

BEFORE THE PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 041464-TP
ORDER NO. PSC-05-0496-PCO-TP
ISSUED: May 5, 2005

ORDER ESTABLISHING PROCEDURE

Case Background

On December 30, 2004, Sprint-Florida, Incorporated (Sprint) filed its Petition for Arbitration of certain unresolved issues associated with negotiations for an Interconnection, Collocation, and Resale Agreement between itself and Florida Digital Network, Inc. d/b/a FDN Communications (FDN). On January 24, 2005, FDN filed its response to Sprint's Petition. Pursuant to Sprint's request for arbitration, this matter has been scheduled for an administrative hearing.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff up to and during the prehearing conference, unless modified by the Commission.

Governing Provisions

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

(1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as 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 local exchange carrier received the request under

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this section. The parties have, however, waived the nine-month requirement of Section 252(b)(4)(C).

In light of the above, this Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

Tentative Issues

Attached to this Order as Attachment "A" is a tentative list of the issues which have been identified in this proceeding. Prefiled testimony and prehearing statements shall address the issues set forth in Attachment "A." Parties are encouraged to continue discussions in an effort to further eliminate issues in this proceeding.

Filing Procedures

In accordance with Rule 25-22.028, Florida Administrative Code, parties shall submit the original document and the appropriate number of copies to the Division of the Commission Clerk and Administrative Services for filing in the Commission's docket file. Filing may be made by mail, hand delivery, or courier service. See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities. Filings pertaining to this docket should identify the assigned docket number and should be addressed to:

Director, Division of the Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Discovery Procedures

When discovery requests are served and the respondent intends to seek clarification of the discovery request, the request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for August 4 - 5, 2005. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by July 25, 2005. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set, and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 250, and requests for production of documents, including all subparts, shall be limited to 75. All discovery responses shall be due 20 days after service of the request, with no additional time for mailing. All discovery requests shall be served

by e-mail, with a hard copy to follow by U.S. Mail or hand delivery. Responses to interrogatories, and to the extent possible requests for documents, shall also be served by e-mail, with a hard copy to follow by U.S. Mail or hand delivery. Commission staff shall be served with a copy of these and all other filings.

Any party intending to provide information pursuant to a discovery request, which it is aware is deemed, or might be deemed, confidential by another party in this proceeding, shall notify that party prior to submitting such information for the purpose of ensuring conformance with this Commission's rules regarding the handling of such information and continued confidential treatment pending a formal ruling by the Commission. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183(4), Florida Statutes.

Parties shall avail themselves of the liberal discovery allowed by this Order within the time frames set forth above. Parties are cautioned against conducting discovery during cross-examination at the hearing.

Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number, and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL

J. Doe Exhibit No. _____

Cost Studies for Minutes of Use by Time of Day

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of the Commission Clerk and Administrative Services, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony. If a demonstrative exhibit or other demonstrative tools are to be used at hearing, they must be identified by the time of the Prehearing Conference.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of the Commission Clerk and Administrative Services by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below:

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;

- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon;
- (i) a statement identifying the party's pending requests or claims for confidentiality;
- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore;
- (k) a statement identifying any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter; and
- (l) Any objections to a witness's qualifications as an expert must be identified in a party's Prehearing Statement. Failure to identify such objection may result in restriction of a party's ability to conduct voir dire.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held on July 18, 2005, at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to

hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(3), Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files.

Post-Hearing Procedure

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

Controlling Dates


The following dates have been established to govern the key activities of this case.

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| 1) Direct testimony and exhibits (All) | May 27, 2005 |
| 2) Rebuttal testimony and exhibits (All) | June 24, 2005 |
| 3) Prehearing Statements | July 5, 2005 |
| 4) Prehearing Conference | July 18, 2005 |
| 5) Hearing | August 4 – 5, 2005 |
| 6) Briefs | September 1, 2005 |

Based upon the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 5th day of May, 2005.


J. TERRY DEASON
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

ATTACHMENT "A"

The tentative list of issues which have been identified in this proceeding are set forth below.

- ISSUE 1** How should "business day" be defined?
- ISSUE 2** How should "collocation space" be defined?
- ISSUE 3** How should "parties" be defined?
- ISSUE 4** Should "virtual point of interconnection" be included in the definition section? If so, how should it be defined?
- ISSUE 5** How should "local traffic" be defined?
- ISSUE 6** Should "high frequency portion of the local loop" be included in the definition section? If so, how should it be defined?
- ISSUE 7** How should "local loop" be defined?
- ISSUE 8** Should "reverse collocation" be included in the definition section? If so, how should it be defined?
- ISSUE 9** What language should be included in the Agreement to address "changes in law?"
- ISSUE 10** What is the appropriate term of the Agreement?
- ISSUE 11** Should the Agreement take effect if FDN has outstanding amounts due to Sprint?
- ISSUE 12** If Sprint sells or trades all or substantially all of its assets in an exchange or group of exchanges, what terms and conditions should apply?
- ISSUE 13** What terms should apply to an assignment of the Agreement when all or substantially all of the assets of a party are purchased or traded?
- ISSUE 14** What are the appropriate terms for services after the Agreement's end date?
- ISSUE 15** Must Sprint provide notice and give FDN an opportunity to cure before suspending processing orders or terminating service for nonpayment of undisputed bills not paid after the due date? If so, on what terms and conditions?
- ISSUE 16** How long after an invoice is rendered may FDN dispute the invoice, and what are the terms and conditions governing the dispute?

- ISSUE 17** What terms should apply to public statements or press releases referring to either of the parties, their affiliates, or the Agreement?
- ISSUE 18** When should notice sent by certified mail, return receipt requested, be effective?
- ISSUE 19** Should the force majeure provision have an exception as proposed by Sprint?
- ISSUE 20** What are the terms and conditions applicable to the use and reassignment of Sprint's facilities when a new order is submitted?
- ISSUE 21** What are the appropriate terms and conditions applicable to the resale of Contract Service arrangements, Special arrangements, or Individual Case Basis (ICB) arrangements?
- ISSUE 22** What terms and conditions should be included to reflect the FCC's TRO and TRRO decisions?
- ISSUE 23** When should FDN be required to self-certify unbundled network elements (UNEs)? When self-certification is required, how should FDN self-certify?
- ISSUE 24** May Sprint restrict UNE availability where there is not a "meaningful amount of local traffic?" If so, what is a "meaningful amount of local traffic?"
- ISSUE 25** When and how should Sprint make subloop access available to FDN?
- ISSUE 26** Should Sprint be required to provide UNEs or combinations of UNEs on the same rates, terms and conditions as Sprint has provided to another carrier or under a Bona Fide Request (BFR) process and/or ICB pricing? If so, how should the rates, terms and conditions be incorporated into the parties' Agreement?
- ISSUE 27** Under what circumstances must Sprint, at FDN's request, combine and provide individual network elements that are routinely combined in Sprint's network?
- ISSUE 28** How should cooperative testing be conducted and what charges should apply, if any?
- ISSUE 29** What rates, terms and conditions should apply to routine network modifications on UNEs available under the Agreement?
- ISSUE 30** On what rates, terms and conditions should Sprint offer loop conditioning?

- ISSUE 31** Is Sprint obligated to provide Line Information Data Bases (LIDB) and Advanced Intelligent Network (AIN) platform and databases as UNEs under 251 and FCC rules? If so, what are the rates, terms and conditions?
- ISSUE 32** Is Sprint obligated to provide access to other companies' Caller ID with NAME (CNAM) databases as UNEs under 251 and FCC rules? If so, under what rates, terms and conditions?
- ISSUE 33** Should Sprint have a distinct obligation to provide to FDN the necessary UNEs for FDN to provide E911/911 services to government agencies, and if such elements are not available to Sprint, should Sprint have a distinct obligation to offer E911/911 services for resale by FDN to government agencies?
- ISSUE 34** What are the appropriate rates for UNEs and related services provided under the Agreement?
- ISSUE 35** What are the parties' obligations regarding interconnection facilities?
- ISSUE 36** What terms should apply to establishing Points of Interconnection (POI)?
- ISSUE 37** What are the appropriate terms for transport and termination compensation for:
(a) local traffic
(b) non-local traffic
(c) ISP-bound traffic?
- ISSUE 38** What are the appropriate terms for compensation and costs of calls terminated to end users physically located outside the local calling area in which their NPA/NXXs are homes (Virtual NXXs)?
- ISSUE 39** What are the appropriate terms for compensation and costs of calls that are transmitted, in whole or in part, via the public Internet or a private IP network (VoIP)?
- ISSUE 40** What should be each party's obligations for identifying and reporting its Percent Local Usage (PLU) factor, and how should billing be adjusted for a change in factors?
- ISSUE 41** What are each party's obligations for transmitting the calling party number (CPN) for each call being terminated on the other's network?
- ISSUE 42** What are the appropriate terms regarding trunk forecasting?
- ISSUE 43** What are the appropriate terms, conditions and compensation for transit traffic?

- ISSUE 44** In order to obtain transit services from Sprint, should FDN be required to have network and contractual arrangements with all necessary parties?
- ISSUE 45** Should FDN be required to pay Sprint for information on traffic originated by third parties and transited by Sprint to FDN?
- ISSUE 46** If the terminating party requests, and the transiting party does not provide, the terminating party with the originating record in order for the terminating party to bill the originating party, should the terminating party be permitted to default bill the transiting party for transited traffic that does not identify the originating party?
- ISSUE 47** What are the appropriate terms, conditions and compensation for indirect traffic?
- ISSUE 48** Should the Agreement address Sprint's refusing to port numbers of customers whose service has been suspended in light of the FPSC's existing rule regarding number porting? If so, how?
- ISSUE 49** What charges, if any, should apply to a request made by FDN to coordinate conversions after normal working hours, or on Saturdays, Sundays, or Sprint holidays?
- ISSUE 50** Within how many days must FDN pay Sprint's bills?
- ISSUE 51** For what billing records may a party charge the other?
- ISSUE 52** What are the appropriate terms and conditions for collocation to implement FPSC Order No. PSC-04-0895-FOF-TP as amended by PSC-04-0895A-FOF-TP?
- ISSUE 53** What are the appropriate terms and conditions for reclamation of collocation space or reclamation of any other Sprint-provided facility and how should disputes regarding collocation reclamations be resolved?
- ISSUE 54** Should collocation space occupied by FDN constitute CLEC premises or Sprint premises?
- ISSUE 55** What are the appropriate intervals for processing collocation applications?
- ISSUE 56** What should the intervals be for collocation space augments?
- ISSUE 57** Under what conditions, if any, should FDN be responsible for Sprint's extraordinary space preparation and maintenance costs?
- ISSUE 58** When should the 180-day period for placing operational telecommunications equipment in FDN's collocation space begin?

ISSUE 59 Under what circumstances, if any, should FDN be permitted to use cross connect services to connect FDN's equipment in FDN's collocation space to any services or facilities purchased under this Agreement or any other Sprint services, such as special access services purchased under Sprint state and federal tariffs?

ISSUE 60 Under what circumstances should FDN be permitted to access its collocation space without the need for a security escort?

ISSUE 61 If FDN brings hazardous material onto Sprint's premises without notification, or stores or disposes of such materials on Sprint's premises in violation of any applicable environmental law, should FDN have an adequate time to cure before Sprint may terminate the applicable collocation space?