



ORIGINAL

April 9, 2001

Ms. Blanca Bayó, Director  
Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

via Overnight Delivery

Re: Docket No. 010098-TP – Florida Digital Network Interconnection  
Agreement Arbitration Petition Against BellSouth

Dear Ms. Bayó,

Please find enclosed for filing in the captioned docket an original and seven (7) copies of the Motion of Florida Digital Network, Inc. to Amend Arbitration Petition. Note that the First Amended Petition is attached to the Motion as Exhibit A.

Also enclosed, please find a diskette containing a Word for Windows 2000 text file of the Motion and the Amended Petition.

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

Sincerely,

Matthew Feil  
Florida Digital Network  
General Counsel

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 3
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- LEG 1
- OPC \_\_\_\_\_
- PAI \_\_\_\_\_
- RGO \_\_\_\_\_
- SEC 1
- SER \_\_\_\_\_
- OTH \_\_\_\_\_

C: James Meza, III (BellSouth) (by overnight mail)  
Felicia Banks (FPSC) (by overnight mail)  
Mike Sloan (Swidler) (by e-mail, U.S mail)

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DOCUMENT NUMBER-DATE  
04404 APR 10 080623  
FPSC-RECORDS/REPORTING

**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- } Dated: April 9, 2001  
munications, Inc. Under the Telecom- }  
munications Act of 1996 }  
\_\_\_\_\_ }

**MOTION OF FLORIDA DIGITAL NETWORK, INC.,**  
**TO AMEND ARBITRATION PETITION**

Pursuant to Rules 28-106.202 and 28-106.204, Florida Administrative Code, Florida Digital Network, Inc., (“FDN”) hereby moves the designated prehearing officer of the Florida Public Service Commission (“FPSC”) to issue an order permitting FDN to amend FDN’s Petition for Arbitration filed in this docket on January 24, 2001. In support hereof, FDN states as follows:

1. On January 24, 2001, FDN filed its Petition to Arbitrate pursuant to Section 252(b) of the Telecommunications Act of 1996 (“Act”), certain terms and conditions of proposed resale, interconnection and appurtenant agreements between FDN and BellSouth Telecommunications, Inc. (“BellSouth” or “BST”).
2. Both prior and subsequent to the FDN’s filing the Petition, FDN and BellSouth representatives had discussed in the context of interconnection agreement negotiations an unbundled network element (“UNE”) ordering issue that FDN did not include in the Petition. That issue and FDN’s position on that issue are as follows:

DOCUMENT NUMBER-DATE  
04404 APR 10 2001  
FPSC-RECORDS/REPORTING

**Issue:** *Should BellSouth be required to provide FDN a service order option for all voice-grade UNE loops (other than SL-1 and SL-2) whereby BellSouth will (1) design circuits served through an integrated subscriber loop carrier (SLC), where necessary and without additional requirements on FDN, (2) meet intervals at parity with retail service, (3) charge the SL-1 rate if there is no integrated SLC or the SL-2 rate if there is, and (4) offer the order coordination option? (Attachment 2.)*

**FDN position:** *Yes. When FDN submits SL-1 orders, BellSouth issues a firm order confirmation (FOC) with a due date. FDN schedules the due date with the customer, but more than 50% of the time, BellSouth fails to install service by the FOC due date because the loop is served through a SLC rather than by continuous copper from the central office. FDN must then submit an SL-2 order, await a new FOC and reschedule for a later date with the inconvenienced customer, significantly delaying the ordering and provisioning process. Because FDN has no reasonable access to BellSouth's network information to make advanced determination of the presence of SLCs, FDN must submit orders for the more expensive SL-2 service (\$80 v. \$140) in order to avoid delays and associated scheduling problems. FDN should not have to bear added cost and service and business risk for what it cannot know – BellSouth's network design. For FDN to have just, reasonable and nondiscriminatory access to UNEs at parity with the service BellSouth provides itself, BellSouth should be required to provide FDN a third order option other than the SL-1 and SL-2. FDN should be able to order all voice-grade UNE loops the same way whether the loop is served through an integrated SLC or not. Bell should design the circuit where necessary and meet parity due date intervals.*

In the First Amended Petition attached hereto as "Exhibit A," the above issue is included as Issue No. 10.<sup>1</sup>

3. Prior to filing the Petition for Arbitration, FDN believed the parties would be able to readily negotiate a mutually satisfactory resolution of this issue. However, on February 21, 2001, BellSouth informed FDN that the issue could not be resolved in a satisfactory time frame. FDN has not received any information on the issue from BellSouth since that time, and no agreement has been reached. FDN maintains the unresolved issue should be submitted to the FPSC for arbitration and resolution.

4. Inclusion of this issue will not prejudice BellSouth's case since BellSouth has been aware of the issue for some time, the parties discussed the issue before and after the Petition was filed, and addition of the issue will not necessitate any change in the established case schedule, which requires FDN to prefile its direct testimony on June 1, 2001, more than 50 days from now.

5. No substantive rights of BellSouth will be affected by the amendment.

6. The arbitration process is designed for the Commission to resolve issues such as the one presented here. The parties' current interconnection agreement provides a vehicle for Commission resolution of such an issue via the Bona Fide Request Process and expedited Dispute Resolution Procedures. See "Exhibit B" attached hereto.<sup>2</sup>

Whether in this case by amendment of the Petition or in a case for expedited dispute resolution, the Commission will be asked to resolve this issue in roughly the same

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<sup>1</sup> The voluminous draft interconnection agreement is attachment to the original Petition and included in the docket file. The draft is not attached to the First Amended Petition since the only salient change to the original Petition for the instant purpose is the addition of Issue No. 10.

<sup>2</sup> The draft interconnection agreement attached to the Petition contains similar Bona Fide Request and Dispute Resolution provisions.

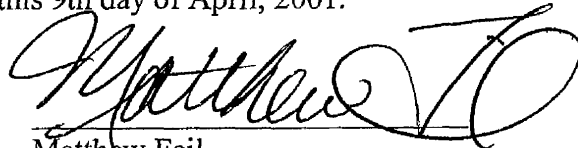
interval if the parties cannot reach an agreement. Thus, administrative economy supports permitting the requested amendment to avoid the inefficient and duplicative efforts inevitable in dual, simultaneous proceedings.

7. Amendments to pleadings, where permitted by rule or order, "shall relate back to the date of the original pleading." E.g., Fla. R. Civ. Pro. 1.190(c). Thus, if permitted by the prehearing officer, the First Amended Petition shall be deemed filed on the date of the original Petition to Arbitrate.

8. The undersigned contacted counsel for BellSouth regarding this motion and reports that BellSouth objects to this motion.

WHEREFORE, FDN respectfully requests that the designated prehearing officer of the FPSC issue an order permitting FDN to amend the Petition for Arbitration to include the issue set forth herein.

RESPECTFULLY SUBMITTED, this 9th day of April, 2001.



Matthew Feil  
Florida Digital Network  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801  
(407) 835-0460

and

Michael C. Sloan  
Michael P. Donahue  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW, Suite 300  
Washington, D.C. 20007-5116  
(202) 424-7500

Attorneys for Florida Digital Network,  
Inc.

Certificate of Service

I hereby certify that a true and complete copy of the foregoing was served on the following by overnight delivery this 9<sup>th</sup> day of April, 2001.

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  
Florida Public Service Comm'n  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850



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Florida Digital Network  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801  
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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- } Dated: April 9, 2001  
munications, Inc. Under the Telecom- }  
munications Act of 1996 }  
\_\_\_\_\_ }

**FIRST AMENDED PETITION OF FLORIDA DIGITAL NETWORK, INC.,  
FOR ARBITRATION WITH BELLSOUTH TELECOMMUNICATONS,  
INC., UNDER THE TELECOMMUNICATIONS ACT OF 1996**

Florida Digital Network, Inc., (“FDN”) hereby petitions the Florida Public Service Commission (“FPSC”) to arbitrate, pursuant to Section 252(b) of the Telecommunications Act of 1996 (“Act”), certain terms and conditions of proposed resale, interconnection and appurtenant agreements between FDN and BellSouth Telecommunications, Inc. (“BellSouth” or “BST”).

**PARTIES**

1. Petitioner FDN’s full name and official business address are as follows:

Florida Digital Network, Inc.  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801

FDN is a Delaware corporation authorized to do business in the State of Florida. FDN has a Certificate of Authority (ALEC Certificate No. 5715) issued by the FPSC that authorizes FDN to provide local exchange service in Florida. FDN is a “telecommunications carrier” and “local exchange carrier” under the Act.

2. The names and addresses of FDN's representatives in this proceeding are as follows:

Matthew Feil  
Florida Digital Network  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801  
(407) 835-0460

and

Michael C. Sloan  
Michael P. Donahue  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW, Suite 300  
Washington, D.C. 20007-5116  
(202) 424-7500

3. BellSouth is a corporation organized and formed under the laws of the State of Georgia, having an office at 675 West Peachtree Street, Atlanta, Georgia, 30375. BellSouth provides local exchange and other services within its franchised areas in Florida. BellSouth is a "Bell Operating Company" and an "incumbent local exchange carrier" ("ILEC") under the terms of the Act.

#### **JURISDICTION**

4. The FPSC has jurisdiction over FDN's Petition under the Act. The negotiation of the FDN-BellSouth Interconnection Agreement commenced August 17, 2000, and by agreement of the parties, this Petition is timely filed.

#### **NEGOTIATIONS**

5. Negotiations have dealt with pricing, resale, unbundled network elements ("UNEs"), interconnection, collocation, rights-of-way, local number portability, business processes, ancillary services, performance measurements and general terms and



conditions. As proposed by FDN, the parties started with the currently effective KMC Telecom-BellSouth Interconnection Agreement as a base document and negotiated changes to be made to it. The parties have been able to resolve a number of the issues raised during the negotiations, but a number of issues remain unresolved. The issues FDN wishes to arbitrate are addressed in the Statement of Unresolved Issues below.

6. A draft of the Interconnection Agreement reflecting the parties' negotiations to date is attached hereto as Exhibit A to the original Petition. Agreed upon language is shown in normal type. Disputed and unresolved language proposed by either party is shown in underlined or cross-out type for the issues identified herein. (In some cases, for recently resolved issues, language is still shown in underlined/cross-out type.) In the Statement of Unresolved Issues and in said Exhibit A, FDN has referenced certain, but not necessarily all, provisions in said Exhibit A relating to each issue. The BellSouth positions listed on the issues below are to the best of FDN's knowledge as of 1:30 p.m. on the date the original Petition was signed.

7. FDN requests the FPSC to approve an Interconnection Agreement between FDN and BellSouth reflecting (i) the agreed upon language in said Exhibit A and (ii) the resolution in this arbitration proceeding of the unresolved issues described below.

## STATEMENT OF UNRESOLVED ISSUES

### ISSUE 1

- Issue:** *Should BellSouth be required to provide FDN just, reasonable and nondiscriminatory access to UNEs such that xDSL service over a UNE loop is available when a customer and number port to FDN local service? (Attachment 2.)*
- FDN position:** *Yes. Such access is technically feasible and is essential to insure competition in the State of Florida.*
- BST position:** *No. The FCC's line sharing order states that the ILEC retains the voice customer in a line sharing arrangement. BellSouth has no plans to provide the "reverse" line sharing FDN requests, but may offer tests for "line splitting" in the future.*

8. FDN collocates its digital loop carrier ("DLC") equipment within BellSouth central offices ("COs") and provisions local dial tone service via UNE loops. Currently, due to BellSouth operations support system ("OSS") limitations, when a UNE loop and telephone number ports to FDN, the customer's BellSouth-provided asymmetric digital subscriber line ("ADSL") service is disconnected. The current BellSouth ADSL OSS does not recognize a number that has been ported to FDN and does not allow ADSL service to continue. It is technically feasible for BellSouth to provide wholesale ADSL service to FDN over a BellSouth UNE loop that FDN utilizes to provide end-user local service. Given the substantial presence and future proliferation of subscriber line carrier devices ("SLCs") deployed to accommodate demand for xDSL services in BellSouth's territories in the State of Florida, competition for local phone service such as that provided by FDN is significantly diminished and will decline if only BellSouth can provide both local dial tone and xDSL services to millions of Florida

consumers. Thus, BellSouth is blocking and will continue to block FDN and other competitive local carriers out of the local telecommunications services market. BellSouth's proposal for "testing" line splitting at some time in the future is a palliative measure. To preserve competition and insure non-discriminatory access to UNEs consistent with the Act, BellSouth should be required, at a minimum, to allow BellSouth wholesale ADSL across a UNE loop ported to FDN.<sup>1</sup>

## ISSUE 2

- Issue:** *What are the appropriate reciprocal compensation rates and should reciprocal compensation payments be made for calls bound to ISPs? (Attachment 3, Section 6.)*
- FDN position:** *The appropriate reciprocal compensation rates are those of the prior agreement, and reciprocal compensation payments should be applicable to calls made from one carrier's customers to the ISP customer of the other carrier.*
- BST position:** *The rates should be as proposed by BellSouth, and reciprocal compensation payments should not be made on calls from one carrier's customers to the ISP customer of the other carrier.*

9. FDN and BellSouth have been negotiating a possible compromise on this issue similar to that included in the KMC-BellSouth Interconnection Agreement but were unable to reach a final resolution prior to the due date for the original Petition. The

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<sup>1</sup> Since FDN has limited knowledge of BellSouth's OSS in this regard, specific proposed language regarding this issue was not drafted with the cooperation of both parties. FDN advised BellSouth that its proposed language would simply state that which is contemplated within the wording of the issue itself. BellSouth opposed FDN's request.

language both parties last considered on this issue is in Attachment 3, Section 6, of Exhibit A to the original Petition.

10. Since no negotiated compromise has been reached, FDN maintains it incurs costs in delivering a call to an ISP and should be compensated appropriately for the service provided. FDN should not be required to deliver traffic originated by BellSouth customers at little or no charge.

11. Most of the states that have addressed this issue, including Florida, have concluded that reciprocal compensation payments should be made on ISP-bound traffic. Each of these states has recognized that it possesses the jurisdiction to direct the payment of reciprocal compensation for ISP-bound traffic absent contrary direction by the FCC. The FPSC in several cases has held that until the FCC issues binding rules, the parties should simply continue to operate under their existing agreements with respect to reciprocal compensation. That is what FDN proposes here.

### ISSUE 3

**Issue:** *Should FDN be consulted on BellSouth's disposition of trouble tickets and not billed for troubles BellSouth cannot identify as being caused by FDN? (Attachment 2, Section 2.2.)*

**FDN position:** *BellSouth should be required to consult FDN on proper dispatching, testing, and closing of trouble tickets, and FDN should not be billed for troubles BellSouth cannot identify as being caused by FDN.*

**BST position:** *BellSouth has not indicated its current position.*

12. For most customer trouble situations, FDN tests its own facilities prior to calling a trouble ticket into BellSouth. In FDN's experience, BellSouth technicians responding to a trouble ticket will test for dial tone only at the central office ("CO")

main frame and not at any other facilities or test points. If there is dial tone at the CO, BellSouth will clear the trouble ticket a) without notifying FDN and b) even though the problem identified on the trouble ticket persists. FDN must then try to reopen the trouble ticket or open a new one to achieve resolution—creating unnecessary delay in problem solving. BellSouth should be required to provide FDN trouble ticket service more at parity with what it provides itself and not be allowed to close a trouble ticket until FDN checks the trouble service BellSouth provided.

13. When BellSouth closes a trouble ticket with a finding of “No Trouble Found” and the problem identified disappears after BellSouth runs a check, FDN maintains BellSouth should not bill FDN where FDN can show the trouble reported did not stem from FDN’s network or facilities.

14. The foregoing FDN proposals regarding trouble tickets are necessary to insure that FDN’s access to UNE loops is on terms and conditions that are just, reasonable and nondiscriminatory under the Act.<sup>2</sup>

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<sup>2</sup> FDN proposed that paragraph 2.2.12 be revised such that “any dispatching and testing (both inside and outside the CO)” as stated should be “as required by BellSouth and FDN in order to confirm the loop’s working status.” FDN also proposed language stating, “Trouble tickets BellSouth resolves with the finding ‘No trouble found’ cannot be cleared without FDN’s validation. Further, FDN shall not be billed for trouble tickets resolved as ‘No trouble found’ where the trouble reported ceases upon Bell’s disposition of the trouble ticket and where FDN can show the trouble reported did not stem from FDN’s network or facilities.” BellSouth has neither accepted nor rejected this language at the time of the original Petition.

#### ISSUE 4

**Issue:** *Where BellSouth cannot meet the required due date for an FDN customer move order (change of location), should FDN be entitled to receive retail BellSouth service to the new customer location at no cost until the move order is executed so the customer does not lose FDN-provided dial tone? (Attachment 2.)*

**FDN position:** *Yes.*

**BST position:** *BellSouth has not indicated its current position.*

15. When an FDN customer changes locations from one address to another, BellSouth must execute a “move order” for FDN. This involves BellSouth’s disconnecting service to the customer’s first location, BellSouth’s provisioning a new UNE loop in the second location and transferring the same customer telephone number to the new loop. In most cases, BellSouth misses the due date for establishing the new UNE loop in the second location. If the customer has already moved and BellSouth has missed the due date, the customer is left without phone service. BellSouth can generally move its retail customers’ service from one location to another in three business days; but BellSouth has not met due dates for FDN move orders well in excess of a three-day interval. To avoid its customers being without service, FDN orders and pays for retail service from the BellSouth business office and then call forwards traffic from the UNE loop in the old location to the Bell-provided retail line.

16. To effectuate parity without penalty to BellSouth, FDN or the customer, FDN maintains that if BellSouth cannot meet the required due date for an FDN move order, FDN should receive retail BellSouth service to the new customer location at no

cost until the move order is executed.<sup>3</sup> FDN would still bear the cost of the UNE loop. FDN's move order proposal is necessary to insure that FDN's access to UNE loops is on terms and conditions that are just, reasonable and nondiscriminatory under the Act.

#### ISSUE 5

- Issue:** *Should BellSouth be required to tag all FDN UNE loops with FDN's name and the circuit ID? (Attachment 2, Section 2.2.4.4.2.)*
- FDN position:** *Yes. FDN maintains this is necessary to minimize the incidence of BellSouth's pulling F2 channel field pair and putting FDN customers out of service.*
- BST position:** *BellSouth only tags UNE loops that require a technician to be dispatched to the customer premises.*

17. With significant frequency, FDN utilized F2 channel field pair have been pulled off at the BellSouth junction box leaving FDN customers without dial tone. BellSouth does not tag the UNE loops in the field with FDN's name and the circuit ID unless it is "required" to dispatch a technician to the customer premises to provision the loop. BellSouth rarely dispatches a technician to the customer premises when executing the cutover of a UNE loop but ordinarily does dispatch a technician to the premises of one of its new retail customers. There are no criteria listed in the draft interconnection agreement for when a technician dispatch is required.

18. FDN maintains that BellSouth should be required to tag all unbundled loops (at no additional cost). Without line tagging in the ordinary course, FDN

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<sup>3</sup> Although drafts of specific language were not exchanged between the parties, FDN informed BellSouth that the language of the issue itself adequately expresses FDN's intent for the interconnection agreement. BellSouth has not directly accepted or rejected this proposal.

customers are at an unreasonable risk of service outages from pulled jumpers.<sup>4</sup> FDN's tagging proposal is necessary to insure that FDN's access to UNE loops is on terms and conditions that are just, reasonable and nondiscriminatory under the Act.

## ISSUE 6

**Issue:** *Should BellSouth be required to test dial tone up to the NID on all UNE SL-1 and SL-2 loops without additional charge? (Attachment 2, Section 2.2.4.4.2.)*

**FDN position:** *Yes. FDN should receive the same testing BellSouth provides its own customers, and such testing would help minimize bad cuts and service calls for both FDN and BellSouth.*

**BST position:** *BellSouth only tests for dial tone up to the NID where a field visit is required to provision the loop.*

19. As stated under the prior issue, while BellSouth rarely dispatches a technician to the customer premises when executing the cutover of a UNE loop, it routinely dispatches a technician to the premises of one of its new retail customers, and there are no criteria for technician dispatches in the draft interconnection agreement. Because BellSouth does not ordinarily test for dial tone up to the customer demarcation point after a cutover, there is significant incidence of BellSouth's leaving a customer without dial tone though reporting a cutover as complete.

20. FDN maintains that BellSouth should be required to test dial tone up to the NID on all UNE SL-1 and SL-2 loops without additional charge. Without such testing in the ordinary course, FDN customers are at an unreasonable risk of bad cuts,

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<sup>4</sup> Although drafts of specific language were not exchanged between the parties, FDN informed BellSouth that the language of the issue itself adequately expresses FDN's intent to be included in the interconnection agreement.



service problems and outages.<sup>5</sup> FDN's testing proposal is necessary to insure that FDN's access to UNE loops is on terms and conditions that are just, reasonable and nondiscriminatory under the Act.

#### ISSUE 7

**Issue:** *Should BellSouth be required to notify FDN prior to changing the loop make-up of any FDN UNE loops? (Attachment 2.)*

**FDN position:** *Yes.*

**BST position:** *BellSouth has not indicated its current position.*

21. BellSouth will change the circuit ID on FDN loops and not notify FDN of the change. When FDN subsequently calls in a trouble ticket on such an altered loop, the circuit ID FDN was given on the original order is not valid. FDN must then research the new ID to properly place a ticket.

22. FDN maintains that BellSouth should be required to notify FDN in advance of changes to FDN UNE loop make-up information. Without such notice, FDN customers are at an unreasonable risk prolonged service problems.<sup>6</sup> FDN's proposal for notice for loop make-up changes is necessary to insure that FDN's access to UNE loops is on terms and conditions that are just, reasonable and nondiscriminatory under the Act.

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<sup>5</sup> Although drafts of specific language were not exchanged between the parties, FDN informed BellSouth that the language of the issue itself adequately expresses FDN's intent to be included in the interconnection agreement.

<sup>6</sup> Although drafts of specific language were not exchanged between the parties, FDN informed BellSouth that the language of the issue itself adequately expresses FDN's intent to be included in the interconnection agreement.

## ISSUE 8

- Issue:** *Should BellSouth be required to allow FDN the option of an FDN-dedicated and funded frame attendant for UNE loop cutovers? (Attachment 2.)*
- FDN position:** *Yes. Since BellSouth has missed appointment rates as high as 40% for some services, FDN's proposal is a reasonable measure to improve service.*
- BST position:** *BellSouth has not indicated its current position.*

23. FDN maintains that BellSouth's missed appointment rates for UNE connection services are unreasonably high and are not at parity with the service BellSouth provides itself. Upon information and belief, BellSouth lacks sufficient manpower to meet all the labor demands on its technicians. FDN has offered to pay for a BellSouth employed technician dedicated to FDN cutovers in an attempt to obtain service closer to parity. To avoid being double charged for labor, the labor component of the UNE non-recurring cutover charges would need to be adjusted if FDN's proposal is approved.

24. To effectuate parity without penalty to BellSouth, FDN maintains that BellSouth should be required to accept an FDN-funded and dedicated frame attendant with appropriate adjustment to the labor component in applicable UNE charges.<sup>7</sup> This FDN proposal is necessary to insure that FDN's access to UNE loops is on terms and conditions that are just, reasonable and nondiscriminatory under the Act.

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<sup>7</sup> On October 12, 2000, BellSouth representative stated they would take the issue under advisement, but BellSouth has not announced a formal position or proposed language. Since FDN has limited knowledge of BellSouth's labor charges and labor controls, FDN did not propose formal language other than the issue itself as an adequate expression of FDN's intent.

## ISSUE 9

- Issue:** *Should the Commission address any unresolved issues between BellSouth and FDN regarding rights-of-way, conduit and pole attachments? (Attachment 8.)*
- FDN position:** *Yes.*
- BST position:** *BellSouth's proposed attachment 8 should be approved.*

25. Prior to the date of the original Petition, the parties' negotiations focused primarily on collocation, interconnection and UNEs. Consequently, the parties have not reached terms on any aspect of Attachment 8 governing rights-of-way, conduit and pole attachments. Accordingly, each term and condition of said Attachment 8 is hereby submitted for resolution by arbitration. FDN should receive access to rights-of-way, conduit and pole attachments on such terms and conditions that are just, reasonable and nondiscriminatory under the Act.

## ISSUE 10

- Issue:** *Should BellSouth be required to provide FDN a service order option for all voice-grade UNE loops (other than SL-1 and SL-2) whereby BellSouth will (1) design circuits served through an integrated subscriber loop carrier (SLC), where necessary and without additional requirements on FDN, (2) meet intervals at parity with retail service, (3) charge the SL-1 rate if there is no integrated SLC or the SL-2 rate if there is, and (4) offer the order coordination option? (Attachment 2.)*
- FDN position:** *Yes. When FDN submits SL-1 orders, BellSouth issues a firm order confirmation (FOC) with a due date. FDN schedules the due*

*date with the customer, but more than 50% of the time, BellSouth fails to install service by the FOC due date because the loop is served through a SLC rather than by continuous copper from the central office. FDN must then submit an SL-2 order, await a new FOC and reschedule for a later date with the inconvenienced customer, significantly delaying the ordering and provisioning process. Because FDN has no reasonable access to BellSouth's network information to make advanced determination of the presence of SLCs, FDN must submit orders for the more expensive SL-2 service (\$80 v. \$140) in order to avoid delays and associated scheduling problems. FDN should not have to bear added cost and service and business risk for what it cannot know – BellSouth's network design. For FDN to have just, reasonable and nondiscriminatory access to UNEs at parity with the service BellSouth provides itself, BellSouth should be required to provide FDN a third order option other than the SL-1 and SL-2. FDN should be able to order all voice-grade UNE loops the same way whether the loop is served through an integrated SLC or not. Bell should design the circuit where necessary and meet parity due date intervals.*

**BST position:** *Unknown at time of the First Amended Petition, other than that BellSouth opposes amendment of the Petition.*


26. FDN's position statement above adequately explains the ordering problem built into BellSouth's system and the draft interconnection agreement. FDN must guess BellSouth's network design if FDN is to order and provision efficiently. FDN maintains that the ordering process that BellSouth currently uses and propose to use under the new interconnection agreement subjects FDN to does not comport with the Telecommunications Act of 1996.

## **REQUEST FOR RELIEF**

WHEREFORE, FDN respectfully requests that the FPSC grant the following relief:

- A. The FPSC should arbitrate the unresolved issues between FDN and BellSouth as specified in the Act.
- B. The FPSC should issue an order directing the parties to submit an FDN-BellSouth Interconnection Agreement reflecting the agreed upon language in Exhibit A to the original Petition and reflecting the resolution of unresolved issues as determined in this arbitration proceeding.
- C. The FPSC should retain jurisdiction of this arbitration until the parties have submitted agreements for approval in accordance with Section 252(e) of the Act.
- D. The FPSC should further retain jurisdiction of this arbitration and the parties hereto until BellSouth has complied with all implementation time frames specified in the arbitrated agreements and those agreements have been fully implemented.
- E. The FPSC should take such other and further actions as it deems appropriate to effectuate resolution of the matters herein.

RESPECTFULLY SUBMITTED, this 9<sup>th</sup> day of April, 2001.

A handwritten signature in black ink, appearing to read "Matthew Feil". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Feil  
Florida Digital Network  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801  
(407) 835-0460

and

Michael C. Sloan  
Michael P. Donahue  
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3000 K Street, NW, Suite 300  
Washington, D.C. 20007-5116  
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Attorneys for Florida Digital Network,  
Inc.

Certificate of Service

I hereby certify that a true and complete copy of the foregoing was served on the following by overnight delivery this 9<sup>th</sup> day of April, 2001.

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  
Florida Public Service Comm'n  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

A handwritten signature in black ink, appearing to read "Matthew Feil", written in a cursive style.

Matthew Feil  
Florida Digital Network  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801  
(407) 835-0460

## MCImetro-BellSouth Florida Interconnection Agreement

EXHIBIT 1BONA FIDE REQUEST PROCESS

1.0 Bona Fide Requests are to be used when MCIIm requests a change to any Services and Elements provided hereunder, including features, capabilities, or functionality.

1.1 A Bona Fide Request shall be submitted in writing by MCIIm and shall specifically identify the required service date, technical requirements, space requirements and/or such specifications that clearly define the request such that BellSouth has sufficient information to analyze and prepare a response. Such a request also shall include, MCIIm's designation of the request as being (i) pursuant to the Telecommunications Act of 1996 or (ii) pursuant to the needs of the business.

1.2 Although not expected to do so, MCIIm may cancel, without penalty, a Bona Fide Request in writing at any time. BellSouth will then cease analysis of the request.

1.3 Within two (2) business days of its receipt, BellSouth shall acknowledge in writing, the receipt of the Bona Fide Request and identify a single point of contact and any additional information needed to process the request.

1.4 Except under extraordinary circumstances, within thirty (30) days of its receipt of a Bona Fide Request, BellSouth shall provide to MCIIm a preliminary analysis of the Bona Fide Request. The preliminary analysis will include BellSouth's proposed price (plus or minus 25 percent) and state whether BellSouth can meet MCIIm's requirements, the requested availability date, or, if BellSouth cannot meet such date, provide an alternative proposed date together with a detailed explanation as to why BellSouth is not able to meet MCIIm's requested availability date. BellSouth also shall indicate in this analysis its agreement or disagreement with MCIIm's designation of the request as being pursuant to the Act or pursuant to the needs of the business. If BellSouth does not agree with MCIIm's designation, it may utilize the Dispute Resolution Process provided in this Agreement. In no event, however, shall any such dispute delay BellSouth's processing of the request. If BellSouth determines that it is not able to provide MCIIm with a preliminary analysis with thirty (30) days of BellSouth's receipt of a Bona Fide Need request, BellSouth will inform MCIIm as soon as practicable. MCIIm and BellSouth will then determine a mutually agreeable date for receipt of the preliminary analysis.



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1.5 As soon as possible, but in no event more than ninety (90) days after receipt of the request, BellSouth shall provide MCIIm with a firm Bona Fide Request quote which will include at a minimum, the firm availability date, the applicable rates and the installation intervals, and a binding price quote.

1.6 Unless MCIIm agrees otherwise, all proposed prices shall be the pricing principles of this Agreement, in accordance with the Act, and any applicable FCC and Commission rules and regulations. Payments for services purchased under a Bona Fide Request will be made as specified in this Agreement, unless otherwise agreed to by MCIIm.

Within thirty (30) days after receiving the firm Bona Fide Request quote from BellSouth, MCIIm will notify BellSouth in writing of its acceptance or rejection of BellSouth's proposal. If at any time an agreement cannot be reached as to the terms and conditions or price of the request, or if BellSouth responds that it cannot or will not offer the requested item in the Bone Fide Request and MCIIm deems the item essential to its business operations, and deems BellSouth's position to be inconsistent with the Act, FCC or Commission regulations and/or the requirements of this Agreement, the Dispute Resolution Process set forth in this Agreement may be used by either Party to reach a resolution.

commercial transactions, compounded daily for the number of days from the date of overpayment to and including the date that payment is actually made. In no event, however, shall interest be assessed on any previously assessed or accrued late payment charges.

22.2 Subject to reasonable security requirements, either Party may audit the books, records and other documents of the other for the purpose of evaluating usage pertaining to transport and termination of local traffic. Where such usage data is being transmitted through CABS, the audit shall be conducted in accordance with CABS or other applicable requirements approved by the appropriate State Commission. If data is not being transferred via CABS, either Party may request an audit for such purpose once each Contract Year. Either Party may employ other persons or firms for this purpose. Any such audit shall take place no later than thirty (30) days after notice thereof to the other Party.

22.2.1 Either Party shall promptly correct any reported usage error that is revealed in an audit, including making payment of any underpayment after the Parties have agreed upon the accuracy of the audit results. Any Disputes concerning audit results shall be resolved pursuant to the Alternate Dispute Resolution procedures described in Section 16 of the General Terms and Conditions and Attachment 1.

22.2.2 The Parties shall cooperate fully in any such audit, providing reasonable access to any and all appropriate employees and books, records and other documents reasonably necessary to assess the usage pertaining to transport and terminating of local traffic.

22.3 This Section 22 shall survive expiration or termination of this Agreement shall for a period of two (2) years after expiration or termination of this Agreement.

### ***Section 23. Dispute Resolution Procedures***

The parties recognize and agree that the Commission has continuing jurisdiction to implement and enforce all terms and conditions of this Agreement. Accordingly, the parties agree that any dispute arising out of or relating to this Agreement that the parties themselves cannot resolve, may be submitted to the Commission for resolution. The parties agree to seek expedited resolution by the Commission, and shall request that resolution occur in no event later than sixty (60) days from the date of submission of such dispute. If the Commission appoints an expert(s) or other facilitator(s) to assist in its decision making, each party shall pay half of the fees and expenses so incurred. During the Commission proceeding each party shall continue to perform its obligations under this Agreement; provided, however that neither party shall be required to

act in any unlawful fashion. This provision shall not preclude the parties from seeking relief available in any other forum.

***Section 24. Bona Fide Request Process for Further Unbundling***

BellSouth shall, upon request of MCI, and to the extent technically feasible, provide to MCI access to its unbundled elements for the provision of MCI's telecommunications service. Any request by MCI for access to an unbundled element that is not already available shall be treated as an unbundled element Bona Fide Request. The parties shall adhere to the process as agreed and described in Exhibit 1.

***Section 25. Branding***

25.1 In all cases in which BellSouth has control over handling of services MCI may provide using services provided by BellSouth under this Agreement, BellSouth shall brand any and all such services at all points of customer contact, exclusively as MCI services, or otherwise as MCI may specify, or be provided with no brand at all, as MCI shall determine. BellSouth may not unreasonably interfere with branding by MCI. If for any reason, BellSouth finds that it is not possible to brand operator services and directory service calls for MCI, BellSouth shall revert to generic unbranding for all local service providers, including itself.

25.2 MCI shall provide the exclusive interface to MCI subscribers, except as MCI shall otherwise specify. In those instances where MCI requires BellSouth personnel or systems to interface with MCI subscribers, such BellSouth personnel shall identify themselves as representing MCI, or such brand as MCI may specify, and shall not identify themselves as representing BellSouth or any other entity, and shall refrain from marketing BellSouth, directly or indirectly, to MCI subscribers.

25.3 BellSouth shall distribute to MCI subscribers materials provided by MCI. Such materials shall be prepared by MCI and provided in sufficient quantities to BellSouth at MCI's cost. All forms, business cards or other business materials furnished by BellSouth to MCI subscribers shall be provided by MCI unless otherwise agreed by MCI, in its sole discretion, in which case, any such customer materials shall be subject to MCI's prior review and approval, and shall bear no corporate name, logo, trademark or trade names other than MCI or its Affiliates or such other brand as MCI, in its sole discretion, shall determine. If, however, the technician does not have a company specific card available at the time services are performed, the BellSouth technician shall use a generic card. Neither BellSouth's vehicles nor its technicians shall be required to bear the MCI logo.