

December 6, 2001

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

via Overnight Mail

Re: Docket No. 990649A-TP – Investigation into Pricing of Unbundled Network Elements

Dear Ms. Bayó,

Please find enclosed for filing in the above docket an original and seven (7) copies of the Prefiled Rebuttal Testimony and Exhibit of Michael P. Gallagher. Also enclosed is a diskette containing a Word file of the prefiled testimony.

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

Sincerely,



Matthew Feil  
Florida Digital Network  
General Counsel

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into Pricing of )  
Unbundled Network Elements )  
\_\_\_\_\_ )

Docket No. 990649A

**REBUTTAL TESTIMONY OF MICHAEL GALLAGHER**

**ON BEHALF OF**  
**Florida Digital Network, Inc.**

**December 7, 2001**

DOCUMENT NUMBER-DATE

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1 **Q. Please state your name and business address for the record.**

2 A. My name is Michael Gallagher. My current business address is 390 N.  
3 Orange Avenue, Suite 2000, Orlando, Florida 32801.

4 **Q. By whom are you employed and what is your position?**

5 A. I am employed by Florida Digital Network, Inc. ("FDN"). I am FDN's  
6 founder and serve as the company's President and Chief Executive Officer.

7 **Q. What are your responsibilities as CEO of FDN?**

8 A. As CEO of FDN, I am ultimately responsible to the shareholders for all  
9 aspects of FDN's operations and performance. I am involved in the day-to-  
10 day business dealings of the company and the decision-making on everything  
11 from marketing and sales strategies, product development, network  
12 architecture and deployment, financing, human resources, customer care,  
13 regulatory changes, etc.

14 **Q. Please describe your education and your work experience in the**  
15 **telecommunications sector.**

16 A. I received a B.S. Degree in Mathematics with a minor in Physics from  
17 Rollins College. Prior to co-founding FDN in 1998, I served as Regional  
18 Vice President for Brooks Fiber Communications where I had overall  
19 responsibility for operations, engineering, finance and sales in the State of  
20 Texas. Brooks Fiber Communications merged into WorldCom on January  
21 31, 1998. Prior to holding the VP position at Brooks, I was President of  
22 Metro Access Networks (MAN), a second-generation Texas CLEC founded  
23 in 1993. At MAN, I developed all business strategies, designed network

1 architecture, secured contracts with the company's original customer base,  
2 and had overall responsibility for operations and performance. MAN merged  
3 into Brooks Fiber in March 1997. Prior to MAN, I worked for Intermedia  
4 Communications and Williams Telecommunications Group (WilTel) as sales  
5 representative, securing contracts with large commercial customers.

6 **Q. Have you previously testified before this Commission?**

7 A. Yes, I have testified in Docket No. 010098-TP (FDN's arbitration of an  
8 interconnection agreement with BellSouth) and in Docket No. 960786-TL  
9 (BellSouth's § 271 case).

10 **Q. Please describe Florida Digital Network.**

11 A. FDN is a Florida-focused, full-service, facilities-based provider of local,  
12 interexchange, and advanced telecommunications services. FDN offers voice  
13 services, dial-up and dedicated data services, and, through an affiliate,  
14 Internet and other enhanced services. FDN was founded in 1998 with the  
15 mission of offering bundled service packages (local, long distance and  
16 Internet) to small- and medium-sized businesses. FDN launched operations  
17 in Orlando, Fort Lauderdale and Jacksonville in 1999, and in West Palm  
18 Beach, Miami and the Tampa Bay area in the first quarter of 2000. FDN  
19 provides service to these markets with its own Class 5 Nortel DMS-500  
20 central office switches, which it connects to end-users through collocated  
21 facilities at more than 100 BellSouth wire centers, and through the purchase  
22 of unbundled network elements (UNEs) from ILECs such as BellSouth.  
23 Based upon information provided by BellSouth, FDN is the largest procurer

1 of UNE voice-grade loops from BellSouth in Florida. FDN does not at this  
2 time provide service using the UNE platform or resold services.

3 **Q. What is the purpose of your rebuttal testimony in this proceeding?**

4 A. My rebuttal testimony will demonstrate that BellSouth, through its cost study  
5 filed on September 24, 2001 and revised on October 8, 2001, and its direct  
6 testimony filed on November 8, 2001, fails to offer a reasonable, workable  
7 solution to address the present inability of competitive carriers to offer xDSL  
8 services where BellSouth has deployed Digital Loop Carriers (“DLCs”).  
9 Many of the bases for my rebuttal testimony in this case are closely related  
10 to, and are addressed more extensively in, the direct testimony I submitted to  
11 the Commission in Docket No. 010098-TP, in which FDN is seeking an  
12 arbitration award that would require BellSouth to offer xDSL loops with  
13 unbundled packet switching. Rather than repeating all of those arguments  
14 here, I have attached a copy of pertinent excerpts of my direct testimony from  
15 the arbitration as Exhibit \_\_\_ (MPG-1), and I will refer to that exhibit in  
16 this testimony as my “Arbitration Testimony.”

17 The Commission must carefully consider the technical and pricing  
18 matters at issue in this docket if it is to require BellSouth to offer new UNEs  
19 that would enable competitive carriers to provide xDSL services where  
20 BellSouth has deployed Digital Loop Carriers (DLCs). As set forth in my  
21 Arbitration Testimony, BellSouth’s DLC-dominated network architecture in  
22 Florida deprives ALECs of the opportunity to provide xDSL-based services  
23 to end-users and, therefore, the Commission should establish an end-to-end

1 xDSL UNE loop, including digital subscriber line access multiplexer  
2 (DSLAM) functionality and transport, that would permit FDN to provide  
3 xDSL-based services. If the Commission grants FDN's request in Docket  
4 No. 010098 or if the Commission approves a new UNE or UNEs of a similar  
5 nature in any other proceeding, reasonable TELRIC-based prices for such  
6 new UNE or UNEs will need to be established in this docket.

7 **Q. Why do BellSouth's DLCs preclude ALECs from offering DSL service?**

8 A. DSL transmissions must be multiplexed into packetized data bits before the  
9 data streams can be aggregated on high-volume transmission facilities bound  
10 for the Internet. In the classic DSL model, this multiplexing is done by a  
11 DSLAM located in the central office. However, where DLCs are deployed as  
12 a break in the transmission path, this DSLAM function must be performed at  
13 the remote terminal. Therefore, the carrier must locate at the remote terminal  
14 a DSLAM or, in the case of Next Generation Digital Loop Carriers  
15 ("NGDLCs"), DSL-capable line cards that perform DSLAM functionality. In  
16 my Arbitration Testimony, I explained why ALECs, unlike BellSouth, cannot  
17 viably collocate DSLAMs or line cards at remote terminals. Therefore,  
18 BellSouth today is the only carrier in Florida able to offer DSL service where  
19 its DLCs are deployed.

20 **Q. Why is it important for the Commission to ensure that ALECs are able  
21 to provide xDSL service where BellSouth has deployed DLCs?**

22 A. DSL is the only widely available technology that enables a consumer to  
23 achieve high-speed data service over their existing copper telephone lines.

1           However, the development of competitive DSL services in BellSouth's  
2           region in Florida is thwarted by the fact that approximately 90% of  
3           BellSouth's Florida access lines now pass through DLCs. Therefore, the  
4           BellSouth region in Florida is effectively closed to DSL competition. As I  
5           explained in my Arbitration Testimony, FDN's inability to offer DSL  
6           services also undermines its viability in the voice services market, as  
7           customers increasingly are demanding bundled service offerings. The  
8           competitive disadvantages already suffered by ALECs will be magnified  
9           significantly if BellSouth obtains interLATA authority in Florida and thereby  
10          becomes the only carrier that can offer one-stop shopping of local,  
11          interexchange and DSL services on a ubiquitous basis.

12   **Q.    What are the components of a "hybrid copper/fiber xDSL-capable**  
13   **loop?"**

14   A.    There are three components in any hybrid copper/fiber loop. The first two  
15   components are subloops: (1) the copper subloop between a remote terminal  
16   and a customer ("distribution"), and (2) the fiber subloop between a remote  
17   terminal and a central office ("feeder"). The third component is the DLC that  
18   connects the two subloops, together with any supporting equipment necessary  
19   to perform whatever switching functions may be required based upon the  
20   nature of the transmission. For circuit-switched voice traffic, this third  
21   component includes voice-grade DLC line cards that are used to pass the  
22   transmission from the distribution to the feeder. To be "xDSL-capable,"  
23   however, the DLC component must either include DSL-capable line cards or,

1 if such cards are not supported by the DLC system, a DSLAM. The DSL line  
2 card or DSLAM performs packet switching functionality at the remote  
3 terminal so that it is possible to transmit the DSL-based services between the  
4 distribution pairs and the feeders.

5 **Q. Does the term “hybrid copper/fiber x-DSL capable loop” appropriately**  
6 **capture the definition of the new UNE that is needed to enable ALECs to**  
7 **offer xDSL services in BellSouth’s Florida territory?**

8 A. No. The “hybrid copper/fiber” terminology would not completely serve the  
9 Commission’s purpose. In addition to BellSouth’s millions of fiber-fed DLC  
10 loops, approximately 1.2 million of BellSouth’s access lines in Florida pass  
11 through DLCs that use copper feeders, and could be described as “hybrid  
12 copper/copper” loops. For purposes of DSL services, these aggregated  
13 copper feeders are no different from fiber feeders; the DSL traffic still must  
14 be multiplexed at the remote terminal. The Commission should, therefore,  
15 use a terminology that includes unbundled packet switching and that is not  
16 dependent upon a particular type of infrastructure.

17 **Q. Why is unbundled packet switching a necessary component of an xDSL-**  
18 **capable DLC loop?**

19 A. DSL transmissions must be converted into packetized data bits at the DLC.  
20 Therefore, for a DLC loop to be xDSL-capable, packet switching must be  
21 performed by a DSL line card or DSLAM at the remote terminal. To provide  
22 xDSL service, ALECs must be able to purchase this functionality on an  
23 unbundled basis as part of any loop that passes through a DLC.



1 **Q. Would any purpose be served by the creation of a new hybrid UNE loop**  
2 **that did not include unbundled packet switching?**

3 A. No. Consideration of a “new” hybrid UNE loop without unbundled packet  
4 switching would serve no purpose, since BellSouth is already required by  
5 federal rules to provide unbundled access to feeder and distribution subloops,  
6 and the Commission is already establishing rates and terms for these subloop  
7 elements in this docket.

8 **Q. How has BellSouth defined “hybrid copper/fiber xDSL-capable loop” in**  
9 **its testimony and its cost study?**

10 A. BellSouth’s proposal unbundles only one of the three necessary components  
11 of a hybrid copper/fiber xDSL-capable loops. Its proposal includes the  
12 distribution subloop in the manner that I have described in my testimony  
13 above. However, BellSouth would require ALECs to purchase their own  
14 dedicated network feeder and packet switching facilities, rather than offering  
15 unbundled packet switching and feeder transport as part of a single wholesale  
16 “loop.” Because BellSouth would require ALECs to purchase an entire 16-  
17 port DSLAM, rather than a port on a common DSLAM, the ALEC is forced  
18 to purchase capacity sufficient for 16 customers, rather than one at a time.  
19 Similarly, BellSouth would require an ALEC to purchase the full capacity of  
20 a DS1 feeder, which can also support approximately 16 customers.  
21 BellSouth’s offer is the opposite of unbundling, as it would force ALECs to  
22 purchase capacity for approximately 16 customers at a time, even if an ALEC  
23 wants to serve only a single customer in a given remote terminal serving area.

1 **Q. Can BellSouth's proposed offering be properly described as a "loop?"**

2 A. No. A loop is a transmission path between the central office and the loop  
3 demarcation point at the customer premises, and includes all features,  
4 functions, and capabilities of the transmission facilities. BellSouth's  
5 proposal, by contrast, would require an ALEC to purchase entire network  
6 facilities that are designed to serve numerous end-users, rather than the  
7 option of purchasing a single line. When FDN purchases voice grade UNE  
8 loops, it buys only the transmission path between its customer and the central  
9 office, at a rate based upon the long-run incremental cost to BellSouth of  
10 providing the single line. Similarly, to provide DSL services to individual  
11 customers, FDN seeks to purchase xDSL-capable loops; BellSouth would,  
12 instead, make it purchase a network.

13 **Q. Can BellSouth's proposed offering be properly described as offering**  
14 **unbundled packet switching?**

15 A. No. Unbundled packet switching should mean that an ALEC could purchase  
16 the switching that it needs, not that the ILEC would offer to sell the ALEC its  
17 own switch. For example, when BellSouth provides unbundled switching for  
18 voice services, either as a stand-alone UNE or as part of the UNE Platform, it  
19 cannot simply offer to sell to each ALEC its own dedicated Class 5 switch;  
20 instead, the switching is sold based on incremental usage of BellSouth's  
21 switching facilities.

1   **Q.    Would it be consistent with TELRIC for BellSouth to require ALECs to**  
2       **purchase DSLAM and fiber infrastructure in bulk, rather than on a line-**  
3       **at-a-time basis?**

4    A.    No. As I understand it, TELRIC is based upon the incremental cost of  
5        providing the additional service. BellSouth's proposal would exceed  
6        TELRIC standards by forcing ALECs to purchase greater capacity than is  
7        needed to provision service to its customers, thereby precluding ALECs of  
8        the benefit of the economies of scale of the BellSouth network. Through its  
9        unnecessary requirement that ALECs purchase their own DSLAMs and DS1  
10       feeders even to serve a single customer, BellSouth's proposal would deny  
11       ALECs the ability to share in BellSouth's economies of scale and would  
12       thereby ensure that ALECs would have a significantly higher average unit  
13       cost for a particular facility than would BellSouth, which has a significantly  
14       larger output and customer base over which to spread its fixed cost.  
15       Economies of scale lower the incumbent's per-customer costs of providing  
16       service. ALECs must have access to the same technologies and economies of  
17       scale and scope that are available to ILECs. To compete effectively with the  
18       ILEC for the same customers, ALECs must be able to attain similar  
19       economies of scale. By denying ALECs the benefits of economies of scale  
20       and forcing them to purchase excess capacity, BellSouth's proposal  
21       controverts basic TELRIC principles.

1 **Q. Where it has deployed DLCs, does BellSouth require ALECs purchasing**  
2 **voice-grade loops to purchase their own dedicated DLC line cards and**  
3 **DS1 feeders?**

4 A. No. Regardless of whether BellSouth's voice grade loops pass through DLCs  
5 or not, it sells an end-to-end loop at the single standard UNE loop rate  
6 calculated by the Commission. These rates represent the average long-run  
7 incremental cost of providing individual voice-grade loops.

8 **Q. Is BellSouth's proposed rate structure for hybrid loops fair, just and**  
9 **reasonable?**

10 A. No. If the Commission required BellSouth to offer "hybrid copper-fiber  
11 xDSL-capable loops," but only in the manner and at the rates proposed by  
12 BellSouth, FDN would remain completely unable to offer xDSL service  
13 where BellSouth has deployed DLCs. First, the rates proposed by BellSouth  
14 are clearly and completely non-viable. Second, even if the rates were  
15 reduced dramatically, FDN would remain impaired because BellSouth's  
16 proposed hybrid service would, at best, be available only after substantial  
17 delays and/or special construction charges or, at worst, not at all.

18 In my Arbitration Testimony, I demonstrated that it is impossible for  
19 FDN to incur the costs of placing its own *dedicated* DSLAMs and DS1  
20 feeders in every one of BellSouth's 12,000 RT serving areas where it hopes  
21 to provide service. Further, as FDN proved in the arbitration (through late-  
22 filed exhibit 13), even if FDN collocated an 8-port DSLAM, the cash flow on  
23 such a project would be negative before depreciation and return on

1 investment. This is why FDN has advocated unbundled access to  
2 BellSouth's facilities. BellSouth has proposed adoption of the very cost  
3 structure that I demonstrated could not be viable, in which every ALEC  
4 would be required to place redundant dedicated facilities at every  
5 neighborhood remote terminal. The rates proposed by BellSouth in this  
6 proceeding are so clearly and completely non-viable for competitors that they  
7 illustrate why BellSouth's proposal is economically unrealistic, and that  
8 ALECs will remain impaired unless they are able to obtain unbundled access  
9 to a UNE platform that includes packet switching and the feeder and  
10 distribution subloops.

11 **Q. Please explain your assessment that BellSouth's proposed rates are**  
12 **"clearly and completely non-viable."**

13 A. BellSouth's proposed rates are far too high to enable FDN to use the hybrid  
14 loop offering to profitably provide xDSL service to Florida consumers.  
15 BellSouth's proposed rates are even significantly higher per customer than  
16 BellSouth's *retail* rate for DSL-based high-speed Internet services -- in some  
17 cases, by hundreds of dollars per month per customer. FDN would obviously  
18 be unable to offer xDSL services if it had to pay BellSouth more for just one  
19 of the many underlying components of this service than the total amount it  
20 could charge for its own retail service in the competitive market. In many  
21 cases, FDN would be paying to BellSouth an average of \$100-300 per line or  
22 more and, in some cases, even in excess of \$1240 for a line, while BellSouth  
23 is offering its own retail service for less than \$50.

1 **Q. Please describe BellSouth's retail charges for its xDSL-based services.**

2 A. Through its ISP, BellSouth sells its DSL-based FastAccess Internet Service to  
3 residential customers for \$49.95, or for \$45 if purchased bundled with certain  
4 other BellSouth services. These prices include Internet access and content  
5 service, email accounts, 10MB for personalized web pages, a newsgroup  
6 account and other typical features offered by ISPs. In addition, BellSouth's  
7 rates should reasonably be expected to include its recovery of the costs of  
8 providing retail service, such as advertising, customer service, and billing.

9 **Q. What portion of BellSouth's \$45-50 retail charge for DSL-based services**  
10 **is attributable to its wholesale costs of providing DSL transport and**  
11 **packet switching through DLC loops?**

12 A. Of the \$45-50 retail charge, approximately \$21 could be attributed to Internet  
13 and enhanced services, as BellSouth sells these separately for \$20.95 per  
14 month. Another couple of dollars per month are attributable to the costs of  
15 providing transport from the central office to an Internet connection point.  
16 Using the Commission's resale discount rates as a proxy, approximately 16-  
17 22% of the remaining costs are attributable to retail costs such as advertising,  
18 customer service and billing. Therefore, the portion of its \$45-50 retail charge  
19 attributable to the DLC loop and DSLAM packet switching should be in the  
20 approximate range of \$16-22. Further, BellSouth's rates for the DLC loop  
21 with packet switching should be measurably less than \$33 per month, which  
22 is the rate in BellSouth's FCC tariff for DSL transport sold to ISPs to provide  
23 service to BellSouth's voice customers ("wholesale ISP rate"). This

1 wholesale ISP service is more expensive to provide than DLC loops alone  
2 because it includes connectivity from the central office to a single connection  
3 point in each LATA. Therefore, the Commission should view with great  
4 skepticism any BellSouth rate for DLC loops that exceeds \$25.

5 **Q. How did you determine that the rates offered in BellSouth's proposed**  
6 **cost study exceed BellSouth's retail and wholesale ISP rates for xDSL**  
7 **loops?**

8 A. Using the rates proposed by BellSouth, I calculated the monthly recurring  
9 charges that would be assessed to FDN in Zones 1 and 3 at each remote  
10 terminal at which it ordered hybrid loops. The BellSouth proposal includes  
11 three groups of charges. The first assesses monthly recurring charges for a  
12 16-port DSLAM, which FDN would incur upon initiating service to its first  
13 customer in each RT serving area and again every 16 customers thereafter.  
14 The second charge is for each dedicated DS1 provided to FDN, which I have  
15 estimated to be sufficient for up to 16 DSL lines. The third type of charge,  
16 the per line activation recurring charge, appears to represent the charge for  
17 the distribution subloop, and is applied based upon the number of active  
18 customers turned up by FDN. To calculate the real world meaning of these  
19 proposed charges to FDN, I added together the total charges that would apply  
20 based upon a range of possible customer combinations, and then determined  
21 the average charge per customer that would apply.

22 **Q. What did you determine from your calculations?**

1 A. In short, providing viable service using BellSouth's proposed rates is  
2 economically impossible, even before considering FDN's own costs of ISP  
3 services and retail support. My calculations demonstrate that BellSouth's  
4 proposed charges would, in every circumstance, exceed not only BellSouth's  
5 wholesale ISP rate, but also its residential retail rate for xDSL-based services.  
6 Even in Zone 1, the least expensive zone, BellSouth's charges for the  
7 provision of service to a single customer would be almost \$700 per month.  
8 On top of this \$700 charge, FDN would incur the costs of providing Internet  
9 services, transport from the central office to the Internet, and the costs of  
10 providing retail service. While the cost per customer would decrease  
11 somewhat as FDN obtained more customers to fill up the 16 ports on the  
12 DSLAM that BellSouth had dedicated to FDN, even if an ALEC happened to  
13 need exactly 16 lines in every remote-terminal serving area where it had  
14 customers wishing to purchase DSL, BellSouth's per customer charges would  
15 still be \$52.68 in Zone 1 up to \$109.44 in Zone 3. Moreover, if the ALEC  
16 obtained a 17<sup>th</sup> customer, its per customer costs would increase dramatically  
17 again because it would need to purchase an additional DSLAM and DS1  
18 feeder. Therefore, no matter what number of customers FDN had, and no  
19 matter how efficiently FDN could provide service, it would lose money under  
20 BellSouth's proposed rates.

21 **Q. Please state the remainder of your calculations.**

22 A. I calculated the following average charges per customer using BellSouth's  
23 proposed rates:



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**Figure 1: Zone 1 Average Monthly Recurring Charges Per Subscriber Under BellSouth's Proposal**

<b>Number of Customers in ZONE 1 RT Serving Area</b>	<b>DSLAM Monthly Charges</b>	<b>DS1 Monthly Charges</b>	<b>Distribution Subloop Monthly Charges</b>	<b>Total Monthly Recurring Charges</b>	<b>Average Monthly Cost Per Subscriber</b>
1	\$ 524.37	\$ 149.48	\$ 10.56	\$ 684.41	\$ 684.41
2	\$ 524.37	\$ 149.48	\$ 21.12	\$ 694.97	\$ 347.49
4	\$ 524.37	\$ 149.48	\$ 42.24	\$ 716.09	\$ 179.02
8	\$ 524.37	\$ 149.48	\$ 84.48	\$ 758.33	\$ 94.79
12	\$ 524.37	\$ 149.48	\$ 127.72	\$ 800.57	\$ 66.71
16	\$ 524.37	\$ 149.48	\$ 168.96	\$ 842.81	\$ 52.68
17	\$ 1048.74	\$ 298.96	\$ 179.52	\$ 1527.22	\$ 89.84
32	\$ 1048.74	\$ 298.96	\$ 337.92	\$ 1685.62	\$ 52.68

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**Figure 2: Zone 3 Average Monthly Recurring Charges Per Subscriber Under BellSouth's Proposal**

<b>Number of Customers in ZONE 3 RT Serving Area</b>	<b>DSLAM Monthly Charges</b>	<b>DS1 Monthly Charges</b>	<b>Distribution Subloop Monthly Charges</b>	<b>Total Monthly Recurring Charges</b>	<b>Average Monthly Cost Per Subscriber</b>
1	\$ 794.60	\$ 419.71	\$ 33.55	\$ 1247.86	\$ 1247.86
2	\$ 794.60	\$ 419.71	\$ 67.10	\$ 1281.41	\$ 640.71
4	\$ 794.60	\$ 419.71	\$ 134.20	\$ 1348.51	\$ 337.13
8	\$ 794.60	\$ 419.71	\$ 268.40	\$ 1482.71	\$ 185.34
12	\$ 794.60	\$ 419.71	\$ 402.60	\$ 1616.91	\$ 134.74
16	\$ 794.60	\$ 419.71	\$ 536.80	\$ 1751.11	\$ 109.44
17	\$ 1589.20	\$ 839.42	\$ 570.35	\$ 2998.97	\$ 176.41
32	\$ 1589.20	\$ 839.42	\$ 1073.60	\$ 3502.22	\$ 109.44

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2 **Q. If the rates for UNEs are based upon TELRIC, why are you comparing**  
3 **BellSouth's proposed rates with its retail rates?**

4 A. My comparison between BellSouth's retail rates and its proposed hybrid  
5 loop/network rates demonstrates several key points. First, it illustrates  
6 clearly that BellSouth's proposed scheme of separate DSLAMs and feeders  
7 for each ALEC at each of BellSouth's 12,000 remote terminals would not be  
8 a cost effective or viable means of ensuring competition for xDSL services.  
9 Second, it demonstrates that CLECs would remain impaired if BellSouth's  
10 proposed rate structure were adopted. Therefore, a detailed TELRIC analysis  
11 of BellSouth's current hybrid loop study would not appear to be warranted;  
12 instead, the Commission should reject the study and require BellSouth to file  
13 a new cost study that offers xDSL loops, including unbundled packet  
14 switching and transport between the customer and the central office, on a per  
15 loop basis.

16 **Q. If, hypothetically, ALECs collocated their own DSLAMs at BellSouth's**  
17 **remote terminals and secured their own dedicated transport to the**  
18 **central office, either through BellSouth's hybrid loop offering or on their**  
19 **own, how many xDSL customers could they realistically hope to**  
20 **subscribe?**

21 A. While the results would vary by ALEC and market, an ALEC could not  
22 reasonably expect (in its early years of operations) to obtain a "take rate" of  
23 more than a small, single-digit percentage of the total possible market for

1 DSL service. Most of BellSouth's 12,000 remote terminals serve a small  
2 number of customers, some as few as a hundred lines. Therefore, as  
3 demonstrated in my calculations above, the rates proposed by BellSouth  
4 would be so prohibitively expensive as to never make economic sense given  
5 the few customers that any given ALEC might serve from an individual  
6 remote location.

7 **Q. Would the use of shared DSL facilities by each carrier be more efficient**  
8 **than the use of separate, dedicated facilities?**

9 A. Yes. The aggregation of all ILEC and ALEC traffic through shared  
10 DSLAMs would be the best way to ensure efficiency not only for ALECs,  
11 but also for BellSouth. If each carrier used its own facilities, there would be  
12 a much less efficient allocation of DSL ports. For example, if BellSouth had  
13 seven DSL customers at an RT, and three ALECs had four, two, and two  
14 customers, respectively, it would be much more efficient for the four carriers  
15 together to use 15 ports on one 16-port DSLAM than to use less than 25% of  
16 the total capacity of four separate DSLAMs. The higher utilization rate  
17 resulting from shared use will enable all carriers to reduce their per customer  
18 costs and thereby lower their retail prices. Even more significantly, pooling  
19 the DSL needs of all carriers could generate sufficient demand to enable the  
20 use of higher-capacity facilities, such as 96-port DSLAMs or DS3 feeders,  
21 which are more efficient and cost-effective if utilized sufficiently. These  
22 higher-capacity facilities are more efficient and would yield lower per  
23 subscriber costs. Shared facilities would reduce costs for both ALECs and

1           BellSouth, and would increase the deployment of broadband to Florida  
2           consumers and businesses.

3   **Q.    Could the establishment of an unbundled xDSL loop in the manner that**  
4   **you have proposed inhibit BellSouth's ability to offer broadband services**  
5   **in Florida?**

6   A.    No. While diversity of facilities in some cases promotes innovation and  
7           diverse service offerings, the space and infrastructure resources at most  
8           remote terminals is insufficient to support it. Aggregation of ALEC and  
9           BellSouth traffic onto the same DSLAMs and feeders will lead to the most  
10          efficient use of these limited resources, thereby reducing costs to consumers  
11          and making it more likely that carriers will be able to justify having DSL  
12          capability in a greater number of areas. In addition, the development of  
13          competitive service offerings will lead to lower prices and a higher overall  
14          penetration rate for DSL subscription. Falling costs and prices should lead to  
15          an increase in subscribership that would in some remote terminal areas justify  
16          the installation of higher capacity facilities, such as 96-port DSLAMs and  
17          DS3 feeders, the benefits of which I have discussed above. Therefore, the  
18          availability of unbundled xDSL loops with packet switching will encourage,  
19          not stifle, broadband deployment in Florida.

20   **Q.    Are there any other reasons that the use of shared DSL facilities at**  
21   **remote terminals would promote DSL competition?**

22   A.    Yes. If each carrier has separate DSL facilities at the remote terminal,  
23          consumers would not be able to enjoy the benefits of line sharing (voice and

1 ADSL services from separate carriers on the same line) unless all voice and  
2 data CLECs placed facilities at the remote terminal and established cross-  
3 connections to BellSouth and with each other. The installation of cross-  
4 connection facilities will be difficult in the inaccessible and cramped  
5 conditions of most remote terminals, and will further drain limited remote  
6 terminal space and resources. The rates and terms for the provisioning of  
7 these cross-connect facilities could be expensive and cumbersome. In a  
8 separate facilities architecture, the distribution pair from the customer  
9 carrying both voice and data traffic would terminate at the data carrier's  
10 DSLAM, which would only be connected to that carrier's dedicated feeder  
11 facilities. Cross-connects would, therefore, need to be established to transmit  
12 the voice traffic to the voice carrier's facilities. However, carriers not  
13 offering DSL would likely not have facilities collocated at the remote  
14 terminal to receive voice traffic in this manner. Their additional demand for  
15 remote terminal space and infrastructure will only further exacerbate the  
16 resource scarcity I have described and, in many cases, it will not be possible  
17 to accommodate. Therefore, Florida consumers could often be denied the  
18 ability to select different carriers to provide voice and data services on the  
19 same telephone line.

20 **Q. Would a shared facilities model make it easier for a customer to select**  
21 **different carriers to provide voice and data services on the same**  
22 **telephone line?**

1 A. Yes. Under a shared facilities model, the common remote terminal DSLAM  
2 would be connected to the common feeder facilities bound for the central  
3 office. Therefore, the voice traffic could be routed over this common feeder  
4 and then transmitted to the central office, where it could be received by the  
5 voice carrier in the same manner that it receives traffic from other BellSouth  
6 UNE loops. Carriers providing only voice services would not be required to  
7 locate facilities at the remote terminal, and additional cross-connect facilities  
8 at the remote terminal would not be needed.

9 **Q. Would a shared facilities model promote competition in other ways?**

10 A. Yes. As another example, in a shared facilities architecture, it would be  
11 much easier to permit customers to switch DSL providers with minimal  
12 disruption and cost. First, if all carriers were using the same DSLAM, it  
13 would be far less likely that the customer would be required to make  
14 significant changes to its modems and software. Second, the technical work  
15 to complete a carrier change request could be completed by a simple  
16 conversion at the central office. By contrast, under BellSouth's proposed  
17 plan, the customer's distribution pair would be wired to a particular carrier's  
18 facilities at the remote terminal, and the conversion would need to be  
19 performed there. Cutovers performed at one of BellSouth's approximately  
20 200 central offices would require only a few minutes of work. However, if  
21 cutovers must be performed at BellSouth's remote terminals, it is more likely  
22 that the conversion could be delayed due to the difficulty in traveling to and  
23 obtaining access to the correct facility. It is not even clear that BellSouth

1 would be willing to perform such cutovers, or whether it would simply  
2 require the customer to cancel their existing service and then order a new  
3 connection. The more difficult it is for consumers to take advantage of  
4 competitive choices, the less likely it is that the benefits of competition will  
5 develop.

6 **Q. Mr. Kephart of BellSouth testifies that the DSLAM portion of the DLC**  
7 **loop offering is exempt from unbundling requirements under the four-**  
8 **part test established in the UNE Remand Order. Do you agree?**

9 A. No. As I demonstrated in my Arbitration Testimony, the Florida  
10 Commission can and should order BellSouth to offer unbundled xDSL loops  
11 with unbundled packet switching because, without such relief, ALECs'  
12 ability to offer xDSL services in Florida would be impaired. A CLEC is  
13 impaired, among other reasons, when no alternative exists that would offer a  
14 *realistic* opportunity to provide a competitive service. In my Arbitration  
15 Testimony, I demonstrated that ubiquitous collocation of DSLAMs at remote  
16 terminals is technically and economically infeasible for FDN, and that no  
17 viable alternatives from BellSouth, self-provisioning or third parties are  
18 available that would enable FDN to offer xDSL services where BellSouth has  
19 deployed DLCs. As evidence of this reality, no ALEC had collocated, or  
20 even requested to collocate, at a BellSouth remote terminal in the entire State  
21 of Florida. My Arbitration Testimony further illustrates that FDN's inability  
22 to offer xDSL services also impairs its ability to offer voice  
23 telecommunications services, as consumers increasingly are demanding

1 bundled telecommunications services that meet all of their service  
2 requirements.

3 **Q. In your Arbitration Testimony, you asserted that ubiquitous ALEC**  
4 **collocation of DSLAMs at remote terminal would be technically and**  
5 **economically infeasible. BellSouth's proposal in this docket, if adopted,**  
6 **would offer CLECs the opportunity to purchase the use of a collocated**  
7 **DSLAM at its remote terminals. Does BellSouth's hybrid loop proposal**  
8 **change your conclusion in your Arbitration Testimony that ALECs**  
9 **would be impaired without access to unbundled xDSL loops with packet**  
10 **switching?**

11 A. No. First, as I demonstrated above, the unreasonably high rates proposed by  
12 BellSouth would completely preclude their use by a competitor. Second,  
13 even if the Commission lowered the rates, in many or even most cases,  
14 BellSouth's proposed service would often be available, if at all, only with  
15 substantial complications and/or delays that an ALEC could not afford to  
16 incur. If BellSouth rejected an order for the proposed hybrid loop service on  
17 the basis that facilities were unavailable, the ALEC would remain impaired in  
18 its ability to offer xDSL services for the reasons set forth in my Arbitration  
19 Testimony. Therefore, BellSouth's proposal is an illusion that would do  
20 nothing to relieve the impairment faced by ALECs in the Florida DSL  
21 market.

22 **Q. Why do you believe that the hybrid loop proposed by BellSouth would**  
23 **often be unavailable?**



1 A. The vast majority of BellSouth's 12,000 remote terminals are likely too small  
2 and lack sufficient power resources and connectivity to support additional  
3 DSL facilities for each and every ALEC wishing to provide xDSL services.  
4 Additional DSLAMs could require expansions of remote terminal space  
5 capacity, power generation, and climate control facilities, that may be  
6 impossible or prohibitively expensive. In addition, BellSouth's proposal  
7 would require each ALEC to obtain a separate, dedicated transport facility  
8 back to the central office, which could prematurely exhaust the limited  
9 supply of feeder facilities that are available to ALECs. My Arbitration  
10 Testimony explains that dark fiber will often not be available to ALECs at  
11 remote terminals, and that it is not economically feasible for an ALEC to  
12 obtain rights-of-way and construct new fiber facilities between BellSouth's  
13 remote terminals and central offices. Furthermore, many of BellSouth's  
14 12,000 remote terminals are unobtrusive cabinet boxes that are located,  
15 among other locations, in residential neighborhoods. The public interest  
16 would not be served by unnecessary and inefficient expansions of these  
17 facilities.

18 **Q. Why would ALECs face additional delays in procuring xDSL-capable**  
19 **loops if BellSouth's proposal is adopted?**

20 A. Under BellSouth's proposed requirement that each ALEC purchase its own  
21 DSLAM and DS1 feeder at every remote terminal, ALECs would face delays  
22 of months or longer in attempting to initiate service to its first customer in an  
23 RT serving area while new DSLAM and DS1 facilities were installed and

1 connected and any infrastructure upgrades needed to support these facilities  
2 were completed. By contrast, if unbundled xDSL loops were offered on a  
3 line-at-a-time basis, wherever BellSouth has DSL facilities, ALECs could  
4 obtain unbundled xDSL loops to provide service to a customer with the same  
5 speed that BellSouth could provide service to that customer. Without the  
6 ability to offer service at the same speed as BellSouth, it would be difficult  
7 for ALECs to win the DSL business of customers located in RT serving areas  
8 where they had not already established their own DSL facilities.

9 **Q. Should BellSouth be required to offer xDSL loops with unbundled**  
10 **packet switching on a stand-alone basis and in combination with voice-**  
11 **grade UNE loops?**

12 A. Yes. As I demonstrated in my Arbitration Testimony, to compete, ALECs  
13 must be able to utilize the full features and capabilities of the loop, including  
14 the ability to provide both circuit-switched voice service and ADSL data  
15 service on the same distribution pair, just as BellSouth provides for its own  
16 customers. Without this ability, ALECs will unnecessarily be forced to incur  
17 greater costs in order to provide voice and data service over separate loops  
18 and may, in some cases, be precluded from providing both services if an  
19 additional loop is not available. This combination offering is provisioned by  
20 employing line sharing on the distribution subloop, and the voice and data  
21 traffic are separated by the DSLAM or DSL line card at the DLC and sent to  
22 the central office on separate feeder transmissions. BellSouth provisions its

1 own service in this manner. The Commission should require BellSouth to  
2 offer the same capability to Florida ALECs.

3 **Q. Based upon your testimony, how should the Commission define the new**  
4 **UNE needed to enable ALECs to offer xDSL services in Florida?**

5 A. The new UNE should be defined as an xDSL loop, from the customer NID to  
6 the central office, with unbundled packet switching. The Commission should  
7 require BellSouth to offer unbundled packet switching as part of any loop  
8 that, to be xDSL-capable, would require packet switching on the customer  
9 side of the central office. The Commission should not limit its terminology  
10 to hybrid copper/fiber loops, since the UNE is also needed where BellSouth  
11 has deployed copper-fed DLCs.

12 **Q. Would it be technically feasible for BellSouth to offer xDSL loops with**  
13 **unbundled packet switching in the manner that you have proposed?**

14 A. Yes. BellSouth already provides such loops to itself for its own use. Mr.  
15 Kephart admits in his testimony that the hybrid loop offering outlined in his  
16 testimony is technically feasible. The only significant difference from a  
17 technical perspective between his proposal and FDN's is that, in FDN's  
18 proposal, the DSL transmissions are aggregated on shared DSL multiplexing  
19 facilities and feeder transport to the central office. This arrangement is also  
20 technically feasible for BellSouth to provide.

21 **Q. You have testified that BellSouth's requirement that ALECs purchase**  
22 **dedicated DSLAMs and DS1 feeders violates TELRIC principles and**  
23 **that the Commission should reject, rather than adjust, BellSouth's cost**

1 study. Putting that contention aside, did BellSouth calculate the  
2 individual rate elements for hybrid loops consistent with TELRIC?

3 A. No. Even a preliminary review of BellSouth's hybrid copper/fiber loop cost  
4 study demonstrates that the proposed rates are not TELRIC-compliant. For  
5 example, the proposed rates for the DS1 component of the hybrid loop  
6 (element A.20.1 of the cost study) is much higher than the rate that BellSouth  
7 proposes for an equivalent DS1 subloop for other services. The disparity  
8 between these rates appears to be based upon BellSouth's use of different  
9 network design models in developing its cost studies for these two elements  
10 which, in reality, are the same. BellSouth witness Caldwell's testimony  
11 indicates that the standard DS1 cost study evaluated all DS1 loops, while the  
12 hybrid loop study only evaluated DS1s between remote terminals and central  
13 offices. The resulting charges would be much higher for the Hybrid  
14 Copper/Fiber DS1, as set forth in Figure 3 below:

15 **Figure 3: Comparison of Proposed DS1 Rates**

	<b><u>A.9.2 Unbundled sub-loop DS 1 feeder</u></b>	<b><u>A.20.1 Hybrid Copper/Fiber</u></b>	
	<b><u>DS1</u></b>		
18	Zone 1	\$46.27	\$149.48
19	Zone 2	\$62.45	\$173.40
20	Zone 3	\$120.65	\$419.71

21 **Q. How do BellSouth's proposed DS1 rates violate TELRIC principles?**

22 A. BellSouth's study fails to utilize a single unified network design in the  
23 determination of its unbundled DS1 subloop rates. FCC Rule 51.505(b)(1)

1 requires that the total element long-run incremental cost of a UNE should be  
2 measured based upon the “lowest cost network configuration.” This  
3 Commission has also recognized that a single unified network design is most  
4 appropriate. The use of different engineering assumptions violates TELRIC  
5 principles because BellSouth has not used the lowest cost network  
6 assumption across the board. Use of a single unified network assumption that  
7 takes into account demand for all types of loops, including stand-alone loops,  
8 loop/port combinations, and xDSL-capable loops, would better reflect the  
9 economies of scale and scope in the ILEC network.

10 **Q. Are there other examples of non-TELRIC-compliant rates in BellSouth’s**  
11 **proposal?**

12 A. Yes. BellSouth’s cost study includes a charge for an unnecessary and  
13 inefficient network design in the central office. Even though BellSouth  
14 would force each ALEC to pay the cost of its own dedicated DS1 from each  
15 remote terminal, BellSouth would not permit the ALEC to terminate the DS1  
16 at its own collocation cage. Instead, BellSouth proposes that each DS1  
17 terminate into a DSL hub bay, and then BellSouth would charge an additional  
18 “administrative DS1” charge for transport from this bay to the ALEC cage.  
19 For this short and unnecessary component, BellSouth would impose the same  
20 excessive charge that it imposes for the DS1 between the remote terminal and  
21 the central office. Aside from the fact that this proposed rate for a DS1 is  
22 excessive, as I discussed above, this extraneous element is inefficient and  
23 counterproductive and should be eliminated.

1 **Q. Based upon your testimony in this docket, what do you believe would be**  
2 **the appropriate rate structure for BellSouth's provision of xDSL loops**  
3 **with unbundled packet switching?**

4 A. The rate structure for xDSL UNE loops should include two basic product  
5 types: data-only and voice-and-data. Each should be offered on a line-at-a-  
6 time basis, with a single loop rate for each zone. The rates should represent  
7 the sum of adding unbundled packet switching to different types of already  
8 existing UNE loops. The only new calculation necessary to compose the  
9 TELRIC-compliant rates for the two types of xDSL loops is a TELRIC-based  
10 charge for packet switching on a per line basis. For data-only xDSL loops,  
11 this surcharge would be added to the applicable rate for a line shared loop.  
12 For combined voice and data xDSL loops, the packet switching surcharge  
13 would be added to the applicable rate for a UNE loop.

14 **Q. How would BellSouth be compensated for shared use of DSLAM**  
15 **facilities?**

16 A. BellSouth could be compensated in the same way it is currently compensated  
17 for shared use of its other facilities. Costs could be developed per DSLAM  
18 or line card port, and BellSouth could seek approval to recover the costs of  
19 unused capacity through use of an appropriate fill factor. This pricing will  
20 more accurately reflect BellSouth's incremental cost of providing the UNE to  
21 ALECs.

22 **Q. What is your recommendation to the Commission?**

1 A. The Commission should reject BellSouth's hybrid loop cost study and require  
2 BellSouth to file a new study that offers xDSL loops, with and without voice  
3 capability, including unbundled packet switching and transport between the  
4 customer and the central office, on a per loop basis.

5 **Q. Does this conclude your rebuttal testimony?**

6 A. Yes.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into Pricing of )  
Unbundled Network Elements )  
\_\_\_\_\_ )

Docket No. 990649A

**EXHIBIT MPG-1**

**FILED WITH THE REBUTTAL TESTIMONY OF**  
**MICHAEL P. GALLAGHER**

**FILED ON BEHALF OF**  
**FLORIDA DIGITAL NETWORK, INC.**





June 7, 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 -- Petition by Florida Digital Network, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996.

Dear Ms. Bayó,

Please find enclosed for filing in the captioned docket an original and seven (7) copies of the Direct Testimony and Exhibits of Mr. Michael P. Gallagher to be filed in the captioned proceeding and an accompanying Certificate of Service. Also enclosed is a copy of the text of the testimony on diskette.

If you have any questions regarding this Notice or the Petition, please call me at 407-835-0460.

Sincerely,

A handwritten signature in cursive script that reads "Matthew Feil".

Matthew Feil  
Florida Digital Network  
General Counsel

C: James Meza, III (BellSouth) (by e-mail, Overnight Delivery)  
Felicia Banks (FPSC) (by e-mail, Overnight Delivery)  
Mike Sloan (Swidler) (by e-mail, Overnight Delivery)

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition of Florida Digital Network, }  
Inc., for Arbitration of Certain Terms and }  
Conditions of Proposed Interconnection and }  
Resale Agreement with BellSouth Telecom- }  
munications, Inc. Under the Telecom- }  
munications Act of 1996 }  
\_\_\_\_\_ }

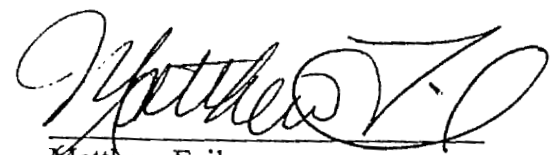
Docket No.010098-TP

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the prefiled direct testimony and exhibits of Michael P. Gallagher filed in the captioned docket was served on the following by overnight delivery this 7<sup>th</sup> day of May, 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



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

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition of Florida Digital Network, }  
Inc., for Arbitration of Certain Terms and }  
Conditions of Proposed Interconnection and }  
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munications Act of 1996 }  
\_\_\_\_\_ }

Docket No.010098-TP

**DIRECT TESTIMONY AND EXHIBITS OF**  
**MICHAEL P. GALLAGHER**

**FILED ON BEHALF OF**  
**FLORIDA DIGITAL NETWORK, INC.**

June 8, 2001

1           **Q. Please state your name and address.**

2           A. My name is Michael P. Gallagher. My business address is 390 North  
3           Orange Avenue, Suite 390, Orlando, Florida, 32801.

4           **Q. Who do you work for?**

5           A. I am Chief Executive Officer of Florida Digital Network, Inc. ("FDN").

6           **Q. What are your responsibilities as CEO of FDN?**

7           A. As CEO of FDN, I am ultimately responsible to the shareholders for all  
8           aspects of FDN's operations and performance. On a management level,  
9           FDN's President & Chief Operating Officer, Chief Financial Officer and  
10          General Counsel report directly to me; FDN's Engineering & Operations,  
11          Customer Service, and Sales Vice Presidents report to the President & COO,  
12          who is also in charge of FDN's Marketing and IS functions. I am involved in  
13          the day-to-day business dealings of the company and the decision-making on  
14          everything from marketing and sales strategies, product development,  
15          network architecture and deployment, financing, human resources, customer  
16          care, regulatory changes, etc.

17          **Q. Please describe your education and your work experience in the**  
18          **telecommunications sector.**

19          A. I received a B.S. Degree in Mathematics with a minor in Physics from  
20          Rollins College.

21                         Prior to co-founding FDN in 1998, I served as Regional Vice  
22          President for Brooks Fiber Communications where I had overall  
23          responsibility for operations, engineering, finance and sales in the State of

1 Texas. Brooks Fiber Communications merged into WorldCom on January  
2 31, 1998. Prior to holding the VP position at Brooks, I was president of  
3 Metro Access Networks (MAN), a second-generation CLEC in Texas  
4 founded in 1993. At MAN, I developed all business strategies, designed  
5 network architecture, secured contracts with the company's original customer  
6 base, and had overall responsibility for operations and performance. MAN  
7 merged into Brooks Fiber in March 1997. Prior to MAN, I worked for  
8 Intermedia Communications and Williams Telecommunications Group  
9 (WilTel) as sales representative securing contracts with large commercial  
10 customers.

11 **Q. Have you previously testified in a regulatory proceeding before a**  
12 **state utility commission, the FCC or a hearing officer?**

13 A. No.

14 **Q. What is the purpose of your testimony in this proceeding?**

15 A. I will address the interconnection agreement issues FDN could not  
16 resolve with BellSouth and which FDN raised in its Arbitration Petition.

17 **Q. Please briefly describe FDN's operations.**

18 A. FDN is a facilities-based Florida CLEC. FDN is also an IXC, a data  
19 services provider (both dial-up and dedicated), and, through an affiliate, FDN  
20 offers ISP and other Internet services. FDN was founded in 1998 with the  
21 mission of offering packaged services (local, long distance and Internet) to

1 small- and medium-sized businesses. FDN launched operations in Orlando in  
2 April 1999 and expanded to Fort Lauderdale in May 1999 and to Jacksonville  
3 in June 1999. A second round of expansion in West Palm Beach, Miami and  
4 the Tampa Bay area was completed in the first quarter of 2000.

5 FDN owns and operates Class 5 Nortel DMS-500 central office  
6 switches in Orlando, Tampa, Jacksonville, and Ft. Lauderdale. FDN's  
7 switches are connected by fiber optic cable owned and operated by FDN to  
8 nearby incumbent local exchange carrier (or "ILEC") tandem switches. FDN  
9 leases collocation cages or has virtual collocation space in over 100 ILEC  
10 wire centers. Remote switching equipment is installed at these collocation  
11 sites and from these sites FDN accesses ILEC UNE loops. Connectivity from  
12 the collocation sites to the central ILEC tandem switch is via T-1 circuits  
13 leased from the ILEC. FDN relies upon its rights under the federal  
14 Telecommunications Act of 1996 (the "Act") to obtain "last mile" access to  
15 Florida consumers through the purchase of unbundled network elements  
16 (UNEs) from ILECs such as BellSouth.

17 FDN uses BellSouth's TAG gateway for electronic ordering. Using  
18 systems and software FDN developed on its own, FDN transmits virtually all  
19 of its local service requests ("LSRs") to Bell electronically with minimal  
20 manual intervention. The vast majority of FDN's LSRs to BellSouth are for  
21 2 wire voice grade UNE loops. Based on information from BellSouth, FDN  
22 believes that FDN is by far the largest procurer of UNE voice-grade loops in  
23 Florida and that FDN has installed more UNE loops than all other CLECs in

1 Florida combined. Through relief sought in this proceeding, FDN intends to  
2 expand its use of BellSouth UNEs for the provision of competitive local  
3 voice and data services to both business and residential users in the State of  
4 Florida.

5 ISSUE 1.

6 **I. INTRODUCTION**

7 **Q. What is the purpose of FDN's high-speed data proposal?**

8 A. FDN seeks the ability to offer its customers a combination of circuit-  
9 switched voice services, such as local dial tone, and packet-switched high-  
10 speed data services, such as Digital Subscriber Line (DSL) services. FDN is  
11 able to provide DSL to some end-users in Florida by collocating its own DSL  
12 multiplexers (DSLAMs) in BellSouth's central offices. However, FDN is  
13 precluded from providing high-speed data service where BellSouth has  
14 deployed Digital Loop Carrier (DLC) facilities. Except in the territory served  
15 by SBC Communications, Inc., CLECs are generally precluded from offering  
16 DSL service where DLCs are deployed. The severity of this limitation on  
17 competition is felt nowhere more than Florida, as *more than 60%* of all  
18 BellSouth access lines in Florida pass through DLCs according to BellSouth.  
19 In FDN's experience in its initial Florida markets, FDN believes the  
20 percentage of DLCs approaches 70%. BellSouth does not offer any resale or  
21 UNE products that would enable CLECs to provide high-speed data service  
22 to consumers who are served by DLC loops where the CLEC is the voice  
23 provider. The purpose of my testimony is to offer the factual basis required

1 for the Florida Commission to order BellSouth to offer UNE and resale  
2 products, in accordance with applicable law, that will be essential for FDN to  
3 offer high-speed data services on an ubiquitous basis in Florida over the same  
4 customer loops that it uses to provide its voice services. This issue is of  
5 paramount importance for FDN to be able to launch a facilities-based  
6 competitive local voice option for residential subscribers. Florida is almost  
7 completely without facilities based local voice competition for residential  
8 subscribers at this time.

9 **Q. What is DSL?**

10 A. DSL is a technology initially developed to enable high-speed data  
11 transmission over traditional copper loop facilities. DSL modems placed on  
12 each end of a copper loop transmit information at rates far exceeding those  
13 typically achieved by traditional "dial-up" modems, allowing consumers to  
14 utilize the growing number of bandwidth intensive applications and to  
15 maximize efficiencies and productivity. To provide a viable DSL  
16 transmission service, the loop between the customer and the DSLAM must  
17 typically be shorter than 18,000 feet, free of bridged tap, load coils and  
18 repeaters, and free from interference caused by nearby fiber-based  
19 telecommunications.

20 **Q. Is FDN able to offer high-speed data services in conjunction with**  
21 **its voice service on a ubiquitous basis in Florida?**

22 A. No. FDN is collocated in more than half of BellSouth's central  
23 offices in the state of Florida, and is able to offer voice services to 100% of



1 the consumers served by these offices. However, FDN is unable to provide  
2 DSL service to approximately 70% of these end-users because of the  
3 presence of BellSouth DLCs.

4 **Q. What are DLCs?**

5 A. The DLC performs an analog to digital conversion that aggregates  
6 telecommunications from the individual customer subloops to a shared  
7 transmission facility bound for the central office. Deployment of DLCs and  
8 successor technologies will ultimately save billions of dollars annually in  
9 maintenance and switching costs. In the past, and still today throughout most  
10 of the country, the vast majority of last mile loops consist of “home run”  
11 copper facilities between the customer and the central office. However, in  
12 the past quarter-century, as Florida’s population grew explosively, BellSouth  
13 deployed a tremendous number of DLCs at remote terminals (RTs) in its  
14 distribution network. Attached hereto as Exhibit \_\_\_ (MPG-1) is a diagram  
15 comparing traditional copper network architecture with DLC deployment.

16 **Q. Why do BellSouth’s DLCs preclude FDN from offering DSL**  
17 **service?**

18 A. DSL cannot be transmitted through a DLC unless it is first  
19 multiplexed for digital transmission to the central office. Therefore, the  
20 carrier must locate at the remote terminal a DSLAM, or, in the case of Next  
21 Generation Digital Loop Carriers (“NGDLCs”), DSL-capable line cards that  
22 perform DSLAM functionality. For reasons I will explain below, unlike  
23 BellSouth, FDN and other CLECs cannot collocate DSLAMs or line cards at

1 remote terminals. Therefore, BellSouth today is the only carrier in Florida  
2 able to offer DSL service where its DLCs are deployed.

3 **Q. Why can CLECs provide high-speed data service over DLC loops**  
4 **in the territory served by SBC?**

5 A. SBC offers a wholesale UNE-priced broadband loop product that  
6 includes transmission from the customer to the remote terminal, DSLAM  
7 functionality at the RT, and transmission to the central office, where CLECs  
8 pick up the traffic from SBC's packet switch. Verizon is developing a  
9 similar product. As I will explain in more detail below, FDN seeks a similar  
10 UNE from BellSouth, tailored to the technical specifications of BellSouth's  
11 Florida network.

12 **Q. Can FDN sustain long-term viability if it is limited to providing**  
13 **DSL only on non-DLC loops?**

14 A. It would be very difficult as demand for DSL increases. In most  
15 Florida central offices, more so than in most of the rest of the nation, FDN  
16 will not be able to succeed in the voice or data market if it is limited to  
17 providing DSL service only to end-users who can be served from the central  
18 office. As I stated previously, more than 60% of BellSouth's Florida access  
19 lines pass through DLCs and cannot be served from the central office. Of the  
20 remaining 30-40% of the end-user base, many cannot receive central office  
21 based DSL due to excessive loop lengths, the presence of bridged taps, load  
22 coils or repeaters, or other factors. With such a high percentage of the DSL  
23 market closed to central-office-only strategies, CLECs will not be able to

1 compete. Furthermore, if BellSouth is the only carrier that can provide DSL  
2 to a substantial percentage of consumers, it can leverage its market power to  
3 suppress competition for voice services, as I have indicated above.  
4 Therefore, an exclusive central office strategy will not only fail in the DSL  
5 market, but it could also fail in the voice services market as well. My point is  
6 well illustrated by the failure of many exclusive central-office based CLEC  
7 strategies, even where the rate of DLCs is much lower than Florida. Of the  
8 three major national DSL CLECs, NorthPoint has already dissolved in  
9 bankruptcy and Covad and Rhythms are in serious financial peril and could  
10 be bankrupt during the course of this year.

11 **Q. Why it is important for FDN to be able to offer both voice and**  
12 **data services?**

13 A. A large and growing number of residential and business customers are  
14 seeking carriers that can satisfy all of their telecommunications needs,  
15 including voice and high-speed data services. These customers want to be  
16 able to obtain these services through a single point of contact and on a single  
17 bill. If FDN is unable to offer high-speed data services, it will not only lose  
18 opportunities in the data market, but it will also be unable to remain  
19 competitive in the voice local exchange and interexchange markets in  
20 Florida.

21 **Q. Is FDN's objective to provide high-speed data service in Florida**  
22 **urgent?**

1           A.     Absolutely. It is well established that early entry and early name  
2           recognition are crucial to success in markets for new technologies and new  
3           services. BellSouth understands this as well, as it is aggressively deploying  
4           DSL in Florida today even as it denies competitors the resale and UNE DSL  
5           products that CLECs need to compete. With each day that passes, FDN falls  
6           further behind BellSouth in the high-speed data market, and the probability of  
7           losing its existing and prospective voice customers grows. In Florida alone,  
8           BellSouth by the end of April 2001 had 133,015 high-speed data subscribers  
9           in the State of Florida, 43,291 of which were added in the first quarter 2001.  
10          Florida customers represent nearly one-half of BellSouth's DSL lines region-  
11          wide, and approximately one-half of its first quarter growth. Therefore,  
12          FDN's efforts to obtain the resale and UNE products for a bundled DSL and  
13          voice offering are extremely urgent and are of utmost importance to FDN's  
14          short-term and long-term viability in the state.

15          **Q.     Does FDN's inability to offer voice and high-speed data on the**  
16          **same telephone line impair its ability to offer local exchange voice**  
17          **services in Florida?**

18          A.     Yes. First, as I mentioned, FDN's inability to offer high-speed data to  
19          most customers impairs its ability to sell voice services to customers looking  
20          for a bundled service offering from a single carrier. Second, FDN is impaired  
21          in its ability to sell local exchange voice services by BellSouth's unnecessary  
22          and anticompetitive practice of leveraging its control of the DSL market in  
23          Florida to injure competitors in the voice market. To illustrate, if a

1 prospective FDN customer today is obtaining both voice and data services  
2 from BellSouth, they are not able to migrate their local exchange voice  
3 service to FDN's facilities-based voice service without having BellSouth  
4 disconnect their data service, even though BellSouth easily has the capability  
5 to continue to provide data service on the line. Because FDN is unable in  
6 most cases to offer DSL service to the customer on the same telephone line,  
7 the customer is likely to lose interest in obtaining voice telephone services  
8 from FDN, even when FDN is able to offer superior pricing and service.  
9 BellSouth's ability to manipulate its market power to injure competitors will  
10 only increase as competitive DSL providers continue to disappear.

11 **Q. How does the lack of competitive DSL providers affect Florida**  
12 **consumers?**

13 A. In markets where only one or only a few providers are available, these  
14 providers have fewer incentives to provide quality service or competitive  
15 rates to their customers. As BellSouth has solidified its growing control over  
16 the DSL market in Florida, it recently raised its retail DSL prices in the state  
17 and discontinued some of its competitive promotions. If competitors are  
18 denied meaningful access to BellSouth's last mile connections to end-users,  
19 price increases could be expected to continue.

20 **Q. In this arbitration, is FDN requesting the same relief sought by**  
21 **MCI WorldCom in Docket No. 000649-TP that BellSouth be required to**  
22 **provide xDSL service to FDN customers?**

1           A.    No. FDN is not in this arbitration seeking to require BellSouth to  
2           provide retail xDSL or ISP *services* to consumers who are also FDN  
3           customers. Instead, FDN proposes to purchase wholesale access to  
4           BellSouth's unbundled network elements pursuant to Section 251 of the Act.  
5           BellSouth would not be required to have end-user relationships, such as  
6           billing or customer service, with FDN's customers. Nor would BellSouth be  
7           required to connect the customers from the central office to an ISP's point of  
8           presence, or to provide Internet service itself; instead, as with other UNEs,  
9           FDN would access the loop via its collocated facilities in BellSouth's central  
10          offices. Therefore, the decision in the MCI WorldCom arbitration in Docket  
11          No. 000649-TP regarding BellSouth's obligation to provide xDSL service is  
12          not relevant in this arbitration.

13

14           **II.    BELLSOUTH SHOULD BE REQUIRED TO OFFER**  
15           **UNBUNDLED BROADBAND LOOPS AS A UNE**

16          **Q.    To enable FDN to provide bundled voice and high-speed data**  
17          **service products where DLCs are deployed, does FDN require access to**  
18          **facilities that are different from the UNEs offered in other BellSouth**  
19          **Florida interconnection agreements?**

20          A.    Yes. At the time that the current national list of UNEs was  
21          established in the FCC's *UNE Remand Order* in 1999, the FCC formalized as  
22          UNEs only the network elements needed for local exchange and DSL service  
23          in an ILEC network in which the predominant last mile connections are home

1 run copper loops. BellSouth's existing network in Florida is very different  
2 from the FCC's conceived model, with more far more fiber and DLCs. Due  
3 to the differences between BellSouth's DLC-dominated Florida network and  
4 other ILECs' copper-based distribution systems, it is necessary to establish  
5 additional UNEs and/or apply the FCC's standard to unbundle packet  
6 switching in order to ensure that CLECs can provide ubiquitous xDSL  
7 service in Florida using UNEs.

8 **Q. Can the Florida Commission establish new UNEs?**

9 A. Yes. Section 251(d)(3) of the Act explicitly authorizes state  
10 commissions to establish additional unbundling obligations. When the FCC  
11 established the basic list of UNEs that must be unbundled by all ILECs, the  
12 FCC emphasized that "section 251(d)(3) grants state commissions the  
13 authority to impose additional obligations upon incumbent LECs beyond  
14 those imposed by the national list."<sup>1</sup> The *Line Sharing Order*, which sought  
15 to promote unbundled CLEC access to DSL, further encouraged state  
16 commissions "to impose additional, pro-competitive requirements consistent  
17 with the national framework established in this order."<sup>2</sup>

18 **Q. What new UNEs are necessary to enable FDN to offer high-speed  
19 data services in BellSouth's territory in Florida?**

20 A. Where BellSouth has deployed Digital Loop Carrier facilities, FDN  
21 requires access to unbundled DSL-capable transmission facilities between the

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1 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, 15 FCC Rcd. 3696, ¶ 154 (1999) ("*UNE Remand Order*").

2 *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order, 14 FCC Rcd. 20912, at ¶ 159 (1999) ("*Line Sharing Order*").

1 customer's Network Interface Device and the BellSouth distribution frame in  
2 its central offices, including all attached electronics that perform DSL  
3 multiplexing and splitting functionalities. I will describe these facilities as  
4 "broadband loops." FDN seeks the ability to obtain both whole loops for a  
5 combined voice and data service and the high-frequency portion thereof for  
6 data-only service.

7 **Q. How does this facility differ from the DSL-capable loop that is**  
8 **classified as a UNE under the UNE Remand Order?**

9 A. Under my description, broadband loops include the packet switching  
10 and splitter functionalities that are performed by BellSouth's equipment  
11 located at a remote terminal. The traditional UNE loop does not include the  
12 DSLAM.

13 **Q. Why would the network elements necessary to provide high-speed**  
14 **data service over DLC loops be different from the definition of a non-**  
15 **DLC loop?**

16 A. As I stated above, FDN is not able to offer xDSL service over DLC  
17 loops using only the existing UNEs. In the *UNE Remand Order*, the FCC  
18 determined that CLECs could place their own DSLAMs in ILEC central  
19 offices on the same terms and conditions that the ILEC located its own  
20 DSLAM, and that they were therefore not impaired by a lack of unbundled  
21 access to ILEC DSLAMs in the central office. As I will explain in more  
22 detail below, CLECs are not able to self-provision or otherwise obtain  
23 DSLAM functionality at ILEC remote terminals on an equivalent basis.



1 Even in rare cases where such provisioning may be technically feasible, the  
2 option is financially impossible for FDN and other CLECs. Therefore, as I  
3 will explain below, CLECs would be impaired if DSLAM functionality is not  
4 included as part of the broadband loop UNE.

5 **Q. Is there a regulatory precedent for requiring incumbents to**  
6 **provide a platform of UNEs that comprise DSL transmission over loops**  
7 **with fiber feeder at prices based on forward-looking, economic cost?**

8 A. Yes. In a proceeding relating to the SBC-Ameritech merger, the FCC  
9 required SBC to offer to CLECs a “Broadband Offering,” which the FCC  
10 described as a “combination of network elements provided as a wholesale  
11 arrangement.”<sup>3</sup> The Broadband Offering must be offered, alone and in  
12 combination with a voice offering, at rates, terms, and conditions that are  
13 just, reasonable, and nondiscriminatory and priced in accordance with the  
14 TELRIC methodology applicable to unbundled network elements.<sup>4</sup> SBC’s  
15 Broadband Service, which is available in SBC’s thirteen-state region today, is  
16 functionally equivalent to the broadband loop requested by FDN in this  
17 arbitration. Therefore, FDN is seeking from BellSouth what SBC already  
18 offers to CLECs in its thirteen-state region.

19 **Q. Have any regulators classified broadband loops as a UNE?**

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3 Ameritech Corp., Transferor and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission’s Rules, CC Docket No. 98-141, ASD File No. 99-49, Second Memorandum Opinion and Order, FCC 00-336 (rel. September 8, 2000) (“*Project Pronto Order*”), at ¶ 30.

4 *Project Pronto Order* at ¶ 6 (footnote omitted).

1           A.     Yes. The FCC described the offering as a combination of network  
2           elements and required that it be priced according to the TELRIC cost  
3           methodology used to price UNEs.<sup>5</sup> The Illinois Commerce Commission  
4           recently created the broadband loop with packet switching functionality as a  
5           new UNE.<sup>6</sup> Numerous other state commissions are now considering the issue.  
6           Although the issue is also pending in an FCC proceeding, the FCC has  
7           indicated that it expects that issues related to access to DLC loops will be  
8           addressed in state arbitration proceedings.

9           **Q.     Have any ILECs other than SBC made plans to offer a similar**  
10          **combination of network elements to provide wholesale DSL capability?**

11          A.     Yes. Verizon has developed a draft proposal for a product that is  
12          functionally equivalent of SBC's Broadband Offering and the broadband  
13          UNE loop proposed by FDN in this case, called its Packet Access at Remote  
14          Terminal Service (PARTS).

15          **Q.     Is CLEC access to DLC-served customers less urgent in BellSouth**  
16          **territory than in SBC and Verizon's regions?**

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<sup>5</sup> The FCC did not formally classify the offering as a UNE because it has reserved that issue to a pending generic case that will be applicable to all ILECs. *See* Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, CC Docket 96-98, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket 96-98*, FCC 00-297, at ¶¶ 81-83, 103-12, 119-28 (rel. Aug. 10, 2000).

<sup>6</sup> *See* Arbitration Decision on Rehearing, *In the Matter of Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues, et al.*, Illinois Commerce Commission, Docket Nos. 00-0312 and 00-0313 (Illinois Commerce Commission, Feb. 15, 2001) ("*Illinois Pronto Arbitration Order*"); *see also* *In the Matter of Illinois Bell Company Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Services*, Illinois Commerce Commission, Docket No. 00-0393, Order (Ill. Commerce Commission Mar. 14, 2001).

1           A.     Absolutely not. In fact, this issue is more urgent in Florida because of  
2           BellSouth's massive deployment of DLCs in the state. SBC offered its  
3           broadband service in conjunction with its rollout of DSL-capable DLC loops,  
4           and Verizon has stated that it has not yet provided DSL over DLC loops. By  
5           contrast, BellSouth has already provisioned a tremendous number of DSL  
6           lines over DLC loops in Florida. In the absence of a broadband loop UNE, a  
7           higher percentage of Florida end-users are deprived of competitive choice of  
8           DSL and voice providers than would be occurring in SBC and Verizon  
9           territory.

10          **Q.     What standard must the Florida Commission employ in deciding**  
11          **whether to create any new UNEs?**

12          A.     FCC Rule 51.317 prescribes the legal standard to be used by state  
13          commissions when creating new UNEs.<sup>7</sup> When prospective UNEs implicate  
14          specified proprietary rights of the ILECs, a state must find that access to that  
15          element is "necessary." When no proprietary rights are implicated, the state  
16          need only find that CLECs would be "impaired" without access to the  
17          element. Under FCC rules, a network element is considered to be proprietary  
18          only if the ILEC demonstrates that it has invested resources to develop  
19          proprietary information or functionalities that are protected by patent,  
20          copyright or trade secret law.<sup>8</sup> The discrete elements such as line sharing,  
21          packet switching, and fiber functionality that comprise the unbundled access  
22          that are sought here have been previously deemed non-proprietary by the

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<sup>7</sup> 47 C.F.R. § 51.317.

<sup>8</sup> See 47 C.F.R. § 51.317(a).

1 FCC.<sup>9</sup> Therefore, in this arbitration, none of FDN's proposals would  
2 implicate BellSouth's proprietary rights. For these reasons, the Florida  
3 Commission should use the "impair" standard to determine whether any new  
4 UNEs should be created.

5 **Q. How is the "impair" standard used by state commissions to create**  
6 **new UNEs?**

7 A. When evaluating whether to unbundle a network element under the  
8 "impair" standard, federal regulations require unbundling if lack of access to  
9 the network element impairs a carrier's ability to provide the services it seeks  
10 to offer. "A requesting carrier's ability to provide service is 'impaired' if,  
11 taking into consideration the availability of alternative elements outside the  
12 ILEC's network, including self-provisioning by a requesting carrier or  
13 acquiring an alternative from a third-party supplier, lack of access to that  
14 element materially diminishes a requesting carrier's ability to provide the  
15 services it seeks to offer."<sup>10</sup> The FCC rules establish that the "totality of  
16 circumstances" must be considered to determine whether an alternative to the  
17 ILEC's network is available in such a manner that a requesting carrier can  
18 *realistically* be expected to actually provide services using the alternative.<sup>11</sup>

19 When determining whether to require additional unbundling, FCC Rule  
20 51.317(b) requires that the Commission consider the cost, timeliness, quality,  
21 ubiquity, and impact on network operations that may be associated with any

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<sup>9</sup> See *UNE Remand Order* at ¶ 180 & 305; *Line Sharing Order* at ¶ 28.

<sup>10</sup> 47 C.F.R. § 51.317(b).

<sup>11</sup> *UNE Remand Order* at ¶ 62.

1 alternatives to unbundling. In addition, other factors such as promotion of  
2 the rapid introduction of competition; facilities-based competition,  
3 investment, and innovation; or certainty to requesting carriers regarding the  
4 availability of the element may also be considered by the Commission.<sup>12</sup>

5 **Q. If broadband loops were not available as a UNE, are there any**  
6 **viable alternatives available to FDN to provide high-speed data service**  
7 **where BellSouth has deployed DLCs?**

8 A. No. If viable alternatives were available, FDN would be selling DSL  
9 today to customers served by DLC loops in Florida.

10 **Q. What options do you believe that BellSouth may assert as**  
11 **justifications for withholding UNE designation of broadband loops?**

12 A. I am aware that ILECs have alleged that at least three alternatives are  
13 available to CLECs -- CLEC collocation of DSLAMs at the remote terminal,  
14 the use of all-copper loops, and construction of their own distribution  
15 network. None of these options offer viable options for FDN or other  
16 CLECs. If left only with these options, FDN would be not only impaired but  
17 prevented from being able to offer DSL service to a growing majority of  
18 Florida consumers, and, as a result, would be impaired in its ability to offer  
19 voice local exchange services as well.

20 **Q. Could FDN provide ubiquitous DSL service to end-users served**  
21 **by DLCs by collocating DSLAMs at BellSouth's remote terminals?**

22 A. No. The cost of providing ubiquitous service throughout the state of  
23 Florida by collocating DSLAMs at remote terminals would be staggeringly

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<sup>12</sup> See 47 C.F.R. § 51.317(c).

1 expensive, and well beyond the capability of FDN or other CLECs. FDN  
2 invested millions of dollars and much of its human and technical resources to  
3 collocate equipment in 100 of BellSouth's 196 central offices in the state of  
4 Florida. By contrast, BellSouth has more than 12,000 remote terminals in the  
5 state of Florida. Collocation on this scale is financially impossible for FDN  
6 and would be tantamount to duplication of a significant portion of  
7 BellSouth's monopoly-built last mile distribution network. In any case,  
8 collocation even at single remote terminals is precluded by numerous other  
9 factors. As evidence of this reality, according to BellSouth's discovery  
10 responses in this case, no CLEC has collocated, or even requested to  
11 collocate, at a BellSouth remote terminal in the entire state of Florida.

12 **Q. What factors preclude CLEC collocation at individual remote**  
13 **terminals?**

14 **A.** First, in most cases, even if BellSouth permitted FDN to collocate a  
15 DSLAM inside the remote terminal, no fiber feeder will be available to  
16 transport the telecommunications back to FDN's collocation site in the  
17 central office. BellSouth has repeatedly maintained that dark fiber will in  
18 most cases not be available to CLECs at these locations. In most or all cases,  
19 no dark fiber would be available from any third parties, as third parties would  
20 have had little reason to invest in fiber between two locations controlled and  
21 highly regulated by BellSouth. Therefore, in most cases, FDN could only use  
22 a remotely-located DSLAM if it were to construct its own fiber-optic

1 transport between the remote terminal and FDN's facilities, such as those it  
2 has collocated at BellSouth's central office.

3 **Q. Could FDN construct its own fiber-optic transmission between**  
4 **BellSouth's remote terminals and central offices for the purpose of**  
5 **providing DSL service through remotely-collocated DSLAMs?**

6 A. No. Such an endeavor would be prohibitively costly and time-  
7 consuming. The FCC noted that "the costs associated with self-provisioning  
8 or purchasing alternative elements from third-party suppliers are relevant to  
9 [a] determination of whether the element is a practical and economical  
10 alternative to the incumbent LEC's unbundled network element."<sup>13</sup> The cost  
11 of constructing new fiber facilities would be incredibly expensive, and  
12 completely unaffordable, to FDN or to a third-party supplier. Such  
13 construction would require FDN to incur tremendous costs to secure rights-  
14 of-way, dig up the path of the fiber, and install equipment. These costs  
15 would not justify the comparatively limited revenues that could be realized  
16 from high-speed data services to the limited number of end-users served by a  
17 single remote terminal.

18 **Q. How would these costs compare to the costs borne by BellSouth**  
19 **for its DSL connectivity?**

20 A. BellSouth has already years ago secured rights-of-way and incurred  
21 most of the costs of placing fiber. Unlike FDN, BellSouth would not be  
22 required to place new fiber in order to carry new traffic. When BellSouth  
23 informs CLECs that no dark fiber is available, that does not mean that no

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<sup>13</sup> *UNE Remand Order* at ¶ 72.

1 fiber is available for *BellSouth's* use. ILECs typically reserve a substantial  
2 amount of fiber capacity between their remote terminals and central offices.  
3 Therefore, BellSouth would not have needed to place new fiber facilities to  
4 add DSLAMs and DSL to its remote terminals. Furthermore, even if its  
5 bandwidth were exhausted between an RT and central office, BellSouth can  
6 upgrade its bandwidth by changing the electronics on the ends of its lit fiber  
7 to secure additional bandwidth for its DSL. This option, which BellSouth  
8 will not provide to CLECs, is tremendously cheaper than installation of new  
9 fiber.

10 **Q. Even if dark fiber was available, would FDN be able to collocate**  
11 **DSLAMs at BellSouth's DLCs?**

12 A. No. In many cases, collocation may not be physically possible, and in  
13 all or nearly all cases, it would be prohibitively expensive and time  
14 consuming for FDN.

15 **Q. Why would CLEC DSLAM collocation at BellSouth remote**  
16 **terminals be physically impossible in some circumstances?**

17 A. The vast majority of BellSouth's 12,000-plus remote terminals in  
18 Florida are cabinets, which are much smaller than other typical RT structures,  
19 such as huts or controlled environmental vaults. Many DLCs therefore are  
20 housed in structures that are too small to support additional collocation of  
21 DSLAMs and necessary supporting infrastructure by several CLECs, or  
22 perhaps even by a single CLEC. DSLAMs require power and climate control  
23 infrastructure that likely is often not available at a remote terminal. Addition



1 of this additional infrastructure would require even more space, which may  
2 not be available.

3 **Q. Why would collocation of a DSLAM at BellSouth remote**  
4 **terminals be prohibitively expensive and time-consuming for FDN?**

5 A. DSLAM power and temperature control requirements exceed the  
6 standards of many remote terminals. CLECs would incur tremendous  
7 expense and delays in arranging for sufficient power capacity and  
8 infrastructure. In addition, as I noted above, if space within the RT were  
9 unavailable, FDN would be required to build an external structure to house its  
10 facilities, which would require substantial time and expense, including, but  
11 not limited to, securing acquisition of new land and/or establishment of new  
12 rights-of-way and all other approvals from local authorities necessary to  
13 construct FDN's own remote terminals. Remote terminals are often located in  
14 residential neighborhoods and are subject to increasing scrutiny.  
15 Neighborhoods now quiet about the presence of a single remote terminal may  
16 well object to plans by numerous CLECs each to place their own remote  
17 terminals. FDN, which does not have long-standing relationships with local  
18 authorities, could experience significant delays or expenses in securing such  
19 permission, if not outright rejection. On top of these expenses, BellSouth  
20 might seek to charge FDN for cross-connection facilities to its remote  
21 terminal. Taken together, ubiquitous collocation of DSLAMs at BellSouth  
22 remote terminals would cost FDN millions of dollars and would require years  
23 of difficult, if not impossible, efforts.

1           **Q.     Could FDN cost-justify these high DSLAM collocation expenses**  
2           **at a remote terminal for the purpose of offering DSL?**

3           A.     No. DSLAMs are very often too expensive to justify at a remote  
4           terminal due to the smaller number of customers that are served by an RT.  
5           Also, the FCC has determined that, in applying the cost factor of the  
6           impairment test, the state commission should consider the economies of scale  
7           enjoyed by incumbents as a result of their ubiquitous networks.<sup>14</sup> Unlike at a  
8           central office, the level of concentration present at a remote terminal is often  
9           as low as a hundred or a few hundred lines in total. At least in their early  
10          years of operations, CLECs cannot realistically hope to obtain a “take rate” of  
11          more than a small, single digit percentage of the total possible market for  
12          DSL service. BellSouth is able to garner a higher take rate, at least initially,  
13          because of its greater name recognition and established relationships with  
14          existing customers. Therefore, the cost of establishing a DSLAM collocation  
15          arrangement and fiber connectivity at each remote terminal may be so  
16          prohibitive as to never make economic sense given the few customers that  
17          any given CLEC might serve from an individual remote location. Indeed, if  
18          collocation of a stand-alone DSLAM at the remote terminal were the only  
19          available “option”, DSL competition in markets served by DLCs might never  
20          develop.

21          **Q.     Would CLECs be able to collocate DSLAMs at BellSouth remote**  
22          **terminals on the same terms and conditions afforded by BellSouth to its**  
23          **own DSL operations?**

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<sup>14</sup> *UNE Remand Order* at ¶ 84.

1           A.     No. First, as I mentioned before, BellSouth has indicated that it will  
2           not provide the lit fiber to CLECs that BellSouth's DSL utilizes for transport  
3           to the central office. Second, CLECs will be severely disadvantaged  
4           wherever BellSouth deploys Next Generation Digital Loop Carrier  
5           ("NGDLC") systems, because BellSouth will be able to use digital line cards  
6           rather than DSLAMs at the remote terminal. These line cards, which perform  
7           the role of the DSLAM in NGDLC architecture, are small pieces of electronic  
8           equipment that that are plugged directly into the channel bank assembly of  
9           the Digital Loop Carrier.<sup>15</sup> Line cards are significantly smaller and cheaper  
10          and are more effective even than the smallest commercial DSLAM. I  
11          understand from BellSouth's statements in other proceedings that it has  
12          opposed collocation by CLECs of line cards at BellSouth NGDLCs.  
13          Therefore, BellSouth would deny the ability of CLECs to place DSLAM  
14          functionality at the remote terminal on the same terms and conditions that it  
15          affords to its own operations.

16          **Q.     You testified that it would be prohibitively time-consuming for**  
17          **FDN to collocate stand-alone DSLAMs and connect to lit fiber at**  
18          **BellSouth remote terminals. At what point does the resulting delay to**  
19          **FDN's deployment constitute an impairment of FDN's ability to provide**  
20          **high-speed data service?**

21          A.     Even if FDN had sufficient funding to collocate remote DSLAMs and  
22          construct or obtain lit fiber to the central office, the process in my estimation  
23          would require well more than one year before FDN could start to provide

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<sup>15</sup> See, e.g., *Pronto Order* at ¶ 16.

1 service, and perhaps much longer. Construction of new external remote  
2 facilities or placement of new fiber could require time-consuming public  
3 approval processes. Furthermore, it is my understanding that in one of the  
4 few instances where a CLEC attempted to collocate a DSLAM at an ILEC  
5 remote terminal, cross-connection and construction issues remained  
6 unresolved more than one year after the initial collocation request was made.  
7 The FCC has held that “delays caused by the unavailability of unbundled  
8 network elements that exceed six months to one year may, taken together  
9 with other factors, materially diminish the ability of competitive LECs to  
10 provide the services that they seek to offer.”<sup>16</sup> FDN and the investors on  
11 which it relies place a valuable premium on speed to market, which is critical  
12 in the telecommunications market, especially for new advanced services.  
13 The FCC observed the importance of speed to market, noting that “incumbent  
14 LECs can take advantage of delays caused by the unavailability of unbundled  
15 network elements by using their unique access to most customers to gain a  
16 foothold in new markets, and, in markets where services may be offered  
17 pursuant to long term-contracts (e.g., DSL and other advanced data services),  
18 to ‘lock-up’ customers in advance of competitive entry.”<sup>17</sup> Moreover, delays  
19 in the introduction of competitive services caused by the unavailability of  
20 unbundled elements would give BellSouth valuable time to entrench itself  
21 with existing customers.<sup>18</sup> If forced to endure delays of additional months or

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16 *UNE Remand Order* at ¶ 89.

17 *UNE Remand Order* at ¶ 91.

18 *See UNE Remand Order* at ¶ 93.

1 years to build new remote structures, collocate DSLAMs, obtain cross-  
2 connections and deploy lit fiber, all while BellSouth adds thousands of new  
3 DSL customers in Florida every month, FDN will suffer serious competitive  
4 injuries. Delays increase the risk that FDN will fall irreparably behind  
5 BellSouth in the high-speed data market, and further enable BellSouth to use  
6 its growing control of the Florida DSL market to injure FDN's position in the  
7 voice services market.

8 **Q. Would it be possible for FDN to offer DSL on a ubiquitous basis**  
9 **over home run copper loops that do not pass through the BellSouth's**  
10 **DLCs?**

11 A. No. In the first instance, many DLCs are deployed at locations where  
12 copper loops are longer than 18,000 feet, and are therefore too long to carry  
13 DSL signals. Even where home run copper loops are DSL-capable, the  
14 quality of the DSL transmissions would be inferior to DLC loops and  
15 therefore would not be competitive in the consumer market. The FCC  
16 concluded that "the quality of alternative network elements available to the  
17 competitive LEC is relevant to a determination of whether a requesting  
18 carrier's ability to provide service is impaired" and that "a material  
19 degradation in service quality associated with using an alternative element  
20 will materially diminish a competitor's ability to effectively provide  
21 service."<sup>19</sup> Second, in many BellSouth serving areas, no copper facilities  
22 remain available for DSL.

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<sup>19</sup> *UNE Remand Order* at ¶ 96.

1           **Q.     Could FDN self-provision DSL transport to end-users who are**  
2           **served by BellSouth DLC facilities?**

3           A.     No. FDN cannot replicate BellSouth's facilities in order to sell DSL.  
4           Even if FDN had at its disposal the billions of dollars that ILECs are  
5           spending on the deployment of DLC loop facilities, it would cost FDN  
6           billions on top of that amount to produce a functionally equivalent last mile  
7           distribution network to carry FDN's own telecommunications. BellSouth's  
8           DLC facilities utilize BellSouth's existing copper distribution network,  
9           existing rights-of-way, and existing remote terminal facilities. Furthermore,  
10          construction of a new distribution network would require several years at a  
11          minimum. Therefore, this is clearly not a realistic option for FDN. Further, I  
12          believe that competitive voice service to residential users would be  
13          accelerated, as competitors to Bellsouth would have access to both parts of  
14          the competitive "bundle" of voice and data.

15          **Q.     Can FDN obtain DSL transport to end-users served by BellSouth**  
16          **DLCs from a third-party provider?**

17          A.     No. I am not aware of any third-party provider that could and would  
18          provide the last mile distribution facilities necessary for high-speed data  
19          services to FDN or other CLECs on a ubiquitous basis throughout BellSouth  
20          territory, or even in a small fraction of that territory. Any third party would  
21          face the same obstacles that prevent FDN from constructing its own last mile  
22          distribution network. Given FDN's interest in obtaining such access, I

1 believe to a near certainty that I would be aware if a viable, ubiquitous third-  
2 party provider were available in Florida.

3 **Q. Would the availability of a broadband UNE promote the rapid**  
4 **introduction of competition for high-speed data services in Florida?**

5 A. Yes. I agree with the FCC's finding in the Project Pronto Order that  
6 the availability of a broadband offering would promote the rapid introduction  
7 of competition.<sup>20</sup> FDN would plan to obtain this service as soon as possible  
8 and would be able to offer DSL soon thereafter. The availability of a  
9 broadband UNE loop would have a far more immediate and profound effect  
10 on DSL competition in Florida than it had in SBC's region due to the higher  
11 percentage of BellSouth DLCs deployed in the state.

12 **Q. Would the broadband UNE loop that you have proposed include**  
13 **packet switching functionality?**

14 A. Yes.

15 **Q. Has the FCC established a test used to determine whether packet**  
16 **switching must be unbundled?**

17 A. Except for the "impair" standard I described above, the FCC has not  
18 issued a generally applicable test to determine whether packet switching  
19 should be unbundled. However, in the 1999 *UNE Remand Order*, the FCC  
20 created a four-part test setting forth one set of circumstances where packet  
21 switching clearly must be unbundled. ILECs have argued that a state  
22 commission may order unbundling of packet switching only when this test is  
23 satisfied; however, nothing in the Order suggests that packet switching may

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<sup>20</sup> *Project Pronto Order* at ¶¶ 23, 30.

1 not be unbundled in other circumstances. Once a state commission finds that  
2 a CLEC would be impaired without access to unbundled packet switching, it  
3 can and should order such unbundling without literal application of the *UNE*  
4 *Remand* test.

5 **Q. Could you please state the packet switching unbundling standard**  
6 **from the *UNE Remand Order*?**

7 A. The test set forth in the *UNE Remand Order* requires ILECs to  
8 unbundle packet switching when (1) the ILEC has installed DLC systems; (2)  
9 there are no spare copper loops that are capable of supporting the xDSL  
10 services the CLEC seeks to offer; (3) requesting CLECs are not allowed or  
11 able to collocate DSLAMs at ILEC remote terminals on the same terms and  
12 conditions that apply to the ILEC's own DSLAM; and (4) the ILEC has  
13 deployed packet switching for its own use.<sup>21</sup>

14 **Q. Are these four conditions met for the purposes of this arbitration?**

15 A. Yes. BellSouth has indisputably installed DLC systems, and likely  
16 has the highest percentage of DLCs deployed of any large ILEC in the  
17 country. Second, in the vast majority of cases where BellSouth has deployed  
18 DLCs, there are no xDSL-capable copper loops available that FDN can use to  
19 provide high-speed data service. FDN and other CLECs have requested such  
20 loops through BellSouth's ordering system and received notice that no copper  
21 loop is available. My response to the third part of the test varies based on  
22 whether BellSouth has deployed NGDLC systems. Where NGDLCs are  
23 deployed, BellSouth's DSLAM functionality is performed through line cards

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21 *UNE Remand Order*, at ¶ 313; 47 C.F.R. 51.319(c)(3).



1 plugged into the channel bank of the NGDLC. BellSouth will not allow  
2 CLECs to collocate their own line cards at the NGDLC. Where traditional  
3 DLCs are deployed, although BellSouth nominally allows CLECs to  
4 collocate stand-alone DSLAMs at the remote terminal, such collocation is  
5 subject to untenable terms and conditions, for the reasons I explained above.  
6 These reasons include, but are not limited to, the fact that BellSouth refuses  
7 to allow CLECs to connect the DSLAMs to the lit fiber that is used to carry  
8 BellSouth's high-speed data service to the central office. Because dark fiber  
9 is often not available, a CLEC DSLAM would be stranded at the remote  
10 terminal. Therefore, whether BellSouth deploys DLCs or NGDLCs, CLECs  
11 are denied collocation of DSLAM functionality on the same terms and  
12 conditions applicable to BellSouth's DSLAM functionality. Finally, it should  
13 be beyond dispute that BellSouth has deployed packet switching functionality  
14 for its own DSL services. Therefore, the FCC's four-part test is satisfied, and  
15 BellSouth must be ordered to offer unbundled packet switching where it has  
16 deployed DLCs.

17 **Q. Should unbundled packet switching be made available generally**  
18 **or only where the Commission conducts a remote terminal by remote**  
19 **terminal unbundling analysis?**

20 A. Because these conditions are satisfied in the vast majority, if not all,  
21 of BellSouth's DLC deployments, a general unbundling requirement is  
22 warranted. Otherwise, BellSouth will be able to effectively prevent CLECs  
23 from obtaining service in a timely and affordable manner by delaying entry

1 over protracted and expensive litigation addressing each one of BellSouth's  
2 hundreds or thousands of DLC sites.

3 **Q. Have any state commissions found that ILECs are required to**  
4 **unbundle packet switching at DLCs generally using the FCC's four-part**  
5 **standard?**

6 A. Yes. The Illinois Commerce Commission found that the test had been  
7 satisfied in ordering Ameritech to unbundle broadband loops.<sup>22</sup> In addition,  
8 the New York Public Service Commission declined to make this  
9 determination *only* because Verizon was not yet currently deploying packet  
10 switching for its own use or for the use of an affiliate. The New York  
11 Commission held that, were Verizon to deploy packet switching for its own  
12 use or to its affiliate, it would have to offer it to all competitors.<sup>23</sup> The facts  
13 of the New York case were materially different than here because of the far  
14 more advanced stage of BellSouth's DSL deployment over DLCs and  
15 ongoing utilization of packet switching for DLC loops in Florida. Had the  
16 Florida facts been before the New York Commission, a general unbundling  
17 of packet switching clearly would have been warranted.

18 **Q. Is the Florida Commission required to apply a four-part test**  
19 **established in the FCC's *UNE Remand Order* for unbundling of packet**  
20 **switching if before it can designate broadband loops as UNEs?**

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<sup>22</sup> *Illinois Pronto Arbitration Order* at 31.

<sup>23</sup> Proceeding on the Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services, Case 00-C-0127, Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities Opinion No. 00-12 (N.Y. P.S.C. October 31, 2000).

1           A.     No. As I stated previously, the Florida Commission can and should  
2           order unbundling of packet switching if it finds that CLECs would be  
3           impaired without such access, pursuant to the terms of FCC Rule 51.317.  
4           The four-part test from the *UNE Remand Order* is only one of many routes  
5           that the Commission could take to find such impairment. Above all, the  
6           Commission should consider that the fundamental purpose of the FCC test is  
7           clearly to enable CLECs to offer high-speed data service where the ILEC has  
8           deployed Digital Loop Carriers. If FDN had such access, it would be  
9           providing high-speed data over these loops today. BellSouth's contrived  
10          arguments that the *UNE Remand Order* precludes the unbundling of packet  
11          switching fails when viewed in the context of the purpose of the FCC's order  
12          and the reality today that CLECs lack meaningful access to DLC loops.  
13          Therefore, the BellSouth should be required to unbundle packet-switched  
14          broadband loops in Florida.

15           **III.    BELLSOUTH IS REQUIRED BY SECTION 251(C)(4) OF THE**  
16           **FEDERAL ACT TO OFFER ITS HIGH-SPEED DATA SERVICE FOR**  
17           **RESALE**

18          **Q.     Should BellSouth be required to offer wholesale high-speed data**  
19          **service to FDN for resale pursuant to Section 251(c)(4) of the**  
20          **Telecommunications Act of 1996?**

21          A.     Yes. BellSouth and its affiliates are required to offer, on a discounted  
22          wholesale basis, all of their retail telecommunications services, including  
23          xDSL and other high-speed data services, pursuant to the resale obligations

1 applicable to incumbent local exchange carriers under Section 251(c)(4) of  
2 the Federal Act. While resale is not FDN's preferred means of access, and,  
3 under FCC Orders, is not a substitute for UNE access,<sup>24</sup> the Act does require  
4 BellSouth to offer it, and BellSouth should be required to provide FDN such  
5 access in this case.

6 **Q. Does BellSouth offer for resale its high-speed data services today**  
7 **under the terms of Section 251(c)(4)?**

8 A. No. BellSouth's only wholesale high-speed data service in Florida is  
9 its voluntary, market-rate offer to Internet Service Providers (ISPs).  
10 BellSouth offers this service only for telephone lines on which BellSouth is  
11 the local exchange carrier. Therefore, this service is not a long-term option  
12 for FDN, which seeks to combine high-speed data services on the same line  
13 as its facilities-based local exchange service. Furthermore, since BellSouth  
14 considers the service to be voluntary, there is no guarantee that it will  
15 continue to be made available at rates, terms and conditions that would allow  
16 a competitor to compete with BellSouth's retail service.

17 **Q. If a resold DSL product were available pursuant to Section**  
18 **251(c)(4), could BellSouth refuse to resell DSL to CLECs for use on lines**  
19 **where it is not the local exchange carrier?**

20 A. No. An ILEC cannot impose unreasonable or discriminatory  
21 limitations on resale services provided under Section 251(c)(4).

22 **Q. What retail products does BellSouth offer to provide high-speed**  
23 **data service?**

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<sup>24</sup> See *UNE Remand Order* at ¶ 67.

1           A.     To the best of my knowledge, BellSouth's consumer high-speed data  
2           service is sold as BellSouth Fast Access Internet Service. FDN seeks to be  
3           able to resell the telecommunications portion of this service, which,  
4           depending on BellSouth's deployment, could be provided either over DSL,  
5           fiber-fed DLC, or all-fiber loops. I will refer to the telecommunications  
6           portion of this service as BellSouth's retail DSL service, but for the purposes  
7           of this testimony I intend to include with this term any technology BellSouth  
8           uses to provide consumer high-speed data services. BellSouth offers other  
9           higher-capacity high-speed data services, such as T-1 service, but these  
10          services are not a subject of this arbitration.

11          **Q.     On what basis has BellSouth refused to offer resold DSL service**  
12          **under Section 251(c)(4)?**

13          A.     BellSouth claims that its DSL services are exempt from the resale  
14          obligations of Section 251(c)(4) of the Telecommunications Act, which  
15          applies to retail telecommunications services. As I understand its position,  
16          BellSouth maintains that its local exchange carrier entity does not sell retail  
17          DSL, but instead sells DSL only to Internet Service Providers (ISPs). This  
18          position is based upon the FCC's 1999 decision that sales of DSL to ISPs are  
19          wholesale services that are exempt from resale obligations under Section  
20          251(c)(4).<sup>25</sup> However, the BellSouth group of companies, taken together, is  
21          the largest retail DSL provider in Florida. BellSouth does sell retail DSL  
22          through an ISP that it owns and controls. BellSouth's ISP obtains DSL from

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<sup>25</sup> Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, Second Report and Order, FCC 99-330 (rel. November 9, 1999) ("UNE Remand Order").

1 BellSouth's local exchange company. BellSouth promotes and sells its  
2 telephone and DSL services using the same advertisements, customer service  
3 and sales agents, and Internet sites, including www.BellSouth.com.  
4 Revenues from DSL sales and telecommunications services are reported  
5 together and accrue for the benefit of the same BellSouth shareholders. If  
6 BellSouth were permitted to avoid its Section 251 obligations by selling all of  
7 its telecommunications service on a wholesale basis to other affiliates, it  
8 would render the unbundling and resale obligations of the Federal Act  
9 meaningless. Therefore, retail sales of telecommunications services by any  
10 BellSouth affiliate should be attributed to the local exchange carrier operation  
11 for the purposes of Section 251.

12 **Q. Have any courts interpreted an ILEC's resale obligations where**  
13 **retail services are sold by an affiliate of the ILEC rather than by the**  
14 **ILEC itself?**

15 A. Yes. In *ASCENT v. FCC*,<sup>26</sup> decided in January 2001, the United  
16 States Court of Appeals for the District of Columbia held that retail sales of  
17 advanced telecommunications services by ILEC affiliates are subject to the  
18 resale obligations of the Act. The court found that an ILEC may not "sideslip  
19 § 251(c)'s requirements by simply offering telecommunications services  
20 through a wholly owned affiliate." Although the case involved a regulation  
21 pertaining only to SBC, the logic of the decision applies equally to BellSouth.  
22 Therefore, the FCC's ISP exemption cannot be read to exempt BellSouth

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<sup>26</sup> *Association of Communications Enterprises v. FCC*, 235 F.3d 662, (D.C. Cir. January 9, 2001)("ASCENT").

1 from its obligation to resell the retail telecommunications service that is  
2 provided by any BellSouth affiliate.

3 **Q. Have any states taken steps to require an ILEC to make available**  
4 **for resale the retail DSL products of separate ISP affiliates?**

5 A. Yes. On May 7, 2001, the Connecticut Department of Utility Control  
6 (DPUC) issued a draft decision that would require the state's largest  
7 incumbent, Southern New England Telephone Company (SNET), to resell  
8 any telecommunications service, including DSL, that is sold by its ISP  
9 affiliate and any other affiliates. The draft decision rejected arguments by  
10 SNET that are virtually identical to those offered by BellSouth. As the DPUC  
11 noted, "[t]he ASCENT Decision clearly holds that 'an ILEC [may not be  
12 permitted] to avoid § 251(c) obligations as applied to advanced services by  
13 setting up a wholly owned affiliate to offer those services.' [SNET's]  
14 repeated claim that this holding has no application to the services it offers  
15 ignores that decision's plain language."<sup>27</sup>

16 **Q. Is FDN asking that BellSouth be required to resell both the**  
17 **telecommunications and enhanced services that are sold together by**  
18 **BellSouth's ISP?**

19 A. No. Section 251 applies only to telecommunications services, and  
20 that is all that FDN is seeking to resell. However, BellSouth cannot refuse to  
21 separate its telecommunications service from its enhanced services for the  
22 purpose of denying resale. FCC bundling rules require BellSouth to offer its

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<sup>27</sup> Petition of DSLnet Communications, LLC Regarding Section 251(c) Obligations of the Southern New England Telephone Company, Docket 01-01-17, Draft Decision at 9 (Conn. D.P.U.C. May 7, 2001) (internal citations omitted).

1 telecommunications services separately from any enhanced services, even if  
2 it only sells them as a bundled product.<sup>28</sup>

3 **Q. If BellSouth only offers a bundled DSL and ISP product to the**  
4 **public, how should the resale rate under Section 251(c)(4) be calculated?**

5 A. BellSouth's current bundled ADSL/Internet Service rate, according to  
6 its Internet web site, is \$49.95, which includes DSL transport and unlimited  
7 access Internet service. When unlimited Internet service is ordered separately  
8 from BellSouth, the cost is \$20.95. Therefore, in the absence of any  
9 Commission-approved cost study allocating costs between the DSL and  
10 Internet service, the DSL transport service should be attributed to have a  
11 retail rate of ~~\$29.95~~<sup>29.00</sup>. The existing resale discount rates established by the  
12 Florida Commission would be applied to the ~~\$29.95~~<sup>29.00</sup> rate. BellSouth would  
13 be free to avail itself of any procedures available under this Commission's  
14 rules and prior decisions to seek modifications to the discount rates or to seek  
15 the establishment of a specific rate applicable to DSL.

16 **IV. FDN'S REQUEST IS NOT INCONSISTENT WITH PRIOR**  
17 **COMMISSION DECISIONS**

18 **Q. Prior arbitration decisions in Florida have rejected arguments**  
19 **that BellSouth should be required to provide splitters to CLECs. Is**  
20 **FDN's request inconsistent with those decisions?**

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28 Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket 96-61; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets, CC Docket 98-183, Report and Order, FCC 01-98 (rel. March 30, 2001), at ¶ 39.



1           A.     No. FDN recognizes that the Commission has previously decided not  
2           to require BellSouth to offer unbundled splitters to CLECs in the central  
3           office. The fact that FDN's proposed broadband UNE loop includes splitter  
4           functionality at the remote terminal is not inconsistent with these prior  
5           findings. In the central office environment, there is no dispute that CLECs  
6           are able to collocate equipment, and in these prior cases, CLECs sought  
7           unbundled splitters for reasons other than complete infeasibility. At remote  
8           terminals, as I have explained previously, CLECs cannot realistically  
9           collocate DSLAMs. For the same reasons, CLECs cannot collocate splitters  
10          at RTs. In addition, unlike the central office that may have multiple  
11          DSLAMs, it would be nonsensical to have multiple splitters all lined up to  
12          connect to a single (BellSouth) DSLAM.

13                 Furthermore, in NGDLC systems, the splitter is an inseparable part of  
14          the same line card equipment that performs DSLAM functionality. Unlike  
15          most current central office deployments, where the splitter is a separate item  
16          of equipment, inclusion of splitter functionality requires no additional burden  
17          on BellSouth. I am not aware of any technically feasible means of  
18          performing splitter functionality in NGDLC loops other than by the line card.  
19          The fact that the splitter functionality is included does not alter the  
20          Commission's overall impairment analysis for broadband loops.

21          **Q.     Why do you believe that the *Line Sharing Reconsideration Order***  
22          **did not endorse the ILECs' refusal to sell DSL service?**

1           A.     The FCC did not find that ILECs may lawfully refuse to provide DSL  
2           service on lines on which it is not the retail voice carrier. On the contrary,  
3           the FCC determined only that AT&T's request was beyond the scope of a  
4           reconsideration order, which, for procedural reasons, was limited to  
5           consideration of the ILECs' obligation to provide access to line sharing to  
6           data CLECs who would provide DSL service. The FCC specifically noted  
7           that it did *not* rule on the merits of AT&T's argument, instead noting that any  
8           party aggrieved by an ILECs refusal to provide service could file a petition  
9           alleging that the ILECs practice constitutes an unreasonable practice in  
10          violation of the common carrier obligations to provide service to the public  
11          on a nondiscriminatory basis, pursuant to Section 201 of the Communications  
12          Act of 1934.

13          **Q.     Has FDN considered pursuing a complaint at the FCC based on**  
14          **Section 201 to require ILECs to sell DSL service to requesting consumers**  
15          **who subscribe to CLEC voice services?**

16          A.     Not at this time. As I stated before, FDN is not seeking a requirement  
17          that BellSouth provide retail xDSL service to FDN's local exchange  
18          customers. Instead, FDN is seeking access only to the resale and UNE  
19          products that it is entitled to under Section 251(c) of the Telecommunications  
20          Act of 1996 so that it may provide its own retail DSL service. However, if  
21          FDN later decided to pursue a different strategy, I would consider filing a  
22          Section 201 complaint at the FCC. BellSouth can offer no reasonable  
23          justification for its policy, which clearly appears designed to leverage its

1 market power in the high-speed data market as an anticompetitive tool to  
2 injure its competitors in the voice services market. Because competitive  
3 providers of DSL have been unable to offer DSL service where DLCs are  
4 present, there have always been fewer competitive options in BellSouth  
5 territory in Florida to the extremely high percentage of such loops. Now,  
6 with numerous competitive DSL providers folding or downsizing even in  
7 markets where copper loops were more readily available, if FDN does not  
8 obtain the relief requested in this case, there is a very real possibility that  
9 BellSouth will in the foreseeable future be the only remaining DSL provider  
10 in its incumbent region in Florida. Therefore, BellSouth's ability to exert  
11 unreasonable and unlawful anticompetitive pressures on the voice services  
12 market will continue to increase. For these reasons, BellSouth's refusal to  
13 offer xDSL service to Florida consumers who purchase facilities-based voice  
14 service from CLECs is unreasonable and unlawful.

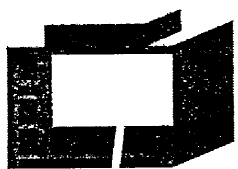
15 ISSUE 2 -- SETTLED

16 ISSUES 3A & 3B.

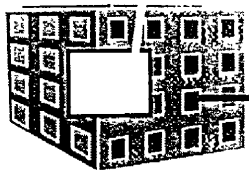
17 **Q. Issues Nos. 3A and 3B concern trouble ticket closure and charges.**

18 **Please describe FDN's position on Issues Nos. 3A and 3B.**

19 A. FDN experiences a significant number of trouble conditions for loss of  
20 dial tone or other service problems that FDN believes are attributable to  
21 BellSouth's service or facilities. Accordingly, FDN has a keen interest in  
22 BellSouth's disposition of trouble tickets and how FDN might be charged  
23 for trouble tickets. FDN does not dispute BellSouth's request to charge

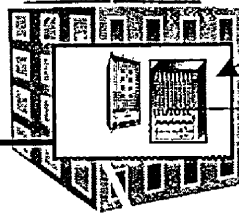


CLEC (FDN)  
POP



Tandem

Local Serving Office



CLEC DSLAM

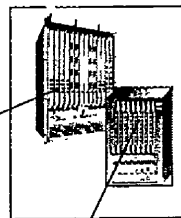


Continuous Copper



FIBER

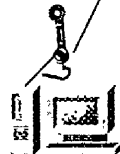
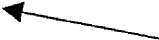
ILEC DLC



ILEC DSLAM



Copper



Fi



= CLEC Co-Location

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by U.S. Mail this 2 day of December, 2001.

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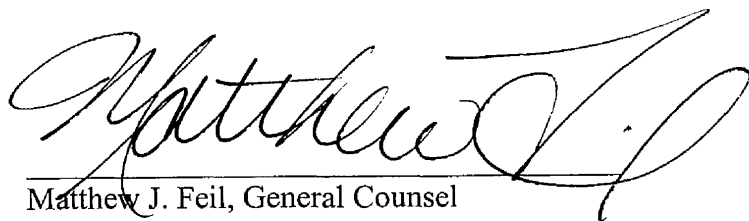
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A handwritten signature in black ink, appearing to read "Matthew J. Feil". The signature is written in a cursive style with a horizontal line underneath the name.

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