



September 6, 2001

Ms. Blanca Bayó, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

via Overnight Mail

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 Prehearing Statement, (2) Florida Digital Network, Inc.’s Motion to Strike, and (3) Florida Digital Network, Inc.’s Notice of Serving its First Set of Interrogatories, Requests for Production, and Requests for Admission on BellSouth Telecommunications, Inc.

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

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

Sincerely,

Matthew Feil
Florida Digital Network
General Counsel

C: Mike Sloan (Swidler Berlin et al)

Motion to Strike
DOCUMENT NUMBER - DATE

11156 SEP-7 01

FPSC-COMMISSION CLERK

L O C A L L O N G D I S T A N C E I N T E R N E T

390 N. Orange Avenue Suite 2000 & 200 Orlando, Florida 32801
407.835.0300 Fax 407. 835.0309 www.floridadigital.net

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 51, line 4, through page 52, line 31, 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-01-1025-PCO-TL, issued April 25, 2001, the Prehearing 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 Prehearing 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.

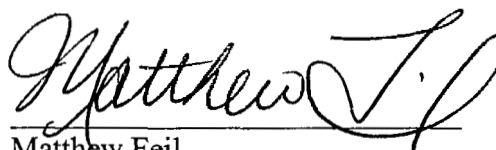
6. The prefiled surrebuttal testimony, page 51, line 4, through page 52, line 31, inclusive, and prefiled Exhibit CKC-10 of BellSouth witness Cox: (1) must be stricken if staff’s recommendation to strike portions of Mr. Page’s testimony is adopted, since striking Page’s testimony without striking Cox’s 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.¹

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.



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

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**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Overnight delivery (if marked *) or by U.S. mail this 6 day of Sept, 2001 to the following:

Mr. Brian Sulmonetti
LDDS WorldCom Communications
Suite 3200
6 Concourse Parkway
Atlanta, GA 30328
Tel. No. (770) 284-5493
Fax. No. (770) 284-5488
brian.sulmonetti@wcom.com

Floyd R. Self, Esq.
Messer Law Firm
215 South Monroe Street
Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876
Tel. No. (850) 222-0720
Fax. No. (850) 224-4359
Represents LDDS/ACSI
fself@lawfla.com

Vicki Gordon Kaufman
Joseph A. McGlothlin
McWhirter, Reeves, McGlothlin
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, FL 32301
Tel. No. (850) 222-2525
Fax. No. (850) 222-5606
Represents FCCA
Represents NewSouth
Represents KMC
vkaufman@mac-law.com

Ms. Nancy White *
c/o BellSouth Telecommunications, Inc.
Ms. Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556
Tel. No. (850) 224-7798
Fax: No. (850) 222-8640

Charles J. Beck
Office of Public Counsel
111 W. Madison Street
Suite 812
Tallahassee, FL 32399-1400
Tel. No. (850) 488-9330
Fax No. (850) 488-4992
Beck.Charles@leg.state.fl.us

Richard D. Melson
Hopping, Green, Sams & Smith
123 South Calhoun Street
P.O. Box 6526
Tallahassee, FL 32314
Tel. No. (850) 222-7500
Fax. No. (850) 224-8551
Represents MCI, Rhythms
RMelson@hgss.com

Susan S. Masterton
Sprint Communications Co.
Post Office Box 2214 (zip 32316-2214)
1313 Blair Stone Road
Tallahassee, FL 32301
Tel. No. (850) 599-1560
Fax. No. (850) 878-0777
susan.masterton@mail.sprint.com

Beth Keating, Staff Counsel *
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6212
Fax. No. (850) 413-6250
bkeating@psc.state.fl.us

Scott Sapperstein
Intermedia Comm. Inc.
One Intermedia Way
MCFLT-HQ3
Tampa, Florida 33647-1752
Tel. No. (813) 829-4093
Fax. No. (813) 829-4923
Sasapperstein@intermedia.com

Rhonda P. Merritt
AT&T
101 North Monroe Street
Suite 700
Tallahassee, Florida 32301
Tel. No. (850) 425-6342
Fax. No. (850) 425-6361
rpmerritt@ATT.com

Kenneth A. Hoffman, Esq.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
215 South Monroe Street
Suite 420
P.O. Box 551
Tallahassee, FL 32302
Tel. No. (850) 681-6788
Fax. No. (850) 681-6515
Represents TCG
Represents US LEC
Ken@Reuphlaw.com

John R. Marks, III
215 South Monroe Street
Suite 130
Tallahassee, FL 32301
Tel. No. (850) 222-3768
Fax. No. (850) 561-0397
Represents BellSouth
JohnM@KMRlaw.com

Kenneth S. Ruth
Florida Director CWA
2180 West State Road 434
Longwood, FL 32779
Tel. No. (407) 772-0266
Fax. No. (407) 772-2516
Kruth@cwa-union.org

Marilyn H. Ash
MGC Communications, Inc.
3301 N. Buffalo Drive
Las Vegas, NV 89129
Tel. No. (702) 310-8461
Fax. No. (702) 310-5689

Rodney L. Joyce
Shook, Hardy & Bacon, L.L.P.
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2004
Tel. No. (202) 639-5602
Fax. No. (202) 783-4211
rjoyce@shb.com
Represents Network Access Solutions

Ms Rose M. Mulvany
Birch Telecom
2020 Baltimore Avenue
Kansas City, MO 64108-1914
Tel. No. (816) 300-3731
Fax No. (816) 300-3350
rmulvany@birch.com

Michael Gross/Charles Dudley
FCTA, Inc.
246 E. 6th Avenue
Suite 100
Tallahassee, FL 32303
Tel. No. (850) 681-1990
Fax. No. (850) 681-9676
mgross@fcta.com

Nanette Edwards
ITC Delta Com
4092 South Memorial Parkway
Huntsville, AL 35802
Tel. No (256) 382-3856
Fax. No. (256) 382-3969
Represented by Hopping Law Firm

Donna McNulty
MCI WorldCom
325 John Knox Road
Suite 105
Tallahassee, FL 32303-4131
Tel. No. (850) 422-1254
Fax. No. (850) 422-2586
donna.mculty@wcom.com

Network Access Solutions Corp.
100 Carpenter Drive
Suite 206
Sterling, VA 20164
Tel. No. (703) 742-7700
Fax. No. (703) 742-7706
Represented by Shook, Hardy & Bacon

Karen Camechis
Pennington Law Firm
215 South Monroe Street
2nd Floor
Tallahassee, FL 32301
Tel. No. (850) 222-3533
Fax. No. (850) 222-2126
Represents Time Warner
pete@penningtonlawfirm.com

Rythms Links, Inc.
6933 South Revere Parkway
Suite 100
Englewood, CO 80112
Tel. No. (303) 476-4200
Represented by Hopping Law Firm

Benjamin Fincher
Sprint/Sprint-Metro
3100 Cumberland Circle
#802
Atlanta, GA 30339
Tel. No. (404) 649-5144
Fax. No. (404) 649-5174
Represented by Ervin Law Firm

Carolyn Marek
Time Warner
Regulatory Affairs, SE Region
233 Bramerton Court
Franklin, TN 37069
Tel. No. (615) 376-6404
Fax. No. (615) 376-6405
carolyn.marek@twtelecom.com
Represented by Pennington Law Firm

James Falvey
ACSI
131 National Business Parkway
Annapolis Junction, MD 20701
Represented by Messer Law Firm

Katz, Kutter Law Firm
Charles J. Pellegrini/Patrick Wiggins
106 E. College Avenue
Tallahassee, FL 32301
Tel. No. (850) 224-9634
Fax.No. (850) 224-9634
pkwiggins@katzlaw.com

Lori Reese
Vice President of Governmental Affairs
NewSouth Communications
Two Main Street
Greenville, South Carolina 29609
Tel. No. (864) 672-5177
Fax. No. (864) 672-5040

Genevieve Morelli
Andrew M. Klein
Kelley Drye & Warren LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036
Represents KMC

John D. McLaughlin, Jr.
KMC Telecom
1755 North Brown Road
Lawrenceville, GA 30043

Suzanne F. Summerlin, Esq.
1311-B Paul Russell Road
Suite 201
Tallahassee, Florida 32301
Tel. No. (850) 656-2288
Fax. No. (850) 656-5589
Represents IDS Telecom

Henry C. Campen, Jr.
Parker, Poe, Adams & Bernstein, LLP
P.O. Box 389
First Union Capital Center
150 Fayetteville Street Mall
Suite 1400
Raleigh, NC 27602-0389
Tel. No. (919) 890-4145
Fax. No. (919) 834-4564
Represents US LEC of Florida

Catherine F. Boone
Covad Communications Company
10 Glenlake Parkway, Suite 650
Atlanta, GA 30328-3495
Tel. No. (678) 222-3466
Fax. No. (678) 320-0004
cboone@covad.com

Jim Lamoureux
AT&T Law & Government Affairs
1200 Peachtree Street, NE
Suite 8100
Atlanta, GA 30309
tn: 404-810-4196

Bruce Culpepper, Esq.
Akerman, Senterift & Eidson
301 S. Bronough Street
Suite 200
Post Office Box 10555
Tallahassee, FL 32302-2555
Represents AT&T

Mark D. Baxter
Stone&Baxter, LLP
557 Mulberry Street
Suite 1111
Macon, GA 31201-8256
Represents Access

Dana Shaffer
XO Communications
105 Molloy Street, Suite 300
Nashville, TN 37201-2315
dana.shaffer@xo.com



Matthew Feil
General Counsel
Florida Digital Network
390 North Orange Avenue
Suite 2000
Orlando, Florida 32801