

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: May 19, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayo)

FROM: Division of Competitive Markets & Enforcement (Barrett)
Office of General Counsel (Banks) **FRB** *SLC*

meB
[Signature]

RE: Docket No. 031132-TP – Petition for suspension of or for stay of effective date of BellSouth Telecommunications, Inc.'s 2004 Key Customer Promotional tariff filing of December 17, 2003, by Florida Digital Network, Inc. d/b/a FDN Communications, Inc.

AGENDA: 05/31/05 – Regular Agenda – Decision Prior to Hearing – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\031132.RCM.DOC

Case Background

On December 31, 2003, Florida Digital Network, Inc. d/b/a FDN Communications, Inc. (FDN) filed a Petition with the Florida Public Service Commission (Commission) for suspension of or for stay of effective date of BellSouth Telecommunications, Inc.'s (BellSouth) 2004 Key Customer Promotional tariff filing of December 17, 2003. This tariff, T-031388, became effective on January 2, 2004, and expired on December 21, 2004. On January 20, 2004, BellSouth filed its Response to the FDN Petition.

On January 30, 2004, staff data requests were served on BellSouth and FDN. Thereafter, staff facilitated an informal conference that resulted in BellSouth modifying certain text in the 2004 Key Customer tariff and the corresponding enrollment contract; however, FDN still found the filing objectionable. Concurrent with these tariff revisions, BellSouth and FDN entered into substantive discussions to seek to resolve the matters at issue in this proceeding. Additionally,

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the Commission's Office of General Counsel conducted a mediation conference to aid in these efforts.

On May 4, 2005 BellSouth and FDN (the "Parties") filed a Joint Motion Seeking Approval of the Stipulation (Joint Motion). The Stipulation is attached to this recommendation as "Attachment A." This recommendation addresses the Joint Motion.

The Commission is vested with jurisdiction over this matter pursuant to Chapter 364.01(4)(a), 364.01(4) (c), 364.01(4) (g), 364.08, 364.09, 364.10, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant the Joint Motion Seeking Approval of the Stipulation dated May 4, 2005?

RECOMMENDATION: Yes, the Commission should grant the Joint Motion Seeking Approval of the Stipulation dated May 4, 2005. (**Barrett, Banks**)

STAFF ANALYSIS: The Joint Motion seeks Commission approval of the underlying Stipulation reached, and requests closure of the docket. The underlying Stipulation codifies BellSouth's agreement to provide FDN customer-specific information for any BellSouth end user's term agreements, upon request.¹ In their Joint Motion, the parties assert their underlying Stipulation amicably resolves the issues in this proceeding, and is "in the best interest of the customers of the Parties." (Joint Motion at pp. 1-2) Staff believes the Commission should acknowledge the resolution of this complaint and grant the Joint Motion on this basis. On a practical basis, staff believes the underlying Stipulation represents a commitment to enhance the exchange of information between customers and competitors; staff believes this serves the public's interest and advances the development of competitive markets.

Conclusion

Staff recommends the Commission grant the Joint Motion Seeking Approval of the Stipulation dated May 4, 2005.

¹ Upon specific request, BellSouth agrees to provide FDN "the effective date, expiration dates, and amount of any early termination charges for any BellSouth end user's term agreements." The Stipulation provides applicable terms, conditions, and timelines. (Stipulation at 2)

Docket No. 031132-TP

Date: May 19, 2005

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed. (**Banks**)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, no further Commission action is required, and this docket should be closed.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Digital Network, Inc. d/b/a) Docket No. 031132-TP
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) Dated: May 3, 2005

Joint Stipulation of BST and FDN Communications

Pursuant to Section 120.57(4), Florida Statutes, BellSouth Telecommunications, Inc. ("BellSouth") and Florida Digital Network, Inc. d/b/a FDN Communications ("FDN") (hereinafter the "Parties") have entered into this Stipulation to effect an informal disposition and complete and binding resolution of any and all matters in the above captioned matter. Without prejudice to any Party's position in any other proceeding, the Parties stipulate and agree as follows:

1. This docket was initiated on December 30, 2003 by a petition filed by FDN for a stay of the effective date of BellSouth's 2004 Key Customer Promotional Tariff Filing. Since the initiation of the docket, the Parties have engaged in Commission ordered mediation and discussions for the purposes of resolving this matter.
2. To this end, the Parties have reached the following Stipulation in full resolution of this docket:

- A. BellSouth has implemented Customer Billing Relationship ("CBR") view-only capability in BellSouth's customer interfacing centers. CBR allows the assigned representatives to ascertain the effective date, expiration dates, and amount of any early termination charges for any BellSouth end user's term agreements.
- B. BellSouth end users may request the effective date, expiration date and early termination charges of the end user's term agreements either by calling their local BellSouth business office or submitting a request via the BellSouth Small Business website.
- C. BellSouth's end user or, where applicable, FDN, requesting on behalf of the BellSouth end user customers will receive, within 48 hours, either a call back, an email reply or fax reply with the information requested, depending on the method(s) specified for the return of the information.
- D. FDN may participate in a 3-way call with BellSouth and the BellSouth end user, however the customer must initiate the request and should lead the conversation.
- E. FDN may send an email or fax to BellSouth requesting the effective date, expiration date, and early termination charges on the BellSouth end user's behalf pursuant to a customer specific letter of authorization or agency. The customer's letter of authorization or agency must be attached to the written FDN request. FDN's customer specific request must designate the email address or fax number to which the BellSouth response will be sent. Within ten (10) days of this Joint Stipulation, BellSouth will provide FDN with appropriate email addresses and fax numbers for FDN's transmission of such requests. Any subsequent revisions to the transmission information will be promptly provided to FDN.
- F. In the event BellSouth does not provide the requested information to the BellSouth end user or to FDN, as the case may be, within 48 hours, then the BellSouth end user, or FDN acting on the customer's behalf, may escalate the request using BellSouth's published procedures for such escalations. Within ten (10) days of this Joint Stipulation, BellSouth will provide FDN with the appropriate escalation information. FDN will be promptly notified of any subsequent changes to the escalation information. If an escalation does not result in prompt

resolution, the dispute may be brought to the Commission.

3. Notwithstanding anything herein to the contrary, the Parties do not waive any of their rights to argue whether the effective dates, expiration dates, or termination charges contained within an end users term agreement(s) should be contained within the Customer Service Record. Further, the Parties do not, by this Joint Stipulation, waive their rights to assert any claims or defenses in any subsequent proceeding not involving the BellSouth promotional tariff filing which was the subject of this proceeding, except that any subsequent claim or defense involving the processes which are the subject of Section 2 of this Joint Stipulation (other than enforcement of same) are waived.

This Stipulation dated this 3rd day of May, 2005 may be executed in counterpart originals and a facsimile of an original signature shall be deemed an original.

The Parties evidence this acceptance and agreement with the provisions of
this Stipulation by their signature:

BELLSOUTH TELECOMMUNICATIONS, INC.

/V.F.

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