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July 19, 2002

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

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COMMISSION
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Re: Docket No.: 020119-TP

Dear Ms. Bayo:

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

- ▶ The Florida Competitive Carriers Association's Protest, Petition on Proposed Agency Action and Request for Hearing

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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Done 7/29/02

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review
and cancellation of BellSouth
Telecommunication 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

Filed: July 19, 2002

**The Florida Competitive Carriers Association's Protest, Petition On Proposed
Agency Action, and Request for Hearing**

Pursuant to rule 28-106.201, Florida Administrative Code, the Florida Competitive Carriers Association (FCCA)¹ files this Protest, Petition On Proposed Agency Action, and Request For Hearing regarding Order No. PSC-02-0875-PAA-TP (Notice of Proposed Agency Action Order Regarding BellSouth's Key Customer Tariff Program and Winback Promotions), issued June 28, 2002.

Introduction

1. The name and address of the affected agency is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

The agency's file number is Docket No. 020119-TP.

2. The name, address and telephone number of Petitioner is:

Florida Competitive Carriers Association
c/o McWhirter Reeves McGlothlin Davidson
Decker Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
850-222-2525

3. The name, address and telephone number of Petitioner's representatives

¹ FCCA filed a Petition to Intervene in this docket on June 26, 2002.

for service during the course of the proceeding is:

Joseph A. McGlothlin
jmcglothlin@mac-law.com

Vicki Gordon Kaufman
vkaufman@mac-law.com

McWhirter Reeves McGlothlin Davidson Decker
Kaufman Arnold & Steen, PA
117 South Gadsden Street
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4. Petitioner received notice of the agency's preliminary decision when it received a copy of the PAA Order by fax on June 28, 2002.

Substantial Interests

5. The FCCA 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 competitors of BellSouth whose interests are substantially affected by BellSouth's offer of the Key Customer promotion to the FCCA members' subscribers and potential subscribers. The Commission's action affects the substantial interests of the FCCA members as ALECs operating in Florida. Moreover, such interests are precisely those that the statutes cited below are designed to protect. Thus, the FCCA will be substantially affected by any action that the Commission takes in this docket.

Disputed Issues of Material Fact

6. Disputed issues of material fact include, but are not limited to, the following:

a. Whether BellSouth's 2002 Key Customer Program tariff is unduly discriminatory in concept;

- b. Whether BellSouth's 2002 Key Customer Program tariff is unduly discriminatory in practice;
- c. Whether the rates for services purchased under BellSouth's 2002 Key Customer program are compensatory;
 - (i) The circumstances that should be considered to meet this test;
 - (ii) The cost justification required to meet this test;
 - (iii) Whether BellSouth has submitted appropriate cost documentation;
- d. Whether the rates for BellSouth's 2002 Key Customer Program are less than the wholesale cost for an ALEC;
- e. Whether the rates for BellSouth's 2002 Key Customer Program create a price squeeze for competitors;
- f. Whether the sequential nature of this program, under which replacement programs effectively result in ongoing discounts, disqualifies it as a "promotion";
- g. Whether the 2002 Key Customer Program is available and/or marketed to all customers or only to customers who have switched to a competitive provider;
- h. Whether the terms governing customers' ability to exit the program are unduly discriminatory;
- i. Whether, in general, BellSouth's "win back" activities are anticompetitive and/or unduly discriminatory;
- j. Whether the Commission should impose restrictions on BellSouth's "win back" activities and if so, the appropriate scope of such restrictions, including, but not limited to, whether at least a 60-day waiting period should be imposed on BellSouth before it may engage in any "win back" activity.

Ultimate Facts Alleged

- 7. Ultimate facts alleged include, but are not limited to, the following:
 - a. The 2002 Key Customer Program is unduly discriminatory and program rates fail to cover their pertinent costs;

b. This program, and other BellSouth “win back” activities, are anticompetitive and interfere with the development of a competitive local market in the state;

c. The measures contained in Order No. PSC-02-0875-PAA-TP are inadequate to prevent anticompetitive conduct through “win back” activities;

d. The Commission should impose restrictions on BellSouth's “win back” activities, that go farther than those proposed in Order No. PSC-02-0875-PAA-TP.

Issues Not in Dispute

8. Pursuant to §120.80(13), Florida Statutes, the FCCA does not dispute those findings of the Commission prohibiting BellSouth from including any marketing information in its final bill sent to customers who have switched providers and prohibiting BellSouth's wholesale division from sharing information with its retail division, such as informing the retail division when a customer is switching from BellSouth to an ALEC.

Statutes Entitling Petitioner to Relief

9. Petitioner is entitled to relief pursuant to, but not limited to, the following: sections 364.01(a), (c), (g); 364.051(5); 364.08; 364.09 and 364.10, Florida Statutes.

Relief Sought

10. Petitioner requests the following relief:

a. The Commission should reverse Order No. PSC-02-0875-PAA-TP, except as noted in ¶ 8;

b. The Commission should cancel the BellSouth 2002 Key Customer program and prohibit BellSouth from offering that program or similar programs in the future;

c. The Commission should require BellSouth to submit full cost justification for promotions at the time the promotions are proposed, and demonstrate that the rate for each service affected by the promotion remains compensatory;

d. The Commission should impose restrictions on BellSouth's win back activities, including, but not limited to, at least a 60-day waiting period before BellSouth may engage in any "win back" activities;

e. The Commission should limit the duration of contracts under any promotion to 24 months, and preclude participating customers from eligibility for similar promotions for a period of 12 months thereafter;

f. The Commission should expeditiously set this matter for hearing;

g. The Commission should provide such other relief as is just and necessary.



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Attorneys for the Florida Competitive
Carriers Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Competitive Carriers Association's Protest and Petition for Formal Hearing has been furnished by (*) hand delivery or by U. S. Mail on this 19th day of July 2002 to the following:

(*) Felicia Banks
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

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

(*) Nancy B. White
James Meza
Patrick Turner
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301

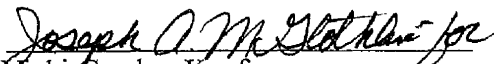
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