



ORIGINAL

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www.supratelecom.com

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

September 17, 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
SEP 17 PM 4:28
COMMISSION
CLERK

RE: DOCKET NO. 040353-TP - SUPRA'S MOTION TO COMPEL

Dear Mrs. Bayo:

Enclosed are the original and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Motion To Compel 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

- CMP _____
- COM S _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1 _____
- OTH Ric P. _____

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09/22/04
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FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

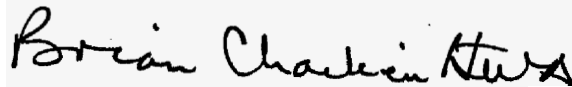
Docket No. 040353-TP

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 17th day of September 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. 27th Avenue
Miami, FL 33133
Telephone: 305/ 476-4248
Facsimile: 305/ 443-1078



By: BRAIN CHAIKEN, ESQ.

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: September 17, 2004
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SUPRA'S MOTION TO COMPEL

Supra Telecommunications and Information Systems, Inc. ("**Supra**"), pursuant to Florida Rule of Civil Procedure 1.380 and Rules 28-106.206 and 28-106.204(3), Florida Administrative Code,¹ hereby requests that the Florida Public Service Commission ("**Commission**") order BellSouth Telecommunications, Inc. ("**BellSouth**") to overrule BellSouth's objections and provide full and complete responses to Supra's Request for Production No. 18. In support, Supra states the following:

STANDARD FOR DISCOVERY

Florida Rule of Civil Procedure 1.280(b)(1) provides that "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party[.]" This rule is "to be applied as broadly and liberally as possible," Hickman v. Taylor, 329 U.S. 495, 506 (1947), such that it includes "any matter that bears on, or that reasonably could lead to other matter that bears on, any issue that is or may be in the case." Rossbach v. Rundle, 128 F.Supp.2d 1348, 1353 (S.D. Fla. 2000) (citation omitted).

¹ On September 9, 2004, counsel for the parties conferred telephonically regarding the subject matter of this Motion.

The discovery requested by Supra in this matter bears on BellSouth's costs, cost studies, and the applicable cost standards with respect to BellSouth's PreferredPack Plan tariff offering and/or the related promotional offerings. Such discovery requests are proper in this proceeding as Supra's claims include, without limitation, an assertion that BellSouth's applicable tariffs violate the applicable cost standards Section 364.051(5)(c), Florida Statutes.

GENERAL BACKGROUND

1. On May 27, 2004, the Commission issued its Order to Initiate Expedited Discovery Procedure (the "**Expedited Discovery Order**").² The Expedited Discovery Order provided shortened timeframes for the filing of objections and responses as follows:

[W]hen discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within five business days of service of the discovery request. . . . [A]ll discovery responses shall be due 10 calendar days after service of the request, with no additional time for mailing.³

2. On July 16, 2004, Supra served BellSouth with its Third Request for Production of Documents (Nos. 17-18) ("**3rd Request for Production**").⁴

3. On July 23, 2004, BellSouth served Supra with its objections to the 3rd Request for Production.⁵

4. On July 30, 2004, BellSouth served Supra with its responses to the 3rd Request for Production.⁶

² See Order No. PSC-04-0549-PCO-TP, in Docket No. 040353-TP.

³ Id., at p. 1.

⁴ A copy of the 3rd Request for Production is attached hereto as **Exhibit A**.

⁵ A copy of BellSouth's objections to the 3rd Request for Production is attached hereto as **Exhibit B**.

⁶ A copy of BellSouth's responses to the 3rd Request for Production is attached hereto as **Exhibit C**.

ARGUMENT

Request No. 18: Produce BellSouth's Privacy Director Cost Study, as testified to by Daonne Caldwell before the United States Bankruptcy Court, Southern District, in Case No. 02-41250.

Response: BellSouth objects to this request on the grounds it is irrelevant and not likely to lead to discovery of admissible evidence.

ARGUMENT: 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"). 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.

Supra's seeks a determination as to whether or not the applicable BellSouth offerings violate Florida Statutes or are otherwise illegal.

As Florida Rule of Civil Procedure 1.280(b)(1) provides that "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the

pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party..."⁷ and as this discovery request is related to the establishment of BellSouth's cost for provisioning its privacy director service (a component of the PreferredPack Plan tariff offering that is the subject of a Supra claim as plead in its Petition), BellSouth's assertion that this Request is irrelevant is improper. As BellSouth has previously testified before the United States Bankruptcy Court, Southern District, that it has created a cost study for its privacy director service and as the costs for such service is in dispute in this proceeding, Supra is entitled to review such.

Local Rule 7027-(C) Certification

Undersigned counsel certifies that they have conferred with counsel for BellSouth in a good faith effort to resolve by agreement the issues raised in this Motion and have been unable to do so.

⁷ In addition, Florida cases state that this rule is "to be applied as broadly and liberally as possible," Hickman v. Taylor, 329 U.S. 495, 506 (1947), such that it includes "any matter that bears on, or that reasonably could lead to other matter that bears on, any issue that is or may be in the case." Rosbach v. Rundle, 128 F.Supp.2d 1348, 1353 (S.D. Fla. 2000) (citation omitted).

WHEREFORE, Supra requests that the Commission hear and consider this Motion, and thereupon enter an Order compelling BellSouth to provide full and complete responses to Supra's applicable discovery requests, and for such other and further relief that the Commission deems appropriate.

By: Brian Chaiken Esq
BRIAN CHAIKEN, ESQ.

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



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

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

EXHIBIT – A

July 16, 2004

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

**RE: Docket 040353 –TP
SUPRA'S THIRD SET OF INTERROGATORIES (NOS. 28-30) AND
THIRD REQUEST FOR PRODUCTION (NOS. 17-18) TO
BELLSOUTH TELECOMMUNICATIONS, INC.**

Dear Mrs. Bayo:

Supra Telecommunications and Information Systems, Inc.'s (Supra) Notice of Service of its Third Set Of Interrogatories (Nos. 28-30) and Third Request For Production (Nos. 17-18) to BellSouth Telecommunications, Inc. to be filed in the 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,

A handwritten signature in black ink that reads "Steven Chaiken" followed by a stylized flourish.

Steven Chaiken
Assistant General Counsel

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 16th 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
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. 27th Avenue
Miami, FL 33133
Telephone: 305/ 476-4239
Facsimile: 305/ 443-1078



By: Steven Chaiken
Florida Bar No. 0626791

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to review and cancel, or)
in the alternative immediately suspend) Docket No.: 040353-TP
or postpone, BellSouth Telecommunications,) Filed: July 16, 2004
Inc.'s Preferred Pack Plan tariffs, by Supra)
Telecommunications and Information)
Systems, Inc.)

**SUPRA'S THIRD SET OF INTERROGATORIES (NOS. 28-30) AND
THIRD REQUEST FOR PRODUCTION (NOS. 17-18) TO
BELLSOUTH TELECOMMUNICATIONS, INC.**

Pursuant to Rule 1.340, Florida Rules of Civil Procedure, Supra Telecommunications and Information Systems, Inc. ("Supra Telecom" or "Supra"), by and through its undersigned counsel, hereby serves its Third Set of Interrogatories and Third Request for Production upon BellSouth Telecommunications Inc. ("BellSouth"). These interrogatories shall be answered under oath and verified by you or through your agent who is qualified to answer and who shall be fully identified, with said answers being served as provided pursuant to the Rules of Civil Procedure and within the time period set out in Order No. PSC-04-0549-PCO-TP, which states that all discovery shall be due ten (10) calendar days after service of the request.

DEFINITIONS

"You", "your", "Company" or "BellSouth" refers to BellSouth Telecommunications, Inc., its employees and authorized agents.

"Document" refers to written matter of any kind, regardless of its form, and to information recorded on any storage medium, whether in electrical, optical or electromagnetic form, and capable of reduction to writing by the use of computer hardware and software.

"Identify" means:

(a) With respect to a person, to state the person's name, address and business relationship (e.g., "employee") to the Company;

(b) With respect to a document, to state the nature of the document in sufficient detail for identification in a request for production, its date, its author, and to identify its custodian. If the information or document identified is recorded in electrical, optical or electromagnetic form, identification includes a description of the computer hardware or software required to reduce it to readable form.

"Act" refers to the Communications Act of 1934 as amended by the Telecommunications Act of 1996.

INTERROGATORIES

28. Identify on a monthly basis, since the inception of the PreferredPack Plan offerings listed below, the number of end users that qualified for:

- (i) \$100 Cash Back offer,
- (ii) \$25 Gift Card,
- (iii) \$40.88 Waiver Charge offer,
- (iv) \$100 Cash Back offer and the \$25 Gift Card,
- (v) \$100 Cash Back offer and the \$40.88 Waiver Charge offer,
- (vi) \$25 Gift Card and the \$40.88 Waiver Charge offer, and
- (vii) \$100 Cash Back offer, \$25 Gift Card offer, and the \$40.88 Waiver Charge offer.

Answer:

29. Identify on a monthly basis, since the inception of the PreferredPack Plan offerings listed below, the number of end users that received:

- (i) \$100 Cash Back offer,
- (ii) \$25 Gift Card,
- (iii) \$40.88 Waiver Charge offer,
- (iv) \$100 Cash Back offer and the \$25 Gift Card,
- (v) \$100 Cash Back offer and the \$40.88 Waiver Charge offer,
- (vi) \$25 Gift Card and the \$40.88 Waiver Charge offer, and
- (vii) \$100 Cash Back offer, \$25 Gift Card offer, and the \$40.88 Waiver Charge offer.

Answer:

30. Identify the average length of service an end user receives service under BellSouth's PreferredPack Plan promotional offer.

Answer:

REQUEST FOR PRODUCTION

17. Produce any and all documents used or relied upon by BellSouth in responding to Supra's Third Set of Interrogatories.

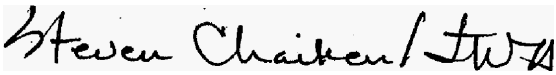
Response:

18. Produce BellSouth's Privacy Director Cost Study, as testified to by Daonne Caldwell before the United States Bankruptcy Court, Southern District, in Case No. 02-41250.

Response:

RESPECTFULLY SUBMITTED this 16th day of July, 2004.

SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC.
2620 S.W. 27th Ave.
Miami, Florida 33133
Telephone: 305.476.4239
Facsimile: 305.443.1078

By: 
STEVEN B. CHAIKEN
Florida Bar No. 0626791

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

July 23, 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

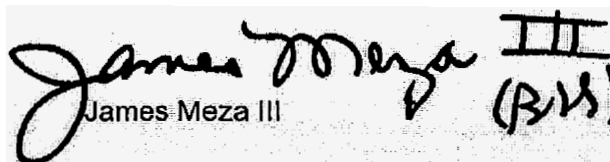
Re: Docket No.: 040353-TP

Dear Ms. Bayó:

Today, BellSouth Telecommunications, Inc. served its Objections to Supra Telecommunications and Information Systems, Inc.'s Third Set of Interrogatories (Nos. 28-30) and Third Request for Production (Nos. 17-18) in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III (B/S)

Enclosures

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

DOCUMENT NUMBER - DATE

08061 JUL 23 04

FPSC-COMMISSION CLERK

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


I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
First Class U.S. Mail and Electronic Mail this 23rd day of July, 2004 to the following:

Adam Teltzman
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Telephone: (850) 413-6199
ateitzma@psc.state.fl.us

Steve Chaiken (*)
Assistant General Counsel
Supra Telecommunications & Info Sys
Legal Department
2620 S.W. 27th Avenue
Miami, Florida 33133
Telephone: (305) 476-4248
Fax: (305) 443-1078
Steve.chaiken@stis.com
bchaiken@stis.com

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

(*) Signed Protective Agreement


James Meza III
(B/S)

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

July 30, 2004

VIA ELECTRONIC AND U.S. MAIL

Steve Chaiken, Esq.
Supra Telecommunications & Info Systems
Legal Department
2620 S.W. 27th Avenue
Miami, Florida 33133

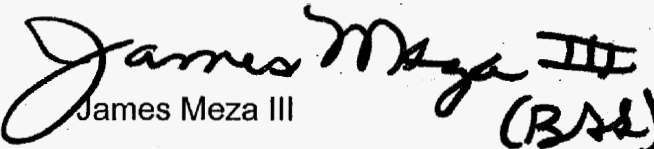
Re: Docket No.: 040353-TP

Dear Mr. Chaiken:

Enclosed are BellSouth Telecommunications, Inc.'s Responses to Supra Telecommunications and Information Systems, Inc.'s Third Set of Interrogatories (Nos. 28-30) and Supra's Third Request for Production of Documents (Nos. 17-18) in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III
(BSB)

Enclosures

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

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

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via First Class U.S. Mail and Electronic Mail this 30th day of July, 2004 to the following:

Adam Teitzman
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Telephone: (850) 413-6199
ateitzma@psc.state.fl.us

Steve Chaiken (*)
Assistant General Counsel
Supra Telecommunications & Info Sys
Legal Department
2620 S.W. 27th Avenue
Miami, Florida 33133
Telephone: (305) 476-4248
Fax: (305) 443-1078
Steve.chaiken@stis.com
bchaiken@stis.com

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

(*) Signed Protective Agreement


James Meza III
(B/H)

**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)	Filed: July 30, 2004
Tarriffs Offered in Conjunction With its New)	
Flat Rate Service Known as Preferred Pack)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO SUPRA TELECOMMUNICATIONS AND INFORMATION
SYSTEMS, INC.'S THIRD SET OF INTERROGATORIES (NOS. 28-30) AND
THIRD REQUEST FOR PRODUCTION (NOS. 17-18)**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files the following responses to Supra Telecommunications and Information Systems, Inc.'s ("Supra") Third Set of Interrogatories (Nos. 28-30) and Third Request for Production (Nos.17-18), dated July 16, 2004.

REQUEST: Identify on a monthly basis, since the inception of the PreferredPack Plan offerings listed below, the number of end users that qualified for:

- (i) \$100 Cash Back offer,
- (ii) \$25 Gift Card,
- (iii) \$40.88 Waiver Charge offer
- (iv) \$100 Cash Back offer and the \$25 Gift Card,
- (v) \$100 Cash Back offer and the \$40.88 Waiver Charge offer,
- (vi) \$25 Gift Card and the \$40.88 Waiver Charge offer, and
- (vii) \$100 Cash Back offer, \$25 Gift Card offer, and the \$40.88 Waiver Charge offer.

RESPONSE: This information is proprietary and is being provided subject to the terms of the non-disclosure agreement executed in this docket.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

REQUEST: Identify on a monthly basis, since the inception of the PreferredPack Plan offerings listed below, the number of end users that received:

- (i) \$100 Cash Back offer,
- (ii) \$25 Gift Card,
- (iii) \$40.88 Waiver Charge offer
- (iv) \$100 Cash Back offer and the \$25 Gift Card,
- (v) \$100 Cash Back offer and the \$40.88 Waiver Charge offer,
- (vi) \$25 Gift Card and the \$40.88 Waiver Charge offer, and
- (vii) \$100 Cash Back offer, \$25 Gift Card offer, and the \$40.88 Waiver Charge offer.

RESPONSE: This information is proprietary and is being provided subject to the terms of the non-disclosure agreement executed in this docket.

BellSouth is unable to provide actual data on the number of PreferredPack Plan end users that received the Cash Back and Gift Card Offers set forth above. However, region-wide, BellSouth's cash back/gift card redemption rates for all products are as follows:

Jan 04	56%
Feb 04	52%
March 04	61 %
April 04	26%
May 04	13%
Jun 04	3%
Jul 04	Less than 1%

REQUEST: Identify the average length of service an end user receives service under BellSouth's PreferredPack Plan promotional offer.

RESPONSE: BellSouth does not know the average length of time that an end user receives services under BellSouth's PreferredPack Plan promotional offer. However, the average BellSouth reacquisition customer stays with BellSouth for ■ months.

BellSouth Telecommunications, Inc.
FPSC Docket No. 040353-TP
Supra's 3rd Request for Production
July 16, 2004
Item No. 17
Page 1 of 1

REQUEST: Produce any and all documents used or relied upon by BellSouth in responding to Supra's Third Set of Interrogatories.

RESPONSE: BellSouth has no responsive documents.

BellSouth Telecommunications, Inc.
FPSC Docket No. 040353-TP
Supra's 3rd Request for Production
July 16, 2004
Item No. 18
Page 1 of 1

REQUEST: Produce BellSouth's Privacy Director Cost Study, as testified to by Daonne Caldwell before the United States Bankruptcy Court, Southern District, in Case No. 02-41250.

RESPONSE: BellSouth objects to this request on the grounds it is irrelevant and not likely to lead to discovery of admissible evidence.

Respectfully submitted this 30th day of July, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy White

NANCY B. WHITE

(BSL)

c/o Nancy H. Sims

150 So. Monroe Street, Suite 400

Tallahassee, FL 32301

(305) 347-5558

James Meza III

R. DOUGLAS LACKEY

JAMES MEZA III

(BSL)

Suite 4300

675 W. Peachtree St., NE

Atlanta, GA 30375

(404) 335-0769

544592