

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-03-0220-CFO-TP
ISSUED: February 13, 2003

ORDER GRANTING FLORIDA DIGITAL NETWORK'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION OF
DOCUMENT NO. 13621-02 (X-REF DOCUMENT NO. 12955-02)

On February 14, 2002, Florida Digital Network, Inc. (FDN) filed a Petition for Expedited Review and Cancellation of BellSouth Telecommunications, Inc.'s (BellSouth) 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.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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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."

FDN and the FCCA filed separate protests of Order No. PSC-02-0875-PAA-TP on July 19, 2002, 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.

On December 20, 2002, FDN filed a Petition for Expedited Review and Cancellation or Suspension of BellSouth Telecommunications, Inc.'s Key Customer Tariff Filing of December 16, 2002. Docket No. 021252-TP was opened to address FDN's complaint regarding BellSouth's December 16, 2002 filing. On January 3, 2003, BellSouth filed a Response to FDN's Petition. Order No. PSC-03-0148-PAA-TP was issued on January 28, 2003, consolidating Docket No. 021252-TP with Docket Nos. 020119-TP and 20578-TP, for the purposes of hearing because the matters at issue are substantially similar and consolidation will promote administrative efficiency.

On December 12, 2002, FDN filed a Request for Specified Confidential Classification of Exhibits JAR-5 and JAR-6 to the prefiled rebuttal testimony of BellSouth witness John A. Ruscilli. (Document No. 13621-02 and cross-referenced Document No. 12955-02.) FDN states that the testimony contains nonpublic, proprietary confidential business information. FDN further states that Document No. 13621-02 contains market deployment data and customer information utilized by FDN to conduct business in Florida, which if released, would cause substantial competitive harm to FDN. FDN states it has treated and intends to continue to treat this information as private, and this information has not been generally disclosed. FDN's position is further specified in Attachment A, which contains an explanation of the proprietary information and a

list identifying the location of the information designated as confidential and proprietary.

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 364.183, Florida Statutes, or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

Section 364.183(3), Florida Statutes, in pertinent part, provides:

The term "proprietary confidential business information" means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

Further, Section 364.24(2), Florida Statutes, in pertinent part, provides:

Any officer or person in the employ of any telecommunications company shall not intentionally disclose customer account records except as authorized by the customer or as necessary for billing purposes, or required by subpoena, court order other process of court, or as otherwise allowed by law.

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Upon review, it appears that the information for which FDN seeks confidential classification in Attachment A, which is incorporated by reference in this order, is information that if disclosed, would cause harm to FDN or its ratepayers by impairing FDN's ability to compete. Therefore, I find that FDN's request complies with Rule 25-22.006, Florida Administrative Code, and Section 364.183(3), Florida Statutes, and is hereby granted.

Based on the foregoing, it is therefore

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that Florida Digital Network, Inc.'s Request for Specified Confidential Classification of Exhibits JAR-5 and JAR-6 to the prefiled rebuttal testimony of BellSouth witness John A. Ruscilli, Document No. 13621-02 and cross-referenced Document No. 12955-02, as set forth in Attachment A, is hereby granted and incorporated by reference in this order. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the documents specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 13th day of February, 2003.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

LHD

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.

ATTACHMENT A

Florida Digital Network, Inc.
FPSC Docket No. 020119-TP/020578-TP
Request for Confidential Classification
December 12, 2002

REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH
PREFILED REBUTTAL EXHIBITS JAR-5 AND JAR-6, FILED NOVEMBER 25,
2002, IN FPSC DOCKET NOS. 020119-TP AND 020578-TP

Reasons for Claim of Proprietary Information Status

1. This information contains proprietary investment, market deployment, customer location information and competitive interest information. This information is valuable, is used by FDN in conducting its business, and FDN strives to keep it secret. Therefore, such information relates to competitive interests of FDN, the discloser of which would impair the competitive business of FDN. See Section 364.183(3)(e), Florida Statutes.

2. This information contains information that FDN strives to keep secret because it is elemental to FDN's business and status in the competitive market place. Therefore, such information is a trade secret. See Section 364.183(3)(a), Florida Statutes.

Exhibit JAR-5

Reason

2002 Report Response

Item 1b, page 1	1,2
Item 4, pages 4-10	1,2
Item 6c, pages 10-15	1,2
Item 6f, NGDLC LSOs, page 16	1,2
Item 9b, pages 17-24	1,2
Item 14, page 26	1,2
Item 20, page 27	1,2
Item 21, page 27	1,2

ATTACHMENT A (CONT.)

Exhibit JAR-5 (cont.)

Reason

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2001 Report Response

Item 1e, page 1	1,2
Item 6, page 4-14	1,2
Item 7e, pages 15-16	1,2

Exhibit JAR-6

Reason

Pages 2-3 (all material)	1,2
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