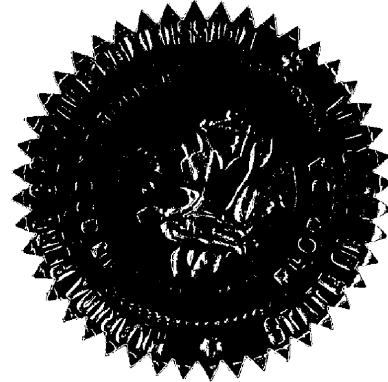


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041464-TP

In the Matter of:

PETITION FOR ARBITRATION OF
CERTAIN UNRESOLVED ISSUES
ASSOCIATED WITH NEGOTIATIONS
FOR INTERCONNECTION, COLLOCATION,
AND RESALE AGREEMENT WITH FLORIDA
DIGITAL NETWORK, INC. D/B/A FDN
COMMUNICATIONS, BY SPRINT-FLORIDA,
INCORPORATED.



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

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 10

BEFORE: CHAIRMAN RUDOLPH "RUDY" BRADLEY
COMMISSIONER J. TERRY DEASON
COMMISSIONER LISA POLAK EDGAR

DATE: Tuesday, December 20, 2005

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

11895 DEC 27 05

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 MATTHEW FEIL, ESQUIRE, representing FDN
3 Communications.

4 SUSAN MASTERTON, ESQUIRE, representing
5 Sprint-Florida, Incorporated.

6 KIRA SCOTT, ESQUIRE, CATHERINE BEARD, EVERETT
7 BROUSSARD, SHEVIE BROWN, DALE BUYS, BOB CASEY, JAMES MADURO,
8 JOHN MANN, RICK WRIGHT, representing the Florida Public Service
9 Commission Staff.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2 CHAIRMAN BRADLEY: Item 10, petition for arbitration,
3 FDN and Sprint.

4 MS. SCOTT: Kira Scott on behalf of staff. Item 10
5 is staff's post-hearing recommendation in Docket 041464-TP
6 involving arbitration of disputed issues associated with
7 negotiations for an interconnection, collocation, and resale
8 agreement between Sprint and FDN. The hearing was held on
9 August 4th, 2005. Since the filing of the petition by Sprint,
10 the parties have reduced the number of disputed issues from 66
11 to 13. The remaining issues relate to unbundled network
12 elements, the TRO, and the TRRO, as well as the definition of
13 local traffic. Staff is available for your questions.

14 CHAIRMAN BRADLEY: Questions.

15 COMMISSIONER DEASON: Mr. Chairman, can we just go
16 issue-by-issue, is that preferable?

17 CHAIRMAN BRADLEY: That's fine. Is that okay with
18 you?

19 COMMISSIONER EDGAR: Yes, sir.

20 CHAIRMAN BRADLEY: So we will start with, what, Issue
21 5?

22 MS. SCOTT: Issue 5, that's correct, Mr. Chairman.

23 MR. MADURA: Good morning, Commissioners. James
24 Madura, Jr., on behalf of staff. Item 5 addresses what
25 constitutes the parties' local calling area. Staff recommends

1 local traffic be defined as traffic originated and terminated
2 in the LATA, provided the originating carrier transports its
3 originating traffic as least as far as the tandem serving the
4 called party.

5 CHAIRMAN BRADLEY: Commissioner Deason.

6 COMMISSIONER DEASON: I agree with staff's
7 recommendation. I just would want a point of clarification and
8 that is concerning the Supreme Court decision and previous case
9 concerning the competitive neutrality of one definition of
10 local calling area versus the other, and I just would hope that
11 we would be able to distinguish this record in this case, and
12 maybe have some clarification in the order if that's
13 appropriate.

14 MS. SCOTT: Yes, Commissioner Deason. This
15 particular docket, or I should say this record is
16 distinguishable from the one that the Supreme Court was
17 reviewing in that prior case.

18 COMMISSIONER DEASON: This is an arbitration, for one
19 thing. That was a generic proceeding, was it not?

20 MS. SCOTT: Yes, sir, that's correct. I believe that
21 the main difference is that -- I don't believe that we are
22 dealing with competitive neutrality here. Help me out if I'm
23 saying anything incorrect, James.

24 MR. MADURA: That's correct. The original docket
25 dealt with a generic docket which would have included all

1 CLECs. This is specific to FDN and Sprint. And we are able to
2 use different constructs in the sense of FDN by increasing the
3 LATA you would be able to increase competition and customers
4 choices. So that is one of the main criteria. Also, the
5 balancing act was passed which gives the ILECs the ability now
6 to increase their local calling costs instead of just putting
7 it in the access charges.

8 COMMISSIONER DEASON: I do agree that we are in a
9 different situation here. And to the extent that we can
10 strengthen and bolster that decision within the wording of the
11 order, I would encourage staff to do so.

12 MR. MELSON: Yes, sir. We'll be sure that we take
13 extra steps to distinguish the prior decision, the prior court
14 case.

15 COMMISSIONER DEASON: And with that, Mr. Chairman, I
16 can move staff's recommendation on Issue 5.

17 COMMISSIONER EDGAR: I'll second.

18 CHAIRMAN BRADLEY: There is a motion and a second.
19 All in favor say aye.

20 (Unanimous affirmative vote.)

21 CHAIRMAN BRADLEY: The next issue is 21.

22 MR. MADURA: Issue 21 deals with the appropriate
23 conditions and terms applicable to the resale of contract sales
24 agreements, special agreements, and individual case basis
25 arrangements. Staff recommends that the parties agreed that

1 most issues pertaining to the resale contract agreements,
2 special arrangements, and individual case basis arrangements.
3 The outstanding aspect of this issue pertains to the
4 application of termination liability. Staff recommends that
5 the termination liability should apply as an end user chooses
6 to transfer service from Sprint to FDN prior to the expiration
7 of the customer's contract with Sprint.

8 COMMISSIONER DEASON: Mr. Chairman, I have a question
9 on this. I guess I'm having some difficulty for the basis for
10 the recommendation. Because I look at this in terms of
11 appropriate cost-recovery, and I don't see if a customer wishes
12 to change carriers and that service is to be provided through a
13 continuation of the existing contract, contract service
14 arrangement, or individual case basis arrangement, or whatever
15 it may be, that as long as that is continued to be provided
16 under a resale basis, I don't see that there is termination
17 costs that are incurred, and hence there is no termination
18 liability. That's my concern. I want staff's perspective on
19 that.

20 MR. CASEY: Bob Casey on behalf of staff. What we
21 have to look at is Sprint's original contract. When they made
22 that contract, they are spreading those costs over the period
23 of the whole term. If in the middle of that term FDN assumes
24 that contract, Sprint will not be paid their total amount of
25 monies and they may be shorted.

1 COMMISSIONER DEASON: Why are they not being paid if
2 they are continuing to be paid for the service, it is just on a
3 discounted basis. It is just discounted for the wholesale
4 discount which are avoided costs by definition, so why isn't
5 there cost-recovery to Sprint?

6 MR. CASEY: That would be my understanding that the
7 discount would have prevented them from getting their full
8 amount of revenue.

9 COMMISSIONER DEASON: Well, by definition the
10 discount is the avoided cost by having it provided under a
11 wholesale basis as opposed to a retail basis. And if that is
12 the case, it is a problem with the discount, not a problem with
13 the termination of the contract it seems to me. I may be
14 wrong. I'm just trying to understand your perspective.

15 MR. CASEY: I know we did look at this item once
16 before, termination liability, and there was a complaint with
17 FDN and BellSouth if you remember that, it was on a winback
18 program. And the outcome of that was, yes, there should be
19 termination liability on that because they are voiding a
20 contract. The customer is actually --

21 COMMISSIONER DEASON: Well, was that contract going
22 to continue to be provided under a resale basis, or was it
23 actually a discontinuation --

24 MR. CASEY: That was actually a discontinuation.

25 COMMISSIONER DEASON: This is not a discontinuation

1 of the facilities that are in place that provide the service,
2 is that correct? It is just a question of whether it is on a
3 retail basis or a resale basis.

4 MR. CASEY: That's correct, sir.

5 COMMISSIONER DEASON: Mr. Chairman, I would certainly
6 entertain more questions and viewpoints, but it's my viewpoint
7 that there is no liability that is being incurred by Sprint.
8 There is no -- the costs are continuing to be recovered under
9 the arrangement under a resale basis and, therefore, there
10 shouldn't be a termination liability. So I guess I would agree
11 with FDN's position. I assume that is FDN's position, is it
12 not?

13 MR. MADURA: Yes, it is.

14 COMMISSIONER DEASON: I would move that we deny
15 staff's recommendation and approve FDN's position.

16 CHAIRMAN BRADLEY: What I'm struggling with, before
17 we entertain the motion, is the concept of liability. And I'm
18 just not clear in my mind as to how there is no accumulation of
19 liability on FDN's part as it relates to paying for
20 termination.

21 COMMISSIONER DEASON: Well, Sprint will continue to
22 get the revenue stream. It's not like they are losing the
23 customer. They are losing the customer in the sense that they
24 are no longer a retail customer of Sprint, but they continue to
25 be the wholesale customer. I mean, they are going to continue

1 the revenue stream. It is not like the customer is actually
2 disconnecting service and there is stranded assets or stranded
3 costs that have been incurred on the front end that were going
4 to be recovered over the life of the contract. It seems to me
5 that the revenue -- the revenue stream is going to be
6 discounted, it is not going to be quite as much. And I don't
7 know what Sprint's resale discount is, it is probably in the
8 neighbor of what, 10 percent, I'm not exactly sure what it is.
9 So there is going to be less revenue.

10 But I think that that discount is designed to
11 recognize that there are costs avoided when they provide
12 service on a wholesale basis as opposed to a retail basis, and
13 that as long as that customer continues to receive that service
14 through a resale arrangement with FDN, there is continued to be
15 a revenue stream that enures to the benefit of Sprint. And
16 based upon the record we have here, I don't think that we have
17 any basis to conclude that that revenue stream is insufficient
18 such that there is going to be the uncollection of up-front
19 costs that were spread over the life of the contract.

20 And in future cases if it can be shown that under a
21 resale arrangement that the resale discount results in the
22 uncollection of up-front monies and that there is a liability
23 that is resulting onto, in this case, Sprint, I would certainly
24 be -- but I don't think this record shows that, and I think
25 that is something that has to be shown. I think we will make

1 the assumption that under -- if, in this case, FDN decides to
2 resell the special service arrangement, the contract, or
3 whatever it may be, that that revenue stream, we will assume
4 the revenue stream is sufficient to cover those deferred costs.
5 And absent such a showing, that would be the result of the
6 decision. Staff, if I'm missing something, please explain it
7 to me. Because I want to make sure that if there is a
8 liability, it gets paid. I'm not sure there is a liability
9 here and that is my problem.

10 MR. CASEY: I had a concern regarding contract law,
11 too, that is why I was asking the attorney whether or not when
12 a customer does sign a contract with the company, and they are
13 actually breaking that contract, they are not staying with them
14 the full term, whether any kind of legal liability would incur.

15 COMMISSIONER DEASON: The flip of that, though, is
16 does the requirements and the rules of the federal act and the
17 FCC rules when they say that a CLEC has the ability to resell
18 an existing contract, does that mean that -- what is the legal
19 ramifications of that, as well. And I think it could be
20 interpreted that that means that you have the full right and
21 ability to resell that without termination liability if that
22 revenue stream continues going to the entity which first
23 entered into that contract with the customer, which I think is
24 the case here. I don't know. Ms. Attorney.

25 MS. SCOTT: Commissioner, I feel that your conclusion

1 is probably closest.

2 COMMISSIONER DEASON: You think we are on a firm
3 legal basis to --

4 MS. SCOTT: I believe so.

5 COMMISSIONER EDGAR: Commissioner Deason, I do
6 believe you made a motion, but I need to ask you to repeat it,
7 please.

8 COMMISSIONER DEASON: The motion would be to -- what
9 is the discount rate, do we know? That is not an issue in this
10 case, is it not, or is it?

11 MR. CASEY: I believe FDN said it was 13 percent. I
12 can look in here real quick.

13 COMMISSIONER DEASON: Before I move FDN's position, I
14 need to make sure exactly what it is. Is there any changing of
15 the discount rate as a result of their position, or no?

16 MR. MADURA: It was 12 percent, Commissioner.

17 COMMISSIONER DEASON: 12 percent was FDN's position?

18 MR. MADURA: Yes, sir.

19 COMMISSIONER DEASON: Staff believes that is
20 reasonable under these circumstances?

21 MR. MADURA: Yes, sir.

22 COMMISSIONER DEASON: This would be the motion. To
23 deny staff's recommendation, and to adopt FDN's position, which
24 would be that there would not be a termination liability under
25 a resale arrangement. And just for future reference, I guess

1 it's not necessary for this case, but for future reference,
2 before I could determine that there was a liability, I would
3 need a factual showing that the resale discount was such that
4 it prevented there to be the necessary cost recovery such that
5 there would be a termination liability. We have no such
6 showing in this case. That's the motion.

7 And if it's unclear to staff, because you guys are
8 going to be the ones writing the order, if it's unclear, let's
9 get it straightened out. Now is the time to do it. Is staff
10 clear about the motion?

11 MS. SCOTT: Yes, sir.

12 CHAIRMAN BRADLEY: Paraphrase it back to me. I would
13 like to know what staff understands.

14 MS. SCOTT: I think I may have a little trouble with
15 that, Commissioner.

16 MR. MELSON: Commissioner, let me take a stab at it.

17 CHAIRMAN BRADLEY: Okay.

18 MR. MELSON: If Sprint has a contract today, say, for
19 three years with a particular customer and FDN comes in at one
20 and a half years and wins that customer and says the way we
21 want to serve that customer is by assuming that contract and we
22 will serve the customer, but the facilities are going to be the
23 same Sprint facilities. We are going to take that contract
24 over, we are going to pay Sprint. We are not going to pay them
25 the full contract price because we are entitled by federal law

1 and by this Commission's rulings to buy that at a 12 percent
2 discount, the question is does Sprint get to say you've
3 terminated that contract and, therefore, there's a lump sum
4 payment due, or do you treat it as though the contract is
5 continuing in existence for that next 18 months.

6 And Commissioner Deason's motion was you --
7 essentially, FDN steps into the shoes of the customer, so that
8 contract is not terminated and there is no lump sum payment for
9 terminating the contract early. Is that what you intended,
10 Commissioner?

11 COMMISSIONER DEASON: Yes. And I think we need to
12 recognize that allowing that lump sum termination liability
13 without cost justification I think is going to have a very
14 chilling effect upon carriers such as FDN being able to win
15 those type customers, and I think that has anticompetitive
16 ramifications, as well.

17 CHAIRMAN BRADLEY: Well, by approving your motion,
18 and I'm just thinking about what this might set off, would it
19 create a negative situation for FDN if Sprint decides to win
20 back the customer at ten cents?

21 COMMISSIONER DEASON: Well, you have a whole
22 different factual situation. You don't have a resale
23 arrangement. It would be -- and I don't think the facts would
24 apply to that. I'm not exactly sure what the outcome of that
25 would be, but I don't think there would be the same basis for

1 the same decision in that reverse situation. Whether there
2 would be termination liability there, it would depend upon the
3 facts, I suppose. I don't see one. If Sprint were to win the
4 customer back they would continue the same revenue stream under
5 the same contract without the discount. It would just put it
6 back to the situation as it was before. So I see no
7 termination liability there, either.

8 COMMISSIONER EDGAR: Mr. Chairman, if you're
9 comfortable moving forward, then I can second the motion to
10 deny staff recommendation on this issue and, instead, adopt the
11 FDN position as discussed.

12 CHAIRMAN BRADLEY: There's a motion and a second.
13 All in favor say aye.

14 (Unanimous affirmative vote.)

15 MR. MANN: Commissioners, in Issue 22 -- my name is
16 John Mann on behalf of staff -- what terms and conditions
17 should be included to reflect the FCC's TRO and TRRO decisions.
18 That is a pretty wide berth there. It really came down to
19 whether or not there should be a cap on DS-1 where DS-3 is
20 impaired in Tier 3 wire centers and how the ILECs should
21 provide notice regarding which wire centers are impaired or not
22 impaired. Do you have any questions regarding this issue?

23 COMMISSIONER DEASON: I can move staff's
24 recommendation, Mr. Chairman.

25 COMMISSIONER EDGAR: Second.

1 CHAIRMAN BRADLEY: There is a motion and a second.
2 All in favor say aye.

3 (Unanimous affirmative vote.)

4 MR. BROWN: Shevie Brown on behalf of staff,
5 Commissioners. Issue 24 addresses may Sprint restrict UNE
6 availability where there is not a meaningful amount of local
7 traffic.

8 COMMISSIONER DEASON: I move staff's recommendation
9 on Issue 24.

10 COMMISSIONER EDGAR: Second.

11 CHAIRMAN BRADLEY: There is a motion and a second.
12 All those in favor say aye.

13 (Unanimous affirmative vote.)

14 CHAIRMAN BRADLEY: Issue 29.

15 MR. BUYS: Dale Buys on behalf of Commission staff.
16 Commissioners, in Issue 29 is staff is recommending that
17 Sprint's proposed language, along with the additional
18 provisional language proposed by FDN, should be incorporated
19 into the interconnection agreement; that is, FDN should
20 compensate Sprint for the cost of routine network modifications
21 to unbundle loop facilities to the extent the costs are not
22 recovered in the UNE rates. However, if Sprint performs
23 network modifications for its own benefit in the normal course
24 of its business, Sprint should not charge FDN for those network
25 modifications.

1 COMMISSIONER DEASON: Move staff on Issue 29.

2 COMMISSIONER EDGAR: Second.

3 CHAIRMAN BRADLEY: There is a motion and a second.

4 All in favor say aye.

5 (Unanimous affirmative vote.)

6 COMMISSIONER DEASON: Mr. Chairman, it may be
7 preferable to address Issue 34 before we address Issue 30.

8 Would that be acceptable?

9 CHAIRMAN BRADLEY: Wait just a minute.

10 MR. WRIGHT: Issue 34 is what are the appropriate --

11 CHAIRMAN BRADLEY: Wait just a minute.

12 MR. WRIGHT: Excuse me.

13 CHAIRMAN BRADLEY: I'm looking at it. Okay. Go
14 ahead. 34.

15 MR. WRIGHT: Rick Wright on behalf of staff. Issue
16 34 is what are the appropriate rates for UNEs and related
17 services provided under the agreement. And staff is
18 recommending that the UNE rates approved in Docket Number
19 990649B-TP be incorporated in the new interconnection agreement
20 between Sprint and FDN. And, in addition, staff recommends
21 that the new rates be implemented on a prospective basis only.

22 COMMISSIONER DEASON: Mr. Chairman, I have a question
23 on Issue 34. The question has to do with the prospective
24 nature of the rate implementation, and I'm trying to find the
25 place in the recommendation where you address this. It's Page

1 33. I'm looking on Page 37 of the recommendation, and this is
2 under the section entitled retroactive treatment of UNE rates.
3 And, staff, there you indicate that you agree with FDN that
4 their current interconnection agreement with Sprint provides
5 that the current rates will remain in effect until a new
6 agreement is executed. That is language within the current
7 agreement, is that correct?

8 MR. WRIGHT: Yes, I believe so.

9 COMMISSIONER DEASON: Let me tell you what my concern
10 is. If that is, in case, the fact, that that language is in
11 there, we may not have any alternative. But I'm concerned, Mr.
12 Chairman, that there could be incentives for participants
13 simply not to implement measures such as this when the
14 Commission has gone through an evidentiary proceeding and made
15 a determination if they know that simply availing themselves of
16 the due process rights which they have, which I have no problem
17 with, and that if it takes one, two, or three years, they
18 benefit financially because, in this situation, they continue
19 lower rates while this Commission has found that those rates
20 were insufficient and the rates should have been higher.

21 I am just concerned that that gives the wrong
22 incentives for a party to engage in their full due process
23 rights. And that if they were fully aware that if, after
24 availing themselves of their due process rights, and they lose,
25 that they have to pay the rate that would have been in effect

1 that that maybe would have a different impact on the real
2 motivations for one's choosing to exercise their full course of
3 due process rights.

4 Mr. Melson, do you understand what I'm saying?

5 MR. MELSON: Yes, sir. However, when the Commission
6 entered the generic UNE rate orders, I believe in the Sprint
7 order in particular, and I believe in all the rest of the
8 orders you did not make those rates immediately effective. You
9 made them effective upon an amendment to the interconnection
10 agreement. This will be the first amendment to the Sprint/FDN
11 interconnection agreement. Presumably if the parties had -- if
12 Sprint had wanted to insist on amending that agreement earlier,
13 and FDN was not proceeding in good faith to amend, they could
14 have brought that issue before you. Since this is the first
15 time the issue is in front of you, I think to be consistent not
16 only with the interconnection agreement, but with your prior
17 order, it really probably does need to be prospective.

18 COMMISSIONER DEASON: And, Mr. Melson, I think I
19 agree with that. I guess I'm just raising that in the future
20 we need to be cognizant if we are sending incentives for people
21 to engage -- and I'm not accusing FDN in this situation, I want
22 to make that perfectly clear, but it just seems to me that if
23 this Commission goes through all of the effort of having an
24 evidentiary hearing and making a decision, that we need to
25 weigh at that point whether we make it effective immediately so

1 there would be a retroactive effect. I'm not saying that that
2 is the cure to the problem, either, but I just think it is
3 something we need to consider in the future. But I tend to
4 agree that based upon this arbitration and the language of our
5 order and the language of this agreement, that in this case it
6 should be prospective. So, Mr. Chairman, I can move staff's
7 recommendation on this issue.

8 CHAIRMAN BRADLEY: There is a motion.

9 COMMISSIONER EDGAR: Second.

10 CHAIRMAN BRADLEY: There is a motion and a second.

11 All in favor say aye.

12 (Unanimous affirmative vote.)

13 CHAIRMAN BRADLEY: Issue 30.

14 MR. BUYS: Commissioners, Issue 30 was tied into
15 Issue 34. Issue 30 involved under what rates, terms, and
16 conditions should Sprint offer loop conditioning. Both parties
17 have reached an agreement on the terms and conditions for loop
18 conditioning, but not on the rates. Based on your approval of
19 Issue 34, then the rates would also be those specified in the
20 Sprint UNE cost docket.

21 COMMISSIONER DEASON: Mr. Chairman, I can move
22 staff's recommendation on Issue 30.

23 COMMISSIONER EDGAR: Second.

24 CHAIRMAN BRADLEY: There is a motion and a second.

25 All those in favor say aye.

1 (Unanimous affirmative vote.)

2 CHAIRMAN BRADLEY: Issue 35.

3 MR. BUYS: Commissioners, Issue 35 addresses the
4 parties obligations regarding the point of interconnection
5 between the companies facilities. Staff is recommending that
6 FDN maintain only one POI per LATA and may establish more than
7 one POI per LATA at its discretion.

8 COMMISSIONER DEASON: I have a question. And as I
9 understand it, FDN has stated on the record that it would agree
10 to establish a point of interconnection at each tandem if the
11 Commission agrees with its position on Issue 5, correct?

12 MR. BUYS: That is correct.

13 COMMISSIONER DEASON: And that will be reflected in
14 the order if we approve staff's recommendation on Issue 35?

15 MS. SCOTT: Yes, sir.

16 COMMISSIONER DEASON: That's my motion, Mr. Chairman,
17 with that understanding that we move staff on Issue 35.

18 COMMISSIONER EDGAR: I second the motion.

19 CHAIRMAN BRADLEY: There's a motion and a second.
20 All in favor say aye.

21 (Unanimous affirmative vote.)

22 CHAIRMAN BRADLEY: Issue 36.

23 MR. BUYS: Commissioners, Issue 36 is tied to Issue
24 35. Again, the parties addressed what the obligations were for
25 the point of interconnection in Issue 35 and Issue 36. It is

1 essentially the same. We are recommending that FDN do
2 establish multi-tandems in each LATA because of the vote in
3 Issue 5.

4 CHAIRMAN BRADLEY: Questions or a motion?

5 COMMISSIONER DEASON: I move staff, Mr. Chairman, on
6 Issue 36.

7 COMMISSIONER EDGAR: Second.

8 CHAIRMAN BRADLEY: There is a motion and a second.
9 All in favor say aye.

10 (Unanimous affirmative vote.)

11 CHAIRMAN BRADLEY: Issue 37, or did I miss one?

12 Okay. 37.

13 MR. BROUSSARD: Everett Broussard with staff. Issue
14 37 deals with what are the appropriate terms for transport and
15 termination compensation for local traffic, non-local traffic,
16 ISP-bound traffic. Staff's recommendation is the parties have
17 come to mutual agreement on the appropriate compensation method
18 for both local, non-local, and ISP-bound traffic. The parties
19 disagree as to the definition of local service, which was
20 addressed in Issue 5.

21 CHAIRMAN BRADLEY: Questions or a motion.

22 COMMISSIONER DEASON: Move staff, Mr. Chairman.

23 COMMISSIONER EDGAR: Second.

24 CHAIRMAN BRADLEY: There is a motion and a second.

25 All those in favor say aye.

1 (Unanimous affirmative vote.)

2 CHAIRMAN BRADLEY: Issue 38.

3 MR. BUYS: Commissioners, Issue 38 addresses the
4 compensation and cost of calls terminated to end users
5 physically located outside the local calling area in which the
6 customers telephone numbers are homed. Staff is recommending
7 that this traffic should be subject to long distance access
8 charges and the terms should be reciprocal such that both FDN
9 virtual NXX and similar Sprint foreign exchange traffic is
10 compensated in the same manner.

11 CHAIRMAN BRADLEY: Questions or a motion.

12 COMMISSIONER DEASON: Move staff on Issue 38.

13 COMMISSIONER EDGAR: Second.

14 CHAIRMAN BRADLEY: There is a motion and a second.
15 All in favor say aye.

16 (Unanimous affirmative vote.)

17 CHAIRMAN BRADLEY: Issue 39.

18 MR. BUYS: Commissioners, Issue 39 addresses the
19 appropriate terms for compensation and costs of voice over
20 Internet protocol calls. Staff is recommending that the
21 parties incorporate language into the agreement that neither
22 party will knowingly send VoIP calls for termination as local
23 traffic by the other party until a mutually agreed amendment is
24 effective, provided that the local calling area is the LATA
25 which was addressed in Issue 5.

1 COMMISSIONER DEASON: Mr. Chairman, I have a
2 question.

3 CHAIRMAN BRADLEY: Question.

4 COMMISSIONER DEASON: Page 49 of the recommendation,
5 the paragraph just above the conclusion section. There is a
6 statement there that says in its post-hearing brief FDN
7 indicated that the minor wording changes or the deletion of the
8 phrase, and I quote, "Or for a party at the party's request,"
9 close quote. What is the significance of that particular
10 language that FDN suggests should be deleted?

11 MR. BUYS: There was no reference to it in the
12 testimony. I'm not absolutely sure why they would want that
13 removed.

14 COMMISSIONER DEASON: You are recommending against
15 it, correct?

16 MR. BUYS: I'm recommending that it not be added.

17 COMMISSIONER DEASON: I'm sorry, was FDN seeking to
18 have that language added or deleted? I'm confused.

19 MR. BUYS: FDN, I believe, requested that that be
20 deleted.

21 COMMISSIONER DEASON: That that be deleted. And it
22 is your position that that language stay in the agreement?

23 MR. BUYS: No, my recommendation is that it be
24 removed.

25 COMMISSIONER DEASON: That it be removed. What's the

1 significance of doing it one way or the other, I guess, is what
2 I'm trying to understand? What does this phrase do? Why is it
3 at issue?

4 MR. BUYS: In my personal opinion, I believe it might
5 be that they might send voice calls for somebody else, not for
6 FDN, although legal may be able to shed a little insight on the
7 legal ramifications of that statement. If I could get a little
8 help.

9 MS. SCOTT: I'm not sure what the legal ramifications
10 are, actually.

11 COMMISSIONER DEASON: Staff, can you repeat again
12 what your concern is, that by having -- that this language
13 would allow -- just repeat it for me, please.

14 MR. BUYS: I believe FDN's objection to that language
15 that -- oh, I'm sorry, in the second line after. I'm not
16 really quite sure why they wanted that deletion. If you could
17 give me a minute to kind of refresh my memory.

18 COMMISSIONER DEASON: This phrase would pertain to a
19 situation where there is a request from a third-party to have
20 certain type traffic carried in a certain way, is that correct?

21 MR. BUYS: I believe it just refers to another party,
22 they would handle the calls for another party, not specifically
23 themselves.

24 COMMISSIONER DEASON: Mr. Chairman, I'm still unclear
25 as to what the significance of this particular wording is one

1 way or the other. Maybe we can go on to the next issue and
2 come back to this one.

3 CHAIRMAN BRADLEY: Let's go on to Issue 62.

4 MS. BEARD: Catherine Beard on behalf of Commission
5 staff. Item Number 62 addresses whether Sprint should provide
6 FDN a means for accessing on a preordering basis information
7 identifying which Sprint loops are served through remote
8 terminals.

9 COMMISSIONER DEASON: Mr. Chairman, I can move
10 staff's recommendation on Issue 62.

11 CHAIRMAN BRADLEY: There's a motion.

12 COMMISSIONER EDGAR: Second.

13 CHAIRMAN BRADLEY: A motion and a second. All in
14 favor say aye.

15 (Unanimous affirmative vote.)

16 CHAIRMAN BRADLEY: Back to Issue, what, 39?

17 COMMISSIONER DEASON: That's correct. I'm just, Mr.
18 Chairman, hung up on the phrase of the significance of the
19 inclusion or the deletion of the phrase which is indicated on
20 Page 49, what difference does that make? And if staff believes
21 it makes no difference, there is no substantive difference,
22 well, then, that's fine. But apparently if this is something
23 that the parties could not agree on and it was contested, there
24 must be some significance as to why this particular phrase
25 should or should not be included.

1 MR. BUYS: Commissioner, in its brief in a footnote,
2 FDN argued that -- and I quote in its footnote, "FDN agreed to
3 accept Sprint's proposed alternative VOIP language if the
4 phrase before a party at that party's request is deleted, since
5 the, quote, actual knowledge, unquote, standard should apply to
6 what third parties do."

7 COMMISSIONER DEASON: So, FDN's concern is that they
8 not be held accountable for what a third party's actions may or
9 may not be, is that the crux of the matter?

10 MR. BUYS: I'm not exactly sure. That's more of a
11 legal question, I would think. I'm not familiar --

12 COMMISSIONER DEASON: Let me put it this way. With
13 your recommendation, is it more likely that we are going to
14 hold folks accountable for the type traffic that they are
15 putting onto the system whether it's at their own behest or at
16 the request of a third-party, is that correct, from a policy
17 standpoint? Would you agree with that or no?

18 MR. BUYS: I believe FDN would be responsible for the
19 traffic they send over their network.

20 COMMISSIONER DEASON: And your recommendation would
21 be more likely that they would be accountable for that, is that
22 correct?

23 MR. BUYS: Yes.

24 CHAIRMAN BRADLEY: And that FDN should compensate
25 Sprint in this case, is that correct, for that traffic?

1 MR. BUYS: This is in regards to VOIP calls that are
2 transmitted over the network which FDN had said they have no
3 intention of transmitting any VoIP call traffic over there and
4 they have not done so in the past, so this would be the
5 agreement that they would adopt.

6 COMMISSIONER DEASON: They would be adopting Sprint's
7 language without -- and your recommendation is simply to adopt
8 Sprint's language without the addition of this phrase?

9 MR. BUYS: Right. That's correct, as the compromise
10 that FDN had proposed.

11 COMMISSIONER DEASON: Mr. Chairman, I think I have a
12 better understanding now. I can move staff's recommendation.

13 COMMISSIONER EDGAR: Second.

14 CHAIRMAN BRADLEY: A motion and a second. All in
15 favor say aye.

16 (Unanimous affirmative vote.)

17 CHAIRMAN BRADLEY: Okay. I think that gets us to
18 Issue 63.

19 COMMISSIONER DEASON: Is this to close the docket?

20 CHAIRMAN BRADLEY: Yes.

21 COMMISSIONER DEASON: We can't close the docket until
22 the signed agreement is provided. I can move staff's
23 recommendation.

24 COMMISSIONER EDGAR: I'll second.

25 CHAIRMAN BRADLEY: A motion and a second. All in

1 favor say aye.

2 (Unanimous affirmative vote.)

3 * * * * *

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

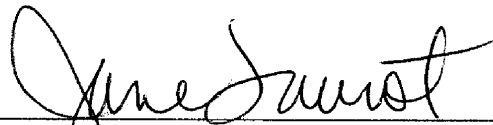
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 27th day of December, 2005.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732