

JAMES MEZA III
Senior Regulatory Counsel

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

June 22, 2005

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.: 050387-TP**
**In re: Petition of supra Telecommunications and Information Systems, Inc.
to Review BellSouth Promotional Tariffs**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Stay Proceeding, 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

Enclosures

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

DOCUMENT NUMBER-DATE
05956 JUN 22 '05

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Supra Telecommunications)
And Information Systems, Inc. to Review)
BellSouth Promotional Tariffs

Docket No. 050387-TP
Filed: June 22, 2005

MOTION TO STAY PROCEEDING

BellSouth Telecommunications, Inc. ("BellSouth") respectfully requests that the Florida Public Service Commission ("Commission") stay the above-captioned proceeding filed by Supra Telecommunications and Information Systems, Inc. ("Supra") until the United States Bankruptcy Court for the Southern District of Florida ("Bankruptcy Court") resolves the parties' dispute as to whether the filing of this litigation violated Supra's obligations in its bankruptcy confirmation plan ("Plan"). In addition, and at a minimum, BellSouth requests that the time-period to file a response to Supra's Petition be tolled until the Commission addresses the instant Motion. In support of this request, BellSouth states the following:

1. On October 23, 2002, Supra filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court.
2. On December 1, 2004, Supra filed its *Third Amended Plan of Reorganization by Supra Telecommunications and Information Systems, Inc., as Modified and Supplemented* (previously defined as the "Plan").
3. On February 4, 2005, the Bankruptcy Court entered its *Order Confirming Third Amended Plan of Reorganization by Supra Telecommunications and Information Systems, Inc., as Modified and Supplemented* (the "Confirmation Order").
4. On March 21, 2005, Supra filed a *Notice of Closing of Transaction Contemplated by Debtor's Confirmed Plan of Reorganization*, indicating that the sale

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

transaction with HIG/Endeavor (the “Purchaser”) closed and the Effective Date¹ of the Plan is March 18, 2005.

5. A material and essential negotiated term of the Plan was that the litigation between Supra and BellSouth then-pending at the Commission in Docket No. 040353-TP (the “Preferred Pack Claim”) would be assigned to the reorganized Supra as of the Effective Date, would be dismissed without prejudice immediately thereafter, and that Supra would be prohibited from refiling the matter for 180 days. Specifically, Section IV(J)(9), footnote (iv), of the Plan provides:

If the closing is extended past December 30, 2004, in accordance with the provisions of the Agreement, then the Company will take whatever action is appropriate to cause any proceedings in this litigation to be deferred until after the Effective Date (at which time it will be dismissed without prejudice for no less than 180 days). (emphasis added).

6. On March 24, 2005, Supra voluntarily dismissed the Preferred Pack Claim as required by the Plan. The Commission approved this dismissal on May 12, 2005 in Order No. PSC-05-0520-FOF-TP.

7. On June 6, 2005, Supra initiated Docket No. 050387-TP, wherein Supra reasserts the same claims against BellSouth that it previously asserted and voluntarily dismissed in the Preferred Pack Claim (“New Preferred Pack Claim”). Specifically, in the New Preferred Pack Claim, Supra challenges the same type of promotions and raises the same arguments in support of its claim that BellSouth’s retail promotions are prohibited. Indeed, the only discernable difference between the two complaints (other than stylistic changes) is that Supra has updated the new lawsuit to include additional promotions, raise additional arguments, revise previously-made arguments, and

¹ The Effective Date is defined in the Plan as the Closing Date.

address the fact that the previously complained about promotions (cash back offers, gift card promotions, and installation fee waiver promotions) have expired.²

8. BellSouth asserts that the initiation of the New Preferred Pack Claim prior to the expiration of 180 days violated the Plan and the Purchase Agreement.

9. As a result, on June 21, 2005, BellSouth filed a Motion to Enforce Confirmation Order with the Bankruptcy Court, wherein BellSouth requests that the Court require Supra to immediately cease prosecution of the New Preferred Pack Claim, withdraw it, and prohibit Supra from refiling the matter until after September 18, 2005. See Motion to Enforce Confirmation Order, attached hereto as Exhibit A.

10. In light of this filing with the Bankruptcy Court, BellSouth requests that the Commission stay the instant proceeding until the Bankruptcy Court resolves BellSouth's Motion to Enforce Confirmation Order. Simply put, the New Preferred Pack Plan is an inappropriate filing at this time, and BellSouth has sought to enforce its rights as well as the obligations of Supra relating to this filing in the appropriate forum. If successful, Supra will be required to withdraw the instant Complaint and honor its obligation to not refile it until after September 18, 2005. Consequently, BellSouth should not be required to spend the time and resources required to litigate a matter that it believes should have never have been filed.

11. Supra will not be prejudiced by any stay of the New Preferred Pack Claim until the Bankruptcy Court resolves this dispute because the majority of the promotions

² Supra pled in the New Preferred Pack Claim that BellSouth has an obligation to provide the subject promotions at resale. While not specifically alleged in the Preferred Pack Claim, Supra did make this allegation in direct testimony filed in that proceeding. Further, in obvious recognition that Supra (as well as all other carriers) use promotions to attract customers, Supra has abandoned its argument in the original complaint that the use of promotions constitutes the provision of "free" service in violation of Florida law.

at issue have been in effect since December 2004 or January 2005. Additionally, Supra's claim that its Complaint must be resolved pursuant to Section 364.059(1)(a) is misplaced because BellSouth is not operating pursuant to Section 364.051(6). Further, any prejudice Supra may claim is offset by the fact that Supra has contractually agreed not to refile the claim for a period of 180 days or until after September 18, 2005. Accordingly, if Supra is prejudiced, Supra agreed to the prejudice and is contractually bound to endure the prejudice.

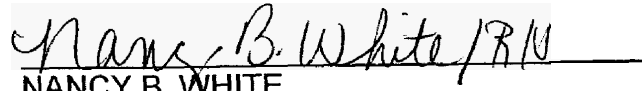
12. Moreover, at a minimum, BellSouth requests that the Commission suspend BellSouth's deadline to file a response to the Complaint until the Commission rules on this Motion to Stay. Currently, BellSouth's response is due on June 27, 2005.

13. And, in the event the Commission denies this Motion in its entirety, BellSouth requests an additional seven days to provide a response due to the undersigned's work commitments and travel schedule.

WHEREFORE, for the foregoing reasons, BellSouth requests that the Commission grant its Motion to Stay.

Respectfully submitted this 22nd day of June, 2005.

BELLSOUTH TELECOMMUNICATIONS, INC.

Handwritten signature of Nancy B. White in cursive, followed by a horizontal line.

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

Handwritten signature of R. Douglas Lackey in cursive, followed by a horizontal line.

R. DOUGLAS LACKEY
JAMES MEZA III
BellSouth Center, Suite 4300
675 West Peachtree Street, N.E.
Atlanta, GA 30375
(404) 335-0769

CERTIFICATE OF SERVICE
Docket No.: 050387-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and FedEx this 22th day of June, 2005 to the following:

Jason Rojas
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
jrojas@psc.state.fl.us

Brian Chaiken, Esq.
Steven B. Chaiken, Esq.
Legal Department
Supra Telecommunications and
Information Systems, Inc.
2901 S.W. 149th Avenue, Ste. 300
Miramar, Florida 33027
Tel. No. (786) 455-4248
Tel. No. (786) 455-4239
Fax. No. (786) 455-4600
bchaiken@stis.com
steve.chaiken@stis.com


James Meza, III

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

FILED BY _____ DC

RECEIVED BY _____ DC

05 JUN 21 PM 4: 02

In re:

SUPRA TELECOMMUNICATIONS D/B/A
SUPRA TELECOMMUNICATIONS &
INFORMATION SYSTEMS,

Case No. 02-41250-BKC-RAM
Chapter 11
U.S. BANKRUPTCY CT.
SD OF FLA.
MIA - OFFICE

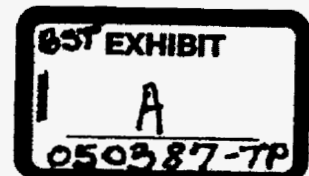
Debtor.
_____ /

**BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION
TO ENFORCE THE CONFIRMATION ORDER**

BellSouth Telecommunications, Inc., by and through its undersigned counsel, files this *Motion to Enforce the Confirmation Order* (the "Motion") and in support hereof, states as follows:

1. On October 23, 2002, Supra filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
2. On December 1, 2004, Supra filed its *Third Amended Plan of Reorganization by Supra Telecommunications and Information Systems, Inc., as Modified and Supplemented* (the "Plan").
3. On February 4, 2005, the Court entered its *Order Confirming Third Amended Plan of Reorganization by Supra Telecommunications and Information Systems, Inc., as Modified and Supplemented* (the "Confirmation Order").
4. As the Court will recall, the Plan was heavily negotiated among BellSouth, the Debtor, HIG/Endeavor and the Committee which facilitated the sale of the Debtor and its emergence from bankruptcy. On March 21, 2005, the Debtor filed a *Notice of Closing of Transaction Contemplated by Debtor's Confirmed Plan of Reorganization*, indicating that the

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sale transaction with HIG / Endeavor (the "Purchaser") closed and the Effective Date¹ of the Plan is March 18, 2005.

5. A material and essential negotiated term of the comprehensive agreement reached among the Debtor, the Committee, BellSouth, and HIG / Endeavor (the "Purchaser") as set forth in Section 4.2 of the Final Purchase Agreement and Section IV(J)(9) of the Disclosure Statement, was that certain litigation extant between Supra and BellSouth pending in the FPSC, styled *In re: Petition of Supra Telecommunications and Information Systems, Inc. to Review and Cancel BellSouth's Promotional Offering Tariffs Offered in Connection With its New Flat Rate Service Known as the Preferred Pack Plan; FPSC; Docket No. 040353-TP* (the "Preferred Pack Claim"), would be assigned to the reorganized Company as of the Effective Date and then dismissed without prejudice immediately thereafter. Supra brought the Preferred Pack Claim to challenge several of BellSouth's retail promotions pursuant to Florida law, including but not limited to, BellSouth's cash back offers, gift card promotions, and installation fee waiver promotions. See *Petition of Supra Telecommunications and Information Systems, Inc. to Review and Cancel, or in the Alternative Immediately Suspend or Postpone Tariffs*, attached hereto as **Exhibit A**.

6. As to the Preferred Pack Claim, the parties further expressly agreed, as a negotiated term, in Section 4.2 of the Final Purchase Agreement and Section IV(J)(9), footnote (iv), of the Disclosure Statement, as follows:

If the closing is extended past December 30, 2004, in accordance with the provisions of the Agreement, then the Company will take whatever action is appropriate to cause any proceedings in this litigation to be deferred until after the Effective Date (at which time it will be dismissed without prejudice for no less than 180 days). (emphasis added).

¹ The Effective Date is defined in the Plan as the Closing Date. All of the capitalized terms herein shall have the meaning ascribed to them in the Plan.

7. On March 24, 2005, Supra voluntarily dismissed the Preferred Pack Claim as required by the Final Purchase Agreement, Plan and Confirmation Order. However, on June 7, 2005, Supra initiated litigation against BellSouth that reasserts the same claims against BellSouth that it previously asserted and voluntarily dismissed in the Preferred Pack Claim ("New Preferred Pack Claim"). See *Petition of Supra Telecommunications and Information Systems, Inc., to Review BellSouth Promotional Tariffs*, attached hereto as Exhibit B. Specifically, in the New Preferred Pack Claim, Supra challenges the same promotions and raises the same arguments in support of its claim that BellSouth's retail promotions are prohibited. Indeed, the only discernable difference between the two complaints (other than stylistic changes) is that Supra has updated the new lawsuit to include additional promotions, raise additional arguments, revise previously made arguments, and address the fact that the previously complained about promotions (cash back offers, gift card promotions, and installation fee waiver promotions) have expired.² Simply put, the primary allegations, legal support, and requests for relief asserted by Supra in both proceedings are essentially the same. F.R.C.P. 41(d) which enables a defendant to recover costs for previously dismissed actions, sheds light on the issue of whether subsequent litigation is similar enough to merit the award of costs. It provides:

[I]f a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order. (emphasis added).

² Supra has pled in the New Preferred Pack Claim that BellSouth has an obligation to provide the subject promotions at resale. While not specifically alleged in the Preferred Pack Claim, Supra did make this allegation in direct testimony filed in that proceeding. Further, in obvious recognition that Supra (as well as all other carriers) use promotions to attract customers, Supra has abandoned its argument in the original complaint that the use of promotions constitutes the provision of "free" service in violation of Florida law.

Clearly the New Preferred Pack Claim is "based upon" the same claims set forth in the Preferred Pack Claim. This duplicative litigation is clearly prohibited and should not be tolerated.

8. Section 6.2 of the Plan provides that "all of the terms and conditions of the Final Purchase Agreement are incorporated herein and, as of the Effective Date, are binding upon all applicable Persons in all respects." In addition, paragraph 8 of the Confirmation Order provides that the "Reorganized Debtor, and their respective directors, officers, employees, and agents are authorized and empowered, pursuant to 11 U.S.C. § 1142(b), to take all such steps as are necessary to effectuate and implement the Plan and this Confirmation Order, **and the Final Purchase Agreement...**" (*emphasis added*).

9. Supra's filing of the New Preferred Pack Claim on June 7, 2005 constitutes a breach of Supra's obligation under the Purchase Agreement, Plan and Confirmation Order as the 180-day tolling period does not expire until on or about September 18, 2005. Accordingly, BellSouth submits that the Court should enforce the unequivocal terms of the Purchase Agreement, Plan and Confirmation Order and immediately require Supra to cease its prosecution of this action and withdraw the New Preferred Pack Claim until September 18, 2005.

10. BellSouth has asked Supra to withdraw the New Preferred Pack Claim prior to filing this Motion, however, Supra has declined to do so.

WHEREFORE, for the foregoing reasons, BellSouth respectfully requests an Order:

- A. Granting this Motion;
- B. Requiring Supra to cease its prosecution of the New Preferred Pack Claim and withdrawing the New Preferred Pack Claim until September 18, 2005;
- C. Imposing such sanctions against Supra as the Court may deem appropriate under 11 U.S.C. § 105(a), including without limitation, the assessment of the fees and expenses

incurred by BellSouth as a result of Supra's willful violation of the terms of the Plan and the Confirmation Order; and

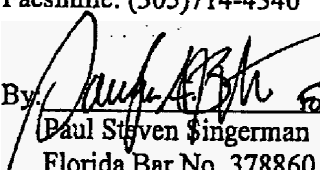
D. Granting such other and further relief as the Court deems just and appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing, was served by U.S. Mail, postage prepaid, upon all other parties enumerated on the Master Service List this 20th day of June, 2005.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and that I am in compliance with all additional qualifications to practice before this Court as set forth in Local Rule 2090-1(A).

BERGER SINGERMAN, P.A.
200 South Biscayne Boulevard,
Suite 1000
Miami, Florida 33131
Telephone: (305)755-9500
Facsimile: (305)714-4340

By:  For: FLA BAR # 0791431

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Counsel for BellSouth
Telecommunications, Inc



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

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

April 20, 2004

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

040353-TP

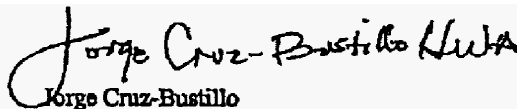
**RE: PETITION OF SUPRA TO REVIEW AND CANCEL, OR IN THE ALTERNATIVE
IMMEDIATELY SUSPEND OR POSTPONE BELLSOUTH'S
PREFERREDPACK PLAN TARIFFS**

Dear Mrs. Bayo:

Enclosed are the originals and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Petition To Review And Cancel, Or In The Alternative Immediately Suspend Or Postpone Bellsouth's PreferredPack Plan Tariffs along with two (2) exhibits for filing.

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

Sincerely,


Jorge Cruz-Bustillo
Assistant General Counsel



DOCUMENT NUMBER-CASE

04683 APR 20 04

FPSC-COMMISSION CLERK

By Jorge Cruz-Bustillo

Jorge Cruz-Bustillo

SUPRA TELECOMMUNICATIONS
& INFORMATION SYSTEMS, INC.
2620 S. W. 27th Avenue
Miami, FL 33133
Telephone: 305/476-4252
Facsimile: 305/443-1078

Nancy White
c/o Mr. Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

**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 20th day of April 2004 to the following:**

Beth Keating
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

CERTIFICATE OF SERVICE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra)	
Telecommunications and Information)	Docket No.
Systems, Inc.'s to Review and Cancel)	
BellSouth's Promotional Offering Tariffs)	Filed: April 20, 2004
Offered in conjunction with its new flat rate)	
Service known as the PreferredPack Plan)	

**PETITION OF SUPRA TELECOMMUNICATIONS AND INFORMATION
SYSTEMS, INC.,
TO REVIEW AND CANCEL, OR IN THE ALTERNATIVE
IMMEDIATELY SUSPEND OR POSTPONE TARIFFS**

Supra Telecommunications and Information Systems, Inc. ("Supra") by and through its undersigned counsel and hereby files this petition with the Florida Public Service Commission ("Commission") pursuant to Florida Statutes §§364.01, 365.051, 364.08 and 365.285, Florida Statutes, and hereby requests that this Commission review and cancel, or in the alternative to immediately suspend or postpone, certain Tariffs allowing BellSouth Telecommunications Inc., ("BellSouth") to offer several months of free telephone service in violation of Florida Statutes. In support thereof, Supra states as follows:

1. Supra is a competitive local exchange carrier ("ALEC") certificated by the Commission to provide telecommunications services within the State of Florida. Petitioner's name, address and telephone number is as follows:

Supra Telecommunications and Information Systems, Inc.
2620 S. W. 27th Avenue,
Miami, Florida 33133
(305) 476-4200

2. The Petitioner's representative's name, address and telephone number is:

Brian Chaiken, Esq.

Legal Department
Supra Telecommunications and Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, Florida 33133
Telephone: 305.476.4248
Facsimile: 305.443.1078

3. BellSouth is a corporation organized and formed under the laws of the state of Georgia, with its principal office at 675 West Peachtree Street, Atlanta, Georgia, 30375. BellSouth is an Incumbent Local Exchange Carrier ("ILEC") certificated by this Commission to provide local exchange telecommunications services in the state of Florida. BellSouth's address in the State of Florida for service of process is:

Nancy B. White, General Counsel
c/o Nancy H. Sims, Director of Regulatory Affairs
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301

FACTUAL ALLEGATIONS

4. BellSouth began offering a new flat rate service known as the PreferredPack Plan, Tariff No. T-031414, which became effective on January 9, 2004 (hereinafter referred to as "PreferredPack Tariff") See PreferredPack Tariff, §A3.4.6 Revised page 26.1, attached hereto as Composite Exhibit A. The monthly retail rate is \$26.95 which entitles the subscriber unlimited local calling to all exchange access lines within the subscribers local calling area as well as unlimited use of the following groups of features/services: (1) Call Waiting Deluxe, Three Way Calling, Call Forwarding Busy Line, Call Forwarding Don't Answer (with or without ring control), Star 98 Access, (2) Caller ID-Deluxe, Call Return (*69), (3) Message Waiting Indication, and (4) Privacy Director Service. See Composite Exhibit A. These features are among

the most popular services provided by Supra. The PreferredPack Plan service is only available to residential subscribers who do not currently have local service with BellSouth.

5. BellSouth has three (3) promotional offering tariffs that are offered in conjunction with the PreferredPack Plan.

6. The first promotional offering is known as "\$100 CASH BACK", Tariff No. T-031379, which became effective on January 2, 2004 (hereinafter referred to as "\$100 CASH BACK Tariff"). See \$100 CASH BACK¹ Tariff, §A2.10.2 Revised page 32.1 and 32.2, attached hereto as Composite Exhibit A.

7. The second promotional offering is known as the "\$25 Gift Card", Tariff No. T-031380, which became effective on January 2, 2004 (hereinafter referred to as "\$25 Gift Card Tariff"). See \$25 Gift Card² Tariff, §A2.10.2 Revised page 32.3, attached hereto as Composite Exhibit A.

8. The third promotional offering is known as the "Line Connection Charge Waiver," Tariff No. T-031381, which became effective on January 2, 2004 (hereinafter referred to as "Connection Fee Waiver Tariff"). See Connection Fee Waiver Tariff, §A2.10.2 Revised page 32.4, attached hereto as Composite Exhibit A. This is a savings of \$40.88. See BellSouth

¹ To receive the \$100 Cash Back the customer fills out a coupon and mails it to BellSouth. The customer will receive the check within 4-6 weeks after BellSouth receives the coupon. The customer must still have the qualifying service at the time the check is processed. This offer may be combined with other promotional offers on the same service. This information is found in BellSouth's Tariff and the Direct Mail Piece attached hereto as Exhibit B.

² To receive the \$25 Gift Card the customer fills out a coupon and mails it to BellSouth. The customer will receive the Gift Card within 4-6 weeks after BellSouth receives the coupon. The customer must still have the qualifying service at the time the Gift Card is processed. This offer may be combined with other promotional offers on the same service. This information is found in BellSouth's Tariff and the Direct Mail Piece attached hereto as Exhibit B.

Direct Mail piece attached hereto as Exhibit B – identifying the savings from the connection fee waiver: “\$40.881” (Emphasis in original).

9. 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. This is in violation of §§364.08 and 364.051(5)(c), Florida Statutes, and is an anti-competitive practice pursuant to §364.012(4)(g), Florida Statutes.

10. Section 364.08(2), Florida Statutes, prohibits carriers from giving away free service.

11. In Docket No. 990043-TP (Petition to review and cancel BellSouth Telecommunications, Inc.’s promotional tariff (T-981783) by Arrow Communications), (“Arrow Docket”) the Commission voted to suspend BellSouth’s tariff pending resolution of the petition. The Commission found (as noted on its February 2, 1999 Vote Sheet) that Arrow’s Petition demonstrates that the alleged anticompetitive or discriminatory effect of the tariff will cause significant harm that cannot be adequately redressed if the tariff is ultimately determined to be invalid. Such harm includes financial or economic harm to competing telecommunications providers.

12. In the Arrow Docket, BellSouth proposed a discount of free connection charges and three free months of service to CLBC customers.

13. In this case, BellSouth is likewise offering three (3), four (4) or five (5) months of free service depending on how you choose to calculate the discounts. In either case, the free service is anti-competitive and in violation of Florida Statutes.

Free Service & Below Cost

14. 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. Amazingly, BellSouth has repeatedly argued before the Federal Communications Commission ("FCC") and this Commission, that the TELRIC UNE pricing set by Florida and other state utility commissions force BellSouth to sell its services to CLECs below cost. Given these recent promotions, it is apparent that either (a) BellSouth's arguments regarding TELRIC UNE pricing being below cost are untrue, or (b) BellSouth's PreferredPack Plan is also below cost and is anti-competitive.³ As noted above, this new service is marketed in conjunction with three promotional offerings: (1) \$100 CASH BACK, (2) \$25 Gift Card, and (3) Connection Fee Waiver of \$40.88. See BellSouth Direct Mail piece attached hereto as Exhibit B.

15. After waiving the connection fee, the customer is given \$125.00 dollars. In the absence of the promotional offer, it would cost the customer \$107.80 ($\$26.95 \times 4 = \107.80) for four (4) months of the PreferredPack Plan service. With the promotional offerings, the customer is given free service for four (4) months. This violates both §§364.08 and 364.051(5)(c), Florida Statutes, because the service is free and below cost.

16. In addition to the four (4) months of free service, the fifth (5th) month's service is reduced to \$9.75 ($\$26.95 \times 5 = \$134.75 - \$125.00 = \9.75). If you add in the \$40.88 savings

³ BellSouth claimed cost of service in Zone 2 is \$27.53. Thus, the PreferredPack Plan retail price of \$26.95 is below cost. See PSC-02-1311-FOR-TP, for BellSouth's proposed rates for loop/port combination [pg. 119], ODUF (message processing, per message) [pg. 129]; usage based on BellSouth charges to Supra; and features charge obtained from BellSouth's Post Hearing Brief in Docket No. 990649A-TP, pg. 20.

from the Connection Fee Waiver Tariff, the customer obtains a fifth (5th) month of free service and the cost of the sixth (6th) month of service is only \$9.75. This last month of service – whether the fifth (5th) or sixth (6th) month - is below the direct cost that BellSouth must collect on its service, in violation of §364.051(5)(c), Florida Statutes.

17. §364.051(5)(c), Florida Statutes, provides in part that the “price charged to a consumer for a non-basic service shall cover the direct costs of providing the service . . .”

18. This Commission has stated the following: “Section 364.051(5)(c), Florida Statutes, examines direct costs, and we believe an examination of direct cost is needed to make a determination of whether the post-discounted rates offered . . . remain “compensatory” for BellSouth.” See Order No. PSC-03-0726-FOF-TP, pg. 21.

19. “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.” *Id.* at pg. 22.

20. . . . The cost of service in Zone 1 and 2 are \$16.36 and \$20.87, respectively⁴. Sixty-Eight (68%) percent of all access lines in BellSouth’s territory are in Zone 2.⁵ In arriving at both figures, *Supra* utilized the same methodology BellSouth Witness, W. Bernard Shell, used in Docket No. 020119-TP⁶ - as well as the updated cost figures for the loop-port combination and ODUF charges obtained from Order No. PSC-02-1311-FOF-TP, issued on September 27, 2002.

⁴ Based on Commission approved rates. Cost figure in footnote 3 is based in part on BellSouth proposed rates.

⁵ See Pg. 21, BellSouth’s Post Hearing Brief in Docket No. 990649A-TP. According to BellSouth 29% of lines are in Zone 1 and 3% in Zone 3. *Id.*

⁶ Witness Shell in Direct Testimony wrote: “The costs used for this test were the statewide average Unbundled Network Element (“UNE”) rates for the loop-port combination plus usage ordered by the

21. Thus, the calculation for Zones 1 and 2 were as follows:

Zone		(1)	(2)
UNE-P (loop/port combination) ⁷	=	\$10.69	\$15.20
Usage ⁸	=	\$3.41	\$3.41
Features Port ⁹	=	\$2.26	\$2.26
ODUF ¹⁰	=	<u>\$0.002146</u>	<u>\$0.002146</u>
Total		\$16.36	\$20.87

22. As noted earlier herein, the cost of service in the fifth month, with the win-back promotional offerings, is \$9.75. This amount of money is less than the cost of service in both Zones 1 and 2. Thus, the PreferredPack Plan service offered in the fifth (5th) month of service is non-compensatory and, as such, is unfair, anticompetitive and discriminatory.

23. BellSouth, because of its dominant market share and enormous revenue base, can afford to lose money on these customers through these steep discounts, even for a prolonged period of time; whereas, CLECs do not have the financial depth to withstand similar losses that would be caused by matching BellSouth's promotional discount tariffs. This gives BellSouth the ability to take market share from CLECs and irreparably harm the CLECs' collective financial and economic ability to increase their already frail market share.

Florida Public Service Commission (Order No. PSC-01-2051-FOF-TP, dated October 18, 2001) in Docket No. 990649-TP." See Pg. 3, Lines 21-24, Direct Testimony, Docket No. 020119-TP.

⁷ See Pg. 119, Order No. PSC-02-1311-FOF-TP.

⁸ See Pg. 20, BellSouth's Post Hearing Brief, Docket No. 990649A-TP. This rate does not reflect the average usage cost in a UNE-P environment. The \$3.41 rate used by BellSouth in Docket 990649A-TP is the average cost "across all lines, not just UNE-P." "[W]e [BellSouth] used all lines" including "retail, resale and UNE-P." These quoted remarks were made by BellSouth Witness Greg Follensbee on November 5, 2002, in the United States Bankruptcy Court Case No. 02-41250-BKC-RAM; Hearing Transcript pg. 572, Lines 8-23. BellSouth subsequently confirmed Follensbee's November 2002 Federal Court admission in a July 2003, filing in Docket No. 030482-TP, by writing that the data used to calculate the average "usage" costs, in its April 12, 2002 and August 26, 2002 filings in Docket 990649A-TP, were based upon "all end users in Florida." A more realistic and accurate average usage cost should be \$5.50, the amount BellSouth charges to Supra. This Complaint will nevertheless show that BellSouth's service and promotional offerings are provided below cost - even using BellSouth's claimed lower usage costs.

⁹ See Pg. 20, BellSouth's Post Hearing Brief in Docket No. 990649A-TP.

¹⁰ See Pg. 129, Order No. PSC-02-1311-FOF-TP (message processing - per message)

24. This Commission should also note that BellSouth's PreferredPack Tariff does not require a contractual arrangement between BellSouth and the winback/reacquisition customers that will ensure retention of these customers for a period of time sufficient to allow BellSouth to break even on each individual winback customer. Thus, if a BellSouth customer switches back to a CLEC after a five-month period, BellSouth would have given the customer five months of free local service. True competitive service offerings are priced above cost. Services that are sold below cost are intended to unfairly steal market share and harm competition. It appears that BellSouth's real intent in offering its PreferredPack Tariff in conjunction with its deep discounted promotional offerings is not to offer a competitive cost-based plan to Florida consumers, but to thwart competition in the local telecommunications market and to permanently entrench BellSouth's dominant market position by selling service below cost. Because of BellSouth's large local market share and revenue base, it has the financial wherewithal to withstand any short-term revenue losses on these customers. Once BellSouth is successful in driving CLEC competitors out of the local market through its anticompetitive promotional pricing, BellSouth can then eliminate its promotional offerings and raise the rates of its local services to recoup those losses.

25. In Docket No. 020119-TP, BellSouth Witness Shall included the Subscriber Line Charge ("SLC") in calculating whether the promotional offering was compensatory. Supra does not believe that the SLC should be included in any calculation in determining whether BellSouth is selling its service below cost. The rationale for not including the SLC is that while carriers are authorized to impose this charge and most do (to obtain the revenue), the charge is still discretionary and need not be imposed.

26. If the SLC of \$5.00¹¹ is added to the \$9.75 for the fifth month of service, the evidence demonstrates that the PreferredPack Plan service is still below cost in both Zone 1 and 2 – all in violation of §364.051(c), Florida Statutes.

27. If the SLC is included in the calculation from the outset, the customer would still obtain three (3) free months of service. This type of promotion has already been found by this Commission to be unfair and discriminatory in the Arrow Docket.

28. Using the same calculation as before, in the absence of the promotional offer, it would cost the customer \$95.85 (PreferredPack Plan \$26.95 + SLC \$5.00 = \$31.95 x 3 = \$95.85) for three (3) months of the PreferredPack Plan service.

29. The promotional offerings – as marketed by BellSouth in Exhibit B - waive the connection fee, and provides to the customer \$125.00 dollars (\$100 CASH BACK and the \$25 Gift Card) which leaves in the customer's proverbial pocket \$29.15 ($\$125.00 - \$95.85 = \29.15) more than the customer is expected to pay for this retail service for three (3) months. The out of pocket expense for the fourth (4th) month would only be \$2.80 ($\$31.95 - \$29.15 = \2.80). This amount of money in the fourth (4th) month is less than the cost of service in both Zones 1 and 2. This violates both §§364.08 and 364.051(5)(c), Florida Statutes, because the service is free and below cost.

30. If you add in the \$40.88 savings from the Connection Fee Waiver Tariff, the customer obtains a fourth (4th) month of free service and the cost of the fifth (5th) month of service is only \$2.80. This last month of service – whether the fourth (4th) or fifth (5th) month - is

¹¹ See Pg. 21, BellSouth's Post Hearing Brief in Docket No. 990649A-TP.

below the direct cost, in Zone 1 and 2, that BellSouth must collect on its service. Again, this is in violation of §364.051(5)(c), Florida Statutes.

31. Thus, even when the SLC is included, the customer still receives at least three (3) months or four (4) months of free service; in turn making the fourth (4th) or fifth (5th) month of service non-compensatory. This is unfair, anticompetitive and discriminatory in violation of §§364.08, 364.051(5)(c), and 364.01(4)(g), Florida Statutes.

WHEREFORE, Supra respectfully requests that this 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;

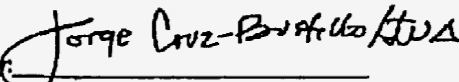
(2) If the Tariffs are not immediately suspended or postponed, grant Supra an expedited hearing to review and adjudicate whether the tariffs offered in conjunction with the PreferredPack Plan are in violation of §§364.08, 364.051(5)(c), and 364.01(4)(g), Florida Statutes; and

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

(4) Grant such other relief as deemed appropriate.

Respectfully submitted this 20th day of April 2004.

SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.
2620 S.W. 27th Avenue
Miami, Florida 33133
Telephone: 305.476.4252
Facsimile: 305.443.1078

By: 

JORGE L. CRUZ-BUSTILLO

COMPOSITE EXHIBIT - A -

OFFICIAL APPROVED VERSION, RELEASED BY BNYHQ

**BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA**
ISSUED: December 24, 2003
BY: Joseph P. Lacher, President-JL
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) (U)

A3.4.6 PreferredPack Plan (U)

A. Description of Service (U)

1. The PreferredPack plan provides the features/services specified following and a flat rate access line with Touch-Tone capability. (U)

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. (U)

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: (U)

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

A13.19 Caller ID-Deletion, Call Return (U)

A13.47 Message Waiting Indication (U)

A13.70 Privacy Director service (U)

B. Regulations and Limitations of Service (U)

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. (U)

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. (U)

3. All features/services are furnished only from central offices that have been arranged to provide them services. The features/services are provided subject to availability of facilities. (U)

4. Service charges specified in Section AA. 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. (U)

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. (U)

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. (U)

C. Rates and Charges (U)

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

	Suspend Rate	Monthly Rate	USOC	
(a) Per plan package	\$5.50	\$26.95	PAMAS	(U)

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

OFFICIAL APPROVED VERSION, ENFORCED BY 878702
 GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 32.1

EFFECTIVE: January 2, 2004

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.3 Descriptions (Cont'd)

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

Area of Promotion	Service	Charges Waived	Filed Authority		
BellSouth's Service Territory - From Central Office where services are available	\$100 Cash Back Offer	- \$100 cash back will be given to customers upgrading to BellSouth Complete Choice BellSouth or not have service with family plan or BellSouth BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provided.	01/02/04 to 12/26/04	00	
	-- Customer must either not currently have local service with BellSouth or not have service with family plan or BellSouth BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provided.	- BellSouth Complete Choice BellSouth or not have service with family plan or BellSouth BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provided.	- The customer must place the order on or before 12/26/04.		00
	-- 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.	- BellSouth Complete Choice BellSouth or not have service with family plan or BellSouth BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provided.	- The customer must place their order through a BellSouth business office or authorized telemarketing vendor or alternate channels as indicated.		00
	-- 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.	- BellSouth Complete Choice BellSouth or not have service with family plan or BellSouth BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provided.	- 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.		00
	-- Customer must have not had local service with BellSouth at least ten (10) days prior to the new service connection date to be eligible.	- BellSouth Complete Choice BellSouth or not have service with family plan or BellSouth BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provided.	- 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.		00
	-- Customer must have the eligible services on their new service order (N) in order to receive the promotional offer.	- BellSouth Complete Choice BellSouth or not have service with family plan or BellSouth BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provided.			00
	-- Offer valid for only one (1) service line at the intended local service address.	- BellSouth Complete Choice BellSouth or not have service with family plan or BellSouth BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provided.			00
	-- BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.	- BellSouth Complete Choice BellSouth or not have service with family plan or BellSouth BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provided.			00

All BellSouth marks contained herein and as set forth in the trademarks and service marks section of this Tariff are owned by BellSouth Intellectual Property Corporation.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 32.2

ISSUED: December 17, 2003
BY: Joseph F. Lacher, President -FL
Miami, Florida

EFFECTIVE: January 2, 2004

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.3 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) - The customer must switch their local service to BellSouth and purchase any one of the following: BellSouth Complete Choice plus, BellSouth Complete Choice Two- Line Plus package, BellSouth Complete Choice Three-Line Plus package, Area Plus with BellSouth Complete Choice plus, Area Plus Two-Line Plus package with BellSouth Complete Choice, Area Plus Three-Line Plus package with BellSouth Complete Choice, BellSouth PreferredPack plus, BellSouth PreferredPack plus for Voicemail.	- Offer may be combined with cash back offers or other promotional offers on the same services, as such offers may be 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 12/31/04	00 00

OFFICIAL APPROVED VERSION, MARKED BY HSDIG
 GENERAL SUBSCRIBER SERVICES TARIFF

EFFECTIVE: January 2, 2004

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.2 Descriptions (Cont'd)

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

Area of Promotion
 Hillsouth's Service Tariff 225 GSA Card
 - From Central Office where
 service are available

Changes Allowed
 - A 225 GSA card will be given
 to eligible residential customers
 who return to Hillsouth and

Period
 01/02/04
 to
 12/31/04

normally have local service with
 Hillsouth or not have service with
 Hillsouth on one of their PrepaidBack plan and who
 have not been customers of
 Hillsouth for ninety-one (91) or
 more days.
 - Customer must either not
 purchase Hillsouth Complete
 Choice service or Hillsouth
 PrepaidBack plan and who
 order service at Hillsouth
 service or equivalent (within in
 same area) at the same local
 manufacturing vendor or alternate
 service address on one or more of
 their existing lines from another
 provider.

- Customer must have local
 service at the same address and in the
 same area, unless customer is
 placing an international move from
 one address to Hillsouth territory.
 - Once the customer completes
 the above requirements they will
 receive the gift card. If the
 responding to the offer. In the case
 of an international move, the
 Hillsouth rep may offer the
 customer the promotion and place
 the order at the new address.
 - Hillsouth reserves the right to
 discontinue or modify this
 promotion at any time without
 the new service connection date or
 customer notice.

- Customer must request service
 specified address by a specified
 date in order to receive the gift
 card.
 - Once the customer completes
 the above requirements they will
 receive the gift card. If the
 responding to the offer. In the case
 of an international move, the
 Hillsouth rep may offer the
 customer the promotion and place
 the order at the new address.
 - Hillsouth reserves the right to
 discontinue or modify this
 promotion at any time without
 the new service connection date or
 customer notice.

- Customer must have the
 promotion and service on their new
 service order (N) in order to
 receive the promotional offer.
 - The customer must provide their
 local service to Hillsouth and
 Hillsouth may offer other
 promotions with any other
 promotion, at the Company's
 sole discretion.

- The customer must have the
 promotion and service on their new
 service order (N) in order to
 receive the promotional offer.
 - The customer must provide their
 local service to Hillsouth and
 Hillsouth may offer other
 promotions with any other
 promotion, at the Company's
 sole discretion.

- Offer valid for only one (1)
 promotion with any other
 promotion, at the Company's
 sole discretion.

GENERAL SUBSCRIBER SERVICE TARIFF

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: December 17, 2003
BY: Joseph P. Lachar, President -FL
Miami, Florida

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	Line Connection Charge Waiver	- The line connection charge to macroconnect or wireover 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.	01/02/04 to 12/25/04	00	
	- 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.				00
	- 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.		- Offer valid for only one (1) service line at the intended local service address.		00
	- Customer must have local service or equivalent (wireless in lieu of wire-line) at the same local service address as one or more of their existing lines.		- The customer must place their order through a BellSouth business office or subaccount telemarketing vendor or alternate channels as indicated.		00
	- 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.		- BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.		00
	- 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 feature.		- Customer must have the new service order (N) in order to receive the promotional offer.		00
			- Offer may be combined with other offers for the same service at the same time.		00
					00
					00
					00
				00	

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this Tariff are owned by BellSouth Intellectual Property Corporation.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: December 19, 2003
BY: Joseph P. Lacher, President-FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 32.6

EFFECTIVE: January 5, 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	Consumer Answers Cash Back Promotion	-- Residential customers ordering the following new services will be eligible to receive a coupon redeemable for \$25 cash back: BellSouth Complete Choice service, Area Plus Complete Choice service, BellSouth PreferredPack service.	01/05/04 to 03/31/04	00	
	-- Customer must place order for promotion eligible product(s) or service(s) between 01/05/04 and 03/31/04.			00	
	-- Customer order must be completed and/or billing begins prior to coupon redemption.	-- New or existing BellSouth residential customer purchasing one of the following services are eligible to receive a coupon redeemable for \$25 cash back: BellSouth Complete Choice service, BellSouth Complete Choice Two-Line Plus package, BellSouth Complete Choice Three-Line Plus package, Area Plus with BellSouth Complete Choice plan, Area Plus Two-Line Plus package with BellSouth Complete Choice, Area Plus Three-Line Plus package with BellSouth Complete Choice, BellSouth PreferredPack plan (any version).			00
	-- The customer must fill out and mail the coupon(s) to the specified address by the specified date to redeem.				00
	-- Only customers who correctly redeem the coupon(s) by the postmark deadline date will be eligible to receive a check(s).				00
	-- The customer must be a current subscriber to the promotion-eligible BellSouth service at the time of coupon redemption.				00
	-- BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.	-- Existing BellSouth customers must upgrade from basic local service to one of the above listed Complete Choice products or PreferredPack products to receive cash back for their regulated service.			00
	-- Offer valid for only one (1) service line at the intended local service address.				00
	-- Customers that transfer qualifying service from one address to another address are not eligible for the cash back offer.	-- New subscribers to Complete Choice service and PreferredPack service are only eligible for this offer if they have not previously received the PreferredPack service or Complete Choice service \$25 cash back offer during the promotion period (01/05/04 to 03/31/04).			00
	-- Customers may only redeem one (1) coupon per regulated product purchased within the promotion period per customer account.				00

BELLSOUTH
 TELECOMMUNICATIONS, INC.
 FLORIDA
 ISSUED: December 19, 2003
 BY: Joseph P. Lachar, President -FL,
 Miami, Florida

EFFECTIVE: January 3, 2004

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.3 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	Customer Answers Cash Back Promotion (Cont'd)	- Customers that downgrade from Complete Choice service to one of the above listed PreferredPack plans will not be eligible for the cash back offer.	01/05/04 to 03/31/04	(0)
		- Customers that transfer qualifying Complete Choice service from one address to another address are not eligible for the Complete Choice cash back offer.		(0)
		- Customers that transfer qualifying PreferredPack services from one address to another address are not eligible for the PreferredPack service cash back offer.		(0)
		- Complete Choice service or PreferredPack service order must be complete by 04/30/04 for customer to be eligible to receive cash back.		(0)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: January 16, 2004
BY: Joseph P. Lacher, President -FL
Miami, Florida

OFFICIAL APPROVED VERSION, RELEASED BY BSWHQ
GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 32.8
Cancels Original Page 32.8

EFFECTIVE: February 1, 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	Charge Waived	Period Authority
BellSouth's service territory from central offices where services are available	Complete Choice service and PreferredPack plan	Any customer who switches their local service from another provider to BellSouth and purchases 1) the BellSouth PreferredPack plan or any product in the BellSouth Complete Choice plan family and 2) any BellSouth Long Distance product other than BellSouth Long Distance Unlimited service will receive a \$5 monthly discount on the PreferredPack plan or the product from the Complete Choice plan family.	01/08/04 to 01/08/05
Restrictions and Eligibility Criteria:			
- The number or line on which the service qualifying for this promotion will be provisioned must have local service within BellSouth territory from another provider. The customer must switch this local service to BellSouth.			
- 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 representative can offer the customer the promotion and place the order at the new address.			
- Customer must have not had local service with BellSouth for at least 10 days prior to the new service connection date.			
- Customer must have the eligible services on their new service order (N) in order to receive the promotional offer.			
- In lieu of satisfying the preceding criteria, the benefits of this promotion will be extended to existing BellSouth customers who call the BellSouth business office, request this specific offer and satisfy the remaining restrictions and criteria.			
- Customer must purchase the following products: a. The PreferredPack plan or a product from the Complete Choice plan family, and b. A BellSouth Long Distance product other than BellSouth Long Distance Unlimited service. A specific long distance plan must be selected. Selecting a BellSouth PFC and LFC without selection of a Long Distance plan will not qualify a customer for this discount.			
- The customer must place the order on or before January 8, 2005.			
- 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 channel.			
- If the customer cancels or discontinues one or more of the qualifying services, he will be ineligible for the discount.			
- BellSouth reserves the right to discontinue or modify this promotion at any time with appropriate notice.			
- Offer may be combined with cash back offers or other promotional offers on the same service, 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. This promotion may not be combined with the Unlimited Reacquisition Bundle Offer.			

All BellSouth marks contained herein and as set forth in the trademarks and service marks section of this Tariff are owned by BellSouth Intellectual Property Corporation.

*And give you everything
you need.*

BellSouth Professional plan consists of land service plus Color TV Service, Call TV Service, Call Show, Directory Listing and "Priority Printer" service. This special package only to new subscribers. Plans available in the state of Florida. Call TV Service available, no extra cost to subscribers. Service may not be available. Call TV and Call Show services are necessary for the operation of Color TV Service and Call Show. These services may not be offered by BellSouth, they may also be purchased separately. Additional services of unattended land calling may apply for Call Show and Directory Listing. Call Show service provided by BellSouth. Land Show, Inc. may be available in BellSouth service area. Additional unattended service may apply on certain special rates. A 25% penalty penalty may apply for a phone call, international calls, late, long and other charges, including 10-year Plan apply. Other terms and conditions apply. Call Show 24/7/365. To receive unattended service you must obtain land line service by BellSouth from another carrier and customer must purchase the BellSouth Priority Printer plan or the BellSouth Professional plan. Customer will receive a one-time coupon to be used only once by BellSouth. See request for redemption details. Offer will be voided to make your receipt of coupon by BellSouth. Customer must call some qualifying service of BellSouth at the time of purchase. Offer valid for only one service line of the standard land service option. Customer must not have had land service with BellSouth in the past 12 months. Service option must also be available or unattended or unattended service. Offer valid for only one service line of the standard land service option. All offers may be modified or withdrawn at any time without notice. Contact for details for each advertisement. Based on Bell, One, No. 100 East 24th St. Offer not available to customers who did not qualify for service of the time which are provided in a timely, other subscribers of service. BellSouth may offer all services of the available to all BellSouth customers who purchase the BellSouth Complete Care plan or the BellSouth Professional plan and who have not been subscribers of BellSouth for more than 12 months. Customer will receive coupon for 25% off which must be offered to BellSouth. See request for redemption details. Offer valid for only one service line of the standard land service option. All offers may be modified or unattended or unattended service. Offer valid for only one service line of the standard land service option. All BellSouth landline and service marks owned by BellSouth Professional Priority Corporation.

EXHIBIT - B -

000000-00000000



*Someone who wants to
take care of you.*

*We promise to do all this and
more, because we really want your
business. And we also want
to win your heart.*

Starting with a phone plan you're going to love!

Introducing the BellSouth® PreferredPack™ Plan!

It's a money-saving package that streamlines your phone service by giving you only our most popular calling features, the ones our customers say they rely on most for much less than you would pay for each feature separately — all for just \$24.95 a month!

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There's never been a better time to become a BellSouth customer! Because now you can reap the rewards of an incredible new calling plan...ring up great savings...and enjoy local service and bundled features, including long distance for as low as \$4 a minute!

We'll even send you a sweet bouquet of bucks to spend any way your heart desires.

>> \$100 CASH BACK

with the BellSouth PreferredPack Plan!

We'll also waive your local service connection fee — a savings of \$40.88! And by adding a qualifying long distance plan, you'll get a \$6.00 a month DISCOUNT!

Plus, we'll give you a
\$25 BellSouth® Rewards Pre-Paid Visa® Card!

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2901 SW 149th Avenue, Miramar, Florida 33027
Telephone: 786-455-4251; Fax: 786-455-4600

June 3, 2005

The Clerk and Administrative Services
The Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0866

Dear Sir or Madam:

Enclosed please find for filing with the Commission original and fifteen (15) copies of Supra Telecommunications And Information Systems, Inc., Petition to Review BellSouth Promotional Tariffs.

Kindly return one copy marked "filed" in the enclosed self-addressed overnight envelop provided.

Thanks.

Sincerely

Brian Chaiken, Esq

cc: Service List(via regular mail)



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra Telecommunications)
and Information Systems, Inc. to Review)
BellSouth Promotional Tariffs.)
_____)

Docket No.
Filed: June 3, 2005

**PETITION OF SUPRA TELECOMMUNICATIONS AND INFORMATION
SYSTEMS, INC. TO REVIEW BELLSOUTH PROMOTIONAL TARIFFS**

Supra Telecommunications and Information Systems, Inc. ("Supra") by and through its undersigned counsel and hereby files this petition with the Florida Public Service Commission ("Commission") pursuant to Florida Statutes §§364.01, 364.08, 365.051, 364.059 and 364.285, and requests that this Commission immediately review and suspend specific promotional tariff offerings that allow BellSouth Telecommunications Inc., ("BellSouth") to offer monetary inducements to customers (including cash back) that amount to several months of telephone service below cost, in violation of the Florida Statutes. Upon this Commission's review of BellSouth's tariffed offerings, Supra requests this Commission issue an order canceling BellSouth's offerings or requiring that BellSouth allow Supra to receive the same monetary inducements from BellSouth when Supra resells the identical service offerings which qualify for the promotional benefits,¹ and for such other relief that the Commission deems appropriate. In support thereof, Supra states as follows:

I. Supra is a competitive local exchange carrier ("CLEC") certificated by the Commission to provide telecommunications services within the State of Florida. Petitioner's name, address and telephone number is as follows:

¹ Supra suggests that this Docket provides the Commission an opportunity to comply with Florida Statutes §§364.059(2) and 364.3381(3) and thereby establish a rule adoption proceeding to create an objective benchmark.

Supra Telecommunications and Information Systems, Inc.
2901 S.W. 149th Avenue, Suite 300,
Miramar, Florida 33027
(786) 455-4200

2. The Petitioner's representative's name, address and telephone number is:

Brian Chaiken, Esq.
Steven B. Chaiken, Esq.
Legal Department
Supra Telecommunications and Information Systems, Inc.
2901 S.W. 149th Avenue, Suite 300,
Miramar, Florida 33027
(786) 455-4248
(786) 455-4239
Facsimile: (786) 455-4600

3. BellSouth is a corporation organized and formed under the laws of the state of Georgia, with its principal office at 675 West Peachtree Street, Atlanta, Georgia, 30375. BellSouth is an Incumbent Local Exchange Carrier ("ILEC") certificated by this Commission to provide local exchange telecommunications services in the state of Florida. BellSouth's address in the State of Florida for service of process is:

Nancy B. White, General Counsel
c/o Nancy H. Sims, Director of Regulatory Affairs
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301

BACKGROUND

4. BellSouth is the dominant provider of local telecommunications service in the state of Florida. According to this Commission's December 2004 Annual Report on Competition, BellSouth's market share for local voice telephone service has risen to approximately 5.4 million

such as a price or cost floor, by which the Commission may determine whether a requested stay of a basic local

access lines (as proffered by BellSouth as of June 30, 2004). Even by conservative estimates, BellSouth is by far the single most dominant provider of local telephone service in the state of Florida.

5. BellSouth has abused its power as the dominant provider of telecommunications services by using monetary inducement promotional strategies and anticompetitive pricing programs to exclusively target customers that have switched to CLECs. BellSouth has used, and is aggressively continuing to use, its dominant market status to frustrate competition in the local voice market, thereby causing substantial and irreparable harm to Florida's CLECs and ultimately Florida's consumers.

6. In its current campaigns, BellSouth has embarked on a wave of "monetary inducement" promotional offerings. (Composite Exhibits A-H)² Each of these promotional campaigns have at least these three factors in common: (1) they exclusively target residential customers that have migrated to a CLEC; (2) the reacquired customers must have new service connected at the same address (and in some cases, using the same name); and (3) the promotion offers some form of a monetary inducement to the returning customer (i.e. \$100.00), thereby discounting the price of BellSouth's associated offerings, without allowing a CLEC to resell and take advantage of the discounted price.

telecommunications service price reduction is warranted.

² Current BellSouth "monetary inducement" promotional offerings: Exhibit A, Tariff Filing No. T-04-1224, Effective from December 27, 2004 through December 26, 2005; Exhibit B, Tariff Filing No. T-05-0187, Effective from March 24, 2005 through December 31, 2005; Exhibit C, Tariff Filing No. T-04-1265, Effective from May 15, 2005 through December 31, 2005; Exhibit D, Tariff Filing No. T-04-1264, Effective from July 15, 2005 through December 31, 2005; Exhibit E, Tariff Filing No. T-05-0028, Effective from February 1, 2005 through December 31, 2005; Exhibit F, Tariff Filing No. T-04-1223, Effective from December 26, 2004 through December 31, 2005; Exhibit G, Tariff Filing No. T-04-1292, Effective from January 9, 2005 through December 31, 2005; Exhibit H, Tariff Filing No. T-04-0123, Effective from February 12, 2004.

7. Like BellSouth's previous winback tariffs (See Complaint of FDN against BellSouth in Docket No. 020119-TP and the Complaint of Arrow Communications against BellSouth in Docket No. 990043-TP), these promotional campaigns contain many of the same problems that have previously been found unacceptable by this Commission. BellSouth's current offerings violate both Section 364.051(5)(c) and 364.3381 of the Florida Statutes, which require BellSouth to price its services above direct cost. Further compounding the extent of the anticompetitive nature of these low-ball offerings, BellSouth refuses to allow Supra (and most likely all CLECs) to resell these promotional offerings (inclusive of the monetary inducements) in violation of 47 USCA § 251(c)(4), thereby ensuring that Supra is unable to match the severely discounted services being offered by BellSouth.

FACTUAL ALLEGATIONS

The BellSouth Base Product Offerings

8. BellSouth offers its various monetary inducement promotions in connection with two of its base offerings: Complete Choice and Preferred Pack service plans.

(1) The Complete Choice³ service plan includes the following:

- A flat rate access line w/ Touch Tone capability
- Free Unlimited Local Calling
- Unlimited use of most prominent features
- RingMaster Service

³ BellSouth's Complete Choice Service, Section A3.4.3; General Subscriber Service Tariff, Thirteenth Revised Page 24. Effective: February 15, 2005 (See Exhibit I).

BellSouth charges its retail end-users \$30.00 for an individual Complete Choice line. In addition, BellSouth charges \$6.50 for its End User Common Line Charge, for total revenue of \$36.50.

(2) The Preferred Pack¹ service plan includes the following:

- A flat rate per access line with Touch-Tone capability;
- Unlimited use of these popular features ordered by end-users: Call Waiting Deluxe, Three way calling, Call Forwarding Don't Answer
- Caller ID-Deluxe
- Voicemail Companion Services Package at no additional charge when Voicemail/Memory Call service is requested (Call forwarding busy line, Call Forwarding don't answer-Ring Control, Star 98 and MWI)
- Privacy Director

BellSouth charges its retail end-users \$26.95 for an individual Preferred Pack line. In addition, BellSouth charges \$6.50 for its End User Common Line Charge, for total revenue of \$33.45.

9. By way of comparison, in order for Supra to replicate BellSouth's Preferred Pack Plan, the total recurring, and average usage and non-recurring costs⁵, together with a statewide weighted average loop cost calculated based upon the actual distribution of all Supra UNE-P customers, totals \$28.14 at FPSC-ordered TELRIC rates. Of course, as the FCC has recently determined that BellSouth need not offer mass market switching under Section 251 of the

¹ BellSouth's Complete Choice Service, Section A3.4.6: General Subscriber Service Tariff, Second Revised Page 26.1, Effective: January 9, 2004 (See Exhibit J).
⁵ For services billed as UNE-P, retail, resale as available.

Telecommunications Act, these prices are going to go up. Absent Commission intervention forcing BellSouth to comply with its obligations under Section 271 of the Telecom Act, and based on BellSouth's most recent commercial offerings, the prices for local switching alone will go up by as much as \$7.00 on a recurring basis, and by as much as \$13.00 on a non-recurring basis. This means Supra's direct cost of goods sold to provide identical services is \$35.14, for a product that BellSouth makes available to its end-users at \$33.45.

The BellSouth Promotional Offerings

10. BellSouth now has five (5) categories of promotional tariff offerings, used both individually and in combination, to provide discounts to its base service offerings. These categories are:

- Cash Back promotions,
- Gift Cards promotions,
- Coupons promotions,
- Fee Waiver promotions, and
- Discounted Service promotions.

BellSouth uses these categories in different combinations, and, often, allows combinations designed to increase the discounts offered only to CLEC customers on the underlying base service offerings.

11. The Cash Back promotional offering category:

The Cash Back promotional offerings category includes the \$100 Cash Back (Exhibit A), which is in effect from December 27, 2004 through December 26, 2005 and the \$100 Cash Back or

\$100 Visa Gift Card (Exhibit B), which is in effect from March 24, 2005 through December 31, 2005 (collectively referred to as "S100 CASH" tariffs). A CLEC customer that purchases Complete Choice Family Plan or PreferredPack Plan is eligible to receive \$100.00 for switching back to BellSouth.

12. The Gift Cards promotional offering category:

The Gift Cards promotional offering category includes the Shoppers Cash Back (\$50 Cash Back or up to \$50 in merchandise) for Complete Choice or PreferredPack Plans (Exhibit C), which is in effect from May 15, 2005 through December 31, 2005, and the Single Family Dwellings (SFD) Gift Card Offer (includes a coupon for a gift card valued at \$50) (Exhibit D), which is in effect from July 15, 2005 through December 31, 2005 (collectively referred to as "GIFT CARD" tariffs).

13. The Coupons promotional offering category:

The Coupons promotional offering category includes the BellSouth Reacquisition IFR Offer, (Exhibit E), which is in effect from February 1, 2005 through December 31, 2005. This promotional offering includes a Basic Line service, two features and a long distance plan from BellSouth Long Distance. Eligible customers who subscribe to a long distance plan will receive a coupon redeemable for up to \$50.00 cash back. (hereinafter referred to as "BELLSOUTH IFR" Tariff).

14. The Fee Waiver promotional offering category:

The Fee Waiver promotional offering category includes the Line Connection Charge Waiver for local service connection fee, which is in effect from December 26, 2004 through December 31, 2005. (Exhibit F) (hereinafter referred to as "LINE CONNECTION WAIVER" Tariff). The

CLEC customer must either subscribe to the Complete Choice Plan or the PreferredPack Plan to receive the benefits of this offering.

15. The Discounted Service promotional offering category:

The Discounted Service promotional offering category includes the \$5 monthly discount from BellSouth's local service offering (Exhibit G), which is in effect from January 9, 2005 through December 31, 2005 (hereinafter referred to as "\$5 DISCOUNT" Tariff).⁶

16. Most of these promotional offerings state "the offer may be combined with other promotional offers for the same service."⁷ Today, prospective customers could realize monetary inducements in excess of \$145.00 by combining these BellSouth's promotions (i.e. \$100.00 cash back, plus \$5.00 discount off the base service plan (See Exhibit G), plus the waived local service connection fee (approximate value of \$40.88)).

17. BellSouth's combination of these promotions with its current pricing of \$30.00 for Complete Choice and \$26.95 for Preferred Pack has the effect of ensuring that BellSouth does not recover its costs for providing telephone service to the consumer unless the consumer stays with BellSouth in excess of thirty (30) months. These promotions are violative of §§364.08, 364.051(5)(c) and 364.3381 Florida Statutes as they are priced below cost and therefore tantamount to BellSouth giving away free telecommunications service to a given class of customers.

⁶ With this offering, the CLEC customer must either subscribe to the Complete Choice Plan or the PreferredPack Plan, and also must subscribe to the BellSouth Long Distance Service Plan for \$1.00 a month (Exhibit H).
See Exhibits A-G.

The Law

18. Florida Statutes Chapter 364.01(4)(i) provides that the Commission shall "Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies." (Emphasis added). The FPSC has been empowered to put together the necessary climate that will foster local competition in the telecommunications marketplace in Florida. By any measuring device imaginable, BellSouth is still the dominant provider of local telecommunications services in the state of Florida, particularly in the residential marketplace. Therefore, it is an imperative that this Commission address the substantial efforts that BellSouth has taken to under-cut competitive rates in the Florida residential telecommunications market. Florida Statute Section 364.3381 provides, in pertinent part:

(1) The price of a nonbasic telecommunications service provided by a local exchange telecommunications company shall not be below its cost by use of subsidization from rates paid by customers of basic services. . . .

(3) The commission shall have continuing oversight jurisdiction over cross-subsidization, predatory pricing, or other similar anticompetitive behavior and may investigate, upon complaint or on its own motion, allegations of such practices.

Furthermore, Section 364.059(1)(a) Florida Statutes, provides:

Any petition filed by a substantially interested party against a local exchange telecommunications company seeking a stay of the effective date of a price reduction for a basic local telecommunications service, alleging an anticompetitive price reduction pursuant to s. 364.051(5), s. 364.08, s. 364.09, s. 364.10, or s. 364.3381, shall be resolved by the commission pursuant to this section and by an order issued within 45 days after the date the petition is filed.

**The Commission has Jurisdiction to Prevent Anti-Competitive Offerings
pursuant to Florida Statutes § Section 364.01**

19. Recognizing BellSouth's historically embedded advantage as the dominant provider of local telecommunications services, the Florida legislature has tried to create a level playing field by passing laws preventing BellSouth from abusing its market power and giving CLECs an opportunity to compete in the local telecommunications market. Section 364.3381(3) prohibits BellSouth from any type of marketing or pricing that could be deemed anti-competitive.⁸ Specifically, section 364.01(4)(g) states that the Commission shall exercise its exclusive jurisdiction in order to:

ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.

BellSouth's promotional tariffs are anticompetitive offerings which are causing irreparable financial and economic harm to its CLEC competitors.

20. In Docket No. 990043-TP (Petition to review and cancel BellSouth Telecommunications, Inc.'s promotional tariff (T-98-1783) by Arrow Communications), ("*Arrow Docket*") the Commission voted to suspend BellSouth's tariff pending resolution of the petition. The Commission found (as noted on its February 2, 1999 Vote Sheet) that Arrow's Petition demonstrates that the alleged anticompetitive or discriminatory effect of the tariff will cause significant harm that cannot be adequately redressed if the tariff is ultimately determined to be

⁸ Specifically, Section 364.3381(3) reads as: "The commission shall have continuing oversight jurisdiction over cross-subsidization, predatory pricing, or other similar anticompetitive behavior and may investigate, upon complaint or on its own motion, allegations of such practices." (Emphasis added).

invalid. Such harm includes financial or economic harm to competing telecommunications providers.

21. Furthermore, BellSouth has repeatedly argued that this Commission's TELRIC UNE pricing has compelled BellSouth to sell its services to CLEC's below cost. The packaging of these promotions demonstrates that one of two scenarios must be true: either (1) BellSouth's arguments regarding TELRIC UNE pricing being below cost are untrue or (2) BellSouth's residential service as offered is below cost and therefore anti-competitive.

22. **True competitive service offerings are priced above cost and are sustainable over a long period of time.** Services that are sold below cost are intended to unfairly steal market share and harm competitors. Inasmuch as BellSouth has not provided any evidence regarding how it will, at a minimum, break even on its local service offerings with the promotional tariffs, BellSouth's true intent in offering its promotional tariffs is not to offer a great plan to Florida consumers, but rather to thwart competition in the local telecommunications market and return BellSouth's dominant market position to its previous monopoly status. Because of BellSouth's large local market share and revenue base, it has the financial wherewithal to withstand any short-term revenue losses on these customers. Once BellSouth is successful in driving CLEC competitors out of the local market through its anticompetitive pricing, BellSouth can then raise the rates of its local services to recoup its losses.

23. Supra and other CLECs are suffering irreparable competitive harm caused by BellSouth's promotional tariffs. These promotional tariffs, when combined with the low prices BellSouth offers on its base products (Complete Choice and Preferred Pack) do not cover the direct relevant cost and are anticompetitive.

24. As noted in Arrow v. BellSouth and in FDX v. BellSouth, CLECs, such as Supra, compete with BellSouth largely on the basis of price. BellSouth's promotional tariffs offer select (i.e. CLEC) customers a combination of monetary inducements that are priced to undercut the prices Supra can profitably offer a customer.⁹ Florida CLECs cannot compete with BellSouth's monetary inducements (approximately \$145.88) targeted exclusively to CLEC customers.

25. The Commission needs to review the cost basis for the promotional tariffs. The Commission may act to halt (at least temporarily) any pricing conduct that is below cost or that appears anticompetitive. BellSouth's promotional tariffs pricing undercuts the prices Supra is able to offer and still remain profitable, and Supra has already and will continue to lose market share due to BellSouth's anti-competitive offerings. The harm that Supra has suffered and will continue to suffer from BellSouth's promotional tariffs cannot be undone. That harm has been constant, frequent, and continuous in character. More troubling is the fact that BellSouth's promotional tariffs directly harm Florida's consumers. As competitors are eliminated as a result of these BellSouth's promotional tariffs, consumers will have fewer competitive choices. As consumers have fewer competitive choices, prices will rise.

26. BellSouth would not be unduly prejudiced by suspension or postponement of its promotional tariffs in question. In balancing the interests of BellSouth, Supra and all CLECs, the irreparable harm Supra and all other CLECs will suffer clearly outweighs any possible disadvantage to BellSouth from delayed implementation of the monetary inducement promotional tariffs described above.

⁹ This is especially so in light of the recent regulatory decisions limiting CLECs' access to various Section 251 UNEs.

**BellSouth Sells Services Below its Direct Costs in
Violation of Florida Statutes § 364.3381, and 364.051**

27. BellSouth's promotional tariffs, combined with its Complete Choice and Preferred Pack service offerings, are violative of §364.3381, Florida Statutes, which provides, in pertinent part:

(1) The price of a nonbasic telecommunications service provided by a local exchange telecommunications company shall not be below its cost by use of subsidization from rates paid by customers of basic services.

(2) A local exchange telecommunications company which offers both basic and nonbasic telecommunications services shall establish prices for such services that ensure that nonbasic telecommunications services are not subsidized by basic telecommunications services. The cost standard for determining cross-subsidization is whether the total revenue from a nonbasic service is less than the total long-run incremental cost of the service. Total long-run incremental cost means service-specific volume and nonvolume sensitive costs.

Furthermore, §364.051(5)(c), Florida Statutes, provides that the "price charged to a consumer for a non-basic service shall cover the direct costs of providing the service . . ."

28. In the aggregate, the total monetary inducement to the customer is approximately \$145.88, and has the potential to be even greater.¹⁰

29. BellSouth's currently tariffed retail rates for the PreferredPack and Complete Choice Plans for a single residence line are \$26.95 and \$30.00 monthly, respectively. At these rates, combined with the various promotions, a prospective customer would have to stay with BellSouth for at least 30 months before BellSouth begins to generate any net revenue from the former CLEC customer. Significantly, BellSouth's promotional offerings do not require eligible customers to stay with BellSouth for such a long period of time.

¹⁰ Both the \$100 and the \$100 Visa Card promotional offerings provide that, "offer may be combined with cash back offers or other promotional offers on the same services, as such offers may be concurrently available from

30. Tellingly, BellSouth's monetary inducement promotional tariffs combined with the already low price of the underlying base products, undercut the very same costs of provisioning the same services and/or elements to Supra.

31. This Commission has stated the following: "Section 364.051(5)(c), Florida Statutes, examines direct costs, and we believe an examination of direct cost is needed to make a determination of whether the post-discounted rates offered . . . remain "compensatory" for BellSouth." See Order No. PSC-03-0726-FOF-TP, at 21. "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." *Id.* at 22.

BellSouth Refuses to Allow Supra to Resell Its Promotions in Violation of 47 USCA §251

32. The Telecommunications Act of 1996 ("TA 96"), §251(c)(4) and FCC Rules (47 C.F.R. §51.601 through 51.620) outline BellSouth's obligations with respect to making its promotional and discounted offerings available for resale. Sections 47 USC §251(c)(4) of TA 96 provide that the incumbent LECs are:

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carrier; and

(B) not to prohibit, and to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications services, ...

Specifically, in FCC 96-325, the FCC concluded that:

time to time, provided that the Company reserves the right to prohibit the combination of the promotion with other promotions, at the Company's sole discretion)." (See Exhibits A and B).

Section 251(c)(4) provides that incumbent LECs must offer for resale at wholesale rates "any telecommunications service" that the carriers provides at retail to noncarrier subscribers. This language makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings. We therefore conclude that no basis exists for creating a general exemption from the wholesale requirement for all promotional or discount service offerings made by incumbent LECs. A contrary result would permit incumbent LECs to avoid the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act. (FCC 96-325, ¶948) (Emphasis added.)

33. It is undisputed that BellSouth has an obligation to make available for resale its promotional and discounted offerings that run for more than 90 days. Nevertheless, BellSouth refuses to make the promotions listed herein available to Supra for resale.

34. Resale is one of the entry strategies that Congress envisioned as a viable method through which CLECs could gain entry into the monopoly local telecommunications marketplace hence, the TA 96 requires that BellSouth shall not prohibit or impose unreasonable or discriminatory conditions or limitations on the resale of such promotional offerings whereby CLECs' ability to resale such monopoly telecommunications services are impacted.

35. The FCC re-emphasized the importance of resale as a method of entry when it promulgated Rules 51.601 through 51.0617: Resale obligation of all local exchange carriers. In FCC 96-325, concluded that

Promotional offerings greater than 90 days in duration must be offered for resale at wholesale rates pursuant to section 251(c)(4)(A). . . . In addition, an incumbent LEC may not use promotional offerings to evade the wholesale obligation. . . . (FCC 96-325, ¶950) (Emphasis added.)

In § 51.613(2) (ii), the FCC mandated that ILECs avail promotions that provide discounted rates when:

The incumbent ILEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates.

Nowhere in any of these provisions does there exist an exception allowing an ILEC to prevent or restrict monetary inducements from being available for resale. To the contrary, the FCC expressed that *"We are concerned that conditions that attach to promotions and discounts could be used to avoid the resale obligation to the detriment of competition."*¹¹

36. It is because of these provisions (and BellSouth's effort to obviate such) that the North Carolina Utilities Commission has enacted rules (Docket No. P-100, SUB 72b, Order issued on December 22, 2004) (See Exhibit K) that are intended to govern BellSouth's promotional tariff offerings in the State of North Carolina. The Indiana Utility Regulatory Commission is undertaking a similar effort in Case No. 42530.

37. BellSouth designed the referenced promotions with the simple goal of by-passing regulatory requirements that otherwise prohibit BellSouth from offering such "effective price" discounts to CLEC customers. The rationale is simple: while a direct price reduction to the effective tariff rate would impact the wholesale discount rate, BellSouth rationalized that a cash rebate and/or other traditional marketing tactics could pass approval without stringent scrutiny and therefore could be utilized to obviate a Commission finding that such approaches are tantamount to discounting of the effective tariff rate of the service(s) being offered. This is the same conclusion that the North Carolina Utilities Commission reached when it ruled that:

The FCC clearly stated that any other conclusion would allow ILECs routinely to create promotions or nonstandard offerings just to avoid their resale obligation. The FCC was concerned that ILEC promotions could become de facto standard offerings that would not be made available to

¹¹ FCC 96-325, ¶952.

resellers and would therefore undercut the duty to resell retail services to resellers at wholesale rates.¹²

38. The reality is that BellSouth's promotions provide economic value to customers. This is the conclusion reached by the North Carolina Utilities Commission:

The Commission is persuaded that anything of economic value paid, given, or offered to a customer to promote or induce purchase of a bundled service offering of both regulated and nonregulated telecommunications services is a promotional discount.¹³

The North Carolina Utilities Commission further ruled that

The customer does not receive this savings or value unless he purchases the specified bundle associated with the promotion. Thus, because the savings or benefit is received only in exchange for the purchase of the bundle, the bundle is in effect discounted to the customer by the amount of the monetary benefit or thing of value provided in return. (North Carolina Order, at 3)

39. Even if not used to directly pay off BellSouth's telecommunications bills, the reality is that the monetary savings resulting from these inducements effectively off-sets other monetary obligation(s) of the end-users. This is the same conclusion that the North Carolina Commission reached when it stated, "while these promotions do provide a savings and therefore a type of discount to subscribers, they do not in fact lower the charge to the subscribers for the regulated services purchased...", and "the promotion reduces the subscriber's cost for the service by the value received in the form of a gift card or other giveaway." (North Carolina Order at 12, and 11)

¹² North Carolina Order, Docket No. P-100, SUB 72h, at 9.

¹³ *Id.* at pg. 3.

40. Therefore, these promotional inducements should be construed to be direct telecommunications services as per Chapter 364.02(12)¹⁴ or at a minimum, derivative telecommunications services. This Commission reached a similar conclusion when it found that BellSouth's Late Payment Charge was a telecommunications "service" in Order No. PSC-01-1769-FOF-TL, Docket No. 000733-TL.¹⁵ These inducements can indeed be characterized as derivative telecommunications services following their importance and inclusion as integral parts of BellSouth's marketing scheme, not because they have a transmission capacity in and of themselves, but simply because BellSouth relies on these inducements to build, enhance, and sustain its market share.

WHEREFORE, Supra respectfully requests that this Commission:

(1) Review and cancel BellSouth's promotional inducement tariffs immediately or, in the alternative, order BellSouth to allow Supra to collect on these inducements when it resells these same underlying services;

(2) If these promotional inducement tariffs are not immediately cancelled, then grant Supra a hearing within 45 days pursuant to Section 364.059(1)(a) Florida Statutes; and

(3) Initiate an investigation of BellSouth's promotional pricing and marketing practices; and

¹⁴ "Service" is to be construed in its broadest and most inclusive sense.

¹⁵ We find that BellSouth's interest charge is a "service" that BellSouth renders to its delinquent telecommunications customers. We believe that through the use of its interest charge, BellSouth is able to keep these delinquent customers as telecommunications subscribers. The alternative is for BellSouth to terminate the accounts of all delinquent customers. We find that the interest charge is a "service" BellSouth renders its delinquent customers for carrying their unpaid balances. In turn, BellSouth uses the realized revenues to offset the loss of use of the unpaid monies. Order No. PSC-01-1769-FOF-TL, Issued: August 30, 2001 in Docket No. 000733-TL (pages 9 and 10) (Emphasis added.)

(4) Grant such other relief as deemed appropriate.

Respectfully submitted this 3rd day of June 2005.

SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.
2901 S.W. 149th Avenue, Suite 300,
Miramar, Florida 33027
Telephone: (786) 455-4248
Facsimile: (786) 455-4600

By:


BRIAN CHAIKEN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was delivered by U.S. Mail to the persons listed below this 3rd day of June 2005.

Ms. Nancy White
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 S. Monroe Street
Suite 400
Tallahassee, FL 32301

Ms. Beth Keating
Legal Division
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

By: 

BRIAN CHAIKEN

**SERVICE LIST
SUPRA TELECOMMUNICATIONS
CASE NO. 02-41250**

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re:) Chapter 11
SUPRA TELECOMMUNICATIONS &) CASE NO. 02-41250-BKC-RAM
INFORMATION SYSTEMS, INC.)
Debtor)

SUPPLEMENTAL CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of *Bellsouth Telecommunications, Inc.'s Motion to Enforce the Confirmation Order* was served via facsimile upon the parties on the attached service list and via regular first-class U.S. Mail on the Master Service List on this 21st day of June, 2005.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and that I am in compliance with the additional qualifications to practice in this Court as set forth in Local Rule 2090-1(A).

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