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ORIGINAL

November 25, 2002

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

Re: **Docket No. 020119-TP**  
**Petition of Florida Digital Network, Inc. for Expedited Review and Cancellation**  
**of BellSouth Telecommunications, Inc.'s Key Customer Promotional Tariffs**  
**and For an Investigation of BellSouth Telecommunications, Inc.'s**  
**Promotional Pricing and Marketing Practices**

**Docket No.: 020578-TP**  
**Petition for Expedited Review and Cancellation of BellSouth**  
**Telecommunications, Inc 's Key Customer Promotional Tariffs**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Prehearing Statement, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

*Meredith E. Mays*  
Meredith E. Mays

Enclosure

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

AUS  
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**CERTIFICATE OF SERVICE  
DOCKET NO. 020119-TP and 020578-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
Electronic Mail and FedEx Mail this 25<sup>th</sup> day of November 2002 to the following:

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Meredith E. Mays



**(+) Signed Protective Agreement**

000920

ORIGINAL

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 )  
Investigation of BellSouth's promotional pricing )  
and marketing practices, by Florida Digital )  
Network, Inc. )  
\_\_\_\_\_ )

Docket No. 020119-TP

In Re: Petition of the Florida Competitive )  
Carriers Association for Expedited Review and )  
Cancellation of BellSouth Telecommunications )  
Inc.'s Key Customer Promotional Tariffs )  
\_\_\_\_\_ )

Docket No. 020578-TP

Dated: November 25, 2002

**PREHEARING STATEMENT OF  
BELLSOUTH TELECOMMUNICATIONS, INC.**

In compliance with the Order Establishing Procedure (Order No. PSC-02-1295-PCO-TP) issued in this docket on September 23, 2002, BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits its Prehearing Statement.

**A. Witnesses**

BellSouth proposes to call the following witnesses to offer direct and rebuttal testimony on the issues in this matter:

<u>Witness</u>	<u>Issues</u>
John Ruscilli (Direct and Rebuttal)	1, 3, 4A, 5, and 6
John P. Casey (Direct)	3A

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<u>Witness</u>	<u>Issues</u>
Carlos Garcia (Direct and Rebuttal)	1, 2(iv), 2(v), 3B, 3D(i), 3D(ii), 3D(iii), 3E
Robert Pitofsky (Rebuttal)	2, 3A, 3B, 3D, 3E, 5A
W. Bernard Shell (Direct and Rebuttal)	2(iv) and 2(v)
E. Steven Bigelow (Direct)	2(iv) and 2(v)
Samuel G. Massey (Rebuttal)	3A(i), 3A(ii), 3D(ii),
William E. Taylor (Direct and Rebuttal)	2, 3D, and 4B

BellSouth has made a good-faith attempt to identify the issues to which these witnesses' testimony primarily relates. Some witnesses present facts supporting these issues, some witnesses present policy considerations supporting these issues, and some do both. Any given witness' testimony may also relate to other issues in this docket.

BellSouth reserves the right to call witnesses to respond to Florida Public Service Commission ("Commission") inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Prehearing Officer at the prehearing conference to be held on December 16, 2002.

## **B. Exhibits**

BellSouth reserves the right to file exhibits to any testimony that may be filed under the circumstances identified in Section "A" above. BellSouth also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and the Rules of the Commission.

<u>Witness</u>	<u>Document Indicator</u>	<u>Title of Exhibit</u>
John Ruscilli	JAR-1	Affidavit of Elizabeth A. Stockdale
	JAR-2	Local Exchange Tariffs of various ALECs
	JAR-3	Promotional offerings by various entities
	JAR-4	Stockdale FL/TN Reply Affidavit
	JAR-5	FDN's 11/6/02 Response to BellSouth's First Set of Request for Production, Item No. 31
	JAR-6	FDN's Rate Changes and Growth in Access Lines
	JAR-7	Margin Analysis UNE-P vs. 3-Line Business Customers
	JAR-8	Network Telephone's May 20, 2002 Letter to Florida Public Service Commission BellSouth's June 19, 2002 Response
John P. Casey	JPC-1	BellSouth Key Customer Program Subscriber Election Form - Georgia and Florida
	JPC-2	BellSouth Key Customer

Program Subscriber Election  
Form - Florida

Carlos Garcia	CG-1	January 15, 2002, letter/tariff filing from Criser to D'Haeseleer
	CG-2	June 11, 2002, letter/tariff filing from Criser to D'Haeseleer
	CG-3	Advertising and Media Materials
	CG-4	Competitive Proposals
	CG-5	BellSouth's Response to FCCA and MPower Communication Corporation's First Set of Interrogatories Item No. 8(a)
	CG-6	Sampling of ALEC offers, advertisements and bills
	CG-7	FDN's Press Release
	CG-8	BellSouth's page by page Pamphlets reflecting actual size of advertisement
	CG-9	Copies of advertisement sent to existing BellSouth customers
Robert Pitofsky	RP-1	Curriculum Vitae

<u>Witness</u>	<u>Document Indicator</u>	<u>Title of Exhibit</u>
W. Bernard Shell	WBS-1	1FB Analysis
	WBS-2	Comparison of discounted prices with costs of rate elements
	WBS-3	Rates for BellSouth's Key Customers
E. Steven Bigelow	None	
Samuel G. Massey	SGM-1	BellSouth's estimated Share in each Wire Center as of September 2002 for January Key Customers
	SGM-2	BellSouth's estimated Share in each Wire Center as of September 2002 for June Key Customer
William E. Taylor	WET-1	Curriculum Vitae

### **C. Statement of Position**

BellSouth's Key Customer tariff filings T-020035 ("the January Key Customer offering") and T-020595 ("the June Key Customer offering") are fair, competitive, and nondiscriminatory. These offerings do not violate any provision of Florida law. These offerings are responsive to the intense local service competition for small business customers in Florida, which has resulted in ALECs serving approximately one-third of the small business access lines in BellSouth's service territory in Florida. BellSouth needs the flexibility to offer new services and competitive rates as quickly as possible, thereby allowing customers to receive the maximum benefits of competition as quickly as possible. The Commission should find that the January and June Key Customer offerings



comply with all requirements currently set forth in Florida and federal law. Moreover, the Commission should find that BellSouth's Key Customer tariff filings are appropriate, fair, competitive, and nondiscriminatory.

#### **D. BellSouth's Position on the Issues**

##### **Issue A:     What is the Commission's jurisdiction in this matter?**

Position:   The Commission has jurisdiction to review tariff filings for compliance with Florida law.

##### **Issue No. 1: How should Section 364.01, Florida Statutes, be interpreted in evaluating a BellSouth promotional tariff for compliance with Chapter 364, Florida Statutes?**

Position:   Nothing in Section 364.01, Florida Statutes, alters or expands the Commission's jurisdiction. Instead, Section 364.01 gives guidance to the Commission as to the appropriate exercise of the jurisdiction that already has been granted to it. Most of this guidance focuses on promoting competition, which is exactly what the January and June Key Customer offerings have done. BellSouth has been offering promotions like the January and June Key Customer offerings for years, and during that time, ALECs have gained a significant share of the business market in Florida. The Commission's 2002 Draft Competition Report, for example, reflects that ALECs serve over 33% of the business lines within BellSouth's territory.

##### **Issue No. 2: What criteria, if any, should be established to determine whether the pricing of a BellSouth promotional tariff offering is unfair, anticompetitive, or discriminatory?**

- i)     Pursuant to the cost standard identified in Sections 364.051(5) and 364.3381, Florida Statutes.

- ii) Pursuant to any other provisions of Chapter 364, Florida Statutes.
- iii) How should the appropriate criteria identified in Issues 2(i) and 2(ii) be applied to a tariff under which varying customer configurations are possible?
- iv) Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to Issues 2(i), 2(ii) and 2(iii)?
- v) Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to Issues 2(i), 2(ii) and 2(iii)?

Position: The criteria set forth in the Florida Statutes is sufficient to determine whether the pricing of a promotional tariff offering is appropriate.

- i) Section 364.3381, Florida Statutes does not apply to price regulated companies such as BellSouth, and no criteria beyond the provisions of Section 364.051(5) Florida Statutes, are necessary or appropriate. The January and June Key Customer offerings comply with these provisions.
- ii) No other criteria is necessary or appropriate.
- iii) Offerings like the January and June Key Customer offerings clearly comply with such criteria when either: (a) after applying the deepest discounts available under the offering, the rates for each service available under the offering covers the relevant costs of the service; or (b) BellSouth is "meeting offerings by any competitive provider" as permitted by Section 364.051(5)(a).
- iv) No.
- v) No.

**Issue 3A:** What criteria, if any, should be established to determine whether the termination liability terms and conditions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory?

- i) **Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?**
- (ii) **Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?**

Position: Existing Florida law addressing liquidated damages, along with competitive market forces, is sufficient to ensure that termination liability terms and conditions are fair, competitive, and nondiscriminatory.

- (i) No. The termination liability provisions in the January Key Customer offering are appropriate because damages from a breach of a January Key Customer contract are not readily ascertainable at the time such a contract is executed and the applicable charges are proportionate to the reasonably anticipated damages.
- (ii) No. The termination liability provisions in the June Key Customer offering are appropriate because damages from a breach of a June Key Customer contract are not readily ascertainable at the time such a contract is executed and the applicable charges are proportionate to the reasonably anticipated damages.

**Issue 3B:** What criteria, if any, should be established to determine whether the duration (term of individual contracts, length and succession of promotions) of a BellSouth promotional tariff offering is unfair, anticompetitive, or discriminatory?

- i) Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?
- ii) Is the BellSouth Key Customer tariff filing (Tariff Number T-025095 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

**Position:** No new criteria should be established. The duration of a promotional tariff offering is dependant on the offering itself and the market to which it is offered.

- i) No. The offering is available for resale, and it is a competitive response to offerings of other competitors.
- ii) No. The offering is available for resale, and it is a competitive response to offerings of other competitors.

**Issue 3C:** What criteria, if any, should be established to determine whether the billing conditions or restrictions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory?

- i) Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?
- ii) Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

**Position:** No new criteria should be established. BellSouth has offered various promotions for years, and these promotions have not inhibited the

ALEC's ability to compete for and win approximately one-third of the small business access lines that are being served in BellSouth's territory.

- i) No.
- ii) No.

**Issue 3D:** What criteria, if any, should be established to determine whether geographic targeting in a BellSouth promotional tariff is unfair, anticompetitive or discriminatory?

- i) Pursuant to Section 364.051(5)(a), Florida Statutes, how should "meeting offerings by any competitive provider" be interpreted?
- ii) Pursuant to Section 364.051(5)(a), Florida Statutes, how should "specific geographic market" be interpreted?
- iii) Pursuant to Section 364.051(5)(a), and 364.08, Florida Statutes, how should "similarly situated" or "substantially similar" be interpreted?
- iv) Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?
- v) Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

**Position:** Section 364.051(5)(a), Florida Statutes, allows for geographic targeting in response to offerings by competitive providers. No additional criteria should be established.

- i) The phrase "meeting offerings by any competitive provider" means that, where competition exists, BellSouth can adjust its prices in order to compete effectively.
- ii) The meaning of the phrase "specific geographic market" is dependent on what the competition is doing. It can mean a wire center, a subset of a wire center, a grouping of wire

centers, or it could mean something else depending on how competitors elect to compete.

- iii) How the phrases "similarly situated" and "substantially similar" are to be interpreted can vary depending on the specific circumstances. In the context of the January and June Key Customer offerings, the heightened level of competition in the "hot" wire centers means that customers that are served out of those wire centers are not "similarly situated" or "substantially similar" to other customers.
- iv) No.
- v) No.

**Issue 3E:** What criteria, if any, should be established to determine whether any other terms or conditions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory?

- i) Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?
- ii) Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

**Position:** It is not necessary to establish any new criteria.

- i) No.
- ii) No.

**Issue 4A:** Under what terms and conditions should BellSouth promotional tariff offerings be made available for ALEC resale?

- i) Does the BellSouth Key Customer tariff filing (Tariff Number T-020035) meet the resale terms and conditions established pursuant to this issue?
- ii) Does the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) meet the resale terms and conditions established pursuant to this issue?

**Position:** The federal Telecommunications Act of 1996 ("the Act") and orders of this Commission and the Federal Communications Commission ("FCC") govern BellSouth's requirements for the resale of promotional offerings. Specifically, retail promotions offered for 90 days or less are not discounted, and promotions of more than 90 days are available for resale at the promotional rate minus the applicable wholesale discount.

- i) Yes. The January Key Customer offering is available for resale consistent with the resale obligations of the Act, this Commission, and the FCC.
- ii) Yes. The June Key Customer offering is available for resale consistent with the resale obligations of the Act, this Commission, and the FCC.

**Issue 4B:** What is the competitive impact, if any, of the resale of BellSouth promotional tariff offerings?

**Position:** The fact that the January and June Key Customer offerings are available for resale has a favorable impact on competition. Among other things, it eliminates the possibility of an anti-competitive price squeeze.

**Issue 5A:** In the context of marketing promotional tariffs, what waiting period or other restrictions, if any, should be applicable to BellSouth?

**Position:** No waiting periods or other restrictions should be placed on BellSouth's ability to market its promotional offerings.

**Issue 5B:** In the context of marketing promotional tariffs, what restrictions, if any, should be placed on the sharing of information between BellSouth's wholesale and retail divisions?

**Position:** It is BellSouth's policy to treat all Customer Proprietary Network Information and Wholesale information in a confidential manner, and to limit the disclosure and use of CPNI and Wholesale Information in a manner consistent with the requirements of the Act, applicable FCC orders, and applicable Commission orders. No additional restrictions should be imposed.

**Issue 6:** If the Commission determines that a BellSouth promotional tariff is unlawful, what effect, if any, should this decision have on customers who have already contracted for service under the promotional tariff?

**Position:** BellSouth's Key Customer offerings comply with Florida law and the Commission's rules as they existed and were interpreted at the time BellSouth filed the offerings. If the Commission finds that these offerings do not comply with criteria established in this proceeding (and it should not), customers who have contracted for service under the offerings should be allowed to continue the contract.

#### **E. Stipulations**

The parties have entered into no stipulations at this time.



#### **F. Pending Motions**


Various Requests for Confidential Classification are pending. Additionally, FDN has filed a motion to compel against BellSouth, but it is BellSouth's understanding that FDN likely will withdraw this motion by way of a notation in its Pre-Hearing Statement. On November 21, 2002, BellSouth filed a Motion to Compel against US LEC, Time Warner and XO. BellSouth also anticipates filing a Motion to Compel against FCCA.


#### **G. Other Requirements**

BellSouth knows of no requirements set forth in any Prehearing Order with which it cannot comply.

Respectfully submitted this 25th day of November, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
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