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ORIGINAL

November 21, 2002

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COMMISSION
CLERK

Mrs. Blanca S. Bayó
Director, 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 Motion to Compel, which we ask that you file in the captioned dockets.

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

Sincerely,

Meredith E. Mays
Meredith E. Mays (KA)

AUS _____
CAF _____
CMP _____
COM 5 _____
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
SEC T _____
OTH _____

Enclosures

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

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FPSC-BUREAU OF RECORDS

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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 21st day of November 2002 to the following:

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Commission
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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 an Investigation of BellSouth's Promotional)	Docket No. 020119-TP
Pricing and Marketing Practices by)	
Florida Digital Network, Inc.)	
<hr/>		
In re: Petition for expedited review and)	
Cancellation of BellSouth Telecommunications, Inc.'s)	Docket No.020578-TP
Key Customer Promotional Tariffs by)	
Florida Competitive Carriers Association)	
<hr/>		
)	Filed: November 21, 2002

BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO COMPEL

I. INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") files this motion seeking an order from the Florida Public Service Commission ("Commission") compelling XO Florida, Inc. ("XO"), US LEC of Florida Inc. ("US LEC"), and Time Warner Telecom of Florida, L.P., ("Time Warner") to respond fully and completely to BellSouth's First Set of Interrogatories and BellSouth's First Requests for Production of Documents (collectively "discovery"). On October 17, 2002, BellSouth served interrogatories and requests for production on these (as well as other) parties seeking to discover information concerning termination liability (Interrogatory 5; Document Request 5), limited service offerings (Interrogatory 7, Document Request 7), resale of promotions (Interrogatory 12, Document Request 12), claims concerning interaction between BellSouth's wholesale and retail divisions (Interrogatory 16, Document Request 16), non-tariffed offerings (Interrogatory 18, Document Request 18), comparative pricing analyses (Interrogatory 19, Document Request 19), contractual offerings (Interrogatory No. 20, Document Request 20),

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numbers of customers and market share (Interrogatories 26, 27, and 28, Document Request 26-28, and 31), and capital funding (Interrogatory 29, Document Request 29). Although directly relevant to the issues that the Commission will hear during this proceeding, which is scheduled to begin on Wednesday, January 8, 2002, these parties objected to BellSouth's discovery or otherwise failed to provide the requested information.¹

In order to avoid having to involve the Commission in discovery issues, BellSouth attempted to resolve this discovery dispute informally. BellSouth emailed XO, Time Warner, and US LEC seeking responses to BellSouth's discovery requests. *See* Exhibit 1. To date, none of these parties has agreed to provide the information requested by BellSouth. This Commission, therefore, should grant BellSouth's motion to compel and order these parties to prepare complete responses to BellSouth's discovery requests as more fully discussed below.

II. DISCUSSION

On October 17, 2002 BellSouth served comprehensive interrogatories and requests for production on various parties in this proceeding that generally were designed to discover information relevant to BellSouth's defense in this case and to rebut ALECs' contentions concerning BellSouth's promotional offerings. Included in these interrogatories and requests for production were the following:

5. Please identify: (a) each section of your Florida tariffs that has been in effect at any time after January 1, 2001 that sets forth termination liability terms and conditions; and (b) any contract for telecommunications services between you and any Florida end user for telecommunications services that has been in effect at any time after January 1, 2001 and that sets forth termination liability terms and conditions.

¹ BellSouth served similar discovery requests on Florida Digital Network, Inc. ("FDN"), ITC^DeltaCom Communications, Inc. ("DeltaCom"), Mpower Communications Corp. ("Mpower"), and Access Integrated Networks, Inc. ("Access"). DeltaCom, Mpower, and Access have since decided to withdraw as parties in this proceeding. FDN generally provided the information requested by BellSouth.

7. (a) Please state whether you have made any telecommunications service offerings available to Florida end users for a limited time only (i.e. in order to avail itself of the offer, the end user was required to sign up for or otherwise accept the offer before a given date or within a given amount of time after the offer was extended). (b) If your response to (a) is anything other than an unqualified “no,” please describe each such limited-time offer in detail and identify any and all documents associated with each such limited-time offer (including without limitation tariffs, documents sent to or filed with the Commission and/or its Staff; contracts, etc.).

12. If you or any of your representatives have ever had any contact with BellSouth regarding the resale of any BellSouth promotional tariff offering in the state of Florida, please: (a) State the date, time, and manner (i.e. e-mail, letter, face-to-face conversation, telephone conversation, etc.) of each such contact; (b) identify with specificity the BellSouth promotional tariff offering that was the subject of the contact; (c) Identify with specificity (including without limitation name, address, and telephone number) the BellSouth representative that you contacted; (d) Identify with specificity (including without limitation name, address, and telephone number) the person who made the contact on your behalf; (e) Describe in detail each and every communication between you or your representatives and BellSouth’s representatives with regard to the resale of the BellSouth promotional tariff offering; and (f) Identify all documents associated with each such contact.

16. (a) Do you contend that with regard to the January Key Customer offering, any inappropriate sharing of information between BellSouth’s wholesale and retail divisions has occurred? (b) If your response to (a) is anything other than an unqualified “no,” please describe in as much detail as possible each and every occurrence of such inappropriate sharing of information. (c) Please identify all documents and describe in detail the source(s) of all information you relied upon in providing your response to (b). (d) Do you contend that with regard to the June Key Customer offering, any inappropriate sharing of information between BellSouth’s wholesale and retail divisions has occurred? (e) If your response to (d) is anything other than an unqualified “no,” please describe in as much detail as possible each and every occurrence of such inappropriate sharing of information. (f) Please identify all documents and describe in detail the source(s) of all information you relied upon in providing your response to (b).

18: (a) Do you offer telecommunications services to any business end users in Florida at rates, terms, and/or conditions that vary from the rates, terms, and/or conditions set forth in the tariffs you have filed with the Florida Public Service Commission? (b) If your answer to (a) is anything other than an unqualified “no,” please describe in detail the rates, terms, and conditions under which you provide service to business end users in Florida that vary in any way from the rates, terms, and conditions set forth in the tariffs you have filed with the Florida Public Service Commission. (c) If your answer to (a) is anything other than an unqualified “no,” please identify all contracts or other documents related to your provision of rates, terms, and conditions under which you provide service

to business end users in Florida that vary in any way from the rates terms, and conditions set forth in the tariffs you have filed with the Florida Public Service Commission.²

19. Please identify all documents (including without limitation training materials and documents given or intended to be given to actual or prospective customers) that compare the rates or prices available for any of your telecommunications products and/or services to the rates or prices available for any telecommunications products and/or services offered by BellSouth, any other ILEC, any ALEC, or any other telecommunications service provider.

20. (a) Do you offer any telecommunications services to business customers under contract? (b) If your answer to (a) is anything other than an unqualified “no,” please describe all services that you provide under contract, identify the contract term lengths available, describe in detail any charges, liability, or penalty that the contract requires the end user to pay if the end user terminates the contract prior to the expiration of its term.

26. Please provide the number of business customers and/or access lines you served in the state of Florida as of the end of each month from January 2001 to the present.

27. For each wire center listed in Section A2.10.2.B of BellSouth’s Florida General Subscriber Service Tariff, a copy of which is attached to these Interrogatories, please provide: the total number of business customers and/or business access lines you served as of the end of each month from January 2001 to the present; and (b) the number of business customers and/or business access lines you served as of the end of each month from January 2001 to the present under contract.

28. Please identify any documents in your possession that discuss, address, or relate to: (a) your share of the Florida local telecommunications market (or any segment thereof); (b) the ALECs’ share of the Florida local telecommunications market (or any segment thereof); or (c) BellSouth’s share of the Florida local telecommunications market (or any segment thereof).

29. (a) In the past twelve months, have you sought to fund your telecommunications operations in the state of Florida by borrowing money (including without limitation the issuance of bonds) or by selling equity? (b) If the answer to (a) is anything other than an unqualified “no,” please identify all documents associated with any such borrowing of money or sale of equity in which you have described in any manner whatsoever the anticipated results of your operations in Florida.

Requests for Production Numbers 5, 7, 12, 16, 18, 19, 20, 26, 27, 28, 29: Please produce all documents that are identified in or that support your response to BellSouth’s First Set of Interrogatories, Item[s] No. 5 [7, 12, 16, 18, 19, 20, 26, 27, 28, 29].

² BellSouth inadvertently omitted Interrogatory Number 18 from its email to counsel seeking discovery responses. BellSouth is requesting the Commission compel responses to Interrogatory Number 18. Moreover, since counsel for XO, US LEC, and Time Warner have not agreed to voluntarily produce any of the information requested, this omission is of no consequence.

Request for Production No. 31: Please produce a full and complete copy of your responses (including any attachments thereto) to the “Year 2001 Local Competition Report Data Request” and the “Year 2002 Local Competition Report Data Request” served by the Florida Public Service Commission.

XO, US LEC, and Time Warner lodged various objections to providing the requested information, asserting generally that the discovery is not relevant to the issues in this proceeding, while other information is proprietary. *See* Exhibit 2, XO’s Objections to BellSouth’s First Interrogatories and First Request for Production of Documents.³ These objections are without merit and should be summarily overruled. As to any commercially sensitive information, BellSouth submitted to counsel for XO, US LEC, and Time Warner an executed protective agreement. *See* Exhibit 1. The terms of the protective agreement should alleviate any concerns by counsel relating to commercially sensitive information and information withheld on such grounds should be produced forthwith.

Concerning relevance, in this proceeding, this Commission is charged with evaluating certain of BellSouth’s promotional offerings, offerings that BellSouth introduced as the direct result of the fierce competition for small business customers in Florida. The Commission must resolve whether BellSouth’s offerings comply with certain Florida statutes. One way for the Commission to determine the level of competition and types of activities occurring in the marketplace is to compare BellSouth’s offerings against the types of offerings offered by ALECs, to evaluate ALEC growth, particularly growth in the hot wire centers in which BellSouth’s promotions were available and over same time periods during which BellSouth’s promotions were offered.

³ XO, Time Warner, and US LEC are represented by the same counsel and filed identical objections; BellSouth has attached only XO’s objections to this motion to avoid filing duplicative information with the Commission.

Rule 1.280 of the Florida Rules of Civil Procedure applies to the use of discovery before this Commission and provides that “[p]arties may obtain discovery regarding *any matter*, not privileged, that is relevant to the subject matter of the pending action, *whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party*, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” See F.S.A. § 366.093(2); *also* Rule 1.280, Florida Rules of Civil Procedure. Moreover, “[t]he discovery rules are to be liberally construed so as to permit any form of discovery within the scope of the rules.” *Weyant v. Rawlings*, 389 So.2d 710, 711 (Fla. Dist. Ct. App. 1980); *see also Jones v. Seaboard Coast Line Railroad Co.*, 297 So. 2d 861, 863 (Fla. Dist. Ct. App. 1974) (“discovery rules are to be liberally construed to accomplish their purpose. In other words, litigation should no longer proceed as a game of ‘blind man’s bluff.’”).

XO, Time Warner, and US LEC cannot realistically contend that BellSouth’s discovery is not relevant since BellSouth is fully entitled to request information relating to *defenses* and relating to information that *may lead to the discovery of admissible evidence*. Instead, XO, US LEC, and Time Warner failed to present BellSouth with *any responsive information* – not a single document, not even a sentence or two summarizing responsive information. BellSouth should not be forced to request assistance from the Commission based upon the ALECs’ failure to take seriously their discovery obligations, and the Commission should reject the ALECs attempt to hide behind unfounded discovery objections.

The relevance of BellSouth's discovery is readily apparent by briefly reviewing the pre-filed direct testimony of the FCCA witnesses as well as the witness of FDN. For example, FCCA witness Danyelle Kennedy testified "[i]n one specific Pensacola case, BellSouth contacted the customer within a few weeks of NTC pulling a CSR, and the customer signed a term agreement with BellSouth instead of with NTC." (Direct testimony, pp. 2-3). Interrogatory Number 16 seeks information about facts the ALECs may have concerning claims of sharing information between wholesale and retail divisions.⁴ BellSouth is entitled to discover from ALECs each and every fact that would shed light on BellSouth's defense of this case, that would be useful in rebutting the testimony of Ms. Kennedy, and that would demonstrate whether there is any basis in fact to ALECs' unsupported allegations of inappropriate sharing of information between BellSouth's wholesale and retail divisions.

Interrogatory Number 20 seeks information concerning whether ALECs offer services under contract. Ms. Kennedy's testimony references a customer signing a "term agreement with BellSouth instead of with NTC." Whether or not ALECs offer term contracts that contain termination charges, discounted pricing, and other perks is directly relevant to BellSouth's defense of this case. To the extent that ALECs are actively marketing term agreements and BellSouth is responding to market pressures with similar term agreements, BellSouth should have the opportunity to use the discovery responses at the hearing.

Ms. Kennedy testified also that "I estimate NTC has lost 20% of its total Florida sales each month due to the BellSouth Key Customer promotion." She stated also that BellSouth has "over 90% of market share." (Direct testimony, pp. 3, 8). Finally, she states "[i]f BellSouth is

⁴ XO, Time Warner, and US LEC also objected to this Interrogatory claiming it sought legal opinions. This objection cannot stand. Nonetheless, in an effort to compromise and without waiving any rights, BellSouth is willing to modify this request by striking the term "inappropriate." BellSouth is entitled to discover facts and/or

allowed to price in this manner, I can assure you there will be no remaining competition in Florida, and consumers will be the ultimate losers.” (Direct testimony, p. 8). Request for Production 31, which seeks specific ALEC line information, and Interrogatories 26, 27, and 28, which also seek customer data are directly relevant and crucial to BellSouth’s ability to present an evidence concerning the reality of ALEC line growth during the time the ALECs complain of BellSouth’s Key customer offerings. That the Commission is examining BellSouth’s promotional offerings does not mean that ALEC customer data and line growth is irrelevant – to the contrary, ALEC line growth during the timeframe in which BellSouth’s offerings were available demonstrates that promotions may stimulate customer demand rather than stifle growth, as the ALECs erroneously contend.

Ms. Kennedy further claims that “Network Telephone, and likely other ALECs, would never be able to match the promotional pricing being offered by BellSouth and stay in business.” She also testified “BellSouth’s promotions seriously hampered NTC’s ability to compete in the marketplace. It was necessary for NTC to counter with promotions” (Direct testimony, pp. 4, 7). Mr. Gallagher’s testimony also refers to the limited ability of ALECs to counter BellSouth’s price discounts. (Direct testimony, p. 6). Interrogatories 7, 18, 19 are all directly relevant to these claims. Interrogatory 7 requests information concerning offers available for limited times, Interrogatory 18 seeks information concerning whether ALECs have offer any “off tariff” promotions or services, while Interrogatory 19 seeks information relating to price comparisons. If, as the ALECs claim, BellSouth’s promotions are so damaging, then surely ALECs analyzed the promotional pricing to make comparisons. Similar, if the ALECs offered special promotions, then BellSouth is entitled to such information to demonstrate the

documents relating to any ALEC contention that BellSouth’s wholesale and retail divisions have shared information (which BellSouth denies).

reasonableness of its offerings, which offerings resulted from the pressures of the competitive marketplace.

Interrogatory 5 seeks specific information concerning termination charges. Ms. Kennedy complains of BellSouth's termination provisions, claiming the provisions present an obstacle. (Direct Testimony, p. 5). If the contractual offerings of ALECs contain similar or more restrictive termination charges, then BellSouth should have an opportunity to present that evidence to this Commission to present a complete and accurate picture of the competitive landscape.

Resale is the topic of Interrogatory 12. Once again, the direct testimony in this case clearly illustrates the relevance of this information. FDN witness Michael Gallagher devotes nearly five pages of direct testimony to the issue of resale (Direct testimony, pp. 20-25). Ms. Kennedy likewise addresses resale in her testimony (Direct testimony, pp. 14-16). BellSouth is entitled to ascertain from the ALECs specific facts concerning resale, including whether ALECs have had any substantive discussions with BellSouth about the resale of the promotional offerings at issue in this case. Thus, this information is relevant, notwithstanding XO's, US LEC's, and Time Warner's arguments to the contrary.

Interrogatory 29 seeks information relating to capital funding. FDN Witness Michael Gallagher testified "there is no doubt that capital markets will not look favorably on investment in Florida's competitive telecommunications sector. BellSouth's promotions pose a chilling effect on ALEC investment." (Direct Testimony, p. 8). Mr. Gallagher's testimony illustrates yet again that BellSouth's interrogatory requests are directly relevant to matters raised in this case and to BellSouth's defense.

In addition to relevancy, XO, US LEC, and Time Warner also objected to BellSouth's discovery requests on grounds that such requests were "unduly burdensome." (See XO's, US LEC's, and Time Warner's Objections to BellSouth's First Set of Interrogatories, Numbers 18, 19, 20, 26-29). The unsubstantiated claims that responding to BellSouth's discovery requests would be "unduly burdensome" cannot be sustained because such claims "have little meaning without substantive support." *First City Development of Florida, Inc. v. The Hallmark of Hollywood Condominium Association, Inc.*, 545 So. 2d 502 (Fla. Dist. Ct. App. 1989) (a party objecting to discovery on grounds that a request is unduly burdensome "must be able to show the volume of documents, or the number of man-hours required in their production, or some other quantitative factor that would make it so"). Here, neither XO, Time Warner, nor US LEC has made any quantitative showing to support their claims of "undue burden" and the Commission should reject such claims.

III. CONCLUSION

BellSouth respectfully requests that the Commission grant its Motion To Compel and order XO, Time Warner, and US LEC to provide the requested information. BellSouth also requests that the Commission require responses in advance of the hearing in this case so that BellSouth may utilize the discovery responses in presenting its defense to the Commission. The information requested by BellSouth is relevant, and no party has offered any reason why it should not be considered by the Commission in resolving the issues in this proceeding.

Respectfully submitted this 21st day of November 2002.

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COUNSEL FOR BELL SOUTH
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470533

**BellSouth's Motion to Compel
Exhibit 1**

e-mail to: Time Warner; XO; US LEC;

Counsel:

BellSouth has served each of your clients with its First Set of Interrogatories and its First Requests for Production of Documents. While BellSouth has received various objections from each of your clients, BellSouth has received nothing whatsoever – no written responses, no documents, no letters, no e-mail, no other communication – in the way of a response from your clients. In light of the pleadings and the Issues List alone, there can be no legitimate argument that BellSouth is not entitled to any response whatsoever to any of the discovery it has served. Information responsive to the following Interrogatories (which may be numbered differently for different parties) and the corresponding Requests for Production of Documents are particularly relevant to this proceeding:

5. Please identify: (a) each section of your Florida tariffs that has been in effect at any time after January 1, 2001 that sets forth termination liability terms and conditions; and (b) any contract for telecommunications services between you and any Florida end user for telecommunications services that has been in effect at any time after January 1, 2001 and that sets forth termination liability terms and conditions.

7. (a) Please state whether you have made any telecommunications service offerings available to Florida end users for a limited time only (i.e. in order to avail itself of the offer, the end user was required to sign up for or otherwise accept the offer before a given date or within a given amount of time after the offer was extended). (b) If your response to (a) is anything other than an unqualified “no,” please describe each such limited-time offer in detail and identify any and all documents associated with each such limited-time offer (including without limitation tariffs, documents sent to or filed with the Commission and/or its Staff; contracts, etc.).

12. If you or any of your representatives have ever had any contact with BellSouth regarding the resale of any BellSouth promotional tariff offering in the state of Florida, please: (a) State the date, time, and manner (i.e. e-mail, letter, face-to-face conversation, telephone conversation, etc.) of each such contact; (b) identify with specificity the BellSouth promotional tariff offering that was the subject of the contact; (c) Identify with specificity (including without limitation name, address, and telephone number) the BellSouth representative that you contacted; (d) Identify with specificity (including without limitation name, address, and telephone number) the person who made the contact on your behalf; (e) Describe in detail each and every communication between you or your representatives and BellSouth’s representatives with regard to the resale of the BellSouth promotional tariff offering; and (f) Identify all documents associated with each such contact.

16. (a) Do you contend that with regard to the January Key Customer offering, any inappropriate sharing of information between BellSouth's wholesale and retail divisions has occurred? (b) If your response to (a) is anything other than an unqualified "no," please describe in as much detail as possible each and every occurrence of such inappropriate sharing of information. (c) Please identify all documents and describe in detail the source(s) of all information you relied upon in providing your response to (b). (d) Do you contend that with regard to the June Key Customer offering, any inappropriate sharing of information between BellSouth's wholesale and retail divisions has occurred? (e) If your response to (d) is anything other than an unqualified "no," please describe in as much detail as possible each and every occurrence of such inappropriate sharing of information. (f) Please identify all documents and describe in detail the source(s) of all information you relied upon in providing your response to (b).

19. Please identify all documents (including without limitation training materials and documents given or intended to be given to actual or prospective customers) that compare the rates or prices available for any of your telecommunications products and/or services to the rates or prices available for any telecommunications products and/or services offered by BellSouth, any other ILEC, any ALEC, or any other telecommunications service provider.

20. (a) Do you offer any telecommunications services to business customers under contract? (b) If your answer to (a) is anything other than an unqualified "no," please describe all services that you provide under contract, identify the contract term lengths available, describe in detail any charges, liability, or penalty that the contract requires the end user to pay if the end user terminates the contract prior to the expiration of its term.

26. Please provide the number of business customers and/or access lines you served in the state of Florida as of the end of each month from January 2001 to the present.

27. For each wire center listed in Section A2.10.2.B of BellSouth's Florida General Subscriber Service Tariff, a copy of which is attached to these Interrogatories, please provide: the total number of business customers and/or business access lines you served as of the end of each month from January 2001 to the present; and (b) the number of business customers and/or business access lines you served as of the end of each month from January 2001 to the present under contract.

28. Please identify any documents in your possession that discuss, address, or relate to: (a) your share of the Florida local telecommunications market (or any segment thereof); (b) the ALECs' share of the Florida local telecommunications market (or any segment thereof); or (c) BellSouth's share of the Florida local telecommunications market (or any segment thereof).

29. (a) In the past twelve months, have you sought to fund your telecommunications operations in the state of Florida by borrowing money (including without limitation the issuance of bonds) or by selling equity? (b) If the answer to (a) is anything other than an unqualified "no," please identify all documents associated with any such borrowing of money or sale of equity in which you have described in any manner whatsoever the anticipated results of you operations in Florida.

Request for Production No. 31: Please produce a full and complete copy of your responses (including any attachments thereto) to the "Year 2001 Local Competition Report Data Request" and the "Year 2002 Local Competition Report Data Request" served by the Florida Public Service Commission.

To the extent that your clients contend that responses contain proprietary, commercially sensitive information, I have attached a soft copy of a Protective Agreement that addresses these concerns and I am mailing an executed agreement to you in today's mail. If, however, your clients do not intend to respond to the discovery listed above even with an executed Protective Agreement in place, I will have no alternative than to file the appropriate motion with the Florida Commission. I request your full responses by or before noon on Friday, October 15, 2002. If any of you would like to discuss this matter, please call me at 404-335-0761 or send me an e-mail.

469948

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review and)
Cancellation of BellSouth Telecommunications,) Docket No. 020119-TP
Inc.'s Key Customer promotional tariffs and for)
Investigation of BellSouth's promotional pricing)
and marketing practices, by Florida Digital)
Network, Inc.)
_____)

In Re: Petition of the Florida Competitive)
Carriers Association for Expedited Review and) Docket No. 020578-TP
Cancellation of BellSouth Telecommunications)
Inc.'s Key Customer Promotional Tariffs)
_____) Dated: October 29, 2002

PROTECTIVE AGREEMENT

STIPULATION AND AGREEMENT

To expedite the production of material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential, and ensure that the protection is afforded to material so entitled, the undersigned parties, through their respective attorneys, hereby stipulate and agree as follows:

1. *Exchange of Confidential Information.* The signatory parties will be bound by the terms of this Protective Agreement upon executing it. Parties may exchange Confidential Information upon executing this Protective Agreement. Any party shall be entitled to seek enforcement of (or other appropriate relief pertaining to) this Protective Agreement before the Florida Public Service Commission ("FPSC"), a member of the FPSC, or any other authority having competent jurisdiction, for any breach or threatened breach of this Protective Agreement. This Protective Agreement shall control the production and disclosure of all materials deemed confidential pursuant to paragraph 2 below.

2. *Confidential Information.* Any materials generated or provided by a party may be designated as "Confidential Information" by that party if the party believes in good faith that the materials are confidential or proprietary and are entitled to protection from disclosure under Florida's trade secret law or any other provision of Florida or Federal law, or are subject to existing non-disclosure obligations to a third party. The parties to this Protective Agreement agree that the designation of materials as "Confidential Information," or the failure to designate materials as "Confidential Information," shall in no way affect the right of the producing party to challenge the release of such materials. In particular, the designation of materials as "Confidential Information," or the failure to designate materials as "Confidential Information," shall in no way affect the right of the producing party to assert that such materials are exempt

from disclosure. Any party asserting confidentiality for such material shall so indicate by clearly marking each page, or portion thereof, for which a Confidential Information designation is claimed with a marking such as "Confidential-Subject to Protective Agreement in Docket Nos. 020119-TP and 020578-TP before the Florida Public Service Commission" or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written consent of the party or other person who has designated a document to be stamped as Confidential Information, or as hereinafter provided, no Confidential Information may be disclosed to any person.

For purposes of the Protective Agreement, the term "document" means all written, recorded or graphic material, and non-paginated items such as computer tapes, diskettes, and CD ROMs, whether produced or created by a party or another person, whether produced pursuant to the FPSC's rules, subpoena, by agreement or otherwise. Prefiled testimony and exhibits, interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection are accorded status as a stamped confidential document, and to the extent feasible, shall be prepared in such a manner that the Confidential Information is bound separately from that not entitled to protection.

3. *Permissible Disclosure of Confidential Information.*

(a) Notwithstanding paragraph 2, Confidential Information provided pursuant to this Protective Agreement may be disclosed without prior consent only to the following persons, only in prosecuting this Proceeding, and only to the extent necessary to assist in prosecuting this Proceeding:

- (1) Counsel of record representing a party in this Proceeding, any legal support personnel (e.g., paralegals and clerical employees) employed by such attorneys provided that all portions of the record containing the Confidential Information shall only be accessible to those having access thereto under this Protective Agreement.
- (2) The FPSC or its staff, pursuant to the rules of the FPSC.
- (3) Court reporters, stenographers, or persons operating audio or video recording equipment at hearings or depositions provided that all parts of the record having the Confidential Information shall only be accessible to those having access thereto under this Protective Agreement.
- (4) Any person designated by the FPSC in the interest of justice, upon such terms as the FPSC may deem proper, and pursuant to the rules of the FPSC.
- (5) Persons noticed for depositions or designated as witnesses, to the extent reasonably necessary in preparing to testify or for the purpose of examination in this Proceeding, provided that all portions of the record containing the Confidential Information shall only be accessible to those having access thereto under this Protective Agreement.

(b) Persons obtaining access to Confidential Information under this Protective Agreement shall not disclose information designated as Confidential Information to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than in prosecuting this Proceeding before this FPSC or any arbitrator appointed by this FPSC. Each individual who is provided access to Confidential Information pursuant to paragraph 3(a), (1), (4), or (5), must first sign, and have notarized, a statement affirmatively stating that the individual has reviewed this Protective Agreement and understands and agrees to be bound by the limitations it imposes on the signing party. The form of the notarized statement to be used is attached as Attachment A to this Agreement.

(c) No copies or notes of materials marked as Confidential Information may be made except copies or notes to be used by persons designated in paragraph (a) of this section. Each party shall maintain a log, recording the number of copies made of all Confidential Information, and the persons to whom the copies have been provided. Any note memorializing or recording of Confidential Information shall, immediately upon creation, become subject to all provisions of this Protective Agreement.

(d) Within ninety (90) days of termination of this Proceeding, including all appeals and petitions, all originals and reproductions of any Confidential Information, along with the log recording persons who received copies of such materials, shall be returned to the producing party. In addition, upon such termination, any notes or other work product, derived in whole or in part from the Confidential Information shall be destroyed, and counsel of record for the receiving party shall notify counsel for the party who produced the materials in writing that this has been completed upon written request of the producing party. If materials are destroyed rather than returned to the producing party, a written statement to that effect by counsel of record for the receiving party shall be provided to the producing party. A limited exception to the provisions of this Section is recognized for the FPSC wherein the FPSC shall be allowed to retain, under seal, one copy of all Confidential Information for purposes of preserving the official record of the Commission. Further, all FPSC staff notes or work product shall be accumulated and kept under seal with all other confidential information which compiles the official record of the FPSC.

(e) The number of reviewing representatives designated by a party to review Confidential Information under paragraph 3(a)(1) may not exceed twenty (20) individuals (excluding paralegals and clerical employees) unless (i) the party producing the Confidential Information, consents to additional reviewing representatives, or (ii) the FPSC or the Prehearing Officer denies a motion to bar disclosure of the Confidential Information to additional reviewing representatives. Failure to file such a motion within ten days after receiving written Notice that a reviewing party intends to designate additional reviewing representative(s) shall constitute consent to the designation. The written Notice shall (a) identify the additional reviewing representative(s), (b) identify the Confidential Information

that is proposed to be disclosed, and (c) provide the current employment and position of the proposed additional reviewing representative(s).

4. *Declassification.* A party may apply, to the FPSC for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as confidential, are not entitled to such status and protection. The party or other person that designated the document or testimony as Confidential Information shall be given notice of the application and an opportunity to respond.

5. *Confidential Information in Depositions.* In the event that depositions are to be taken in This Proceeding:

(a) A deponent may, during the deposition, be shown and examined about Confidential Information if the deponent already knows the Confidential Information contained therein or if the provisions of paragraph 3 above are complied with.

(b) Parties (and deponents) may, within fifteen (15) days after receiving a depositions transcript, designate pages of the transcript (and exhibits thereto) as Confidential Information. Confidential Information within the deposition transcript may be designated by marking the portions of the pages that are confidential and marking such pages with the following legend: "Confidential - Subject To Protective Agreement in Docket Nos. 020119-TP and 020578-TP before the Florida Public Service Commission." Until expiration of the 15-day period, the entire deposition will be treated as Confidential Information subject to protection against disclosure under this Protective Agreement. If no party or deponent timely designates Confidential Information in a deposition, then none of the transcript or its exhibits shall be filed (to the extent such filing may be required) under seal separately from the portions and exhibits not so marked.

6. *Confidential Information Offered in Evidence or Filed in the Record.* Subject to the FPSC's rules and applicable state statutes, Confidential Information may be offered into evidence or in the record made by the parties and submitted to the FPSC (or to an arbitrator appointed by the FPSC) in this Proceeding, provided that the proponent does so in the manner set forth in this Protective Agreement and provides reasonable advance written notice of the party's intent to do so. Pursuant to this Agreement, any party may move before the FPSC (or a presiding officer of the FPSC, or an arbitrator appointed by the FPSC) for any order that the evidence being received shall only be accessible to those having access thereto under the Protective Agreement or in camera or under other conditions to prevent unnecessary disclosure. The FPSC, presiding officer, or arbitrator will then determine whether the proffered evidence should continue to be treated as Confidential Information and, if so, what protection, if any, may be afforded such information at any hearing or other proceeding.

7. *Subpoena by Courts or Other Agencies.* If a court or other administrative agency subpoenas or orders production of Confidential Information which a party has obtained under the terms of this Protective Agreement, such party shall promptly (within two (2) business days) notify the party (or other person who designated the document as confidential) of the pendency of such subpoena or order to allow that party time to object to that production or seek a protective order.

8. *Filing.* Confidential Information need not be filed with the FPSC except when required in connection with motions under the FPSC's rules and regulations or other matters pending before the FPSC or an arbitrator appointed by the FPSC. If filed, such information shall be filed under seal and shall remain sealed while in the office as the FPSC may designate so long as they retain their status as Confidential Information.

9. *Client Consultation.* Nothing in this Protective Agreement shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential Information provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure or reference to any Confidential Information except under the procedures or paragraph 3 above.

10. *Use.* Persons obtaining access to Confidential Information under this Protective Agreement shall use the information only for preparation of and the conduct of litigation in this Proceeding and any related appeals or review proceedings, and shall not use such information for any other purpose, including business or commercial purposes, or governmental or other administrative or judicial proceedings.

11. *Non-Termination.* The provisions of this Protective Agreement shall not terminate at the conclusion of this Proceeding.

12. *Modification Permitted.* Nothing in this Protective Agreement shall prevent any party from objecting to discovery that it believes to be otherwise improper.

13. *Responsibilities of the Parties.* The parties are responsible for employing reasonable measures to control, consistent with this Protective Agreement, duplication of, access to, and distribution of Confidential Information.

14. *Definition of "This Proceeding".* For the purposes of this Protective Agreement, the phrase "This Proceeding" shall only include FPSC Docket Nos. 020119-TP and 020578-TP and any appeals thereof.

15. *Counterparts.* This Protective Agreement may be executed by one or more parties to this Protective Agreement on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument binding on and inuring to the benefit of each party so executing this Protective Agreement with the same effect as if all such parties had signed the same instrument at the same time and place.

Dated: November 14, 2002

US LEC of Florida, Inc.

By: _____

(Print Name)

Title: _____

BELLSOUTH TELECOMMUNICATIONS, INC.

By: Patrick W. Turner

Patrick W. Turner
(Print Name)

Title: Senior Regulatory Counsel

STATE OF _____
COUNTY OF _____

CERTIFICATE OF AUTHORIZED REVIEWING REPRESENTATIVE

BEFORE ME, the undersigned authority, duly Commissioned and qualified in and for the State and County aforesaid, personally came and appeared _____ (insert name), who, being by me first duly sworn, deposed and said as follows:

I certify my understanding that Confidential Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Agreement in Florida Public Service Commission Docket Nos. 020119-TP and 020578-TP, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of "Confidential Information", and any notes, memoranda, or any other form of information regarding or derived from Confidential Information shall not be disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purposes of the proceedings in Docket Nos. 020119-TP and 020578-TP.

Signature: _____

Date of Execution: _____
(Type or Print below)

Name: _____

Title: _____

Company: _____

Address: _____

Requesting Party: _____

SWORN TO AND SUBSCRIBED BEFORE ME on this _____ day of _____, 2002.

My Commission expires: _____

(NOTARY PUBLIC)

(SEAL)

#470177

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review and)
Cancellation of BellSouth Telecommunications,) Docket No. 020119-TP
Inc.'s Key Customer promotional tariffs and for)
Investigation of BellSouth's promotional pricing)
and marketing practices, by Florida Digital)
Network, Inc.)
_____)

In Re: Petition of the Florida Competitive)
Carriers Association for Expedited Review and) Docket No. 020578-TP
Cancellation of BellSouth Telecommunications)
Inc.'s Key Customer Promotional Tariffs)
_____) Dated: October 29, 2002

PROTECTIVE AGREEMENT

STIPULATION AND AGREEMENT

To expedite the production of material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential, and ensure that the protection is afforded to material so entitled, the undersigned parties, through their respective attorneys, hereby stipulate and agree as follows:

1. *Exchange of Confidential Information.* The signatory parties will be bound by the terms of this Protective Agreement upon executing it. Parties may exchange Confidential Information upon executing this Protective Agreement. Any party shall be entitled to seek enforcement of (or other appropriate relief pertaining to) this Protective Agreement before the Florida Public Service Commission ("FPSC"), a member of the FPSC, or any other authority having competent jurisdiction, for any breach or threatened breach of this Protective Agreement. This Protective Agreement shall control the production and disclosure of all materials deemed confidential pursuant to paragraph 2 below.

2. *Confidential Information.* Any materials generated or provided by a party may be designated as "Confidential Information" by that party if the party believes in good faith that the materials are confidential or proprietary and are entitled to protection from disclosure under Florida's trade secret law or any other provision of Florida or Federal law, or are subject to existing non-disclosure obligations to a third party. The parties to this Protective Agreement agree that the designation of materials as "Confidential Information," or the failure to designate materials as "Confidential Information," shall in no way affect the right of the producing party to challenge the release of such materials. In particular, the designation of materials as "Confidential Information," or the failure to designate materials as "Confidential Information," shall in no way affect the right of the producing party to assert that such materials are exempt

from disclosure. Any party asserting confidentiality for such material shall so indicate by clearly marking each page, or portion thereof, for which a Confidential Information designation is claimed with a marking such as "Confidential-Subject to Protective Agreement in Docket Nos. 020119-TP and 020578-TP before the Florida Public Service Commission" or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written consent of the party or other person who has designated a document to be stamped as Confidential Information, or as hereinafter provided, no Confidential Information may be disclosed to any person.

For purposes of the Protective Agreement, the term "document" means all written, recorded or graphic material, and non-paginated items such as computer tapes, diskettes, and CD ROMs, whether produced or created by a party or another person, whether produced pursuant to the FPSC's rules, subpoena, by agreement or otherwise. Prefiled testimony and exhibits, interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection are accorded status as a stamped confidential document, and to the extent feasible, shall be prepared in such a manner that the Confidential Information is bound separately from that not entitled to protection.

3. *Permissible Disclosure of Confidential Information.*

(a) Notwithstanding paragraph 2, Confidential Information provided pursuant to this Protective Agreement may be disclosed without prior consent only to the following persons, only in prosecuting this Proceeding, and only to the extent necessary to assist in prosecuting this Proceeding:

- (1) Counsel of record representing a party in this Proceeding, any legal support personnel (e.g., paralegals and clerical employees) employed by such attorneys provided that all portions of the record containing the Confidential Information shall only be accessible to those having access thereto under this Protective Agreement.
- (2) The FPSC or its staff, pursuant to the rules of the FPSC.
- (3) Court reporters, stenographers, or persons operating audio or video recording equipment at hearings or depositions provided that all parts of the record having the Confidential Information shall only be accessible to those having access thereto under this Protective Agreement.
- (4) Any person designated by the FPSC in the interest of justice, upon such terms as the FPSC may deem proper, and pursuant to the rules of the FPSC.
- (5) Persons noticed for depositions or designated as witnesses, to the extent reasonably necessary in preparing to testify or for the purpose of examination in this Proceeding, provided that all portions of the record containing the Confidential Information shall only be accessible to those having access thereto under this Protective Agreement.

(b) Persons obtaining access to Confidential Information under this Protective Agreement shall not disclose information designated as Confidential Information to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than in prosecuting this Proceeding before this FPSC or any arbitrator appointed by this FPSC. Each individual who is provided access to Confidential Information pursuant to paragraph 3(a), (1), (4), or (5), must first sign, and have notarized, a statement affirmatively stating that the individual has reviewed this Protective Agreement and understands and agrees to be bound by the limitations it imposes on the signing party. The form of the notarized statement to be used is attached as Attachment A to this Agreement.

(c) No copies or notes of materials marked as Confidential Information may be made except copies or notes to be used by persons designated in paragraph (a) of this section. Each party shall maintain a log, recording the number of copies made of all Confidential Information, and the persons to whom the copies have been provided. Any note memorializing or recording of Confidential Information shall, immediately upon creation, become subject to all provisions of this Protective Agreement.

(d) Within ninety (90) days of termination of this Proceeding, including all appeals and petitions, all originals and reproductions of any Confidential Information, along with the log recording persons who received copies of such materials, shall be returned to the producing party. In addition, upon such termination, any notes or other work product, derived in whole or in part from the Confidential Information shall be destroyed, and counsel of record for the receiving party shall notify counsel for the party who produced the materials in writing that this has been completed upon written request of the producing party. If materials are destroyed rather than returned to the producing party, a written statement to that effect by counsel of record for the receiving party shall be provided to the producing party. A limited exception to the provisions of this Section is recognized for the FPSC wherein the FPSC shall be allowed to retain, under seal, one copy of all Confidential Information for purposes of preserving the official record of the Commission. Further, all FPSC staff notes or work product shall be accumulated and kept under seal with all other confidential information which compiles the official record of the FPSC.

(e) The number of reviewing representatives designated by a party to review Confidential Information under paragraph 3(a)(1) may not exceed twenty (20) individuals (excluding paralegals and clerical employees) unless (i) the party producing the Confidential Information, consents to additional reviewing representatives, or (ii) the FPSC or the Prehearing Officer denies a motion to bar disclosure of the Confidential Information to additional reviewing representatives. Failure to file such a motion within ten days after receiving written Notice that a reviewing party intends to designate additional reviewing representative(s) shall constitute consent to the designation. The written Notice shall (a) identify the additional reviewing representative(s), (b) identify the Confidential Information

that is proposed to be disclosed, and (c) provide the current employment and position of the proposed additional reviewing representative(s).

4. *Declassification.* A party may apply, to the FPSC for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as confidential, are not entitled to such status and protection. The party or other person that designated the document or testimony as Confidential Information shall be given notice of the application and an opportunity to respond.

5. *Confidential Information in Depositions.* In the event that depositions are to be taken in This Proceeding:

(a) A deponent may, during the deposition, be shown and examined about Confidential Information if the deponent already knows the Confidential Information contained therein or if the provisions of paragraph 3 above are complied with.

(b) Parties (and deponents) may, within fifteen (15) days after receiving a depositions transcript, designate pages of the transcript (and exhibits thereto) as Confidential Information. Confidential Information within the deposition transcript may be designated by marking the portions of the pages that are confidential and marking such pages with the following legend: "Confidential - Subject To Protective Agreement in Docket Nos. 020119-TP and 020578-TP before the Florida Public Service Commission." Until expiration of the 15-day period, the entire deposition will be treated as Confidential Information subject to protection against disclosure under this Protective Agreement. If no party or deponent timely designates Confidential Information in a deposition, then none of the transcript or its exhibits shall be filed (to the extent such filing may be required) under seal separately from the portions and exhibits not so marked.

6. *Confidential Information Offered in Evidence or Filed in the Record.* Subject to the FPSC's rules and applicable state statutes, Confidential Information may be offered into evidence or in the record made by the parties and submitted to the FPSC (or to an arbitrator appointed by the FPSC) in this Proceeding, provided that the proponent does so in the manner set forth in this Protective Agreement and provides reasonable advance written notice of the party's intent to do so. Pursuant to this Agreement, any party may move before the FPSC (or a presiding officer of the FPSC, or an arbitrator appointed by the FPSC) for any order that the evidence being received shall only be accessible to those having access thereto under the Protective Agreement or in camera or under other conditions to prevent unnecessary disclosure. The FPSC, presiding officer, or arbitrator will then determine whether the proffered evidence should continue to be treated as Confidential Information and, if so, what protection, if any, may be afforded such information at any hearing or other proceeding.

7. *Subpoena by Courts or Other Agencies.* If a court or other administrative agency subpoenas or orders production of Confidential Information which a party has obtained under the terms of this Protective Agreement, such party shall promptly (within two (2) business days) notify the party (or other person who designated the document as confidential) of the pendency of such subpoena or order to allow that party time to object to that production or seek a protective order.

8. *Filing.* Confidential Information need not be filed with the FPSC except when required in connection with motions under the FPSC's rules and regulations or other matters pending before the FPSC or an arbitrator appointed by the FPSC. If filed, such information shall be filed under seal and shall remain sealed while in the office as the FPSC may designate so long as they retain their status as Confidential Information.

9. *Client Consultation.* Nothing in this Protective Agreement shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential Information provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure or reference to any Confidential Information except under the procedures or paragraph 3 above.

10. *Use.* Persons obtaining access to Confidential Information under this Protective Agreement shall use the information only for preparation of and the conduct of litigation in this Proceeding and any related appeals or review proceedings, and shall not use such information for any other purpose, including business or commercial purposes, or governmental or other administrative or judicial proceedings.

11. *Non-Termination.* The provisions of this Protective Agreement shall not terminate at the conclusion of this Proceeding.

12. *Modification Permitted.* Nothing in this Protective Agreement shall prevent any party from objecting to discovery that it believes to be otherwise improper.

13. *Responsibilities of the Parties.* The parties are responsible for employing reasonable measures to control, consistent with this Protective Agreement, duplication of, access to, and distribution of Confidential Information.

14. *Definition of "This Proceeding".* For the purposes of this Protective Agreement, the phrase "This Proceeding" shall only include FPSC Docket Nos. 020119-TP and 020578-TP and any appeals thereof.

15. *Counterparts.* This Protective Agreement may be executed by one or more parties to this Protective Agreement on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument binding on and inuring to the benefit of each party so executing this Protective Agreement with the same effect as if all such parties had signed the same instrument at the same time and place.

Dated: November 14, 2002

Time Warner Telecom of FL, L.P.

By: _____

(Print Name)

Title: _____

BELLSOUTH TELECOMMUNICATIONS, INC.

By: Patrick W. Turner

Patrick W. Turner

(Print Name)

Title: Senior Regulatory Counsel

STATE OF _____
COUNTY OF _____

CERTIFICATE OF AUTHORIZED REVIEWING REPRESENTATIVE

BEFORE ME, the undersigned authority, duly Commissioned and qualified in and for the State and County aforesaid, personally came and appeared _____ (insert name), who, being by me first duly sworn, deposed and said as follows:

I certify my understanding that Confidential Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Agreement in Florida Public Service Commission Docket Nos. 020119-TP and 020578-TP, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of "Confidential Information", and any notes, memoranda, or any other form of information regarding or derived from Confidential Information shall not be disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purposes of the proceedings in Docket Nos. 020119-TP and 020578-TP.

Signature: _____

Date of Execution: _____
(Type or Print below)

Name: _____

Title: _____

Company: _____

Address: _____

Requesting Party: _____

SWORN TO AND SUBSCRIBED BEFORE ME on this _____ day of _____, 2002.

My Commission expires: _____

(NOTARY PUBLIC) (SEAL)

#470177

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review and)
Cancellation of BellSouth Telecommunications,) Docket No. 020119-TP
Inc.'s Key Customer promotional tariffs and for)
Investigation of BellSouth's promotional pricing)
and marketing practices, by Florida Digital)
Network, Inc.)
_____)

In Re: Petition of the Florida Competitive)
Carriers Association for Expedited Review and) Docket No. 020578-TP
Cancellation of BellSouth Telecommunications)
Inc.'s Key Customer Promotional Tariffs)
_____) Dated: October 29, 2002

PROTECTIVE AGREEMENT

STIPULATION AND AGREEMENT

To expedite the production of material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential, and ensure that the protection is afforded to material so entitled, the undersigned parties, through their respective attorneys, hereby stipulate and agree as follows:

1. *Exchange of Confidential Information.* The signatory parties will be bound by the terms of this Protective Agreement upon executing it. Parties may exchange Confidential Information upon executing this Protective Agreement. Any party shall be entitled to seek enforcement of (or other appropriate relief pertaining to) this Protective Agreement before the Florida Public Service Commission ("FPSC"), a member of the FPSC, or any other authority having competent jurisdiction, for any breach or threatened breach of this Protective Agreement. This Protective Agreement shall control the production and disclosure of all materials deemed confidential pursuant to paragraph 2 below.

2. *Confidential Information.* Any materials generated or provided by a party may be designated as "Confidential Information" by that party if the party believes in good faith that the materials are confidential or proprietary and are entitled to protection from disclosure under Florida's trade secret law or any other provision of Florida or Federal law, or are subject to existing non-disclosure obligations to a third party. The parties to this Protective Agreement agree that the designation of materials as "Confidential Information," or the failure to designate materials as "Confidential Information," shall in no way affect the right of the producing party to challenge the release of such materials. In particular, the designation of materials as "Confidential Information," or the failure to designate materials as "Confidential Information," shall in no way affect the right of the producing party to assert that such materials are exempt

from disclosure. Any party asserting confidentiality for such material shall so indicate by clearly marking each page, or portion thereof, for which a Confidential Information designation is claimed with a marking such as "Confidential-Subject to Protective Agreement in Docket Nos. 020119-TP and 020578-TP before the Florida Public Service Commission" or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written consent of the party or other person who has designated a document to be stamped as Confidential Information, or as hereinafter provided, no Confidential Information may be disclosed to any person.

For purposes of the Protective Agreement, the term "document" means all written, recorded or graphic material, and non-paginated items such as computer tapes, diskettes, and CD ROMs, whether produced or created by a party or another person, whether produced pursuant to the FPSC's rules, subpoena, by agreement or otherwise. Prefiled testimony and exhibits, interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection are accorded status as a stamped confidential document, and to the extent feasible, shall be prepared in such a manner that the Confidential Information is bound separately from that not entitled to protection.

3. *Permissible Disclosure of Confidential Information.*

(a) Notwithstanding paragraph 2, Confidential Information provided pursuant to this Protective Agreement may be disclosed without prior consent only to the following persons, only in prosecuting this Proceeding, and only to the extent necessary to assist in prosecuting this Proceeding:

(1) Counsel of record representing a party in this Proceeding, any legal support personnel (e.g., paralegals and clerical employees) employed by such attorneys provided that all portions of the record containing the Confidential Information shall only be accessible to those having access thereto under this Protective Agreement.

(2) The FPSC or its staff, pursuant to the rules of the FPSC.

(3) Court reporters, stenographers, or persons operating audio or video recording equipment at hearings or depositions provided that all parts of the record having the Confidential Information shall only be accessible to those having access thereto under this Protective Agreement.

(4) Any person designated by the FPSC in the interest of justice, upon such terms as the FPSC may deem proper, and pursuant to the rules of the FPSC.

(5) Persons noticed for depositions or designated as witnesses, to the extent reasonably necessary in preparing to testify or for the purpose of examination in this Proceeding, provided that all portions of the record containing the Confidential Information shall only be accessible to those having access thereto under this Protective Agreement.

(b) Persons obtaining access to Confidential Information under this Protective Agreement shall not disclose information designated as Confidential Information to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than in prosecuting this Proceeding before this FPSC or any arbitrator appointed by this FPSC. Each individual who is provided access to Confidential Information pursuant to paragraph 3(a), (1), (4), or (5), must first sign, and have notarized, a statement affirmatively stating that the individual has reviewed this Protective Agreement and understands and agrees to be bound by the limitations it imposes on the signing party. The form of the notarized statement to be used is attached as Attachment A to this Agreement.

(c) No copies or notes of materials marked as Confidential Information may be made except copies or notes to be used by persons designated in paragraph (a) of this section. Each party shall maintain a log, recording the number of copies made of all Confidential Information, and the persons to whom the copies have been provided. Any note memorializing or recording of Confidential Information shall, immediately upon creation, become subject to all provisions of this Protective Agreement.

(d) Within ninety (90) days of termination of this Proceeding, including all appeals and petitions, all originals and reproductions of any Confidential Information, along with the log recording persons who received copies of such materials, shall be returned to the producing party. In addition, upon such termination, any notes or other work product, derived in whole or in part from the Confidential Information shall be destroyed, and counsel of record for the receiving party shall notify counsel for the party who produced the materials in writing that this has been completed upon written request of the producing party. If materials are destroyed rather than returned to the producing party, a written statement to that effect by counsel of record for the receiving party shall be provided to the producing party. A limited exception to the provisions of this Section is recognized for the FPSC wherein the FPSC shall be allowed to retain, under seal, one copy of all Confidential Information for purposes of preserving the official record of the Commission. Further, all FPSC staff notes or work product shall be accumulated and kept under seal with all other confidential information which compiles the official record of the FPSC.

(e) The number of reviewing representatives designated by a party to review Confidential Information under paragraph 3(a)(1) may not exceed twenty (20) individuals (excluding paralegals and clerical employees) unless (i) the party producing the Confidential Information, consents to additional reviewing representatives, or (ii) the FPSC or the Prehearing Officer denies a motion to bar disclosure of the Confidential Information to additional reviewing representatives. Failure to file such a motion within ten days after receiving written Notice that a reviewing party intends to designate additional reviewing representative(s) shall constitute consent to the designation. The written Notice shall (a) identify the additional reviewing representative(s), (b) identify the Confidential Information

that is proposed to be disclosed, and (c) provide the current employment and position of the proposed additional reviewing representative(s).

4. *Declassification.* A party may apply, to the FPSC for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as confidential, are not entitled to such status and protection. The party or other person that designated the document or testimony as Confidential Information shall be given notice of the application and an opportunity to respond.

5. *Confidential Information in Depositions.* In the event that depositions are to be taken in This Proceeding:

(a) A deponent may, during the deposition, be shown and examined about Confidential Information if the deponent already knows the Confidential Information contained therein or if the provisions of paragraph 3 above are complied with.

(b) Parties (and deponents) may, within fifteen (15) days after receiving a depositions transcript, designate pages of the transcript (and exhibits thereto) as Confidential Information. Confidential Information within the deposition transcript may be designated by marking the portions of the pages that are confidential and marking such pages with the following legend: "Confidential - Subject To Protective Agreement in Docket Nos. 020119-TP and 020578-TP before the Florida Public Service Commission." Until expiration of the 15-day period, the entire deposition will be treated as Confidential Information subject to protection against disclosure under this Protective Agreement. If no party or deponent timely designates Confidential Information in a deposition, then none of the transcript or its exhibits shall be filed (to the extent such filing may be required) under seal separately from the portions and exhibits not so marked.

6. *Confidential Information Offered in Evidence or Filed in the Record.* Subject to the FPSC's rules and applicable state statutes, Confidential Information may be offered into evidence or in the record made by the parties and submitted to the FPSC (or to an arbitrator appointed by the FPSC) in this Proceeding, provided that the proponent does so in the manner set forth in this Protective Agreement and provides reasonable advance written notice of the party's intent to do so. Pursuant to this Agreement, any party may move before the FPSC (or a presiding officer of the FPSC, or an arbitrator appointed by the FPSC) for any order that the evidence being received shall only be accessible to those having access thereto under the Protective Agreement or in camera or under other conditions to prevent unnecessary disclosure. The FPSC, presiding officer, or arbitrator will then determine whether the proffered evidence should continue to be treated as Confidential Information and, if so, what protection, if any, may be afforded such information at any hearing or other proceeding.

7. *Subpoena by Courts or Other Agencies.* If a court or other administrative agency subpoenas or orders production of Confidential Information which a party has obtained under the terms of this Protective Agreement, such party shall promptly (within two (2) business days) notify the party (or other person who designated the document as confidential) of the pendency of such subpoena or order to allow that party time to object to that production or seek a protective order.

8. *Filing.* Confidential Information need not be filed with the FPSC except when required in connection with motions under the FPSC's rules and regulations or other matters pending before the FPSC or an arbitrator appointed by the FPSC. If filed, such information shall be filed under seal and shall remain sealed while in the office as the FPSC may designate so long as they retain their status as Confidential Information.

9. *Client Consultation.* Nothing in this Protective Agreement shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential Information provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure or reference to any Confidential Information except under the procedures or paragraph 3 above.

10. *Use.* Persons obtaining access to Confidential Information under this Protective Agreement shall use the information only for preparation of and the conduct of litigation in this Proceeding and any related appeals or review proceedings, and shall not use such information for any other purpose, including business or commercial purposes, or governmental or other administrative or judicial proceedings.

11. *Non-Termination.* The provisions of this Protective Agreement shall not terminate at the conclusion of this Proceeding.

12. *Modification Permitted.* Nothing in this Protective Agreement shall prevent any party from objecting to discovery that it believes to be otherwise improper.

13. *Responsibilities of the Parties.* The parties are responsible for employing reasonable measures to control, consistent with this Protective Agreement, duplication of, access to, and distribution of Confidential Information.

14. *Definition of "This Proceeding".* For the purposes of this Protective Agreement, the phrase "This Proceeding" shall only include FPSC Docket Nos. 020119-TP and 020578-TP and any appeals thereof.

15. *Counterparts.* This Protective Agreement may be executed by one or more parties to this Protective Agreement on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument binding on and inuring to the benefit of each party so executing this Protective Agreement with the same effect as if all such parties had signed the same instrument at the same time and place.

Dated: November 14, 2002

XO Florida, Inc.

By: _____

(Print Name)

Title: _____

BELLSOUTH TELECOMMUNICATIONS, INC.

By: Patrick Turner

Patrick W. Turner
(Print Name)

Title: Senior Regulatory Counsel

STATE OF _____
COUNTY OF _____

CERTIFICATE OF AUTHORIZED REVIEWING REPRESENTATIVE

BEFORE ME , the undersigned authority, duly Commissioned and qualified in and for the State and County aforesaid, personally came and appeared _____ (insert name), who, being by me first duly sworn, deposed and said as follows:

I certify my understanding that Confidential Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Agreement in Florida Public Service Commission Docket Nos. 020119-TP and 020578-TP, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of "Confidential Information", and any notes, memoranda, or any other form of information regarding or derived from Confidential Information shall not be disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purposes of the proceedings in Docket Nos. 020119-TP and 020578-TP.

Signature: _____

Date of Execution: _____
(Type or Print below)

Name: _____

Title: _____

Company: _____

Address: _____

Requesting Party: _____

SWORN TO AND SUBSCRIBED BEFORE ME on this _____ day of _____, 2002.

My Commission expires: _____

(NOTARY PUBLIC)

(SEAL)

#470177

**BellSouth's Motion to Compel
Exhibit 2**

your initial response be incorrect or untrue. Pursuant to Florida Rule of Civil Procedure 1.280(e), XO objects to BellSouth's request to require supplemental responses. Fla.R.Civ.P. 1.280(e) states that:

a party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired.

3. XO will make a reasonable effort to respond to the Interrogatories as XO understands and interprets them. If BellSouth should assert an interpretation of any Request that differs from XO's, XO reserves the right to supplement or amend its objections. XO further reserves the right to produce responsive documents or information received after the date of its Response.

4. XO expressly reserves and does not waive any and all objections it may have to the admissibility, authenticity or relevancy of the responses produced pursuant to the Requests.

5. BellSouth's Requests for Production of Documents ask only for documents that are identified or supporting XO's responses to Interrogatories. Therefore, XO incorporates all of its objections to BellSouth's Interrogatories in all of its objections to BellSouth's corresponding Requests for Production of Documents.

OBJECTIONS TO BELLSOUTH'S REQUESTS

Many of the specific objections that XO makes are applicable to several of BellSouth's Requests. For this reason, XO provides the following definitions of those objections and, where applicable, repeats only the defined term in stating its specific objections.

1. **Relevance**: the request is not relevant to any specific claims, defenses, issues or questions presented in this proceeding and is not reasonably calculated to lead to the discovery of information relevant to resolution of the issues.

2. Unduly Burdensome: the request is unduly burdensome in that providing the requested data (i) would require an unreasonable expenditure of time and resources to search for documents or information; (ii) is cumulative and/or has only a limited likelihood of leading to the discovery of data relevant to resolution of the specific issue; and (iii) either (a) the value of providing the data is outweighed by the burden of production or (b) BellSouth can obtain the data through publicly available information.

3. Overly Broad: the request seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding.

4. Vague and Ambiguous: the request is vague and ambiguous in that it does not describe the data sought with particularity or fails to convey with reasonable clarity what is being requested and, as such, XO cannot reasonably determine the intended meaning, scope or limits of BellSouth's Request.

5. Commercially Sensitive, Proprietary, and Confidential: the requested data relates to issues, matters, or materials that contain proprietary, confidential, and/or trade secret information which would cause competitive harm to XO if disclosed.

6. Calls for a legal conclusion: the request calls for a conclusion of law.

SPECIFIC OBJECTIONS TO REQUESTS

Interrogatory No. 1: Please identify all documents (including without limitation meeting minutes, e-mails, memos, and letters) that discuss or that are related to: (a) the FDN Petition; (b) the FCCA Petition; (c) the January Key Customer offering; (d) the June Key Customer Offering; or (e) any matter that is at issue in this proceeding.

Objection:

XO objects to this request on grounds that it is unduly burdensome, vague and ambiguous, and seeks discovery of work product and commercially sensitive, proprietary and confidential information.

Interrogatory No. 2: Please explain in detail how you contend Section 364.01, Florida Statutes, should be interpreted in evaluation of each of the following items for compliance with Chapter 364, Florida Statutes: (a) a BellSouth promotional tariff; (b) an ALEC promotional tariff; (c) a BellSouth tariff that is not a promotional tariff; and (d) an ALEC tariff that is not a promotional tariff.

Objection:

XO objects to this request as it calls for a legal conclusion. Fla.R.Civ.P. 1.280(b)(3) specifically prohibits disclosure of the information requested and states, in pertinent part:

In ordering discovery of the materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusion, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

XO's contentions regarding how BellSouth's tariffs violate Section 364.01, Florida Statutes, are "mental impressions, conclusions, opinions and legal theories" and are therefore protected from disclosure in response to discovery requests. XO's contentions regarding how BellSouth's tariffs violate Section 364.01, Florida Statutes will be addressed pursuant to Order No. PSC-02-1295-PCO-TP, issued September 23, 2002, in XO's prehearing statement and posthearing brief.

Also, Fla. R.Civ.P. 1.280(b)(1) limits the scope of discovery and states, in pertinent part: "Parties may obtain discovery regarding any *matter*, not privileged, that is relevant to the subject

matter of the pending action....” Black’s Law Dictionary defines *matter*, in pertinent part, as ‘substantial facts forming [the] basis of claim or defense; facts material to issue...’ It is evident that the term “matter”, as used in Rule 1.280(b), does not contemplate unwarranted inquiries into the mental processes of counsel regarding opinions or conclusions as to the law and theory applicable to the case. Such information is merely counsel’s impression and legal opinion and does not constitute facts germane to the cause upon which the issues are drawn between the parties. Fla.R.Civ.P. 1.280 limits discovery to *facts* as opposed to *law or opinion*. Florida courts have consistently and uniformly held that the term *matter* as used in Rule 1.280 is specifically limited to facts; distinguished from law or opinion. See *Boucher v. Pure Oil Company*, 101 So.2d 408 (Fla. 1st DCA 1958), *Hurley v. Werly*, 203 So.2d 530 (Fla. 2nd DCA 1967).

Interrogatory No. 3: (a) Describe in detail all criteria you contend should be established to determine whether the pricing of a BellSouth promotional tariff offering is unfair, anticompetitive, or discriminatory.

(b) Identify all authority (including without limitation federal and state statutes, federal and state agency decisions, and federal and state case law) that supports each of the criteria set forth in your response to (a).

(c) Please apply each of the criteria identified in your response to (a) to the January Key Customer offering, explaining in detail whether and why the January Key Customer offering meets or fails to meet each of the criteria.

(d) Please apply each of the criteria identified in your response to (a) to the June Key Customer offering, explaining in detail whether and why the June Key Customer offering meets or fails to meet each of the criteria.

Objection:

XO objects to this request on the grounds that it is vague and ambiguous, unduly burdensome, seeks discovery of mental impressions, conclusions, opinions or legal theories of an attorney or a party concerning litigation. XO also incorporates in full its objection to Interrogatory No. 2.

Interrogatory No. 4:

(a) Please describe in detail all criteria you contend should be established to determine whether the termination liability terms and conditions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory.

(b) Identify all authority (including without limitation federal and state statutes, federal and state agency decisions, and federal and state case law) that supports each of the criteria set forth in your response to (a).

(c) Please apply each of the criteria identified in your response to (a) to the termination liability terms and conditions of the January Key Customer offering, explaining in detail whether and why the January Key Customer offering meets or fails to meet each of the criteria.

(d) Please state whether, in light of your response to (c), the termination liability terms and conditions of the January Key Customer offering are unfair, uncompetitive, or discriminatory and explain your answer in detail.

(e) Please apply each of the criteria identified in your response to (a) to the termination liability terms and conditions of the June Key Customer offering, explaining in detail whether and why the June Key Customer offering meets or fails to meet each of the criteria.

(f) Please state whether, in light of your response to (e), the termination liability terms

and conditions of the June Key Customer offering are unfair, anticompetitive, or discriminatory and explain your answer in detail.

Objection:

XO objects to this request on the grounds of relevance, that it is vague and ambiguous, and unduly burdensome. Also Fla.R.Civ.P. 1.280(b)(3) specifically protects against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party concerning the litigation. XO incorporates in full its objection to Interrogatory No. 2.

Interrogatory No. 5: Please identify (a) each section of your Florida tariffs that has been in effect at any time after January 1, 2001 that sets forth termination liability terms and conditions; and (b) any contract for telecommunications services between you and any Florida end user for telecommunications services that has been in effect at any time after January 1, 2001 and that sets forth termination liability terms and conditions.

Objection:

XO objects on the grounds of relevance: BellSouth has not filed any answer or counterclaim regarding any XO tariffed product, and therefore XO's tariffed products are not at issue in this proceeding. The petitions filed in the instant docket assert that BellSouth's Key Customer promotional tariffs violate Section 364.3381, Florida Statutes. Section 364.3381 specifically prohibits the anticompetitive and predatory pricing behaviors of incumbent local exchange carriers. XO's promotional tariffs are irrelevant to the Commission's determination of the issues presented in the petition. Also, XO's Florida tariffs are public records available to BellSouth.

Interrogatory No. 6: (a) Please describe in detail all criteria you contend 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.

(b) Please identify all authority (including without limitation federal and state statutes, federal and state agency decisions, and federal and state case law) that supports each of the criteria set forth in your response to (a).

(c) Please apply each of the criteria identified in your response (a) to the duration (term of individual contracts, length and succession of promotions) of the January Key Customer offering, explaining in detail whether and why the January Key Customer offering meets or fails to meet each of the criteria.

(d) Please state whether, in light of your response to (c), the duration (term of individual contracts, length and succession of promotions) the January Key Customer offering is unfair, anticompetitive, or discriminatory and explain your answer in detail.

(e) Please apply each of the criteria identified in your response to (a) to the duration (term of individual contracts, length and succession of promotions) of the June Key Customer offering, explaining in detail whether and why the June Key Customer offering meets or fails to meet each of the criteria.

(f) Please state whether, in light of your response to (e), the duration (term of individual contracts, length and succession of promotions) of the June Key Customer offering is unfair, anticompetitive, or discriminatory and explain your answer in detail.

Objection:

XO objects on the grounds of relevance, that it is vague and ambiguous, and unduly burdensome. Pursuant to Florida Rule of Civil Procedure 1.280(b)(3) XO is under no obligation to

detail any criteria XO contends should be established to determine whether BellSouth's tariff is unfair, anticompetitive or discriminatory. Such information constitutes "mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation" and is explicitly protected from disclosure pursuant to Rule 1.280(b)(3). XO incorporates in full its objection to Interrogatory No. 2.

Interrogatory No. 7: (a) Please state whether you have made any telecommunications service offerings available to Florida end users for a limited time only (i.e. in order to avail itself of the offer, the end user was required to sign up for or otherwise accept the offer before a given date or within a given amount of time after the offer was extended).

(b) If your response to (a) is anything other than an unqualified "no," please describe each such limited-time offer in detail and identify any and all documents associated with each such limited-time offer (including without limitation tariffs, documents sent to or filed with the Commission and/or its Staff; contracts, etc.).

Objection:

XO objects on the grounds of relevance, and incorporates herein XO's objection to BellSouth Interrogatory No. 5.

Interrogatory No. 8: (a) Please describe in detail all criteria you contend should be established to determine whether the billing conditions or restrictions of a BellSouth promotional tariff are unfair, anticompetitive, or discriminatory.

(b) Please identify all authority (including without limitation federal and state statutes, federal and state agency decisions, and federal and state case law) that supports each of the criteria set forth in your response to (a).

(c) Please identify with specificity each and every provision of the January Key Customer offering that you contend constitutes “billing conditions or restrictions.”

(d) Please apply each of the criteria identified in your response to (a) to each of the “billing conditions or restrictions” identified in your response to (c), explaining in detail whether and why each of the “billing conditions or restrictions” meets or fails to meet each of the criteria.

(e) With regard to each of the “billing conditions or restrictions” identified in (c), please state whether you contend the “billing condition or restriction” is unfair, anticompetitive, or discriminatory and explain your answer in detail.

(f) Please identify with specificity each and every provision of the June Key Customer offering that you contend constitutes “billing conditions or restrictions.”

(g) Please apply each of the criteria identified in your response to (a) to each of the “billing conditions or restrictions” identified in your response to (f), explaining in detail whether and why each of the “billing conditions or restrictions” meets or fails to meet each of the criteria.

(h) With regard to each of the “billing conditions or restrictions” identified in (g), please state whether you contend the “billing condition or restriction” is unfair, anticompetitive, or discriminatory and explain your answer in detail.

Objection:

XO objects on the grounds that the requested information is protected against disclosure pursuant to Florida Rule of Civil Procedure 1.280(b)(3), and incorporates herein its objection to Interrogatory No. 2.

Interrogatory No. 9: (a) Please describe in detail all criteria you contend should be established to determine whether geographic targeting in a BellSouth promotional tariff offering is

unfair, anticompetitive, or discriminatory.

(b) Please identify all authority (including without limitation federal and state statutes, federal and state agency decisions, and federal and state case law) that supports each of the criteria set forth in your response to (a).

(c) Please apply each of the criteria identified in your response to (a) the geographic targeting in the January Key Customer offering, explaining in detail whether and why the geographic targeting in the January Key Customer offering meets or fails to meet each of the criteria.

(d) Please state whether, in light of the your response to (c), the geographic targeting in the January Key Customer offerings unfair, anticompetitive, or discriminatory and explain your answer in detail.

(e) Please apply each of the criteria identified in your response to (a) to the geographic targeting in the June Key Customer offering, explaining in detail whether and why the geographic targeting in the June Key Customer offering meets or fails to meet each of the criteria.

(f) Please state whether, in light of the your response to (e), the geographic targeting in the June Key Customer offering is unfair, anticompetitive, or discriminatory and explain your answer in detail.

Objection:

XO incorporates herein its objection to Interrogatory No. 2.

Interrogatory No. 10: (a) Please describe in detail all criteria you contend should be established to determine whether any other terms or conditions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory.

(b) Please identify all authority (including without limitation federal and state statutes,

federal and state agency decisions, and federal and state case law) that supports each of the criteria set forth in your response to (a).

(c) Please apply each of the criteria identified in your response to (a) to the other terms or conditions of the January Key Customer offering, explaining in detail whether and why the other terms and conditions of the January Key Customer offering meets or fails to meet each of the criteria.

(d) Please state whether, in light of the your response to (c), any other terms and conditions of the January Key Customer offering are unfair, anticompetitive, or discriminatory and explain your answer in detail.

(e) Please apply each of the criteria identified in your response to (a) to the other terms or conditions of the June Key Customer offering, explaining in detail whether and why the other terms and conditions of the June Key Customer offering meets or fails to meet each of the criteria.

(f) Please state whether, in light of the your response to (e), any other terms and conditions of the June Key Customer offering are unfair, anticompetitive, or discriminatory and explain your answer in detail.

Objection:

XO incorporates herein its objection to Interrogatory No. 2.

Interrogatory No. 11: (a) Please set forth in detail each and every term and condition under which BellSouth promotional tariff offerings should be made available for ALEC resale.

(b) Please identify all authority (including without limitation federal and state statutes, federal and state agency decisions, and federal and state case law) that supports your response to (a).

(c) For each term and condition set forth in your response to (a), please state whether the

January Key Customer offering complies with such term and/or condition, explaining your answer in detail.

(d) For each term and condition set forth in your response to (a), please state whether the June Key Customer offering complies with such term and/or condition, explaining your answer in detail.

Objection:

XO objects on the grounds of relevance, that is vague and ambiguous, unduly burdensome. XO also incorporates herein its objection to Interrogatory No. 2.

Interrogatory No. 12: If you or any of your representatives have ever had any contact with BellSouth regarding the resale of any BellSouth promotional tariff offering in the state of Florida, please:

(a) State the date, time, and manner (i.e. e-mail, letter, face-to-face conversation, telephone conversation, etc.) of each such contact;

(b) Identify with specificity the BellSouth promotional tariff offering that was the subject of the contact;

(c) Identify with specificity (including without limitation name, address, and telephone number) the BellSouth representative that you contacted;

(d) Identify with specificity (including without limitation name, address, and telephone number) the person who made the contact on your behalf;

(e) Describe in detail each and every communication between you or your representatives and BellSouth's representatives with regard to the resale of the BellSouth promotional tariff offering; and

(f) Identify all documents associated with each such contact.

Objection:

XO objects on the grounds of relevance, that the request is vague and ambiguous, and that BellSouth already has access to the requested information.

Interrogatory No. 13: Please set forth in detail what you contend is the competitive impact, if any, of the resale of BellSouth's promotional tariff offerings.

Objection:

XO incorporates herein its objection to Interrogatory No. 2.

Interrogatory No. 14: (a) In the context of promotional tariffs, please set forth in detail all waiting periods or other restrictions that you contend should be applicable to BellSouth and explain in detail why such waiting periods or other restrictions should apply.

(b) Please identify all authority (including without limitation federal or state statutes, federal or state agency decisions, and federal and state case law) that supports your response to (a).

Objection:

XO incorporates herein its objection to Interrogatory No. 2.

Interrogatory No. 15: (a) In the context of marketing promotional tariffs, what restrictions do you contend should be placed on the sharing of information between BellSouth's wholesale and retail divisions?

(b) Please identify all authority (including without limitation federal and state statutes, federal and state agency decisions, and federal and state case law) that supports your response to (a).

Objection:

XO incorporates herein its objection to Interrogatory No. 2.

Interrogatory No. 16: (a) Do you contend that with regard to the January Key Customer offering, any inappropriate sharing of information between BellSouth's wholesale and retail divisions has occurred?

(b) If your response to (a) is anything other than an unqualified "no," please describe in as much detail as possible each and every occurrence of such inappropriate sharing of information.

(c) Please identify all documents and describe in detail the source(s) of all information you relied upon in providing your response to (b).

(d) Do you contend that with regard to the June Key Customer offering, any inappropriate sharing of information between BellSouth's wholesale and retail divisions has occurred?

(e) If your response to (d) is anything other than an unqualified "no," please describe in as much detail as possible each and every occurrence of such inappropriate sharing of information.

(f) Please identify all documents and describe in detail the source(s) of all information you relied upon in providing your response to (b).

Objection:

XO incorporates herein its objection to Interrogatory No. 2.

Interrogatory No. 17: (a) Do you contend that the January Key Customer offering has or will cause substantial and irreparable harm to Florida's ALECs?

(b) If the answer to (a) is anything other than an unqualified no, please identify with specificity each and every aspect "substantial and irreparable harm" that you contend Florida's ALECs have or will suffer as a result of the January Key Customer offering or the June Key Customer Offering .

(c) For each aspect of “substantial and irreparable harm” identified in (b), please describe in detail how you have suffered that aspect of “substantial and irreparable harm” as a result of the January Key Customer offering.

(d) Do you contend that the June Key Customer offering has or will cause substantial and irreparable harm to Florida’s ALECs?

(e) If the answer to (d) is anything other than an unqualified no, please identify with specificity each and every aspect “substantial and irreparable harm” that you contend Florida’s ALECs have or will suffer as a result of the June Key Customer offering or the June Key Customer Offering .

(f) For each aspect of “substantial and irreparable harm” identified in (e), please describe in detail how you have suffered that aspect of “substantial and irreparable harm” as a result of the June Key Customer offering.

Objection:

XO incorporates herein its objection to Interrogatory No. 2.

Interrogatory No. 18: (a) Do you offer telecommunications services to any business end users in Florida at rates, terms, and/or conditions that vary from the rates, terms, and/or conditions set forth in the tariffs you have filed with the Florida Public Service Commission?

(b) If your answer to (a) is anything other than an unqualified “no,” please describe in detail the rates, terms, and conditions under which you provide service to business end users in Florida that vary in any way from the rates, terms, and conditions set forth in the tariffs you have filed with the Florida Public Service Commission.

(c) If your answer to (a) is anything other than an unqualified “no,” please identify all

contracts or other documents related to your provision of rates, terms, and conditions under which you provide service to business end users in Florida that vary in any way from the rates, terms, and conditions set forth in the tariffs you have filed with the Florida Public Service Commission.

Objection:

XO objects to Interrogatory No. 18 on the grounds of relevance, that it is vague and ambiguous, unduly burdensome, and seeks discovery of commercially sensitive, proprietary and confidential information. Further, to the extent that information is available in XO's filed Florida tariffs, BellSouth already has access to the requested information.

Interrogatory No. 19: Please identify all documents (including without limitation training materials and documents given or intended to be given to actual or prospective customers) that compare the rates or prices available for any of your telecommunications products and/or services to the rates or prices available for any telecommunications products and/or services offered by BellSouth, any other ILEC, any ALEC, or any other telecommunications service provider.

Objection:

XO objects as the request is vague and ambiguous, unduly burdensome and seeks discovery of commercially sensitive, proprietary and confidential information. Also, to the extent BellSouth seeks information relating to "any of your [XO's] telecommunications products and/or services" that information is irrelevant to any issue to be determined by the Commission in this docket, and not reasonably calculated to lead to the discovery of relevant information.

Interrogatory No. 20: (a) Do you offer any telecommunications services to business customers under contract?

(b) If your answer to (a) is anything other than an unqualified "no," please describe all

services that you provide under contract, identify the contract term lengths available, describe in detail any charges, liability, or penalty that the contract requires the end user to pay if the end user terminates the contract prior to the expiration of its term.

Objection:

XO objects as the request is vague and ambiguous, unduly burdensome and seeks discovery of commercially sensitive, proprietary and confidential information. To the extent BellSouth seeks information relating to products or services XO provides to its customers, that information is irrelevant to any issue to be determined by the Commission in this docket, and not reasonably calculated to lead to the discovery of relevant information.

Interrogatory No. 21: Please identify any documents or other information in your possession regarding any offering by which you have made available (or are currently making available) rates, terms, conditions, discounts, rebates, checks, or other items only to persons and/or entities who were not your end user customers (either generally or with regard to any particular telecommunications service) as of the time of the offer.

Objection:

XO objects on the grounds that the request is vague and ambiguous, unduly burdensome and seeks discovery of commercially sensitive, proprietary and confidential information. To the extent BellSouth seeks information relating to any offering XO has made available, that information is irrelevant to any issue to be determined by the Commission in this docket, and not reasonably calculated to lead to the discovery of relevant information.

Interrogatory No. 22: Please identify any documents in your possession which discuss, address, or relate to the use of special contracts, contract service arrangements and/or special promotions by BellSouth, by any other ILEC, by you, by any ALEC, or by ALECs generally.

Objection:

XO objects to this request on the grounds that it is unduly burdensome, irrelevant, vague and ambiguous and seeks discovery of commercially sensitive proprietary and confidential information. To the extent BellSouth seeks documents that discuss, address, or relate to the use of special contracts, contract service arrangements and/or special promotions by any company other than BellSouth, those documents are proprietary, confidential and irrelevant to any issues in that the Commission is to determine in this docket, and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 23: Please identify all documents by which you market any telecommunications products and/or services in Florida (including without limitation: advertisements in newspapers, periodicals, and trade publications; copies of billboard advertisements; transcripts of radio or television advertisements; direct mailings, faxes, and e-mails; "leave-behind" materials; telemarketing scripts; web pages; marketing brochures; and comparable materials).

Objection:

XO incorporates herein its objection to Interrogatory No. 20.

Interrogatory No. 24: Please identify a copy of all materials that you have used between June 2001 and the present to train any person(s) who is or may be selling your telecommunications services to end users in BellSouth's operating territory in the state of Florida.

Objection:

XO incorporates herein its objection to Interrogatory No. 20.

Interrogatory No. 25: Please describe the method(s) you are using to provide telecommunications services (e.g. resale, interconnection, unbundled network elements, facilities-based, etc.).

Objection:

XO incorporates herein its objection to Interrogatory No. 20.

Interrogatory No. 26: Please provide the number of business customers and/or access lines you served in the state of Florida as of the end of each month from January 2001 to the present.

Objection:

XO incorporates herein its objection to Interrogatory No. 20.

Interrogatory No. 27: For each wire center listed in Section A2.10.2.B of BellSouth's Florida General Subscriber Service Tariff, a copy of which is attached to these Interrogatories, please provide: the total number of business customers and/or business access lines you served as of the end of each month from January 2001 to the present; and (b) the number of business customers and/or business access lines you served as of the end of each month from January 2001 to the present under contract.

Objection:

XO incorporates herein its objection to Interrogatory No. 20.

Interrogatory No. 28: Please identify any documents in your possession that discuss, address, or relate to: (a) your share of the Florida local telecommunications market (or any segment thereof); (b) the ALECs' share of the Florida local telecommunications market (or any segment

thereof); or (c) BellSouth's share of the Florida local telecommunications market (or any segment thereof).

Objection:

XO incorporates herein its objection to Interrogatory No. 20.

Interrogatory No. 29: (a) In the past twelve months, have you sought to fund your telecommunications operations in the state of Florida by borrowing money (including without limitation the issuance of bonds) or by selling equity?

(b) If the answer to (a) is anything other than an unqualified "no," please identify all documents associated with any such borrowing of money or sale of equity in which you have described in any manner whatsoever the anticipated results of you operations in Florida.

Objection:

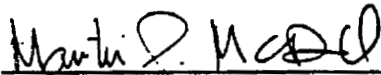
XO incorporates herein its objection to Interrogatory No. 20.

Interrogatory No. 30: Please state the total number of persons (including employees, vendors, independent contractors, etc.) who attempt to sell your telecommunications products and/or services to business customers in the state of Florida.

Objection:

XO incorporates herein its objection to Interrogatory No. 20.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 28th day of October, 2002:

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By: Martin P. McDonnell
MARTIN P. MCDONNELL, ESQ.

USLEC\vo.interresponse

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

In re: Petition of the Florida Competitive Carriers)
Association for Expedited Review and Cancellation) Docket No. 020578-TP
of BellSouth Telecommunications, Inc.'s Key)
Customer Promotional Tariffs.)

Filed: October 28, 2002

**XO FLORIDA, INC.'S OBJECTIONS TO
BELLSOUTH TELECOMMUNICATIONS, INC.'S
FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Order No. PSC-02-1295-PCO-TP, issued September 23, 2002, XO Florida, Inc. ("XO") submits these Objections to BellSouth Telecommunications, Inc.'s ("BellSouth") First Requests for Production of Documents.

GENERAL OBJECTIONS

XO makes these General Objections to the Requests and incorporates each of the General Objections into its specific objections to each Request.

1. XO objects to the Requests to the extent they seek information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the work-product doctrine, or the trade-secrets doctrine.

2. BellSouth asserts in its First Set of Interrogatories to XO that "these interrogatories are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these interrogatories subsequently become known or should

your initial response be incorrect or untrue. Pursuant to Florida Rule of Civil Procedure 1.280(e), XO objects to BellSouth's request to require supplemental responses. Fla.R.Civ.P. 1.280(e) states that:

a party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired.

3. XO will make a reasonable effort to respond to a Request as XO understands and interprets such Request. If BellSouth should assert an interpretation of any Request that differs from XO's, XO reserves the right to supplement or amend its objections. XO further reserves the right to produce responsive documents or information received after the date of its Response.

4. XO expressly reserves and does not waive any and all objections it may have to the admissibility, authenticity or relevancy of the responses produced pursuant to the Requests.

5. BellSouth's Requests for Production of Documents ask only for documents that are identified or supporting XO's responses to Interrogatories. Therefore, XO incorporates all of its objections to BellSouth's Interrogatories in all of its objections to BellSouth's corresponding Requests for Production of Documents.

OBJECTIONS TO BELLSOUTH'S REQUESTS

Many of the specific objections that XO makes are applicable to several of BellSouth's Requests. For this reason, XO provides the following definitions of those objections and, where applicable, repeats only the defined term in stating its specific objections.

1. **Relevance**: the request is not relevant to any specific claims, defenses, issues or questions presented in this proceeding and is not reasonably calculated to lead to the discovery of information relevant to resolution of the issues.

2. Unduly Burdensome: the request is unduly burdensome in that providing the requested data (i) would require an unreasonable expenditure of time and resources to search for documents or information; (ii) is cumulative and/or has only a limited likelihood of leading to the discovery of data relevant to resolution of the specific issue; and (iii) either (a) the value of providing the data is outweighed by the burden of production or (b) BellSouth can obtain the data through publicly available information.

3. Overly Broad: the request seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding.

4. Vague and Ambiguous: the request is vague and ambiguous in that it does not describe the data sought with particularity or fails to convey with reasonable clarity what is being requested and, as such, XO cannot reasonably determine the intended meaning, scope or limits of BellSouth's Request.

5. Commercially Sensitive, Proprietary, and Confidential: the requested data relates to issues, matters, or materials that contain proprietary, confidential, and/or trade secret information which would cause competitive harm to XO if disclosed.

6. Calls for a legal conclusion: the request calls for a conclusion of law.

SPECIFIC OBJECTIONS TO REQUESTS

1. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 1.

Objection:

XO incorporates herein its objection to Interrogatory No. 1.

2. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 2.

Objection:

XO incorporates herein its objection to Interrogatory No. 2.

3. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 3.

Objection:

XO incorporates herein its objection to Interrogatory No. 3.

4. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 4.

Objection:

XO incorporates herein its objection to Interrogatory No. 4.

5. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 5.

Objection:

XO incorporates herein its objection to Interrogatory No. 5.

6. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 6.

Objection:

XO incorporates herein its objection to Interrogatory No. 6.

7. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 7.

Objection:

XO incorporates herein its objection to Interrogatory No. 7.

8. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 8.

Objection:

XO incorporates herein its objection to Interrogatory No. 8.

9. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 9.

Objection:

XO incorporates herein its objection to Interrogatory No. 9.

10. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 10.

Objection:

XO incorporates herein its objection to Interrogatory No. 10.

11. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 11.

Objection:

XO incorporates herein its objection to Interrogatory No. 11.

12. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 12.

Objection:

XO incorporates herein its objection to Interrogatory No. 12.

13. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 13.

Objection:

XO incorporates herein its objection to Interrogatory No. 13.

14. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 14.

Objection:

XO incorporates herein its objection to Interrogatory No. 14.

15. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 15.

Objection:

XO incorporates herein its objection to Interrogatory No. 15.

16. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 16.

Objection:

XO incorporates herein its objection to Interrogatory No. 16.

17. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 17.

Objection:

XO incorporates herein its objection to Interrogatory No. 17.

18. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 18.



Objection:

XO incorporates herein its objection to Interrogatory No. 18.

19. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 19.

Objection:

XO incorporates herein its objection to Interrogatory No. 19.

20. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 20.

Objection:

XO incorporates herein its objection to Interrogatory No. 20.

21. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 21.

Objection:

XO incorporates herein its objection to Interrogatory No. 21.

22. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 22.

Objection:

XO incorporates herein its objection to Interrogatory No. 22.

23. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 23.

Objection:

XO incorporates herein its objection to Interrogatory No. 23.

24. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 24.

Objection:

XO incorporates herein its objection to Interrogatory No. 24.

25. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 25.

Objection:

XO incorporates herein its objection to Interrogatory No. 25.

26. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 26.

Objection:

XO incorporates herein its objection to Interrogatory No. 26.

27. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 27.

Objection:

XO incorporates herein its objection to Interrogatory No. 27.

28. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 28.

Objection:

XO incorporates herein its objection to Interrogatory No. 28.

29. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 29.

Objection:

XO incorporates herein its objection to Interrogatory No. 29.

30. Please produce all documents that are identified in or that support you response to BellSouth's First Set of Interrogatories, Item No. 30.

Objection:


XO incorporates herein its objection to Interrogatory No. 30.

31. Please produce a full and complete copy of your responses (including any attachments thereto) to the "Year 2001 Local Competition Report Data Request" and the "Year 2002 Local Competition Report Data Request" served by the Florida Public Service Commission.

Objection:

XO objects to the extent the information requested is confidential or otherwise filed with the Commission and available to BellSouth.

Respectfully submitted,



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