



ORIGINAL

September 27, 2001

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

via Overnight Mail

960786A-TL

Re: Docket No. 960786-TL – Consideration of BellSouth Telecommunications, Inc.'s entry into InterLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996

Dear Ms. Bayó,

Please find enclosed for filing in the above docket an original and seven (7) copies of the following: (1) Florida Digital Network, Inc.'s Motion to Compel.

Also enclosed is a diskette containing a Microsoft Word for Windows 2000 file of the foregoing.

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

Sincerely,

Matthew Feil
Florida Digital Network
General Counsel

APP
CAF
CMP
COM
CTR
ECR
LEG
OPC
PAI
RGO
SEC
SER
OTH

LOCAL

LONG DISTANCE

INTERNET

RECEIVED & FILED
RJM
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE

12274 SEP 28 01

FPSC-CLERK/STICL/CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of)
BellSouth Telecommunications,) Docket No. 960786-TL
Inc.'s entry into interLATA)
services pursuant to Section 271)
of the Federal Telecommunications)
Act of 1996.)

FLORIDA DIGITAL NETWORK, INC.'S
MOTION TO COMPEL BELL SOUTH TELECOMMUNICATIONS, INC. TO
RESPOND TO DISCOVERY

Pursuant to Rules 28-106.204 and 28-106.206, Florida Administrative Code, and
Rule 1.380 Florida Rules of Civil Procedure, Florida Digital Network, Inc., ("FDN")
hereby moves the Florida Public Service Commission ("FPSC") to compel BellSouth
Telecommunications, Inc. ("BellSouth") to answer discovery FDN propounded in this
docket. In support hereof, FDN states as follows:

- 1. On September 6, 2001, FDN its First Set of Interrogatories (No. 1), First Set of
Request for Production of Documents (No. 1) and First Set of Request for Admission
(Nos. 1 -11) on BellSouth.1
2. On September 17, 2001, BellSouth served a document entitled "General and
Specific Objections to Florida Digital Network, Inc.'s First Set of Interrogatories, First
Request for Production of Documents and First Set of Request for Admissions"
(hereinafter the "Objections"). As the title indicates, BellSouth objected to every single

1 After serving the referenced discovery, FDN realized that it had erred in labeling the
interrogatories and document requests as first sets. FDN had in fact served a first set of interrogatories (1 -
51) and document requests (1 - 12) on BellSouth on May 16, 2001. Accordingly, the instant
interrogatories and document requests should have been referred to as the Second Set of Interrogatories
(No. 52) and Second Set of Request for Production of Documents (No. 12). The requests for admission
were properly labeled as the first set.

one of FDN's September 6th discovery requests and BellSouth's objections fall into two categories, general and specific.

3. BellSouth's general objections are impermissibly broad and vague. However, in other cases BellSouth has typically responded to discovery requests though filing general objections identical to the ones filed here. In this case, BellSouth provided responses to all but one of FDN's September 6 discovery requests despite filing these general objections. The instant motion concerns the one discovery request to which BellSouth did not respond and against which BellSouth posed a specific objection.²

4. In what was labeled as Document Request No. 1 of its September 6 discovery, FDN sought the following:

Provide all documents referring or relating to projected or actual market share results from BellSouth winback programs in Florida.

5. BellSouth's specific objection to this discovery request is as follows:

BellSouth objects to this Request on the grounds that it is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Winback programs are not within the scope of section 271 of the Telecommunications Act and therefore not relevant to this proceeding.

(BellSouth's September 17, 2001, General and Specific Objections, at p. 4.)

6. BellSouth's objection is baseless and must be summarily rejected. BellSouth submitted evidence in this proceeding designed to prove that competition in Florida's local exchange market is viable, irreversible, and sustainable. See, e.g. (1) Affidavit of Victor Wakeling attached as Exhibit CKC-4 to the direct testimony of BellSouth witness Cox and (2) prefiled rebuttal of BellSouth witness Cox, pp. 2 – 20. Ironically, the very design of BellSouth's winback programs are to "winback" or regain customers that left

² FDN hereby expressly reserves its right to file such motions as may be necessary to compel responses to other FDN discovery requests should BellSouth's answers be incomplete or unresponsive.

BellSouth to be served by competing carriers; winback programs exist to enhance the market share of the dominant BellSouth at the expense of nascent competitors. FDN is entitled to know the intent behind and extent of BellSouth's winback results in order to test the validity of evidence that BellSouth argues is proof that local competition is viable, irreversible, and sustainable.

7. By analogy, FDN's discovery request in this case is not significantly different from a rate case discovery request that seeks budgeted or out-of-period data in order to test the validity of the test year's data. Such discovery requests are commonly processed in rate cases and objections thereto are routinely overruled, as BellSouth's objection in this case should be. The discovery request at issue here is as relevant as the evidence which BellSouth submitted regarding market share and the status of competition in Florida.

8. Because the time left before the hearing is short, FDN requests that the Prehearing Officer rule on its objection at the earliest possible date and require BellSouth to provide the requested information by no later than October 3, 2001. Because of the delay occasioned by BellSouth's objection, FDN hereby advises the Commission that FDN may have to seek an extension of the discovery cutoff to pursue such additional recourse as may be necessary to develop a full and complete answer to its information request.

WHEREFORE, FDN respectfully moves that the Prehearing Officer enter an order compelling BellSouth to deliver an answer to FDN's Document Request No. 1, served September 6 by no later than October 3, 2001.

RESPECTFULLY SUBMITTED, this 27 day of September 2001.

A handwritten signature in black ink, appearing to read "Matthew Feil". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Feil
General Counsel
Florida Digital Network
390 North Orange Avenue
Suite 2000
Orlando, FL 32801
(407) 835-0460