



ORIGINAL

November 30, 2002

Ms. Blanca Bayó, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

via Overnight Delivery

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.

Dear Ms. Bayó,

Please find enclosed for filing in the above-captioned docket an original and seven copies of Florida Digital Network, Inc.'s Response to BellSouth Telecommunication, Inc.'s Position in Support of BellSouth's Proposed Contract Language. A diskette containing an electronic file of the document is also enclosed.

If you have any questions regarding this filing, please call me at 407-835-0460.

Sincerely,

Matthew Feil
Florida Digital Network
General Counsel

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Digital Network, }
Inc., for Arbitration of Certain Terms and } Docket No. 010098-TP
Conditions of Proposed Interconnection and }
Resale Agreement with BellSouth Telecom- }
munications, Inc. Under the Telecom- }
munications Act of 1996 }
_____ }

**FLORIDA DIGITAL NETWORK, INC.'S RESPONSE TO BELL SOUTH
TELECOMMUNICATION, INC.'S POSITION IN SUPPORT OF
BELL SOUTH'S PROPOSED CONTRACT LANGUAGE**

Florida Digital Network, Inc., ("FDN") hereby files its response to the Position In Support of Proposed Contract Language ("Position Statement") filed by BellSouth Telecommunications, Inc. ("BellSouth") on November 20, 2002.¹ In support hereof, FDN states as follows:

1. On November 20, 2002, and FDN each submitted their proposals for implementing the Commission's award in the above-captioned interconnection proceeding.
2. Not surprisingly, in an effort to preserve and strengthen its monopoly power over both the DSL and voice markets in Florida, BellSouth has taken the narrowest interpretation of the Commission's Order, and one step further. Major philosophical differences aside, however, BellSouth's Position Statement is largely correct in that it represents there remain a few differences between the parties. Several points raised in BellSouth's Position Statement, however, cannot be permitted to stand uncorrected.

¹ Rule 28-106.204, Florida Administrative Code, permits responses to motions, so to the extent that BellSouth's pleading is deemed akin to, or in effect, a motion, FDN should be permitted to file a response.

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3. First, BellSouth claims that the Commission's Order requires only that it continue to provide DSL service over UNE loops, but does not similarly obligate it to continue serving end-users who are provisioned via FDN UNE-P arrangements. See Position Statement at 4. BellSouth's characterization of the Commission's Order is absurd for several reasons. First, UNE-P is a form of UNE loop, as BellSouth well knows. Though BellSouth presumably means to limit the Commission's Order to stand-alone loops provisioned via an ALEC's own switching and transport, rather than in combination with other RBOC network elements, nothing in the Commission's Order supports the cramped reading that BellSouth advocates. Indeed, the most natural reading of the Commission's reference in the Order to "UNE loops" is that it encompasses all UNE loops, whether they are purchased on a stand-alone basis or in combination with other network elements.

4. While the parties could argue about the Commission meant, argument is unnecessary because the Commission has already spoken on this issue. Shortly after the Commission issued its award in the FDN arbitration, the Commission permitted Supra Telecom to incorporate the FDN arbitration award into its own interconnection agreement. The relief the Commission provided Supra, which was based on the FDN award and on the record from the FDN arbitration, expressly obligated BellSouth to continue providing its DSL service when an end-user converts its voice service to Supra utilizing a UNE-P line.² It would make no sense at all for the Commission to sanction an inconsistent result here, as BellSouth requests.

² See Docket No. 001305-TP (Supra – BellSouth Arbitration). By Order No. PSCC-02-1140-FOF-TP, issued August 22, 2002, the Commission approved the Supra - BellSouth interconnection agreement. Attachment 2 of that agreement specifically addresses continuation of DSL over UNE-P.

5. The logic behind requiring BellSouth to continue providing DSL service regardless of how a CLEC provisions voice service is compelling. Whether an ALEC uses stand-alone loops served off its own switching or purchases loops in combination with BellSouth's switching is transparent to end-users. All the end-user customer knows, and the only consideration that is relevant to this proceeding, is that when it wishes to switch voice service providers to FDN (or another ALEC), it loses DSL. BellSouth's anticompetitive insistence on tying DSL and voice together is what the Commission's order in both the FDN and Supra arbitrations was intended to eliminate, and it, thus, does not matter whether the ALEC uses UNE-P or stand-alone loops. Accordingly, the Commission should reject the limiting language that BellSouth has proposed for Section 2.10.1 of the Agreement.

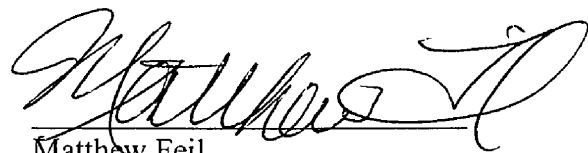
6. Second, BellSouth objects to FDN's language which would require BellSouth to continue providing wholesale DSL transport service to unaffiliated ISPs who wish to provide DSL-based Internet service to FDN voice customers. See Position Statement at 3. FDN's position on this issue is explained in its Motion to Approve Interconnection Agreement and does not require further elaboration here. In its Position Statement, however, BellSouth "supports" its proposal by claiming that FDN's position would constitute impermissible state "regulation" of DSL service. Nothing could be further from the truth. The fact that BellSouth's DSL-based telecommunications service is tariffed at the federal level does not pose any barrier to Commission's authority to prevent BellSouth from destroying competition in the voice market. FDN's view of the Commission's Order, thus, does not conflict with any federal rule, regulation or statute. Accordingly, there is no federal preemption of the Florida Commission's authority on

this issue and the Commission has all the authority needs to award the relief FDN requests.

7. Lastly, the Commission must reject BellSouth's proposal regarding billing of the xDSL customers. BellSouth's position that it cannot send a bill for xDSL service to customers that do not have its voice service, aside from being difficult to believe (particularly if the continuation of the xDSL service is over a stand-alone loop with a separate telephone number), is not supported in the record. ALEC voice end users that wish to continue their BellSouth xDSL services should at least have the choice of receiving a written bill from BellSouth for xDSL services. BellSouth's alleged billing problems should not serve as an excuse relieving BellSouth of its obligation to provide ALEC voice end users with xDSL service, thereby suppressing competition in the voice market.

WHEREFORE, for the reasons stated hereinabove and in FDN's November 20th filing, FDN respectfully requests that the Commission reject BellSouth's proposed contract language and accept the language that FDN proposed.

RESPECTFULLY SUBMITTED, this 2 day of December 2002.



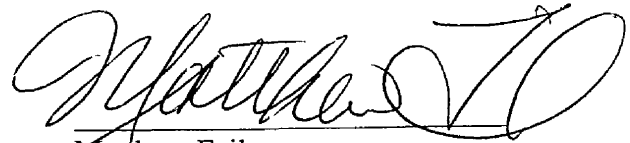
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Certificate of Service

I hereby certify that a true and complete copy of the foregoing was served on the following by e-mail and U.S. Mail this 2 day of December, 2002.

Mr. Patrick Turner
Mr. James Meza, III
C/o Ms. Nancy H. Sims, Dir., Reg. Relations
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Ms. Felicia Banks
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