

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

MAY 20, 2003

RE: Docket No. 020119-TP - Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc.

Docket No. 020578-TP - Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs by Florida Competitive Carriers Association.

Docket No. 021252-TP - Petition for expedited review and cancellation or suspension of BellSouth Telecommunications, Inc.'s Key Customer tariff filed 12/16/02, by Florida Digital Network, Inc.

ISSUE A: What is the Commission's jurisdiction in this matter?

RECOMMENDATION: Pursuant to Chapter 364, Florida Statutes, the Commission has authority to regulate telecommunications companies. As such, the Commission has jurisdiction to review the promotional tariff filings which are at issue under its regulatory authority.

APPROVED

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

Charles M. Dugg
John J. ...
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REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

04526 MAY 20 03

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ISSUE 1: How should Section 364.01, Florida Statutes, be interpreted in evaluating a BellSouth promotional tariff for compliance with Chapter 364, Florida Statutes?

RECOMMENDATION: Section 364.01, Florida Statutes, provides the Commission with the authority to promote competition. As such, staff believes that Section 364.01, Florida Statutes, should be interpreted as giving the Commission authority to promote competition by preventing any conduct or practice which contravenes the goal of Section 364.01, Florida Statutes, to promote competition.

APPROVED

ISSUE 3D: What criteria, if any, should be established to determine whether geographic targeting in a BellSouth promotional tariff is unfair, anticompetitive or discriminatory?

(i): Pursuant to Section 364.051(5)(a)(2), Florida Statutes, how should "meeting offerings by any competitive provider" be interpreted?

(ii): Pursuant to Section 364.051(5)(a)(2), Florida Statutes, how should "specific geographic market" be interpreted?

(iii): Pursuant to Sections 364.051(5)(a)(2), and 364.08, Florida Statutes, how should "similarly situated" or "substantially similar" be interpreted?

RECOMMENDATIONS: 3D: Staff recommends that no criteria should be established, other than that included in Section 364.051(5)(a)(2) Florida Statutes, to determine whether geographic targeting in a BellSouth promotional tariff is unfair, anticompetitive or discriminatory.

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3D (i): Staff recommends that the phrase "meeting offerings by any competitive provider" implies that BellSouth should have the ability to respond to offerings made by competitors in BellSouth wire centers.

APPROVED

3D (ii): Staff recommends that for purposes of this docket, the phrase "specific geographic market" can mean a wire center, a subset of a wire center, a grouping of wire centers, or it could mean something else depending on how competitors elect to compete.

APPROVED

3D (iii): Staff recommends that for purposes of this docket, "similarly situated" or "substantially similar" should be interpreted as customers facing similar competitive alternatives in a "specific geographic market" as defined in Issue 3D ii.

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ISSUE 3D (iv): Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

ISSUE 3D (v): Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

RECOMMENDATIONS:

3D(iv) AND 3D(v): No. Based on Section 364.051(5)(a)(2), Florida Statutes, staff recommends that the BellSouth January and June Key Customer tariff filings are not unfair, anti-competitive, or discriminatory pursuant to this issue.

APPROVED

ISSUE 2: What criteria, if any, should be established to determine whether the pricing of a BellSouth promotional tariff offering is unfair, anticompetitive, or discriminatory?

(i): Pursuant to the cost standard identified in Sections 364.051(5) and 364.3381, Florida Statutes.

(ii): Pursuant to any other provisions of Chapter 364, Florida Statutes.

(iii): How should the appropriate criteria identified in Issues 2(i) and 2(ii) be applied to a tariff under which varying customer configurations are possible?

(iv): Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to Issues 2(i), 2(ii) and 2(iii)?

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(v): Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to Issues 2(i), 2(ii) and 2(iii)?

RECOMMENDATIONS:

2(i) & (ii): The existing criteria set forth in the Florida Statutes are sufficient to determine whether the pricing of a promotional tariff offering is appropriate.

APPROVED

2(iii): The existing criteria set forth in the Florida Statutes should be applied uniformly to a tariff under which varying customer configurations are possible.

APPROVED

2(iv) & (v): No. Based upon the evidence in the record of this proceeding, the BellSouth Key Customer tariff filings (Tariff Number T-020035, Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) are not unfair, anticompetitive, or discriminatory. The existing criteria set forth in the Florida Statutes are sufficient to determine whether the pricing of a promotional tariff offering is appropriate.

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ISSUE 3A: What criteria, if any, should be established to determine whether the termination liability terms and conditions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory?

(i): Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

(ii): Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

RECOMMENDATIONS:

3A: Staff does not believe any specific criteria should be established outside of the existing guidance from the Florida Statutes to determine whether the termination liability terms and conditions of a BellSouth promotional tariff are unfair, anticompetitive, or discriminatory.

APPROVED

3A(i) & 3A(ii): The Key Customer tariff filings at issue in this proceeding are not unfair, anticompetitive, or discriminatory pursuant to the Florida Statutes.

Staff recommends, however, that BellSouth should revise the applicable portion of its current Key Customer tariff, Tariff No. T-021241, to clearly disclose that the termination liability does not apply in a "split-service" scenario. The corresponding revision should be made to the standard contract used to enroll subscribers as well. Additionally, on a going-forward basis, all future BellSouth

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promotional tariffs that are based on total billed revenue should clearly disclose that the termination liability does not apply in a "split-service" scenario.

APPROVED

ISSUE 3B: What criteria, if any, should be established to determine whether the duration (term of individual contracts, length and succession of promotions) of a BellSouth promotional tariff offering is unfair, anticompetitive, or discriminatory?

(i): Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

(ii): Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

RECOMMENDATIONS:

3B: Staff recommends that no criteria should be established, other than that included in Section 364.051(5)(a)(2) Florida Statutes, to determine whether the duration (term of individual contracts, length and succession of promotions) of a BellSouth promotional tariff offering is unfair, anticompetitive, or discriminatory.

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3B(i) & (ii): No. Based on Section 364.051(5)(a)(2), Florida Statutes, staff recommends that the BellSouth Key Customer tariff filings are not unfair, anticompetitive, or discriminatory regarding the term, length and succession of the promotional offerings.

APPROVED

ISSUE 3C: What criteria, if any, should be established to determine whether the billing conditions or restrictions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory?

(i): Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

(ii): Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

RECOMMENDATIONS:

3C: Staff does not believe any specific criteria should be established outside of the existing guidance from the Florida Statutes to determine whether the billing conditions or restrictions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory.

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3C(i) & 3C(ii): No.

APPROVED

ISSUE 3E: What criteria, if any, should be established to determine whether any other terms or conditions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory?

(i): Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

(ii): Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

RECOMMENDATIONS:

3E: No other criteria should be established to determine whether any other terms or conditions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory.

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3(i) & 3E(ii): No other criteria were established in Issue 3E to determine whether the BellSouth Key Customer tariff filings at issue in this proceeding are unfair, anticompetitive, or discriminatory.

APPROVED

ISSUE 4A: Under what terms and conditions should BellSouth promotional tariff offerings be made available for ALEC resale?

(i): Does the BellSouth Key Customer tariff filing (Tariff Number T-020035) meet the resale terms and conditions established pursuant to this issue?

(ii): Does the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) meet the resale terms and conditions established pursuant to this issue?

RECOMMENDATIONS:

4A: BellSouth's promotional tariff offerings should be and are made available for ALEC resale in accordance with the terms and conditions required by state and federal law. The law provides that incumbent LECs offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to noncarrier subscribers. Also, promotions of more than 90 days must be available for resale at the promotional rate minus the wholesale discount. Further, the incumbent LECs must not prohibit or impose unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service.

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4A(i) & 4A(ii): The BellSouth Key Customer tariff filings at issue in this proceeding meet the resale terms and conditions established in Issue 4A.

APPROVED

ISSUE 4B: What is the competitive impact, if any, of the resale of BellSouth promotional tariff offerings?

RECOMMENDATION: Resale of BellSouth's promotional tariff offerings provides ALECs with another means of competing with BellSouth and is not detrimental to the development of viable competition.

APPROVED

ISSUE 5A: In the context of marketing promotional tariffs, what waiting period or other restrictions, if any, should be applicable to BellSouth?

RECOMMENDATION: In the context of marketing promotional tariffs, staff recommends that the Commission acknowledge BellSouth's voluntary 10-day waiting period after a customer leaves BellSouth for an ALEC before any type of winback activity is implemented. Staff also recommends that the Commission affirm its finding contained in Order No. PSC-02-0875-PAA-TP, prohibiting BellSouth from including any marketing information in its final bill sent to customers who have switched providers.

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ISSUE 5B: In the context of marketing promotional tariffs, what restrictions, if any, should be placed on the sharing of information between BellSouth's wholesale and retail divisions?

RECOMMENDATION: In the context of marketing promotional tariffs, staff recommends that the Commission affirm its finding contained in Order No. PSC-02-0875-PAA-TP 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.

APPROVED

ISSUE 6: If the Commission determines that a BellSouth promotional tariff is unlawful, what effect, if any, should this decision have on customers who have already contracted for service under the promotional tariff?

RECOMMENDATION: If the Commission finds that the Key Customer tariffs of this proceeding are lawful in Issues 2, 3, and 4 and its subparts, this decision should have no effect on customers who have already contracted for service under the promotional tariffs. However, if the Commission finds in Issues 2, 3, and 4 and its subparts, that the Key Customer tariffs of this proceeding are unfair, anticompetitive, or discriminatory pursuant to Chapter 364, Florida Statutes, staff believes that the customers who have contracted for service under these offerings should be given 45 days from the date of approval of this recommendation to choose to terminate, or to continue their individual contracts. BellSouth should be ordered to waive the applicable termination liability charges for a customer terminating an individual contract to seek an alternative service plan. In addition, no new customers should be allowed to sign contracts under the current tariff from the date of approval of this recommendation.

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ISSUE 7: Should these dockets be closed?

RECOMMENDATION: If the Commission finds that the Key Customer tariffs of this proceeding are lawful and BellSouth has completed the tariff and contract modifications to the current Key Customer tariff that were recommended in Issue 3A, these dockets should be closed. However, if the Commission finds in Issues 2, 3, or 4 and the subparts, that the Key Customer tariffs of this proceeding are unfair, anticompetitive, or discriminatory pursuant to Chapter 364, Florida Statutes, these dockets should remain open pending the disposition of further proceedings.

APPROVED