



Telephone: (850) 402-0510  
Fax: (850) 402-0522  
www.supratelecom.com

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

ORIGINAL

August 24, 2004

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

RECEIVED-FPSC  
04 AUG 24 PM 4:49  
COMMISSION  
CLERK

**RE: DOCKET NO. 040353-TP  
SUPRA'S MOTION TO STRIKE PORTIONS OF BELL SOUTH'S  
OPPOSITION TO 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 To Strike Portions Of BellSouth's Opposition To Supra's Motion For Summary Final Order 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,

Paul Turner  
General Counsel

- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
- RCA \_\_\_\_\_
- SCR \_\_\_\_\_
- SEC \_\_\_\_\_
- OTH Kim P.

dk  
09/03/04  
KMP ✓

RECEIVED & FILED  
  
FPSC-BUREAU OF RECORDS

DOCUMENT NO.  
09266-04  
8/24/04

**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 24<sup>th</sup> day of August 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/ 476-4247  
Facsimile: 305/ 443-1078

*Paul Turner / tura*

---

By: PAUL TURNER, ESQ.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re:	)	Docket No. 040353-TP
Petition to Review and Cancel, or in the	)	
Alternative Immediately Suspend or	)	
Postpone, BellSouth Telecommunications,	)	Filed August 24, 2004
Inc.'s PreferredPack Plan tariffs, by Supra	)	
Telecommunications and Information	)	
Systems, Inc.	)	

**SUPRA'S MOTION TO STRIKE PORTIONS OF BELLSOUTH'S  
OPPOSITION TO SUPRA'S MOTION FOR SUMMARY FINAL ORDER**

Supra Telecommunications and Information Systems, Inc. ("Supra"), in accordance with Rule 28-106.204(3), Florida Administrative Code,<sup>1</sup> hereby moves the Commission to strike certain portions of BellSouth Telecommunications, Inc.'s Opposition to Supra's Motion for Summary Final Order ("BellSouth's Motion").

**Standard for Motion to Strike**

1. Pursuant to Rule 1.140(f), Florida Rules of Civil Procedure a party may move to strike redundant, immaterial, impertinent or scandalous matter from any pleading at any time. This rule permits a motion to strike to be filed at any time.
2. Florida law requires that "[a] motion to strike matter as redundant, immaterial or scandalous should only be granted if the material is wholly irrelevant, can have no bearing on the equities and no influence on the decision."<sup>2</sup> The provisions of BellSouth's Motion for which Supra seeks struck are wholly irrelevant as they do not relate to any claim or defense in this proceeding.

---

<sup>1</sup> Supra has conferred with counsel for BellSouth and BellSouth does object to this motion.  
<sup>2</sup> Pentecostal Holiness Church, Inc. v. Mauney, 270 So.2d 762 (Fla.App. 1972).

## PROCEDURAL BACKGROUND

3. On April 20, 2004 Supra filed its Petition of Supra Telecommunications and Information Systems, Inc. to Review and Cancel, or in the Alternative Immediately Suspend or Postpone Tariffs (the “Petition”).

4. In the Petition, Supra sought the following relief from the Commission:

(1) Review and cancel or, in the alternative, immediately suspend or postpone the effectiveness of the \$100 CASH BACK Tariff, \$25 Gift Card Tariff, and the Connection Fee Waiver Tariff as offered in conjunction with BellSouth’s PreferredPack Plan service on the basis that Supra’s Petition demonstrates that the alleged anticompetitive or discriminatory effect of the above tariffs – in violation of §§§ 364.08, 364.051(5)(c), and 364.01(4)(g), Florida Statutes – will cause significant harm that cannot be adequately redressed if the tariffs are ultimately determined to be invalid;

(2) If the Tariffs are not immediately suspended or postponed, grant Supra an expedited hearing to review and adjudicate whether the tariffs offered in conjunction with the PreferredPack are in violation of §§§ 364.08, 364.051(5)(c), and 364.01(4)(g), Florida Statutes; and

(3) **Initiate an** investigation of BellSouth’s promotional pricing and marketing practices.

(4) Grant such other relief as deemed appropriate.

5. The Petition simply raised the issue of BellSouth’s PreferredPack tariff offerings and asserts no claim or defense regarding Supra’s or any other CLEC’s promotional offerings.

6. With respect to the issue of BellSouth’s PreferredPack offerings, the issue is whether or not the offerings violate Florida Statutes or are otherwise illegal.

7. To arrive at a determination as to the issue of the legality of the PreferredPack offerings, the Commission does **not** need to review any other promotional offerings by BellSouth, Supra, or any other CLEC.

8. On May 17, 2004, BellSouth filed BellSouth’s Answer (the “Answer”).

9. In its Answer, BellSouth did **not** assert a counterclaim against Supra, but did assert one affirmative defense - that "Supra's Petition fails to state a cause of action upon which relief can be granted."<sup>3</sup>

10. BellSouth's Answer raised the sole affirmative defense of failure to state a cause of action upon which relief can be granted and asserted **no** claim or defense regarding Supra's or any other CLEC's promotional offerings.

11. As neither party pled a claim or defense regarding Supra's or any other CLEC's promotional offerings, such a claim or defense is not part of this proceeding.

**REDUNDANT, IMMATERIAL, IMPERTINENT OR SCANDALOUS MATTER**

12. As neither party has asserted a claim or defense which involves any other tariff besides BellSouth's Preferred Pack tariffs, the identified language and exhibits from BellSouth's Motion are wholly irrelevant and should be stricken as redundant, immaterial, impertinent or scandalous matter.

**(A) References to Supra's Promotions**

13. It is undisputed that only BellSouth's PreferredPack tariff offerings are at issue in this proceeding; yet, BellSouth attempts to obfuscate the narrow scope of this proceeding by discussing at great lengths Supra's promotional offerings. The law in Florida is clear; such wholly irrelevant material should be struck so as to avoid littering the record with such transparent attempts by BellSouth to mislead the Commission. The wholly irrelevant language and exhibits which reference Supra's promotional offerings are as follows:

---

<sup>3</sup> See the Answer at p. 11.

However, in making this argument, Supra conveniently ignores its own promotional offerings that provide Florida consumers “free” service or gifts that exceed \$300 in value. Indeed, in switching to Supra, a new Supra customer will not pay any “conversion fees,” may receive one month of free service; or may receive the complete DVD set of “Friends”, a prize worth over \$300. Ironically, Supra admits that one of its promotions would “[u]nder a strict reading of the statute” be considered a “free service.” This is the same law it claims BellSouth is in violation of in providing a “free service”; yet, Supra is still advancing this case before the Commission. Thus, Supra’s argument appears to be that only BellSouth is subject to the laws of this State and that Supra may violate the law at will in the name of competition.<sup>4</sup> (Footnotes omitted).<sup>5</sup>

\*\*\*

Supra avoids the “free service” argument, obviously in recognition of its admission in discovery that a strict reading of the statute would suggest its own promotions violate Florida law...<sup>6</sup> (Footnote omitted).

\*\*\*

[A]nd Inconsistent with Supra’s Own Practice.<sup>7</sup>

\*\*\*

Supra’s refusal to amortize these reacquisition cost is quite surprising because Supra conducts a similar analysis in determining whether its promotions comply with Florida law.<sup>8</sup>

\*\*\*

Specifically, in responding to Staff’s question of whether its one month of free service promotion violated Section 364.08, Florida statutes (sic) (which prohibits a carrier from providing free or reduced service), Supra provided inconsistent answers. First, Supra essentially admitted that its promotion violated Florida law as it stated that, “[u]nder a strict reading of the statute, Supra’s promotion would be considered free service.” Then, Supra provided an alternative explanation and states that the promotion would not result in the provisioning of free service because the tariff “requires the residential customer to remain with Supra for a minimum of 4 months in order to receive one month of ‘free service.’ Based on Supra’s costs and prices

---

<sup>4</sup> BellSouth’s Motion at p. 2.

<sup>5</sup> The citation identified Exhibits 1-3 to BellSouth’s Motion. Supra asserts that these Exhibits should be stricken along with the wholly irrelevant language.

<sup>6</sup> Id., at p. 10.

<sup>7</sup> Id., at p. 23. This language is located in the title to Section 4 of BellSouth’s Motion.

<sup>8</sup> Id.

charged to its residential customers for the first 3 months, Supra makes enough of a profit to cover the costs of the fourth month.”<sup>9</sup> (Footnotes omitted).<sup>10</sup>

\*\*\*

Supra’s inconsistent answers notwithstanding, the important point is that, when it benefited Supra, Supra amortized its costs over the time a customer stays with Supra to recover its costs in providing one month of free service.<sup>11</sup>

\*\*\*

Supra and other CLECs offer a similar type of promotion.<sup>12 13</sup>

\*\*\*

Notwithstanding the hypocritical nature of Supra’s Complaint...<sup>14</sup>

**(B) References to Non-Parties’ (other CLECs’) Promotions**

14. As above, it is undisputed that only BellSouth’s PreferredPack tariff offerings are at issue in this proceeding. As such, certainly non-parties to this proceeding should not have their promotional offerings reviewed by the Commission without being afforded due process. The wholly irrelevant language which references other CLECs’ promotions is as follows:

Dr. Taylor’s comments are not surprising in light of the fact that almost all carriers offer some type of promotion that gives away “free” service or other inducements to entice consumers to switch carriers. For instance, in addition to the Supra promotions discussed above, CLECs have offered or are offering the following promotions: (Footnote omitted).

---

<sup>9</sup> Id.

<sup>10</sup> The citation identified Exhibit 2 to BellSouth’s Motion. Supra asserts that this Exhibit should be stricken along with the wholly irrelevant language.

<sup>11</sup> Id., at pp. 23-24.

<sup>12</sup> Id., at p. 6.

<sup>13</sup> The citation identified Exhibits 1 and 7 to BellSouth’s Motion. Supra asserts that these Exhibits should be stricken along with the wholly irrelevant language.

<sup>14</sup> Id., at p. 2.

- MCI offers one month of “**free service**” if a new customer signs up for Neighborhood Complete or Neighborhood 200 and 50 percent off all other Neighborhood Plans. In addition, new customers of the Neighborhood Plan receive “3,000” airline miles with Northwest Airlines and 6 free DVD or game rental certificates at Blockbuster.
- AT&T offers new customers who switch to AT&T local service a **\$25 credit** on their long distance bill. In addition, if a customer purchases a phone from AT&T, that customer is entitled to receive a **\$10 credit** on their AT&T bill.
- Z-Tel offer one month of **free service** of its Z-Line Home Unlimited for new customers who switch to Z-Tel service (a value of \$49.99). In addition, Z-Tel provides customers with a **\$20 credit** on their bill for every referred customer.
- Momentum Telecom offers its customers a **\$20 credit** and an opportunity to win **\$10,000** for all referred customers;
- Talk America offers new customers **\$10 off** any plan price for six months;
- Vonage offers new customers a “**FREE month rebate credit**”, a value up to \$34.99 for switching to Vonage;
- AT&T’s CallVantage offers new customers a **\$120 credit** for six months worth of service;
- Most of these carriers do not charge any conversion or switch

## CONCLUSION

The claims and defenses as pled in this proceeding are straightforward and cannot be interpreted to include anything other than BellSouth’s PreferredPack tariff offerings. Showing complete disregard for the procedural rules, BellSouth has decided nonetheless to attempt to place as many CLECs’ promotional offerings on trial – whether or not the targeted CLEC is even a party to this proceeding. This is simply improper, and the law in

---

<sup>15</sup> Id., at pp 4-5.

<sup>16</sup> The citation identified Exhibit 6 to BellSouth’s Motion. Supra asserts that this Exhibit should be stricken along with the wholly irrelevant language.

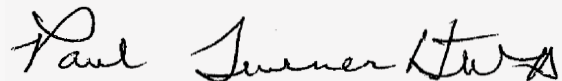


Florida recognizes such. Florida law allows the Commission to strike such wholly irrelevant material. Supra requests that the Commission prevent BellSouth from littering the record in this proceeding with attempts to shift the Commission's focus away from the issue at hand, whether or not BellSouth's promotional offerings violate Florida Statutes or are otherwise illegal. To arrive at a determination as to the issue of the legality of the PreferredPack offerings, the Commission does **not** need to review any other promotional offerings by BellSouth, Supra, or any other CLEC.

WHEREFORE, Supra respectfully requests that this Commission strike those portions of BellSouth's Motion, as more fully set forth above, which are redundant, immaterial, impertinent or scandalous and for such further relief which it deems fair and just.

Respectfully submitted this 24<sup>th</sup> day of August, 2004.

SUPRA TELECOMMUNICATIONS AND  
INFORMATION SYSTEMS, INC.



---

Paul Turner  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, Florida 33133  
Telephone: 305.476.4247  
Facsimile: 305.443.1078