

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Competitive,)
Carriers Association, for Expedited Review)
and Cancellation Of BellSouth)
Telecommunications, Inc.'s Key Customer)
Promotional Tariffs.)

Docket No.: 020578-JP

Filed: June 25, 2002

**PETITION OF THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION
FOR EXPEDITED REVIEW AND CANCELLATION OF BELL SOUTH
TELECOMMUNICATIONS, INC.'S KEY CUSTOMER PROMOTIONAL TARIFFS**

The Florida Competitive Carriers Association, ("FCCA") hereby petitions the Florida Public Service Commission ("FPSC" or "Commission") pursuant to sections 364.01(4)(a), (b), (c), and (g), 364.051, 364.08, 364.09, 364.10, and 364.3381(3), Florida Statutes, and rules 25-22.036(2) and 28-106.201, Florida Administrative Code, to immediately review and cancel or, alternatively, suspend or postpone, the 2002 Key Customer tariff and any like tariffs filed by BellSouth Telecommunications, Inc. ("BellSouth"). In support of its petition, FCCA states as follows:

I. PARTIES

The Florida Competitive Carriers Association is a Florida not-for-profit corporation, whose members provide competitive telecommunications services in the state. Collectively, the members of the FCCA are a group of substantially affected competitors of BellSouth and, as such, the FCCA has standing to file this proceeding.

All pleadings, notices and other documents related to this proceeding should be provided to:

Joseph A. McGlothlin
jmcglothlin@mac-law.com

Vicki Gordon Kaufman

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vk Kaufman@mac-law.com

McWhirter Reeves McGlothlin Davidson Decker
Kaufman Arnold & Steen, PA
117 South Gadsden Street
Tallahassee, Florida 32301
850-222-2525
850-222-5606 (fax)

BellSouth is a corporation organized and formed under the laws of the State of Georgia, having an office at 675 West Peachtree Street, Atlanta, Georgia, 30375. BellSouth provides local exchange and other services within its legacy franchised areas in Florida. BellSouth is a “Bell Operating Company” and an “incumbent local exchange carrier” (“ILEC”) under the terms of the Federal Telecommunications Act (“the Act”) and is certificated as a Florida ILEC.

II. SUBSTANTIAL INTERESTS

FCCA members provide competitive local telecommunications services in BellSouth's territory. As such, their substantial interests are affected significantly by BellSouth's anticompetitive behavior. BellSouth's offer of anticompetitive promotions continues to delay the time when meaningful local competition will become a reality for Florida consumers. BellSouth's actions directly affect the interests of FCCA's members.

IV. FACTS ALLEGED

Through promotional pricing programs offered exclusively to ALEC business customers and potential ALEC business customers, BellSouth has used, and intends to continue to use, its dominant market status to selectively eliminate its business market competitors, causing substantial and irreparable harm to Florida's ALECs and, ultimately, to Florida's consumers. On June 11th, 2002, BellSouth filed with the Commission its 2002 Key Customer promotional program which is set to become effective on June 26, 2002, and remain in effect until December 31, 2002. The 2002 Key Customer Promotion offers discounts of up to 20% off total billed

revenue (lines and features), as well as a discount of up to 100% off the line hunting service and a waiver of line connection charges.

Sections 364.08(2), 364.051(5)(b) and (5)(c), Florida Statutes require a telecommunications company to offer services to customers at rates above its incremental costs. As of yet, BellSouth has made no such showing. Moreover, by applying the discounts to total revenues and incorporating the hunting feature at discounts of as much as 100%, BellSouth has made it difficult for affected parties or the Commission to even relate the discounts to incremental costs; the impacts will vary depending upon individual customers' usage patterns.

The Key Customer program is available only to subscribers located in certain specified wire centers. There are over 110 eligible "hot wire centers," which apparently are chosen on the basis of whether BellSouth has perceived the possibility of a competitive presence. Thus, only subscribers who are or could be served by a competitor are eligible to receive these promotional discounts. A copy of the pertinent tariff pages, printed from BellSouth's website, is attached hereto and marked "Exhibit A."

Upon information and belief, BellSouth does not generally market and promote the Key Customer programs to all eligible business customers. Rather, BellSouth targets markets and promotes the Key Customer program only to business customers who have taken some action to initiate a change of carrier from BellSouth to an ALEC.

Pursuant to section 364.3381(3), Florida Statutes, this Commission has continuing jurisdiction over predatory pricing and other anticompetitive behavior. BellSouth's practice of marketing the Key Customer tariff only to those select wire centers where ALEC competitors have shown some entry in the market—and of placing selected customers beyond the reach of competition through a succession of discounts that effectively do not end as long as competition is a possibility—is anticompetitive in nature. Upon information and belief, this is the third in a series

of “key customer” programs which have been designed to insulate those customers who would otherwise have a choice from meaningful competition. BellSouth’s continuous program of discounts, its failure to demonstrate compensatory rates, and its selection of a pricing approach that obscures the impact of the discounts, constitute a prima facie indication of anticompetitive intent.

Recently, the Commission considered the prior discount program in Docket No. 020119-TP. Among other things, the Commission considered the parameters which should be placed on BellSouth’s attempts to prevent competition on a going forward basis. On June 18, 2002, the FCCA appeared at the Agenda Conference during which such parameters were considered. FCCA intends to request a hearing on the subject. Therefore, it is imperative that the 2002 Key Customer Program be suspended or postponed until the Commission, based upon the full opportunity of parties to provide input, develops its policies in this area.

In addition to the Key Customer promotion’s anticompetitive price design and marketing scheme, the contract that is the subject of the promotion is designed to limit the customers’ ability to select competitive carriers in the market place. The 2002 Key Customer promotion requires a subscriber to enter into either a 24 or 36 month contract with BellSouth. Subscribers that sign up to receive promotional discounts, but leave BellSouth service before expiration of the contract term would be required to reimburse BellSouth for all discounts received and pay any applicable termination charges. The long duration of the Key Customer contract, coupled with the harsh penalties associated with breaking the contract, produces a chilling effect on a subscriber’s ability to choose competitors of BellSouth. In essence, the Key Customer promotion creates “captive”

customers for BellSouth and insulates BellSouth from the competitive pressures of the marketplace.

V. MATERIAL FACTS IN DISPUTE

The FCCA does not believe that any material facts are in dispute. However, BellSouth may dispute that its Key Customer promotion is anticompetitive, non-compensatory, and in violation of Florida Statutes.


VI. REQUESTED RELIEF

FCCA requests that the Commission:

- a. Process this case on an expedited basis;
- b. Order BellSouth to cease and desist from offering its 2002 Key Customer promotion to all Florida consumers, now and in the future;
- c. Provide such other relief, as the Commission may deem appropriate.

WHEREFORE and in consideration of the above, the Florida Competitive Carriers Association respectfully requests the Commission to cancel or, in the alternative, suspend or postpone the effectiveness of, BellSouth's 2002 Key Customer tariff.

Respectfully submitted, this 25th day of June 2002,



Joseph A. McGlothlin
Vicki Gordon Kaufman

Timothy J. Perry
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, PA
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525 Telephone
(850) 222-5606 Telefax

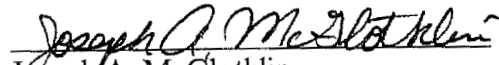
Attorneys for the Florida Competitive Carriers
Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint of the Florida Competitive Carriers Association for Expedited Review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer Promotional Tarriffs has been furnished by (*) hand delivery or by U. S. Mail this 25th day of June 2002 to the following:

(*) Beth Keating
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

(*) Nancy White
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301-1556


Joseph A. McGlothlin