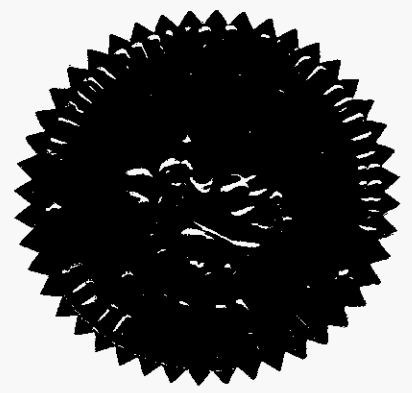


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010098-TP

In the Matter of

PETITION BY FLORIDA DIGITAL NETWORK,  
INC. FOR ARBITRATION OF CERTAIN TERMS  
AND CONDITION OF PROPOSED  
INTERCONNECTION AND RESALE AGREEMENT  
WITH BELLSOUTH TELECOMMUNICATIONS,  
INC. UNDER THE TELECOMMUNICATIONS  
ACT OF 1996.



ELECTRIC VERSIONS OF THIS TRANSCRIPT ARE  
A CONVENIENCE COPY ONLY AND ARE NOT  
THE OFFICIAL TRANSCRIPT OF THE HEARING,  
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

13 PROCEEDINGS: PREHEARING CONFERENCE

14 BEFORE: COMMISSIONER J. TERRY DEASON  
Prehearing Officer

15 DATE: Thursday, August 2, 2001

16 TIME: Commenced at 9:30 a.m.  
17 Concluded at 10:07 a.m.

18 PLACE: Betty Easley Conference Center  
Room 152  
19 4075 Esplanade Way  
Tallahassee, Florida

20 REPORTED BY: KORETTA E. STANFORD, RPR  
21 Official FPSC Reporter

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

MATTHEW J. FEIL, 390 North Orange Avenue, Suite 2000, Orlando, Florida 32801-1640 and MICHAEL C. SLOAN, Swidler Berlin Shereff Friedman, LLP, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007-5116, appearing on behalf of Florida Digital Network, Inc.

JAMES MEZA, III and PATRICK W. TURNER, c/o Nancy H. Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301-1556, appearing on behalf of BellSouth Telecommunications, Inc.

FELICIA BANKS and JASON FUDGE, FPSC Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Commission Staff.

## P R O C E E D I N G S

1  
2 COMMISSIONER DEASON: Call the prehearing conference  
3 to order. Could I have the Notice read, please?

4 MS. BANKS: Pursuant to Notice issued July 26th,  
5 2001, this time and place has have been set for a prehearing in  
6 Docket Number 010098-TP, petition by Florida Digital Network,  
7 Inc., for arbitration of certain terms and conditions of  
8 proposed interconnection and resale agreement with BellSouth  
9 Telecommunications, Inc., under the Telecommunications Act of  
10 1996.

11 COMMISSIONER DEASON: Thank you, take appearances.

12 MR. FEIL: For petitioners, I'm Matthew Feil, general  
13 counsel, Florida Digital Network, Inc., address as stated in  
14 the draft prehearing order. With me is Michael Sloan of the  
15 Washington, D.C. law firm of Swidler Berlin.

16 MR. SLOAN: Good morning, Commissioner.

17 COMMISSIONER DEASON: Good morning.

18 MR. MEZA: Jim Meza and Patrick Turner on behalf of  
19 BellSouth.

20 MS. BANKS: And Felicia Banks and Jason Fudge on  
21 behalf of PSC Staff.

22 COMMISSIONER DEASON: Patrick Turner, is it?

23 MR. TURNER: Yes, sir.

24 COMMISSIONER DEASON: Okay. Staff, do we have any  
25 preliminary matters?

FLORIDA PUBLIC SERVICE COMMISSION

000789

1 MS. BANKS: Yes, Commissioner Deason. Staff is aware  
2 of one pending motion to strike by BellSouth in response to the  
3 direct testimony filed June 8th, 2001, by Florida Digital  
4 network, Inc., recommending that the Commission create a new  
5 bundled network element or to unbundle packet switching  
6 BellSouth Telecommunications filed an objection to FDN's  
7 request for new UNEs or unbundled packet switching and a motion  
8 to strike testimony on July 12th, 2001. Subsequently, on July  
9 19th, FDN filed an opposition of FDN to BellSouth's motion to  
10 strike or alternatively a motion to amend arbitration petition.

11 COMMISSIONER DEASON: Okay, thank you. Mr. Meza,  
12 this is your petition or motion to strike, rather?

13 MR. TURNER: Mr. Deason, this is Patrick Turner, I'll  
14 be addressing it, but yes, sir --

15 COMMISSIONER DEASON: All right. Well, I have a  
16 question for you, then. I'm looking at your filing. I'm  
17 looking at Page 2 of it. And at the top of that page you  
18 indicate that in the petition for arbitration FDN presented  
19 Issue 1, and then you go on to quote that. I'm having very  
20 much difficulty in understanding why that issue's being  
21 described within the petition for arbitration why the  
22 particular nuances that are being raised within testimony don't  
23 fit within that.

24 MR. TURNER: Thank you, Mr. Commissioner.

25 The reason they do not is that in Paragraph 6 of the

FLORIDA PUBLIC SERVICE COMMISSION

000790

1 petition FDN explains that it has indicated in Attachment A,  
2 which is a copy of the interconnection agreement, explains  
3 they've indicated which issues are involved in the case by  
4 underlining or striking through the contract language  
5 pertaining to that issue.

6 Section 7.2.2.14 of that attachment is entitled,  
7 "Packet Switching Capability." Subsection .1 of that defines  
8 packet switching as including, and I'm quoting, "The functions  
9 that are performed by digital subscriber line access  
10 multiplexers." It then goes on to say at subsection 5,  
11 "BellSouth shall be required to provide nondiscriminatory  
12 access to unbundled packet switching capability only where each  
13 of the four following -- or each of the following conditions  
14 are satisfied." And then it quotes the FCC's order.

15 FDN has agreed to that language. Given that it has  
16 agreed to that language, that is why we're saying that the  
17 issues that they presented in their testimony which are you  
18 should unbundle the packet switching other than in these  
19 circumstances. That's not an issue in the case.

20 The issue in the case, as stated in the petition, was  
21 simply should we be required to provide DSL service over a UNE  
22 loop? In their testimony, they make the distinction between a  
23 DSL service in unbundled elements that they could use to  
24 provide their own DSL service.

25 Beyond that, in the prehearing conference or the

FLORIDA PUBLIC SERVICE COMMISSION

000791

1 issue ID conference, FDN agreed to language that states the  
2 issue in terms of whether or not BellSouth's xDSL service, not  
3 network elements, should be provided. So, when you look at the  
4 language of the petition, the way the issue's framed, when you  
5 look at the language they use to explain the position which  
6 they're required by Section 252 to put into the complaint, and  
7 when you look at the plain undisputed agreed to language in the  
8 arbitration agreement, it's very clear that the issue of  
9 whether to unbundle the packet switch was never in contention.

10 The only issue in contention was when FDN is using a  
11 UNE loop to provide voice service to an end user customer does  
12 BellSouth have to provide its DSL service over the same line?  
13 So, not only are they attempting, in our opinion, to add a new  
14 issue, they're actually attempting to retract from the  
15 agreement that they have set forth to this Commission, and  
16 that's just not appropriate.

17 COMMISSIONER DEASON: Okay. Mr. Feil.

18 MR. FEIL: I have a few points, Commissioner. I  
19 don't want to be redundant of what we put in our filed  
20 response. The wording of the issue in the petition, as you've  
21 seem to have understood as broadly stated, should BellSouth be  
22 required to provide FDN just reasonable nondiscriminatory  
23 access to UNEs such that xDL(sic) service over a UNE loop is  
24 available when a customer and number port to FDN local  
25 service?"

FLORIDA PUBLIC SERVICE COMMISSION

000792

1           The issue, as framed in the petition and in the text  
2 of the petition describe the problem which is that when a loop  
3 ports to FDN for voice services, FDN cannot get through  
4 BellSouth DSL service over that same loop.

5           The petition says, "At a minimum, FDN should be able  
6 to get BellSouth wholesale DSL service over the same line.  
7 Neither the issue as worded in the petition nor in the text of  
8 the petition limit the redress that we might seek to remedy the  
9 problem, and the problem is as described in the petition and as  
10 described in Mr. Gallagher's testimony.

11           With regard to Mr. Turner's statement on packet  
12 switching, as stated or as spelled out in the attachment to the  
13 petition, which is the draft interconnection agreement to that  
14 point, if all the draft interconnection agreement does is refer  
15 to the FCC rule regarding packet switching, it's not as though  
16 we're in a position to say, okay, that law doesn't apply. The  
17 law is the law, the rule is the rule. All we're saying is that  
18 when you apply the facts into the rule then we should still be  
19 entitled to packet switching. That is what Mr. Gallagher's  
20 testimony addresses.

21           With regard to the issue as reworded after the issue  
22 ID conference, again, as it's reworded it does not limit the  
23 redress to the problem. It doesn't -- as I read it anyway, it  
24 doesn't pigeonhole us or FDN into one specific avenue for  
25 correcting the problem that we face. And from the notes that

FLORIDA PUBLIC SERVICE COMMISSION

1 I've looked at from the issue ID conference, which was attended  
2 by the Staff, Mr. Turner by phone, Mr. Meza, some other  
3 BellSouth representatives, myself and Mr. Gallagher, FDN's  
4 chief witness, Mr. Gallagher, said FDN sought DSL over the same  
5 line through Bell or through FDN facilities and the ability to  
6 continue existing DSL service at a conversion of a UNE loop and  
7 to initialize DSL after conversion of a UNE loop for voice  
8 service.

9           The last point I would make would be administrative  
10 efficiency. There's no prejudice. FDN's testimony has been  
11 filed, I believe, it was June 7th. BellSouth filed rebuttal  
12 July 17th. They've covered all the issues under 364.161. If  
13 FDN made a request to unbundle elements to BellSouth, the  
14 parties are obligated to negotiate within 60 days. If they  
15 can't resolve it, the Commission is supposed to resolve it  
16 within 120 days. We would be at, basically, the same point as  
17 we are now, even if the motion is granted.

18           COMMISSIONER DEASON: Thank you. Mr. Turner, do you  
19 have any concluding comments before I make a ruling?

20           MR. TURNER: Yes, Mr. Commissioner, thank you, just  
21 very briefly.

22           Once again, the notes that he just referred to, as I  
23 understood them, were talking about converting existing  
24 service. That existing service is a BellSouth xDSL service,  
25 and that is exactly what the issue is, is provide xDSL service

FLORIDA PUBLIC SERVICE COMMISSION

000794



1 over UNE loops, not unbundled elements. And again, they make  
2 the distinction between the two in their own testimony.

3 The second point I'd like to make is I disagree that  
4 FDN, having agreed to the unbundled packet switching language  
5 in the agreement and not having challenged that language, I  
6 don't think they can come back and arbitrate new language in an  
7 agreement they've already agreed to. If that were the case,  
8 you're going to have this arbitration proceeding, you'll issue  
9 an order at some point approving a term agreement, and then FDN  
10 could come out the next day and say, you know, we won't  
11 arbitrate the language that you approved yesterday and change  
12 it. That, clearly, is unacceptable. They agreed to this  
13 language. They did not ask you to arbitrate it, and they  
14 should be required to stick to their agreement.

15 COMMISSIONER DEASON: Okay, thank you.

16 First of all, I'll make a few observations. First, I  
17 believe that the language that was contained within the  
18 petition for arbitration is broad enough to capture the nuances  
19 as described within the testimony as prefiled by FDN. I don't  
20 think that BellSouth is in any way surprised or their due  
21 process in any way hampered, that we can go forward and address  
22 this issue. I think, there is judicial efficiency in going  
23 forward with it now so, therefore, I'm going to rule that the  
24 motion to strike is overruled, it is rejected, and that we will  
25 go forward.

FLORIDA PUBLIC SERVICE COMMISSION

000795

1 I'll also make one other notation is that I  
2 understand that there is an issue ID conference, but this  
3 prehearing officer is in no way bound by an issue ID  
4 conference. I will determine what the issues are. That's one  
5 of the purposes of this prehearing conference. Any question by  
6 any of the parties? I think, the ruling is clear. We will  
7 proceed. Any other preliminary matters?

8 MS. BANKS: Commissioner Deason, that's all that  
9 Staff's aware of at this time.

10 COMMISSIONER DEASON: Do the parties have any  
11 preliminary matters?

12 MR. TURNER: None from BellSouth.

13 MR. FEIL: The only thing I would mention,  
14 Commissioner, is we have a pending motion or request for  
15 qualified representative status for Mr. Sloan. I don't know  
16 that the time has passed for objections to any, but I just want  
17 to let you know that that's on file.

18 COMMISSIONER DEASON: Will there be any objections?

19 MR. TURNER: No, sir.

20 COMMISSIONER DEASON: Staff, you can prepare an order  
21 approving that. I will sign it.

22 MR. FEIL: Thank you.

23 COMMISSIONER DEASON: Very well. I do have one -- we  
24 will get to it in the discussion of the draft prehearing order,  
25 but I might as well go ahead and raise it at this time and at

FLORIDA PUBLIC SERVICE COMMISSION

1 least give parties time to think about it before we actually  
2 get there, if that time is necessary. I understand that there  
3 has been a request or a notice that has been filed indicating  
4 that certain responses to discovery are going to be considered  
5 confidential; is that correct?

6 MR. MEZA: That's correct, Commissioner Deason.

7 COMMISSIONER DEASON: Okay. My concern is,  
8 obviously, that information will be provided confidential  
9 status until there is a ruling. My question is how are we  
10 going to proceed with that information -- first of all, is that  
11 information going to be presented at the hearing or is it too  
12 early to make a determination of that, Staff?

13 MS. BANKS: Commissioner, I believe, that the  
14 information will be utilized at the hearing. I think, I  
15 believe that what you just referenced is the two notice of  
16 intent filed by BellSouth regarding documents, Staff's request  
17 for production of documents, and Staff's request for a set of  
18 interrogatories and, at this time, Staff is anticipating using  
19 that information at the hearing.

20 COMMISSIONER DEASON: Okay. Well, I'm looking now on  
21 Page 3 of the draft prehearing order, this is the section  
22 addressing procedure for handling confidential information. I  
23 look at Section 2-A, and there is a requirement for any party  
24 wishing to use any proprietary confidential business  
25 information, basically, to provide notice that that information

FLORIDA PUBLIC SERVICE COMMISSION

000797

1 is to be utilized, so that's what Staff is doing at this point;  
2 is that correct?

3 MS. BANKS: Yes, Commissioner.

4 COMMISSIONER DEASON: Now, do -- is there a necessity  
5 for there to be a showing at the time of hearing that that is,  
6 indeed, confidential information or how are we going to handle  
7 that?

8 MR. MEZA: I believe that there may be two issues  
9 regarding confidentiality. One is in response to Staff's  
10 discovery, and then one is in response to FDN's discovery that  
11 we served our responses to prior to the prehearing order --  
12 excuse me, the procedural order coming out requiring us to give  
13 Staff a copy as well.

14 FDN and BellSouth have executed a confidentiality  
15 agreement, so we did not file notice of intent regarding the  
16 newer request or notice of intent. This latest confidential  
17 issue came about when Staff asked us to provide them with  
18 copies of certain documents. And I would point out that the  
19 information that we provided to Staff was the same information  
20 that we provided in the 271 proceeding whereby we requested  
21 confidential classification, because FDN's discovery in both  
22 that proceeding and in this case were substantially the same.

23 So, there may be a ruling already out there regarding  
24 the specific information that Staff has just requested that we  
25 provide. Regarding the interrogatory, it is information

1 relating to a customer, and that's it, so I think our concerns  
2 would be alleviated or may not be really a concern for the  
3 Commission to address, because one, it's already been addressed  
4 probably in 271 and, two, it's customer information, so -- but  
5 we would request that any determination be made prior to  
6 hearing so that we can take appropriate actions, if the  
7 Commission determines that the information is not subject to  
8 confidential treatment.

9 COMMISSIONER DEASON: Well, as I understand the  
10 procedure, if no ruling has been made it will continue to be  
11 treated confidential.

12 MR. MEZA: Okay.

13 COMMISSIONER DEASON: And if the information is not  
14 entered into the record, well, then, it can be returned and  
15 there is no need for ruling.

16 MR. MEZA: Yes, sir.

17 COMMISSIONER DEASON: If the information is to become  
18 part of the record, well, then, there may be a necessity, then,  
19 to make a ruling at some point. Are all the parties clear on  
20 that and willing to go forward under that understanding?

21 MR. FEIL: Yes, Commissioner.

22 MS. BANKS: Yes, Commissioner.

23 COMMISSIONER DEASON: Okay.

24 MR. FEIL: The only request I would make of BellSouth  
25 is since we do have a confidentiality agreement with them

FLORIDA PUBLIC SERVICE COMMISSION

000799

1 already, the information that they haven't provided yet in  
2 response to the PSC Staff request they provide to us. And  
3 again, we're not going to have any objection to confidential  
4 treatment for that.

5 MR. MEZA: I think, we've already produced it.

6 MR. FEIL: Okay, well, I haven't seen it, so...

7 MR. MEZA: Okay.

8 COMMISSIONER DEASON: Okay. All right. I think,  
9 then, we're at the stage where we can proceed through the draft  
10 prehearing order. I do have one preliminary question and that  
11 is do the parties wish to engage in opening statements?

12 MR. FEIL: Yes, Commissioner, but no more than five  
13 minutes.

14 COMMISSIONER DEASON: BellSouth?

15 MR. TURNER: Commissioner, if FDN does, we would like  
16 to have at least five minutes to respond.

17 COMMISSIONER DEASON: Five minutes acceptable?

18 MR. TURNER: Yes, sir.

19 COMMISSIONER DEASON: Okay.

20 MR. TURNER: If they're limited to five, we're  
21 certainly willing to limit it to five.

22 COMMISSIONER DEASON: Mr. Feil, five minutes you say  
23 is acceptable?

24 MR. FEIL: Yes, sir.

25 COMMISSIONER DEASON: Okay. Staff, note that in the

FLORIDA PUBLIC SERVICE COMMISSION

000800

1 prehearing order, please.

2           And when we get to the section addressing Order of  
3 Witnesses, I will need a response at that time as to whether  
4 we're going to take direct and rebuttal simultaneously or if we  
5 will take that in sequence, so be prepared to answer that  
6 question.

7           I propose that we proceed through the draft  
8 prehearing order and we'll go section by section. If any party  
9 has any concerns, questions, clarifications or whatever please  
10 let me know, otherwise, we will proceed through in rapid  
11 fashion.

12           Section 1, Conduct of Proceedings; Section 2, Case  
13 Background. We've already discussed, to some extent,  
14 Confidential Information. Is there anything needed to be added  
15 to that section? Hearing nothing, we will proceed on.

16           Section 4, Post-Hearing Procedures; Section 5,  
17 Prefiled Testimony and Exhibits; Section 6, Order of Witnesses.  
18 The question that I have is concerning direct and rebuttal. Do  
19 the parties have any preference as to how we proceed?

20           MR. FEIL: No, Commissioner, we can take direct and  
21 rebuttal of Mr. Gallagher at the same time. That's fine with  
22 us.

23           COMMISSIONER DEASON: BellSouth?

24           MR. TURNER: We're fine with that procedure.

25           COMMISSIONER DEASON: Okay. Please note that in the

FLORIDA PUBLIC SERVICE COMMISSION

1 prehearing order, Staff, we will take the direct and rebuttal  
2 testimony at the same time.

3 Section 7, Basic Positions; Section 8, we'll go  
4 through the specific issues. We'll start with Issue A, which  
5 is a standard issue concerning the Commission's jurisdiction.  
6 There are no positions stated by FDN or BellSouth, I assume,  
7 then the parties think we have total jurisdiction and what the  
8 FCC does doesn't matter here; is that correct?

9 MR. MEZA: We believe, Commissioner Deason, that you  
10 have all the jurisdiction in the world to arbitrate this case.

11 COMMISSIONER DEASON: Okay. So, you're not going to  
12 be taking a position.

13 MR. MEZA: That's correct.

14 COMMISSIONER DEASON: And if you get a bad decision,  
15 in your mind, you're not going to be appealing it to the FCC or  
16 to a court? I guess, you can appeal it to a court.

17 MR. MEZA: That's correct.

18 COMMISSIONER DEASON: My concern is -- is that I want  
19 to make sure that all the parties are on-line that this is  
20 something within our jurisdiction, there's nothing out there  
21 pending that is going to make our efforts in this hearing  
22 useless, and I just want to make sure that parties agree to  
23 that. It's a pretty simple request.

24 MR. FEIL: Your jurisdiction to make the decision,  
25 yes, you have that. And at this point and time, FDN doesn't



1 anticipate any FCC rule change that's going to alter your  
2 jurisdiction or act of Congress that will alter your  
3 jurisdiction.

4 COMMISSIONER DEASON: BellSouth?

5 MR. TURNER: Mr. Commissioner, we certainly agree  
6 that you have the jurisdiction to arbitrate. As far as whether  
7 the FCC's going to do something, I know that some of the issues  
8 relating to unbundling the packet are currently being addressed  
9 by the FCC in response to a further notice of proposed  
10 rulemaking.

11 COMMISSIONER DEASON: Is that going to impact the  
12 time frame that we're going to proceed in this case?

13 MR. TURNER: The time frame, no. The only concern I  
14 had is your comments about an appeal.

15 COMMISSIONER DEASON: I was fairly facetious.

16 MR. TURNER: That's what I thought, but I did want to  
17 point out there are some FCC matters that I have no idea when  
18 the time is going to be that they'll make a ruling on that, but  
19 we don't have any problem with your jurisdiction.

20 COMMISSIONER DEASON: I guess, my concern if there's  
21 anything out there imminent that we'd need to be aware of.

22 MR. TURNER: Not that I'm aware of.

23 COMMISSIONER DEASON: Okay. Staff, are you aware of  
24 anything?

25 MS. BANKS: No, Commissioner.

FLORIDA PUBLIC SERVICE COMMISSION

000803

1           COMMISSIONER DEASON: Very well. Okay. Issue 1,  
2 changes, corrections, clarifications? Issue 2 --

3           MR. FEIL: Well, Commissioner, with respect to Issue  
4 1, the only thing I wanted to say is that we don't have a  
5 problem with the issue as worded as long as pursuant to the  
6 motion you just denied we are able to present the evidence and  
7 the testimony, so --

8           COMMISSIONER DEASON: I want to make it clear that  
9 that is the ruling. And if it's necessary to reword this issue  
10 to make it even further clearer, I'm willing to do that. But  
11 as I indicated in my ruling, I think, what is really the  
12 primary consideration is the way the matter was worded within  
13 your petition for arbitration, and I felt that language was  
14 certainly broad enough to capture all of the various nuances in  
15 which your testimony addresses. BellSouth do you wish to have  
16 this issue reworded? We certainly can do it at this time.

17           MR. TURNER: Commissioner, I don't see any -- we  
18 respect your ruling. We do intend to renew it at the -- the  
19 motion at the hearing simply to preserve our appellate rights,  
20 if necessary, but without waiving those rights I don't see any  
21 reason, given your ruling, that we need to reword the issue.

22           COMMISSIONER DEASON: Very well.

23           MR. FEIL: That's fine.

24           COMMISSIONER DEASON: Okay. Issue 2. Issue 3-A, I  
25 have a -- I see Issue 2 has been withdrawn. Issue 3-A, I'm

1 having a little difficulty just reading the positions taken by  
2 FDN and BellSouth as to really what is at issue here.

3 MR. FEIL: Well, Commissioner, with respect to Issue  
4 3-A, I think, we've -- as far as I'm concerned, we have in  
5 effect a stipulation to language that BellSouth proposed to us,  
6 I think, it was two weeks ago, and the only thing remaining is  
7 Issue 3-B.

8 COMMISSIONER DEASON: Can we show, then, that 3-A is  
9 a stipulated matter?

10 MR. FEIL: I think, we can show that it's stipulated  
11 per the language BellSouth proposed, and I don't recall the  
12 date off hand, but --

13 MR. MEZA: Yeah, it was approximately two weeks ago.

14 MS. BANKS: Commissioner Deason, Staff would just  
15 like to request that, I guess, once the parties come to some  
16 agreement of the stipulation that Staff be advised that there  
17 has been agreement reached regarding the stipulation.

18 COMMISSIONER DEASON: To the extent parties can reach  
19 a stipulation, put it in writing, have it ready to present to  
20 the Commission at hearing, that would be sufficient. Is that  
21 acceptable to Staff?

22 MS. BANKS: Yes, Commissioner, that is acceptable.

23 COMMISSIONER DEASON: Issue 3-B. I understand,  
24 Mr. Feil, you just indicated that 3-B is really the matter at  
25 issue, but reading the positions, I'm having a little

1 difficulty understanding really what is at issue. And what I  
2 point your attention to is the language within your position  
3 where you indicate where FDN can show that BellSouth caused the  
4 trouble.

5 And as I understand BellSouth, if it can be shown  
6 that there is actual trouble or was caused by BellSouth, well,  
7 then, obviously, that's the situation which they feel that they  
8 need to correct and stand behind. So, what is at issue here?

9 MR. FEIL: Well, since you asked me first, I'm not  
10 exactly sure. I'll be frank with you. When I read BellSouth's  
11 position, as it's been plugged into this draft, I didn't  
12 understand BellSouth's position relative to the wording of the  
13 issue itself. I think, the wording of the issue and the  
14 wording of our position match correctly.

15 The issue is if we have a trouble ticket and  
16 BellSouth works the ticket and closes the ticket as no trouble  
17 found, if FDN can show that there was a BellSouth trouble  
18 through the remote line diagnostic testing, I'm referring to,  
19 or through other testing, then we should not have to pay for  
20 the ticket which we ordinarily would for no trouble found  
21 tickets. I think, it's as simple as that.

22 COMMISSIONER DEASON: And BellSouth, if it can be  
23 shown that there was, even though you close it out as no  
24 trouble found, if it can be shown that it was, indeed, a  
25 problem on BellSouth's network you do not expect to collect a

FLORIDA PUBLIC SERVICE COMMISSION

000806

1 charge for a no trouble found report, correct?

2 MR. TURNER: That's correct, Commissioner Deason.  
3 We, frankly, were wondering what the issue was, too, and  
4 intended to explore that during depositions today. The only  
5 thing I will say is as I'm sure FDN would, we would reserve the  
6 right not to accept as 100% conclusive their remote line  
7 diagnostic test. If our test doesn't agree with theirs, that's  
8 an issue we just have to work out, but with that caveat, I --

9 COMMISSIONER DEASON: I'll tell you what, we will  
10 preserve the issue, leave it as is, and to the extent the  
11 parties can explore it further on discovery or negotiation,  
12 please do so.

13 Issue 4-A has been withdrawn, as well as 4-B. Issues  
14 5, 6, 7, 8-A, 8-B, 9 have all been withdrawn, and I want to  
15 congratulate the parties. I think that is good work. I  
16 appreciate that. Issue 10; and, I think, that's the last  
17 issue. Section 9 is Exhibit List; any changes or corrections?

18 MR. FEIL: Well, Commissioner, since MPG-5 under  
19 Mr. Gallagher's testimony and MPG-6 relate to issues since  
20 withdrawn we'll be, I guess at the hearing, withdrawing those  
21 exhibits and testimony -- we'll be striking testimony or  
22 withdrawing testimony relative to those issues so that it's not  
23 cluttering the record.

24 COMMISSIONER DEASON: Very well. For purposes of the  
25 prehearing order we will just allow those to exist as they

FLORIDA PUBLIC SERVICE COMMISSION

000807

1 currently are and at the time Witness Gallagher takes the stand  
2 you will certainly be able to withdraw those exhibits and to  
3 amend the testimony to delete sections which are no longer  
4 relevant. I assume that's acceptable to BellSouth. Very well.

5 Section 10, Proposed Stipulations; we have none  
6 presently, but I understand there may be, and to the extent  
7 that those can be reached prior to hearing, please be prepared  
8 to present those at the beginning of hearing.

9 Pending Motions; I believe that I have addressed the  
10 one pending motion which I am aware of. Are there any other  
11 pending motions? Parties have anything else pending?

12 MR. FEIL: No, Commissioner. I did want to mention  
13 that FDN intends to file a motion for administrative notice of  
14 most of the orders referenced in Mr. Gallagher's testimony.  
15 The parties have already been provided copies of most of those  
16 already, so it'll just basically be a formality of filing the  
17 motion. I just wanted to make everybody aware of that.

18 The other thing, the procedural order requested that  
19 parties let Staff and the other parties know if there are any  
20 pending or imminent regulatory decisions that could affect  
21 proceedings. I just wanted to put everybody on notice that  
22 there was a July 13th arbitration panel decision in Texas,  
23 which we will be providing all the parties copies of either, I  
24 guess, Friday or Monday when I get back. And I have a docket  
25 number, if they want that now, but I will provide a copy.

1 MR. MEZA: Docket, please.

2 MR. FEIL: A docket number? Okay, hold on a second.

3 MR. MEZA: Just after the prehearing conference will  
4 be fine.

5 MR. FEIL: Okay.

6 MS. BANKS: Mr. Feil, do you by chance know who the  
7 parties are involved in that docket?

8 MR. FEIL: I think it was -- I know it was  
9 Southwestern Bell. I think, it may have concerned more than  
10 just one CLEC.

11 MS. BANKS: That's fine.

12 MR. FEIL: Okay.

13 COMMISSIONER DEASON: If you can provide that to  
14 Staff later, that'll be fine.

15 MR. FEIL: I will.

16 COMMISSIONER DEASON: I think, we will have addressed  
17 the confidentiality matter sufficiently. Rulings; Staff, you  
18 can indicate that there will be opening statements, but they  
19 will be limited to five minutes per party. And you may also  
20 include within the Rulings section the ruling that I've made  
21 today concerning the motion to strike.

22 MR. FEIL: Commissioner, may I ask one other thing?  
23 With regard to briefs in Section 4, the limitation is 40 pages.  
24 May I request with your approval and with BellSouth's approval  
25 that we be limited to 50 pages?

1 COMMISSIONER DEASON: BellSouth?

2 MR. TURNER: It's at the Commission's leisure. We  
3 don't have a strong preference either way.

4 COMMISSIONER DEASON: Staff?

5 MS. BANKS: Staff doesn't have a preference either.

6 COMMISSIONER DEASON: Very well, since there's no  
7 objection by any of the parties and there is a request made to  
8 50, we will change that from 40 to 50.

9 MR. FEIL: Thank you.

10 COMMISSIONER DEASON: But only use it if you need it.

11 MR. FEIL: Yes, sir.

12 MR. MEZA: Commissioner Deason, there's one issue  
13 that I'd just like to raise in light of the fact that we have a  
14 series of depositions today and tomorrow, and that is to the  
15 extent either Staff or FDN intends to use our confidential  
16 information through those depositions, is it the Commission's  
17 position that the procedures in place for the hearing apply  
18 also to those depositions?

19 COMMISSIONER DEASON: Yes, any confidential  
20 information would apply. I mean, it would be treated  
21 similarly.

22 MR. MEZA: All right. The prehearing or the order  
23 itself only addresses the use at hearing, and I just wanted to  
24 make sure that the parties were aware of that and that  
25 limitation of the use of the information.



1           COMMISSIONER DEASON: Well, I guess, I'm unsure as to  
2 your question. Are you saying that if information which is  
3 obtained through deposition, that the same confidential status  
4 would apply if that deposition is to be presented at hearing?

5           MR. MEZA: Well, that's one instance. And the other  
6 is if either FDN or Staff uses the confidential information  
7 that we've produced subject to a notice of intent as a series  
8 of questions in a deposition, whether -- and to make sure that  
9 the record established in a deposition is treated with the  
10 confidential status until there's a ruling on it.

11           COMMISSIONER DEASON: Well, it's certainly our intent  
12 that we're not going to allow a deposition to be a vehicle to  
13 circumvent what, otherwise, would be treated confidential.  
14 I'll leave it to the parties to make sure that does not happen.  
15 And if there's any issues that come up, please see me, and if I  
16 need to make a ruling I will. But it is the intent that if a  
17 proper notice has been given that you believe it's  
18 confidential, it will be treated as confidential, and we'll  
19 take whatever steps are necessary to preserve that, realizing  
20 that when we go to hearing we're going to have an open hearing  
21 and it's going to be incumbent upon the parties to explore that  
22 information and present it in such a manner that it can be  
23 preserved, but the hearing will be open.

24           MR. MEZA: Thank you.

25           MR. FEIL: That's fine.

FLORIDA PUBLIC SERVICE COMMISSION

**000811**

1           COMMISSIONER DEASON: Okay. The parties -- I'm  
2 sorry.

3           MS. BANKS: Commissioner Deason, I just wanted to  
4 state that Staff is not anticipating using any of the  
5 confidential information as a result of the depositions  
6 conducted today.

7           COMMISSIONER DEASON: Very well. Okay. Any other  
8 matters to come before the prehearing officer? Hearing none --  
9 once again, I want to congratulate the parties on the efforts  
10 you've put into this case thus far -- Mr. Turner?

11           MR. TURNER: Commissioner, one thing I did want to  
12 state on the record. The hearing was originally scheduled for  
13 the 17th. At our request it was moved to the 15th. The reason  
14 is that one of our witnesses has a -- his daughter's wedding  
15 on the Saturday and needed to be back in town that Friday, and  
16 I just wanted to thank the Commission and Staff and other  
17 parties for helping to accommodate that witness.

18           COMMISSIONER DEASON: Very well. Glad to do that.  
19 When is the hearing date now, is it the 15th?

20           MS. BANKS: August 15th.

21           COMMISSIONER DEASON: Right. Very good. This  
22 prehearing conference is concluded. Thank you.

23           MR. FEIL: Thank you.

24           (Prehearing concluded at 10:07 a.m.)

25

- - - - -

FLORIDA PUBLIC SERVICE COMMISSION

**000812**

1 STATE OF FLORIDA )  
2 : CERTIFICATE OF REPORTER  
3 COUNTY OF LEON )  
4

5 I, KORETTA E. STANFORD, RPR, Official Commission  
6 Reporter, do hereby certify that a Prehearing Conference was  
7 heard at the time and place herein stated.

8 IT IS FURTHER CERTIFIED that I stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under my direct supervision; and that this  
11 transcript constitutes a true transcription of my notes of said  
12 proceedings.

13 I FURTHER CERTIFY that I am not a relative, employee,  
14 attorney or counsel of any of the parties, nor am I a relative  
15 or employee of any of the parties' attorneys or counsel  
16 connected with the action, nor am I financially interested in  
17 the action.

18 DATED this Monday, August 6, 2001.

19   
20 KORETTA E. STANFORD, RPR  
21 FPSC Official Commissioner Reporter  
22 (850) 413-6734  
23  
24  
25