



ORIGINAL

December 18, 2003

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

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COMMISSION  
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Re: Docket No. 981834-TP – Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.’s service territory

Re: Docket No. 990321-TP - Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to insure that BellSouth Telecommunications, Inc., Sprint-Florida, Inc., and GTE Florida, inc. comply with obligation to provide alternative local exchange carriers with flexible, timely and cost-efficient physical collocation

Dear Ms. Bayó,

Please find enclosed for filing in the above dockets an original and seven (7) copies of FDN Communications’ Response to Verizon Florida, Inc.’s Motion for Clarification and Partial Reconsideration. A diskette with an electronic version of this document is also enclosed.

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

Sincerely,

Matthew Feil  
FDN Communications  
General Counsel

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Competitive Carriers for )  
Commission action to support local competition )  
in BellSouth Telecommunications, Inc.'s service )  
territory. )  
\_\_\_\_\_ )

Docket No. 981834-TP

Petition of ACI Corp. d/b/a Accelerated )  
Connections, Inc. for generic investigation to )  
ensure that BellSouth Telecommunications, Inc., )  
Sprint-Florida, Incorporated, and GTE )  
Florida Incorporated comply with obligation )  
provide alternative local exchange )  
carriers with flexible, timely, and cost-efficient )  
physical collocation )  
\_\_\_\_\_ )

Docket No. 990321-TP

**RESPONSE OF FLORIDA DIGITAL NETWORK, INC.**  
**d/b/a FDN COMMUNICATIONS TO VERIZON FLORIDA, INC.'S MOTION FOR**  
**CLARIFICATION AND PARTIAL RECONSIDERATION**

Pursuant to Rule 25-22.060, Florida Administrative Code, Florida Digital Network, Inc., d/b/a FDN Communications ("FDN") respectfully responds to the Motion for Clarification and Partial Reconsideration filed by Verizon Florida, Inc. ("Verizon") in the captioned cases on December 11, 2003. In support of this Response, FDN states as follows:

1. The Commission should reject the Verizon Motion.<sup>1</sup> As to Issue No. 3 (collocation transfers), Verizon's motion attempts (a) to impose further obstacles to collocation transfers and

<sup>1</sup> FDN opposes Verizon's Motion as to Issue No. 1A on the grounds that the Motion does not meet the requisite standard for reconsideration. FDN's focus in this Response, however, is with Verizon's Motion relative to Issue No. 3.

ALEC consolidation and (b) to unjustifiably burden the transferee ALEC with costs Verizon and/or the transferor ALEC should bear.

2. Without adequate support, Verizon asks the Commission to “clarify” the Final Order<sup>2</sup> so as to (a) permit Verizon to withhold consent to collocation transfers if the transferor ALEC has any undisputed outstanding debts under the transferor’s interconnection agreement with Verizon -- as opposed to outstanding debts just for collocation services -- and (b) permit Verizon to withhold consent to a collocation transfer unless the transferor and transferee ALECs are jointly and severally liable for any and all charges – regardless of whether the charges are for UNEs, reciprocal compensation or collocation services and regardless of when service was rendered. The Motion illustrates how eager Verizon is to terminate services to, and deprive the Florida market of, facilities-based competitors. In sum, Verizon asks to hold the transferee ALEC (the ALEC over which Verizon has greatest leverage via the ability to terminate service) accountable for debts which the transferee ALEC had nothing to do with and for debts which have nothing to do with the collocation services transferred. These Verizon proposals are without foundation and are patently unreasonable.

3. As an initial matter, FDN disagrees with two predicate assertions in the Verizon Motion. First, in footnote 12 of the Motion, Verizon claims it could not respond to the ALEC’s positions on Issue No. 3, since these positions were not fully explicated until briefing. FDN believes this Verizon claim has no weight. Final positions are always subject to clarification, embellishment or out-right change in post-hearing filings, depending on what the record supports.<sup>3</sup> The Commission’s rules permit this. Moreover, Verizon changed its testimony and

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<sup>2</sup> Order No. PSC-03-1358-FOF-TP, issued November 26, 2003 (hereinafter “Final Order” or the “Order”).

<sup>3</sup> In any case, FDN does not concede that its position on Issue No. 3 changed at all since identification of the issue.

its position at the hearing,<sup>4</sup> and Verizon complained fervently at AT&T's alleged attempts to change AT&T's testimony before the hearing, so Verizon is the last party who should be heard to complain about not having an opportunity to reply to someone's position or argument. Second, Verizon completely misses the mark by suggesting significance in the Commission's ruling that a transferee ALEC should satisfy the requirements of its interconnection agreement. Relying on this ruling, Verizon seems prepared to argue that if a transferee ALEC has an outstanding bill to Verizon for anything, Verizon could halt a collocation transfer. FDN maintains that the only bodies in a position to definitively state that a transferee ALEC has not met a requirement of its interconnection agreement are this Commission and the courts, not the ILEC.<sup>5</sup> Moreover, Verizon's interpretation that any and all alleged noncompliance with the transferee's interconnection agreement can hold up a transfer illustrates just why Verizon's requested clarification must be rejected. The Commission cannot and should not permit a collocation transfer to be held up over matters that have no bearing on the collocation transfer.<sup>6</sup>

4. One need only consider the practical ramifications of Verizon's clarification proposals to realize how over-reaching and unfair they are. Verizon's request for joint and several liability post-transfer is particularly problematic. If, for example, after a collocation transfer, an ILEC

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<sup>4</sup> The Commission acknowledged Verizon's evolving position on page 17 of the Order. Verizon's and Sprint's at-hearing changes made it difficult for parties, staff and the Commission to understand what Verizon's and Sprint's positions were exactly. FDN understands that some changes before and at hearing are inevitable and may sometimes be helpful. FDN does not argue that such changes should never be allowed, but posits that Verizon's claim that Verizon had no opportunity to reply to the ALEC's positions is ironic, as well as groundless.

<sup>5</sup> Certainly, the transferee ALEC should have an interconnection agreement in place when a transfer is effectuated.

<sup>6</sup> The unreasonable positions Verizon takes provide some cause for the Commission's clarifying on its own motion the requirement that the transferee ALEC meet the requirements of its interconnection agreement. If an ILEC can exert leverage on the transferee ALEC to force concessions for non-collocation related disputes, the ILEC will likely exert such leverage. The Commission should not sanction an ILEC's denying or stalling collocation transfers over matters that have nothing to do with collocation services. ALEC consolidation is too important a policy goal for the State. Further, to the extent necessary, the Commission may deem this response a cross-motion for clarification on the Commission's intent regarding the transferee ALEC fulfilling the requirements of its interconnection agreement.

back-bills<sup>7</sup> for prior years' collocation services or reciprocal compensation or UNEs or anything, Verizon wants to hold the transferee ALEC accountable and the acquired collocation interests hostage. If, after a collocation transfer, a pre-transfer billing dispute for any services rendered the transferor ALEC is resolved in favor of Verizon, Verizon again wants to hold the transferee ALEC responsible. Verizon asks that the transferee ALEC be jointly and severally liable just so Verizon can use the hammer of terminating service to get payment -- payment for bills that have nothing to do with the transferee ALEC -- and despite Verizon's own acknowledgment that the transferor ALEC has benefited from the transfer and "pocketed the financial consideration it obtained from the transfer." (See Motion at p. 7.) Verizon claims it should not be "left holding the bag." So, Verizon instead favors a greater inequity by having the transferee ALEC, who had no involvement with the prior bills in the first place, left holding the bag.<sup>8</sup> Verizon supposes that collocation is akin to property that is subject to a security interest which follows the property regardless of owner. There is no basis in the record, in the Act, or in Chapter 364 to support this type of theory. The Commission should not allow Verizon or any ILEC to shift the risk of nonpayment for services pre-dating the transfer onto the transferee. The transferor should be responsible for such claims.

5. Nor should the Commission permit a transfer to be denied/delayed by the ILEC simply because the transferor ALEC owes the ILEC for non-collocation services under the interconnection agreement. The Commission ruled that unpaid and undisputed collocation service balances -- and those alone -- had to be paid prior to a transfer. Had the Commission

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<sup>7</sup> ILEC back-billing is not unheard of. Sprint, for instance, recently caused an uproar in the ALEC community by back-billing, going back two years, for certain services.

<sup>8</sup> Verizon would pursue the transferee ALEC as the most accessible and most vulnerable of the two joint-and-several candidates.

intended to expand that provision to include any and all debts owing by the transferor ALEC to the ILEC it would have said so, but it did not, for good reason. A pre-condition that all balances for all non-collocation services be paid in full is unreasonable. The ILEC has remedies it can pursue under interconnection agreements and/or tariffs, as the Commission properly recognized. Verizon has presented no justification in its Motion to support the Commission's changing the Final Order in this regard.

WHEREFORE, FDN respectfully requests that the Commission deny Verizon's Motion for the reasons stated hereinabove.

RESPECTFULLY SUBMITTED, this 18 day of December, 2003.



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**CERTIFICATE OF SERVICE**  
**Docket No. 981834-TP and 990321-TP**

I hereby certify that a copy of the foregoing was sent by e-mail and regular mail to the persons listed below, other than those marked with an (\*) who have been sent a copy via overnight mail, this 18 day of December, 2003.

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