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ATTACHMENT B

BellSouth Telecommunications, Inc.
FPSC Docket No. 040353-TP
Request for Confidential Classification
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9/8/04

REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S OPPOSITION TO SUPRA'S MOTION FOR SUMMARY FINAL ORDER AND EXHIBITS 5 AND 11 THERETO FILED AUGUST 16, 2004, IN FLORIDA DOCKET NO. 040353-TP

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Supra Telecommunications And Information Systems, Inc. to Review And Cancel BellSouth's Promotional Offering Tariffs Offered in Conjunction With Its New Flat Rate Service Known as Preferred Pack	Docket No. 040353-TP Filed: August 16, 2004

BELLSOUTH TELECOMMUNICATIONS, INC.'S OPPOSITION TO SUPRA'S MOTION FOR SUMMARY FINAL ORDER

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 28-106.204(4), Florida Administrative Code, respectfully submits this Opposition to Supra Telecommunications and Information Systems, Inc.'s ("Supra") Motion for Summary Final Order ("Motion"). As discussed more fully below, the Florida Public Service Commission ("Commission") should deny Supra's most recent attempt to stifle competition in Florida[1] because (1) Supra is not entitled to judgment as a matter of law under either Section 364.051(5)(c) or 365.051(a)(2), Florida Statutes; and (2) genuine issues of material fact exist.

INTRODUCTION

I. SUPRA'S TIRED APPROACH: SUPRA WANTS COMPETITION BUT ONLY IF BELLSOUTH CANNOT COMPETE.

This Complaint proceeding represents the epitome of hypocrisy and is designed solely to insulate Supra from the rigors of a competitive marketplace. Supra argues that certain BellSouth promotional offerings – offerings designed to compete for customers of BellSouth's competitors -- violate Florida law because they result in BellSouth

[1] This is not the first time that Supra has attempted to use this Commission to prohibit Florida consumers from enjoying the benefits of a competitive marketplace by attacking BellSouth's tariffs. In Docket No. 030349-TP, Supra initially filed a complaint regarding BellSouth's $75 cash back promotion and others, wherein it alleged, as it does here that BellSouth's tariffs violate Florida law. Supra ultimately withdrew these allegations after the Commission issued its Key Customer Order, discussed infra.

completed coupon, BellSouth will verify the customer's eligibility. If at that time the customer no longer subscribes to the PreferredPack service, the customer will be deemed ineligible and the Cash Back check will not be sent.[28] In addition, BellSouth verifies whether the customer is receiving the subject service a second time, before mailing the Cash Back check, which is approximately another 4-6 weeks.[29] Thus, approximately two to three months will elapse between the time the customer submits an order to return to BellSouth and the time the customer actually receives any of the subject non-telecommunications promotions. During this time period, BellSouth bills the customer $26.95 for the PreferredPack service (along with the $6.50 subscriber line charge ("SLC") and will treat the customer as any other customer for nonpayment of services rendered if payment is not received.[30] In addition, neither the $100 Cash Back Offer nor the $25 Gift Card can be applied towards payment of a customer's bill.[31]

BellSouth's data establishes that approximately [redacted] percent of reacquisition customers that receive cash back/gift card coupons region-wide redeem them[32] and that the average reacquisition customer stays with BellSouth for approximately [redacted] months.[33] As to the latter, this is a conservative calculation because BellSouth only counts how long these customers have purchased its services up to the time that the lengths of stay were recorded. Thus, the true duration of stay is likely higher than the [redacted] months calculated.[34]

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[28] Id. at No. 1(d).
[29] Id. at No. 1(f).
[30] Id. at No. 8.
[31] Id. at No. 6-7.
[32] Id. at No. 3(d)(e).
[33] Id. at 4(i).
[34] See Exhibit 5 at ¶ 13.

Regarding the revenue BellSouth receives, as stated above, BellSouth receives $26.95 a month for the PreferredPack Plan service. In addition, BellSouth charges each customer $6.50 for the SLC.[35] The "SLC is an additional part of the monthly price of PreferredPack Plan service that is paid by *all* BellSouth customers of that service and, importantly, is received and *retained* as revenue by BellSouth."[36] Accordingly, BellSouth receives $26.95 + $6.50 or $33.45 a month for all PreferredPack Plan customers, including those that receive all or part of the subject Promotions.[37]

In contrast, BellSouth's the appropriate cost floor to provide the subject services and promotions is $[redacted],[38] which is derived in the following manner. First, BellSouth's monthly recurring costs for the flat rate access component of the PreferredPack Plan service is $[redacted],[39] which is BellSouth statewide average 1FR rate for its retail, residential service. BellSouth determined this rate by dividing the total 1FR revenues by the total 1FR lines in Florida as of April 2003.[40] To this figure, the $6.50 SLC charge to get a price of $16.56 that should be attributed to the basic flat rate residential service. Second, the composite monthly TSLRIC cost of the monthly nonbasic features in the PreferredPack Service is $[redacted]. This cost includes BellSouth's direct TSLRIC monthly cost of $[redacted] for its Privacy Director service.[41] Importantly, this feature cost calculation overestimates the cost of providing the service because it assumes that every

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[35] Id. at ¶ 21.
[36] Id.
[37] Id.
[38] Id. at ¶ 46.
[39] Id. at ¶ 45; see also, BellSouth's Responses to Staff's First Set of Interrogatories, No. 4(d).
[40] See BellSouth's Responses to Staff's First Set of Interrogatories, No. 4(d).
[41] See Exhibit 5 at ¶ 45; BellSouth's Response to Supra's Second Set of Interrogatories, No. 15.

PreferredPack Plan customer subscribes to and receives all of the features available with the service offering.[42]

Third, BellSouth calculated the costs of the Promotions amortized over the average lifespan of a winback customer. Here, BellSouth's costs in providing the Promotions is $[redacted], which is comprised of the $100 cash back offer and the TSLRIC costs of $[redacted] for the line installation charge waiver.[43] With these figures, and taking into account the [redacted] percent take rate on the Promotions and the [redacted] month term of a winback customer, the monthly amortized customer reacquisition cost is $[redacted]. This is also a conservative figure because it overestimates the true average customer monthly reacquisition costs that BellSouth experiences.[44]

SUPRA'S ARGUMENTS

In its Complaint, Supra argued that BellSouth violated Section 364.08, 364.051(5)(c), and 364.01(4)(g), Florida Statutes because "the combination of these promotional offerings offered in conjunction with the PreferredPack Plan service has the effect of providing free service to the consumer for several months and one month of non-compensatory below cost service." Complaint at ¶ 9. In its Motion, Supra avoids the "free service" argument, obviously in recognition of its admission in discovery that a strict reading of the statute would suggest its own promotions violate Florida law,[45] and instead argues (1) that BellSouth is in violation of Section 364.051(5)(c) because it is pricing services below its costs; and (2) in a **new argument** not previously pled, that

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[42] Id.
[43] See Exhibit 5 at ¶ 27; BellSouth's Response to Staff's First Set of Interrogatories, No. 4(c).
[44] See Exhibit 5 at ¶¶ 27 and 28.
[45] BellSouth does not agree with Supra's interpretation of law regarding the provisioning of "free" service.

Fourth, there is nothing anticompetitive about interpreting "direct cost" to mean BellSouth's 1FR price because CLECs, like Supra, can still purchase unbundled loops at economic costs and on equal footing with BellSouth. As stated by Dr. Taylor:

> As long as BellSouth prices the bundle of basic and nonbasic services to cover the retail price of the basic service and the direct costs of the nonbasic services, the CLEC can compete on equal footing. Such pricing may not be economically efficient, (because it is below cost) but it is not anticompetitive, particularly in the market for customers who buy bundled telecommunications services. As long as CLECs can purchase (or self-provide) loops at a price commensurate with BellSouth's economic loop costs, there is nothing anticompetitive about selling 1FR service at a price below costs or in selling a bundle of services that includes the loop at a price that reflects the price of the standalone 1FR service.[58]

Thus, the Commission should interpret "direct cost" as it is used in Section 364.051(5)(c) to mean BellSouth's 1FR rate as the cost for the basic service and TSLRIC for the costs of the features and Privacy Director. Using this standard, it is clear that BellSouth's PreferredPack Plan service, even with the subject Promotions, is compensatory as BellSouth's total monthly cost is $23.44[59] and BellSouth receives $33.45 a month in revenue, providing a very healthy monthly margin of $[redacted]. Thus, Supra's argument fails as a matter of law.

2. BellSouth Still Complies with Section 364.051(5)(c) if an Imputation Standard Is Utilized.

Although BellSouth strongly discourages the Commission from ordering a cost standard other than the 1FR Price/TSLRIC standard discussed above in this particular

[58] See Exhibit 5 at ¶ 40.

[59] As stated above, this figure includes $10.06 for the 1FR, $3.46 for the TSLRIC cost of the features and BellSouth's Privacy Director service, and $3.42 for the cost of the Promotions.

case, even if the Commission construes Section 364.051(5)(c) to require imputation of prices of monopoly components to the cost standard, BellSouth meets this standard as well.

As an initial matter, Section 364.051(5)(c) only requires the imputation of certain costs when a cost is not included in BellSouth's direct cost ("Imputation Standard").[60] Under this interpretation of Section 364.051(5)(c), BellSouth's direct costs will include as an "imputed cost the price charged by the company to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service."[61] The only monopoly component or essential facility[62] that arguably exists with the Preferred Pack Plan service is the loop.[63] Indeed, Supra's own business plan proves this fact as Supra has deployed its own switches from which it serves approximately 18,000 customers.

With this Imputation Standard, BellSouth's monthly costs in providing the PreferredPack Plan with the subject Promotions is $[redacted],[64] which is comprised of the following costs: $[redacted] for the state-wide average UNE rate for the loop; $[redacted] for the TSLRIC costs of the non-monopoly components of BellSouth's 1FR, which consists of the port and average usage;[65] $[redacted] for the composite monthly nonbasic features plus

[60] BellSouth recovers its "direct costs" with the 1FR and TSLRIC standard discussed above and thus no imputation is required.
[61] Section 364.051(5)(c).
[62] As stated by Dr. Taylor, "for good economic and regulatory reasons," the imputation requirement only applies to essential facilities, *i.e.* "elements or components of services that (1) are not available competitively (BellSouth is the sole source) or through resale of a BellSouth retail service, (2) have no close or feasible substitutes, and (3) are essential for the provision of downstream retail services for which BellSouth and other carriers compete." See Exhibit 5 at ¶ 50.
[63] Id. Given the availability of wireless local loops, cellular service, VOIP, and cable connections, it is even arguable whether the loop is an essential facility or monopoly component today. For the sake of argument only in this particular proceeding, BellSouth presumes that the loop is an essential facility. BellSouth does not concede this fact.
[64] Id. at ¶ 53.
[65] See Affidavit of Bernard Shell at ¶¶ 3-4, attached hereto as Exhibit 11.

privacy director costs; and $[redacted] for the properly amortized monthly customer reacquisition costs associated with the Promotions.[66] Again, because BellSouth receives $33.45 a month in revenue for the PreferredPack Plan, BellSouth recovers its costs even using the Imputation Standard.

3. Supra's Cost Calculation Is Irrelevant and Flawed.

Supra's simplistic and erroneous argument is that BellSouth receives $26.95 for a service that it costs Supra $28.14 to provide and thus is in violation of Section 364.051(5)(c).[67] Supra's $28.14 cost calculation should be given no weight because it does not measure BellSouth's costs but rather Supra's costs. Further, $4.65 of this cost is Supra's resale costs in purchasing Privacy Director from BellSouth, which has nothing to do with the statutory standard. Privacy Director is not a UNE and thus is not available at TELRIC.[68] Supra should be aware of this fact because it has already lost this argument before the United States Bankruptcy Court for the Southern District of Florida. Indeed, in that proceeding, Supra asserted a billing dispute as to its Privacy Director resale charges on the grounds that Privacy Director was a feature function of the switch and thus should be included in the UNE feature cost and local switch port charges. The Bankruptcy Court rejected this argument:

> The debtor's argument on privacy director is that it is already paying for the components of privacy director as part of the charges embodied in the UNE bills for the $2.26 features costs and the $1.17 local switch port charge. BellSouth has maintained from the beginning that privacy director uses components that involve costs that did not go into the UNE billing charges that Supra is paying, and, therefore, under the contract, this service has to be acquired if the debtor wants it, just as it would be acquired by a retail

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[66] Id.
[67] Motion at 5.
[68] Exhibit 5 at ¶ 50.

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re:	**)**	
Petition of Supra Telecommunications and	**)**	
Information Systems, Inc. to Review and	**)**	**Docket No. 040353-TP**
Cancel BellSouth's Promotional Offering Tariffs	**)**	
Offered in Conjunction with its New Flat Rate	**)**	**Filed: August 16, 2004**
Service Known as PreferredPack	**)**	
	)	

Affidavit of

William E. Taylor, Ph.D.

On Behalf Of

Bellsouth Telecommunications, Inc.

BELLSOUTH EXHIBIT 5
RESPONSE TO MOTION
DOCKET 040353-TP

$100 Cash Back Offer and the waiver of the $40.88 line connection charge to win back CLEC customers to BellSouth.

26. The data required for measuring recurring costs were obtained directly from previous BellSouth filings, using methods approved by the Commission. For reasons discussed below, I use the statewide average retail price of 1FR services (including the SLC) as the economically appropriate measure of the direct recurring cost of basic exchange service in this circumstance. For the remaining direct recurring costs (for vertical services, Privacy Director and local usage), I follow the Commission's analysis in its Key Customer decision, where in determining whether the discounted service prices were compensatory and covered the "direct costs" of the service, the Commission compared prices with the corresponding service-level TSLRICs.[36] This measure of direct cost generally results in a more conservative test for anticompetitive pricing than the antitrust standard of average variable cost or LRIC (discussed above at ¶ 16), because TSLRIC includes volume-insensitive fixed costs that LRIC by definition excludes.

27. The non-recurring costs of the PreferredPack Plan promotion were calculated as follows. Following the discontinuance of the $25 gift card offer to re-acquired customers, the total upfront cost of BellSouth's promotional offerings is the sum of the cost of the Cash Back offer ($100) and the cost of waiving the line connection charge. The price of the line connection charge is $40.88, and the non-recurring TSLRIC of line connection is **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY**. These costs—the $100 offer and the **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY** line connection cost—would have to be amortized and recovered over the average duration of consumption by a re-acquired customer in the PreferredPack Plan service. BellSouth reports that the average duration a winback customer stays with BellSouth is **BEGIN PROPRIETARY** [redacted] **END PROPRIETARY** months[37] and that, on average, only **BEGIN PROPRIETARY**

[36] *Key Customer Order* at 21-22.

[37] BellSouth's Responses to Staff's 1st Set of Interrogatories in this proceeding, Item No. 4(g), May 28, 2004.

[redacted] **END PROPRIETARY** percent of eligible customers actually redeem Cash Back offers associated with its winback promotional programs.[38] This implies that the monthly amortized customer re-acquisition cost is actually **BEGIN PROPRIETARY $[redacted] END PROPRIETARY.**[39]

28. Note that this figure is conservative, in the sense that it overestimates the true average customer monthly re-acquisition cost that BellSouth experiences. It is my understanding that the average duration of stay of a re-acquired customer is calculated by adding up the lengths of time (in months) that re-acquired customers have been purchasing BellSouth's services and dividing that sum by the number of re-acquired customers.[40] That means that the divisor in that calculation includes both re-acquired customers that have since discontinued service from BellSouth and re-acquired customers that are still with BellSouth. In turn, this means that when the individual lengths of stay are added up, the sum consists *in some part* of the durations associated with re-acquired customers that have not yet left BellSouth. Clearly, the lengths of time actually recorded for such customers understate their eventual durations of stay; BellSouth only counts how long those customers have purchased its services *up to the time that the lengths of stay were recorded.* Because such censored measures of the duration of stay understate the average length of stay reported by BellSouth, the *true* duration for calculating the monthly amortized cost of customer re-acquisition is *higher* than the **BEGIN PROPRIETARY** [redacted] **END PROPRIETARY** months used by BellSouth.[41] That is, the true monthly amortized

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[38] This is a region-wide average, not specific to any state or winback program.

[39] This is based on a "principal" of **BEGIN PROPRIETARY $[redacted], END PROPRIETARY** an amortization period of **BEGIN PROPRIETARY** [redacted] **END PROPRIETARY** months, and an annual discount rate of 11.25%.

[40] BellSouth sources indicate that the average duration of stay for re-acquired customers (as reported in BellSouth's response to the Staff's 1st Set of Interrogatories) was calculated across *all* winback-type programs, not just that designed for PreferredPack Plan service. Moreover, that figure is a region-wide average, not specific to any state.

[41] BellSouth's response to Item No. 4(i) in Staff's 1st Set of Interrogatories in this proceeding calculated this cost using a more conservative divisor, namely, the average duration of stay of its customers for *all packaged services* of **BEGIN PROPRIETARY** [redacted] **END PROPRIETARY** months rather than, as is more appropriate, the average duration of stay of its re-acquired customers. Using the shorter average

cost of customer re-acquisition would be lower than the **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY** calculated earlier.[42]

29. Supra's analysis fails to recognize how non-recurring costs should be treated in the Section 364.051(5)(c) price floor. Instead, Supra measures the upfront cost of the promotional offerings ($125 for the combined Cash Back and gift card offers and $165.88 for the combined Cash Back, gift card, and connection charge waiver offers) in terms of the months of "free" service to which that cost would be equivalent. Such an analysis is misleading because BellSouth does not, in fact, give away PreferredPack Plan service for free for any number of months.[43] Rather, BellSouth charges its customers a levelized price for every month of service, and that price covers the properly amortized average cost of the promotional offers that BellSouth experiences over the expected duration of the customer relationship. For customers that stay with BellSouth for less than the average duration, that recovery may be partial; but, for customers that stay with BellSouth for more than the average duration, BellSouth would more than recover the customer re-acquisition costs. However, what matters is not how BellSouth fares with an *individual* customer; rather, it matters only that BellSouth recovers its costs across *all* re-acquired customers. That is why it is appropriate to use the average duration of stay to amortize the customer re-acquisition costs.

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duration in my calculation above would increase the cost of customer re-acquisition to **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY.**

[42] For example, if the true average duration of stay were 42, not **BEGIN PROPRIETARY** [redacted] **END PROPRIETARY**, months, then the amortized monthly re-acquisition cost would be **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY.** Again, I assume an annual discount rate of 11.25%.

[43] Nonetheless, even analyzing the upfront costs as Supra does, BellSouth will more than recover the upfront costs for the entire group of customers that sign up for the PreferredPack plan service, given the average length of time customers are expected to retain the service.

VI. BELLSOUTH'S PRICING OF PREFERREDPACK PLAN SERVICE IS NOT PREDATORY OR ANTICOMPETITIVE

30. In this section, I examine the economically reasonable application of the measure of "direct cost" and show that BellSouth's pricing of its PreferredPack Plan service is not anticompetitive by the Section 364.051(5)(c) standard.

A. The Statutory Test Must Account for the Regulated Price of Basic Exchange Service

31. How should the statutory pricing standard for non-basic services be applied to BellSouth's PreferredPack Plan service, which is a bundle of non-basic services combined with basic exchange service? PreferredPack Plan service itself is obviously a non-basic service, (even though basic exchange service is included in the service), because the individual service components remain available to customers on a stand-alone basis.

32. In determining the meaning of "direct cost" in Section 364.051(5)(c), a fundamental inconsistency between two of the Commission's important public policy objectives arises: pricing residential basic exchange below cost to foster universal service on the one hand and encouraging competition among all potential providers of local exchange service on the other. The problem is that PreferredPack Plan service combines non-basic services with a basic exchange service whose standalone price is regulated and set below its direct cost.[44] Now, if Section 364.051(5)(c) were interpreted to mean that the price of PreferredPack Plan service had to equal or exceed its direct cost as measured by the sum of the TELRICs or TSLRICs that make up the bundle,[45] then severe competitive distortions would be imposed on the market for telecommunications services.

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[44] For example, BellSouth's statewide average retail 1FR price is **BEGIN PROPRIETARY $**[redacted] **END PROPRIETARY** plus the $6.50 SLC. Its statewide average residential UNE loop and port TELRIC averages **BEGIN PROPRIETARY $**[redacted] **END PROPRIETARY** plus **BEGIN PROPRIETARY $**[redacted] **END PROPRIETARY** for local usage.

[45] I ignore, for the moment, the requirement to impute the price of monopoly components that the CLEC must purchase.

because BellSouth could always price the component basic and non-basic services separately at this floor.[52]

B. Under the Statutory Test, BellSouth's Price for PreferredPack Plan Service is Procompetitive

43. Given the economic and statutory foundations for conducting the price/cost comparisons under Section 364.051(5)(c) of the Florida Statutes, I next show that BellSouth's current pricing of PreferredPack Plan service, along with its promotional offerings, does not violate the prohibition against predatory and anticompetitive pricing. All of my results discussed below are also shown in a convenient tabular format in the proprietary Exhibit WET-2.

44. Assume for simplicity that direct costs alone matter (*i.e.*, there are no "monopoly services" and no imputation is necessary).[53] As I noted earlier, the monthly price of PreferredPack Plan service ($33.45) is uncontroversial, and the direct non-recurring customer acquisition costs, although controversial, amount to about $3.42 per month. The PreferredPack Plan service bundles a flat-rate access line (loop-port combination and usage) with various vertical services and Privacy Director service. The direct cost of PreferredPack Plan service is treated as the sum of the direct costs of the component services.

45. In this interpretation of the price floor in Section 364.051(5)(c), I use the retail price of the basic exchange component of PreferredPack service as its direct cost. According to BellSouth, the statewide average of its retail monthly residence flat-rate access line service (1FR service) is **BEGIN PROPRIETARY $[redacted] END PROPRIETARY** (as of April 2003)[54] to which we must add the $6.50 SLC that all

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[52] Although BellSouth could always achieve a $18 price floor by selling the basic and non-basic services separately, the competitive process would remain distorted. BellSouth would be unable to offer a bundled service, and since 1FR prices vary geographically across Florida, it would be unable to offer its equivalent PreferredPack service at a single statewide rate. Moreover, customers who prefer bundled services and compare the bundles offered by different suppliers would be worse off if BellSouth could not offer a comparable bundle.

[53] The case where imputation is necessary is addressed below.

[54] See BellSouth's response to Item No. 4(a) in Staff's 1st Set of Interrogatories in this proceeding.

customers pay. In addition, the monthly TSLRIC of the composite features and Privacy Director Service is **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY.**[55] This cost *includes* BellSouth's direct TSLRIC monthly cost of the Privacy Director service, which is **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY** per month.[56]

46. Based on this information, the direct recurring cost of the service components is **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY.** When the properly amortized monthly customer re-acquisition cost of **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY** is added to this, the total monthly direct cost of providing PreferredPack Plan service to an average re-acquired customer (that also receives the promotional offerings) is **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY** per month.

47. From a comparison of the total direct cost of PreferredPack Plan service (inclusive of the cost of customer re-acquisition) with the monthly total rate of $33.45, it is evident that the rate exceeds the direct cost by **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY**, a significant positive margin. Therefore, when direct costs are calculated in the manner described above, no violation of Section 364.051(5)(c) can be said to have occurred, and since price exceeds direct cost, that price cannot be construed as predatory.[57]

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[55] BellSouth explains that the monthly "composite UNE feature cost" of vertical services, as filed in Docket No. 990649-TP, is actually **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY.** That is a "conservative estimate of the direct cost that would be incurred on average based on a particular customer's utilization of the offered features." See BellSouth's Response to Staff's 1st Set of Interrogatories (Proprietary) in this proceeding, Item No. 4, May 28, 2004. Since Privacy Director is not a vertical feature, its cost is not included above. As noted above, the TSLRIC of Privacy Director and all the vertical features offered with the PreferredPack Plan is **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY.** The latter cost figure applies if all BellSouth customers for PreferredPack Plan service are assumed to subscribe to all of the features made available by that service.

[56] BellSouth's Response to Supra's 2nd Request for Admissions (Proprietary) in this proceeding, Item No. 30, July 15, 2004.

[57] That conclusion is unchanged even with the higher **BEGIN PROPRIETARY** $[redacted] **END PROPRIETARY** estimate of the monthly amortized customer re-acquisition cost, assuming that *every* eligible customer redeems the $100 Cash Back offer.

C. BellSouth's Price for PreferredPack Plan Service Is Still Procompetitive Even If One Imputes the UNE Price of Possible Monopoly Components into the Price Floor

48. For reasons discussed below, I believe the **BEGIN PROPRIETARY $**[redacted] **END PROPRIETARY** price floor calculated above represents the proper implementation of the price floor required in Section 364.051(5)(c). However, even if the Commission construes that rule differently and requires imputation of prices of monopoly components, a properly conducted price/cost comparison shows that BellSouth's PreferredPack plan service with its promotions is still priced consistently with that rule. All of the results discussed below are also shown in a convenient tabular format in the proprietary Exhibit WET-2.

49. This interpretation of Section 364.051(5)(c) assumes that the price charged by BellSouth for any monopoly component of its PreferredPack Plan service must be imputed into (*i.e.*, recovered by) the price charged by BellSouth for the PreferredPack Plan service itself. As is standard practice for good economic and regulatory reasons, the imputation requirement only applies to essential facilities, *i.e.*, elements or components of services that (1) are not available competitively (BellSouth is the sole source) or through resale of a BellSouth retail service, (2) have no close or feasible substitutes, and (3) are essential for the provision of downstream retail services for which BellSouth and other carriers compete. In this circumstance, the direct cost would pertain to all service components that are *not* essential facilities (*i.e.*, we would use the TSLRIC of those components), and the imputed cost would pertain only to essential facilities (*i.e.*, the prices of those components would be used rather than their costs in determining the price floor).

50. Of all the components of BellSouth's PreferredPack Plan service, only the access line itself (the loop) can arguably be considered an essential facility, and even for the loop, the presence of "last mile" alternatives in the form of wireless local loops, cellular wireless service, and cable connections are becoming increasingly available. The switching function and switch-based features and services can be self-supplied or can be obtained from non-BellSouth sources, and I observe that Supra has

deployed its own switches in Florida. While Supra may currently resell BellSouth's Privacy Director service, alternatives including self-supply are readily available, and Privacy Director has never been considered a UNE that BellSouth would have to unbundle and sell at TELRIC prices in order that CLECs not be impaired in their efforts to compete.[58] The customer re-acquisition costs are, of course, unrelated to service provision itself, and represent a marketing cost that Supra or other CLECs routinely incur on their own. Therefore, if any imputation is required by Section 364.051(5)(c), the facts of the present-day telecommunications marketplace limit that imputation to the loop component of the service.

51. Thus, the only change from the earlier cost calculation arises from regarding the loop as an essential facility which, under FCC rules that were extant until recently, is to be provided to requesting carriers as a UNE at a price based on its TELRIC. This means that instead of employing the direct cost of BellSouth's 1FR service, the "direct cost" of the loop should be measured by its TELRIC-based UNE price, while the cost of the other components of the service would be measured by their respective TSLRICs.

52. According to BellSouth, the state-wide average UNE rate in Florida for the unbundled loop is **BEGIN PROPRIETARY $[redacted].**[59] **END PROPRIETARY** Further, the combined TSLRIC of all non-monopoly components of BellSouth's 1FR service in Florida is **BEGIN PROPRIETARY $[redacted] END PROPRIETARY.**[60] As noted earlier, the TSLRIC of the vertical features plus Privacy Director service is **BEGIN PROPRIETARY $[redacted] END PROPRIETARY.**

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[58] Thus Supra's calculation of its costs to purchase the components of PreferredPack service from BellSouth in its *Motion* (¶¶ 8-12) is irrelevant. The Florida pricing standard in Section 364.051(5)(c) refers to BellSouth's direct costs (with the exception of imputation applied to monopoly services), not to the costs that Supra chooses to incur to supply the service.

[59] This statewide weighted average is calculated by BellSouth from deaveraged zone-specific UNE loop rates established by the Commission in Docket No. 990649-TP.

[60] BellSouth sources indicate that the TSLRIC of the port is **BEGIN PROPRIETARY $[redacted] END PROPRIETARY** and that of average usage is **BEGIN PROPRIETARY $[redacted] END PROPRIETARY**, making a total of **BEGIN PROPRIETARY $[redacted] END PROPRIETARY.**

53. Based on this information, the combined direct and imputed cost of the service components of PreferredPack Plan service is **BEGIN PROPRIETARY $**[redacted] **END PROPRIETARY.** When the properly amortized monthly customer re-acquisition cost of **BEGIN PROPRIETARY $**[redacted] **END PROPRIETARY** is added to this, the total monthly direct and imputed cost of providing PreferredPack Plan service to a re-acquired customer (that also receives the promotional offerings) is **BEGIN PROPRIETARY $**[redacted] **END PROPRIETARY.**

54. Comparing the total direct and imputed cost of PreferredPack Plan service (inclusive of the cost of customer re-acquisition) with the monthly total price of $33.45, it is evident that the rate exceeds the direct and imputed costs by **BEGIN PROPRIETARY $**[redacted] **END PROPRIETARY**, a positive margin. Therefore, when direct and imputed costs are calculated in the manner described above, no violation of Section 364.051(5)(c) can be said to have occurred, and the price of PreferredPack service, including its promotions, cannot be said to be predatory.[61]

D. The Statutory Test Must be Applied to the Service as a Whole, not to Individual Customers.

55. In its *Petition*, Supra asserts that

> This Commission should also note that BellSouth's PreferredPack Tariff does not require a contractual arrangement between BellSouth and the winback/re-acquisition 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[62]

implying that the test requires BellSouth to break even on *every* re-acquired customer. However, nothing in the regulatory principles governing BellSouth's Florida operations suggests that revenue must recover cost for each *individual customer*. Rather, the recovery of costs in revenues is expected to occur at the

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[61] That conclusion is unchanged even with the higher **BEGIN PROPRIETARY $**[redacted] **END PROPRIETARY** estimate of the monthly amortized customer re-acquisition cost, assuming that *every* eligible customer redeems the $100 Cash Back offer.

[62] *Supra's Petition*, ¶24.

REDACTED

Declaration of William E. Taylor, Ph.D.
Proprietary Exhibit WET-2
Docket No. 040353-TP
August 17, 2004

Price and Cost Comparisons for BellSouth's PreferredPack Plan Service with Promotional Offerings

	A	B	C	D
1	**Price**			
2	PreferredPack Plan (tariff)	$ [redacted]		
3	Subscriber Line Charge	$ [redacted]		
4	Total	$ [redacted]		
5	**Cost**		**Margin**	
6	Statewide average 1FR rate	$ [redacted]	Price	$ [redacted]
7	Subscriber Line Charge	$ [redacted]	Cost	$ [redacted]
8	Features plus Privacy Director	$ [redacted]	Margin	$ [redacted]
9	Customer reacquisition	$ [redacted]		
10	Total	$ [redacted]		
11	Unbundled loop UNE rate	$ [redacted]	Price	$ [redacted]
12	Port and usage TSLRIC	$ [redacted]	Cost	$ [redacted]
13	Features plus Privacy Director	$ [redacted]	Margin	$ [redacted]
14	Customer re-acquisition	[redacted]		
15	Total	$ [redacted]		

BELLSOUTH EXHIBIT WET-2
RESPONSE TO MOTION
DOCKET 040353-TP

REDACTED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Supra Telecommunications)
And Information Systems, Inc. to Review)
And Cancel BellSouth's Promotional)
Offering Tariffs Offered in Conjunction With)
Its New Flat Rate Service Known as)
Preferred Pack)

Docket No. 040353-TP

Filed: August 16, 2004

AFFIDAVIT OF BERNARD SHELL

Before me, the undersigned authority, personally appeared Bernard Shell, who, after being duly sworn, did depose and say:

1. My name is Bernard Shell. I am over the age of 18 and I make this Affidavit on personal knowledge. If called upon to do so, I would testify to each and every fact stated herein in open court.

2. I am employed with BellSouth Telecommunications, Inc. ("Bell South") as a Manager in the Finance Department. In this position, I support and develop economic costs and am familiar with BellSouth cost methodologies and resulting calculations.

3. The state-wide UNE average rate for the loop in BellSouth's territory is $[redacted].

4. The TSLRIC costs for the non-monopoly components of Bellsouth's 1FR is $[redacted], which consists of the port and average usage.

5. BellSouth charges every PreferredPack Plan customer $6.50 per month for the SLC in addition to the $26.95 price.

BELLSOUTH EXHIBIT 11
RESPONSE TO MOTION
DOCKET 040353-TP

BY: ______________________
BERNARD SHELL

WITNESSED BY:

____

The foregoing instrument was acknowledged before me this ___th day of August, 2004 by Bernard Shell, who produced a driver's li cense as identification.

NOTARY PUBLIC

Sign: Lynn Barclay

Print: Lynn Barclay

My Commission Expires: Lynn J. Barclay (SEAL)
Notary Public, DeKalb County, Georgia
My Commission Expires August 13, 200