

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 05-16653

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| FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT September 15, 2006 THOMAS K. KAHN CLERK |
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D. C. Docket No. 03-00282-CV-4-RH-WCS

FLORIDA DIGITAL NETWORK, INC.,
a Delaware corporation,

Plaintiff-Appellant,

versus

EMBARQ FLORIDA, INC.
a Florida corporation,
FLORIDA PUBLIC SERVICE COMMISSION,
LILA A. JABER,
in her official capacity as Chairman of
the Florida Public Service Commission,
J. TERRY DEASON,
BRAULIO L. BAEZ, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida

(September 15, 2006)

Before MARCUS, WILSON and COX, Circuit Judges.

PER CURIAM:

Florida Digital Network, Inc. (“Florida Digital”) appeals the district court’s affirmance of a decision by the Florida Public Service Commission (“the Commission”) setting the rates charged by an incumbent local exchange carrier (Embarq Florida, Inc., formerly Sprint-Florida, Inc.) for unbundled network elements provided to competitive carriers, including Florida Digital, under the Telecommunications Act of 1996. Florida Digital contends: (1) that the rates established were arbitrary and capricious, an abuse of discretion, and not supported by substantial, competent evidence; (2) that the Commission decision establishing the rates failed to comply with applicable law and regulations; and (3) that the Commission arbitrarily established geographically de-averaged rate zones.

After reviewing the record, reading the parties’s briefs and having the benefit of oral argument, we affirm the district court’s decision based on its well-reasoned order of November 2, 2005.

AFFIRMED.