

ORIGINAL



December 10, 2002

Ms. Blanca Bayó, Director  
Division of the Commission Clerk  
& Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

via Overnight Mail

Re: Docket No. 020119 – Petition for Expedited Review and Cancellation Of BellSouth Telecommunications, Inc.’s Key Customer Promotional Tariffs and For an Investigation Of BellSouth’s Promotional Pricing And Marketing Practices by Florida Digital Network, Inc.

Re: Docket No. 020578 – Petition of the Florida Competitive Carriers Association for Expedited Review and Cancellation of BellSouth Telecommunications, Inc.’s Key Customer Promotional Tariffs.

Dear Ms. Bayó,

Please find enclosed for filing in the above dockets an original and seven copies of FDN’s Objections to BellSouth’s Second Set of Interrogatories.

If you have any questions regarding this letter or the one attached, please call me at 407-835-0460.

Sincerely,

Matthew Feil  
Florida Digital Network  
General Counsel

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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 }  
Telecommunications, Inc.'s Key Customer } Docket No. 020119-TP  
Promotional Tariffs and For an }  
Investigation Of BellSouth's Promotional }  
Pricing And Marketing Practices by }  
Florida Digital Network, Inc. }  
\_\_\_\_\_ }

In Re: Petition for Expedited Review }  
and Cancellation of BellSouth }  
Telecommunications, Inc.'s Key Customer } Docket No. 020578-TP  
Promotional Tariffs by the Florida }  
Competitive Carrier's Association }  
\_\_\_\_\_ }

**FLORIDA DIGITAL NETWORK, INC.'S OBJECTIONS TO  
BELLSOUTH TELECOMMUNICATIONS, INC.'S SECOND SET OF  
INTERROGATORIES (NOS. 31-33)**

Florida Digital Network, Inc. ("FDN"), pursuant to Rule 28-106.206, Florida Administrative Code and Rules 1.340 and 1.280, Florida Rules of Civil Procedure, hereby submits the following Objections to BellSouth Telecommunications, Inc.'s Second Set of Interrogatories (Nos. 31 - 33) dated December 4, 2002.

The objections stated herein are preliminary in nature and are made at this time to comply with the 5-day requirement set forth in Order No. PSC-02-1295-PCO-TP issued on September 23, 2002, as amended, by the Florida Public Service Commission ("Commission"). Should additional grounds for objection be discovered as FDN prepares its answers to the above-referenced Interrogatories, FDN reserves the right to supplement, revise, or modify its objections at the time it serves its responses.

DOCUMENT NUMBER DATE

13523 DEC 11 8

FPSC-COMMISSION CLERK

## GENERAL OBJECTIONS

1. FDN objects to each Interrogatory to the extent that it seeks to impose an obligation on FDN to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such Interrogatory is overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules.

2. FDN objects to each Interrogatory to the extent that it is intended to apply to matters other than those directly at issue in this proceeding. FDN objects to each such Interrogatory as being irrelevant, overly broad, unduly burdensome, and oppressive.

3. FDN objects to each Interrogatory to the extent that it requests information that is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege.

4. FDN objects to each Interrogatory to the extent that it is vague, ambiguous, overly broad, imprecise, or to the extent that it utilizes terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these Interrogatories. Answers, if any, provided by FDN in response to these Interrogatories will be provided subject to, and without waiver of, the foregoing objection.

5. FDN objects to each Interrogatory to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action. FDN will attempt to note in here and/or in its responses each instance where this objection applies.

6. FDN objects to providing information to the extent that such information is already in the public record before the Commission or in the possession of the party propounding the discovery.

7. FDN objects to each Interrogatory to the extent that it seeks to impose obligations on FDN that exceed the requirements of the Florida Rules of Civil Procedure or Florida Law.

8. FDN objects to each Interrogatory to the extent that responding to it would be unduly burdensome, expensive, oppressive, or excessively time consuming.

9. FDN objects to each Interrogatory to the extent that it is not limited to any stated period of time and, therefore is overly broad and unduly burdensome.

10. FDN is a small corporation with employees located in different locations in Florida. In the course of its business, FDN creates documents that re

not subject to Commission or FCC retention of records requirements. These documents may be kept in different locations and may be moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every document will be identified in response to these requests. To the extent an Interrogatory or Request is not otherwise objectionable, FDN will conduct a search of the files that are reasonably expected to contain the requested information. To the extent that the Interrogatories and Request purport to require more, FDN objects on the grounds that compliance would impose an undue burden or expense.

11. In certain circumstances, FDN may determine upon investigation and analysis that information responsive to certain discovery requests to which objections are not otherwise asserted are confidential and proprietary and should not be produced at all or should be produced only under an appropriate confidentiality agreement and protective order. By agreeing to provide such information in response to such a discovery request, FDN is not waiving its right to insist upon appropriate protection of confidentiality by means of a confidentiality agreement and protective order. FDN hereby asserts its right to require such protection of any and all documents that may qualify for protection under the Florida Rules of Civil Procedure and other applicable statutes, rules and legal requirements.

12. FDN objects to any discovery requests to the extent any definitions or instructions purport to expand FDN's obligations under applicable law. FDN will comply with applicable law.

13. FDN objects to the discovery requests to the extent they purport to require FDN to conduct any analysis or create information not prepared by FDN or its consultants in preparation for this case. FDN will only comply with its obligations under applicable law.

14. For each specific objection below, FDN incorporates all of the foregoing general objections as though pleaded therein.

#### **SPECIFIC OBJECTIONS**

1. FDN objects to Interrogatory Nos. 31 – 33 on the grounds that they are not reasonably calculated to lead to the discovery of admissible evidence.

(a) If the Commission permits BellSouth to discover details of the ALECs' businesses, products, practices, operations and results through discovery requests such as these, the Commission will effectively permit BellSouth to put the ALECs on trial in this proceeding with the following results: (1) the Commission will be diverted from whether **BellSouth's** pricing/conduct is or may be anticompetitive as contemplated by the list of

issues in this proceeding, and (2) the Commission will create a chilling effect on ALECs with meritorious complaints against BellSouth.

(b) BellSouth and the ALECs occupy completely different positions in the Florida telecommunications market. BellSouth has unquestionable market power in Florida, and the ALECs have none. For that reason alone, BellSouth's promotional prices and conduct (the real subject matter of this proceeding) are not generally analogous to ALEC conduct. ALECs operate under a completely different business model and for a different business purpose than does BellSouth. Further, the issues in this case concern BellSouth and its promotional tariffs and related conduct, **not** the ALECs' businesses or operations. BellSouth is accused of wrongdoing aided primarily by its dominant market power and position. Permitting discovery of the ALECs' businesses, products, practices, and operations in this proceeding does not allow BellSouth to obtain legitimate explanation of the ALEC's arguments in this case. Rather, it is a declaration that everything about the ALEC, the ALEC financials, investment, revenues, returns, methods of operation, etc. will be discoverable, even though BellSouth made no attempt to place such matters at issue during the issue identification process or at any other point in the proceeding. By allowing BellSouth to discover details of ALEC business, products, practices and operations, the Commission permits the victims to be put on trial during the discovery phase. The Commission must draw the line based on (1) the fundamental differences between

ILECs and ALECs, (2) BellSouth's conduct being the focal point of this docket. If the Commission does not draw the line by disallowing BellSouth's discovery on these matters, BellSouth will have license to explore practically anything it wants about the ALECs' businesses, practices, products and operations. The Commission cannot grant BellSouth such unwarranted license as though the ALEC's, not BellSouth, have been accused of some wrongdoing.

(c) Certain FDN information, like information pertinent to other ALECs, is in the public domain. Some of this information is placed in the public domain by being posted on an ALEC's website; other information is provided to the Commission under threat of being penalized for failure to do so (such as is the case with local competition data requests). An ALEC should not be made to "update" this sort of information at BellSouth's whim, particularly where the ALEC was originally required to provide the Commission the information in its current form and where information pertaining to one ALEC or another, in isolation, if offered to explain the overall impact of BellSouth's anticompetitive behavior in the market place, will inevitably lead to putting each individual ALEC on trial -- rather than BellSouth as the issues in the case contemplate -- because one side or another will move to explicate the information. The Commission should not permit such distraction during the discovery phase of this proceeding or the hearing.



2. FDN objects to Interrogatories 31 and 33 on the grounds that BellSouth already has in its possession information pertaining to FDN lines in BellSouth territory. It would be unduly burdensome for FDN to produce the information as if it had to recompile a new PSC report response, and this is what BellSouth unabashedly demands. Since BellSouth already has the information it seeks, BellSouth, not FDN, should have the burden of producing that information if it thinks that information relevant. The discovery process should not be about shifting workload from one party to another, as BellSouth would desire. Additionally, information pertaining to FDN's operations in non-BellSouth regions in Florida are completely irrelevant to this case in any event.

Respectfully submitted, this 10<sup>th</sup> day of Dec., 2002.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by e-mail and regular mail to the persons listed below, other than those marked with an (\*) who have been sent a copy via overnight mail, this 10th day of December, 2002.

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A handwritten signature in black ink, appearing to read "Matthew Feil". The signature is written in a cursive style with a large, looping flourish at the end.

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