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Marguerite Lockard

From: Smith, Debbie N. [Debbie.N.Smith@BellSouth.COM]
Sent: Friday, August 04, 2006 2:55 PM
To: Filings@psc.state.fl.us
Cc: Carver, J; Fatool, Vicki; Slaughter, Brenda ; Nancy Sims; Holland, Robyn P; Bixler, Micheale; Randa, Johna A
Subject: Florida Docket No. 060366-TP
Importance: High
Attachments: issueslist.pdf

A. Debbie Smith
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- B. Docket No. 060366-TP: In Re: Complaint Regarding BellSouth Telecommunications, Inc.'s Failure to Offer its Promotional Tariff Offerings for Resale and Request for Relief, by Supra Telecommunications and Information Systems, Inc.
- C. BellSouth Telecommunications, Inc. on behalf of J. Phillip Carver
- D. 7 pages total in PDF format
- E. BellSouth's Notice Of Filing Preliminary Issues List

CMP _____
 COM _____
 CTR _____
 ECR _____
 GCL _____
 OPC _____
 RCA _____
 SCR _____
 SGA _____
 SEC 1
 OTH _____

Debbie Smith (sent on behalf of J. Phillip Carver)
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<<issueslist.pdf>>

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8/4/2006

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Legal Department

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August 4, 2006

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

Re: Docket No. 060366-TP

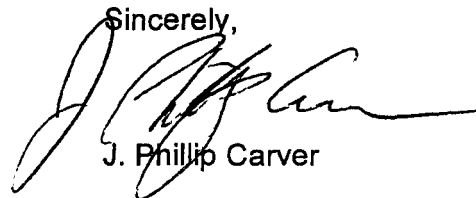
**In Re: Complaint regarding BellSouth Telecommunications, Inc.'s
failure to offer its promotional tariff offerings for resale and request
for relief, by Supra Telecommunications and Information Systems,
Inc.**

Dear Ms. Bayó:

Enclosed is BellSouth's Notice of Filing Preliminary Issues List, which we ask
that you file in the captioned docket.

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

Sincerely,



J. Phillip Carver

Enclosure

cc: All parties of record
Jerry D. Hendrix
E. Earl Edenfield, Jr.
James Meza III

DOCUMENT NUMBER-DATE

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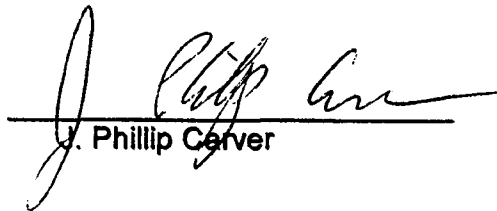
**CERTIFICATE OF SERVICE
DOCKET NO. 060366-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and First Class U.S. Mail this 4th day of August, 2006 to the following:

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J. Phillip Cerver

ORIGINAL

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint regarding BellSouth) Docket No. 060366-TP
Telecommunications, Inc.'s Failure to Offer its)
Promotional Tariff Offerings for Resale and)
Request for Relief, by Supra Telecommunications)
And Information Systems, Inc.) Filed: August 4, 2006

BELLSOUTH'S NOTICE OF FILING PRELIMINARY ISSUES LIST

BellSouth Telecommunications, Inc. ("BellSouth") hereby respectfully files its Preliminary List of Issues in the above-captioned matter and states the following:

1) On July 27, 2006, the Commission Staff issued by a Memorandum to all parties and interested persons to request the filing of preliminary issue lists by August 4, 2006. The memorandum also requested that each party's issue list designate the issues that include a factual component.

2) BellSouth hereby responds by filing its Preliminary List of Issues, which is attached hereto as "Exhibit A." As noted on that list, BellSouth believes that each of the issues that must be resolved in this proceeding include a factual component. BellSouth also believes that, for most of these issues, the need to make factual determinations is fairly obvious. However, during the Informal Conference between Staff and the parties, held July 24, 2006, there was a discussion as to whether the "threshold" issue in this proceeding can be resolved as a matter of law, i.e., the issue of whether the promotional incentives are discounts subject to the resale requirements of 251(c)(4). Given this discussion, and in anticipation of further discussion at the Issue Identification Meeting, BellSouth would like to provide the following clarification of its position.

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3) Although there is certainly a legal component to this threshold issue, it cannot be treated solely as a legal issue. Instead, the legal determination must be based on a factual record to establish, for example, the nature of each promotion, whether any given promotion involves cash payments, bill credits or the provision of goods and/or services, and whether any given promotion results in an actual reduction to the price charged to retail customer for a purchased service. The Commission must allow the submission of record evidence to, in effect, define how the promotions function before it can determine whether the promotions are discounts within the meaning of § 251. As BellSouth noted during the informal conference, the only existing federal court decision on point was resolved on the basis of a factual determination of this sort.¹

4) During the informal conference, counsel for Supra suggested that the relevant facts reside in BellSouth's tariffs, and that the parties can, in effect, brief the tariffs. BellSouth disagrees. First, the tariffs that set forth the parameters of the subject promotions do not, standing alone, constitute a legally sufficient evidentiary record. Further, even if the tariffs did constitute evidence, this approach would only work if the tariffs contained all the facts necessary to resolve Supra's Complaint, which is not the case.

5) For example, in its Complaint, Supra does not identify specifically the tariff provisions at issue, but rather provides a general summary of the BellSouth promotions it challenges. Nevertheless, BellSouth has made its best effort to identify the tariffs to which Supra refers in its complaint. A review of these tariffs reveals that Supra's complaint does not simply recount the terms and conditions of the tariffs, but rather

¹ The specific determination was that the promotions were not discounts because they did not result in a direct credit for billed services. Order, issued May 15, 2006 in BellSouth v. Sanford, et al., Case 3:05CV345 - MV (West Dist. N.C.).

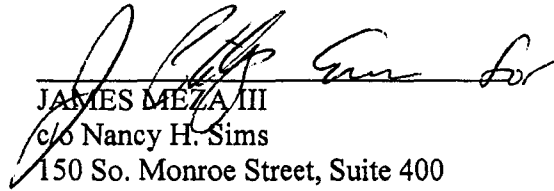
extrapolates from them considerably and makes what, at this juncture, amounts to unverified factual allegations. For instance, Supra's complaint contains many allegations regarding the value of these promotions. Supra, however, acknowledges in one instance that this stated value is its own "estimate," not a figure taken from the tariff (Supra Complaint, p. 5).

6) Briefing the tariffs would give rise to another problem. Again, the Federal Court that recently resolved this issue in BellSouth's favor did so, in substantial part, because the promotions did not result in a credit on the customer's bill or some other sort of direct reduction to the customer's bill. BellSouth contends that when a promotional tariff provides, for example, for the retail customer to receive "\$100 cash back," the customer receives a check or coupon, not a bill credit. Supra's complaint is silent on this point, so it is impossible to know whether Supra agrees with BellSouth's contention. This is precisely the point: briefing the tariffs would only allow for potential disputes as to the *meaning* of the tariffs.


7) Again, there is currently no factual record in this matter, and such a record must be developed as the predicate to any supportable legal determination by the Commission. Having said this, BellSouth would be willing to discuss whether it is possible to stipulate to facts for the purpose of briefing some or all of the legal issues. Doing so would require, at a minimum, stipulating to facts to address the questions identified in paragraph 3 above.

Respectfully submitted this 4th day of August 2006.

BELLSOUTH TELECOMMUNICATIONS, INC.



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BellSouth's Preliminary List of Issues

- 1) Are the promotional incentives at issue "discounts" that are subject to the resale requirements of § 251(c)(4) of the Act?
- 2) (a) Do the cost of these promotional incentives constitute marketing expenses?
(b) If so, would the treatment of these promotions as discounts violate the pricing standards of § 252(d)(3) of the Act?
- 3) If the answer to #1 above is affirmative, may BellSouth refuse to provide the discount for resale purposes under the provisions of 47 CFR § 51.613(b), i.e., would such refusal be reasonable and non-discriminatory?
- 4) If the answer to #1 above is affirmative, and the answer to #3 above is negative:
 - (a) What "value" should be placed on each of the subject promotions so that they may be applied as resale discounts?
 - (b) How should the value of these promotions be applied (e.g., by a single payment, a reduction to recurring wholesale charges, etc.)?

Each of these issues set forth above is a mixed question of law and fact.

Testimony that addresses matters of policy may also be necessary to the resolution of these issues.

Exhibit A