



ORIGINAL

July 18, 2002

Ms. Blanca Bayó, Director  
Division of the Commission Clerk  
& Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

via Overnight Mail

Re: Docket No. 020119 – Petition for Expedited Review and Cancellation Of  
BellSouth Telecommunications, Inc.'s Key Customer Promotional Tariffs and For  
an Investigation Of BellSouth's Promotional Pricing And Marketing Practices by  
Florida Digital Network, Inc.

Dear Ms. Bayó,

Please find enclosed for filing in the above docket an original and seven (7) copies of the  
following: Florida Digital Network, Inc.'s Petition for Formal Proceeding and Protest of  
Order No. PSC-02-0875-PAA-TP.

If you have any questions regarding the enclosed, please call me at 407-835-0460.

Sincerely,

Matthew Feil  
Florida Digital Network  
General Counsel

AUS  
CAF  
CMP  
COM  
CTR  
ECR  
GCL  
OPC  
MMS  
SEC  
OTH

LOCAL

LONG DISTANCE

390 North Orange Ave Suite 2000 Orlando, Florida 32801  
407 835 0300 Fax 407 835.0309 www.fdn.com

DISTRIBUTION CENTER  
02 JUL 19 AM 10:23

DOCUMENT NUMBER DATE

07519 JUL 19 02

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered by regular mail to the persons listed below this 18 day of July, 2002.

BellSouth Telecommunications, Inc.  
Nancy White/James Meza/Patrick Turner  
C/O Ms. Nancy H. Sims  
150 S. Monroe Street  
Suite 400  
Tallahassee, FL 32301-1556

Ms. Felicia Banks  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

ACCESS Integrated Networks, Inc.  
Mr. Rodney Page  
Riverside Corporate Center  
4885 Riverside Drive, Suite 101  
Macon, GA 31210-1164

Time Warner Telecom of Florida LP  
C/O Carolyn Marek  
233 Bramerton Court  
Franklin, TN 37069-4002

ITC/DeltaCom  
Nanette S. Edwards/Leigh Ann Wooten  
4092 S Memorial Parkway  
Huntsville, AL 35802-4343

McWhirter Law Firm  
Joseph McGlothlin  
117 S Gadsden Street  
Tallahassee, FL 32301

Rutledge Law Firm  
Ken Hoffman/MartinMcDonnell/M.Rule  
PO Box 551  
Tallahassee, FL 32302-0551

Pennington Law Firm  
Karen M. Camechis  
PO Box 10095  
Tallahassee, FL 32302-2095

Florida Competitive Carriers Assoc.  
C/O McWhirter Law Firm  
Joseph McGlothlin/Vicki Kaufman/Perry  
117 S. Gadsden Street  
Tallahassee, FL 32301

US LEC of Florida, Inc.  
Mr. Greg Lunsford  
6801 Morrison Blvd  
Charlotte, NC 28211-3599

XO Florida, Inc.  
Ms. Dana Shaffer  
105 Molloy Street, Suite 300  
Nashville, TN 37201-2315



Matthew Feil  
Florida Digital Network, Inc  
390 North Orange Ave.  
Suite 2000  
Orlando, FL 32801  
407-835-0460  
[mfeil@floridadigital.net](mailto:mfeil@floridadigital.net)

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for Expedited Review }  
and Cancellation of BellSouth }  
Telecommunications, Inc.'s Key Customer }  
Promotional Tariffs and For an }  
Investigation Of BellSouth's Promotional }  
Pricing And Marketing Practices by }  
Florida Digital Network, Inc. }

---

Docket No. 020119-TP

**FLORIDA DIGITAL NETWORK, INC.'S PETITION FOR FORMAL PROCEEDING  
AND PROTEST OF ORDER NO. PSC-02-0875-PAA-TP**

Florida Digital Network, Inc., ("FDN" or "Florida Digital") hereby petitions the Florida Public Service Commission ("FPSC" or "Commission") pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Rules 25-22.029 and 28-106.201, Florida Administrative Code, for a formal evidentiary proceeding to address the disputed material factual, legal and policy issues referenced herein and in FDN's original petition filed in this case on February 14, 2002. In support hereof, FDN states as follows:

1. FDN is an alternative local exchange carrier ("ALEC") certificated by the FPSC. Therefore, FDN is a substantially affected competitor of BellSouth and, as such, has standing to file this proceeding. In addition, FDN is a retail business class customer of BellSouth.<sup>1</sup>

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

Florida Digital Network, Inc.  
390 North Orange Ave.  
Suite 2000  
Orlando, FL 32801  
407-835-0300

---

<sup>1</sup> Some of FDN's regional offices receive BellSouth retail service.

DOCUMENT NUMBER DATE

07519 JUL 19 2002

FPSC-COMMISSION CLERK

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

Matthew Feil  
General Counsel  
Florida Digital Network, Inc  
390 North Orange Ave.  
Suite 2000  
Orlando, FL 32801  
407-835-0460

4. BellSouth is a corporation organized and formed under the laws of the State of Georgia, having an office at 675 West Peachtree Street, Atlanta, Georgia, 30375. BellSouth provides local exchange and other services within its legacy franchised areas in Florida. BellSouth is a "Bell Operating Company" and an "incumbent local exchange carrier" ("ILEC") under the terms of the Federal Telecommunications Act ("the Act") and is certificated as a Florida ILEC.

5. On February 14, 2002, FDN filed a petition requesting expedited review and cancellation of BellSouth's Key Customer tariffs and requesting the Commission investigate BellSouth's pricing and marketing practices ("FDN's Petition for Cancellation and Investigation").<sup>2</sup> By Proposed Agency Action Order No. PSC-02-0875-PAA-TP, issued June 28, 2002 (the "PAA Order"), faxed to FDN and posted on the Commission's website upon issuance, the Commission: (a) refused to cancel or suspend BellSouth's Key Customer tariffs, (b) declined to impose a waiting period on BellSouth before it could attempt to regain a customer, (c) ordered that BellSouth is prohibited from including marketing information in its final bill to customers who have switched providers and (d) barred BellSouth's wholesale division from sharing information with its retail division.

---

<sup>2</sup> FDN's Petition for Cancellation and Investigation is by reference incorporated herein.

6. FDN hereby protests the Commission's PAA Order. The issues of material fact FDN disputes include all factual determinations made in and predicate to findings in the PAA Order and those stated in FDN's Petition for Cancellation and Investigation. Such disputed issues include the following:<sup>3</sup>

- (a) Are BellSouth's winback discounts unfair or anticompetitive? Must BellSouth's winback rates be below cost to be deemed unfair or anticompetitive under Florida law?
- (b) Do BellSouth's winback programs include the provision of free or reduced service? Is the provision of any such free or reduced service prohibited by Florida law?
- (c) Do BellSouth's winback discounts and programs cause subsidization of basic and non-basic services or any other subsidies? Does Florida law prohibit any resulting subsidies?
- (d) Do BellSouth's winback discounts tend to cause ALECs to move away from facilities-based competition in order to compete? Is this harmful to competition and the public interest?
- (e) Do the early termination liability provisions of BellSouth's discount programs unreasonably impede customer migration from BellSouth? Are these termination provisions anticompetitive under the circumstances? Are they discriminatory?
- (f) Are BellSouth's winback tariffs "promotions" or enduring adjustments? How do the latter and the former effect competition differently?
- (g) Are BellSouth's winback tariffs available for ALEC resale, and, specifically, available for resale to a BellSouth customer that has already signed an election form/contract with BellSouth? On what terms and conditions is resale available?
- (h) Do BellSouth's winback discounts discriminate against similarly situated customers? If so, is this discrimination permitted by Florida law?
- (i) Does BellSouth market its winback discounts so as to discriminate against similarly situated customers? If so, is this discrimination permitted by Florida law?
- (j) What information is shared between BellSouth's wholesale and retail divisions? Which types of information sharing are anticompetitive? Which violate the Telecommunications Act of 1996?

---

<sup>3</sup> Some of the issues that follow incorporate questions of law and policy. For purposes hereof, "winback" means BellSouth's Key Customer and Full Circle and all similar and like predecessor and successor tariffs and programs.

(k) What carrier and retail customer contact with BellSouth, predicate to a customer's switching to another carrier, trigger BellSouth winback efforts? Are any anticompetitive? Do any violate the Telecommunications Act of 1996?

FDN incorporates herein any issues identified in protests filed by other ALEC parties to this proceeding and reserves the right to identify additional issues as matters arise during the course of discovery and as permitted by the Commission's standard prehearing procedures.

7. The ultimate facts warranting reversal of the Commission's PAA Order are as stated in FDN's Petition for Cancellation and Investigation and include the following: BellSouth's winback discounts (more than 40% off under a prior Key Customer tariff) and programs are unfair, anticompetitive and discriminatory in violation of Florida law and result in inappropriate subsidies. The primary purpose of the winback discounts is to eliminate ALEC competition. Florida's competitive carriers have suffered and will continue to suffer serious and irreparable harm as a result of BellSouth's winback discounts and programs. Moreover, the winback discounts presage higher rates for Florida consumers. Reselling BellSouth's winback discounts, assuming such is available, is a palliative consolation that serves neither to avoid the irreparable harm nor to remedy BellSouth's anticompetitive conduct. Resale of winback rates by ALECs will naturally promote erosion of facilities-based competition in the state, to the detriment of Florida consumers. BellSouth's marketing of its winback programs is anticompetitive and discriminatory in that BellSouth utilizes wholesale information and carrier and customer contacts to inappropriately trigger winback activity and does not market to all program eligible customers on equal terms.

8. The specific statutes that require reversal of the PAA Order are as stated in FDN's Petition for Cancellation and Investigation and include the following: Sections 364.01(4)(a), (c),

and (g), 364.051, 364.08, 364.09, 364.10, and 364.3381, Florida Statutes. The facts of this case dictate results under these statutes that are contrary to the conclusions reached in the PAA Order.

WHEREFORE and in consideration of the above, Florida Digital Network, Inc. respectfully requests the Commission do the following:

(a) schedule a formal proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes,

(b) bar BellSouth from offering winback discounts until competitors have at least a 40% market share in BellSouth's Florida territory,

(c) immediately cancel or suspend all BellSouth winback tariffs currently in effect in Florida,

(d) bar BellSouth from subjecting a customer to winback marketing when the customer contacts BellSouth for retail account activity predicate to a port out,

(e) bar BellSouth's wholesale division from sharing information with its retail division,

(f) bar BellSouth from contacting a customer who ported to another carrier in an effort to regain the customer for at least thirty (30) days after the port out,

(g) prohibit BellSouth from including marketing information in its final bill to customers who have switched providers

Respectfully submitted, this 18 day of July 2002.

A handwritten signature in black ink, appearing to read "Matthew Feil". The signature is fluid and cursive, with a horizontal line drawn underneath the name.

Matthew Feil  
Florida Digital Network, Inc  
390 North Orange Ave.  
Suite 2000  
Orlando, FL 32801  
407-835-0460  
[mfeil@floridadigital.net](mailto:mfeil@floridadigital.net)