

VOTE SHEET

APRIL 23, 2002

RE: Docket No. 010098-TP - Petition by Florida Digital Network, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996. (Deferred from March 5, 2002 Commission Conference.)

LEGAL ISSUE A: What is the Commission's jurisdiction in this matter?

RECOMMENDATION: Staff believes that the Commission has jurisdiction pursuant to Chapter 364, Florida Statutes, and Section 252 of the Federal Telecommunications Act of 1996 (Act) to arbitrate interconnection agreements, and may implement the processes and procedures necessary to do so in accordance with Section 120.80 (13)(d), Florida Statutes. Section 252 states that a State Commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions required. This section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which the ILEC received the request under this section. In this case, however, the parties have explicitly waived the nine-month requirement set forth in the Act.

COMMISSIONERS ASSIGNED: Jaber, Deason, Palecki

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

*[Handwritten signatures: J. Terry Deason, Michael A. Palecki]*

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REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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Further, staff believes that while Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with the Act and its interpretation by the FCC and the courts, the Commission should use discretion in the exercise of such authority.

# APPROVED

ISSUE 1: For purposes of the new interconnection agreement, should BellSouth be required to provide xDSL service over UNE loops when FDN is providing voice service over that loop?

RECOMMENDATION: (a) Staff recommends that for the purposes of the new interconnection agreement, where BellSouth has deployed a DSLAM in the remote terminal for the purposes of providing DSL service to customers served by that remote terminal, BellSouth should be required to provide a broadband UNE that includes unbundled DSL-capable transmission facilities between the customer's Network Interface Device and BellSouth's central office, including attached electronics that perform DSL multiplexing and splitting functionalities in the remote terminal. (b) Staff recommends the Commission not require BellSouth to offer either its FastAccess Internet Service or its DSL transport service to FDN for resale in the new BellSouth/FDN interconnection agreement. (c) Finally, staff recommends the Commission not require BellSouth to continue to provide its FastAccess Internet Service to end users who obtain voice service from FDN over UNE loops.

# MODIFIED

*Parts (a) and (c) were denied for reasons expressed by Commissioner Deason; part (b) was approved.*

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ISSUE 11: Should this docket be closed?

RECOMMENDATION: No. The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

**APPROVED**