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October 2, 2001

Mrs. Blanca S. Bay6
Director, Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850


Re: **960786-A-TL (Section 271)**

Dear Ms. Bay6:

Enclosed is BellSouth Telecommunications, Inc.'s Opposition to Florida Digital Network, Inc.'s Motion to Compel, which we ask that you file in the captioned docket.

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

Sincerely,


James Meza III

Enclosures

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

**CERTIFICATE OF SERVICE
DOCKET NO. 960786-A-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by E-Mail (#) and Federal Express this 2nd day of October, 2001 to the following:

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(+) Signed Protective Agreement

3. FDN's primary argument in its Motion to Compel as to why winback information is relevant to this proceeding is that it "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." Motion at 2. FDN's argument is flawed for several reasons.

4. First, as admitted by FDN in a recent pleading, the Commission has previously determined that BellSouth's winback activities are not to be considered in this proceeding. Specifically, on September 7, 2001, FDN filed a Motion to Strike certain portions of BellSouth witness Cox's surrebuttal testimony because it rebutted testimony filed by Access Integrated witness Page regarding BellSouth's winback activities. See Motion to Strike at 2, attached hereto as Exh. A.

5. In its Motion to Strike, FDN acknowledged that the Commission rejected FDN's request to consider BellSouth's winback activities in this proceeding. Motion at 1-2. Accordingly, FDN argued that, because the "consideration of substantive winback matters has been excluded from this proceeding pursuant to Commission order," the Commission should strike witness' Cox testimony referring to winback matters. Id. at 2.

6. In support of its Motion to Strike, FDN cited to the fact that (1) based on the Commission's exclusion of the winback issue, FDN "did not conduct discovery or submit testimony addressing the substantive aspects of BellSouth winback programs in this proceeding; (2) on July 30, 2001, BellSouth

objected to certain discovery propounded by AT&T regarding BellSouth's winback activities on the grounds that the requested information was irrelevant to the proceeding; (3) the Commission staff recommended striking "practically all of the prefiled rebuttal testimony of witness Page, including that portion related to winback matters; and (4) BellSouth "should be held to its position" that consideration of winback matters is inappropriate in this proceeding. See Motion at 2-3.

7. In Order No. PSC-OI-1830-PCO-TL, issued on September 11, 2001, the Commission granted FDN's Motion to Strike. Order at 7-8.

8. Unbelievably, after stating to this Commission less than a month ago that "consideration of substantive winback matters has been excluded from this proceeding pursuant to Commission order[.]" (Motion to Strike at 2), FDN now argues that such information is relevant to this proceeding and that BellSouth should be compelled to produce the requested information regarding BellSouth's winback activities.

9. FDN's own statements belie this argument. As stated and relied upon by FDN, the Commission rejected FDN's request that the Commission consider winback activities in this proceeding. Motion to Strike at 2. As stated and relied upon by FDN, "consideration of substantive winback matters has been excluded from this proceeding pursuant to Commission order[.]" Motion to Strike at 2. As stated and relied upon by FDN, FDN did not conduct discovery or submit testimony addressing BellSouth's winback activities because the

Commission excluded winback activities from consideration.’ Motion to Strike at 2. As stated and relied upon by FDN, BellSouth previously objected to AT&T’s discovery request regarding winback matters on the grounds that such information was “not properly part of this proceeding.” Motion to Strike at 2. Finally, as stated and relied upon by FDN, the Commission staff recommended (and the Commission eventually ordered) that witness Page’s testimony regarding winback activities be stricken because such information was irrelevant to this proceeding. Motion to Strike at 2; see also, Order No. PSC-01-1830-PCO-TL at 7-8.

10. Simply put, FDN’s own words succinctly state why FDN’s Motion to Compel should be denied: “consideration of substantive winback matters has been excluded from this proceeding pursuant to a Commission Order[.]” As argued by FDN in its Motion to Strike, the Commission “should hold [FDN] to its position” and deny FDN’s request that BellSouth be required to produce documents responsive to FDN’s Request for Production No. 1. To hold otherwise would allow FDN to eviscerate the Commission’s Orders and obtain information that FDN itself has acknowledged is not to be considered in this proceeding.

11. Second, even if the Commission had not previously determined that consideration of winback activities was inappropriate in this proceeding, FDN’s argument is nonsensical and illogical. Without detailed explanation, FDN appears to argue that it needs the requested information to test BellSouth’s

¹ It should be noted that FDN served BellSouth with Document Request No. 1 on the same day it made this statement in its Motion to Strike – September 6, 2001.

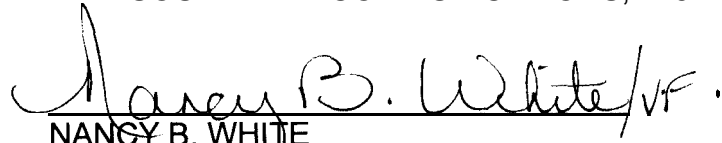
assertion that it is entitled to 271 relief based on the status of competition in Florida, as set forth in Mr. Wakeling's affidavit and Ms. Cox's rebuttal testimony. Documents evidencing BellSouth's market share resulting from BellSouth's winback activities (assuming such documents exist), however, are not necessary for this analysis, especially given the fact that neither Mr. Wakeling's affidavit nor Ms. Cox's testimony relied upon such information.

12. Indeed, BellSouth is at a loss as to how analyzing the results of winback activities will allow FDN to challenge BellSouth's assertion that it is entitled to 271 relief. Unlike a rate case, the information requested by FDN is not germane or relevant to the data that BellSouth has submitted in support of its case. If FDN truly intended to test the validity of BellSouth's evidence regarding the status of competition, it should have asked for the underlying data supporting Mr. Wakeling's affidavit and Ms. Cox's rebuttal testimony.

13. FDN's Motion to Compel is an attempt by FDN to obtain irrelevant information that FDN previously admitted the Commission excluded from consideration. Accordingly, for the foregoing reasons BellSouth respectfully requests that the Commission deny FDN's Motion to Compel.

Respectfully submitted this 2nd day of October, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

Handwritten signature of Nancy B. White in cursive, followed by a horizontal line and the initials "VF".

NANCY B. WHITE

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413733

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 STRIKE PORTIONS OF PREFILED SURREBUTAL TESTIMONY
AND EXHIBIT OF BELLSOUTH TELECOMMUNICATIONS, INC.

Pursuant to Rule 28-106.204, Florida Administrative Code, Florida Digital Network, Inc., (“FDN”) hereby moves the Florida Public Service Commission (“FPSC”) to strike those portions of the prefiled surrebuttal testimony and exhibits of **BellSouth** Telecommunications, Inc. (“**BellSouth**”) identified herein. In support hereof, FDN states as follows:

1. In her prefiled surrebuttal testimony, page 5 1, line 4, through page 52, line 3 1, inclusive, and in prefiled Exhibit CKC-10, **BellSouth** witness Cox purports to rebut the prefiled rebuttal testimony of Access Integrated Networks witness Mr. Rodney Page regarding **BellSouth’s winback** programs. This portion of the prefiled surrebuttal of Ms. Cox and Exhibit CKC-10 must be **stricken** for the reasons set forth herein.

2. In its list of issues served on April 12, 2001, FDN sought for the Commission to consider **BellSouth’s winback** programs in this docket:

Issue No. 1

Is it consistent with the public interest, convenience and necessity for **BellSouth** to receive the authorization requested?

FDN Position:

No. **BellSouth** engages in a pattern and practice of anti-competitive behaviors including, but not limited to, (1) predatory “promotional” pricing targeted at CLEC customers identified through use of customer proprietary network information

BellSouth objected to the Commission’s considering the above in this proceeding, and by Order No. PSC-OI-1025-PCO-TL, issued April 25, 2001, the Preheating Officer excluded it from the case. (Order No. **PSC-01-1025-PCO-TL**, at pp. 7 – 8.)

3. Despite its objection to the Prehearing Officer’s ruling, FDN acted in reliance on and in deference to the Prehearing Officer’s order and did not conduct discovery or submit testimony addressing the substantive aspects of **BellSouth winback** programs in this proceeding.

4. By objections filed July 30, 2001, **BellSouth** objected to AT&T’s Document Production Request Nos. 26 – 29 because those requests dealt with **winback** programs, which **BellSouth** argued are not properly part of this proceeding.

5. By memorandum to the Preheating Officer dated August 31, 2001, the Commission staff recommends striking practically all of the prefiled rebuttal testimony of Access Integrated Networks witness Page, including that portion **BellSouth** rebuts through the aforesaid surrebuttal testimony and exhibit of Ms. Cox.

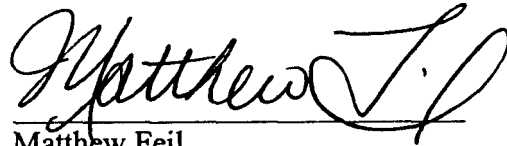
6. The prefiled surrebuttal testimony, page 51, line 4, through page 52, line 31, inclusive, and prefiled Exhibit CKC-10 of **BellSouth** witness Cox: (1) must be stricken if staffs recommendation to strike portions of Mr. Page’s testimony is adopted, since striking Page’s testimony without striking Cox’s is illogical and inconsistent and (2) must be stricken in any event because (a) consideration of substantive **winback** matters has been excluded from this proceeding pursuant to a Commission order, (b) **BellSouth** has

maintained through its statements at the Issue Identification Conference and its objections to AT&T's discovery that consideration of substantive **winback** matters be excluded from this proceeding and **BellSouth** should be held to its position in this context, and (c) it would be patently unfair to FDN at this point in the proceeding for **BellSouth's** testimony to stand when FDN requested advance opportunity to present testimony on the same subject and was denied that opportunity.'

7. If the Commission does not strike the aforesaid portions of witness Cox's surrebuttal testimony and Exhibit **CKC-10**, the Commission must continue this hearing for at least 90 days to permit FDN and other **ALECs** a reasonable and fair opportunity to conduct discovery and submit testimony on the subject of **BellSouth winback** programs.

WHEREFORE, FDN respectfully moves that the Commission strike the prefiled surrebuttal testimony, page 51, line 4, through page 52, line 31, inclusive, and prefiled Exhibit **CKC-10**, of **BellSouth** witness Cox or, in the alternative, requests that the Commission continue this hearing as set forth herein.

RESPECTFULLY SUBMITTED, this 6th day of September 2001.



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¹ Although the Commission has excluded consideration of substantive aspects of **BellSouth's winback** activities from this proceeding, including whether **BellSouth's winback** programs and conduct are anticompetitive in nature and against the public interest, FDN reserves its right to argue the effects of **BellSouth's winback** programs on other issues in the case.

CERTIFICATE OF SERVICE
DOCKET NO **960786-TL**

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