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Suite 1200
106 East College Avenue
Tallahassee, FL 32301
www.akerman.com
850 224 9634 tel 850 222 0103 fax

May 26, 2005

Ms. Blanca S. Bayo
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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COMMISSION
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Re: Docket No. 000121A-TP

Dear Ms. Bayo:

Attached please find Florida Digital Network, Inc., d/b/a FDN Communications' Petition Protesting Proposed Agency Action Order No. PSC-05-0488-PAA-TP and Request for Formal Proceeding. Please file this Petition in the above referenced docket file. Copies of this document will be served on all parties via U.S. Mail.

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- OTH Kim P. Lockard

Thank you for your assistance with this filing.

Sincerely,

Bill L. Bryant, Jr.

Enclosures

cc: Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the)
Establishment of Operations Support)
Systems Permanent Performance)
Measures for Incumbent Local)
Exchange Telecommunications)
Companies (BellSouth Track).)

Filed: May 26, 2005

Docket No.: 000121A-TP

FLORIDA DIGITAL NETWORK, INC., d/b/a FDN COMMUNICATIONS' PETITION
PROTESTING PROPOSED AGENCY ACTION ORDER NO. PSC-05-0488-PAA-TP
AND
REQUEST FOR FORMAL PROCEEDING

Pursuant to Rule 28-106.201, Florida Administrative Code, Florida Digital Network, Inc., d/b/a FDN Communications ("FDN") files this protest to Commission's Order No. PSC-05-0488-PAA-TP (hereinafter referred to as Order No. 05-0488), issued as proposed agency action on May 5, 2005. FDN requests a formal hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. In support hereof, FDN states as follows:

1. The name and address of the agency affected by this petition are:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

The agency's docket number is as indicated in the caption of this pleading.

2. Petitioner's full name and principal place of business are:

Florida Digital Network, Inc., d/b/a FDN Communications
2301 Lucien Way, Suite 200
Maitland, FL 32751

3. All pleadings, orders, notices and other correspondence with respect to this docket should be addressed to:

DOCUMENT NUMBER-DAT
05134 MAY 26 08
FPSC-COMMISSION CLERK

Matthew Feil
FDN Communications
2301 Lucien Way, Suite 200
Maitland, FL 32751
(407) 835-0460
mfeil@mail.fdn.com

Bill L. Bryant, Jr.
Akerman Senterfitt
106 East College Avenue, Suite 1200
Tallahassee, FL 32301
(850) 224-9634
Bill.Bryant@akerman.com

4. FDN is a duly certified competitive local exchange telecommunications carrier (“CLEC”). As such, FDN is generally subject to the rules, regulations and orders of the Commission, and such rules, regulations and orders directly impact FDN’s ability to provide local exchange telecommunications service in the state of Florida. FDN’s substantial interests are affected by the action proposed by this order as discussed below.

5. Order No. 05-0488 was obtained by FDN on May 6, 2005 during a review of the Commission’s website for filings in this proceeding.

BACKGROUND

6. Order No. 05-0488 approves a settlement agreement dated April 18, 2005 among BellSouth Telecommunications (BellSouth) and certain CLECs which contains stipulated changes to BellSouth’s Performance Assessment Plan for Florida. The objective of the Performance Assessment Plan is to motivate BellSouth to provide non-discriminatory service to competitors on a continuing basis. The plan is comprised of a Service Quality Measurement Plan (SQM) and a Self-Effectuating Enforcement Mechanism (SEEM) Plan. The SQM is a detailed description of BellSouth’s performance measurements for service provided to CLECs through its Operations Support Systems. The SEEM Plan includes key measures to which remedy payments are applied if BellSouth fails to meet the performance standards as approved by the Commission. The Performance Assessment Plan is intended to not only facilitate a truly competitive telecommunications market but to ensure there is no backsliding once competition has been established and once BellSouth received 271 approval.

7. Not all CLECs, which are substantially affected by this decision, signed the settlement agreement. FDN did not sign the settlement agreement and reluctantly cannot agree with factual and legal findings supporting Order No. 05-0488.

8. FDN supports the goal of improving and simplifying BellSouth's Performance Assessment Plan. However, FDN does not believe that the settlement agreement results in a plan that adequately measures and assesses BellSouth's operations support systems performance in Florida or adequately protects competition. Simply stated, FDN cannot agree that the stipulated revised plan is an improved performance monitoring mechanism.

DISPUTED ISSUES OF MATERIAL FACT AND LAW

9. FDN contends that the impact of the stipulated Performance Assessment Plan has not been adequately assessed. There are critical issues of material fact that were not addressed in either the settlement agreement or the Commission's PAA order. Specifically, neither the settlement agreement nor the order contains an analysis of whether the revised plan provides adequate compensation to the CLECs for service failures by BellSouth. Adequate compensation is vital in order to motivate BellSouth to provide non-discriminatory service to competitors.

10. Neither is there a discussion of whether the revised plan provides sufficient incentives to BellSouth to achieve, and notably, maintain reliable provisioning service to its CLEC customers. One important purpose of performance monitoring is to establish a standard against which CLECs and the Commission can measure performance over time to detect and correct any degradation of service provided to CLECs.

11. FDN disputes whether the revised plan adequately measures and assesses BellSouth's service performance to CLECs in Florida.

12. Moreover, the settlement agreement does not contain a provision for transition to the revised plan. The order states that the parties have informally agreed to implement the changes with the June 2005 performance measurement data. Given that the order was issued in May 2005, this provides virtually no transition period in which CLECs are afforded an opportunity to adjust in light of the revised plan. When dealing with a substantial regulatory change, regulatory authorities often provide a period of time which allows affected companies to ramp down from one scheme to a new one. This does not appear to be the case in this instance; rather, the proposal is to flash cut to the new scheme. The order contains a footnote which refers to a BellSouth-proposed transitional plan to partially compensate CLECs and the state of Florida for lost penalties during the transition. According to the footnote, this BellSouth transitional plan was described in an email to Commission staff dated April 19, 2005. However, there is no discussion of the specifics of that proposed transitional plan in the order, nor was the email attached or incorporated into the order by reference. FDN understands that this email referenced only deals with how, when or whether to restart the counter for violations occurring over continuous months, not measured implementation of the new plan over time. FDN contends that the details of the transition from the existing plan to any revised performance assessment plan is an issue of critical concern to CLECs and should be fully analyzed before a revised plan is approved. This does not appear to have occurred in this case.

13. Approval of the settlement agreement should not be granted without a full and complete assessment of these and other relevant issues that will undoubtedly impact the competitive telecommunications environment in Florida. FDN contends that such assessment by the Commission is required under state and federal law, which authorizes this Commission

to promote competition in the telecommunications market and ensure that all providers are treated fairly in the marketplace.

14. As stated in Order No. 05-0488,

Pursuant to Section 364.01(3), Florida Statutes, the Florida Legislature has found that regulatory oversight is necessary for the development of fair and effective competition in the telecommunications industry. To that end, Section 364.01(4)(g), Florida Statutes, provides, in part, that we shall exercise exclusive jurisdiction in order to ensure that all providers of telecommunications service are treated fairly by preventing anticompetitive behavior.

15. In addition, Section 271 of the Federal Telecommunications Act of 1996 (the Act) provides an important ongoing role for state commissions with regard to a Bell Operating Company's entry into the long distance market. Once a Bell Operating Company, such as BellSouth, demonstrates that it has sufficiently provided access to its local network to warrant entry into the long distance market, the Act contemplates ongoing compliance and the FCC has encouraged a state role in the compliance and monitoring process. Order No. 05-0488 recognizes this responsibility by noting that, "the FCC has encouraged the states to implement performance metrics and oversight for purposes of evaluating the status of competition under the Telecommunications Act of 1996." Further, Section 364.27, Florida Statutes, directs the Commission to investigate companies for compliance with federal regulations and report to the FCC should the Commission find any company wanting in its compliance with federal law. FDN asserts that the above mentioned Florida Statutes and federal law require reversal by this Commission of PAA Order No. 05-0488.

16. FDN maintains that the role of the Florida PSC in ensuring that BellSouth provides non-discriminatory service to its competitors is vital to the growth of a meaningful competitive market for the benefit of Florida citizens. Without reliable wholesale provisioning service from BellSouth, CLECs such as FDN incur a substantial risk of losing

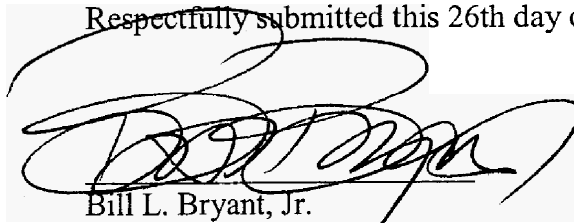
customers due to poor service beyond its control, which will have a negative impact on the financial wellbeing of the affected CLECs and on the competitive telecommunications market in Florida.

17. FDN looks forward to working with the Commission, BellSouth and the other parties to explore alternatives to develop a Performance Assessment Plan which contains logical and reasonable incentives for BellSouth to provide parity performance.

18. Accordingly, FDN objects to the provisions of the Settlement Agreement and must, therefore, protest Order 05-0488 in its **entirety**. To be clear, FDN is disputing all of the changes to the Performance Assessment Plan.

WHEREFORE, FDN respectfully requests the Florida Public Service Commission to conduct a public hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, to fully explore the economic impact to CLECs of potential revisions to BellSouth's Performance Assessment Plan for Florida as well as its effect on the competitive telecommunications market in Florida.

Respectfully submitted this 26th day of May, 2005.



Bill L. Bryant, Jr.
Akerman Senterfitt
106 East College Avenue, Suite 1200
Tallahassee, FL 32301
(850) 224-9634
Bill.Bryant@akerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the following by
U.S. mail this 26th day of May, 2005.

AT&T
Tracy Hatch
101 North Monroe Street, Suite 700
Tallahassee, FL 32301

Blanca S. Bayo
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

BellSouth Telecommunications, Inc.
Ms. Nancy B. White
c/o Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Covad Communications Company
Mr. William Weber
19th Floor, Promenade II
1230 Peachtree Street, NE
Atlanta, GA 30309-3574

Florida Cable Telecommunications Assoc.
Michael A. Gross
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32302

IDS Telcom, LLC
Angel Leiro
1525 N.W. 167th Street, Second Floor
Miami, FL 33169-5131

ITC^Deltacom
Nanette S. Edwards
4092 South Memorial Parkway
Huntsville, AL 35802-4343

Kelley Drye & Warren, LLP
Jonathan Canis/Michael Hazzard
1200 19th Street NW, Fifth Floor
Washington, DC 20036

KMC Telecom Inc.
Mr. John D. McLaughlin, Jr.
1755 North Brown Road
Lawrenceville, GA 30043

MCI
Donna Canzano-McNulty
1203 Governors Square Blvd., Suite 201
Tallahassee, FL 32301-2960

WorldCom, Inc.
Dulaney O'Roark, III
Six Concourse Parkway, Suite 3200
Atlanta, GA 30328

Messer Law Firm
Floyd Self
Norman Horton
P.O. Box 1867
Tallahassee, FL 32302-1876

Moyle Flanigan Katz Raymond & Sheehan, P.A.
Vicki Kaufman
118 North Gadsden Street
Tallahassee, FL 32301

Mpower Communications Corp.
David Woddsml
175 Sully's Trail, Suite 300
Pittsford, NY 14534-4558

Pennington Law Firm
Peter Dunbar
Karen Camechis
P.O. Box 10095
Tallahassee, FL 32302-2095

Sprint Communications Company
Susan Masterton/Charles Rehwinkel
P.O. Box 2214
MC: FLTLHO0107
Tallahassee, FL 32316-2214

Supra Telecom
Mr. Brian Chaiken
2901 SW 149th Avenue, Suite 300
Miramar, FL 33027-4153

e.spire Communications, Inc.
Renee Terry
131 National Business Parkway, #100
Annapolis Junction, MD 20701-10001

Rutledge Law Firm
Kenneth Hoffman
John Ellis
P.O. Box 551
Tallahassee, FL 32302-0551

Z-Tel Communications, Inc.
John Rubino/George S. Ford
601 S. Harbour Island Blvd.
Tampa, FL 33602-5706

ALLTEL Communications, Inc.
c/o Ausley Law Firm
Jeffrey Whalen
P.O. Box 391
Tallahassee, FL 32302

Miller Isar, Inc.
Andrew O. Isar
7901 Skansie Avenue, Suite 240
Gig Harbor, WA 98225

Suzanne F. Summerlin
2536 Capital Medical Boulevard
Tallahassee, FL 32308-4424

Russell E. Hamilton, III
Nuvox Communications, Inc.
301 North Main Street, Suite 5000
Greenville, SC 29601

Verizon Select Services Inc.
Kimberly Caswell
P.O. Box 110, FLTC0007
Tampa, FL 33601-0110

Florida Public Service Commission
Mr. Adam Teitzman
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850

BellSouth Telecom, Inc.
Patrick W. Turner/R. Douglas Lackey
675 W. Peachtree Street, Suite 4300
Atlanta, GA 30375

Birch Telecom of the South, Inc.
Tad J. Sauder
Manager, ILEC Performance Data
2020 Baltimore Avenue
Kansas City, MO 64108

David Benck
Momentum Business Solutions, Inc.
2700 Corporate Drive
Suite 200
Birmingham, AL 35242

This 26th day of May, 2005.



Bill L. Bryant, Jr.
Akerman Senterfitt
106 East College Avenue, Suite 1200
Tallahassee, FL 32301
(850) 224-9634
Bill.Bryant@akerman.com