

November 3, 2005

Ms. Blanca S. Bayo
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 050387-TP

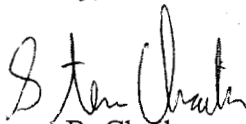
Dear Ms. Bayo:

Attached please find an original and 15 copies of Supra Telecommunications and Information Systems, Inc.'s Motion to File Second Amended Petition and the Second Amended Petition to Review BellSouth Promotional Tariffs.

Please file these documents in the above-referenced docket file. Copies of these documents will be served on all parties via U.S. Mail.

Thank you for your assistance with this filing.

Sincerely,



Steven B. Chaiken
SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC.
2901 SW 149th Avenue, Suite 300
Miramar, FL 33027

Enclosures

cc: Parties of Record

DOCUMENT NUMBER-DATE

10687 NOV-3 '05

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Supra Telecommunications)	
And Information Systems, Inc. to Review)	Docket No. 050387-TP
BellSouth Promotional Tariffs)	Filed: November 3, 2005
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**SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.'S
MOTION TO FILE SECOND AMENDED PETITION**

Supra Telecommunications and Information Systems, Inc. ("Supra"), moves this Florida Public Service Commission ("Commission") for leave to file an amended petition. In support of its motion, Supra states as follows:

ARGUMENT

1. On June 3, 2005, Supra filed its *Petition of Supra Telecommunications and Information Systems, Inc. to Review BellSouth Promotional Tariffs* initiating the instant docket.
2. On June 20, 2005, BellSouth Telecommunications, Inc. ("BellSouth") filed its *Motion to Enforce the Confirmation Order* (the "Motion") in Case No. 02-41250-BKC-RAM before the United States Bankruptcy Court, Southern District of Florida and requested that Bankruptcy Court require Supra to dismiss the instant docket until September 18, 2005.
3. On June 30, 2005, the Bankruptcy Court heard oral arguments on the Motion.
4. On July 18, 2005, the Bankruptcy Court issued its *Order Granting In Part and Denying Part BellSouth Telecommunications, Inc.'s Motion to Enforce the Confirmation Order* (the "Order").
5. Pursuant to the Order, Supra was required to a.) file an amended petition removing reference to Tariff Numbers T-04-1224 and T-04-1223, and b.) refrain from challenging such tariffs until September 18, 2005.

6. On July 21, 2005, Supra filed a First Amended Petition in compliance with the Order.

7. As Supra is no longer required to refrain from challenging Tariff Numbers T-04-1224 and T-04-1223, Supra seeks to amend its petition again to incorporate such.

8. Furthermore, Supra seeks to add additional state law support to assist the Commission in resolving BellSouth's Partial Motion to Dismiss of Supra's First Amended Petition dated July 21, 2005 and in support of Supra's claim that BellSouth has an obligation to make its promotions available for resale.

9. Supra has attached to this motion as **Exhibit 1** a copy of Supra's Second Amended Petition, and requests that it be deemed filed in the event the Commission grants Supra's motion.

10. Supra has conferred with counsel for BellSouth and is authorized to represent that BellSouth has no objection to the relief requested.

WHEREFORE, Supra respectfully requests that this Commission enter an order granting Supra leave to file a Second Amended Petition and deem Supra's Second Amended Petition as filed.

Respectfully submitted,

By:



Steven B. Chaiken
SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC.
2901 SW 149th Ave., Suite 300
Miramar, Florida 33027

Dated: November 3, 2005

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 November 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

James Meza
BellSouth Telecommunications, Inc.
675 West Peachtree Street, N.W.
Suite 4300
Atlanta, GA 30375

By: 
STEVEN CHAIKEN

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: November 3, 2005

**SECOND AMENDED PETITION OF SUPRA
TELECOMMUNICATIONS AND INFORMATION
SYSTEMS, INC., TO REVIEW BELL SOUTH PROMOTIONAL TARIFFS**

Supra Telecommunications and Information Systems, Inc. ("Supra") by and through its undersigned counsel and hereby files this Second Amended 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. Supra reiterates its requests that this Commission immediately suspend BellSouth's tariffed offerings and, upon review of such offerings, issue an order 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 initiating an investigation into the appropriate resale avoided cost discount, and/or canceling BellSouth's offerings. In support thereof, Supra states 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, such as a price or cost floor, by which the Commission may determine whether a requested stay of a basic local telecommunications service price reduction is warranted.

1. 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:

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:

Marva Brown Johnson Esq.
Legal Department
Supra Telecommunications and Information Systems, Inc.
2901 S.W. 149th Avenue, Suite 300,
Miramar, Florida 33027
(786) 455-4209
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 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. 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 four 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); (3) the promotion offers some form of a monetary inducement to the returning customer (i.e. \$100.00); and (4) BellSouth does not allow competitors the benefit of the cash inducement in BellSouth's resale pricing arrangement. BellSouth thereby creates the classic price squeeze by discounting the price of BellSouth's associated offerings and selling its retail service at rates that are below BellSouth's wholesale rates.

6. 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 presented for this Commission's review. BellSouth's current offerings

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.

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 predatory 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.

7. Further, 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.

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

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).

- RingMaster Service

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 Pack⁴ 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

⁴ 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.

determined that BellSouth need not offer mass market switching under Section 251 of the 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 Act⁶, 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 at least five (5) categories of promotional tariff offerings 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 categories⁷ both individually and in different combinations, to provide offerings designed to increase the discounts offered exclusively to CLEC customers.

11. The Cash Back promotional offering category:

⁶ Presumably, BellSouth's failure to live up to its Section 271 obligations will be addressed in Docket No.041269-TP.

⁷ This petition should not be construed to limit Supra's challenge to only those promotional tariffs which Supra specifically identifies herein. Supra intends on including subsequently filed tariffs, which will likely provide for greater incentives, as well.

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 "\$100 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 1FR 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 1FR" 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).⁸

16. Most of these promotional offerings state "the offer may be combined with other promotional offers for the same service."⁹ Today, prospective customers could receive 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. Contrary to the economic facts, to the extent that BellSouth represents that these promotions are not priced

⁸ 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**).

⁹ See Exhibits A-G.

below cost, then BellSouth's resale avoided cost discount should be adjusted in order to appropriately account for the additional costs that BellSouth avoids in refusing to allow CLEC resale customers the same financial inducements as BellSouth offers to its own retail customers.

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 eliminate competition by selling telecommunications services below costs in effort 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.¹⁰ 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

¹⁰ 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).

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.

21. Furthermore, BellSouth has repeatedly argued that this Commission's TELRIC UNE pricing has compelled BellSouth to sell its services to CLECs below cost. The packaging of these promotions demonstrates that one of three scenarios must be true: either (1) BellSouth's arguments regarding TELRIC UNE pricing being below cost are untrue; (2) BellSouth's residential service as offered is below cost and therefore anti-competitive; or (3) BellSouth's resale avoided cost discount rate is understated.

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 create a price-squeeze in order to 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, moreover, BellSouth's true short-run intent is to thwart competition in the local telecommunications market and BellSouth's true long-run intent is simply to secure BellSouth's dominant market position to its 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 FDN 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.¹¹ 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. The most troubling aspect of BellSouth's promotional tariffs is that while these tariffs appear to offer short term benefits to Florida consumers, the fact is that in the long run, Florida consumers will suffer the greatest consequences of the price squeeze. Once BellSouth has weakened and eliminated competition, BellSouth will once again be "safe" to raise its rates for all consumers. As competitors are eliminated as a result of BellSouth's promotional tariffs, consumers will have fewer competitive choices. While CLEC market share in the state of Florida within the business market continues to grow, competition within the residential market is on the decline. Specifically, Supra has already lost and will continue to lose market share due

to BellSouth's anti-competitive offerings. The harm that Florida consumers and Supra have suffered and will continue to suffer from BellSouth's promotional tariffs cannot be undone. That harm has been constant, frequent, and continuous in character.

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

**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 . . ."

¹¹ This is especially so in light of the recent regulatory decisions limiting CLECs' access to various Section

28. In the aggregate, the total monetary inducement to the customer is approximately \$145.88, and has the potential to be even greater.¹²

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.

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

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 and 364.161, Florida Statutes**

²⁵¹ UNEs.

¹² 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 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**).

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:

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. Section 364.161 (2), Florida Statutes, provides:

Other than ensuring that the resale is of the same class of service, no local exchange telecommunications company may impose any restrictions on the resale of its services or facilities except those the commission may determine are reasonable. The local exchange telecommunications company's currently tariffed, flat-rated, switched residential and business services shall not be required to be resold until the local exchange telecommunications company is permitted to provide inter-LATA services and video programming, but in no event before July 1, 1997. In no event shall the price of any service provided for resale be below cost.

34. 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 in their entirety to Supra for resale.

35. 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.

36. 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 LEC 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.*”¹³

37. 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.

38. 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 resellers and would therefore undercut the duty to resell retail services to resellers at wholesale rates.¹⁴

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

¹³ FCC 96-325, ¶952.

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.¹⁵

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)

40. 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)

41. The North Carolina Utilities Commission clarified its rules in an Order issued June 3, 2005 (**See Exhibit L**) and stated therein at page 5:

One-time incentive gifts, including gift cards, check coupons and other merchandise, which are offered to induce customers to subscribe to telecommunications services, are promotional offerings. Therefore, if such gifts or incentives are offered for more than 90 days, as discussed in greater detail in the *Order*, they have the effect of lowering the actual, "real" retail rate. The retail rate, and thus the wholesale rate charged to resellers, must be determined on the basis of the "real" rate charged to subscribers. The Commission's *Order* does not

¹⁴ North Carolina Order, Docket No. P-100, SUB 72b, at 9.

¹⁵ *Id.*, at pg. 3.

prevent or in any way frown upon the use of such incentives as gift cards and other one-time upfront gifts. However, if the incentives, i.e. promotions, are offered for more than 90 days, on the 91st day, **resellers are entitled to have the benefit of the promotion reflected in the wholesale rate, meaning that that the wholesale discount must be applied to the promotional rate – not to some other theoretical listed rate which has been undercut by a long-term promotional rate that is generally available to subscribers in the telecommunications marketplace.** (Emphasis added)

42. Therefore, these promotional inducements should be construed to be direct telecommunications services as per Chapter 364.02(12)¹⁶ 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.¹⁷ 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. Alternatively, resellers must receive the benefit of the promotions, as previously found by the North Carolina Utilities Commission.

WHEREFORE, Supra respectfully requests that this Commission:

(1) Immediately suspend BellSouth's promotional tariffs and/or grant Supra a hearing within 45 days pursuant to Section 364.059(1)(a) Florida Statutes;

¹⁶ "Service" is to be construed in its broadest and most inclusive sense.

¹⁷ 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

(2) Review and cancel BellSouth's promotional inducement tariffs or, in the alternative, order BellSouth to allow Supra to receive the benefits of these inducements when it resells the same underlying services;

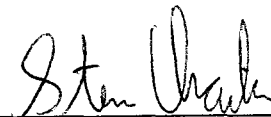
(3) Initiate an investigation of BellSouth's promotional pricing and marketing practices; and

(4) Grant such other relief as deemed appropriate.

Respectfully submitted this 3rd day of November 2005.

SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.
2901 S.W. 149th Avenue, Suite 300,
Miramar, Florida 33027
Telephone: (786) 455-4239
Facsimile: (786) 455-4600

By: _____



STEVEN B. 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 November 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

James Meza
BellSouth Telecommunications, Inc.
675 West Peachtree Street, N.W.
Suite 4300
Atlanta, GA 30375

By: 
STEVEN CHAIKEN

1041224

BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301

marshall.m.criser@bellsouth.com

Marshall M. Criser III
Vice-President
Regulatory & External Affairs

(RSO) 224 7796
Fax (RSO) 224 3071

December 10, 2004

Ms. Beth Salak, Director
Division of Competitive Markets and Enforcement
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Ms. Salak:

Pursuant to Florida Statute 364.051, we are filing revisions to our General Subscriber Service Tariff. Attached for filing with the Commission is the following tariff page:

General Subscriber Service Tariff

Section A2 - First Revised Page 32.1
- First Revised Page 32.2

These revisions establish the \$100 Cash Back promotion. Attachment A contains an Executive Summary of the program.

Yours very truly,

Regulatory Vice President

All BellSouth marks contained herein are owned by BellSouth Intellectual Property Corporation.

FL2004-051

EXHIBIT - A

\$100 Cash Back Offer

Overview

The \$100 Cash Back Offer promotion is scheduled to begin on December 27, 2004 and end on December 26, 2005. Services included in this promotion are:

- BellSouth® Complete Choice® plan (single or multiple lines)
- BellSouth® Area Plus® with Complete Choice® plan (single or multiple lines)
- BellSouth® PreferredPack® plan

Promotion Specifics

Customers returning to BellSouth and purchasing a qualifying local service product will be eligible to receive \$100 cash back.

Restrictions/Eligibility Requirements

- Customer must have at least one wire line local service or equivalent (wireless in lieu of wire line) with a provider other than BellSouth at a local service address within BellSouth territory. A new service qualifying for this promotion must be provisioned as a replacement for the existing wire line or equivalent service.
- Customer must request the qualifying service at the same address and in the same name as the existing service, 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, BellSouth 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 ten (10) days prior to the new service connection date to be eligible.
- Customer must switch their local service to BellSouth and purchase any one of the following: Complete Choice plan, Complete Choice Two-Line Plan package, Complete Choice Three-Line Plan package, Area Plus with Complete Choice plan, Area Plus with Complete Choice Two-Line Plan package, Area Plus with Complete Choice Three-Line Plan package, or PreferredPack plan.
- Customer must place the order on or before 12/26/05.
- Offer valid for only one (1) service line at the intended local service address.
- Customer must place their order through a BellSouth business office or outbound telemarketing vendor or alternate channel.
- Customer must complete and mail a rebate coupon to a specified address by the date specified on the coupon in order to receive the \$100 cash back.
- After customer completes the above requirements, he/she will receive the \$100 cash back. If customer cancels or discontinues the qualifying service prior to fulfillment, he/she will be ineligible for the cash back offer.
- BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.
- Customer must have the eligible services on their new service (N) order to receive the promotional offer.
- Offer may be combined with cash back offers or other promotional offers on the same services, 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.

RELEASED
TITEL COMMUNICATIONS, INC.
FLORIDA

ISSUED: December 12, 2004
BY: Joseph F. Lacher, President
Miami, Florida

GENERAL SUBSCRIBER SERVICE LEXICON

First Revised Page 101
Cancels Original Page 101

101 LEXICON E. January 2, 2004 December 12, 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	\$100 Cash Back Offer	- \$100 cash back will be given to customers enrolling in BellSouth and porting BellSouth Choice Preferred plan.	12/27/04 to 12/31/04	(45)
- From Central Office where services are available:	- Customer must either not currently have local service with BellSouth or not have service with family plan or BellSouth on any or more of their existing lines, including the line on which the service qualifying for this promotion will be provisioned.	- The customer must place the order on or before 12/26/04.		(46)
	- Customer must have local service or equivalent (wireless or land of wire line) at the same local address as out of town of their existing line.	- The customer must place their order through a BellSouth business office or authorized salesperson or alternate phone as indicated.		(47)
	- Customer must request service at the same address and in the same name, unless customer is requesting an extension from one address in BellSouth territory to another address in BellSouth territory within thirty (30) days of the above requirements they will be eligible for the \$100 cash back. If the customer moves, the BellSouth rep can offer the customer the promotion and place the order at the new address.	- The customer must call 800-833-8333 and email the request to a specified address by a specified date in order to receive the \$100 cash back.		(48)
	- Customer must have not had local service with BellSouth at least two (2) days prior to the new service connection date to be eligible.	- Once the customer completes the above requirements they will be eligible for 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.		(49)
	- Customer must have the eligible services on their new service order (N) in order to receive the promotional offer.			(50)
	- Offer valid for only one (1) service line at the intended local service address.			(51)
	- BellSouth reserves the right to discontinue or modify this promotion at any time without notice.			(52)

EFFECTIVE December 17, 2004

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.2 Descriptions (Cont'd)

A. The following promotions are in full with the Commission: (Cont'd)

Area of Promotion	Service	Change Wanted	Period	Authority
BellSouth's Service Territory: - From Central Office where services are available	\$100 Cash Back Offer - Customer must either not currently have local service with BellSouth or not have service with third party plan or BellSouth or BellSouth on one or more of their existing lines, including the line on which the service qualifying for this promotion will be provisioned. - Customer must have local service or equivalent (wireless or pay as you go) at the same local telemarketing vendor or alternate service address on one or more of their existing lines. - 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 ninety (90) days of the above requirements they will participate in the offer. In the case where the \$100 cash back offer is not available, the BellSouth rep can offer the customer the promotion and phone fulfillment, he will be ineligible for the cash back offer. - Customer must have not had local service with BellSouth at least ten (10) days prior to the new service connection date to be eligible. - Customer must have the eligible service on their new service order. (In order to receive this promotional offer. - Offer valid for only one (1) service line at the connected party address. - BellSouth reserves the right to discontinue or modify this promotion at any time without notification.	\$100 cash back will be given to customers returning to BellSouth and purchasing BellSouth Complete Choice PreferredPlan plan. - The customer must place the order on or before 12/24/05. - The customer must place their order through a BellSouth business office or authorized telemarketing vendor or alternate channels as indicated. - 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. - 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.	12/24/04 to 12/24/05	(C)

BellSouth Telecommunications, Inc.
150 South Main Street
Suite 400
Tallahassee, Florida 32301
March 9, 2005
Beth Salak, Director
Competitive Markets and Enforcement
ATTN: Tariff Section
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Dear Ms. Salak:

Pursuant to Florida Statute 384.051, we are filing revisions to our General Subscriber Service Tariff. Attached for filing with the Commission are the following tariff pages:

General Subscriber Service Tariff

- Section A2 - Second Revised Page 32.1
- Second Revised Page 32.2
- Twenty Seventh Revised Page 33
- Third Revised Page 35.6.8
- Second Revised Page 35.6.9

These revisions add a gift card option to the \$100 Cash Back Offer. Attachment A contains an Executive Summary of the program.

Acknowledgment, date of receipt and authority number of this filing are requested.

Yours very truly,

Michael M. Overstreet

Regulatory Vice President

Attachments

Promotion Description

\$100 Cash Back or Gift Card Offer

Overview

The \$100 Cash Back Offer promotion began on December 27, 2004, and is scheduled to end on December 26, 2005. That promotion will be terminated early on March 23, 2005, and will be replaced by the \$100 Cash Back or Gift Card Offer. The \$100 Cash Back or Gift Card Offer promotion is scheduled to begin on March 24, 2005, and end on December 31, 2005. Services included in this promotion are:

- BellSouth® Complete Choice® plan (single or multiple lines)
- BellSouth® Area Plus® with Complete Choice® plan (single or multiple lines)
- BellSouth® PreferredPack® plan

Promotion Specifics

Customers returning to BellSouth and purchasing a qualifying local service product will be eligible to receive either \$100 cash back or a \$100 Visa® gift card.

Restrictions/Eligibility Requirements

- Customer must have at least one wire line local service or equivalent (wireless in lieu of wire line) with a provider other than BellSouth at a local service address within BellSouth territory. A new service qualifying for this promotion must be provisioned as a replacement for the existing wire line or equivalent service.
- Customer must request the qualifying service at the same address and in the same name as the existing service, 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, BellSouth 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 ten (10) days prior to the new service connection date to be eligible.
- Customer must switch their local service to BellSouth and purchase any one of the following: Complete Choice plan, Complete Choice Two-Line Plan package, Complete Choice Three-Line Plan package, Area Plus with Complete Choice plan, Area Plus with Complete Choice Two-Line Plan package, Area Plus with Complete Choice Three-Line Plan package, or PreferredPack plan.
- Customer must place the order on or before December 31, 2005.
- Offer valid for only one (1) service line per local service address.
- Customer must place the order through a BellSouth business office or outbound telemarketing vendor or alternate channel.
- Customer must complete and mail a rebate coupon to a specified address by the date specified on the coupon in order to receive either the \$100 cash back or gift card.
- After customer completes the above requirements, he/she will receive either the \$100 cash back or gift card. If customer cancels or discontinues the qualifying service prior to fulfillment, he/she will be ineligible for the cash back or gift card offer.
- BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.
- Customer must have the eligible services on their new service (N) order to receive the promotional offer.
- Customer may not receive both the \$100 cash back and the \$100 gift card. If customer does not specify which reward he/she prefers, customer will receive the \$100 cash back.
- Offer may be combined with cash back offers or other promotional offers on the same services, 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.

All BellSouth marks contained herein are owned by BellSouth Intellectual Property Corporation.
Visa is a registered trademark of Visa International Service Association.

A2. GENERAL REGULATIONS

A7.10 Special Promotions (Cont'd)

AT-102 Descriptions (Cont'd)

4. The following decisions are of the kind of "discretionary" kind:

[illegible]

10/10/51
 10/10/51
 10/10/51
 10/10/51

100

RECEIVED BY THE DIRECTOR OF THE FBI ON 10-10-68

THIS DOCUMENT CONTAINS NEITHER RECOMMENDATIONS NOR CONCLUSIONS OF THE NATIONAL BUREAU OF STANDARDS. IT IS INTENDED TO PRESENT THE RESULTS OF THE WORK IN A MANNER THAT WOULD BE USEFUL TO OTHERS.

10-10-68

1. The first step in the process of identifying a problem is to recognize that a problem exists. This involves gathering information about the situation and identifying the specific issue that needs to be addressed.

[illegible]

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— 34 —

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the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.1 billion to 1.5 billion. The number of people aged 65 and over is expected to increase from 200 million to 400 million. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion.

Over the calendar year ending 31 March 2000, the following information was received from the following sources:

《...》

~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED~~

Corporation
The undersigned hereby certifies that the foregoing is a true and correct copy of the original of the same as the same is on file in the office of the undersigned.

SECRETARY OF THE ARMY

T050187

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: December 17, 2004 March 5, 2005

BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Twenty-Sixth Smith Revised Page 33
Cable Twenty-Sixth Smith Revised Page 33

EFFECTIVE: January 4 March 24, 2005

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.1 Descriptions (Cont'd)

A. The following promotions are approved by the Commissioner (Cont'd)

Area of Promotion	Service	Charges Waived	Period
(BELLSOUTH) BellSouth's service territory from central offices where services are available	Shoppers Cash Back for Complete Choice plans, PreferredPack plan, flat rate lines	New or existing residential customers who contact BellSouth and request information on local service or bundle prices for comparison with competitive offers and indicate a intention to place an order during the call will be offered a coupon redeemable for up to \$50 Cash Back or up to \$50 in merchandise as an incentive to close the sale. Existing residential customers who contact BellSouth to downgrade or disconnect their service will be offered a coupon redeemable for up to \$50 Cash Back or up to \$50 in merchandise if they agree to extend their service at a level that satisfies the criteria specified following. Restrictions and Eligibility Criteria: <ul style="list-style-type: none">- This Cash Back offer is limited to residential customers subscribing to or ordering one of the following services:<ul style="list-style-type: none">a. the PreferredPack plan,b. any of the Complete Choice plans, orc. flat rate individual line service with at least one vertical feature and at least one of the following services: a BellSouth Long Distance plan, a BellSouth Internet access plan or a Complete wireless plan.- Customers must have the eligible service on their new service order (N) or must maintain their current service on their existing account to receive a redeemable coupon.- A new customer must place a qualifying order on or before 12/31/05.- Offer valid for only one (1) service line at the qualifying local service address.- The customer must fill out a coupon and mail the coupon to a specified address by a specified date to receive up to \$50 cash back or merchandise.- If the customer cancels or discontinues the qualifying service prior to fulfillment, they will be ineligible for the cash back or merchandise offer.- This offer may be combined with other cash back or promotional offers on the same service, as such offers may be continuously 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 offer cannot be combined with non-coupon \$100 Cash Back or Gift Card offer, \$25 Gift Card offer, or offers that waive activation fees.- BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.	6/5/04 to 12/31/05

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: December 14, 2004 March 9, 2005
BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Revised Third Revised Page 33.6.3
Cancels First-Second Revised Page 33.6.3

EFFECTIVE: December 31, 2004 March 24, 2005

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	Description	Period	Authority
Beltsouth's Service Territory - From Central Office where service are available	USPS Target® Card Offer	Beltsouth USPS Target® Card Offer is available for customers ordering or transferring service with Beltsouth. Customers will be advised to place their Beltsouth order via a website. Customers purchasing Beltsouth service (N or T orders) via an online ordering system will receive a Target® Gift Card valued at twenty-five dollars (\$25.00).	10/28/04 to 4/30/05	16D
Rules And Regulations				
-Orders must be placed via an online tool (listed in e-Beltsouth).				
-Orders placed via phone or the Consumer Large Town will not be eligible for this offer.				
-Orders must be placed on or by April 30, 2005.				16D
-Offer is limited to one (1) eligible line per customer.				
-Offer may not be combined with Reconnection \$100 Cash Back or Gift Card offer or the Reconnection \$25 VISA® Gift Card or Reconnection \$25 Visa® Gift Card or \$50 Sharpless Cash Back or Service Connection Waiver.				16D
-Beltsouth reserves the right to modify this promotion at any time following any required Commission action.				

All Beltsouth events contained herein and as set forth in the trademarks and service marks section of this Tariff are owned by Beltsouth Intellectual Property Corporation.
Target® is registered trademark of Target Brands, Inc.
Visa is registered trademark of Visa International Service Association.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: December 17, 2004 March 5, 2005
BY: Joseph P. Lachier, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

First Second Revised Page 35.6.3
Cancel Original First Revised Page 35.6.3

EFFECTIVE: January 1 March 31, 2005

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	SFD Gift Card Offer	<p>Customers moving into contracted, newly contracted SFDs (Single Family Dwellings) will receive collateral that will include a coupon redeemable for a gift card valued at fifty-dollars (\$50.00). The gift card will not be redeemable for cash.</p> <p>Rules And Regulations:</p> <ul style="list-style-type: none"> -Offer begins July 15, 2004 and ends December 31, 2005. -Customers receive collateral from the SFD sales offices with instructions to place their order via an online tool or to an 800 number to BellSouth. -To redeem the coupon, the customer must first establish service with BellSouth via either ordering tool or designated 800 number or by contacting a BellSouth representative in a BellSouth call center. After establishing service, the customer must enter their new telephone number onto their coupon before redeeming. -Customers establishing service in non-served SFD locations may receive a coupon for BellSouth upon demand. -Offer available only to customers establishing service (TV or T order) in a newly contracted SFD. -Customers returning to BellSouth must not have had local service with BellSouth at least 90 (ninety) days prior to the new service connection date. -The customer must place the order on or before December 31, 2005. -Offer valid for only one (1) service line per local service address. -Customer is limited to one (1) gift card coupon per twelve (12) month period. -The customer must place their order through a BellSouth business office or authorized subcontracting vendor or the alternative channel indicated on the direct mail piece or collateral provided. -Offer may not be combined with Redemption \$100 Cash Back or Gift Card offer or Redemption \$25 VISA Gift Card or Redemption \$25 Visa® Gift Card or \$50 Shopping Cash Back or Service Connection Waiver. -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 these promotions with any other promotions at the Company's sole discretion. -BellSouth reserves the right to discontinue or modify this promotion at any time without notice. 	07/15/04 to 12/31/05	(6)
				(6)
				(6)
				(1)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: March 9, 2001
BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 12.1
Current Form Revised Page 12.1

EFFECTIVE: March 14, 2001

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	\$100 Cash Back or Gift Card Offer	Customers receiving or BellSouth and purchasing a Complete Choice family plan or PreferredPlan plan will be eligible to receive \$100 cash back or a \$100 Visa® gift card.	3/24/01 to 12/31/01	(C)
Central Office where services are available		Restrictions and Eligibility Criteria:		(N)
		- 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.		
		- Customer must have local service or equivalent (wireless or line of wire-line) at the same local service address on one or more of their existing lines.		
		- 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.		
		- Customer must have not had local service with BellSouth in last two (10) days prior to the new service installation date to be eligible.		
		- The customer must switch their local service to BellSouth and purchase any one of the following: Complete Choice plan, Complete Choice Two-Line Plan package, Complete Choice Three-Line Plan package, Area Plan with Complete Choice plan, Area Plan with Complete Choice Two-Line Plan package, Area Plan with Complete Choice Three-Line Plan package, or PreferredPlan plan.		(N)(T)
		- Customer must have the eligible service on their new service order (P) in order to receive the promotional offer.		
		- Offer valid for only one (1) service line at the intended local service address.		
		- BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.		
		- The customer must place the order on or before 12/31/01.		(C)
		- The customer must place their order through a BellSouth business office or authorized telemarketing vendor or internet channel.		(C)
		- 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 or gift card.		(C)
		- Once the customer completes the above requirements they will receive the \$100 cash back or gift card. If the customer cancels or discontinues the qualifying service prior to fulfillment, he will be ineligible for this offer.		(C)

Material appearing on this page previously discussed on page(s) 11.1 of this tariff.

All BellSouth marks contained herein and in all BellSouth trademarks and service marks herein of the U.S. and are owned by BellSouth Intellectual Property Corporation.
VISA is registered trademark of Visa International Service Association.

As BellSouth's service providers, we are committed to providing you with the highest quality service. We will continue to work with you to ensure that your service is always available and that we are always there for you when you need us. We will continue to work with you to ensure that your service is always available and that we are always there for you when you need us.

Area of Promotion: Service
 BellSouth's Service: 1-800-444-4444
 Offer may be extended into each local office in your promotional office on the same
 - Offer may be extended into each local office in your promotional office on the same
 services as each office may be extended into each local office in your promotional office on the same
 the Company reserves the right to modify the conditions of this promotion with any
 other promotion, at the Company's sole discretion.
 - Customer may not receive more than \$100 cash back and the \$100 cash back. If customer
 does not specify which reward he/she prefers, customer will receive the \$100 cash back.

Period
 1/1/05
 12/31/05

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.2 Description (Cont'd)

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

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.1 Descriptions (Cont'd)

A. The following promotions are approved by the Commission: (Cont'd)

Area of Promotion	Service	Change Waived	Period
BellSouth's service territory from current offerings where services are available	Shopper's Cash Back for Complete Choice plans, PredefinedPlan plan, Flat rate line	New or existing residential customers who contact BellSouth and request information on local service or bundle plans for comparison with competitive offers and activate a relationship to place an order during the call will be offered a coupon redeemable for up to \$50 Cash Back or up to \$50 in merchandise at an amount to their choice.	05/15/01 to 12/31/01
		Existing residential customers who contact BellSouth to downgrade or disconnect their service will be offered a coupon redeemable for up to \$50 Cash Back or up to \$50 in merchandise if they agree to extend their service to a level that satisfies the criteria specified following.	
		Restrictions and Eligibility Criteria:	
		- This Cash Back offer is limited to residential customers subscribing to or ordering one of the following services:	
		a. the PredefinedPlan plan,	
		b. any of the Complete Choice plans, or	
		c. the one individual line service with at least one vertical feature and at least one of the following services: a BellSouth Long Distance plan, a BellSouth Internet access plan or a Complete watching plan.	
		- Customer must have the eligible services on their new service order (NO) or must maintain their current service on their existing account to receive a redeemable coupon.	
		- A new customer must place a qualifying order on or before 12/31/01.	
		- Offer valid for only one (1) service line at the qualifying local service address.	
		- The customer must fill out a coupon and mail the coupon to a specified address by a specified date to receive up to \$50 cash back or merchandise.	
		- If the customer cancels or disconnects the qualifying service prior to fulfillment, they will be ineligible for the cash back or merchandise offer.	
		- The offer may be combined with other cash back or promotional offers on the same service, as such offers may be occasionally 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 offer cannot be combined with merchandise \$100 Cash Back or Gift Card offers, \$25 Gift Card offers, or offers that waive activation fees.	(7)
		- BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.	

THIS REVIEW PAGE IS A
 (MAY BE USED FOR THE
 EFFECTIVE DATE 03/27/2008

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

BELLSOUTH
 TELECOMMUNICATIONS, INC.
 FLORIDA
 ISSUED: March 9, 2000
 BY: Joseph P. Leland, President
 Miami, Florida

AT. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

42101 Distributions (Cont'd)

The following questions are to be asked by the witness (continued):

[illegible][illegible]

—Orders placed via phone or the Consumer Line must be placed by 5:00 PM.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

—One is located in one (1) of the following:

[illegible]

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08-14-2010 BY 60322 UCBAW

At Dallas, the following items are on file in the records of the Dallas Police Department:

RECEIVED BY THE DIRECTOR, FBI, 11/11/64

BELLSouth
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: March 9, 2005
BY: Joseph P. Lacher, President -F1
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 35.6.9
Cancel First Revised Page 35.6.6

EFFECTIVE: March 24, 2005

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
BellSouth's Service: SFD Gift Card Offer
Territory - F1
Central Office where
services are available

Charger Waiver

Customers moving into constructed, newly constructed SFDs (Single Family Dwellings) will receive collateral that will include a coupon redeemable for a gift card valued at fifty-dollars (\$50.00). The gift card will not be redeemable for cash.

Rules And Regulations

-Offer begins July 22, 2004 and ends December 31, 2005.

-Customers receive collateral from the SFD sales offices with instructions to place their order via an online tool or to an MD number to BellSouth.

-To redeem the coupon, the customer must first establish service with BellSouth via online ordering tool or designated MD number or by contacting a BellSouth representative in a BellSouth call center. After establishing service, the customer must enter their new telephone number onto their coupon before redeeming.

-Customers establishing service in non-targeted SFD locations may receive a coupon for fulfillment upon demand.

-Offer available only to customers establishing service (N or Y order) in a newly constructed SFD.

-Customers referring to BellSouth must not have had local service with BellSouth at least 180 days prior to the new service connection date.

-The customer must place the order on or before December 31, 2005.

-Offer valid for only one (1) service line per local service address.

-Customer is limited to one (1) gift card coupon per twelve (12) month period.

-The customer must place their order through a BellSouth business office or outbound salesperson or the alternative channel indicated on the direct mail piece or collateral provided.

-Offer may not be combined with Acquisition \$300 Cash Back or Gift Card offer or Retention \$25 VISA Gift Card or Retention \$25 Visa® Gift Card or \$50 Shopping Card Back or Service Connection Waiver.

-Offer may be combined with cash back offers or other promotional offers on the same services, as such offers may be concurrently available from time to time, provided that the Company reserves the right to prohibit the combination of these promotions with any other promotions at the Company's sole discretion.

-BellSouth reserves the right to discontinue or modify this promotion at any time without notice.

Period:
Authority:
9711504
to
12/31/05

(1)

7041265

BoltSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
marshall.m.criser@bolt.com

Marshall M. Criser III
Vice President
Regulatory & External Affairs

(850) 224-7798
Fax (850) 224-5073

December 17, 2004

Beth Salak, Director
Competitive Markets and Enforcement
Attn: Tariff Section
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Ms. Salak:

Pursuant to Florida Statute 364.051, we are filing revisions to our General Subscriber Service Tariff. Attached for filing with the Commission is the following tariff page:

General Subscriber Service Tariff

Section A2 - Twenty Sixth Revised Page 33

These revisions extend the Shoppers Cash Back promotion. Attachment A contains an Executive Summary of the program.

Acknowledgment, date of receipt and authority number of this filing are requested.

Yours very truly,

Regulatory Vice President

Attachments

EXHIBIT - C

Promotion Description

Shoppers Cash Back Extension

Overview

The Shoppers Cash Back promotion began May 15, 2004, and was scheduled to end December 31, 2004. The Company will extend the end date of this promotion until December 31, 2005.

Promotion Specifics

New or existing customers who contact BellSouth and request information on local service or bundle prices for comparison with competitive offers and indicate a reluctance to place an order during the call will be offered a coupon redeemable for up to \$50 Cash Back or up to \$50 in merchandise as an incentive to close the sale.

Existing customers who contact BellSouth to downgrade or disconnect their service will be offered a coupon redeemable for up to \$50 Cash Back or up to \$50 in merchandise if they agree to extend their service at a level that satisfies the criteria specified below.

Restrictions/Eligibility Requirements

1. This Cash Back offer is limited to customers subscribing to or ordering one of the following services:
 - a. the PreferredPack[®] plan,
 - b. any of the Complete Choice[®] plans, or
 - c. flat rate individual line service with at least one vertical feature and at least one of the following services: a BellSouth[®] Long Distance plan, a BellSouth Internet access plan or a Cingular[®] wireless plan.
2. Customer must have the eligible services on their new service order (N) or must maintain their current services on their existing account to receive a redeemable coupon.
3. A new customer must place a qualifying order on or before December 31, 2005.
4. Offer valid for only one (1) service line at the qualifying local service address.
5. The customer must fill out a coupon and mail the coupon to a specified address by a specified date to receive the cash or merchandise.
6. If the customer cancels or discontinues the qualifying service prior to fulfillment, they will be ineligible for the cash back offer.
7. This offer may be combined with other cash back or promotional offers on the same services, 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.
8. This offer cannot be combined with reacquisition cash back offers.
9. BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: December 17, 2004
BY: Joseph P. Lacher, President-F.L.
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Twenty Sixth Revised Page 33
Twenty Fifth Revised Page 33

EFFECTIVE: January 1, 2005

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.2 Descriptions (Cont'd)

A. The following promotions are approved by the Commission: (Cont'd)

Area of Promotion	Service	Changes Made	Period	(D)
(DELETED)				
Beltsouth's service territory from original offices where services are available	500ppm Cash Back for Complete Choice plan, PreferredPack plan, Flat rate lines	New or existing residential customers who contact Beltsouth and request information on local service or bundle prices for comparison with competitive offers and indicate a reluctance to place an order during the call will be offered a coupon redeemable for up to \$50 Cash Back or up to \$50 in merchandise or an incentive to close the sale. Existing residence customers who contact Beltsouth to downsize or discontinue their service will be offered a coupon redeemable for up to \$50 Cash Back or up to \$50 in merchandise if they agree to extend their service at a level that satisfies the criteria specified following. Restrictions and Eligibility Criteria: - This Cash Back offer is limited to residence customers subscribing to or ordering one of the following services: a. the PreferredPack plan, b. any of the Complete Choice plan, or c. flat rate individual line service with at least one vertical feature and at least one of the following services: a Beltsouth Long Distance plan, a Beltsouth national access plan or a Cellular wireless plan. - Customer must have the eligible service on their new service order (N) or must migrate their current services on their existing account to receive a redeemable coupon. - A new customer must place a qualifying order on or before 12/31/05. - Offer valid for only one (1) service line at the qualifying level service address. - The customer must fill out a coupon and mail the coupon to a specified address by a specified date to receive up to \$50 cash back or merchandise. - If the customer cancels or discontinues the qualifying service prior to fulfillment, they will be ineligible for the cash back or merchandise offer. This offer may be combined with other cash back or promotional offers on the same services, 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 offer cannot be combined with merchandise \$100 Cash Back offers, \$25 Call Card offers, or offers that waive activation fees. - Beltsouth reserves the right to discontinue or modify this promotion at any time without customer notice.	05/15/04 to 12/31/05	(C)

Marshall M. Chert III
Vice President
Regulatory & External Affairs

(850) 224-3746
Fax (850) 224-3573

Beckwith Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
marshall.chert@beckwith.com

December 17, 2004

Ben Salak, Director
Competitive Markets and Enforcement
ATTN: Tariff Section
1540 Sturtevant Oak Boulevard
Tallahassee, Florida 32399-0850
Dear Mr. Salak:

Pursuant to Florida Statute 364.051, enclosed is a package filing for STD GIN Card Offer. The issue and effective dates for this tariff package are December 17, 2004 and January 1, 2005, respectively.

(General Subscriber Service Tariff)

Section A2

First Revised Page 35.6.9

Acknowledgment, date of receipt and authority number of this filing are requested. Your consideration and approval will be appreciated.

Yours very truly,

Marshall M. Chert III

Regulatory Vice President

Attachments

Promotion Description

SFD Gift Card Offer Extension

Proposed Promotion

BellSouth SFD Gift Card Offer, which began July 13, 2004 and ends December 31, 2004, is extended from January 1, 2005 to December 31, 2005. Customers moving into targeted, newly constructed Single Family Dwellings, Townhomes or Condominiums will receive collateral redeemable for a gift card valued at fifty-dollars (\$50.00). The gift card will not be redeemable for cash.

Promotion Specifics

1. Extended from January 1, 2005 to December 31, 2005.
2. Targeted at customers who purchase newly constructed SFDs (Single Family Dwellings) in contracted communities.
3. Customers receive collateral from the SFD sales offices with instructions to place their order via an online tool or to an 800 number to BellSouth.
4. To redeem the coupon, the customer must first establish service with BellSouth via online ordering tool or designated 800 number or by contacting a BellSouth representative in a BellSouth call center. After establishing service, the customer must enter their new telephone number onto their coupon before redeeming.
5. Customers establishing service in non-targeted SFD locations may receive a coupon for fulfillment upon demand.

Restrictions/Eligibility Requirements

1. Offer available only to customers establishing service (N or T order) in a newly constructed SFD.
2. Customers returning to BellSouth must not have had local service with BellSouth at least ten (10) days prior to the new service connection date.
3. The customer must place the order on or before December 31, 2005.
4. Offer valid for only one (1) service line per local service address.
5. Customer is limited to one (1) gift card coupon per twelve (12) month period.
6. The customer must place their order through a BellSouth business office or outbound telemarketing vendor or the alternative channel indicated on the direct mail piece or collateral provided.
7. Offer may not be combined with Reacquisition \$100 Cash Back offer or Reacquisition \$25 VIP Gift Card or Reacquisition \$25 Visa Gift Card or \$50 Shoppers Cash Back or Service Connection Waiver.
8. Offer may be combined with cash back offers or other promotional offers on the same services, as such offers may be concurrently available from time to time, provided that the Company reserves the right to prohibit the combination of these promotions.

Tariff Filing Package Number: FL 2004-128

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED January 17, 2004 June 10, 2004
BY: Joseph P. Lockett, President -FI
Miami, Florida

GENERAL SUBSCRIBER SERVICE TABLE

Original Form Revised Page 35.6.8
(Insert Original Page 35.6.9)

July 15, 2004 EFFECTIVE February 1, 2005

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	SFD Gift Card Offer	Customers moving into contracted, newly constructed SFDs (Single Family Dwellings) will receive a gift card that will include a coupon redeemable for a gift card valued at fifty dollars (\$50.00). The gift card will not be redeemable for cash.	07/15/04 to 12/31/04	04-11
		Rules And Regulations:	11.05	(4)
		-Offer begins July 15, 2004 and ends December 31, 2004 December 31, 2004		04-11
		-Customers receive a coupon from the SFD sales office with instructions to place their order via an online tool or by calling 800 number or by contacting a BellSouth representative at a BellSouth call center. After establishing service, the customer must enter their new telephone number onto their coupon before redeeming.		(4)
		-Customers establishing service at non-targeted SFD locations may receive a coupon for fulfillment upon demand.		(4)
		-Offer available only to customers establishing service (N or Y order) in a newly constructed SFD.		(4)
		-Customers receiving at BellSouth must not have had local service with BellSouth at least ten (10) days prior to the new service connection date.		(4)
		-The customer must place the order on or before December 31, 2004 December 31, 2004.		04-11
		-Offer valid for only one (1) service line per local service address.		(4)
		-Customer is limited to one (1) gift card coupon per twelve (12) month period.		(4)
		-The customer must place their order through a BellSouth business office or authorized participating vendor or the alternative channel indicated on the direct mail piece or collateral provided.		(4)
		-Offer may not be combined with Acquisition \$100 Cash Back offer or Reacquisition \$25 VBP Gift Card or Reacquisition \$25 Visa Gift Card or \$30 Shopper Cash Back or Service Connection Waiver.		(4)
		-Offer may be combined with cash back offers or other promotional offers on the same service, at such times may be concurrently available from time to time, provided that the Company reserves the right to prohibit the combination of these promotions with any other promotions at the Company's sole discretion.		(4)
		-BellSouth reserves the right to discontinue or modify this promotion at any time without notice.		(4)

EFFECTIVE: January 1, 2005

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.1 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	\$50 Gift Card Offer	Customers moving into contracted, newly constructed NIDs (Single Family Dwellings) will receive collateral that will include a coupon redeemable for a gift card valued at fifty dollars (\$50.00). The gift card will not be redeemable for cash.	07/15/04 to 12/31/05	(C)
Rules And Regulations				
-Offer begins July 15, 2004 and ends December 31, 2005.				
-Customers receive collateral from the SPD sales offices with instructions to place their order via an online tool or to an 800 number at BellSouth.				
-To redeem the coupon, the customer must first establish service with BellSouth via either ordering tool or designated 800 number or by contacting a BellSouth representative in a BellSouth call center. After establishing service, the customer must enter their new telephone number onto their coupon before redeeming.				
-Customers establishing service in non-targeted SPD locations may receive a coupon for fulfillment upon demand.				
-Offer available only to customers establishing service (N or T order) in a newly constructed SPD.				
-Customers returning to BellSouth must not have had local service with BellSouth in least ten (10) days prior to the new service connection date.				
-The customer must place the order on or before December 31, 2005.				
-Offer valid for truly one (1) service line per listed service address.				
-Customer is limited to one (1) gift card coupon per twelve (12) month period.				
-The customer must place their order through a BellSouth business office or authorized telemarketing vendor or the alternative channel indicated on the direct mail piece or collateral provided.				
-Offer may not be combined with Reacquisition \$100 Cash Back offer or Reacquisition \$25 VWR Gift Card or Reacquisition \$25 VWR Gift Card or \$20 Shopper's Cash Back or Service Connection Waiver.				
-Offer may be combined with cash back offers or other promotional offers on the same services, as such offers may be concurrently available from time to time, provided that the Company reserves the right to prohibit the combination of these promotions with any other promotions at the Company's sole discretion.				
-BellSouth reserves the right to discontinue or modify this promotion at any time without notice.				

Beith Salah, Director
Competitive Markets and Enforcement
ATTN: Tariff Section
1540 Shawmut Oak Boulevard
Tallahassee, Florida 32399-0850
Tallahassee, Florida 32301
DATE: 1/14/2004
FAX: (904) 224-7798
FAX: (904) 224-5070

January 14, 2004

Dear Mr. Salah:
Enclosed is a package filing to revise the end date for BoothSouth 1PK+2 Free Features Promotion from March 31, 2005 to January 31, 2005.

General Subscriber Service Tariff
Section A2
2nd Revised Page 33.5.1.3

The issue and effective dates for this tariff package are January 14, 2004 and January 31, 2005, respectively.
Acknowledgment, date of receipt and authority number of this filing are requested. A duplicate letter of transmittal is attached for this purpose.

Your consideration and approval will be appreciated.

Yours very truly,

Regulatory Vice President
Attachments

T050098

Promotion Description

1FR with 2 Features At No Charge for 12 Months Promotion (Extension)

Proposed Promotion

The 1FR with 2 Features At No Charge for 12 Months is extended until January 31, 2005.

Promotion Specifics:

This promotion offers reacquisition or winover customers who purchase a 1FR (local line) from BellSouth and who are not currently using BellSouth for local service, two (2) features at no charge for twelve (12) months.

Restrictions/Eligibility Requirements:

1. 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.
2. 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.
3. 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.
4. Customer must have not had local service with BellSouth at least 10 days prior to the new service connection date.
5. The customer must switch their local service to BellSouth and purchase BellSouth basic service.
6. The customer must place the order on or before January 31, 2005.
7. Offer valid for only one (1) service line at the intended local service address.
8. The customer must place their order through a BellSouth business office or outbound telemarketing vendor or alternate channels as indicated.
9. Once the customer completes the above requirements they will receive three local line features without charge for 12 months. If the customer cancels or discontinues the qualifying service, he will be ineligible for this offer.
10. BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.
11. Customer must have the eligible services on their new service order (N) in order to receive the promotional offer.
12. This promotion may not be combined with the Reacquisition \$100 1FR + 2 features Cash Back offer.
13. Offer may not be combined with any cash back offers; however, this offer may be combined with other promotional offers on the same services, 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.

Tariff Filing Package Number: F1 2004-204

All BellSouth marks contained herein are the property of BellSouth Corporation and are used under license from BellSouth Corporation. All other marks contained herein are the property of their respective owners.

T050028

BELL SOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: January 14, 2005 September 13, 2005
BY: Joseph P. Lacher, President & CEO
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

First Second Revised Page 35 of 33
Currents First Revised Page 35 of 33

EFFECTIVE: January 11, 2005 (1/11/05) 0.0000

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 and are:

Area of Promotion	Service	Charges/Waived	Period	Comments
BellSouth's Service Territory	Basic Local Service with 7	-This promotion offers	10/01/04	(1)(1)
- From Central Office where features are available	features are available (Cont'd) Months	reimbursement of whatever	10	10/01/04/11/01
-Customer must either not	currently have local service with	customers who purchase basic		
BellSouth or not have service with	BellSouth on one or more of their	local service from BellSouth and		
existing lines, including the line	on which the service qualifying	who are currently not using		
for this promotion will be	provided.	BellSouth for local service two		
-Customer must have local	service or equivalent (wireless in	(1) features at no charge for 12		
line of wire-line) at the same local	service address on one or more of	months.		
their existing lines.		-Customer must have the		
-Customer must request service at	the same address and in the same	eligible services on their new		
name, unless customer is planning	to move from one	service order (N) in order to		
address in BellSouth territory to	another address in BellSouth	receive the promotional offer.		
territory within 10 days of	responding to the offer. In the	-Offer valid for only one (1)		
event of an address move, the	BellSouth rep can offer the	service line at the intended local		
customer the promotion and place	the order at the new address.	service address.		
-Customer must have not had	local service with BellSouth at	-The customer must place the		
least 10 days prior to the new	service connection date.	order on or before March 31,		
-The customer must switch their	local service to BellSouth and	2005 January 11, 2005		
purchase BellSouth basic service.		-This promotion may not be		
-The customer must place their	order through a BellSouth	combined with 100% 17% + 2		
business office or customer	representative within 10 business	Cash Back Offer.		
days of activation.		-Offer may not be combined		
-Once the customer completes	above requirements they will	with cash back offers however,		
receive two local line features for	free for 12 months. If the	this offer may be combined with		
customer cancels or discontinues	the qualifying service, the offer	other promotional offers on the		
will be null and void.		same service, as such offers		
		may be concurrently available		
		from time to time, provided that		
		the Company reserves the right		
		to provide the combination of		
		this promotion with any other		
		promotions at the Company's		
		sole discretion.		
		- BellSouth reserves the right to		
		discontinue or modify this		
		promotion at any time without		
		notice.		

EFFECTIVE: January 31, 2000

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	Basic Local Service with 2	-This promotion offers	1/1/99-04	(K)
from Central Office where Features At No Charge for 12	services are available (Cont'd) Months	reconnection or wiperover	12	
		customers who purchase local	1/31/99	
	Customer must have not	local service from BellSouth and		
	previously have local service with	who are currently not using		
	BellSouth or not have service with	BellSouth for local service two		
	BellSouth on one or more of their	(2) features at no charge for 12		
	existing lines, including the line	months.		
	on which the service qualifying			
	for this promotion will be	-Customer must have the		
	provisioned.	eligible services on their new		
		service order (N) in order to		
		receive the promotional offer.		
	Customer must have local	-Offer valid for only one (1)		
	service or equivalent (wiperover is	service line at the extended local		
	line of wire-line) at the same local	service address.		
	service address on one or more of			
	their existing lines.			
	-Customer must request service at	-The customer must place the		(K)
	the same address and in the same	order on or before January 31,		
	name, unless customer is planning	2000.		
	to relocate more than one			
	address in BellSouth territory to	-This promotion may not be		
	another address in BellSouth	combined with \$100 LFR + 2		
	territory within 30 days of	Cash Back Offer.		
	responding to the offer. In the case			
	of an imminent move, the	Offer may not be combined		
	BellSouth rep can offer the	with cash back offer however,		
	customer the promotion and place	this offer may be combined with		
	the order at the new address.	other promotional offers on the		
		same service, as such offers		
	-Customer must have not had	may be concurrently available		
	local service with BellSouth at	from time to time, provided that		
	least 30 days prior to the new	the Company reserves the right		
	service connection date.	to provide the combination of		
		this promotion with any other		
	-The customer must switch their	promotion, at the Company's		
	local service to BellSouth and	sole discretion.		
	purchase BellSouth local service.			
		BellSouth reserves the right to		
	-The customer must place their	discontinue or modify this		
	order through a BellSouth	promotion at any time without		
	business office or outbound	customer notice.		
	telemarketing vendor or alternate			
	channels as indicated.			
	-Once the customer completes the			
	service requirements they will			
	receive local line features for			
	line for 12 months. If the			
	customer cancels or downgrades			
	the qualifying service, it will be			
	voidable.			

T041223

BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301

marshall.m.criser@bellsouth.net

Marshall M. Criser III
Vice-President
Regulatory & External Affairs

(850) 224-7795
Fax (850) 224-5373

December 10, 2004

Beth Salak, Director
Competitive Markets and Enforcement
Attn: Tariff Section
2540 Shumard Oak Boulevard
Tallahassee, Florida 32309-0850

Dear Ms. Salak:

Enclosed is a package filing for BellSouth Line Connection Fee Waiver Extension

General Subscriber Service Tariff

1st Revised Page 32.4

Section A2

The issue and effective dates for this tariff package are December 10, 2004 and December 26, 2004, respectively.

Acknowledgment, date of receipt and authority number of this filing are requested. Your consideration and approval will be appreciated.

Yours very truly,

Marshall M. Criser III mms

Regulatory Vice President

Attachments

EXHIBIT - F

Executive Summary

Line Connection Charge Waiver Extension

Planned Promotion

The Line Connection Charge Waiver promotion is extended to December 26, 2005. Services included in this promotion are:

- BellSouth Complete Choice plan
- BellSouth PreferredPack plan
- BellSouth basic service and one (1) custom calling (or Touchstar service) local features

Promotion Specifics:

Specific features of this promotion are as follows:

Waived line connection charge to reacquisition or winover 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) features will be waived.

Restrictions/Eligibility Requirements:

- 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.
- This promotion is not valid for out-of-region customers who are new to BellSouth.
- 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.
- 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.
- The customer must switch their local service to BellSouth and purchase any one of the following: BellSouth Complete Choiceplan, BellSouth PreferredPack plan, or BellSouth basic service and one (1) custom calling (or Touchstar service) local features.
- The customer must place the order on or before December 26, 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 channels as indicated.
- BellSouth reserves the right to discontinue or modify this promotion at any time without customer notice.
- Customer must have the eligible services on their new service order (N) in order to receive the promotional offer.
- Offer may be combined with other offers for the same service at the same time.

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REF ID: A66000

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EFFECTIVE December 16, 2004

AZ. GENERAL REGULATIONS

AZ.10 Special Promotions (Cont'd)

AZ.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	(C)
BellSouth's Service Territory - From Central Office where service not available	Line Connection Charge Waiver 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 provided. - The target customer for this promotion is a customer that purchased service from either a facility based or reseller CLIC. This promotion is not valid for out-of-region customers who are new to BellSouth. - Customer must have local service at equivalent (same or less of wire line) at the same local service address on one or more of their existing lines. - Customer must request service at the same address and in the same name, unless customer is placing 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 event of an imminent move, the BellSouth rep can offer the customer the promotion and place the order at the new address. The customer must switch their local service to BellSouth and purchase any one of the following: BellSouth Complete Choice plan, BellSouth PackagedPlan plan, or BellSouth basic service and line 10 minutes calling 1 or 3 minutes service local exchange.	The line connection charge is recognition or waiver residential customers who currently are not using BellSouth for local service and who purchase BellSouth Complete Choice service, BellSouth PackagedPlan service, or basic service and line (1) charge will be waived. - 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 customer satisfactory rep or alternate channel as indicated. - BellSouth reserves the right to discontinue or modify that promotion at any time without customer notice. - Customer must have the eligible service on their new service order (NO) in order to receive the promotional offer. Offer may be combined with responding to the offer. In the event of an imminent move, the BellSouth rep can offer the customer the promotion and place the order at the new address.	12/26/94 to 12/26/95	(C)
				(C)

BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301

marshall.crier@bellsouth.com

Marshall BL Crier III
Vice President
Regulatory & External Affairs

(850) 224-7705
Fax (850) 224-5073

December 24, 2004

Beth Salak, Director
Competitive Markets and Enforcement
Attn: Tariff Section
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Ms. Salak:

Pursuant to Florida Statute 364.051, we are filing revisions to our General Subscriber Service Tariff. Attached for filing with the Commission is the following tariff page:

General Subscriber Service Tariff

Section A2 - Second Revised Page 32.8

These revisions restart a special promotion for Complete Choice® service and the PreferredPack® plan. Attachment A contains an Executive Summary of the program.

Acknowledgment, date of receipt and authority number of this filing are requested.

Yours very truly,

Regulatory Vice President

Attachments

Promotion Description

\$5 Discount for Reacquisition and Winover

Overview

The \$5 Discount for Reacquisition and Winover promotion is scheduled to begin on January 9, 2005 and end on December 31, 2005. Services included in this promotion are the BellSouth® PreferredPack® plan and the BellSouth® Complete Choice® family of plans.

Promotion Specifics

Any potential customer who is currently using someone other than BellSouth for local service and who switches 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.

Restrictions/Eligibility Requirements

1. 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.
2. 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.
3. 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.
4. Customer must have not had local service with BellSouth for at least 10 days prior to the new service connection date.
5. The customer must switch their local service to BellSouth and 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 PIC and LPIC without selection of a Long Distance plan will not qualify a customer for this discount.
6. Customer must have the eligible services on their new service order (N) in order to receive the promotional offer.
7. The benefits of this promotion will be extended to existing BellSouth customers who call the BellSouth business office and request this specific offer.
8. The customer must place the order on or before December 31, 2005.
9. Offer valid for only one (1) service line at the intended local service address.
10. The customer must place their order through a BellSouth business office or outbound telemarketing vendor or alternate channel.
11. Once the customer completes the above requirements they will receive the \$5 discount on their monthly bill. If the customer cancels or discontinues one or more of the qualifying services, he will be ineligible for the discount.
12. BellSouth reserves the right to discontinue or modify this promotion at any time without notice.
13. Offer may be combined with cash back offers or other promotional offers on the same services, 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.

- The customer must place the order on or before January 15, 1970.
- After valid box ready date (i.e. service date at the intended food service address.
- The customer must place their order through a participating merchant or individual.
- If the customer cancels or discontinues use or more of the qualifying services, he will be ineligible for the discount.
- Subsequent changes to the right to discount are monthly. This provision is not three will.
- Additional details

[illegible]

The number at which the service quality for this protection will be determined must have been advised within the previous period. The customer must furnish this kind of service to BellSouth.

The customer must remain at the same address and in the same house, unless a change is indicated in writing. In case of temporary absence, the customer is permitted to change his address in BellSouth's territory in case of an emergency. The BellSouth representative can offer the customer the possibility of an emergency service within 30 days of temporary absence. In the case of an emergency, the BellSouth representative can offer the customer the possibility of an emergency service within 30 days of temporary absence. In the case of an emergency, the BellSouth representative can offer the customer the possibility of an emergency service within 30 days of temporary absence.

The service will be provided for at least 10 days prior to the date of the customer's request.

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EXCLUDED FROM AUTOMATIC
DOWNGRADING AND
DECLASSIFICATION

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A. The following procedures are to be used for the (continued)

A2102 Descriptions (Cont'd)

A2.10 Special Promotions (Cont'd)

A2. GENERAL REGULATIONS

BELLSOUTH
 TELECOMMUNICATIONS, INC.
 FLORIDA
 ISSUED: December 14, 2004
 BY: Joseph S. Lamber, President - FL
 Michael E. Brown

STATE OF NEW YORK - JAIL

~~SECRET~~

GENERAL INVESTIGATIVE DIVISION

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

42.10.2 Description (Cont'd)

4. The following information was obtained from the FBI records of the Central Intelligence Agency:

[illegible]

It is noted that the service quality of the promoter will be improved and the service quality of the promoter will be improved and the service quality of the promoter will be improved.

[illegible]

As a result of the above, the Commission has concluded that the information provided by the respondents is not sufficient to warrant the issuance of a subpoena. The Commission has also concluded that the information provided by the respondents is not sufficient to warrant the issuance of a subpoena. The Commission has also concluded that the information provided by the respondents is not sufficient to warrant the issuance of a subpoena.

1. The proposed sale of a product from the Campbell Soup family, and
2. A National Long Distance product with the National Long Distance telephone
number 1-800-888-8888. The proposed sale of a Long Distance product will not qualify a customer for
any discount.

[illegible][illegible][illegible]



100 N. Park Ave
Winter Park, FL
32789

P.O. Drawer 200
Winter Park, FL
32790 6200

Tel: 407-740-8575
Fax: 407-740-0613
tmi@tmiinc.com

T 040123

February 16, 2004
Via Overnight Delivery

Ms. Beth Salak
Director of Competitive Markets
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

RE: Tariff Revision for BellSouth Long Distance, Inc.

Dear Ms. Salak:

Enclosed for filing is the original and three (3) copies of a tariff revision filed on behalf of BellSouth Long Distance, Inc. This filing eliminates the calling card requirement from BellSouth® Dollar and BellSouth® Dollar Value plans. The Company respectfully requests an effective date of February 12, 2004 for this revision.

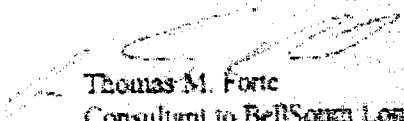
The following pages are included in this filing:

<u>Page</u>	<u>Change Made</u>
41 st Revised Page 2	Updates Check Sheet
13 th Revised Page 3	Updates Check Sheet
1 st Revised Page 157.14	Deletes calling card requirement from BellSouth® Dollar plan
1 st Revised Page 157.15	Deletes calling card requirement from BellSouth® Dollar Value plan

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for that purpose.

Any questions regarding this filing may be directed to my attention at (407) 740-8575.

Sincerely,


Thomas M. Forte
Consultant to BellSouth Long Distance, Inc.

TMF:mw
Enclosure

cc: Mario Soto - BellSouth
Robin Taylor - BellSouth
Nancy Sims - BSI
file: BellSouth - F1
ims: FLJ0404

EXHIBIT - H

SECTION 4.0 - RATES AND CHARGES. (CONT'D.)

4.2 Residential Service Offerings. (Cont'd.)

4.2.36 BellSouth[®] Dollar Plan

The BellSouth[®] Dollar plan is a direct dialed outboard long distance service offered to residential Customers from switched access lines. Service is offered on a flat rate basis, twenty-four hours per day, seven days per week. Customers must dial 1 plus the area code, if applicable, and the terminating number to complete a call utilizing this service.

(D)
(D)

All calls are billed in one (1) minute increments after an initial period, for billing purposes, of one (1) minute. This service is only offered in conjunction with the corresponding interstate BellSouth[®] Dollar plan. This service is not offered on an intralATA only basis.

(A) Rates and Charges

(1) Monthly Recurring Charge

Monthly Charge (per account): * \$1.00

(2) Per Minute Rate

Per Minute Charge: \$0.1000

- * This charge is the same as the Monthly Recurring Charge identified in the Company's Interstate Residential Services Pricing and Service Guide. Only one monthly recurring charge will apply when both interstate and intrastate service is provided to the Customer.

SECTION 4.0 - RATES AND CHARGES. (CONT'D.)

4.2 Residential Service Offerings. (Cont'd.)

4.2.37 BellSouth® Dollar Value Plan

The BellSouth® Dollar Value plan is a direct dialed outbound long distance service offered to residential Customers from switched access lines. Service is offered on a flat rate basis, twenty-four hours per day, seven days per week. Customers must dial 1 plus the area code, if applicable, and the terminating number to complete a call utilizing this service.

Customers of this plan must subscribe to BellSouth® Complete Choice® plan, BellSouth® Area Plus® plan or Flat Rate Residential Individual lines. Customers who subscribe to Flat Rate Residential Individual lines must also subscribe to at least two Associated Services listed in Section 3.15 of this tariff. These plans and services are provided by the Company's affiliated incumbent local exchange entity. The Customer must also receive billing for each of these services from the Company's affiliated incumbent local exchange entity. Customers who no longer meet the eligibility requirements identified above will be transferred to the BellSouth® Dollar plan without further notice.

(D)

(D)

All calls are billed in one (1) minute increments after an initial period, for billing purposes, of one (1) minute. This service is only offered in conjunction with the corresponding interstate BellSouth® Dollar Value plan. This service is not offered on an intraLATA only basis.

(A) Rates and Charges

(1) Monthly Recurring Charge

Monthly Charge (per account): * \$1.00

(2) Per Minute Rate

Per Minute Charge: \$0.1000

- * This charge is the same as the Monthly Recurring Charge identified in the Company's Interstate Residential Services Pricing and Service Guide. Only one monthly recurring charge will apply when both interstate and intrastate service is provided to the Customer.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 26.1
Cancels First Revised Page 26.1

ISSUED: December 24, 2003
BY: Joseph P. Lachar, President - FL
Miami, Florida

EFFECTIVE: January 3, 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 A183)

A3.4.6 PreferredPack Plan

A. Description of Service

1. The PreferredPack plan provides the features/services specified following and a flat rate access line with Touch-Tone capability.
2. The rate specified herein caters 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.
3. The rate specified herein also caters a residence subscriber to unlimited use of the features/services specified following from the listed sections of this Tariff:

- A13.9 Call Waiting, Deluxe, Three-Way Calling, Call Forwarding Busy Line, Call Forwarding Don't Answer (with or without Ring Control), Split 98 Access
- A13.19 Caller ID-Deluxe, Call Return
- A13.47 Message Waiting Indication
- A13.70 Privacy Director service

B. Regulations and Limitations of Service

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.
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.
3. All features/services are furnished only from central offices that have been arranged to provide these services. The features/services are provided subject to availability of facilities.
4. Service charges specified in Section A4. 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.
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.
6. The PreferredPack plan can be suspended as specified in A2.1.16 of this Tariff. During the period of suspension, the rate specified following applies.

C. Rates and Charges

1. The following monthly rates apply for the PreferredPack plan.

	Suspend Rate	Monthly Rate	USOC	
(a) Per plan package	\$5.50	\$24.95	PAMAS	00

A3. BASIC LOCAL EXCHANGE SERVICE

A3.4 Flat Rate Service (Cont'd)

A3.4.2 Monthly Rates (Cont'd)

D. Auxiliary Line Service (Inward Service) (Cont'd)

3. The auxiliary line is to be used for one way (inward to the subscriber) service only.
4. Auxiliary line service may or may not be arranged for rotary, banking or similar service which allows completion of an incoming call from a line that is called but is in use, by means of an arrangement of central office equipment on a full time basis.
5. Auxiliary line service is furnished at a rate for each line equal to the rate applicable for business individual line flat rate service for that exchange. Where the lines are arranged for rotary, banking or similar service, the rotary charge will apply as specified in A3.6.

a. Rates

(1) Rate Groups 1-6

	Group						USOC
(a) Per Auxiliary line	1	2	3	4	5	6	7FB
(b) Multi-line Exchange Access Line ¹	\$28.95	\$21.58	\$22.75	\$22.76	\$34.75	\$25.84	7MB
(2) Rate Groups 7-12	13.95	24.95	28.95	29.95	34.95	32.95	7MB

	Group						USOC
(a) Per Auxiliary line	7	8	9	10	11	12	7FB
(b) Multi-line Exchange Access Line ¹	\$26.72	\$27.61	\$28.43	\$29.85	\$29.68	\$38.20	7MB
	11.95	24.95	34.95	36.95	34.75	26.95	7MB

E. Mobile Service Exchange Charge

1. See Section A17. for Rates.

F. Outgoing Only Service

1. See A3.29 for regulations and rates.

A3.4.3 Complete Choice Service

A. General

1. Complete Choice service provides the features specified following in conjunction with a flat rate access line. The access line includes Touch-Tone capability.
2. The rate specified herein enables a residence subscriber to access all exchange access lines in the subscriber's local calling area as defined in A3.3.1 of this Tariff.
3. The rate specified herein also enables a residence subscriber to unlimited use of the services/features specified in the following sections of this Tariff:

- A13.9 Common Calling Services
- A13.19 TouchStar Services excluding Calling Number Delivery Blocking-Permanent
- A13.20 Customized Code Restriction
- A13.34 Ringblaster Service
- A13.47 Message Waiting Indication
- A13.10 Obsolete Common Calling Services
- A12.16.2.A Call Hold and Call Pickup only (PCS limitations do not apply)

A subscriber may select an unlimited number of compatible services or features from the sections listed above. All rules, regulations and limitations specified in the sections listed (except as indicated above) apply to the respective services/features requested as part of this service. Service charges specified in Section A.4. of this Tariff do not apply for transactions involving only additions, deletions or changes to the services/features requested as part of this service.

Note 1: The Multi-line Exchange Access Line rate applies per line to subscribers with more than one exchange access line.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: March 13, 2003
BY: Joseph P. Lacher, President -FL
Miami, Florida

~~CONFIDENTIAL - INTERNAL USE ONLY~~
GENERAL SUBSCRIBER SERVICE TARIFF

Ninth Revised Page 25
Cancels Eighth Revised Page 25

EFFECTIVE: March 24, 2003

A3. BASIC LOCAL EXCHANGE SERVICE

A3.4 Flat Rate Service (Cont'd)

A3.4.3 Complete Choice® Service (Cont'd)

A. General (Cont'd)

4. Residence customers may subscribe to the Two-Line Plan or the Three-Line Plan for Complete Choice® service. Both plans offer bundling as specified in A3.6 at no additional charge in addition to the features listed in 3. preceding. All services/features specified as available with Complete Choice® service are available with each line of a multi-line package. All lines in each multi-line package must be billed to the same account and located at the same premises.
5. Service charges specified in Section A4. of this Tariff do not apply for a conversion of existing service to/from Complete Choice® service.
6. Existing customers of Complete Choice® service can not take advantage of special promotions for Complete Choice® service or Area Plus® service with the Complete Choice® option or any of the services/features specified in 3. preceding unless specifically allowed by the terms of the special promotion.

B. Rates and Charges

1. The following monthly rates apply for Complete Choice® service.

a. Individual line service

(i) Residence

	Separate	Monthly	USOC
	Rate	Rate	NA
(A) Per line (USOCs VR1 and VSB must both be used to provide this service.)	\$5.00	\$10.00	NA
(b) Per Two-Line Plan package or Credit for two individual lines qualifying as Two-Line Plan package	\$11.00	\$20.00	CCML2 CRD2C
(c) Per Three-Line Plan package	\$14.00	\$29.00	CCML3

A3.4.4 Area Plus® Service

A. General

1. Area Plus® service provides residence subscribers a flat rate access line with unlimited calling to all access lines within the serving exchange, the additional exchanges in the associated Extended Area Service (EAS) and Extended Calling Service (ECS) categories as specified in A3.3.1 of this Tariff, and all other exchanges in the subscriber's LATA. The LATA for each exchange is indicated in A3.3.1 and the exchanges in each LATA are listed in A3.3.2. The access line includes Touch-Tone capability.

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 72b

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Implementation of Session Law 2003-91,)	
Senate Bill 814 Titled "An Act to Clarify the)	ORDER RULING ON MOTION
Law Regarding Competitive and Deregulated)	REGARDING PROMOTIONS
Offerings of Telecommunications Services")	

BY THE COMMISSION: On June 25, 2004, the Public Staff filed a Motion for Order Concerning Eligibility for One-Day Notice and ILECs' Obligations to Offer Promotions to Resellers. On July 7, 2004, the Commission issued an *Order Seeking Comments on the Public Staff's Motion Regarding Promotions* with initial comments due no later than August 6, 2004 and reply comments August 24, 2004. The following parties or groups of parties filed timely initial comments: the Public Staff; BellSouth Telecommunications, Inc. (BellSouth); Time Warner Telecom of North Carolina, L.P., US LEC of North Carolina, Inc., and Southeastern Competitive Carriers Association (collectively, the "Joint Commenters"); and ALLTEL Carolina, Inc., Carolina Telephone and Telegraph Company, Central Telephone Company, and Verizon South Inc. (collectively, the "ILECs").

By *Supplemental Order* issued on August 24, 2004, the Commission granted the Public Staff's Motion for an extension of time until August 31, 2004, for all parties to file reply comments. The following parties filed timely reply comments: the Public Staff, BellSouth, Verizon South Inc. (Verizon), and Carolina Telephone and Telegraph Company (Carolina) and Central Telephone Company (Central) (collectively, "Sprint").

PUBLIC STAFF'S MOTION

The Public Staff's Motion sought the Commission's further guidance on the proper construction of the provision in G.S. 62-133.5(f) authorizing the filing on one day's notice and without Commission approval of

any promotion or bundled service offering for residence or business customers involving both regulated and nonregulated services that feature price discounts that apply exclusively to services not regulated by the Commission.

G.S. 62-133.5(f). Specifically, the Public Staff sought guidance on construction of the statutory language as it relates to matters regarding promotional discounts/nonregulated

EXHIBIT - K

service as set forth below. In addition, the Public Staff sought guidance, also as set forth below, on the application of the resale obligation created by TA96.

A. Promotional Discounts/Nonregulated Service

1) *Are gift cards, checks, coupons for checks or similar types of benefits promotional discounts or nonregulated services, as Carolina/Central have contended?*

The **Public Staff** argued that bill credits, gift cards, checks or coupons offered to customers by a company's regulated business as a promotion to encourage subscription to a regulated service are promotions featuring price discounts. When inducements such as gift cards are given in exchange for subscription to both regulated and nonregulated services, the customer effectively receives a price discount even though the company's tariffed price for the regulated service remains unchanged. It is irrelevant whether the cost of the telecommunications service is directly affected or the customer reduces his expenses elsewhere through use of a gift card, check or coupon. The Public Staff further stated that gift card type promotions are not telecommunications services.

The **Joint Commenters** noted that, while not "services" according to the definition in G.S. 62-3(27), gift cards, checks, coupons and similar incentives are discounts offered to induce customers to purchase certain specified services. In order to invoke the one-day notice provision of Section 62-133.5(f) applicable when a discount applies solely to nonregulated services, the company offering the promotional discount has the burden of establishing that such discount applies only to the nonregulated portion of a mixed or bundled regulated/nonregulated service offering.

BellSouth contended that gift cards, checks, coupons for checks and similar types of benefits are marketing incentives. According to BellSouth, such incentives are not telecommunications services, nor are they promotional discounts, since customers are not provided a reduction, i.e., a discount, from the retail price of the service(s) offered in conjunction with the incentive(s).

According to the **ILECs**, gift cards, checks, coupons for checks and similar types of benefits are themselves nonregulated services. Sprint maintained in its reply comments that any services, such as gift cards, checks or check coupons, not contained in Carolina's and Central's General Subscriber Services or Intrastate Access Tariffs are not regulated by the Commission and are, therefore, nonregulated services. Verizon noted in its reply comments that gift cards, checks and coupons are marketing incentives, not regulated services. Verizon further stated that gift card type incentives cannot be considered promotional discounts because they cannot be used to reduce the retail price a customer pays for regulated services.

DISCUSSION OF QUESTION A-1

The Commission agrees with the Joint Commenters and the Public Staff inasmuch as they argued (1) that gift cards, checks, check coupons and similar benefits offered as an inducement to purchase telecommunication services are not themselves services (regulated or nonregulated) offered by a public utility, and (2) that such inducements are promotional discounts nonetheless. 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. Gift cards and similar benefits or incentives are not services offered by a public utility and they are not being offered by local exchange carriers as either regulated or nonregulated services. However, when such benefits are offered to induce the purchase of regulated and/or nonregulated services these benefits are promotional discounts. While the retail price to the customer of neither the regulated or nonregulated portions of the bundle is necessarily lowered as part of gift card type promotions, the customer nevertheless receives the offered bundle for a savings because the gift card, check, coupon for check, or other thing of value provided returns value to the customer for the purchase of a bundle. 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.¹

2) *If such benefits are promotional discounts rather than nonregulated services, in what cases are the promotional discounts considered "price discounts that apply exclusively to services not regulated by the Commission"?*

The **Public Staff** argued that, only when the benefit of promotional discounts is funded solely from nonregulated operations of the local exchange carrier, are such discounts price discounts that apply exclusively to services not regulated by the Commission. The Public Staff stated that since the statute restricts the one-day notice provision to cases in which price discounts apply exclusively to services not regulated by the Commission, the burden rests on the company offering the promotional discount to establish that the promotional discount applies exclusively to nonregulated services, i.e., is funded from nonregulated operations. The Public Staff commented that a bundle typically has one price for two or more services, making it impossible to discern, without further information, which services in the bundle have been discounted.

The **Joint Commenters** implicitly agreed that a price discount applies exclusively to nonregulated services when a promotion is funded solely from nonregulated service offerings and the revenue from the regulated portion of a mixed offering is "booked" at the full retail rate or value. The Joint Commenters stated that to

¹ Also, as discussed below in Part B of this Order, the real price of the service eventually becomes the retail price minus the value received for purchasing the service, i.e., the price is discounted by the value received. After a promotion is offered for a long enough period of time, the tariffed retail price is then no longer the real price.

the extent a LEC seeks to invoke the one-day notice provision of G.S. 62-133.5(f) with respect to gift card type incentives, the burden should be on the LEC to demonstrate that the promotional discount generated by the incentive is solely applied to (charged against) the nonregulated portion of any mixed bundle of regulated and nonregulated services. According to the Joint Commenters, if the regulated portions of a bundled offering are accounted for or "booked" at less than the retail value of the regulated services, then the discount does not apply exclusively to nonregulated services and the one-day notice provision of G.S. 62-133.5 is not applicable to the LEC's promotion.

BellSouth stated that since these benefits are not promotional discounts, Question A-2 is not applicable.

The **ILECs** also found Question A-2 inapplicable since they argued that gift card type benefits are not promotional discounts, but are nonregulated marketing incentives. However, the **ILECs**, Verizon and Sprint suggest that if a promotion is found to feature a price discount for subscription to a bundled service offering of regulated and nonregulated services, and the offering company does not lower or in any way alter the price for the regulated service portion of the bundle, it is fairly simple to determine that the discount for the promotional offering was applied exclusively to the nonregulated service. Therefore the one-day notice of Section 133.5(f) would apply to the promotion.

DISCUSSION OF QUESTION A-2

Promotional discounts are considered "price discounts that apply exclusively to services not regulated by the Commission" when the benefit of the discount is funded solely from or charged against the nonregulated operations of the local exchange carrier. The LEC² is entitled to invoke the one-day notice provision of G.S. 62-133.5(f) when the promotional discount is not used to lower retail revenues of any regulated service offered as part of a mixed bundle, but is instead applied to or accounted for against revenues for nonregulated services contained in the bundle.

3) *Does the source of the discount offered in a promotion, i.e., from regulated or nonregulated operations or both, determine whether a one- or five-day notice is required if the promotion otherwise qualifies as a one business-day promotion?*

The **Public Staff** stated that, if the price of the regulated and nonregulated services in the bundle is lower than the sum of the individual prices, it is reasonable to conclude that the price of one or more of the services in the bundle has been discounted. The Public Staff argued that additional information is needed to confirm that such a discount was applied only to the nonregulated service(s) in the bundle. In some cases, the nonregulated services are not available individually, so it is not always possible to determine the price of the individual services. The Public Staff believes that the regulated company has an obligation to specify whether the marketing incentive or price discount is provided by or charged against regulated or nonregulated operations. If

² The Commission uses the term "LEC" to refer to local exchange carriers, including competing local providers, unless otherwise stated.

the regulated operations of the company will record the tariffed price of the regulated service as revenue (or, conversely, if the cost of the promotion is not recorded as a regulated expense), it is reasonable to conclude that the price discount has been taken only on the nonregulated service(s) in the bundle, qualifying the promotional offer for the one business day notice provision. Otherwise, an ILEC bundle or promotion must be made under the five business-day provision of the ILEC tariffs. Specification of the source of the price discount is a reliable, determinative factor for ensuring that notice of the promotion or bundle has been properly filed.

The **Joint Commenters** stated that in order to use the one-day notice provision, the company offering the promotional discount has the burden of showing that the exclusive source of funding for any promotional discount offered as an incentive to purchase a mixed bundle is nonregulated service operations. The Joint Commenters believe the source should be identified through accounting records that will show whether any discount was applied to or accounted for against regulated service operations or nonregulated service operations.

BellSouth emphasized that it is not the accounting treatment of the benefit or marketing incentive that determines the proper notice period, but whether a price discount is being offered. BellSouth maintained that gift card type promotions are mere incentives and do not provide price discounts against the services offered, since such promotions do not impact or reduce the retail price of the bundled service package purchased by the customer.

The **ILECs** again stated that the only necessary test for determining whether there is a discount applicable exclusively to the nonregulated services in a mixed bundle is to determine whether the price for any regulated services in the bundle has been lowered. If the price for a regulated service has been lowered, a five-day notice filing is required. If a price discount is present without any lowering of the regulated price, the Commission must determine that the discount was applied exclusively to the nonregulated service in the bundled offering and that one-day notice to the Commission of the promotion is all that is required. The ILECs maintained that if services in a bundle or promotion offered by a company operating under price regulation include any nonregulated service, there should be no consideration of the source of the funds for the promotion or discount.

DISCUSSION OF QUESTION A-3

Whether a new promotion featuring a price discount applies exclusively to services not regulated by the Commission is what determines whether a LEC is entitled to invoke the one-day notice provision of G.S. 62-133.5(f). Accordingly, the real question raised by the Public Staff's Motion is whether the source of funding for a promotional discount must come from nonregulated service operations in order for a LEC to establish that the featured promotional price discount applies exclusively to services not regulated by the Commission. The Commission believes, as argued by the Public Staff and the Joint Commenters, that the source of funding for any promotional

discount is determinative of whether the discount "applies exclusively to services not regulated by the Commission." If the discount is funded in whole or in part by charging it to a regulated service or the regulated service operations, then it would not apply exclusively to nonregulated services or operations and the LEC offering the promotion would not be entitled to avail itself of the one-day notice provision.

4) *If the source of the discount determines whether a one- or five-day notice is required, should the Commission require that [a LEC] specify in its filing whether the benefit offered in conjunction with a promotion is funded by nonregulated operations, regulated operations, or both so that the Public Staff can determine whether the promotion is properly filed?*

The **Public Staff** in effect argued that if the source of funding is determinative of whether a promotion "appl[ies] exclusively to services not regulated by the Commission" and therefore the Commission need only receive one day's notice prior to the effective date of the promotion, then the Commission's *Order* dated January 2, 2004 must be expanded to include a specification of the source of the funding for the promotional discount. The Public Staff claimed that without further information from companies regarding the source of a promotional discount, the Public Staff and Commission are unable to monitor promotions and to ensure that the proper amount of notice has been given.

The **Joint Commenters** requested the Commission to impose upon LECs seeking to invoke the one-day notice provision in G.S. 62-133.5(f) the requirement that their notices contain more specific information in support of their filings made pursuant to the one-day notice provision of the statute. The Joint Commenters proposed a rule that would address the LEC's internal accounting procedures as they may relate to G.S. 62-133.5(f). The Joint Commenters stated that without the adoption of appropriate and detailed protective mechanisms and guidance concerning LEC bundling and promotions, the one-day notice provision is extremely difficult to administer and could lead to anticompetitive behavior.

BellSouth argued that the source of funding does not determine the proper amount of notice and that it is not required by any statute or rule to give any notice of marketing incentives. BellSouth reiterated that gift card promotions are marketing incentives—not promotional discounts that impact the retail price of any service. Because these types of promotions are not discounts, they do not require any notice whatsoever pursuant to any North Carolina statute or rule. However, BellSouth stated that it "does not object generally to providing information indicating whether marketing incentives [such as gift card promotions] are funded by regulated and/or non-regulated operations."

The **ILECs** opposed the imposition of any requirement that LECs provide information in addition to that required by the Commission's *Order* dated January 2, 2004. The ILECs stated that any requirement by the Commission of anything more than a statement from carriers describing the promotional/bundled service offerings, and the

dates during which those offerings would be made available, would suggest that Commission has approval authority not provided for in G.S. 62-133.5(f). Further, the ILECs suggested that the Commission's *Order* dated January 2, 2004 requires more information in notices of promotional offerings than the statute requires. In its reply, Sprint answered that the Commission should not require LECs to provide any additional information regarding the funding source for a promotion. Sprint noted that perhaps the Public Staff's proposal may be justified for those companies which are rate of return regulated. However, examination of a price regulated company's financial accounting by the Public Staff is not required or appropriate.

DISCUSSION OF QUESTION A-4

While, as discussed above, the Commission finds the source of funding for promotional discounts, such as gift cards, relevant to the determination of whether a discount applies exclusively to the nonregulated services in a mixed bundle of services, thereby qualifying the promotion for the one-day notice requirement, the Commission rules that there is no need to expand its *Order* dated January 2, 2004, regarding the content of notices provided under G.S. 62-133.5(f). Pursuant to the statute at issue, a LEC is not entitled to give the Commission one business day's notice *unless* the promotion or bundled service offering (1) involves both regulated and nonregulated services and (2) features a price discount that applies exclusively to the nonregulated services. Therefore, the Commission need not impose a requirement that the LEC specify the funding source for its promotion in its one-day notice filing. When a LEC purports to file a one-day notice pursuant to G.S. 62-133.5(f) for a promotional offering involving both regulated and nonregulated services, it is representing that any discount applies exclusively to nonregulated services, i.e., that it has chosen to fund any discount from its nonregulated operations.

Thus, as argued by the ILECs, if a LEC provides the Commission with one-day notice of a promotion and a price discount is present without any lowering of the regulated price, the Commission will view the one-day notice as the LEC's representation that the discount was applied exclusively to the nonregulated service in the bundled offering in accordance with the reasoning of this *Order*. The Commission's decision does not impose internal accounting procedures on the LECs; rather, by submitting a one-day notice under G.S. 62-133.5(f), a LEC, on its own volition, has elected to fund its promotion from its nonregulated operations. The Commission still believes, as asserted by the Public Staff in earlier comments when the Commission was initially requested to adopt rules related to the notice required under G.S. 62-133.5(f), that imposing unnecessary "rules" or requirements on notices for promotions and bundled service offerings could make it more difficult and more time-consuming for LECs than the Legislature intended when it enacted the one-day notice provision and exempted these types of offerings from the Commission's approval authority.

In sum, the Commission finds that companies who avail themselves of the one-day notice provision of G.S. 62-133.5(f) necessarily represent that any promotional discount applies exclusively to the nonregulated portion of a mixed bundle, and that any

such discount given for the purchase of a mixed bundle will be funded, accounted for or applied against only the nonregulated portion of the bundle. Therefore, for all regulatory purposes and required filings, regulated companies must assign the full tariff rate to sales of (or revenues from) regulated services that were subscribed to as a result of promotional discounts involving bundled offerings of both regulated and nonregulated services.³ LECs who invoke the one-day notice provision should keep records regarding the funding of their promotion and be mindful that they are subject to audit. See G.S. 62-51.

B. Resale Obligation

1) *If a LEC offers a benefit in the form of a check, a coupon for a check, or anything else of value for more than ninety days to incent subscription or continued subscription to a regulated service, is it required that the benefit be offered to resellers in addition to the reseller discount?*

The **Public Staff** alleges that BellSouth's 1FR + 2 Cash Back promotion, which provides subscribers with a \$100 check for subscribing to certain services, is implicated by Question B-1. The Public Staff argued that when inducements such as gift cards are offered to promote new or continued subscriptions to regulated telecommunications services, the regulated services are discounted. The resulting discount, brought about by the inducing promotion, should be available to resellers at the discounted resale rate whenever the promotion is offered for more than 90 days. The FCC's Local Competition Order makes no distinction between charging a reduced price for service, and charging the standard tariff rate while awarding the customer with a check or a coupon for a check.

The **Joint Commenters** declined to take a position with respect to resale obligations related to gift card type promotions offered for the purchase of bundles of both regulated and nonregulated services.

BellSouth stated that gift cards, coupons, etc. are not telecommunications services and therefore are not subject to the resale obligation of TA96. Gift card type promotions are marketing tools that do not provide end-user customers with a reduction of the price of the ILEC's services.

The **ILECs** argued that marketing incentives, gift cards, checks, coupons for checks, and similar incentives are not telecommunications services and are not subject to the resale requirements of the Act. Sprint reiterated that the obligation to resell

³ The Commission notes that it is not concerned with the rate of return of price regulated companies such as the ILECs who filed comments. However, inquiring into the source of funding for purposes of applying G.S. 133.5(f) is not the same as inquiring into a company's rate of return. The Commission's interest is not in a company's margins or profits or in any particular amount of reduction of revenues; the Commission's interest is in whether the costs (no matter the amount) of a given promotion were applied to nonregulated services.

services does not extend to nonregulated services (i.e., incentives, gift cards, checks etc.) offered with regulated services.

DISCUSSION OF QUESTION B-1

At the outset, the Commission notes that Question B-1 does not address mixed bundles of regulated and nonregulated services. Instead, Question B-1 is directed to promotions that offer a gift such as a gift card or a check for cash in exchange for subscribing to regulated services.

Section 251(c)(4) of TA96 addresses the extent to which an ILEC may restrict resale of its retail telecommunications services. Section 251(c)(4) requires an ILEC "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." This Section further requires ILECs "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of . . . telecommunications service" provided at retail to end-user subscribers. Section 252(d)(3) provides that wholesale rates are to be determined on the basis of rates charged to subscribers.

While gift cards, check coupons and other similar promotions or incentives offered for the purchase of a regulated telecommunications service are not themselves services that ILECs offer at retail from their tariffs, they are promotional offerings for telecommunications services. Promotional offerings are subject to the limitations and conditions set forth by the FCC. In ¶ 948 of its Local Competition Order⁴, the FCC stated that Section 251(c)(4)'s requirement that ILECs resell retail telecommunications services

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. [Emphasis added.] 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. In discussing promotions here, we are only referring to price discounts from standard offerings that will remain available for resale at wholesale rates, i.e., temporary price discounts.

The Commission interprets ¶ 948 of the FCC's Local Competition Order to mean that an ILEC's duty to resell telecommunications services it offers at retail does not exclude an ILEC's promotional offerings. 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 resellers

⁴ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, (CC Docket 96-98); First Report and Order, FCC No. 96-325, 11 FCC Rcd 15499 (rel. August 8, 1996) ("Local Competition Order").

and would therefore undercut the duty to resell retail services to resellers at wholesale rates. The FCC's statement that the subject of its discussion on promotions referred to "price discounts from standard offerings that will remain available for resale at wholesale rates, i.e., temporary price discounts," does not define or limit the term "promotion," as used by the FCC in its Order, to a reduction from the retail price of a tariffed service. Rather, the FCC was speaking to the temporary nature of a promotion. The term "promotion" in the context of a sale or advertising campaign usually refers to an opportunity or offer that is temporary or short-term, rather than one that is more permanent or long-lasting.⁵ The FCC distinguished a promotional price discount from a "standard offering" that would remain available for sale at retail and therefore available for resale at the wholesale rate. Contrasted with a promotional offering, a standard offering is one that is of a more permanent, long-lasting nature. When the reference to a promotion as a price discount is read in context, the Commission believes it is clear that the FCC was not stating that a promotion exists only when there is a reduction or discount of the retail price of a telecommunications service.⁶

The Commission's interpretation of ¶ 948 of the FCC's Order is supported by the Order's next paragraph. In ¶ 949, the FCC immediately began a discussion of whether "short-term promotional prices" are "retail rates." Since resale wholesale rates are based on retail rates, state commissions setting wholesale rates must know if the rates for promotions, i.e., short-term prices, are "retail rates" that are to be discounted to the wholesale rates that ILECs must offer to resellers. Because TA96 does not define "retail rates," the FCC interpreted the meaning of the term as follows:

In view of this ambiguity, we conclude that "retail rate" should be interpreted in the light of the pro-competitive policies underlying the 1996 Act. We recognize that promotions that are limited in length may serve procompetitive ends through enhancing marketing and sales-based competition and we do not wish to unnecessarily restrict such offerings. We believe that, if promotions are of limited duration, their procompetitive effects will outweigh any potential anticompetitive effect. We therefore conclude that short-term promotional prices do not constitute retail rates for the underlying services and are thus not subject to the wholesale rate obligation.⁷

Thus, short-term promotional prices or nonstandard offerings are not the "retail rate" for purposes of establishing the wholesale rate. If a promotion is offered for an indefinite extended period of time, at some point it starts to become or look more like a standard

⁵ The Commission's interpretation is supported by the FCC's opinion and order in *In the Matter of American Communications Services, Inc.*, (CC Docket 97-100); FCC No. 99-386, 14 FCC Rcd 21579 (rel. December 23, 1999), ¶¶ 41, 51 (noting that phrases such as "service packages" and "trial offerings" connote an element of a temporary price discount).

⁶ The FCC's use of the phrase "all promotional or discount service offerings" in ¶ 948 of the Local Competition Order implies a distinction between a promotional service offering and a discount service offering. That is to say, the FCC appears to have contemplated that an ILEC could offer a promotion that would not necessarily result in a reduced service price per se.

⁷ Local Competition Order, ¶ 949.

retail offering that should be subject to the duty to resell at the wholesale rate. Cognizant of this situation, the FCC made a determination as to when a promotional price ceases to be short-term and must be treated as the retail rate to be used in calculating the wholesale rate.

We believe that promotions of up to 90 days, when subjected to the conditions outlined below, will have significantly lower anticompetitive potential, especially as compared to the potential procompetitive marketing uses of such promotions. We therefore establish a presumption that promotional prices offered for a period of 90 days or less need not be offered at a discount to resellers. Promotional offerings greater than 90 days in duration must be offered for resale at wholesale rates pursuant to 251(c)(4)(A).⁸

Despite the ILECs' argument that gift card type promotions are incentives and/or marketing tools used to distinguish their services in the marketplace, these promotions are in fact promotional offers subject to the FCC's rules on promotions.⁹ While these promotional offerings are not discount service offerings *per se* because they do not result in a reduction of the tariffed retail price charged for the regulated service at the heart of the offerings, they do result in a savings to the customers who subscribe to the regulated service. The longer such promotion is offered, the more likely the savings will undercut the tariffed retail rate and the promotional rate becomes the "real" retail rate available in the marketplace. The promotion reduces the subscriber's cost for the service by the value received in the form of a gift card or other giveaway. The tariffed retail rate would, in essence, no longer exist, as the tariffed price minus the value of the gift card received for subscribing to the regulated service, i.e., the promotional rate, would become the "real" retail rate. Thus, the ILEC could use the promotion as a *de facto* rate change without changing its tariff pricing. The FCC hoped to avoid this situation, where the promotional rate competes with the tariffed price for a long or indefinite period of time, by defining the point at which the promotional rate would become a retail rate to be discounted for resale as the 91st day the promotion is available to end-users purchasing a particular telecommunications service. In other words, the FCC decided that after 90 days, resellers are entitled to the promotional rate (the "real" retail rate) minus the wholesale discount.

Therefore, pursuant to TA96, in order for a gift card type promotion not to require an adjustment to the resale wholesale rate (caused by the fact that the retail price has in effect been lowered), such a promotion must be limited to 90 days, unless the ILEC proves to the Commission that not applying the resellers' wholesale discount to the

⁸ Local Competition Order, ¶ 950.

⁹ See *In re AT&T Communications of the Southern States, Inc.*, Docket No. 960833-TP, PSC-96-1579-FOF-TP (Fla. P.S.C. 1996); *In re AT&T Communications of the Southern States, Inc.*, Docket No. 6801-U (Ga. P.S.C. 1996); *In re Sprint Communications Company, L.P.*, Case No. TO-97-124 (Mo. P.S.C. 1997); *In re US West Communications, Inc.*, Docket No. 70000-TT-98-379, Record No. 3992, (Wyo. P.S.C. 1999) (rejecting similar "marketing tool"/"marketing expense" arguments offered by ILECs to avoid resale obligation with regard to promotions).

promotional offering is a reasonable and nondiscriminatory restriction on the ILEC's resale obligation.¹⁰

Does the record before the Commission sufficiently establish that it is reasonable and nondiscriminatory for ILECs not to apply the wholesale discount to the promotional rate for gift card type promotions? The Commission finds it extremely noteworthy that while its *Order* seeking comments on the questions raised by the Public Staff's Motion was served on companies authorized to resell local service in North Carolina, no resellers filed comments addressing the ILECs' resale obligation with respect to promotional offerings. This absence of comment would appear to suggest that the reseller community believes competition will not be stifled or unduly harmed by gift card type promotions such as the one presently being offered by BellSouth since June 29, 2004 and scheduled to run until March 31, 2005. Although the resellers offered no comments, ILECs such as BellSouth commented that they offer these type promotions precisely because there is robust competition they are trying to meet by distinguishing their services with gift card type promotions. 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. Therefore, the Commission believes these promotions do not have the same degree of anticompetitive effect that a direct discounting of the retail price would have on the reseller market. Some customers will likely subscribe to the regulated service offering at the retail rate, although the gift received (particularly a gift card) may have little value to them.¹¹ Furthermore, the ILECs continue to resell the regulated services offered in their promotions to resellers, reducing the retail rate for these services by the amount of the applicable wholesale discount. Hence, the ILECs argue they are meeting their statutory obligation to resell their retail telecommunication services; resellers are not being prevented from reselling these services. Moreover, after purchasing services from the ILECs at the wholesale discount rate (a rate made possible by excluding ILEC marketing costs from the resale price), resellers may resell these services to end-users and may offer promotional inducements at their own expense whether or not the ILECs offer such promotions. In fact, ILECs have argued that their promotions are in response to promotions (fee waivers and the like) offered by resellers. Finally, to the extent that these gift card promotions are for a reasonably limited duration and are not offered consecutively, their procompetitive effects in a market that is more competitive than it was in 1996 when the Local Competition Order was issued will likely outweigh the anticompetitive effects.

Given that there has been no opposition to gift card type promotions from the reseller community, the Commission is reluctant to establish a rule that the benefit of these promotions must be offered to resellers in addition to the reseller discount. To the contrary, given the absence of opposition, the Commission is persuaded by the arguments put forth by the ILECs. Although the Commission believes that restrictions on resale obligations must be considered on a promotion-by-promotion basis, some

¹⁰ 47 C.F.R. § 51.613(b).

¹¹ For example, BellSouth commented that some customers accepting gift card type promotions never use the gift card or coupon for check, etc.

restrictions on resale of some gift card type promotions that run for more than 90 days may be proven to be reasonable and nondiscriminatory. While promotions must be analyzed individually for their anticompetitive effects, the Commission finds that, upon proof that it is reasonable and nondiscriminatory not to offer the benefit of a promotion offered for more than 90 days to resellers, ILECs will not be required to provide such benefit to resellers in addition to the established reseller wholesale discount. However, ILECs should be mindful that resale restrictions on unreasonably long, unlimited or permanent promotions that compete with and undercut the tariffed retail price for services would gut the resale obligation of TA96 and will be held unreasonable.¹²

With regard to BellSouth's 1FR + 2 Cash Back promotion, based on the Commission's current knowledge, the Commission would be inclined to find that a restriction on resale is reasonable and non-discriminatory. Resellers have not complained or asked the Commission to find the restriction unreasonable or harmful to competition. Resellers have not been precluded from reselling the regulated service and are able to purchase the service at the tariffed rate minus the wholesale discount. The wholesale discount was, in part, set by deducting ILEC marketing expenses from the ILECs' costs for the regulated service—at least in part a recognition that resellers would have their own marketing expenses. Resellers remain free to offer, at their own expense, promotional inducements to customers who purchase the tariffed service(s) from them. Although the Commission would ordinarily be concerned about a promotion in competition with the tariffed offering for a nine-month period (from June to March), BellSouth's promotion will be offered for a limited time, and the resellers' apparent disinterest or indifference would tend to persuade the Commission that, at least with respect to 1FR + 2 Cash Back, the anti-competitive effects caused by a nine-month promotion that is unavailable to resellers are outweighed by the procompetitive effects.

2) *Is an ILEC offering a bundle of regulated and nonregulated services for more than ninety days obligated to offer the bundle, the regulated portion of the bundle, or both to resellers during the term of the promotion or, as BellSouth has contended, is no part of such a bundle subject to the resale obligations?*

The **Public Staff** argued that the regulated portion of a mixed bundle containing regulated services is subject to resale. Companies should not be allowed to evade their resale obligations by placing regulated services in bundles, discounting these services, and refusing to offer the regulated portion of the bundle to resellers. Bundling regulated services does not suddenly make those services immune from regulation. Bundles certainly can be in the public interest by allowing customers to buy services they desire at a lower rate. However, they are not immune from regulation.

¹² The Commission notes that to the extent a gift card type promotion may be associated with a mixed bundle offering of regulated and nonregulated services with respect to which an ILEC invokes the one-day notice in G.S. 62-133.5(f), case-by-case determinations for the purpose of determining resale obligations will not run afoul of the ILECs' right to offer the promotion without obtaining the Commission's approval. The Commission's case-by-case determination would not be for approval purposes but would be to determine whether, under TA96 and the FCC's rules, the benefit of a promotion offered for more than 90 days must be accounted for in determining the retail rate that must be discounted by the wholesale discount.

The **Joint Commenters** did not address this issue.

BellSouth maintained that a company is not required to resell mixed bundles containing non-telecommunications services or services provided by other entities. There is no obligation to make the separate parts of a bundled offering available to resellers at a "hypothetical" discounted price which would be the equivalent of providing resellers a service at a price that does not relate to the prices for which those services are sold at retail to non-carrier subscribers. However, a company must offer for resale each regulated service contained in a bundle at the retail rate minus the wholesale discount.

The **ILECs** commented that if a bundle consists of regulated and nonregulated services, resellers should not be allowed to sell the bundle at the promotional discount rate. Requiring the resale of bundled offerings containing regulated and nonregulated services would be contrary to the TA96.

DISCUSSION OF QUESTION B-2

As has been discussed hereinabove, Section 251(c)(4)(A) of TA96 requires ILECs to offer for resale at wholesale discounts any telecommunications service that it provides at retail to non-telecommunications end-user subscribers. The FCC has held that promotions offered for more than 90 days must be made available to resellers at the promotional rate minus the wholesale rate, because any promotion exceeding 90 days would be in competition with the retail rate and would allow the ILEC to undercut the reseller by shifting customers to the promotional offerings and denying the benefits of those offerings to the resellers. An ILEC's obligation to make the benefit of a promotional offering available to resellers is, therefore, directly related to whether the promotional rate is available to the end-user retail customer in such a way as to be in competition with the tariffed retail rate. Service bundles, such as those implicated by Question B-2, are not categorically exempt from the resale obligation.¹³

In the context of analyzing the obligation of ILECs to resell services, there are at least two different types of mixed bundle offerings. The first type is similar to the gift card type promotion and must be made available to resellers if offered for more than 90 days, unless a restriction on reselling the promotion is reasonable and nondiscriminatory. The second type of mixed bundle offering requires the customer to subscribe to a bundle of services, the total cost of which exceeds the cost of the consideration of the regulated service(s) on a stand-alone basis if purchased from the tariff. ILECs should not be obligated to resell this second type of promotion.

The first type of mixed bundle promotion consists of regulated telecommunications services, provided at no less than the tariffed retail rate, and nonregulated services, provided free of charge. For resale purposes, this type of promotion should be treated no differently than gift card type promotions. Promotions that allow the customer to receive something of value as a giveaway for the purchase of

¹³ *In the Matter of American Communications Services, Inc.*, ¶¶ 41, 51, 52.

a regulated telecommunications service would provide the customer with a discount off the price of the regulated service, i.e., a discount equal to the value of the giveaway, whether it be a gift card, cash back or free nonregulated services. These promotions permit the customer to purchase the regulated service for the same price listed in the tariff but gives the customer more for the same amount of money by providing the customer a giveaway of some value. These promotions, therefore, compete head-to-head with the retail price. The customer's choice is between paying the retail price of, for example, \$20, and receiving only the tariffed regulated service, or paying the same \$20 retail price for the same service but receiving an additional value or giveaway for making the exact same dollar cost purchase. Thus, the promotion reduces or discounts the retail price by the value of the giveaway. When such a discount of the regulated service is offered for more than 90 days, the discounted price (the tariffed rate minus the value of the giveaway) becomes the "real" retail rate and competes directly with the tariffed rate for the regulated service. Therefore, in order for the reseller to receive the true wholesale rate, the wholesale discount must be from the discounted promotional rate. The ILEC must allow the reseller's purchase price to be determined by applying the wholesale discount to the promotional rate that is, in effect, available at retail to end-user subscribers. To further clarify the ILEC's resale obligation as to this first type of mixed bundle promotion, the Commission notes that the ILEC does not have to allow the reseller to purchase the bundle of services offered in the ILEC's promotion as long as it offers for resale each telecommunications service component of the bundle at the promotional rate minus the wholesale discount. Of course, if the promotional rate is not available to end-user subscribers for more than 90 days, the ILEC is not obligated to permit resellers to take advantage of the promotional rate.

The second type of mixed bundle promotion also consists of both regulated telecommunications services and nonregulated services, but the entire bundle is offered to the customer for more consideration than the customer would pay if purchasing from the tariffed offering.¹⁴ For resale purposes, the ILEC should not be required to provide these bundled offerings or the benefit of these promotions to resellers. Such promotions do not compete directly with tariffed offerings. With these promotions, end-user subscribers cannot purchase the bundle (or the regulated portion of the bundle) for a price less than or equal to the tariffed retail rate for the regulated service(s) in the bundle. The subscriber to such a promotional offering must accept the complete bundle and pay not only for the regulated service(s), but also for the additional services in the bundle at a total cost that exceeds the price of the regulated service(s) when purchased on a stand-alone basis under the tariff. Some or all of the services (regulated and/or nonregulated) may be discounted, but the customer cannot purchase the regulated portion of the bundle, discounted or not, without purchasing the entire bundle for consideration that exceeds the tariffed price for just the regulated retail services. Any discount that may apply to a regulated service in such a promotional bundle is not available to end-users because they cannot receive the discounted service

¹⁴ For purposes of this discussion on the second type of mixed bundle, more consideration includes all additional consideration (beyond the tariffed price) from the customer, such as the price paid for service, the signing of a contract binding the consumer to purchase a service for a set or extended period of time, or the subscription to a certain increased level of service at a specified premium price.

unless they purchase the entire bundle of services for consideration that exceeds the retail price for the regulated service. Therefore, with these promotions, neither the promotional bundle nor the regulated services in the bundle competes directly with or undercuts the equivalent regulated tariffed offerings. The customer's choice is between the regulated service(s) at the tariffed price on the one hand, or the regulated service(s) plus additional services for a total price exceeding the cost of the stand-alone regulated service(s) under the tariff on the other hand. The promotional bundle, which costs the customer more, is not a lower cost means of obtaining the regulated services in the bundle; instead, it is a higher cost means of purchasing the service because the customer can only receive the regulated service in the bundle by paying additional money or consideration for additional services.¹⁵

However, ILECs are advised that if promotional mixed bundles should be offered for a total price that is less than or equal to the price of the regulated services offered on a stand-alone basis under their tariffs, the promotions would cause head-to-head competition with the tariffed retail rates. Accordingly, with regard to the regulated services in such a bundle, the benefit of such promotions offered for more than 90 days would have to be offered to the resellers, as discussed in the section above on the first type of mixed bundle offerings. In any event, as with the first type of promotions, ILECs are not required to make the bundles themselves available to resellers and would only have to make the promotional rate of the regulated services available for resale if the entire bundle was offered for less than the price of the tariffed regulated services.

3) *If the ILEC is required to offer the bundle or the regulated portion of the bundle to resellers, does the reseller discount apply in addition to any promotional discount offered in the bundle to the ILEC's end users during the term of the promotion?*

The **Public Staff** argued that the regulated portion of a bundle is subject to resale, and both the promotion discount and the reseller discount should apply. The Public Staff opined that, since the promotion discount has lowered the retail rate of the regulated service, the wholesale discount should be applied to the reduced retail rate.

The **Joint Commenters** did not address this question.

BellSouth stated that, as set forth in its initial comments, a service is required to be offered for resale at the wholesale discount only if it is made available to end-users at the retail rate. Retail customers do not have the ability to pick and choose selected portions of bundles. They can purchase a component of a bundle alone if that service is available on a stand-alone basis, and when they do so they pay the tariffed rate for the individual service, not some percentage of the price for a bundle that includes that service (and others). In those cases, BellSouth makes the retail service available for resale at the retail price minus the wholesale discount. There is no further requirement

¹⁵ While the bundle costs more than just the regulated service(s), a customer who wants the additional services *and* the regulated services saves money by choosing the promotional bundle because it is priced lower than the total cost of the services purchased individually.

in any jurisdiction that BellSouth break apart and resell parts of bundles piece-meal, and there is no valid basis for the Commission to create one.

Again, the **ILECs** commented that if a bundle consists of regulated and nonregulated services, resellers should not be allowed to sell the bundle at the promotional discount rate. Requiring the resale of bundled offerings containing regulated and nonregulated services would be contrary to the TA96.

DISCUSSION OF QUESTION B-3

This question has been answered by the discussion hereinabove. Whenever an ILEC is required to make the benefit of a promotion available to resellers because it is being offered for more than 90 days and is therefore in competition with the tariffed retail rates, the reseller discount applies to the promotional rate. That is to say, the reseller discount applies in addition to the promotional discount.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

- 1) That gift cards, checks, coupons for checks or similar types of benefits are promotional discounts for the purposes of G.S. 62-133.5(f);
- 2) That promotional discounts are considered "price discounts that apply exclusively to services not regulated by the Commission" pursuant to G.S. 62-133.5(f) when the benefit of the discounts is funded solely from or charged against the nonregulated operations of the local exchange carrier;
- 3) That the source of funding for any promotional discount is determinative of whether the discount "applies exclusively to services not regulated by the Commission." A discount funded in whole or in part by charging it to a regulated service or to regulated service operations is not one that "appl[ies] exclusively to services not regulated by the Commission;"
- 4) That LECs who avail themselves of the one-day notice provision of G.S. 62-133.5(f) necessarily represent that any promotional discount appl[ies] exclusively to the nonregulated portion of a mixed bundle, and that any discount given for the purchase of a mixed bundle will be funded, accounted for or applied against only the nonregulated portion of the bundle. The Commission declines to expand its *Order of January 2, 2004* to require a LEC to specify the funding source of its promotions;
- 5) That the benefit of a gift card type promotion offered for more than 90 days must be made available to resellers such that resellers are permitted to purchase the regulated service(s) associated with the promotion at the promotional rate minus the wholesale discount, unless the ILEC proves to the Commission (per 47 C.F.R.

§ 51.613(b)) that not applying the wholesale discount to the promotional offering is a reasonable and nondiscriminatory restriction on the ILEC's resale obligation;

- 6) That the benefit of a mixed bundle offering that results in a regulated service in the bundle being in direct competition with the tariffed retail rate for the regulated service must be made available to resellers if the bundled promotion is offered for more than 90 days, but the benefit of a mixed bundle offering that does not result in such direct competition with the tariff offering (as discussed above in this *Order*) need not be made available to resellers; and,
- 7) That whenever an ILEC is required to make the benefit of a promotion available to resellers because it is being offered for more than 90 days and is therefore in competition with the tariffed retail rates, the reseller discount applies to the promotional rate instead of the tariffed retail rate.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of December, 2004.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

pb121404.01

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-100, SUB 72b

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Implementation of Session Law 2003-91,) ORDER CLARIFYING RULING
Senate Bill 814 Titled "An Act to Clarify the) ON PROMOTIONS AND
Law Regarding Competitive and Deregulated) DENYING MOTIONS FOR
Offerings of Telecommunications Services") RECONSIDERATION AND STAY

BY THE COMMISSION: On December 22, 2004, the Commission issued *Order Ruling on Motion Regarding Promotions*. On February 18, 2005, BellSouth Telecommunications, Inc. ("BellSouth") filed a Motion for Reconsideration or, in the Alternative, for Clarification, and for Stay. Also on February 18, 2005, Image Access, Inc. d/b/a New Phone ("New Phone") filed a Petition to Intervene and Comment Out of Time. The Commission granted New Phone's Petition to Intervene on March 3, 2005, and accepted New Phone's Comments for the record, but did not otherwise address them. This Order addresses both New Phone's comments and BellSouth's motion.

New Phone's Comments

A. The Commission's forecast and 47 C.F.R. 51.613(a)(2)

In its comments, New Phone complains that the Commission considered a specific promotion, which BellSouth offered in excess of 90 days, and forecasted that the Commission would be inclined to find that a restriction on the resale of the promotion was reasonable and nondiscriminatory. New Phone notes that the Commission's forecast was *dictum*, based in part on the Commission's perception that Competing Local Providers ("CLPs") did not object to BellSouth's refusal to offer the promotion for resale since no CLP filed comments or objections. New Phone explains that it and other CLPs were not indifferent on this issue, but failed to file comments or objections because the Commission's July 7, 2004 *Order* seeking comments did not indicate that specific BellSouth promotions of more than 90 days' duration would be considered or approved. According to New Phone, without regard to whether a CLP files an objection, Federal Communications Commission ("FCC") Rule 47 C.F.R. 51.613(a)(2) establishes that it is unreasonable and discriminatory for an ILEC to refuse to resell telecommunications services at the promotional rate minus the percentage wholesale discount when the promotional rate is offered to retail customers for more than 90 days.

EXHIBIT - L

DISCUSSION

First, the Commission does not agree that its July 7, 2004 *Order* failed to provide CLPs with notice that BellSouth's 1FR + 2 Cash Back promotion could be under consideration. The Public Staff's motion for a ruling on promotions made express mention of the 1FR + 2 Cash Back promotion, the dispute with BellSouth regarding the availability of the promotion for resale, and the start and end dates for the nine-month promotion. In addition, the Public Staff's motion was an attachment to the Commission's *Order*, and the Public Staff again specifically identified and discussed the 1FR + 2 Cash Back promotion in the comments it filed on August 6, 2004 pursuant to the Commission's *Order*. Thus, the Commission believes that New Phone and other CLPs had adequate notice that the Commission could address the 1FR + 2 Cash Back promotion in examining and clarifying BellSouth's resale obligations. Nevertheless, the Commission granted New Phone's Petition to Intervene and accepted New Phone's comments for the record. Because New Phone's comments were not filed in time to be considered prior to issuance of the December 22nd *Order*, the Commission will consider them now and will treat them as a motion for reconsideration or, in the alternative, for clarification of the Commission's *Order Ruling on Motion Regarding Promotions*.

Second, the Commission generally agrees with New Phone's interpretation of 47 C.F.R. 51.613(a)(2): if a promotion involves rates that will be in effect for more than 90 days, an ILEC shall apply the wholesale discount to the special promotional rate for retail service rather than to the ordinary rate. The FCC has stated in express terms that short-term promotional prices do not constitute retail rates that are subject to the wholesale percentage discount and has defined short-term promotions to be those offered for no more than 90 days. The FCC reasoned that a promotion offered for 90 days or less has procompetitive effects that outweigh the anticompetitive effects of restricting the resale of such a promotion.¹ The clear implication of the FCC's rule and related opinions is a presumption that it is unreasonable and discriminatory for an ILEC not to resell telecommunications services at the promotional rate minus the percentage wholesale discount when the promotional rate is offered to retail customers for more than 90 days.

However, in its December 22nd *Order*, the Commission recognized that the FCC clearly intended that an ILEC may rebut this presumption as to promotions offered in excess of 90 days by proving that a restriction on resale of such promotions is reasonable and nondiscriminatory. "With respect to any restrictions on resale not permitted under paragraph (a) [e.g., a restriction on the resale of a long-term promotion that is offered for more than 90 days], an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory."² That is to say, not all promotions offered for more than 90 days

¹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, (CC Docket 96-98); First Report and Order, FCC No. 96-325, 11 FCC Rcd 15499 (rel. August 8, 1996) ("Local Competition Order"), ¶¶ 949-50.

² 47 C.F.R. 51.613(b).

necessarily have anticompetitive effects that outweigh procompetitive effects. It may not always be unreasonable and discriminatory for an ILEC not to apply the wholesale discount to the 90-day-plus special promotional rate.

By its *dicta*, the Commission did not intend to suggest a change of law or to disregard existing FCC rules and orders. Instead, the Commission's discussion of the dispute implicated by BellSouth's 1FR + 2 Cash Back promotion recognized that FCC rules do permit an ILEC to restrict resale of a promotion offered at retail for more than 90 days, upon *proving* that the restriction is reasonable and nondiscriminatory. The Commission's discussion of factors an ILEC may present to establish that a restriction is reasonable and nondiscriminatory was not intended to be exhaustive nor meant to suggest that the presence of any one or all of the factors would be sufficient to prove that a given restriction is permissible under the FCC's rules. Rather, the Commission's opinion stressed that each 90-day-plus promotion, including the 1FR + 2 Cash Back promotion, would have to be examined on a promotion-by-promotion basis, and that, in the absence of an objection by a reseller, the stated factors could be considered and could have some persuasive value to the Commission in determining whether a particular restriction on resale is reasonable and nondiscriminatory.

CONCLUSIONS

To clarify, the Commission's December 22, 2004 *Order* should not be read as a change of law or policy. If the Commission is called upon to determine whether a promotion offered for more than 90 days must be offered to resellers at the promotional rate minus the wholesale discount, the Commission will follow the law as stated in 47 U.S. C. 251(c)(4) and 47 C. F. R. 51.613 (a)(2) and (b). In order to withhold the benefit of a long-term (90-day-plus) promotional rate from resellers, an ILEC is first required to "[prove] to the [Commission] that the restriction is reasonable and nondiscriminatory." The Commission's discussion of the 1FR + 2 Cash Back promotion was intended only to offer a modicum of guidance as to some of the kinds of factors the Commission might find probative, in the absence of objection, should an ILEC seek to prove that a restriction on resale is reasonable and nondiscriminatory. The burden of proving any restriction reasonable and nondiscriminatory remains with the ILEC. The factors acknowledged by the Commission were not intended to be exhaustive or necessarily sufficient to meet the ILEC's burden of proof. The Commission will consider all arguments and admissible evidence presented and decide on a promotion-by-promotion basis (with regard to promotions offered in excess of 90 days) whether an ILEC has proved that a restriction on resale is permissible pursuant to 47 C.F.R. 51.613(b). The Commission cannot authorize a restriction on resale of a long-term promotion in the absence of such proof

B. The Commission's forecast and the parties' interconnection agreement

New Phone states in its comments that it is concerned that BellSouth may rely on the Commission's forecast with respect to the 1FR + 2 Cash Back promotion to avoid its obligation to resell promotions as provided by the terms of BellSouth's interconnection

agreement with New Phone ("Agreement"). According to New Phone, the Agreement provides that BellSouth must resell all telecommunications services at the wholesale discount rate subject to a list of restrictions set forth in the Agreement. New Phone states that the Agreement provides that all promotions must be available for resale at the wholesale discount rate except those promotions, as identified in the list of restrictions, which are offered for less than 90 days. New Phone further notes that the Agreement contains Parity provisions that may be violated if BellSouth fails to resell promotions in accordance with the terms of the Agreement.

DISCUSSION AND CONCLUSION

The Commission's December 22, 2004 *Order* does not relieve any party of obligations it might have under an existing interconnection agreement. The Commission does not, based on the present record, express any opinion about the extent of any party's obligation under New Phone's interconnection agreement with BellSouth. Moreover, the Commission has no evidence before it suggesting that BellSouth has any intent to avoid the obligations established by its interconnection agreement with New Phone. Accordingly, the Commission clarifies that its December 22, 2004 *Order* relieves no party of any resale obligations it might have under an existing interconnection agreement.

BellSouth's Motion

A. Resale Obligations and One-time Gift Promotions

In its motion for reconsideration or clarification, BellSouth argues that the Commission created a novel resale obligation for one-time incentive gifts that ILECs provide to their customers. According to BellSouth, the Commission's *Order* requires one-time upfront gifts "that are funded in whole or in part by the ILEC's regulated service operations" and offered as incentives to customers subscribing to retail services to be "made available to resellers, unless the ILEC proves to the Commission that not making [such gifts] available for resale is reasonable and nondiscriminatory." BellSouth suggests that the Commission's ruling on resale obligations is based on language in the *Order* stating 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." BellSouth calls the result of the Commission *Order* "patently silly" and "bizarre" because, according to BellSouth, the *Order* would require BellSouth "to give a CLP . . . a toaster for each customer to whom the CLP resells [a given] service," if BellSouth offers a toaster to any customer subscribing to that same service. BellSouth re-asserts its initial argument that because one-time gifts offered as incentives are not themselves "telecommunications services," they are not subject to the resale obligations of the Telecommunications Act of 1996 ("TA 96"). BellSouth further complains that CLPs are not required to pass the benefit of the promotional rate on to their customers and that it will often be difficult, if not impossible, to determine the value of one-time incentive gifts, since ILECs generally do not pay face value for such gifts.

DISCUSSION

First, the Commission notes that BellSouth appears to cite language from Part A of the Commission's *Order*, which pertains to the interpretation of a state statute concerning when notice of a promotion or a bundled service offering must be filed, to complain about the Commission's holding in Part B of the *Order*, which pertains to federal resale obligations under TA 96. To clarify, the Commission's holdings with respect to resale obligations are not based on the ILEC's funding source for incentive gifts or marketing tools. The Commission's discussion of the source of funding for a promotion applies only to the interpretation of the state statute at issue in Part A of the *Order*.

Second, notwithstanding BellSouth's characterizations, the Commission's *Order* creates no new resale obligations. Section 251(c)(4) of TA 96 requires an ILEC "to offer for resale at wholesale rates any telecommunications services that the carrier provides at retail to subscribers who are not telecommunications carriers." Section 252(d)(3) provides that the wholesale rates are to be determined on the basis of rates charged to subscribers. The Commission's *Order* merely recognizes what the FCC found in its 1996 Local Competition Order, *i.e.*, that long-term promotional offerings offered to customers in the marketplace for a period of time exceeding 90 days have the effect of changing the actual retail rate to which a wholesale requirement or discount must be applied. The FCC stated that there is to be no general exemption of promotional offerings from the wholesale requirement. However, in the same order, the FCC held that promotional offerings are exempt from the wholesale requirement if they are offered for 90 days or less because such short-term promotional offerings do not constitute the actual retail rate. The wholesale requirement, therefore, would not apply to such short-term promotions because they have been determined by the FCC not to change the actual retail rate. This bright line test was the FCC's compromise between allowing and not allowing ILECs to offer promotions that could undercut reseller pricing, so that short-term promotions, deemed procompetitive and beneficial to customers, would not have to be unnecessarily restricted.

One-time incentive gifts, including gift cards, check coupons and other merchandise, which are offered to induce customers to subscribe to telecommunications services, are promotional offerings. Therefore, if such gifts or incentives are offered for more than 90 days, as discussed in greater detail in the *Order*, they have the effect of lowering the actual, "real" retail rate. The retail rate, and thus the wholesale rate charged to resellers, must be determined on the basis of the "real" rate charged to subscribers. The Commission's *Order* does not prevent or in any way frown upon the use of such incentives as gift cards and other one-time upfront gifts. However, if the incentives, *i.e.*, promotions, are offered for more than 90 days, on the 91st day, resellers are entitled to have the benefit of the promotion reflected in the wholesale rate, meaning that the wholesale discount must be applied to the promotional rate—not to some other theoretical listed rate which has been undercut by a long-term promotional rate that is generally available to subscribers in the telecommunications marketplace. If an ILEC does not want to offer resellers a wholesale rate based on a retail rate adjusted

to reflect the effect of a promotion on the actual retail price, then the ILEC must not offer the promotion for more than 90 days.

Third, the Commission did not create a novel approach or new law when it held that "in order for a gift card type promotion not to require an adjustment to the resale wholesale rate . . . such a promotion must be limited to 90 days, unless the ILEC proves to the Commission that not applying the resellers' wholesale discount to the promotional offering [rate] is a reasonable and nondiscriminatory restriction on the ILEC's resale obligation." As discussed above with respect to New Phone's comments, FCC Rule 51.613(b), read in tandem with Rule 51.613(a)(2), has long provided for the possibility that an ILEC could avoid applying the wholesale discount to the special promotional rate if the ILEC is able to prove that withholding the availability of the promotional rate from the reseller is reasonable and nondiscriminatory.

Fourth, the Commission is not persuaded by BellSouth's argument that one-time incentive gifts such as gift cards and toasters are not "telecommunications services" required to be resold pursuant to TA 96. The *Order* does not require that non-telecommunications services, such as gift cards, check coupons, or merchandise, be resold. Such items do, however, have economic value. In recognition of this fact, the *Order* requires that telecommunications services subject to the resale obligation of Section 251(c)(4) be resold at rates that give resellers the benefit of the change in rate brought about by offering one-time incentives for more than 90 days. The *Order* does not require ILECs to provide CLPs with toasters, phones, knife sets, hotel accommodations, gift cards, etc. that they might provide to their customers as an incentive to purchase services. The *Order* does require that the price lowering impact of any such 90-day-plus promotions on the real tariff or retail list price be determined and that the benefit of such a reduction be passed on to resellers by applying the wholesale discount to the lower actual retail price.

Fifth, BellSouth complains that the Commission did not determine the value of various gift incentives or provide guidance on making such determinations, given that the ILECs' costs to acquire incentive gifts are likely not the same as the face value or actual value of the gifts to the customers. The Commission did not address determining the value of the benefit of an incentive gift promotion nor did it attempt to set strict guidelines for determining the actual rate for a service based on the value of any particular type of incentive gift. The Commission intentionally left this matter open so that the parties would be free to negotiate and arrive at a mutually agreed upon real retail rate. Irresolvable disputes in this area may be brought to the Commission for decision. However, to the extent that it is impossible either to reach a fair accommodation or agreed upon rate based on the promotional offer, or to provide the benefit of the promotional rate to resellers because it is too difficult to calculate such a

rate, then, in the absence of contrary proof, such 90-day-plus promotions would be unreasonable and discriminatory and could not be approved.³

Finally, BellSouth complains that CLPs will not be required to pass on the benefit of the promotional rate to their customers. According to BellSouth, a CLP would have every incentive to keep the benefit for itself as a windfall over and above the wholesale discount it already receives. The resale obligation of TA 96 permits a CLP to use the wholesale discount in a way that is beneficial to it without requiring the benefit to be passed directly to end users, so it is possible that a reseller could choose not to pass the promotional rate on to its customers. However, the Commission believes such an outcome is unlikely because the reseller's success is based on being able to sell services at prices that are competitive with the ILEC's prices in the marketplace. If the ILEC offers a long-term promotion and that promotional rate continues to be generally available in the market after the 90th day of a promotion, the reseller will need to offer its services at a competitive price and will likely want to maintain the price differential it usually maintains between the ILEC's retail rates and the rates it charges customers. Moreover, BellSouth's argument seems to contemplate that the gift would be provided directly to the CLP, e.g., if a \$100 coupon was offered to BellSouth's customers, BellSouth would have to provide resellers with a \$100 cash payment for each of its customers. However, as discussed above, the *benefit* (not the gift itself) would be delivered to the reseller through the wholesale price charged to the reseller, thus, further reducing the likelihood of undue windfall as described by BellSouth.

CONCLUSION

The Commission's *Order* regarding resale obligations applicable to one-time gift promotions, pursuant to TA 96, is clarified in accordance with the foregoing discussion.

B. Resale obligations with respect to mixed bundles

BellSouth complains that, with respect to mixed bundles of telecommunications services and non-telecommunications services, the Commission's *Order* requires ILECs to make the regulated services in the bundle available for resale at a "super discount." According to BellSouth, this super discount results because the *Order* requires the wholesale discount to be applied to the difference between the tariff rate for the telecommunications services in the mixed bundle and the entire price of the bundle, whenever the bundle is offered for a total price that is less than or equal to the stand-alone tariff price for the regulated telecommunications service. Thus, BellSouth believes the *Order* requires ILECs to resell piece-meal portions of mixed bundles at a "super discount." BellSouth argues that it should not be made to break apart such bundles. An ILEC has no obligation to resell either non-telecommunications services

³ Prior approval is not required under N.C.G.S. 62-133.5(f), but starting on the 91st day of a promotional offering, "an incumbent LEC may impose a restriction [on the resale obligation] only if it [has proved] to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. 51.613(b).

that it provides, or any services (telecommunications or non-telecommunications services) that are provided by entities other than the ILEC.

DISCUSSION

At the outset, the Commission notes that its *Order* addressed the Public Staff's specific questions, which focused on resale obligations with respect to *regulated* telecommunications services that were part of a gift card promotion or that were part of a bundle of regulated and nonregulated services. Therefore, the *Order* generally discussed resale obligations regarding component services in a mixed bundle in terms of regulated and nonregulated services. However, pursuant to Section 251(c)(4), an ILEC is required "to offer for resale at wholesale rates any telecommunications service that [the ILEC] provides at retail to subscribers who are not telecommunications carriers." It follows from Section 251(c)(4) that an ILEC must resell all telecommunications services, whether regulated or nonregulated, at the true retail price minus the wholesale discount. Thus, an ILEC must offer the reseller any regulated telecommunications services it provides at retail (the tariff list price) for the wholesale rate, and it must also offer the reseller any nonregulated telecommunications services it provides at retail (the retail list price) for the wholesale rate. Accordingly, hereinafter, the Commission will discuss the resale obligation in terms of telecommunications services and non-telecommunications services, not in terms of regulated and nonregulated services.

BellSouth correctly states that an ILEC is not required to resell either non-telecommunications services that it provides or any services that are provided by an entity other than the ILEC. The Commission's *Order* imposed no resale obligation in conflict with this stated principle. The *Order* does not require an ILEC to resell a mixed bundle that contains inside wire maintenance (a non-telecommunications service) nor a mixed bundle that contains long distance service (a telecommunications service) supplied by a non-ILEC such as BellSouth Long Distance, Inc. However, the Commission's *Order* does require that an ILEC make any telecommunications services provided by it and offered as a component of a mixed bundle available for resale on a stand-alone basis for the wholesale rate, which must be determined by applying the wholesale discount rate to the actual, retail, marketplace rate. Accordingly, with respect to mixed bundles of telecommunications services and non-telecommunications services or telecommunications services and services offered by non-ILECs, determining the actual retail rate of any ILEC-provided telecommunications services that are in the bundle is crucial to calculating the wholesale rate a reseller must pay to resell such telecommunications services. As discussed in the *Order*, short-term promotional rates offered for 90 days or less do not constitute retail rates for telecommunications services, but long-term promotional rates offered for 91 days or more do constitute the retail rates that must be used to determine the reseller's wholesale rate.

In its discussion of a "super discount" resale obligation, BellSouth has misunderstood the Commission's *Order*, which the Commission finds should be clarified with respect to resale obligations relating to telecommunications services offered as part

of a mixed bundle. When a package or bundle of a telecommunications service and a non-telecommunications service is offered in excess of 90 days for a total price that equals the price of the telecommunications service, i.e., the price of the telecommunications service is not lowered but the customer receives added value for the price of the telecommunications service alone, the real retail rate in the market for the ILEC-provided telecommunications service must be determined by accounting for the value of the services in the bundle that are not telecommunications services provided by the ILEC. In this situation, the price for the telecommunications service provided by the ILEC is reduced by the value received in the form of additional non-telecommunications services and/or non-ILEC provided services. Thus, if Telecommunications Service 1 ("TS1") retails for \$50 and a mixed bundle consisting of TS1, a Non-Telecommunications Service, and Satellite Television provided by a non-ILEC entity retails for \$50, then TS1 is being discounted by the value of the other services in the bundle (which may appear to be provided as a free gift). If this mixed bundle is offered for 91 days or more, then the wholesale rate that the reseller must pay for TS1 is determined by applying the wholesale discount (to be determined in accordance with the discussion on Pages 6-7 above) to the promotional rate for TS1, which is determined by subtracting the value (benefit) of the giveaways (the Non-Telecommunications Service and the non-ILEC provided Satellite Television Service) from the tariff or retail list price for TS1.

When a package or bundle of a telecommunications services and a non-telecommunications service is offered in excess of 90 days for a total price that is less than the price of the telecommunications service, the real retail rate for the telecommunications service is the total price of the bundle. That is to say, when the total bundle price is less than the telecommunications service in the bundle, the ILEC has determined the value of the discount from the tariff or retail list price and has thereby determined that the actual retail rate for the telecommunications service is the price of the total mixed bundle. (There is no requirement that discounts applicable to individual components sold together in a bundle be determined or passed on to resellers.) For example, if TS1 retails for \$50 and Telecommunications Service 2 ("TS2") retails for \$75, while a mixed bundle consisting of TS1, TS2, a Non-Telecommunications Service, and Satellite Television is offered for \$60, then TS2 is actually available in the marketplace for a real retail rate of \$60. A customer whose goal is to acquire TS2 for the best price in the market can do so by paying \$60 for the bundle rather than the retail list price of \$75, although he must also accept additional services in order to acquire TS2 at the lower rate. Therefore, the wholesale rate that the reseller must pay for TS2 is determined by applying the wholesale discount to \$60, the promotional rate for TS2. In this example, the mixed bundle sells for more than the retail price for TS1, so TS1 is not available in the marketplace for less than the tariff or retail list price of \$50. The customer whose goal is to purchase TS1 for the best price in the market would not purchase the \$60 mixed bundle just to acquire TS1, because he can purchase TS1 for less at the retail list price. Accordingly, an ILEC is only obligated to resell TS1 at the retail list price minus the wholesale discount.

In another example, if TS2 again retails on a stand-alone basis for \$75 and a Non-Telecommunications Service retails for \$10, while a mixed bundle of TS2 and the Non-Telecommunications Service is offered for more than 90 days for \$25, then TS2 would be available in the market for a real retail rate of \$25 even though a subscriber would have to accept the entire bundle to obtain TS2 for that price. Thus, TS2 should be offered to the reseller at the wholesale rate, which would be determined by applying the wholesale discount to the TS2 promotional rate of \$25.

Looking at BellSouth's example on Page 7 of its Motion for Reconsideration, where telecommunications service A retails for \$30, telecommunications service B retails for \$10, and a bundle of both A and B is priced at \$25 for a period in excess of 90 days, a reseller must pay \$25 minus the wholesale discount for service A, since a customer could purchase service A for less than \$30 by purchasing the bundle for \$25. That is to say, the real retail rate for service A would be \$25. For service B, the reseller must pay \$10 minus the wholesale discount because the real retail rate for service B remains at \$10, i.e., a customer cannot acquire service B for less than \$10 by purchasing the bundle. The reseller would not be entitled to purchase service A alone for \$15 (\$40 [A + B] minus \$25 = \$15) minus the wholesale discount as BellSouth apparently believed was required by the Commission's *Order*. It should be noted that if service B is changed to a non-telecommunications service or to a non-ILEC provided service, the ILEC would have no obligation to offer service B to a reseller at the wholesale rate.

Finally, to reiterate, as was noted above and in the *Order*, when the entire mixed bundle is offered for a price that is more than an end-user subscriber would pay for a telecommunications service if purchased alone at the retail list price, an ILEC is not required to resell the telecommunications services in the bundle for a price that is lower than the retail list price minus the wholesale discount. Instead, the ILEC is only required to resell such telecommunications services at the listed retail price minus the wholesale discount. For example, TS1 retails for \$50, while a mixed bundle of TS1, a Non-Telecommunications Service and Satellite Television supplied by a non-ILEC is offered at \$80. In this example, the mixed bundle cannot be purchased as a lower cost means of acquiring TS1. Thus, the wholesale rate for TS1 would continue to be determined by applying the wholesale discount to the tariff or retail list price for TS1, not the promotional rate that a customer might receive for TS1 if it is purchased as part of the bundle. To clarify further, the Commission's *Order* does not require an ILEC to calculate internal discount prices of components offered in a bundle and then "pick apart" the bundle to offer those internal discounts applicable to telecommunications services (discounts that are never offered to retail customers on a stand-alone basis) to resellers.

CONCLUSION

The Commission's *Order* regarding federal resale obligations applicable to mixed bundles is clarified in accordance with the foregoing discussion.

DISPOSITION OF MOTIONS

WHEREUPON, the Commission disposes of the parties' motions as follows:

1. New Phone's Motion to Reconsider IS DENIED.
2. New Phone's alternative Motion for Clarification IS GRANTED in accordance with the foregoing discussion and conclusions stated hereinabove in the section captioned "New Phone's Comments."
3. BellSouth's Motion to Reconsider and its Motion for Stay ARE DENIED.
4. BellSouth's alternative Motion for Clarification IS GRANTED in accordance with the foregoing discussion and conclusions stated hereinabove in the section captioned "BellSouth's Motion."

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of June, 2005.

NORTH CAROLINA UTILITIES COMMISSION



Patricia Swenson, Deputy Clerk

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