increases more than makes up for the losses on the Tariff, and could be considered by some as a subsidy. CLECs, on the other hand, have a much smaller revenue base and are struggling just to be profitable. Thus, it is simply financially impossible for a CLEC to offer \$165.88 in promotional offerings to win customers, when the cost of the wholesale monthly service is higher than the price of the BellSouth offering. There is simply no way to ever catch up, let alone break even with the cost, much less the promotional offering itself.

The Tariff pricing undercuts the prices Supra and other CLECs are able to offer and still remain viable. Supra has and will continue to lose market share and revenue as a direct result of the Tariff. The harm that Supra has suffered and will continue to suffer from the Incentive Offerings, a lower than cost monthly service rate, and tie-ins with other product discounts cannot be undone, adequately compensated by damages, or

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<sup>22</sup> BellSouth's does not waive Supra's nonrecurring costs for these products under three conditions.

<sup>23</sup> BellSouth financials provided by Reuters via [www.yahoo.com](http://www.yahoo.com) for most current fiscal year.

readily measured by pecuniary standards. Such harm has been constant, frequent, and continuous in character.

The Tariff also harms Florida's consumers. As CLEC competitors are eliminated from the marketplace as a result of BellSouth's anti-competitive Tariff, consumers will have fewer competitive choices and will eventually be subject to higher prices. The Tariff should be discontinued immediately to avoid further harm to the nascent competitive local telecommunications market.

**BellSouth unlawfully discriminates against similarly situated customers.**

The issue is whether BellSouth, by virtue of offering its promotions only to its competitors' subscribers in the same geographic market, violates Section 364.051(5)(a)(2), Florida Statutes. Section 364.051(5)(a)(2) states, in part, that:

“...the local exchange telecommunications company shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers.” (Emphasis added).

The Tariff violates section 364.051(5)(a)(2) because it unreasonably discriminates among “similarly situated customers” in the residential market. The Tariff is only available to residential customers that are presently served by a CLEC willing to switch back to BellSouth. Thus, if customer “A” is a CLEC customer and decides to purchase PreferredPack, the customer receives the Incentive Offerings. However, if customer “A’s” next door neighbor is an existing BellSouth customer who also purchases PreferredPack, the neighbor does not receive any of the Incentive Offerings. As such, BellSouth is discriminating against similarly situated customers by offering the Incentive Offerings to some local telecommunication users, but not to others.

The Commission applied this same rationale in Order No. PSC-03-0726-FOF-TP. In Docket Nos. 020119-TP, 020578-TP and 021252 TP, Florida Digital Network, Inc. (“FDN”) sought review and cancellation of BellSouth’s Key Customer promotional tariffs, claiming such were unfair, anti-competitive and discriminatory, and thus non-compliant with specific Florida Statutes. The promotional tariffs at issue offered incentives to business customers that met certain criteria in select wire centers.

First, the Commission addressed the issue of the definition of “Meeting Offerings” as provided in Section 364.051(5)(a)(2), Florida Statutes. The Commission held that:

[T]he phrase “meeting offerings by any competitive provider” implies that BellSouth should have the ability to respond to offerings made by competitors in BellSouth wire centers. . . . We agree with BellSouth’s witness Taylor that a BellSouth competitive offering need not be identical in service, in terms of either its price or non-price characteristics. BellSouth could introduce a bundle of services which may be more attractive than offerings of competitors and be priced higher or lower than a competitor’s offering. Therefore, we find that the phrase “meeting offerings by any competitive provider” implies **that BellSouth should have the ability to respond to offerings made by competitors in any of its wire centers.**<sup>24</sup> (Emphasis added.)

In the instant proceeding, BellSouth cannot argue that the Tariff was the result of “meeting offerings by any competitive provider,” as no competitor of BellSouth in any of BellSouth’s wire centers has a similar offer nor has any competitors’ offering even approached the grandiose scale of the Incentive Offerings. Under any review, the Tariff is not responsive or reactionary to any currently pending offer from a competitor of BellSouth.

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<sup>24</sup> Id., at pp. 11-12.

Second, the Commission addressed the phrase “specific geographic market” as contained in Section 364.051(5)(a)(2), Florida Statutes. The Commission held:

[T]he phrase “specific geographic market” can mean a wire center, a subset of a wire center, a grouping of wire centers, or it could mean something else depending on how competitors elect to compete.<sup>25</sup>

Third, the Commission addressed the phrase “similarly situated” as contained in Section 364.051(5)(a)(2), Florida Statutes. The Commission held:

“similarly situated” or “substantially similar” shall be interpreted as customers facing similar competitive alternatives in a “specific geographic market” as defined in Section IV.D of this Order.<sup>26</sup>

Almost invariably, two Florida residents, living next door to each other are in the same “specific geographic market” and are “similarly situated.” It is discriminatory for BellSouth to offer one of the residents \$165.88 in Incentive Offerings simply because it’s a customer of a BellSouth competitor and not offer the same to the existing BellSouth customer.

Fourth, the Commission applied the definitions set forth above to determine whether BellSouth’s Key Customer tariffs were discriminatory based on “geographic targeting.” The Commission held:

Customers in non-“hot” wire centers are not “similarly situated” to customers in “hot” wire centers where customers are exposed to more competition; therefore they are not being discriminated against.<sup>27</sup>

In the instant proceeding, BellSouth has not attempted to geographically target its customers based on “hot” wire centers where customers are exposed to more competition. Rather, BellSouth has targeted a subset of customers within a “hot” wire center – those

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<sup>25</sup> Id., at p. 13.

<sup>26</sup> Id., at p. 15.

<sup>27</sup> Id., at p. 16.



customers that are non-BellSouth customers. Simply put, BellSouth is engaging in this “subset” promotion, whereby BellSouth cherry picks the customers currently being served by CLECs.

As BellSouth has not made its promotion available to all similarly situated customers (i.e., in the same geographic market) and as BellSouth, who is a party to Docket Nos. 020119-TO, 020578-TP and 021252-TP, has made a conscious business decision to disregard an effective Commission order that was clarified in Order No. PSC-03-0726-FOF-TP, BellSouth’s Promotional Plan Tariff is violative of Section 364.051(5)(a)(2), Florida Statutes.

### CONCLUSION

For all of these reasons, there is no genuine issue of material fact and Supra is entitled to judgment as a matter of law. The Tariff is violative of Sections 364.08(2) and 364.051(5)(a)(2) of the Florida Statutes. There is no dispute as to any fact that the Tariff: (i) provides monthly retail services at prices below what BellSouth charges for functionally equivalent wholesale monthly services before ever considering the \$165.88 Incentive Offerings that, in effect, reduces the price of the service even further below cost; and (ii) provides cash back and other benefits only to customers within the same wire center who do not currently subscribe to BellSouth for local service. By virtue of these two facts alone, BellSouth is in violation of the Sections 364.08(2) and 364.051(5)(a)(2) as well as the precedent established by this Commission in Order No. PSC-03-0726-FOF-TP.

Therefore, Supra requests that the Commission grant its Motion for Summary Final Order and immediately order BellSouth to discontinue the Incentive Offerings and

order BellSouth to discontinue providing PreferredPack under the Tariff until BellSouth raises its price to meet the costs of providing such services.

This 27th day of July, 2004.

By: Brian Chaiken/LSA  
BRIAN CHAIKEN, ESQ.  
FBN: 0118060

**SUPRA TELECOMMUNICATIONS  
AND INFORMATION SYSTEMS, INC.**  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, Florida 33133  
Telephone: (305) 476-4248

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA  
ISSUED: December 24, 2003  
BY: Joseph P. Lacher, President -FL  
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 26.1  
Cancels First Revised Page 26.1  
EFFECTIVE: January 9, 2004

**A3. BASIC LOCAL EXCHANGE SERVICE**

**A3.4 Flat Rate Service (Cont'd)**

**A3.4.5 Optional Payment Plans for Multi-Line Flat Rate Service (Obsoleted, See Section A103)**

(T)

**A3.4.6 PreferredPack Plan**

(N)

**A. Description of Service**

(N)

1. The PreferredPack plan provides the features/services specified following and a flat rate access line with Touch-Tone capability. (N)
2. The rate specified herein entitles a residence subscriber to unlimited calling to all exchange access lines within the subscriber's local calling area as defined in A3.3.1. of this Tariff. (N)
3. The rate specified herein also entitles a residence subscriber to unlimited use of the features/services specified following from the listed sections of this Tariff: (N)

A13.9 Call Waiting Deluxe, Three-Way Calling, Call Forwarding Busy Line, Call Forwarding Don't Answer (with or without Ring Control), Star 98 Access (N)

A13.19 Caller ID-Deluxe, Call Return (N)

A13.47 Message Waiting Indication (N)

A13.70 Privacy Director service (N)

**B. Regulations and Limitations of Service**

(N)

1. The PreferredPack plan is only available to residence subscribers. A residence subscriber may select any suitable combination of the features/services listed in A3.4.6.A.3. (N)
2. All rules, regulations and limitations specified in the Tariff sections listed in A3.4.6.A.3 apply to the respective features/services requested as part of this package. (N)
3. All features/services are furnished only from central offices that have been arranged to provide these services. The features/services are provided subject to availability of facilities. (N)
4. Service charges specified in Section A4. of this Tariff do not apply for transactions in which a subscriber only modifies an existing PreferredPack plan package by adding, deleting or changing features/services requested as part of the package. (N)
5. Existing customers of the PreferredPack plan can not take advantage of special promotions for the PreferredPack plan or any of the features/services specified in A3.4.6.A.3 preceding unless specifically allowed by the terms of the special promotion. (N)
6. The PreferredPack plan can be suspended as specified in A2.3.16 of this Tariff. During the period of suspension, the rate specified following applies. (N)

**C. Rates and Charges**

(N)

1. The following monthly rates apply for the PreferredPack plan. (N)

	Suspend Rate	Monthly Rate	USOC	
(a) Per plan package	\$5.50	\$26.95	PAMA5	(N)

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA  
ISSUED: December 17, 2003  
BY: Joseph P. Lacher, President -FL  
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

EFFECTIVE: January 2, 2004

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority	
BellSouth's Service Territory -- From Central Office where services are available	\$100 Cash Back Offer	-- \$100 cash back will be given to customers returning to BellSouth and purchasing BellSouth Complete Choice family plan or BellSouth PreferredPack plan.	01/02/04 to 12/26/04	(N)
	-- Customer must either not currently have local service with BellSouth or not have service with BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provisioned.	-- The customer must place the order on or before 12/26/04.		(N)
	-- Customer must have local service or equivalent (wireless in lieu of wire-line) at the same local service address on one or more of their existing lines.	-- The customer must place their order through a BellSouth business office or outbound telemarketing vendor or alternate channels as indicated.		(N)
	-- Customer must request service at the same address and in the same name, unless customer is planning an imminent move from one address in BellSouth territory to another address in BellSouth territory within thirty (30) days of responding to the offer. In the case of an imminent move, the BellSouth rep can offer the customer the promotion and place the order at the new address.	-- The customer must fill out a coupon and mail the coupon to a specified address by a specified date in order to receive the \$100 cash back.		(N)
		-- Once the customer completes the above requirements they will receive the \$100 cash back. If the customer cancels or discontinues the qualifying service prior to fulfillment, he will be ineligible for the cash back offer.		(N)
	-- Customer must have not had local service with BellSouth at least ten (10) days prior to the new service connection date to be eligible.			(N)
	-- Customer must have the eligible services on their new service order (N) in order to receive the promotional offer.			(N)
	-- Offer valid for only one (1) service line at the intended local service address.			(N)
	-- BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.			(N)

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EFFECTIVE: January 2, 2004

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority	
BellSouth's Service Territory - From Central Office where services are available	\$100 Cash Back Offer (Cont'd)	-- Offer may be combined with cash back offers or other promotional offers on the same services, as such offers may be concurrently available from time to time, provided that the Company reserves the right to prohibit the combination of this promotion with any other promotion, at the Company's sole discretion.	01/02/04 to 12/26/04	(N)
	-- The customer must switch their local service to BellSouth and purchase any one of the following: BellSouth Complete Choice plan, BellSouth Complete Choice Two-Line Plan package, BellSouth Complete Choice Three-Line Plan package, Area Plus with BellSouth Complete Choice plan, Area Plus Two-Line Plan package with BellSouth Complete Choice, Area Plus Three-Line Plan package with BellSouth Complete Choice, BellSouth PreferredPack plan, BellSouth PreferredPack plan for Voicemail.			

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**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority	
BellSouth's Service Territory - From Central Office where services are available	\$25 Gift Card	-- A \$25 gift card will be given to eligible residential customers who return to BellSouth and purchase BellSouth Complete Choice service or BellSouth PreferredPack plan and who have not been customers of BellSouth for ninety-one (91) or more days.	01/02/04 to 12/26/04	(N)
	-- Customer must either not currently have local service with BellSouth or not have service with BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provisioned.	-- The customer must place their order through a BellSouth business office or outbound telemarketing vendor or alternate channels.		(N)
	-- Customer must have local service or equivalent (wireless in lieu of wire-line) at the same local service address on one or more of their existing lines from another provider.	-- The customer must fill out a coupon and mail the coupon to a specified address by a specified date in order to receive the gift card.		(N)
	-- Customer must request service at the same address and in the same name, unless customer is planning an imminent move from one address in BellSouth territory to another address in BellSouth territory within 30 days of responding to the offer. In the case of an imminent move, the BellSouth rep can offer the customer the promotion and place the order at the new address.	-- Once the customer completes the above requirements they will receive the gift card. If the customer cancels or discontinues the qualifying service prior to fulfillment, he will be ineligible for the gift card.		(N)
	-- Customer must have not had local service with BellSouth at least ninety-one (91) days prior to the new service connection date or must have never been a Bellsouth customer and currently have service with another provider.	-- BellSouth reserves the right to <b>discontinue or modify this promotion at any time without customer notice.</b>		(N)
	-- The customer must switch their local service to BellSouth and purchase any one of the following: BellSouth Complete Choice plan or BellSouth PreferredPack plan.	-- Customer must have the eligible services on their new service order (N) in order to receive the promotional offer.		(N)
	-- The customer must place the order on or before 12/26/04.	-- Offer may be combined with cash back offers or other promotional offers on the same services, as such offers may be concurrently available from time to time, provided that the Company reserves the right to prohibit the combination of this promotion with any other promotion, at the Company's sole discretion.		(N)
	-- Offer valid for only one (1) service line at the intended local service address.			(N)

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**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority	
BellSouth's Service Territory -- From Central Office where services are available	Line Connection Charge Waiver  -- Customer must either not currently have local service with BellSouth or not have service with BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provisioned.  -- The target customer for this promotion is a customer that switches service from either a facility based or reseller CLEC. This promotion is not valid for out-of-region customers who are new to BellSouth.  -- Customer must have local service or equivalent (wireless in lieu of wire-line) at the same local service address on one or more of their existing lines.  -- Customer must request service at the same address and in the same name, unless customer is planning an imminent move from one address in BellSouth territory to another address in BellSouth territory within 30 days of responding to the offer. In the case of an imminent move, the BellSouth rep can offer the customer the promotion and place the order at the new address.  -- The customer must switch their local service to BellSouth and purchase any one of the following: BellSouth Complete Choice plan, BellSouth PreferredPack plan, or BellSouth basic service and one (1) custom calling (or Touchstar service) local features.  -- The customer must place the order on or before 12/25/04.	-- The line connection charge to reacquisition or winover residential customers who currently are not using BellSouth for local service and who purchase BellSouth Complete Choice service, BellSouth PreferredPack service, or basic service and one (1) feature will be waived.  -- Offer valid for only one (1) service line at the intended local service address.  -- The customer must place their order through a BellSouth business office or outbound telemarketing vendor or alternate channels as indicated.  -- BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.  -- Customer must have the eligible services on their new service order (N) in order to receive the promotional offer.  -- Offer may be combined with other offers for the same service at the same time.	01/02/04 to 12/25/04	(N)
				(N)
			(N)	
			(N)	
			(N)	
			(N)	
			(N)	
			(N)	
			(N)	
			(N)	

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to review and cancel, or in the alternative immediately suspend or postpone, BellSouth Telecommunications, Inc.'s PreferredPack Plan tariffs, by Supra Telecommunications and Information Systems, Inc.

DOCKET NO. 040353-TP

AFFIDAVIT OF DAVID A. NILSON

I, David A. Nilson, do solemnly swear that I am over the age of eighteen, competent to testify, and have direct and personal knowledge of the facts set forth herein below.

1. I am the Chief Technology Officer for Supra Telecommunications and Information Systems, Inc. ("Supra"). I have been employed with Supra since July 1997.

2. I am aware that in order to provide a comparable service offering to the BellSouth PreferredPack Plan, Supra would have to purchase the following unbundled network elements ("UNEs") from BellSouth:

- a. P.1.1 - 2 Wire loop/port Combination<sup>1</sup>; Zones 1-3 consisting of:
  - i. 2 wire Analog loop, zones 1-3 (Combined form of A.1.1<sup>1</sup>, USOC UEPLX); and
  - ii. Unbundled Local switch port<sup>2</sup> POTS service with extended area calling. (Combined form of B.1.1<sup>1</sup>, USOC UEPxx).
- b. B.4.13 CLASS features<sup>1</sup>- Complete Feature Set (USOC UEPVF);
- c. Local Number Portability (USOC LNPCX);
- d. ADUF - LD Access Billing Data records (UNE Rates);

<sup>1</sup> FPSC designated UNE cost element per Dockets 990649-TP, 990649A-TP and 990649B-TP. FPSC designated UNE cost element per Dockets 990649-TP, 990649A-TP and 990649B-TP.

<sup>2</sup> Residential / Business



- e. ODUF – Local toll and OS/DA billing records (UNE Rates);
- f. Directory listing charges (Non-UNE);
- g. Unbundled usage, which varies by caller – called party location consisting of<sup>1</sup>:
  - i. C.1.1 - End Office switching per MOU;
  - ii. C.1.2 - End Office Trunk Port – Shared per MOU,
  - iii. C.2.1 - Tandem Switching per MOU;
  - iv. C.2.2 - Tandem Trunk Port – Shared per MOU;
  - v. D.1.1 - Common Transport per mile, per MOU;
  - vi. D.1.2 - Common Transport – Facilities termination per MOU; and
- h. Operator services and Directory assistance services (Non-UNE).

3. Additionally, Supra would be required to purchase Privacy Director, which BellSouth does not offer as a UNE at TELRIC rates.

4. The average price per line for the TELRIC UNEs listed above in paragraph 2, pursuant to BellSouth's bills to Supra from January 1, 2004 to present, is approximately \$22.58.

5. BellSouth charges Supra an additional \$5.56 in resale (non-TELRIC) charges consisting of \$4.65<sup>3</sup> per line per month for Privacy Director Services,<sup>4</sup> an average of approximately \$0.31 per line per month for Directory Listing Charges and \$0.60 for operator services and directory assistance calls.

6. For Supra, the total recurring and average usage and non-recurring costs<sup>5</sup> for the services and features to duplicate BellSouth's PreferredPack Plan together with a statewide weighted average loop cost calculated based upon the actual distribution of all of Supra's UNE-P customers, totals \$28.14.

<sup>3</sup> i.e. BellSouth GSST A3 Tariff rate time the applicable resale discount.

<sup>4</sup> BellSouth charges Supra \$5.95 out of its tariff, less a resale discount of 21.83%, arriving at a price of \$4.65.

7. BellSouth's retail price of \$26.95 for its PreferredPack Plan is \$1.19 less than Supra's cost of \$28.14 to provide the equivalent service.

Further Affiant sayeth not.

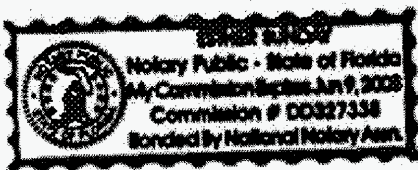
*[Handwritten Signature]*  
\_\_\_\_\_  
DAVID A. NILSON

STATE OF FLORIDA            )  
  ) ss  
COUNTY OF DADE            )

The execution of the foregoing instrument was acknowledged before me this 26<sup>th</sup> day of July 2004, by David A. Nilson, who [] is personally known to me or who [] produced \_\_\_\_\_ as identification and who did take an oath.

My Commission Expires:

*[Handwritten Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC  
State of Florida at Large  
Print Name:



<sup>5</sup> For services billed as UNE-P, retail, resale as available.