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December 30, 2003

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. 031132-TP - Petition of Florida Digital Network, Inc.  
d/b/a FDN Communications for Suspension of or for a Stay of the Effective Date  
of BellSouth Telecommunications, Inc.'s 2004 Key Customer Promotional Tariff  
Filing December 17, 2003

Dear Ms. Bayó,

Please find enclosed for filing in a **new docket** an original and seven (7) copies of the  
following: FDN Communications Petition for Suspension of or for a Stay of the  
Effective Date of BellSouth Telecommunications, Inc.'s 2004 Key Customer  
Promotional Tariff Filing December 17, 2003

Also enclosed is a diskette containing a Microsoft Word for Windows 2000 file of the  
foregoing document.

If you have any questions regarding the enclosed, please call me at 407-835-0460.

Sincerely,

Matthew Feil  
FDN Communications  
General Counsel

LOCAL

LONG DISTANCE

390 North Orange Avenue Suite 2000 Orlando, FL 32801  
407.835.0300 Fax 407.835.0309 www.fdn.com

DOCUMENT NUMBER DATE

13607 DEC 31 8

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Florida Digital Network, Inc. )  
d/b/a FDN Communications for Suspension of or )  
A Stay of the Effective Date of )  
BellSouth Telecommunications, Inc.'s )  
2004 Key Customer Promotional Tariff )  
Filing of December 17, 2003 )  
\_\_\_\_\_ )

Docket No. 031132-TP  
Filed: December <sup>th</sup>30, 2003

**PETITION OF FLORIDA DIGITAL NETWORK, INC.**  
**d/b/a FDN COMMUNICATIONS FOR SUSPENSION OF OR FOR A STAY OF THE**  
**EFFECTIVE DATE OF BELLSOUTH TELECOMMUNICATIONS INC.'S 2004 KEY**  
**CUSTOMER PROMOTIONAL TARIFF FILING OF DECEMBER 17, 2003**

Florida Digital Network, Inc., d/b/a FDN Communications ("FDN" or "Petitioner") hereby petitions the Florida Public Service Commission ("FPSC" or "Commission") pursuant to Section 364.059, Florida Statutes, to suspend, or stay of the effective date of, the 2004 Key Customer tariff filed by BellSouth Telecommunications, Inc. ("BellSouth") on December 17, 2003.<sup>1</sup> FDN respectfully requests pursuant to Sections 364.3381, 354.01(a), (c) and (g), Florida Statutes, that the Commission immediately review and take said action to postpone the 2004 Key Customer tariff. These actions are necessary in order for the Commission to enforce Sections 364.01(4)(a), (c) and (g), 364.051(6), 364.08, 364.09, 364.10, and 364.3381, Florida Statutes, and its prior orders.

In support of this Petition, FDN states as follows:

**I. BACKGROUND**

<sup>1</sup> A copy of the 2004 Key Customer tariff filing is attached hereto as Exhibit A. See Tariff Filing No. T031388 of BellSouth Telecommunications, Inc. (Dec. 17, 2003) (hereinafter 2004 Key Customer Promotion).

DOCUMENT NUMBER 031132-TP  
13607 DEC 31 2003  
FPSC-COMMISSION CLERK

1. FDN is a competitive local exchange carrier (“CLEC”) certificated by the FPSC. Therefore, FDN is a substantially affected competitor of BellSouth and, as such, has standing to file this proceeding. In addition, FDN is a retail business class customer of BellSouth.

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

FDN Communications  
290 North Orange Ave.  
Suite 2000  
Orlando, Florida 32801  
407-835-0300

3. The Petitioner’s representative’s name, address and telephone number is:

Matthew Feil, General Counsel  
FDN Communications  
290 North Orange Ave.  
Suite 2000  
Orlando, Florida 32801  
407-835-0460

4. 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. BellSouth’s principal office in Florida is located at 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301.

5. According to the Commission’s Annual Report on Competition for Telecommunications Markets in Florida dated June, 30, 2003, BellSouth has a 79 percent total market share (64% business market share) in its ILEC territory.<sup>2</sup> Even by conservative estimates of business customer market share, BellSouth is by far the single dominant provider in its ILEC territory in Florida.

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<sup>2</sup> See Office of Market Monitoring and Strategic Analysis, Florida Public Service Commission, 2003 Annual Report on Competition in Telecommunications Markets in Florida at 9 (June 30, 2003).

6. Over the last few years, BellSouth has filed with the Commission various promotional tariffs of temporary duration that offer price reductions to eligible subscribers. Many of these promotional programs are known as Key Customer programs. BellSouth has filed Key Customer promotions in 2000, 2001, 2002, 2003, and now 2004. These Key Customer promotions have offered discounts (increasing in degree over the years) off total billed revenue and a waiver of certain line connection charges.<sup>3</sup>

7. The BellSouth Key Customer promotions establish eligibility criteria, and the chief eligibility criterion is customer location. As of September 2002, nearly 30% of customers who were eligible for the 2002 Key Customer program signed contracts with BellSouth for the program. In other words, BellSouth locked up nearly 30% of the market with one promotional program in 9 months. The total number of customers locked up under BellSouth contracts for all Key Customer (prior and current) and all like promotions (such as Simple Solutions) must be significantly above 30%. BellSouth's hold on the market and its market power and influence is illustrated by the percentage of the market locked up under contracts as much as by BellSouth's raw market share.

8. FDN has previously filed Petitions requesting review and cancellation of BellSouth's tariff filings implementing these Key Customer promotions.<sup>4</sup> These Petitions were consolidated with a separate Petition of the Florida Competitive Carriers Association, which

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<sup>3</sup> In early iterations, Key Customer tariffs did not address free hunting or early termination charges.

<sup>4</sup> See *In re* Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariff and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc., Docket No. 020199-TP (Feb. 14, 2003); *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. 021252-TP (Dec. 20, 2002).

protested a third promotional filing.<sup>5</sup> All three Petitions claimed that BellSouth's promotional tariffs were anticompetitive and otherwise violated Florida law. Earlier this year, however, in the Commission's Key Customer Final Order, the Commission determined that the suspect tariffs were not unfair, anticompetitive or discriminatory in violation of the Florida States. *See In re* 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., et. al, Order No. PSC-03-0726-FOF-TP, Docket Nos. 020119-TP, 020578-TP & 021252-TP (June 19, 2003) (hereinafter "Key Customer Final Order"). FDN has appealed these Orders to the Florida Supreme Court.

9. While BellSouth's 2004 Key Customer tariff is similar to the prior promotional tariffs in certain respects, new provisions in the 2004 Key Customer Tariff distinguish it from the prior filings and must be reviewed anew. Specifically, the 2004 Key Customer Tariff contains entirely new provisions regarding termination penalties and automatic renewal of the customer contract. These proposals are so onerous that they will foreclose customer migration and must be eliminated as unfair and anticompetitive practices.

10. The 2004 Key Customer promotion's new termination liability language states that the subscriber will pay liquidated damages of \$30 per month remaining on the contract plus any "special promotional rewards received." *See* 2004 Key Customer Promotion at Original Page 33.22. Although not defined in the tariff, special promotional rewards could include all discounts credited for regulated total billed revenue and hunting service. In addition, subscribers presumably would also have to pay for any line connection charges that were waived for new

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<sup>5</sup> *See In re* Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs by Florida Competitive Carriers Association, Docket No. 020578-TP (June 25, 2002).

service subscribed to during the promotional period, as those too would be a special promotional reward.

11. Also, the 2004 Key Customer promotion's new automatic renewal language would have the effect of locking-up customer for terms of four or six years, or even in perpetuity. Specifically, the automatic renewal language states that "Unless the subscriber notifies BellSouth in writing of its intent not to renew for another like Term under the Promotion at least sixty days (60) prior to expiration, then upon expiration of the initial Term, the Agreement shall be automatically renewed for the same Term initially selected." *See* 2004 Key Customer Promotion at Original Page 33.25 (emphasis added). A lock-in period of 2-3 years, with an automatic renewal period is clearly more anticompetitive than the tariff the Commission approved in the Key Customer Final Order. Indeed, BellSouth's main witness in that proceeding, Professor Pitofsky stated on the record that he did not view the 18-month and 36 month terms at issue in that proceeding as anticompetitive, but recognized that a longer period presented a different situation. The 2004 Key Customer Tariff presents a very different situation -- far different from what the Commission previously considered -- because the contracts automatically rollover and the contract terms may be perpetual.

12. While BellSouth's 2002 Key Customer promotions included early termination penalties, such penalties were either (a) repayment of the discounted charges plus \$100 or (b) a fixed amount multiplied by the number of months remaining on the agreement plus repayment of waived line connection charges. The 2002 Key Customer and 2003 Key Customer promotions also stated the "the Subscriber shall reimburse all rewards for line connection charges." *See* BellSouth Telecommunications, Inc. Florida General Subscriber Service Tariff at First Revised

Page 34.0.2.3 and First Revised Page 34.0.2.6.<sup>6</sup> Neither of these promotions required a fee per month remaining PLUS repayment of “any special promotion rewards received,”<sup>7</sup> which, as stated above, could include both (1) rewards for line connection charges and (2) the monthly rewards based on total billed revenue.

13. By using different language for liquidated damages from prior Key Customer tariffs, BellSouth has created an even more excessive and unfair penalty when the customer terminates or moves to another carrier. For example, a customer on a 36-month term contract that has total billed revenue of \$3000 per month and hunting, which costs \$10 per month, per line,<sup>8</sup> who cancels 24 months into the contract will have a \$15,000 penalty whereas if the same customer cancels one (1) month into the contract will have a \$1,660 penalty. The chart below provides additional examples of the results of this penalty provision.

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<sup>6</sup> Copies of the tariff pages including the 2002 Key Customer and 2003 Key Customer promotions are attached hereto as Exhibits B and C, respectively.

<sup>7</sup> The customer contract, however, indicated that the termination liability would be the amount of discounted charges received plus \$100. *See* Exhibit JPC-1, Docket Nos. 020119-TP and 020578-TP. A second customer contract submitted in the case reflected the tariff provisions. *See* Exhibit JPC-2, Docket Nos. 020119-TP and 020578-TP.

<sup>8</sup> Section A3.6.2 of BellSouth’s General Subscriber Service Tariff indicates that hunting charges are \$10 per line, PBX trunk or NAR with flat rates, and between \$7.40 and \$10 per line, PBX trunk or NAR with message rates. For the purposes of this discussion, FDN has assumed a \$10 per month charge.

<b>Term</b>	<b>Months Elapsed &amp; Remaining</b>	<b>Monthly Penalty (Months Remaining) x (Penalty)</b>	<b>TBR Penalty (Months Elapsed) x (Monthly TBR Reward)</b>	<b>Hunting Penalty (Months Elapsed) x (Monthly Hunting Reward)</b>	<b>Total Termination Penalty</b>
36	35 & 1	(1)(\$30) = \$30	(35)(\$600) = \$21,000	(35)(\$10) = \$350	\$21,380
36	24 & 12	(12)(\$30) = \$360	(24)(\$600) = \$14,400	(24)(\$10) = \$240	\$15,000
36	12 & 24	(24)(\$30) = \$720	(12)(\$600) = \$7,200	(12)(\$10) = \$120	\$8,040
36	1 & 35	(35)(\$30) = \$1,050	(1)(\$600) = \$600	(1)(\$10) = \$10	\$1,660
24	23 & 1	(1)(\$30) = \$30	(23)(\$300) = \$6,900	(1)(\$5) = \$5	\$6,935
24	15 & 9	(9)(\$30) = \$270	(15)(\$300) = \$4,500	(15)(\$5) = \$75	\$4,845
24	9 & 15	(15)(\$30) = \$450	(9)(\$300) = \$2,700	(9)(\$5) = \$45	\$3,195
24	1 & 23	(23)(\$30) = \$690	(1)(\$300) = \$300	(1)(\$5) = \$5	\$995

14. None of BellSouth's prior Key Customer tariffs included the automatic renewal provision. As discussed below, the addition of this provision, when combined with the liquidated damages provision, may lock customer into multiple, multi-year terms should customers fail to remember to provide BellSouth written notice that they do not intend to renew 60 days prior to the end of the term. It is likely that BellSouth expects customer not to remember to properly inform them of their intentions.

15. BellSouth may argue, as it did in the prior Key Customer promotion cases, that the customer has the ability to avoid termination liability by leaving some level of service with BellSouth (i.e. a "leave-one-line-behind" rule), and this mitigates the effect of the liquidated damages provision. However, as discussed further below, the one-line-behind rule does not work and the anticompetitive effects of BellSouth's liquidated damages provisions are not mitigated.



## **II. REQUESTED RELIEF**

16. FDN asks the Commission to suspend, or stay the effective date of, the 2004 Key Customer tariff pending an investigation into the termination penalty and automatic renewal provisions described above. Such action is required to prevent irreparable harm to FDN and other Florida CLECs who may lose or fail to acquire customers that sign up for the 2004 Key Customer promotion, whose provisions may be found to be unfair and/or anticompetitive. This action is also required to prevent irreparable harm to customers who may sign up for the program and fail to remember to notify BellSouth at least 60 days prior to the expiration of the initial term that they do not wish to renew.

17. Upon completion of the investigation, FDN further respectfully requests that the Commission (1) prohibit BellSouth from including the new termination penalty language in favor of the language previously used by BellSouth in the 2002 and 2003 Key Customer promotions<sup>9</sup> or in favor of another less onerous requirement, such as one whereby the termination penalty be no higher than that of the carrier to whom the customer ports and (2) prohibit inclusion of the automatic renewal provision.

## **III. IRREPARABLE HARM AND NEED FOR EXPEDITED TARIFF REVIEW**

18. FDN and other CLECs will suffer irreparable competitive harm if BellSouth's promotional tariff goes into effect as planned on January 2, 2004 because the 2004 Key Customer tariff is unfair and anticompetitive. Expedited Commission action is required to prevent the irreparable harm that will result from implementation of this tariff.

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<sup>9</sup> FDN suggests the foregoing remedy without waiving its objections to the Commission's prior determination regarding termination liability. The Commission's prior determination from Docket Nos. 020119 and 020578 are currently on appeal.

19. BellSouth's 2004 Key Customer tariff is unlawful on various factual and legal grounds, including the intent and effect of the promotion. BellSouth has further embarked on a course to lock-up a specific group of customers through unfair and anticompetitive practices designed to make it cost prohibitive for customers to switch to competitive providers.

20. To support a finding of anticompetitive conduct under Chapter 364, the Commission need not find that the conduct amounts to a violation of state or federal antitrust laws. Indeed, there is no indication anywhere in Chapter 364 that for a carrier's behavior to be deemed anticompetitive, it must amount to an attempt to monopolize or a restraint of trade under the Sherman or Clayton Acts or the Florida Antitrust Act of 1980.<sup>10</sup> Had the Legislature intended application of traditional antitrust standards to a Chapter 364 determination of anticompetitive conduct, it would have required such, but it did not. Rather it is sufficient that the conduct in question is anticompetitive in effect or nature. Based on the plain meaning of the statute, the test is simply whether the conduct is more anticompetitive than pro-competitive. As explained below, BellSouth's 2004 Key Customer tariff is beyond question anticompetitive.

21. The Commission has ample authority to cancel or to suspend/postpone anticompetitive, discriminatory, or otherwise unlawful tariffs pursuant to Section 364(4)(a), (c) and (g), 364.051(6), 364.059, 364.08, 364.10 and 364.3381(3), Florida Statutes. This authority pertains even if a tariff is "presumptively valid" under Section 367.051(6), Florida Statutes. There is simply no other way to characterize the conduct of a dominant, monopolistic provider who locks in customers with unfairly high termination penalties and then automatically renews a

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<sup>10</sup> Section 364.01(3), Florida Statutes, states that the regulatory oversight in Chapter 364 does not limit the availability of antitrust remedies, thus acknowledging but not adopting antitrust standards while recognizing a possible overlap of jurisdiction in certain cases.

contract if the customer does not act affirmatively to not renew, thus become subject to the termination penalties on the renewed contract.

22. Even under the more onerous antitrust standard not applicable in the instant context, the DOJ and courts have recognized that companies who use excessive liquidated damage and automatic renewal provisions to lock in customers and keep them from migrating to competitors violate Section 2 of the Sherman Act. *See U.S. v. Waste Management*.<sup>11</sup> Long initial terms, automatic renewal terms and excessive liquidated damage charges prevent competitors, no matter how competitive, from quickly obtaining enough customers in a market to be profitable. In this case, BellSouth's 2004 Key Customer tariff contains the sort of automatic renewal and excessive early termination fees which are deemed improper under the Sherman Act and which should be deemed improper under the lesser standard of Chapter 364.

23. BellSouth may again argue, as it did in the prior Key Customer promotion cases, that the customer's ability to leave one line behind with BellSouth and avoid early termination charges mitigates the effect of the early termination charges. The practical aspects and application of the one-line-behind rule, however, makes it ineffective. Very few customers have successfully left one line with BellSouth and avoided early termination liability. Aside from customers not wanting to deal with bills from multiple providers, and aside from product bundling from one carrier being what the marketplace demands, BellSouth has made leaving one line behind problematic. For example, BellSouth has insisted that a customer leave the main billing telephone number (or BTN) behind when, typically, this is the customer's primary number. This requirement has frustrated the port out process because customers do not want to

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<sup>11</sup> *See United States v. Waste Management of Georgia*, Civ. A. No. CV496-35, Final Judgment, 1996 WL 426830 (S.D.Ga. 1996) (hereinafter, *U.S. v. Waste Management*). A copy of *U.S. v. Waste Management* is attached hereto as Exhibit D.

leave the BTN with BellSouth and do not want to deal with the headaches of reconfiguring their service. The Key Customer tariffs, contracts, the Commission's Key Customer Final Order – none authorize BellSouth to demand that the BTN be left behind. Only some level of service need be left behind. BellSouth made up the BTN requirement on its own to frustrate number portability and the customers' attempts to port service to competing carriers.

24. BellSouth has also “gamed” the Key Customer contract dates. For instance, BellSouth has informed customers that the term begins not on the contract date but on the date when the discounts first appear on the customer's bill, thus extending the termination date. While this start-date approach is specified in the 2004 Key Customer Tariff, it was not so stated in prior Key Customer tariffs or contracts or authorized in the Final Order. This then begs the question of whether customers seeking to leave contracts before receiving bills with the discount credits applied were permitted to leave without termination liability or leaving one line behind.

25. As an example of this gamesmanship, a customer recently was assessed a termination charge by BellSouth after porting to FDN at the end of the customer's contract term, that is, as the contract term was quoted to the customer by a BellSouth representative. Although the customer ported on the date the BellSouth representative gave as the end of the contract term, the customer received its last bill from BellSouth with an early termination charge. The customer contacted BellSouth and, contrary to the customer's prior conversation with a BellSouth representative, the customer was told that the customer did not complete the term of the contract and “missed” the termination date by five days. BellSouth refused to entertain the customer's request that BellSouth bill the customer for the remaining five days so that the termination charge would not apply. Instead, BellSouth offered to forgive the termination charge only if the customer ported back to BellSouth for an additional term of three years. Clearly, such

practices are anticompetitive and unfair to customers and the new termination liability will only exacerbate that effect.

26. There must be a reliable, predictable way for customers to escape BellSouth's termination liability without undue burden placed on the customer. The one-line-behind rule does not work, because it was impractical to start with and made even more impractical by BellSouth's manipulations. Furthermore, the customer must receive timely and accurate information from BellSouth on when the customer's contract term starts and ends such that the customer may port out without undue interference or being forced into a new contract with BellSouth.

27. FDN will be irreparably harmed by BellSouth's 2004 Key Customer promotion. BellSouth's 2004 Key Customer promotion effectively prevents customers from moving to competitors due to excessively high and unfair liquidated damages provisions and the automatic renewal provisions. FDN has experienced slower growth due to BellSouth's previous Key Customer promotions, which are less onerous, and will continue to do so with the promotion at hand. Further, it will be more difficult for FDN to win these customers back – or for any other CLEC from gaining these customers – due to the liquidated damages and automatic renewal provisions. The harm that FDN will suffer from BellSouth's 2004 Key Customer promotion cannot be undone and cannot be adequately compensated by damages or readily measured by pecuniary standards. If the 2004 Key Customer promotion is allowed to go into effect, that harm will be constant, frequent and continuous in character.

28. BellSouth's 2004 Key Customer promotion also harms Florida's consumers. First, as competitors are eliminated as a result of the BellSouth promotions, consumers will have fewer competitive choices and will be subject to higher prices. Second, consumers who contract

for services under the 2004 Key Customer promotion will be subject to excessive liquidated damages should they cancel the contract prior to the end of the term of the initial contract or renewal contract, thus limiting their ability or desire to switch to another carrier towards the end of the contract term. Third, a consumer who signs up for this program may unwittingly lock himself in to multiple, multi-year term contracts by virtue of failing to inform BellSouth that the customer does not wish to renew at least 60 days prior to the end of the contract term.

29. BellSouth is not at all prejudiced by a stay of the effective date of the 2004 Key Customer tariff. In balancing the interests of BellSouth and FDN, the irreparable harm FDN will suffer clearly outweighs any possible disadvantage to BellSouth from delayed implementation of the tariff described above. BellSouth has the option of extending the duration of its 2003 Key Customer tariffs.

30. BellSouth's previous implementation of promotional tariffs does not legally or practically excuse the anticompetitive nature of the tariff at hand or the irreparable harm it will inflict.


#### **IV. CONCLUSION**

31. FDN has shown that the liquidated damages and automatic renewal provisions of BellSouth's 2004 Key Customer Tariff are unfair and anticompetitive in nature. Further, implementation of the tariff as planned would cause irreparable harm to FDN and other CLECs as well as Florida consumers, while a stay of the tariff pending investigation would not cause harm to BellSouth.

WHEREFORE and in consideration of the above, FDN Communication respectfully requests that the Commission immediately suspend or stay the effective date of BellSouth's 2004 Key Customer tariff and require revisions to the liquidated damages provision, as set forth in the body of this Petition, and removal of the automatic renewal provision of BellSouth's 2004 Key

Customer tariff. Further, FDN further respectfully requests the Commission enforce the Key Customer Final Order by requiring BellSouth to provide clear and concise contract term information upon request and barring BellSouth from imposing any requirements on the level of service that the customer may choose to leave with BellSouth when porting to another carrier.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew Feil", written over a horizontal line.

Matthew Feil  
FDN Communications  
390 North Orange Ave.  
Suite 2000  
Orlando, FL 32801  
407-835-0460  
mfeil@floridadigital.net

Dated: December 30, 2003

**EXHIBIT LIST**

**Exhibit A**            2004 Key Customer Promotion

**Exhibit B**            2002 Key Customer Promotion

**Exhibit C**            2003 Key Customer Promotion

**Exhibit D**            U.S. v. Waste Management

**Certificate of Service**



**EXHIBIT A**

2004 Key Customer Promotion

PRESUMPTIVELY VALID PRICE CAP LEC  
COMMUNICATIONS TARIFF APPLICATION

AUTHORITY NUMBER: T031388

DATE PSC RECEIVED: 12/17/2003

SCANNING DATE: \_\_\_\_\_

OFFICIAL FILING DATE:  / /

PROCESSED BY: OPR BHH OCR \_\_\_\_\_

COMPANY CODE: TL720

COMPANY NAME: BellSouth Telecommunications, Inc.

TARIFF TYPES: LBC GST

A. SYNOPSIS: (Tariff Clerk) ANALYST

1. ANTICIPATED EFF DATE: 01/01/2004 DATE DUE TO CLERK: 02/02/2004

2. IF DIFFERENT COMPANY REQ DATE: 01/02/2004

3. DESCRIPTION OF TARIFF FILING:  
Filing introduces the 2004 Key Customer promotion.

B. ACTION TO BE TAKEN WITH THIS FILING: (Supervisor)

- 1. TYPE OF SERVICE: BASIC: \_\_\_\_\_ NON-BASIC:  NETWORK ACCESS: \_\_\_\_\_  
INTERCONNECTION: \_\_\_\_\_ UNBUNDLING/RESALE: \_\_\_\_\_
- 2. TYPE OF FILING: PRICE INCREASE: \_\_\_\_\_ PRICE DECREASE:  NEW SERVICE:   
CHANGE IN TERMS AND CONDITIONS: \_\_\_\_\_ CHANGE IN TEXT: \_\_\_\_\_ RESTRUCTURE: \_\_\_\_\_
- 3. TO BECOME EFFECTIVE A2 (A1 or A2 ABOVE) SUBJECT: \_\_\_\_\_ ADMIN/AGENDA: ADMIN
- 4. OTHER INSTRUCTIONS: \_\_\_\_\_

C. FINAL ACTION: (Analyst)

- 1. IN COMPLIANCE WITH FLORIDA STATUTES AND COMMISSION RULES? YES \_\_\_\_\_ NO \_\_\_\_\_
- A. IF NO, APPLICABLE STATUTES AND RULES IN DISPUTE: \_\_\_\_\_

B. DISCRIMINATION/COMPETITIVE/RESALE INTERCONNECTION/IMPUTATION/OTHER ISSUES:	C: CONCLUSIONS/COMMENTS/FOLLOW-UP ACTION:

2. DOCKET NO: \_\_\_\_\_ ORDER NO: \_\_\_\_\_  
DOCKET NO: \_\_\_\_\_ ORDER NO: \_\_\_\_\_

3. EFFECTIVE DATE: \_\_\_\_\_ INVESTIGATION DOCKET? (CIRCLE ONE) YES NO  
4. TARIFF PAGES VERIFIED AGAINST LETTER? \_\_\_\_\_ AGAINST BOOK \_\_\_\_\_

FINAL SIGN OFF ANALYST \_\_\_\_\_ SUPERVISOR \_\_\_\_\_  
DATE/TIME/INITIALS DATE/TIME/INITIALS

ATTACHMENT  
AUTHORITY NUMBER: T031388

SECTION A2

GENERAL SUBSCRIBER SERVICE TARIFF  
GENERAL REGULATIONS

Orig 33.19 - 33.25, 33.25.1, 33.25.2

T-03-1388  
**BELLSOUTH**

**BellSouth Telecommunications, Inc.**  
Regulatory & External Affairs  
150 South Monroe Street  
Suite 400  
Tallahassee, FL 32301-1556

**Marshall M. Criser III**  
Vice President  
Regulatory & External Affairs

840 224 7798  
Fax 850 224 5073

marshall.criser@bellsouth.com  
December 17, 2003

**Ms. Beth Salak**  
Director Of Competitive Markets and Enforcement  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Dear Ms. Salak:

The purpose of this filing is to introduce a special promotion that BellSouth plans to begin on January 2, 2004 and end on December 31, 2004. Qualifying subscribers will be eligible for the **2004 Key Customer** promotion. Attached is a description of the promotion specifics and restrictions. Also attached for filing with the Commission are the following pages of BellSouth's General Subscriber Services Tariff:

**General Subscriber Service Tariff:**

- A2.10 - Original Page 33.19
- Original Page 33.20
- Original Page 33.21
- Original Page 33.22
- Original Page 33.23
- Original Page 33.24
- Original Page 33.25
- Original Page 33.25.1
- Original Page 33.25.2

Please acknowledge receipt of this tariff by signing and returning the second copy of this letter.

Yours very truly,

*Marshall M. Criser III*

Regulatory Vice President

Attachment(s)

RECEIVED  
DECEMBER 17 2003  
REGULATORY SERVICES

## PROMOTION DESCRIPTION

### 2004 Key Customer Promotion

This promotion is an offering available to existing BellSouth customers in Florida that are located in specified wire centers within the state. The Key Customer Program (hereafter called "Promotion") will offer rewards on the subscriber's bill. Subscribers must sign a 24 or 36-month term election agreement to participate in the promotion to receive the rewards specified. The promotion will begin on January 2, 2004 and end on December 31, 2004.

#### **PROMOTION ELIGIBILITY**

- This promotion is available to existing BellSouth business customers subscribing to local exchange service.
- Monthly BellSouth charges for subscriber's location must be seventy-five dollars (\$75) to three thousand dollars (\$3,000) (excluding Hunting, Analog Private Line, BellSouth® Primary Rate ISDN, BellSouth® Integrated Solutions, BellSouth® Frame Relay service, and BellSouth® MegaLink® service revenue) to receive the rewards.
- The subscriber's location must be located in specified wire centers.
- BellSouth® Complete Choice® for Business Package subscribers are not eligible to receive the hunting reward.
- Subscriber must sign a twenty-four (24) month or thirty-six (36) month term election agreement to receive the rewards.

#### **PROMOTION ELEMENTS**

- Subscribers will earn for each such month of the term a reward in an amount equal to the applicable reward percentage times subscriber's Monthly Billed BellSouth Regulated Charges; in addition, if applicable, the subscriber will earn for each month of the term a reward for Hunting Service equal to the applicable reward percentage times subscriber's hunting charge.
- Reward: Specified percentage of Subscriber's regulated total billed revenue (TBR) (charges to the customer) from the General Subscriber Service Tariff and Private Line Service tariffs.

Monthly Billed BellSouth Regulated Charges	24 Month	36 Month
\$75- \$3000	10%	20%
Hunting Reward	50%	100%

- The monthly total billed BellSouth regulated charges consists of end-user monthly billed BellSouth regulated charges at qualifying locations excluding: non-promotion services, non-regulated charges, other fees, taxes, late payment charges, charges billed pursuant to federal or state access service tariffs, charges collected on behalf of

municipalities (including, but not limited to services for 911 service and dual party relay services), and charges for services provided by other companies.

- Subscribers that participate in the promotion and also subscribe to new service during the promotional period, will not be billed for the line connection charges associated with the service order. This will include the Line Connection Charge (first and additional lines, line equivalents, and trunks) as described in A4 of Bellsouth's Tariff.
- Subscribers with multi-locations that are BTN'd or CLUB billed may have all locations participate as long as one location is in an eligible location meets the revenue requirement.
- Should the subscriber's charges decrease below seventy-five dollars (\$75), the subscriber will not receive the reward until the subscriber's monthly charges meet this minimum TBR amount seventy-five dollars (\$75).
- Should the subscriber's charges exceed the three thousand dollars (\$3,000) threshold, the subscriber will only receive the maximum reward allowed under this promotion for monthly charges up to three thousand dollars (\$3,000).
- The reward will appear as a credit in the Other Charges & Credits section of the subscriber's bill in either the current or a subsequent billing period usually within one (1) or two (2) billing cycles. Participation in the promotion begins on the date the subscriber commits to a term election and BellSouth accepts (unless voided by BellSouth). Depending on the subscriber's billing cycle, the term may begin in the current month or the month following, or the billing cycle that BellSouth completes the subscriber's term election agreement order. Subscribers will earn for each such month of the term a reward in an amount equal to the applicable reward percentage times subscriber's Monthly Billed BellSouth Regulated Charges; in addition, if applicable, the subscriber will earn for each month of the term a reward for Hunting Service equal to the applicable reward percentage times subscriber's hunting charge.
- In the event the Subscriber terminates the term election agreement, the Subscriber agrees to pay liquidated damages to BellSouth as provided below based upon the number of months remaining on the term, plus any special promotional rewards received. These charges will appear on the Subscriber's final bill as a charge in the Other Charges & Credits section. No charge will be assessed if the Subscriber maintains some level of local regulated service with BellSouth for the agreed upon term. Payment of this charge does not release the Subscriber from other previous amounts owed to BellSouth.

<b>Monthly Billed BellSouth Regulated Charges at time</b>	<b>Set charge to be multiplied by number of months remaining on</b>
---	---

of enrollment	term after disconnect
\$75 - \$3,000	\$30

- Subscribers with BellSouth® Centrex service, BellSouth® MultiServ® service and BellSouth® ESSX® with Secondary Location Addresses not meeting the per location revenue requirement may have all locations participate as long as it is billed under the same account and at least one location is located in a specified wire center.
- Once enrolled, if the subscriber moves to a location outside the specified wire center, the term election agreement will continue throughout the remaining term.
- Unless the subscriber notifies BellSouth in writing of its intent not to renew for another like Term under the Promotion at least sixty days (60) prior to expiration, then upon expiration of the initial Term, the Agreement shall be automatically renewed for the same Term initially selected.
- Applicable taxes and fees will be based on the full tariff price of all products and services, and no taxes or fees will be added to the amount of any reward under this promotion.
- The term election is subject to and controlled by the provisions of BellSouth's lawfully filed tariffs, including any changes therein as may be made from time to time.

#### **PROMOTION RESTRICTIONS**

- Subscribers with aggregate annual billing, per state of BellSouth services exceeding thirty-six thousand dollars (\$36,000) at the time of enrollment, are not eligible to participate in this promotion.
- Rewards as well as hunting rewards (for hunting service) apply only to monthly total billed BellSouth regulated charges within a state, not across states.
- BellSouth® Complete Choice® for Business Package subscribers may participate in the promotion but are not eligible to receive the additional hunting reward.
- Analog Private Line, BellSouth® Primary Rate ISDN, BellSouth® Integrated Solutions T-1, BellSouth® Frame Relay service, and BellSouth® MegaLink® services will not be included in qualifying revenue under this promotion or entitled to rewards for the related revenues.
- Except as provided below, subscribers participating in Contract Service Arrangements, BellSouth® Complete Choice® for Business Term Plan, Welcoming Rewards, Welcome Back Win Back, Full Circle, Hunting Promotion, Simple Savings or any previous Key Customer Promotion (where available) are not eligible to participate in this promotion.
- However, subscribers currently participating under an existing BellSouth Small Business Promotion local exchange term election agreement may migrate to this promotion without incurring any termination liability from the existing promotion if the subscriber has twelve (12) months or less remaining under the existing term election agreement for local exchange services with BellSouth, and the subscriber agrees to another BellSouth Small Business local exchange term election agreement

that provides for an equal or greater number of business access lines than under their existing local exchange term election agreement. The new local exchange service term agreement will be based upon monthly business access line rates in effect at the time the new local exchange service term election agreement is effective.

- BellSouth reserves the right to terminate this promotion at any time; provided, however, that subscribers participating in the promotion will continue to receive this promotion for the remaining term of their term election agreement.



BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA  
ISSUED: December 17, 2003  
BY: Joseph P. Lacher, President -FL  
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 33.19

EFFECTIVE: January 2, 2004

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority	
BellSouth's Service Territory -- From Central Office where services are available	2004 Key Customer Promotion  -- This promotion is an offering available to existing BellSouth customers in Florida that are located in specified wire centers within the state. The Key Customer Program (hereafter called "Promotion") will offer rewards on the subscriber's bill. Subscribers must sign a twenty-four (24) month or thirty-six (36) month term election agreement to participate in the promotion to receive the rewards specified. The promotion will begin on January 2, 2004 and end on December 31, 2004.	-- Reward: Specified percentage of Subscriber's regulated total billed revenue (TBR) (charges to the customer) from the General Subscriber Service Tariff and Private Line Service tariffs.  -- Monthly Billed BellSouth Regulated Charges -- seventy-five dollars (\$75) to three thousand dollars (\$3000)  -- Twenty-four (24) month agreements will receive - 10% and Hunting Reward - 50%  -- Thirty-six (36) month agreements will receive- 20% and Hunting Reward - 100%	01/02/04	(N)
			to 12/31/04	(N)
<b>PROMOTION ELIGIBILITY</b>				
	-- This promotion is available to existing BellSouth business customers subscribing to local exchange service.			(N)
	-- Monthly BellSouth charges for subscriber's location must be seventy-five dollars (\$75) to three thousand dollars (\$3,000) (excluding Hunting, Analog Private Line, BellSouth Primary Rate ISDN, BellSouth Integrated Solutions, BellSouth Frame Relay service, and BellSouth MegaLink service revenue) to receive the rewards.			(N)
	-- The subscriber's location must be located in specified wire centers.			(N)
	-- BellSouth Complete Choice for Business Package subscribers are not eligible to receive the hunting reward.			(N)

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 TELECOMMUNICATIONS, INC.  
 FLORIDA  
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 BY: Joseph P. Lacher, President -FL  
 Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 33.20

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**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority
BellSouth's Service Territory - From Central Office where services are available	2004 Key Customer Promotion (Cont'd)		(N)
	- Subscribers must sign a twenty-four (24) month or thirty-six (36) month term election agreement to receive the rewards.		(N)
	<b>PROMOTION ELEMENTS</b>		(N)
	- Subscribers will earn for each such month of the term a reward in an amount equal to the applicable reward percentage times subscriber's Monthly Billed BellSouth Regulated Charges; in addition, if applicable, the subscriber will earn for each month of the term a reward for Hunting Service equal to the applicable reward percentage times subscriber's Hunting charge.		(N)
	- The monthly total billed BellSouth regulated charges consists of end-user monthly billed BellSouth regulated charges at qualifying locations excluding: non-promotion services, non-regulated charges, other fees, taxes, late payment charges, charges billed pursuant to federal or state access service tariffs, charges collected on behalf of municipalities (including, but not limited to services for 911 service and dual party relay services), and charges for services provided by other companies.		(N)

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

**A. The following promotions are on file with the Commission: (Cont'd)**

Area of Promotion	Service	Charges Waived	Period Authority
BellSouth's Service Territory -- From Central Office where services are available	2004 Key Customer Promotion (Cont'd)		(N)
	-- Subscribers that participate in the promotion and also subscribe to new service during the promotional period, will not be billed for the line connection charges associated with the service order. This will include the Line Connection Charge (first and additional lines, line equivalents, and trunks) as described in A4 of BellSouth's Tariff.		(N)
	-- Subscribers with multi-locations that are BTN'd or CLUB billed may have all locations participate as long as one location in an eligible location meets the revenue requirement.		(N)
	-- Should the subscriber's charges decrease below seventy-five dollars (\$75), the subscriber will not receive the reward until the subscriber's monthly charges meet this minimum TBR amount seventy-five dollars (\$75).		(N)
	-- Should the subscriber's charges exceed the three thousand dollars (\$3,000) threshold, the subscriber will only receive the maximum reward allowed under this promotion for monthly charges up to three thousand dollars (\$3,000).		(N)
	-- The reward will appear as a credit in the Other Charges & Credits section of the subscriber's bill in either the current or a subsequent billing period usually within one (1) or two (2) billing cycles. Participation in the promotion begins on the date the		(N)

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority
BellSouth's Service Territory - From Central Office where services are available	2004 Key Customer Promotion (Cont'd)		(N)
	<p>subscriber commits to a term election and BellSouth accepts (unless voided by BellSouth). Depending on the subscriber's billing cycle, the term may begin in the current month or the month following, or the billing cycle that BellSouth completes the subscriber's term election agreement order. Subscribers will earn for each such month of the term a reward in an amount equal to the applicable reward percentage times subscriber's Monthly Billed BellSouth Regulated Charges; in addition, if applicable, the subscriber will earn for each month of the term a reward for Hunting Service equal to the applicable reward percentage times subscriber's Hunting charge.</p>		(N)
	<p>-- In the event the subscriber terminates the term election agreement, the subscriber agrees to pay liquidated damages to BellSouth as provided below based upon the number of months remaining on the term, plus any special promotional rewards received. These charges will appear on the subscriber's final bill as a charge in the Other Charges &amp; Credits section. No charge will be assessed if the subscriber maintains some level of local regulated service with BellSouth for the agreed upon term. Payment of this charge does not release the subscriber from other previous amounts owed to BellSouth.</p>		(N)

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority
BellSouth's Service Territory - From Central Office where services are available	2004 Key Customer Promotion (Cont'd)	Set charge to be multiplied by number of months remaining on term after disconnect \$30	(N) (N) (N)
	- Subscribers with BellSouth Centrex service, BellSouth MultiServ service and BellSouth ESSX with Secondary Location Addresses not meeting the per location revenue requirement may have all locations participate as long as it is billed under the same account and at least one location is located in a specified wire center.		(N)
	-- Once enrolled, if the subscriber moves to a location outside the specified wire center, the term election agreement will continue throughout the remaining term.		(N)
	- Unless the subscriber notifies BellSouth in writing of its intent not to renew for another like Term under the Promotion at least sixty days (60) prior to expiration, then upon expiration of the initial Term, the Agreement shall be automatically renewed for the same Term initially selected.		(N)
	-- Applicable taxes and fees will be based on the full tariff price of all products and services, and no taxes or fees will be added to the amount of any reward under this promotion.		(N)
	- The term election is subject to and controlled by the provisions of BellSouth's lawfully filed tariffs, including any changes therein as may be made from time to time.		(N)

BELLSOUTH  
 TELECOMMUNICATIONS, INC.  
 FLORIDA  
 ISSUED: December 17, 2003  
 BY: Joseph P. Lacher, President-FL  
 Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 33.24

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**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority
BellSouth's Service Territory - From Central Office where services are available	2004 Key Customer Promotion (Cont'd)		(N)
	<b>PROMOTION RESTRICTIONS</b>		(N)
	- Subscribers with aggregate annual billing, per state of BellSouth services exceeding thirty-six thousand dollars (\$36,000) at the time of enrollment, are not eligible to participate in this promotion. Rewards as well as hunting rewards (for Hunting service) apply only to monthly total billed BellSouth regulated charges within a state, not across states.		(N)
	- BellSouth Complete Choice for Business Package subscribers may participate in the promotion but are not eligible to receive the additional hunting reward.		(N)
	- Analog Private Line, BellSouth Primary Rate ISDN, BellSouth Integrated Solutions T-1, BellSouth Frame Relay service, and BellSouth MegaLink services will not be included in qualifying revenue under this promotion or entitled to rewards for the related revenues.		(N)
	- Except as provided below, subscribers participating in Contract Service Arrangements, BellSouth Complete Choice for Business Term Plan, Welcoming Rewards, Welcome Back Win Back, Full Circle, Hunting Promotion, Simple Savings or any previous Key Customer Promotion (where available) are not eligible to participate in this promotion.		(N)

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA  
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Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 33.25

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**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority
BellSouth's Service Territory -- From Central Office where services are available	2004 Key Customer Promotion (Cont'd)		(N)
	-- However, subscribers currently participating under an existing BellSouth Small Business Promotion local exchange term election agreement may migrate to this promotion without incurring any termination liability from the existing promotion if the subscriber has twelve (12) months or less remaining under the existing term election agreement for local exchange services with BellSouth, and the subscriber agrees to another BellSouth Small Business local exchange term election agreement that provides for an equal or greater number of business access lines than under their existing local exchange term election agreement. The new local exchange service term agreement will be based upon monthly business access line rates in effect at the time the new local exchange service term election agreement is effective.		(N)
	-- BellSouth reserves the right to terminate this promotion at any time; provided, however, that subscribers participating in the promotion will continue to receive this promotion for the remaining term of their term election agreement.		(N)

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA  
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Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 33.25.1

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**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Eligible Wire Centers for 2004 Key Customer Promotion					
CLLI Code	Wire Center	CLLI Code	Wire Center	CLLI Code	Wire Center
MIAMFLPL	MIAM PALMETTO	ORLDFLSA	ORLD-SAND LAKE	OVIDFLCA	OVIDO
MIAMFLHL	MIAM HIALEAH	FNSCFLFP	FNSC-FERRY PASS	MIAMFLBC	MIAM BISCAYNE
FTLDFLMR	FT LAUD MAIN RELIEF	NDADFLAC	NDAD ARCH CREEK	COBFLMA	COCOA BEACH
BCRFLMA	BOCA RATON MAIN	VRBFLMA	VERO BEACH MAIN	JCVLFLBW	JCVL-BEACHWOOD
MIAMFLAE	MIAM ALHAMBRA	NDADFLOL	NDAD OLETA	PCBFLNT	PANAMA CITY BEACH
ORLDFLMA	ORLD-MAGNOLIA	FTLDFLSU	FTLD SUNREE	TTVFLMA	TITUSVILLE
MIAMFLGR	MIAM GRANDE	DLBFLMA	DELRAY BEACH MAIN	ORPKFLMA	ORPK-MAIN
PRRFLMA	PERRINE MAIN	MIAMFLSH	MIAM MIAMI SHORES	COCOFLME	COCOA-MERRITT ISLAND
ORLDFLPC	ORLD-PINECASTLE	JCVLFLCL	JCVL-CLAY STREET MGO	JCVLFLNO	JCVL-NORMANDY
PMBFLMA	PMBH MARGATE	BYBFLMA	BOYNTON BEACH MAIN	JCVLFLWC	JCVL-WESCONNETT
HLWDFLWH	HLWD WEST HOLLYWOOD	FNSCFLBL	FNSC-BELMONT	MIAMFLME	MIAM METRO
MIAMFLPB	MIAM POINCIANA	JPTRFLMA	JUPITER MAIN	PMBFLTA	PMBH TAMARAC
ORLDFLPH	ORLD-PINEHILLS	ORLDFLCL	ORLD-COLONIAL	FTSLFLSO	FTSL SOUTH PTSL
FTLDFLPL	FTLD PLANTATION	WPBFLLE	WPBH LAKE WORTH	FNSCFLWA	FNSC-WARRINGTON
PMBFLFE	PMBH FEDERAL	NDADFLGG	NDAD GOLDEN GLADES	LKMRFLMA	LAKE MARY
HLWDFLPE	HLWD PEMBROKE PINES	MIAMFLOL	MIAM OPA LOCKA	FRBFLFP	FERNANDINA BEACH
MLBRFLMA	MELBOURNE	DYBFLPO	DYBH-PORT ORANGE	PNVDFLMA	PONTE VEDRA BCH
FTLDFLCY	FTLD CYPRESS	MIAMFLBA	MIAM BAYSHORE	FTLDFLSG	FTLD SAWGRASS
MIAMFLBR	MIAM BEACH	EGLFLBQ	EGLL-BOWE GARDENS	GLBRFLMC	GULF BREEZE
GSVLFLMA	GSVL-MAIN	MIAMFLAL	MIAM ALLAPATTAH	MIAMFLAP	MIAM AIRPORT
STRFLMA	STUART MAIN	COCOFLMA	COCOA-MAIN	JCVLFLFC	JCVL-FORT CAROLINE
WPBFLHH	WPBH HAVERHILL	MIAMFLIC	MIAM INDIAN CREEK	ORPKFLRW	ORPK-RIDGEWOOD
ORLDFLAP	ORLD-AZALEA PARK	KYWSFLMA	KEY WEST MAIN	MIAMFLDB	MIAM DADELAND BLVD
MIAMFLWM	MIAM W. MIAMI	DYBFLQD	DYBH-ORMOND BEACH	EGLFLH	EGLL-INDIAN HRBR BCH
WPBFLAN	WPBH MAIN ANNEX	MIAMFLNS	MIAM NORTHSIDE	DBRYFLMA	DEBARY MAIN
WPBFLGR	WPBH GARDENS	MIAMFLNM	MIAM NORTH MIAMI	JCVLFLJT	JCVL-SOUTHPOINT
WPBFLRB	WPBH RIVIERA BEACH	MIAMFLFL	MIAM FLAGLER	VRBFLBE	VRBH BEACHLAND
MIAMFLCA	MIAM CANAL	JCVLFLRV	JCVL-RIVERSIDE	HTISFLMA	HUTCHINSON IS. MAIN
FTLDFLJA	FTLD JACARANDA	NSBFLMA	NEW SMYRNA BCH	MNDRFLAV	MNDR-AVENUES
FTLDFLCR	FTLD CORAL RIDGE	MNDRFLLO	MNDR-LORETTO	DBRYFLDL	DEBARY DELTONA
WPBFLGA	WPBH GREENACRES	DELDFLMA	DELAND	BKVLFLJF	BROOKSVILLE
HLWDFLMA	HOLLYWOOD MAIN	FTLDFLWN	FTLD WESTON	FTPRFLMA	FORT PIERCE MAIN



BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 33.25.2

ISSUED: December 17, 2003  
BY: Joseph P. Lacher, President -FL  
Miami, Florida

EFFECTIVE: January 2, 2004

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Eligible Wire Centers for 2004 Key Customer Promotion					
CLLI Code	Wire Center	CLLI Code	Wire Center	CLLI Code	Wire Center
DRBHFLMA	DEERFIELD BEACH MAIN	BCRTFLSA	BCRT SANDALFOOT	HMSTFLHM	HOMESTEAD MAIN
DYBHFLMA	DYBH-MAIN	HLWDFLHA	HLWD HALLANDALE	JCVLFLLF	JCVL-LAKE FOREST
PMBHFLCS	PMBH CORAL SPRINGS	NDADFLBR	NDAD BRENTWOOD	JCVLFLOW	JCVL-OCEANWAY
BCRTFLBT	BCRT BOCA TEECA	JCBHFLMA	JCBH-MAIN	PNCYFLMA	PANAMA CITY MAIN
SNRFFLMA	SANFORD-O-WS	JCVLFLAR	JCVL-ARLINGTON	PTSLFLMA	PORT ST. LUCIE MAIN
MIAMFLRR	MIAM RED ROAD	WWSPFLSH	WWSP-SPRING HILL	STAGFLMA	STAG-MAIN
FTLDFLOA	FTLD OAKLAND	JCVLFLSM	JCVL-SAN MARCO	WPBHFLRP	WPBH ROYAL PALM BCH
MIAMFLSO	MIAM SILVER OAKS	DLBHFLKP	DLBH KINGS POINT	WWSPFLHI	WWSP-HIGHLAND
JCVLFLSJ	JCVL-SAN JOSE	MIAMFLWD	MIAM W. DADE		

**EXHIBIT B**

2002 Key Customer Promotion

BELLSOUTH  
 TELECOMMUNICATIONS, INC.  
 FLORIDA  
 ISSUED: January 15, 2002  
 BY: Joseph P. Lacher, President -FL  
 Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Thirteenth Revised Page 34.0.2  
 Cancels Twelfth Revised Page 34 0.2

EFFECTIVE: January 31, 2002

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are *on file with* the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority	
(DELETED)				(T)
(DELETED)				(D)
BellSouth's Service Territory <sup>1</sup>	2002 Key Customer Program	-Eligible monthly revenue is discounted at percentages listed below based on monthly total billed revenue (TBR) and applied as a credit each month on the customer's bill:	01/31/02 to 06/25/02	(N)
	-For business customers served from hot wire centers <sup>2</sup>			
	-Customers with Analog Private Line service are not eligible for this promotion.	Monthly TBR - 18 months \$75 - \$3,000 10%		
	-Customers with Volume and Term Contract Service Arrangements are not eligible to participate in this promotion.	Monthly TBR - 36 months \$75 - \$3,000 25%		
		-50% discount will be given on Rotary Service for a contract period of 18 months.		
		-100% discount will be given on Rotary Service for a contract period of 36 months.		
		-Line Connection Charges will be waived during the promotion sign-up period.		

**Note 1:** Customer may elect to participate only once during each promotion.

**Note 2:** The list of hot wire centers that are eligible for this promotion is listed on Page 34.0.2.1.



BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA  
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Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 34.0.2.2  
Cancels Original Page 34.0.2.2

EFFECTIVE: December 31, 2002

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority
BellSouth's Service Territory	2002 Key Customer Program		
	<b>Program Eligibility and Elements</b>		
	-Available to new and existing BellSouth business customers subscribing to local exchange service.	-Customers who participate in this promotion and subscribe to new service during the promotional period, will receive a reward equal to the line connection charges associated with the service order. This will include the Line Connection Charge (first and additional lines, line equivalents and trunks).	06/26/02 to 07/01/03
	-Monthly BST revenue for subscriber's location must be \$75 to \$3,000 (excluding hunting, analog private line, and ISDN PRI revenue) to receive the rewards.		
	-Subscriber's location must be located in specified wire centers		
	-Subscriber must sign a 24 or 36-month term election agreement.		
	-Participant must be a BST customer at the time of the reward. The reward amount for a given month is determined by multiplying the eligible billing amount by the applicable percentage rate. That reward amount will appear as a credit in the OC&C section of the Subscriber's bill in a subsequent billing period usually within one or two billing cycles.	<b>Reward</b> Monthly TBR - 24 months \$75 - \$3,000 10% Monthly TBR - 36 months \$75 - \$3,000 20%	
	-Subscribers with multi-locations that are BTN'd or CLUB billed may have all locations participate as long as one location is in an eligible location and one location meets the revenue requirement.	-50% Hunting Reward will be given on a contract period of 24 months.	
	-Should Subscriber's charges decrease below \$75, the Subscriber will not receive the reward until the Subscriber's monthly charges meet this minimum TBR amount (\$75).	-100% Hunting Reward will be given on a contract period of 36 months.	
	-Should Subscriber's charges exceed the \$3,000 threshold, the Subscriber will only receive the maximum reward allowed under this Program for monthly charges up to \$3,000.	The total billed charges consists of end-user monthly billed BellSouth regulated charges at qualifying locations excluding: non-regulated charges, taxes, late payment charges, charges billed pursuant to federal or state access service tariffs, charges collected on behalf of municipalities (including, but not limited to services for 911 service and dual party relay services), and charges for services provided by other companies.	
	-Subscribers with Centrex, MultiServ and ESSX with SLAs not meeting the per location revenue requirement may have all locations participate as long as it is billed under the same account and at least one location is located in a specified wire center.		
	-Once enrolled, if Subscriber moves to a location outside the specified wire center, the term election agreement will continue throughout the remaining term.		
	-Applicable taxes and fees will be based on the full tariff price of all products and services, and no taxes or fees will be added to the amount of any reward under this program.		

(C)

Note 1: The list of hot wire centers that are eligible for this promotion is listed on Page 34.0.2.4

BELLSOUTH  
 TELECOMMUNICATIONS, INC.  
 FLORIDA  
 ISSUED: December 13, 2002  
 BY: Joseph P. Lacher, President -FL  
 Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 34.0.2.3  
 Cancels Original Page 34.0.2.3

EFFECTIVE: December 31, 2002

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority
BellSouth's Service Territory	2002 Key Customer Program (Cont'd)	<p><b>Promotion Restrictions</b></p> <p>-Subscribers with aggregate annual billing, per state of BellSouth services exceeding \$36,000 at the time of enrollment, are not eligible to participate in this tariffed promotion.</p> <p>-Base and hunting rewards (for hunting service) apply only to BST regulated total billed charges within a state, not across states</p> <p>-Subscribers participating in a Volume and Term Agreement CSAs are not eligible to participate in this promotion.</p> <p>-Subscribers with Analog Private Line or ISDN PRI services will not be included in qualifying revenue under this program or entitled to rewards.</p> <p>-This promotion may not be used concurrently with any previous or existing BellSouth Business Programs.</p> <p>-Subscribers currently participating under an existing BST SBS Small Business Promotion local exchange term election agreement may migrate to this promotion without incurring any termination liability from the existing program if the Subscriber has twelve (12) months or less remaining under the existing term election agreement for local exchange services with BellSouth, and the Subscriber agrees to another BST SBS Small Business local exchange term election agreement that provides for an equal or greater number of business access lines than their existing local exchange term election agreement. The new local exchange service term agreement will be based upon monthly business access line rates in effect at the time the new local exchange service term election agreement is effective.</p> <p>-Payment of the termination charge does not release the Subscriber from other previous amounts owed to BST.</p> <p>-BellSouth reserves the right to terminate this program at any time; provided, however, that Subscribers participating in the program will continue to receive this promotion for the remaining term of their term election agreement.</p> <p>In the event the Subscriber terminates the election agreement, the Subscriber must pay to BellSouth a termination charge as provided below for the number of months remaining on the agreed upon term. In addition, the Subscriber shall reimburse all rewards for line connection charges. This terminatin charge will appear on the Subscriber's final bill as a charge in the OC&amp;C section.</p> <p>Monthly TBR                      (at time of enrollment)                      \$75-\$149.99      \$25.00*                      \$150-\$3,000      \$40.00*</p> <p>*Set charge to be multiplied by number of months remaining on term after disconnect</p>	06/26/02 to 07/01/03

(C)

BELLSOUTH  
 TELECOMMUNICATIONS, INC.  
 FLORIDA  
 ISSUED: June 11, 2002  
 BY: Joseph P. Lacher, President -FL  
 Miami, Florida

EFFECTIVE: June 26, 2002

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

**B. Eligible Hot Wire Centers – Key Customer 2002**

Hot Wire Center	Hot Wire Center	Hot Wire Center	(N)
BCRT BOCA TEECA	HTCHNSON IS MAIN	MIAM W. DADE	(N)
BOCA RATON MAIN	JCBH-MAIN	MIAM W. MIAMI	(N)
BCRT SANDALFOOT	JCVL-ARLINGTON	MELBOURNE	(N)
BROOKSVILLE	JCVL-BEACHWOOD	MNDR-LORETTO	(N)
BOYNTON BEACH MAIN	JCVL-FT CAROLINE	NDAD ARCH CREEK	(N)
COCOA BEACH	JCVL-LAKE FOREST	NDAD BRENTWOOD	(N)
COCOA-MAIN	JCVL-NORMANDY	JCVL-CLAY STREET MGO	(N)
COCOA-MERRITT ISLAND	JCVL-OCEANWAY	NDAD GOLDEN GLADES	(N)
DEBARY DELTONA	JCVL-RIVERSIDE	NDAD OLETA	(N)
DEBARY MAIN	JCVL-SAN JOSE	NEW SMYRNA BCH	(N)
DELAND	JCVL-SAN MARCO	ORLD-AZALEA PARK	(N)
DLBH KINGS POINT	JCVL-SOUTHPOINT	ORLD-COLONIAL	(N)
DELRAY BCH MAIN	JCVL-WESCONNETT	ORLD-MAGNOLIA	(N)
DEERFIELD BEACH MAIN	JUPITER MAIN	ORLD-PINECASTLE	(N)
DYBH-MAIN	KEY WEST MAIN	ORLD-PINEHILLS	(N)
DYBH-ORMND BCH	LAKE MARY	ORLD-SAND LAKE	(N)
DYBH-PORT ORANGE	MIAM ALHAMBRA	ORPK-MAIN	(N)
EGLL-INDN HBR BH	MIAM ALLAPATTAH	ORPK-RIDGEWOOD	(N)
EGLL-BOWE GDNS	MIAM AIRPORT	OVIEDO	(N)
FT LAUD MAIN RELIEF	MIAM BAYSHORE	PERRINE MAIN	(N)
FTLD CORAL RIDGE	MIAM BISCAYNE	PANAMA CITY BEACH	(N)
FTLD CYPRESS	MIAM BEACH	PANAMA CITY MAIN	(N)
FTLD JACARANDA	MIAM CANAL	PMBH CORAL SPRINGS	(N)
FTLD OAKLAND	MIAM DADELAND BLVD	PMBH FEDERAL	(N)
FTLD PLANTATION	MIAM FLAGLER	PMBH MARGATE	(N)
FTLD SAWGRASS	MIAM GRANDE	PMBH TAMARAC	(N)
FTLD SUNRISE	MIAM HIALEAH	PNSC-BELMONT	(N)
FTLD WESTON	MIAM INDIAN CREEK	PNSC-FERRY PASS	(N)
FERNANDINA BCH	MIAM METRO	PNSC WARRNGTON	(N)
FORT PIERCE MAIN	MIAM NORTH MIAMI	PONTE VEDRA BCH	(N)
GULF BREEZE	MIAM NORTHSIDE	PORT ST. LUCIE MAIN	(N)
GSVL-MAIN	MIAM OPA LOCKA	PTSL SOUTH PTSL	(N)
HLWD HALLANDALE	MIAM PALMETTO	SANFORD-O-WS	(N)
HLWD PEMBROKE PINES	MIAM POINCIANA	STAG-MAIN	(N)
HLWD WEST HOLLYWOOD	MIAM RED ROAD	STUART MAIN	(N)
HOLLYWOOD MAIN	MIAM MIAMI SHORES	TITUSVILLE	(N)
HOMESTEAD MAIN	MIAM SILVER OAKS	VERO BEACH MAIN	(N)
	MNDR - AVENUES	VRBH BEACHLAND	(N)
		WPBH GARDENS	(N)
		WPBH GREENACRES	(N)
		WPBH HAVERHILL	(N)
		WPBH MAIN ANNEX	(N)
		WPBH LAKE WORTH	(N)
		WPBH RIVIERA BCH	(N)
		WPBH RYL PLM BCH	(N)
		WWSP-HIGHLAND	(N)
		WWSP-SPRING HILL	(N)

**EXHIBIT C**

2003 Key Customer Promotion



BELLSOUTH  
 TELECOMMUNICATIONS, INC.  
 FLORIDA  
 ISSUED: July 31, 2003  
 BY: Joseph P. Lacher, President -FL  
 Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 34 0.2.5  
 Cancels Original Page 34.0 2.5

EFFECTIVE: August 15, 2003

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority
BellSouth's Service Territory	2003 Key Customer Program	--Specified percent of subscriber's regulated total billed revenue (TBR) (charges to the customer) from the GSST A and PLS B tariffs.	07/02/03 to 12/31/03
	-- This promotion is available to existing BellSouth business customers who subscribe to local exchange service.		
	-- Monthly BellSouth revenue for subscriber's location must be \$75 to \$3,000 (excluding hunting, analog private line, and ISDN PRI revenue) to receive the rewards.	--Monthly TBR - 24 months \$75 - \$3,000 10%	
	-- Subscriber's location must be located in specified wire centers.	--50% Hunting Reward will be given on a contract period of 24 months.	
	-- Subscribers must sign a 24 or 36-month term election agreement to receive the rewards.	--100% Hunting Reward will be given on a contract period of 36 months.	
	-- Participant must be a BellSouth customer at the time of the reward. The reward will appear as a credit in the OC&C section of the Subscriber's bill in a subsequent billing period usually within one or two billing cycles.	-- The total billed charges consists of end-user monthly billed BellSouth regulated charges at qualifying locations excluding: non-regulated charges, taxes, late payment charges, charges billed pursuant to federal or state access service tariffs, charges collected on behalf of municipalities (including, but not limited to services for 911 service and dual party relay services), and charges provided by other companies.	
	-- Subscribers with multi-locations that are BTN'd or CLUB billed may have all locations participate as long as one location is in an eligible location and one location meets the revenue requirement.		
	-- Should subscriber's charges decrease below \$75, the subscriber will not receive the reward until the subscriber's monthly charges meet this minimum TBR amount (\$75).	-- Subscribers who participate in the promotion and subscribe to new service during the promotional period, will receive an additional reward equal to the line connection charges associated with the service order. This will include the Line connection charge (first and additional lines, line equivalents and trunks).	
	-- Should subscriber's charges exceed the \$3,000 threshold, the subscriber will only receive the maximum reward allowed under this Program for monthly charges up to \$3,000.		

(T)

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA  
ISSUED: July 7, 2003  
BY: Joseph P. Lacher, President -FL  
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 34.0.2.6  
Cancels Original Page 34.0.2.6

EFFECTIVE: July 22, 2003

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority
BellSouth's Service Territory	2003 Key Customer Program (Cont'd)	<p>-- In the event the Subscriber terminates the term election agreement, the Subscriber must pay to BellSouth a charge as provided below for the number of months remaining on <i>such</i> agreed upon term. In addition, the Subscriber shall reimburse all rewards for line connection charges. This charge will appear on the Subscriber's final bill as a charge in the OC&amp;C section. <i>No charge will be assessed if the subscriber maintains some level of local regulated service with BellSouth for the agreed upon term.</i></p> <p>-- Once enrolled, if subscriber moves to a location outside the specified wire center, the term election agreement will continue throughout the remaining term.</p> <p>-- Applicable taxes and fees will be based on the full tariff price of all products and services, and no taxes or fees will be added to the amount of any reward under this program.</p> <p>-- Subscribers with aggregate annual billing, per state of BellSouth services exceeding \$36,000 at the time of enrollment, are not eligible to participate in this promotion.</p> <p>--Base and hunting rewards (for hunting service) apply only to BellSouth regulated total billed charges within a state, not across states.</p> <p>-- Subscribers participating in a Volume and Term Agreement CSA are not eligible to participate in this promotion.</p> <p>-- Analog Private Line or BellSouth® Primary Rate ISDN services will not be included in qualifying revenue under this program or entitled to rewards for the related revenues.</p> <p>-- This promotion may not be used concurrently with any previous or existing BellSouth Business Programs.</p>	(T)
		<p>-- Monthly TBR at the time of enrollment. \$75 - \$149.99    \$25.00* \$150 - 3,000    \$40.00* *Set charge to be multiplied by the number of months remaining on the term after disconnect.</p>	

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® BellSouth is a registered trademark of BellSouth Intellectual Property Corporation

BELLSOUTH  
 TELECOMMUNICATIONS, INC.  
 FLORIDA  
 ISSUED: June 10, 2003  
 BY: Joseph P. Lacher, President -FL  
 Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

EFFECTIVE: July 2, 2003

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

A. The following promotions are on file with the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period Authority
BellSouth's Service Territory	2003 Key Customer Program (Cont'd)		(N)
	-- Subscribers currently participating under an existing BellSouth SBS Small Business Promotion local exchange term election agreement may migrate to this promotion without incurring any termination liability from the existing program if the subscriber has twelve (12) months or less remaining under the existing term election agreement for local exchange services with BellSouth, and the subscriber agrees to another BellSouth SBS Small Business local exchange services term election agreement that provides for an equal or greater number of business access lines than their existing local exchange term election agreement. The new local exchange service term agreement will be based upon monthly business access lines in effect at the time the new local exchange service term agreement is effective.		(N)
	-- Payment of the termination charge do not release the subscriber from other previous amounts owed to BellSouth.		(N)
	-- BellSouth reserves the right to terminate this program at any time; provided, however, that subscribers participating in the program will continue to receive this promotion for the remaining term of their term election agreement.		(N)

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 34.0.2.8

ISSUED: June 10, 2003

EFFECTIVE: July 2, 2003

BY: Joseph P. Lacher, President -FL  
Miami, Florida

**A2. GENERAL REGULATIONS**

**A2.10 Special Promotions (Cont'd)**

**A2.10.2 Descriptions (Cont'd)**

Eligible Hot Wire Centers – Key Customer 2003

(N)

Hot Wire Center	Hot Wire Center	Hot Wire Center
BCRT BOCA TEECA	JCVL-SAN JOSE	PMBH FEDERAL
BOCA RATON MAIN	JCVL-SAN MARCO	PMBH MARGATE
BCRT SANDALFOOT	JCVL-WESCONNETT	PMBH TAMARAC
BROOKSVILLE	JUPITER MAIN	PANAMA CITY MAIN
BOYNTON BEACH MAIN	KEY WEST MAIN	PNSC-BELMONT
COCOA BEACH	LAKE MARY	PNSC-FERRY PASS
COCOA-MAIN	MIAM ALHAMBRA	PNSC-WARRINGTON
COCOA-MERRITT ISLAND	MIAM ALLAPATTAH	PONTE VEDRA BCH
DELTONA	MIAM AIRPORT	PERRINE MAIN
DEBARY MAIN	MIAM BAYSHORE	PORT ST. LUCIE MAIN
DELAND	MIAM BISCAYNE	PTSL SOUTH PTSL
DLBH KINGS POINT	MIAM BEACH	SANFORD-O-WS
DELRAY BEACH MAIN	MIAM CANAL	STAG-MAIN
DEERFIELD BEACH MAIN	MIAM DADELAND BLVD	STUART MAIN
DYBH-MAIN	MIAM FLAGLER	TITUSVILLE
DYBH-ORMOND BEACH	MIAM GRANDE	VRBH BEACHLAND
DYBH-PORT ORANGE	MIAM HIALEAH	VERO BEACH MAIN
EGLL-BOWE GARDENS	MIAM INDIAN CREEK	WPBH MAIN ANNEX
EGLL-INDIAN HRBR BCH	MIAM METRO	WPBH GREENACRES
FERNANDINA BEACH	MIAM NORTH MIAMI	WPBH GARDENS
FTLD CORAL RIDGE	MIAM NORTHSIDE	WPBH HAVERHILL
FTLD CYPRESS	MIAM OPA LOCKA	WPBH LAKE WORTH
FTLD JACARANDA	MIAM POINCIANA	WPBH RIVIERA BEACH
FT LAUD MAIN RELIEF	MIAM PALMETTO	WPBH ROYAL PALM BCH
FTLD OAKLAND	MIAM RED ROAD	WWSP-HIGHLAND
FTLD PLANTATION	MIAM MIAMI SHORES	WWSP-SPRING HILL
FTLD SAWGRASS	MIAM SILVER OAKS	
FTLD SUNRISE	MIAM W. DADE	
FTLD WESTON	MIAM W. MIAMI	
FORT PIERCE MAIN	MELBOURNE	
GULF BREEZE	MNDR-AVENUES	
GSVL-MAIN	MNDR-LORETTO	
HLWD HALLANDALE	NDAD ARCH CREEK	
HOLLYWOOD MAIN	NDAD BRENTWOOD	
HLWD PEMBROKE PINES	NDAD GOLDEN GLADES	
HLWD WEST HOLLYWOOD	NDAD OLETA	
HOMESTEAD MAIN	NEW SMYRNA BCH	
HUTCH IS-JEN BCH-225,334	ORLD-AZALEA PARK	
JCBH-MAIN	ORLD-COLONIAL	
JCVL-ARLINGTON	ORLD-MAGNOLIA	
JCVL-BEACHWOOD	ORLD-PINECASTLE	
JCVL-CLAY STREET MGO	ORLD-PINEHILLS	
JCVL-FORT CAROLINE	ORLD-SAND LAKE	
JCVL-SOUTHPOINT	ORPK-MAIN	
JCVL-LAKE FOREST	ORPK-RIDGEWOOD	
JCVL-NORMANDY	OVIEDO	
JCVL-OCEANWAY	PANAMA CITY BEACH	
JCVL-RIVERSIDE	PMBH CORAL SPRINGS	

(N)  
(N)  
(N)  
(N)  
(N)  
(N)  
(N)

**EXHIBIT D**

U.S. v. Waste Management

**C**

United States District Court, S.D. Georgia, Savannah  
Division.

UNITED STATES

v.

**WASTE MANAGEMENT OF GEORGIA, INC., dba  
Waste Management of Savannah, Waste  
Management of Louisiana, Inc., dba Waste Management  
of Central Louisiana, and  
Waste Management, Inc.**

No. CIV. A. CV496-35.

May 20, 1996.

FINAL JUDGMENT

NANGLE, District Judge:

\*1 WHEREAS Plaintiff, United States of America, having filed its Complaint in this action on February 15, 1996, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law;

NOW, THEREFORE, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

*JURISDICTION*

This Court has jurisdiction of the subject matter of this action and of the persons of the Defendants, **Waste Management, Inc., Waste Management of Georgia, Inc., d/b/a Waste Management of Savannah, and Waste Management of Louisiana, Inc., d/b/a Waste Management of Central Louisiana**. The Complaint states a claim upon which relief may be granted against the Defendants under Section 2 of the Sherman Act, 15 U.S.C. § 2.

II.

*DEFINITIONS*

As used in this Final Judgment:

(A) "Savannah market" means Chatham, Effingham, and Bryan Counties, Georgia.

(B) "Central Louisiana market" means Rapides, Natchitoches, Avoyelles, Red River, Winn, and Sabine

Parishes, Louisiana.

(C) "Solid waste hauling" means the collection and transportation to a disposal site of trash and garbage (but not construction and demolition debris; medical waste; hazardous waste; organic waste; or special waste, such as contaminated soil, or sludge; or recyclable materials) from residential, commercial and industrial customers. Solid waste hauling includes hand pick-up, containerized pick-up, and roll-off service.

(D) "Defendants" means defendant **Waste Management, Inc.**, a Delaware corporation with its headquarters in Oak Brook, Illinois, defendant **Waste Management of Georgia, Inc.**, d/b/a **Waste Management of Savannah**, a Georgia corporation with offices in Savannah, Georgia, and defendant **Waste Management of Louisiana, Inc.**, d/b/a **Waste Management of Central Louisiana**, a Louisiana corporation with offices in Alexandria, Louisiana, and includes their officers, directors, managers, agents, employees, successors, assigns, parents, and subsidiaries.

(E) "Small Container" means a 2 to 10 cubic yard container.

(F) "Small Containerized Solid Waste Hauling Service" means providing solid waste hauling service to customers by providing the customer with a Small Container that is picked up mechanically using a frontload, rearload, or sideload truck, and expressly excludes hand pick-up service, and service using a compactor attached to or part of a small container.

(G) "Customer" means a Small Containerized Solid Waste Hauling Service customer.

III.

*APPLICABILITY*

This Final Judgment applies to Defendants and to their officers, directors, managers, agents, employees, successors, assigns, parents and subsidiaries, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV.

*PROHIBITED CONDUCT*

\*2 Defendants are enjoined and restrained as follows:

(A) Except as set forth in paragraph IV(B) and (G), Defendants shall not enter into any contract with a Customer for a service location in the Savannah or Central Louisiana markets that:

- (1) has an initial term longer than two (2) years;
  - (2) has any renewal term longer than one (1) year;
  - (3) requires that the Customer give Defendants notice of termination more than thirty (30) days prior to the end of any initial term or renewal term;
  - (4) requires that the Customer pay liquidated damages in excess of three times the greater of its prior monthly charge or its average monthly charge over the most recent six months during the first year of the initial term of the Customer's contract;
  - (5) requires that the Customer pay liquidated damages in excess of two times the greater of its prior monthly charge or its average monthly charge over the most recent six months after the Customer has been a Customer of a Defendant for a continuous period in excess of one (1) year;
  - (6) requires the Customer to give Defendants notice of any offer by or to another solid waste hauling firm or requires the Customer to give Defendants a reasonable opportunity to respond to such an offer for any period not covered by the contract (sometimes referred to as a "right to compete" clause);
  - (7) is not easily readable (e.g., formatting and type-face) and is not labeled, in large letters, SERVICE CONTRACT; or
  - (8) requires a Customer to give Defendants the right or opportunity to provide hauling service for recyclables or more than one solid waste hauling service for a Customer unless the Customer affirmatively chooses to have Defendant do so by so stating on the front of the contract.
- (B) Notwithstanding the provisions of paragraph IV(A) of this Final Judgment, Defendants may enter into a contract with a Customer for a service location in the Savannah or Central Louisiana markets with an initial term in excess of two years provided that:
- (1) The Customer has acknowledged in writing that the Defendants have offered to the Customer the form contracts Defendants are required herein to offer generally to Customers;
  - (2) the Customer has the right to terminate the contract after 2 years by giving notice to Defendants thirty (30) days or more prior to the end of that 2 year period;
  - (3) the contract otherwise complies with the provisions of paragraph IV(A)(2)-(8); and
  - (4) the number of service locations subject to contracts permitted under subparagraph (B) in either the Savannah or

Central Louisiana markets does not exceed 25% of the total number of service locations for small containerized solid waste hauling service in each such market in any year.

(C) From the date of filing of an executed Stipulation in the form attached hereto as Exhibit A [Not reproduced.--CCH.], Defendants shall offer to new Customers with service locations in the Savannah and Central Louisiana markets only contracts that conform to the requirements of paragraphs IV(A) or (B) of this Final Judgment, except as provided in IV(G).

\*3 (D) Except as provided in IV(G), within thirty (30) days following the entry of this Final Judgment, Defendants shall send to all existing Customers with service locations in the Savannah and Central Louisiana markets with contracts having an initial term longer than 2 years and which otherwise do not conform with paragraph IV(B) a notice in the form attached hereto as Exhibit B [Not reproduced.--CCH.]

(E) Except as provided in IV(G), for each Customer with a contract having an initial term longer than 2 years and which otherwise does not conform to paragraph IV(B) that enters a renewal term 120 days after entry of this Final Judgment, Defendants shall send a reminder to that Customer in the form attached hereto as Exhibit C [Not reproduced.--CCH.] ninety (90) days or more prior to the effective date of the renewal term. This reminder may be sent to the Customer as part of a monthly bill, but if it is, it must be displayed on a separate page and in large print.

(F) Upon entry of this Final Judgment, Defendants may not enforce those contract provisions that are inconsistent with this Final Judgment.

(G) Notwithstanding the provisions of this Final Judgment, Defendants may enter into contracts with municipal or governmental entities that are not in compliance with paragraphs IV(A)-(F) provided that those contracts are awarded to Defendants on the basis of a formal request for bids or a formal request for proposals issued by the Customer.

(H) Notwithstanding the provisions of this Final Judgment, Defendants shall not be required to do business with any Customer.

## V. REPORTING

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to Defendants at their principal offices, subject

to any lawful privilege, be permitted:

(1) Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Defendants, which may have counsel present, relating to any matters contained in this Final Judgment.

(2) Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview officers, employees, or agents of Defendants, who may have counsel present, regarding any matters contained in this Final Judgment.

(B) Upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to Defendants at their principal offices, subject to any lawful privilege, Defendants shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment.

(C) No information or documents obtained by the means provided by this Section shall be divulged by the Plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States government, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

\*4 (D) If at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or document to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten days notice shall be given by Plaintiff to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

#### VI. FURTHER ELEMENTS OF JUDGMENT

(A) This Final Judgment shall expire on the tenth anniversary of the date of its entry.

(B) Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### VII.

#### PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

#### Competitive Impact Statement [FN\*]

FN\* This does not constitute a portion of the final judgment.--CCH.

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil proceeding.

#### I.

#### Nature and Purpose of the Proceeding

On February 15, 1996, the United States filed a civil antitrust Complaint to prevent and restrain **Waste Management, Inc. ("WMI")**, **Waste Management of Georgia, Inc. ("WMG")**, d/b/a **Waste Management of Savannah**, and **Waste Management of Louisiana, Inc. ("WML")**, d/b/a **Waste Management of Central Louisiana** from using contracts that have restrictive and anticompetitive effects in the small containerized hauling service markets in Savannah and Central Louisiana, in violation of Section 2 of the Sherman Act, 15 U.S.C. As alleged in the Complaint, Defendants has attempted to monopolize small containerized hauling service in the Savannah and Central Louisiana geographic markets by using and enforcing contracts containing restrictive provisions to maintain and enhance their existing market power there.

The Complaint alleges that: (1) Defendant WMG has market power in small containerized hauling services in the Savannah, GA market and Defendant WML has market power in small containerized hauling service in the Central Louisiana market; (2) Defendants, acting with specific intent, used and enforced contracts containing restrictive provisions to exclude and constrain competition and to maintain and enhance their market power in small containerized hauling service in those markets; (3) in the context of their large market shares and market power, Defendants' use and enforcement of those contracts in the Savannah and Central Louisiana markets has had anticompetitive and exclusionary effects by significantly increasing barriers to entry facing new entrants and barriers to expansion faced by small incumbents; (4) Defendants' market power is maintained and enhanced by their use and enforcement of those contracts; and, (5) as a result, there is a dangerous probability that Defendants will achieve monopoly power in the Savannah and Central Louisiana markets.

\*5 In its Complaint, Plaintiff seeks, among other relief, a



permanent injunction preventing Defendants from continuing any of the anticompetitive practices alleged to violate the Sherman Act, and thus affording fair opportunities for other firms to compete in small containerized hauling service in the Savannah and Central Louisiana markets.

The United States and Defendants also have filed a stipulation by which the parties consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of Defendants' actions in the Savannah and Central Louisiana markets. Under the proposed Final Judgment, as explained more fully below, in dealing with small-container customers in the Savannah and Central Louisiana markets, Defendants would only be permitted to enter into contracts containing significantly less restrictive terms than the contracts they now in use in those markets. Furthermore, Defendants would be prohibited from enforcing provisions in existing contracts that are inconsistent with the Final Judgment.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## II.

### *Description of the Events Giving Rise to the Alleged Violation*

**Waste Management, Inc. ("WMI")**, a subsidiary of WMX Technologies, Inc., is the world's largest company engaged in the solid waste hauling and disposal business, with operations throughout the United States. WMI had total 1994 revenues of approximately \$5.8 billion.

**Waste Management of Georgia, Inc. ("WMG")**, d/b/a **Waste Management of Savannah**, is a subsidiary of WMI with its principal offices in Savannah, GA. It is the largest solid waste hauling and disposal company in the Savannah market. WMG had revenues of over \$14 million in its 1994 fiscal year.

**Waste Management of Louisiana, Inc. ("WML")**, d/b/a **Waste Management of Central Louisiana**, is also a subsidiary of WMI. It has offices in Alexandria, LA and Natchitoches, LA. It is the largest solid waste hauling and disposal company in the Central Louisiana market. WML had revenues over \$3 million in its 1994 fiscal year.

#### *A. The Solid Waste Hauling Industry*

Solid waste hauling involves the collection of paper, food,

construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than do residential customers. Waste generated by commercial customers is generally placed in metal containers of two to ten cubic yards provided by their hauling company. In the markets at issue, two to ten cubic yard containers are called "small containers." Small containers are collected primarily by frontend load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Service to commercial customers that use small containers is called "small containerized hauling service."

\*6 Solid waste hauling firms also provide service to residential and industrial (or "roll-off") customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags, trash cans, or small plastic containers at curbside.

Industrial or roll-off customers include factories and construction sites. These customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customer's premises. Some customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash similar to the waste of commercial customers, but in much greater quantities; it is more economical for this type of customer to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

#### *B. Relevant Product Market*

The relevant product market is small containerized hauling service. There are no practical substitutes for this service. Small containerized hauling service customers will not generally switch to noncontainerized service in the event of a price increase, because it is too impractical and more costly for those customers to bag and carry their volume of

trash to the curb for hand pick-up. Similarly, roll-off service is much too costly and the container takes up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of compactible solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option.

### *C. Relevant Geographic Markets*

The relevant geographic markets are the Savannah market and the Central Louisiana market. Small containerized solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized solid waste hauling firms to be profitable. In addition, it is not economically efficient for heavy trash hauling equipment to travel long distances from customers without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

### *D. Defendants' Attempt to Monopolize*

Defendant WMG has market power in small containerized hauling service in the Savannah market. WMG has maintained a very high market share since at least 1991--consistently in excess of 60 percent.

\*7 Defendant WML has market power in small containerized hauling service in the Central Louisiana market. WML has maintained a very high market share since at least 1988--consistently in excess of 60 percent.

There are substantial barriers to entry and to expansion into the small containerized hauling markets in Savannah and in Central Louisiana. A new entrant or small incumbent hauler must be able to achieve minimum efficient scale to be competitive. First, it must be able to generate enough revenues to cover significant fixed costs and overhead.

Second, a new entrant or small incumbent hauler must be able to obtain enough customers to use its trucks efficiently. For example, it is not efficient to use a truck half a day because the firm doesn't have enough customers to fill up the truck.

Third, a new entrant or small incumbent hauler needs to obtain customers that are close together on its routes (called "route density"). Having customers close together enables a company to pick up more waste in less time (and generate more revenues in less time). The better a firm's route density, the lower its operating costs.

Until a firm overcomes these barriers, the new entrant or small incumbent will have higher operating costs than Defendants in the relevant geographic markets, may not operate at a profit, and will be unable effectively to constrain pricing by Defendants in those markets.

Defendant WMG in the Savannah market and Defendant WML in the Central Louisiana market have entered into written contracts with the vast majority of their small containerized hauling customers. Many of these contracts contain terms that, when taken together in the relevant markets where Defendants have market power, make it more difficult and costly for customers to switch to a competitor of Defendants and allows Defendants to bid to retain customers approached by a competitor.

The contracts enhance and maintain Defendants' market power in the Savannah and Central Louisiana markets by significantly raising the cost and time required by a new entrant or small incumbent firm to build its customer base and obtain efficient scale and route density. Therefore, Defendants' use and enforcement of these contracts in the Savannah and Central Louisiana markets raise barriers to entry and expansion in those markets. Those contract terms are:

- a. A provision giving Defendants the exclusive right to collect and dispose of all the customers' solid waste and recyclables;
- b. An initial term of three years;
- c. A renewal term of three years that automatically renews unless the customer sends Defendants a written notice of cancellation by certified mail more than 60 days from the end of the initial or renewal term;
- d. A term that requires a customer that terminates the contract at any other time to pay Defendants, as liquidated damages, its most recent monthly charge times six (if the remaining term is six or more months) or its most recent monthly charge times the number of months remaining under the contract (if the remaining term is less than six months); and
- \*8 e. A "right to compete" clause that requires the customer to give Defendants notice of any offer by or to a hauling competitor or requires the customer to give Defendants a reasonable opportunity to respond to such an offer for any period not covered by the contract.

The appearance and format of the contracts also enhances Defendants' ability to use the contracts to maintain their market power in these markets. The provisions that make it difficult for a customer to switch to a competing hauler are not obvious to customers in the relevant markets. The

document is not labeled "Contract" so its legally binding nature is not always apparent to the customer. Also, all the restrictive provisions mentioned above are in small print on the back of the document.

Defendants' use and enforcement of the contracts described above in the Savannah and Central Louisiana markets have raised the barriers already faced by new entrants and small existing firms in those markets. Defendants' use and enforcement of the contracts has reduced the likelihood that the customers will switch to a Defendant's competitor. Given Defendants' market power, this has made it more difficult for competitors to achieve efficient scale, obtain sufficient customers to use their trucks efficiently, and develop sufficient route density to be profitable and to constrain Defendants' pricing in those markets.

### III.

#### *Explanation of the Proposed Final Judgment*

The proposed Final Judgment will end the unlawful practices currently used by Defendants to perpetuate and enhance their market power in the Savannah and Central Louisiana markets. It requires Defendants to offer less restrictive contracts to small containerized hauling customers in the Savannah and Central Louisiana markets. [FN1]

FN1. The proposed Final Judgment applies to all contracts entered into by Defendants with customers for service locations in the relevant markets except contracts described in Paragraph IV(G). Contracts awarded to Defendants by municipal or government entities as a result of a formal request for bids or a formal request for proposals need not contain the provisions dictated by the proposed Final Judgment. These contracts were excluded from the decree to assure that competition for such bids would not be adversely affected by preventing Defendants from bidding.

In particular, Paragraphs IV(A) and (B) prohibit Defendants from entering into contracts containing the type of restrictive terms described above. Paragraphs IV(C), (D), (E), and (F) are designed to bring existing contracts into compliance with the proposed Final Judgment on an expeditious basis.

#### *A. Prohibition of Contract Terms and Formats*

The Contracts used most frequently by defendants in the relevant markets have an initial term of three years and renew automatically and perpetually for additional three-year terms unless cancelled by the customer. In these markets, given that the Defendants have market power and a vast majority of their existing customers are subject to such

contracts, the long initial term and long renewal terms prevent new entrants and small incumbents, no matter how competitive, from quickly obtaining enough customers that are close together to be profitable. Shortening the initial term and the renewal term will allow competitors to compete for more of the customer base each year and, if they compete effectively, to obtain efficient scale and route density more quickly. This, in turn, will enhance competition in the relevant markets and will help offset Defendants' market power.

\*9 Paragraph IV(A)(1) prohibits Defendants from using contracts for service locations in the Savannah and Central Louisiana markets that have an initial term longer than two years, except under certain very limited circumstances.

A contract with an initial term in excess of two years in the relevant markets is permitted, under limited circumstances, pursuant to Paragraph IV(B) of the proposed Final Judgment, but the contracts must otherwise conform to the Final Judgment. The United States is aware that some customers, for valid business reasons such as long-term price assurance, want contracts with an initial term longer than two years. Paragraph IV(B) is intended to permit customers who want them to have such contracts, while ensuring that customers who have not made such a choice do not, nevertheless, find themselves with long contracts. Under Paragraph IV(B)(1), Defendants may sign a contract of longer than two years with a customer, but only if the customer has been offered the two year contract and has acknowledged, in writing, that this offer was made. [FN2] Even if the customer signs a contract with an initial term longer than two years, the customer retains the right to terminate that contract at the end of the first two years, without payment of any liquidated damages, pursuant to Paragraph IV(B)(2). Paragraph IV(B) was included to give Defendants the ability to contract with customers who truly want a longer term, for the United States anticipates that contracts with initial terms longer than two years will be the exception, not the rule. To assure such an outcome, Paragraph IV(B)(4) limits the number of service locations subject to such contracts in either the Savannah or Central Louisiana markets to no more than 25 percent of the total number of small containerized solid waste hauling service locations in each relevant market.

FN2. The United States envisions that the customer's written acknowledgment that the two year contract was offered, but declined, by the customer could be made by having the customer check an appropriate box on the face of the contract near the customer's signature, or by some similar mechanism.

Paragraph IV(A)(2) prohibits Defendants from signing a

contract with a renewal term longer than one year in length, down from the three-year renewal term used as a standard in the Savannah and Central Louisiana markets.

Paragraph IV(A)(3) increases the period of time that a customer may notify Defendants of its intention not to renew the contract from a period ending 60 days before the end of any initial or renewal term to a period ending 30 days before the end of any such term. This allows the customer to make a decision concerning renewal closer to the end of the contract term. A customer is more likely to consider whether or not it wants its existing contract renewed the closer than customer is to the end of the contract term. Paragraph IV(A)(3) assures that a customer will be able to choose not to renew its contract up to 30 days from the end of the contract term. Paragraph IV(A)(3) also eliminates the requirement that a customer give its nonrenewal notice in writing and send it to Defendants by certified mail. A telephone call or letter is sufficient under the proposed Final Judgment. These changes in the notification provisions make it easier for the customer not to renew within the terms of the contract. This, in turn, enhances customer choice and enables a new entrant or small incumbent to compete for more customers.

\*10 A liquidated damages provision is intended to allow a seller to recover otherwise unrecoverable costs where the amount of the damage resulting from a breach of contract is difficult to determine. Defendants do incur some unrecoverable costs, including sales costs, in contracting with customers for small containerized solid waste hauling services. The contract currently most widely used by Defendants in the relevant markets contain the following liquidation damages provision for early termination: the customer must pay six times its prior monthly charge unless the contract has a remaining term of less than six months, in which case the customer pays its prior monthly charge times the number of months remaining in its contract term. If this case went to trial, the United States believes it could prove that these liquidated damages far surpass the contracting costs the Defendants incur, and that, in the relevant markets where Defendants have market power, Defendants have threatened to enforce such liquidated damages provisions with the effect that customers did not switch to new entrants and small incumbents when they desired to do so. In the presence of market power, the threat of enforcing large liquidated damages provisions can deter sufficient customers from switching to a competitor and harm competition.

Paragraphs IV(A)(4) and (5) reduce the amount of liquidated damages Defendants can collect from a customer. The liquidated damages Defendants may collect from a customer in the relevant markets during the first year of the initial term of a customer's contract are reduced to the

greater of three times the customer's prior monthly charge or average monthly charge over the prior six months. A firm that has been a customer of a Defendant for a continuous period in excess of one year can be required to pay Defendants no more than two times the greater of the customer's prior monthly charge or average monthly charges over the past six months. The changes made in the liquidated damages provisions make it less expensive (and therefore more likely) that a customer can switch to a competing hauler should it choose to do so during the contract term. Defendants have incurred costs to sign small containerized solid waste hauling customers to contracts. However, as customers pay their monthly bills over time, the unrecovered amount of those costs decreases. That fact is reflected in the proposal Final Judgment by the reduction of the liquidated damages Defendants may collect once a firm has been Defendants' customer for more than one year.

Paragraph IV(A)(6) prohibits Defendants from including a "right to compete" clause in their contracts in the relevant markets. That clause requires a customer to give Defendants notice of any offer by or to another solid waste hauling firm or requires the customer to give Defendants a reasonable opportunity to respond to such an offer for any period not covered by the contract. Defendants currently use a clause in the vast majority of contracts in use in the Savannah and Central Louisiana markets. [FN3] Such a clause enables a firm with market power easily to deny a sufficient customer base to new entrants or small incumbents because the customer must notify it of the terms of offers from competitors before the competitor obtains a single customer's business. It is a simple matter for the dominant firm to match or beat the competitor's price and induce the customer not to switch to the competitor. Furthermore, it allows the dominant firm to target price reductions only to those customers approached by a competitor without dropping prices across the board. The existence of this clause reduces a new entrant's expected profitability for luring a customer away from Defendants. It has the effect of retarding entry. The Final Judgment prohibits the use of this provision in the relevant markets.

FN3. The clause reads: "RIGHT TO COMPETE. Customer grants to Contractor the right to compete with any offer which Customer receives (or intends to make) relating to the provision of nonhazardous waste collection and disposal services upon the termination of this Agreement for any reason, and agrees to give Contractor written notice of any such offer and reasonable opportunity to respond to it."

\*11 The contracts predominantly used by Defendants in the relevant markets currently give Defendants the exclusive right to perform all of a customer's solid waste hauling

services and recycling, just because the customer has signed a contract for small containerized solid waste hauling service. Paragraph IV(A)(8) of the proposed Final Judgment prohibits this provision in the relevant markets. Instead, it provides that Defendants may perform only those services a customer selects. Defendants may perform all types of solid waste hauling services and recycling for a customer only if the customer affirmatively chooses to have Defendants do so by so stating on the front of the contract. [FN4] The United States does not intend this provision to prohibit Defendants from requiring that it be the exclusive supplier of any type of service for which it contracts with a customer. For example, if a customer contracts with Defendants to perform small containerized solid waste hauling service at a specific service location, Defendants may require that it be the exclusive supplier for that service at that location.

FN4. The United States anticipates that the customer should be able to affirmatively indicate its choice of service types by checking a box, by writing in the type of service it wants on the front of the contract, or by some similar mechanism.

Paragraph IV(A)(7) of the proposed Final Judgment also requires Defendant to change the appearance and format of its contracts in the relevant markets. If this case went to trial, evidence from customers in those markets would show that some of them were not aware they had signed legally binding documents. Therefore, the proposed Final Judgment requires that the document be labeled "SERVICE CONTRACT" in large letters. Furthermore, evidence from customers in the relevant markets would show that the contractual provisions that enable a firm with market power to restrict customers from switching to a competitor are in very small print on the back of the document. The proposed Final Judgment requires that the contracts used in the relevant markets be easily readable in formatting and type-face.

#### *B. Transition Rules*

In the Stipulation consenting to the entry of the proposed Final Judgment, Defendants agreed to abide by the provisions of the proposed Final Judgment immediately upon the filing of the Complaint, i.e., as of February 15, 1996. Among other things, the transition provisions described herein will require Defendants to abide by the foregoing limitations and prohibitions when entering into any contracts with new small containerized hauling customers after February 15, 1996. Certain additional provisions of the proposed Final Judgment also apply to existing customer contracts that are inconsistent with the proposed Final Judgment's requirements for new customer contracts.

Under Paragraph IV(C), Defendants must offer contracts that conform with Paragraphs IV(A) or (B) of the proposed Final Judgment to all new customers with service locations in the Savannah and Central Louisiana markets beginning today, the date of the filing of the executed Stipulation.

Under Paragraph IV(D), within 30 days of the entry of the proposed Final Judgment, Defendants must notify existing customers in the Savannah and Central Louisiana markets who have contracts with an initial term longer than two years and do not otherwise comply with the proposed Final Judgment of their right to sign a new contract complying with the proposed Final Judgment. These notices must also inform any customers choosing to retain their existing contracts that no provisions inconsistent with the proposed Final Judgment will be enforced against them. With regard to municipal and government entities, Defendants are not required to notify those entities with nonconforming contracts that were awarded on the basis of a formal request for bids or a formal request for proposals issued by the customer.

\*12 Paragraph IV(E) requires Defendants to give an additional notice in the form of a reminder to any customer subject to a nonconforming contract that enters a renewal term 120 days or more after the entry of the proposed Final Judgment. Defendants must send the reminder to each such customer ninety (90) days or more prior to the effective date of the renewal term. The reminder informs the customer that it must cancel its contract by a certain date or the contract will renew. It also reminds the customer that it may enter into a new contract conforming to the proposed Final Judgment on request and that terms in the customer's existing contract that are inconsistent with the new form will not be enforced against it. Defendants may send this reminder as part of a monthly bill, as long as it appears on a separate page and in large print so that it will be noticeable.

Under Paragraph IV(F), Defendants may not enforce contract provisions inconsistent with the Final Judgment upon entry of the Final Judgment by the Court.

Under Paragraphs IV(G) and (H), the proposed Final Judgment makes clear that contracts awarded by municipal or government entities on the basis of a formal request for bids or proposals issued by the customer need not comply with Paragraphs IV(A)-(F). Moreover, nothing in the proposed Final Judgment requires Defendants to do business with any customer.

Paragraphs IV(C)-(F) further two consistent goals. Opportunities for competition in small containerized hauling service in the relevant markets will be fostered by a rapid end to the provisions that significantly raise entry barriers in the relevant markets. At the same time, the transition rules avoid creating any unnecessary disruption of the customers'

trash hauling service that might result from voiding all nonconforming contracts. Existing customers are not required to terminate or amend their existing contracts with Defendants; the choice belongs to the customer. However, Defendants may not enforce against any customer any provision inconsistent with the proposed Final Judgment.

To ensure that existing customers learn of their rights under the proposed Final Judgment, Paragraphs IV(D) and (E) require Defendants to notify customers of their rights under the Final Judgment and remind them of their right to terminate their existing contract or to sign a new contract form.

#### C. Enforcement

Section V of the proposed Final Judgment establishes standards and procedures by which the Department of Justice may obtain access to documents and information from Defendants related to their compliance with the proposed Final Judgment.

#### D. Duration

Section VI of the proposed Final Judgment provides that the Final Judgment will expire on the tenth year after its entry. Jurisdiction will be retained by the Court to conduct further proceedings relating to the Final Judgment, as specified in Section VI.

#### IV.

##### *Remedies Available to Potential Private Litigants*

\*13 Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

#### V.

##### *Procedures Available for Modification of the Proposed Final Judgment*

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Anthony V Nanni, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street N.W., Suite 4000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

#### VI.

##### *Alternatives to the Proposed Final Judgment*

The United States considered, as an alternative to the proposed Final Judgment, litigation against Defendants. The United States could have brought suit and sought preliminary and permanent injunctions against the use and enforcement of these contracts by Defendants in the relevant markets. The United States is satisfied, however, that the relief outlined in the proposed Final Judgment will eliminate Defendants' ability to use restrictive and anticompetitive contracts to maintain and enhance their market power in the relevant markets. The United States believes that these contracts will no longer inhibit the ability of a new entrant to compete with the Defendants. The relief sought will allow new entry and expansion by existing firms in those markets.

#### VII.

##### *Standard of Review Under the APPA for Proposed Final Judgment*

\*14 The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider--

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually

considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the D.C.Circuit recently held this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States v. Microsoft* [1995-1 TRADE CASES ¶ 71,027], 56 F.3d 1448, 1462 (D.C.Cir.1995). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [FN5]

FN5. 119 Cong.Rec. 24598 (1973). *See United States v. Gillette Co.* [1975-2 TRADE CASES ¶ 60,651], 406 F.Supp. 713, 715 (D.Mass.1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Responses to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See H.R.Rep. 93-1463, 93rd Cong.2d Sess. 8-9, reprinted in* (1974) U.S.Code Cong. & Ad.News 6535, 6538.

Rather absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should ... carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States v. Mid-America Dairymen, Inc.*, 1977-1 TRADE CASES ¶ 61,508, at 71,980 (W.D.Mo.1977).

The Court's inquiry, under the APPA, is whether the settlement is "within the reaches of the public interest." [FN6] The proposed Final Judgment enjoins the Defendants' continued use of overly restrictive contract terms and opens local markets to increased competition, thus effectively furthering the public interest.

FN6. *United States v. Bechtel* [1981-1 TRADE CASES ¶ 64,111], 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); (citations omitted) (emphasis added); *see United States v. BNS, Inc.* [1988-2 TRADE CASES ¶ 68,223], 858 F.2d 456, 463, (9th Cir.1988); *United States v. National Broadcasting Co.* [1978-1 TRADE CASES ¶ 61,842], 449 F.Supp. 1127, 1143 (C.D.Cal.1978); *United States v. Gillette Co.*, 406 F.Supp. at 716; *see also United States v. American Cyanamid Co.* [1983-2 TRADE CASES ¶ 65,656], 719 F.2d 558, 565 (2d Cir.1983), *cert. denied*, 465 U.S. 1101 (1984); *United States v. American Tel. and Tel. Co.* [1982-2 TRADE CASES ¶ 64,900, 64,979], 552 F.Supp. 131, 150 (D.D.C.1982), *aff'd sub nom. Maryland v. United States* [1983-1 TRADE CASES ¶ 65,233], 460 U.S. 1001 (1983) quoting *United States v. Gillette Co.*, *supra*, 406 F.Supp. at 716; *United States v. Alcan Aluminum, Ltd.* [1985-1 TRADE CASES ¶ 66,428], 605 F.Supp. 619, 622 (W.D.Ky.1985).

#### VIII.

##### *Determinative Documents*

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

1996 WL 426830, 1996 WL 426830 (S.D.Ga.), 1996-2 Trade Cases P 71,455

END OF DOCUMENT

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 30th day of Dec., 2003.

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