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DIVISION OF COMPETITIVE MARKETS &
ENFORCEMENT
BETH W. SALAK
DIRECTOR
(850) 413-6600

Public Service Commission

September 29, 2003

Mr. Matthew Feil, General Counsel
Florida Digital Network, Inc.
390 North Orange Avenue, Suite 3000
Orlando, FL 32801

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Re: CATS# 526227

Dear Mr. Feil:

We have completed our analysis of the above complaint of IDS Telecom (IDS) against Florida Digital Network (FDN) which alleges violations of Section 222(b) and 222(c)(1) of the Telecommunications Act of 1996. IDS asserts that FDN notification letters outlining termination liabilities and fees are, in reality, retention letters designed to "intimidate and persuade" the customer to change its decision to switch carriers. In its April 21, 2003 response to the complaint, FDN stated:

Without, for the nonce, addressing Commission jurisdiction in this matter, FDN asserts that a carrier's notifying a customer of service termination information and termination liability charges after the customer has decided to switch carriers but before migration occurs has not been addressed, let alone barred, by the FCC or the Florida Commission.

Staff disagrees with this statement. By Order FCC 03-42, released March 17, 2003, the Federal Communications Commission (FCC) stated:

We reiterate our finding in the *Second Reconsideration Order* that carrier change request information transmitted to executing carriers in order to effectuate a carrier change cannot be used for any purpose other than to provide the service requested by the submitting carrier.

The Order clearly indicates that an LSR received by FDN requesting that an FDN customer be switched to another provider cannot be used to trigger a notification letter from FDN prior to the completion of the switchover. Therefore, it is staff's opinion that if FDN sends out notification

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Florida Digital Network
Page 2
September 29, 2003

letters of termination liability as a result of receiving a local service request (LSR) from another carrier and prior to the completion of the switch-over, FDN would be in violation of the FCC Order.

FDN's April 21, 2003 letter also addressed preferred carrier freezes which the FPSC is currently addressing in a rulemaking process. We believe that your concerns with respect to preferred carrier freezes could be better handled and addressed in this rulemaking proceeding. Therefore, we recommend that you please contact Mr. Ray Kennedy by phone at 850-413-6584 or by e-mail at ray.kennedy@psc.state.fl.us. On your behalf, we contacted Mr. Kennedy and provided all of your e-mails/letters to him.

Since there are no outstanding issues remaining as far as the complaint is concerned, I am closing this case. If you have any questions, please contact me at 850-413-6562.

Sincerely,

A handwritten signature in cursive script that reads "Levent Ileri". The signature is written in black ink and includes a small flourish at the end.

Levent Ileri
Engineer IV

LI

cc: Beth Salak, Director, Division of Competitive Markets and Enforcement
Bob Trapp, Assistant Director, Division of Competitive Markets and Enforcement
Cheryl Bulecza-Banks, Bureau Chief, Division of Competitive Markets and Enforcement
Bob Casey, Supervisor, Division of Competitive Markets and Enforcement
Ray Kennedy, Utility Engineer Supervisor, Division of Competitive Markets and Enforcement
Mr. Angel M. Leiro, IDS Telecom
Docket No. 011077-TP