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November 25, 2002

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Re: Docket Nos.: 020119-TP and 020578-TP

Dear Ms. Bayo:

On behalf of Florida Competitive Carriers Association, enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Florida Competitive Carriers Association's Prehearing Statement.

Please acknowledge receipt of the above on the extra copy and return the stamped copy to me. Thank you for your assistance.

Sincerely,

Joseph A. McGlothlin

JAM/mls
Enclosure

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review and cancellation of BellSouth telecommunications, Inc.'s Key Customer promotional tariffs and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc.

Docket No.: 020119-TP

In Re: Petition for expedited review and cancellation Of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs by Florida Competitive Carriers Association.

Docket No.: 020578-TP

Filed: November 25, 2002

**THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S
PREHEARING STATEMENT**

The Florida Competitive Carriers Association ("FCCA"), through its undersigned counsel, and in response to Order No. PSC-02 1295-PCO-TP, issued on September 23, 2002, submits its Prehearing Statement.

A. APPEARANCES:

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman & Arnold, P.A.
117 S. Gadsden Street
Tallahassee, Florida 32301

On behalf of the Florida Competitive Carriers Association.

B. WITNESSES:

Subjects

Joseph P. Gillan

Imputation standard applicable to BellSouth's tariffs;
Criteria governing termination provisions, maximum duration of contracts, and restrictions on "winback" contacts.

Danyelle Kennedy

Examples of impacts of Key Customer promotions on ALECs; impact of multiple discounts, including a non-tariffed discount; inadequacy of resale option.

C. STATEMENT OF BASIC POSITION

To comply with the requirements of Section 364.01 (which directs the Commission to prohibit anticompetitive conduct) and Section 364.051, Florida Statutes (which delineates the standard the Commission is to use in prohibiting cross-subsidization), BellSouth's tariffs for nonbasic services must exceed an imputed floor comprised of pertinent network-related costs, represented by the UNE prices applicable to UNEs involved in providing the service, and non-network-related costs, represented by the wholesale discount. In addition, in order to determine whether BellSouth's nonbasic services recover, in the aggregate, all costs associated with furnishing such services, BellSouth should be directed to file a comprehensive cost study that attributes all costs to either basic or nonbasic services. To the extent that BellSouth believes a cost cannot be assigned between these categories, BellSouth should be required to identify the cost and provide an explanation as to why it is unable to assign it to either of these categories. Further, because of BellSouth's dominant position, in order to provide an opportunity for competition to take hold in the local exchange, the Commission should restrict BellSouth's contract terms and winback activities. The Commission should limit BellSouth's termination provisions to a maximum of three months of discounts. The duration of contracts for standard, analog-provided services should not exceed one year. The maximum duration applicable to more complex digital services should be three years. Finally, the Commission should prohibit BellSouth from contacting customers who choose competitive alternatives for 30 days following the date they disconnect from BellSouth.

D. EXHIBITS

DK-1	Danyelle Kennedy	Comparison of wholesale cost and retail rate, 4-line service
DK-2	Danyelle Kennedy	Excerpt, Copy of Key Customer contract
DK-3	Danyelle Kennedy	Advertisement related to BellSouth "Winback" activity
DK-4	Danyelle Kennedy	Advertisement directed to existing BellSouth customer
DK-5	Danyelle Kennedy	Excerpt, BellSouth response
DK-6	Danyelle Kennedy	"Select Points" promotion
DK-7	Danyelle Kennedy	Tariff notification

E. STATEMENT OF ISSUES AND POSITIONS:

ISSUE 1: How should Section 364.01, Florida Statutes, be interpreted in evaluating a BellSouth promotional tariff for compliance with Chapter 364, Florida Statutes?

FCCA: The Commission should interpret Section 365.01(4)(d) as mandating the Commission to affirmatively promote competition and to prohibit anticompetitive practices. The Commission should recognize this will require the Commission to differentiate its regulatory oversight of incumbent local exchange companies relative to that of new entrants. In the present context, implementing Section 364.01 would include reviewing tariffs of BellSouth to ensure compliance with applicable thresholds, and placing reasonable restrictions on efforts by BellSouth to embed within the tariff terms and conditions which would impede nascent competition.

ISSUE 2: What criteria, if any, should be established to determine whether the pricing of a Bellsouth promotional tariff offering is unfair, anticompetitive, or discriminatory?

(i) Pursuant to the cost standard identified in Section 364.051(5) and 364.3381, Florida Statutes.

FCCA: The Commission should devise an imputation test that will implement the statutory standard. Under the test the recurring price under a BellSouth promotion must meet or exceed the sum of the recurring network-related costs, represented by the recurring Commission – established rate for each UNE used in the provision of the service and non-network-related costs, in the form of the wholesale discount.

With respect to non-recurring charges under a BellSouth promotion, the test should be that the non-recurring charge must exceed the non-recurring charges associated with each of the UNEs that underlie the service.

Finally, in order to determine whether BellSouth's nonbasic services recover, in the aggregate, all costs associated with furnishing such services, BellSouth should be directed to file a comprehensive cost study that attributes all costs to either basic or nonbasic services. To the extent that BellSouth believes a cost cannot be attributed between these categories, Bellsouth should be required to identify the cost and provide an explanation as to why it is unable to assign it to either of these categories.

(ii) Pursuant to any other provisions of Chapter 364, Florida Statutes.

FCCA: (No position)

(iii) How should the appropriate criteria identified in Issues 2(i) and 2(ii) be applied to a tariff under which varying customer configurations are possible?

FCCA: All customer configurations which reasonably can be foreseen must meet all of the appropriate criteria.

(iv) Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to Issues 2(i), 2(ii) and 2(iii)?

FCCA: Based upon a comparison and analysis derived from calculations contained in the testimony of FCCA witness Danyelle Kennedy, which examined the discounted price applicable to a 4-line business service, the answer is yes.

(v) Is the BellSouth Key Customer Tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to Issues 2(i), 2(ii) and 2(iii)?

FCCA: The FCCA has not made this comparison; however, based upon the degree to which the January tariff fails the criterion, and the relationship between the January and June discounts, it appears that the June tariff would also violate the standard.

ISSUE 3A: What criteria, if any, should be established to determine whether the termination liability terms and conditions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory?

FCCA: Given the status of the introduction of competition, the Commission should limit BellSouth's termination liability provisions to a maximum of three months' discounts.

(i) Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

FCCA: The answer to this subissue would vary depending on the amount of time an individual customer has taken service under the contract.

- (ii) Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

FCCA: See response to (i) above

ISSUE 3B: What criteria, if any, 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?

FCCA: Given the state of competition in the local exchange market, FCCA recommends that the Commission limit BellSouth from offering contracts for standard services (traditional, single or multi-lines pots services provisioned as an analog voice service) of more than twelve months, or contracts for complex digital services of greater than three years.

- (i) Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this order?

FCCA: Yes.

- (ii) Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

FCCA: Yes.

ISSUE 3C: What criteria, if any should be established to determine whether the billing conditions or restrictions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory?

- (i) Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

- (ii) Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

FCCA: No position.

ISSUE 3D: What criteria, if any, should be established to determine whether geographic targeting in a BellSouth promotional tariff is unfair, anticompetitive or discriminatory?

FCCA: BellSouth should not be permitted to market the promotion only to customers who have chosen an alternative. More importantly, structural separation is needed to ensure that Bellsouth does not exploit its access to information unavailable to other market participants.

(i) Pursuant to Section 364.051(5)(a), Florida Statutes, how should “meeting offerings by any competitive provider” be interpreted?

FCCA: Any promotion would have to meet the imputation standard identified above. In the aggregate, all of BellSouth’s nonbasic services must cover the total cost to provide nonbasic services.

(ii) Pursuant to Section 364.051(5)(a), Florida Statutes, how should “specific geographic market” be interpreted?

FCCA: BellSouth should be prohibited from differentiating between its existing customers and customers who have chosen competing services. This would include both the determination of the customers applicable for a discount and the manner in which BellSouth markets the discount to its customers.

(iii) Pursuant to Section 364.051(5)(a), and 364.08, Florida Statutes, how should “similarly situated” or “substantially similar” be interpreted?

FCCA: See (ii) above

(iv) If the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

FCCA: Yes. Evidence indicates that BellSouth does not market the discounts to existing customers to the extent it markets the same discount to customers who have elected to leave BellSouth. (Kennedy)

(v) Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

FCCA: Yes. See response to (iv) above.

ISSUE 3E: What criteria, if any, should be established to determine whether any other terms or conditions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory?

FCCA: The Commission should prohibit BellSouth from applying separate discounts to the price that a customer pays if the effect would be to violate the imputation standard.

(i) Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

(ii) Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue.

FCCA: It appears that BellSouth's "select points" promotion, which was introduced without being tariffed, if permitted to be applicable to the Key Customers, would have the effect of exacerbating the extent to which the Key Customer tariffs violate the imputation standard.

ISSUE 4A: Under what terms and conditions should BellSouth promotional tariff offerings be made available for ALEC resale?

(i) Does the BellSouth Key Customer tariff filing (Tariff Number T-020035) meet the resale terms and conditions established pursuant to this issue?

(ii) Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) meet the resale terms and conditions established pursuant to this issue?

FCCA: **No position.**

ISSUE 4B: What is the competitive impact, if any, of the resale of BellSouth promotional tariff offerings?

FCCA: The technical ability of an ALEC to resell the promotional tariff does not mitigate its anticompetitive effect, due to the inadequacy of the resale entry mechanism.

ISSUE 5A: In the context of marketing promotional tariffs, what waiting period or other restrictions, if any, should be applicable to BellSouth?

FCCA: The Commission should prohibit BellSouth from contacting customers who chose alternatives for minimum of thirty days after the customer has been disconnected from BellSouth.

ISSUE 5B: In the context of marketing promotional tariffs, what restrictions, if any should be placed on the sharing of information between BellSouth's wholesale and retail divisions?

FCCA: Corporate restructuring should be required. Until that is done, the Commission should prohibit "geographical targeting." Moreover, BellSouth retail should not have access to any information that is not available to all ALECs at no more than a TELRIC-based, Commission-approved rate.

ISSUE 6: If the Commission determines that a BellSouth promotional tariff is unlawful, what effect, if any, should this decision have on customers who have already contracted for service under the promotional tariff?

FCCA: Does not contend that customers who have already signed up for "key customer" promotional service should be removed from the tariff. The FCCA favors implementation of the criteria developed in these dockets on a going forward basis.

F. STIPULATED ISSUES:
None.

G. PENDING MOTIONS:
FCCA has no motions pending.

H. OTHER MATTERS:
None at this time.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Florida Competitive Carriers Association's Prehearing Statement has been furnished by (*) hand delivery, (**) electronic mail and by U. S. Mail on this 25th day of November 2002 to the following:

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