

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 for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs by Florida Competitive Carriers Association.

DOCKET NO. 020578-TP

In re: Petition for expedited review and cancellation or suspension of BellSouth Telecommunications, Inc.'s Key Customer tariff filed 12/16/02, by Florida Digital Network, Inc.

DOCKET NO. 021252-TP
ORDER NO. PSC-03-0183-PCO-TP
ISSUED: February 6, 2003

ORDER GRANTING FDN'S MOTION FOR
LEAVE TO TAKE TELEPHONIC DEPOSITION

On February 14, 2002, Florida Digital Network, Inc. (FDN) filed a Petition 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 (January tariff filing). On March 5, 2002, BellSouth filed its Response and Answer to FDN's Petition.

On June 25, 2002, the Florida Competitive Carriers Association (FCCA) filed a Petition for Expedited Review and Cancellation Of BellSouth's Key Customer Promotional Tariffs (June tariff filing) in Docket No. 020578-TP. On June 28, 2002, Order No. PSC-02-0875-PAA-TP, was issued in Docket No. 020119-TP, and the Commission

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determined that BellSouth's 2002 Key Customer Program tariff was not unduly discriminatory.

On July 15, 2002, BellSouth filed a Motion to Dismiss or, in the alternative, Response to the "Petition of the Florida Competitive Carriers Association (FCCA) for Expedited Review and Cancellation Of BellSouth Telecommunications Inc.'s Key Customer Promotional Tariffs."

On July 19, 2002, FDN and the FCCA filed separate protests of Order No. PSC-02-0875-PAA-TP, each requesting an administrative hearing be convened in Docket No. 020119-TP. On July 22, 2002, the FCCA filed a Response to BellSouth's Motion to Dismiss. By Order No. PSC-02-1237-FOF-TP, issued September 9, 2002, BellSouth's Motion to Dismiss FCCA's complaint was denied and Docket Nos. 020119-TP and 020578-TP were consolidated for purposes of hearing. By Order No. PSC-02-1295-PCO-TP, issued September 23, 2002, the procedural and hearing dates were set for these dockets. I would note also by Order No. PSC-03-0148-PAA-TP, issued January 28, 2003, Docket No. 021252-TP was consolidated with Docket Nos. 020119-TP and 020578-TP for hearing purposes.

By Order No. PSC-03-0065-PHO-TP, Prehearing Order and Second Order Modifying Procedure, issued January 8, 2003, all discovery pending and hearing schedule were suspended to allow parties additional time to reach settlement negotiations. Parties had until January 28, 2003, to reach settlement, or the hearing schedule would presume and all pending discovery would be due February 5, 2003. On January 28, 2003, the parties filed a letter indicating that a settlement had not been reached and that parties were continuing to negotiate. The administrative hearing set in these dockets is scheduled for February 19-20, 2003.

On February 4, 2003, FDN filed a Motion for Leave to Take A Telephonic Deposition.

In its motion, FDN asserts that after settlement efforts failed in this case, counsel for FDN asked counsel for BellSouth if BellSouth's rebuttal witness Pitofsky would be available for deposition on or before, February 5, 2003, the discovery due date. However, FDN states that BellSouth represented that its witness Pitofsky was not available on or before February 5, 2003. FDN

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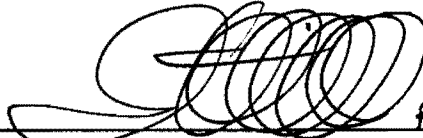
explains further that BellSouth agreed to make its witness Pitofsky available for deposition by phone on February 12, 2003, at 2:00 pm. FDN notes that barring unforeseen circumstances, FDN does not intend to request the deposition of any other BellSouth witnesses in this case. FDN also states that neither staff nor other parties have expressed an objection to the proposed deposition of BellSouth's witness Pitofsky. Therefore, FDN requests that it be permitted to take the telephonic deposition of BellSouth's witness Pitofsky.

Because it appears that FDN's request for telephonic deposition is not opposed and that a telephonic deposition will not unduly prejudice parties and staff in this proceeding, I find it appropriate to grant FDN's Motion for Leave to Take a Telephonic Deposition of BellSouth's witness Pitofsky on Wednesday, February 12, 2003, at 2:00 pm.

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that Florida Digital Network, Inc.'s Motion for Leave to Take Telephonic Deposition is hereby granted as set forth in the body of this Order.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 6th day of February, 2003.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.