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July 14, 2003

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COMMISSION
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Ms. Blanca S. Bayó
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: **Docket No. 021252-TP**

In re: **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.**

Docket No. 020119-TP

Petition of Florida Digital Network, Inc. for Expedited Review and Cancellation of BellSouth Telecommunications, Inc.'s Key Customer Promotional Tariffs and For an Investigation of BellSouth Telecommunications, Inc.'s Promotional Pricing and Marketing Practices

Docket No.: 020578-TP

Petition for Expedited Review and Cancellation of BellSouth Telecommunications, Inc.'s Key Customer Promotional Tariffs

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response in Opposition to Florida Digital Networks, Inc.'s Motion for Reconsideration/ Clarification, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

- AUS _____
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- ECR _____
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- OPC _____
- MMS _____
- SEC 1
- OTH _____

Enclosure

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

Sincerely,

Meredith E. Mays

Meredith E. Mays

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FPSC-BUREAU OF RECORDS

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FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
DOCKET NO. 021252-TP, 020119-TP and 020578-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and U.S. Mail this 14th day of July, 2003 to the following:

Felicia Banks
Linda Dodson
Staff Counsel
Florida Public Service
Commission
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Meredith E. Mays

(+) Signed Protective Agreement

FDN's invitation to reverse or clarify the Final Order on BellSouth's Key Customer Tariffs ("Final Order").

II. DISCUSSION

The gist of FDN's argument – that because the Commission did not directly cite to a hearing exhibit admitted into the record, such evidence was overlooked or ignored – is misplaced. The voluminous record in this case includes 29 exhibits, many of which were composite exhibits. That the Final Order did not specifically cite to each exhibit in its Final Order does not mean that the Commission did not fully consider all the evidence introduced, including Exhibit No. 17. Moreover, simply because the Final Order did not include a sentence stating “anticompetitive conduct is defined as...” does not mean the Commission failed to evaluate the tariffs at issue to ensure full compliance with Florida law. Instead, the Final Order addresses anticompetitive conduct at length. (*See* Final Order, pp. 6, 9, 16, 17, 18, 19, 22, 23, 24, 27, 28, 29, 33, 36, and 38). This Commission addressed each and every argument raised by FDN in this case, and appropriately concluded, based on the record evidence that BellSouth's Key Customer tariff filings comply with Florida statutes.

To support its Motion, FDN reargues that BellSouth's Key Customer tariffs negatively impact facilities based carriers. FDN relies upon Exhibit 17 to bolster its position. However, FDN's argument makes no sense. First, Exhibit 17 demonstrates that the number of access lines served by facilities based carriers has continued to grow. Simply because facilities-based carriers have not continued to grow at a rapid pace does not mean that BellSouth's Key Customer tariffs fail to comply with Florida law. Second, FDN concedes on the one hand that the Commission must look “at the whole market picture.” However, FDN then suggests on the other that the Final Order must be reversed because of alleged impacts to only one segment of

the market -- “UNE-L facilities-based providers.” (FDN Motion, pp. 7-8) (which would conflict with the Commission’s obligation to ensure all providers of telecommunications are treated fairly). A review of Exhibit 17 shows continued growth for both facilities based and UNE-P carriers – data that is entirely consistent with this Commission’s findings in its 2002 Report on Competition (Hearing Exhibit 8). Consequently, that staff did not direct Commissioner Davidson to Exhibit 17 during Agenda Conference does not mean that the Commission overlooked or ignored FDN’s arguments. Rather, it demonstrates that FDN’s arguments were appropriately found to be misguided and more reflective of FDN’s desire to immunize itself from competition rather than to preserve competition in the overall market.

FDN also incorrectly claims that the Commission “overlooked” evidence concerning customers that do not receive Key Customer tariff discounts. To the contrary, the Final Order squarely considered and rejected FDN’s argument on that point. At page 18, the Final Order summarized FDN’s concerns: “. . . the business class becomes divided between the ‘haves’ and the ‘have nots’ FDN believes BellSouth’s immense market power enables it to act in an anticompetitive manner . . .” After summarizing FDN’s arguments and recommendations, the Commission rejected them finding that “we tend to agree with BellSouth witness Pitofsky, who believes the ‘discount programs made available to customers in Florida by BellSouth are proconsumer and procompetitive.” Final Order, p. 19. FDN apparently desires that this Commission issue Final Orders more lengthy than the 50 pages at issue here, and that spell out in excruciating detail this Commission’s rulings in FDN’s preferred format. However, FDN’s desires are insufficient to justify reversal, clarification, or reconsideration of the Final Order and the Commission should deny FDN’s motion. *See e.g., Sherwood v. State*, 111 So.2d 96 (Fla. 3rd DCA 1959) (citations omitted) (it is not appropriate to reargue matters that have already been

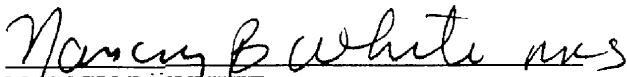
considered in a motion for reconsideration); *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974) (a motion for reconsideration must be based upon specific factual matters and not an arbitrary feeling that a mistake may have been made).

As a final matter, FDN claims that somehow the Commission has erroneously applied Florida statutes. This claim also cannot stand. A reading of the Commission's Final Order demonstrates that the Commission reviewed each and every issue and each and every practice complained of by FDN, and considered the record in its entirety. That the Commission declined to establish a bright-line test demonstrates the facts presented in any given scenario are controlling. Incredibly, FDN suggests the Final Order provides "little or no 'wiggle' room" when instead the Final Order evaluated all of the conduct complained of in great detail. The Final Order -- a decision rendered over one year after FDN's Petition was filed, after voluminous discovery was conducted, after a deposition occurred, and after eight witnesses testified on behalf of BellSouth -- can hardly be labeled a "dangerous course" for the Florida market. If any course for the Florida market is clear, it is that this Commission will examine in painstaking detail allegations that purportedly demonstrate a threat to competition.

III. CONCLUSION

BellSouth respectfully requests that the Commission deny FDN's Motion for Reconsideration/Clarification.

Respectfully submitted this 14th day of July 2003.



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