

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 19, 2005

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

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

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,

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)

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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.