

ORIGINAL

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April 3, 2002

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COMMISSION
CLERK

Mrs. Blanca S. Bayó
Director, Division of the Commission
Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: **Docket No. 020252-TP**
Florida Digital Network's Complaint and Request for Emergency Relief

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Answer and Counterclaim to Florida Digital Network's Complaint and Request for Emergency Relief, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return a copy to me. Copies have been served to the parties shown on the attached certificate of service.

Sincerely,

James Meza III
(LA)

James Meza III

Enclosures

- AUS _____
- CAF _____
- CMP _____
- COM 3
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC 1
- OTH _____

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

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FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
Docket No. 020252-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and Federal Express this 3rd day of April, 2002 to the following:

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Staff Counsel
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Tallahassee, FL 32399-0850

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James Meza III (LA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Florida Digital Network,) Docket No. 020252-TP
Inc. Against BellSouth Telecommunications,)
Inc. and Request for Emergency Relief) Filed: April 3, 2002
_____)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
ANSWER AND COUNTERCLAIM TO FLORIDA DIGITAL NETWORK'S
COMPLAINT AND REQUEST FOR EMERGENCY RELIEF**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Answer and Counterclaim to Florida Digital Network's ("FDN") Complaint and Request for Emergency Relief Requiring BellSouth to Process Service Orders Pending Resolution of Disputes ("Complaint"). The Florida Public Service Commission ("Commission") should summarily deny and/or dismiss FDN's requests for relief and should grant BellSouth's Counterclaim.

INTRODUCTION

BellSouth and FDN are before this Commission because of one simple reason: FDN is not and has not paid its bills on time. As of March 29, 2002, FDN owes BellSouth _____ in CRIS (UNE and resale) and CABS (access) charges. Of this amount, _____ is for current charges while _____ (_____ for CRIS; _____ for CABS) is past due and undisputed.¹

Despite not paying its bills, FDN has allegedly experienced a 25 percent growth in access lines since August 2001. See Docket 990649A-TP, Tr. Vol. V. p. 649, ln. 16 – p. 650, ln. 16, attached hereto as Exhibit A. (On cross-examination, Mr. Gallagher, FDN's CEO, represented that FDN gained 20,000

access lines since August 2001). Thus, it is clear that, unless FDN is giving service away, it is receiving increased revenue and purchasing additional services from BellSouth but, in turn, not paying BellSouth for those services.²

In addition, FDN is incurring, on average, monthly billings totaling

As a result, because FDN is not paying its current charges, the total amount that FDN owes BellSouth for past due amounts increases every month.³

At the same time, independent evidence suggests that FDN appears to be experiencing a period of financial distress. This evidence includes (1) FDN's Dunn and Bradstreet's rating, which is 4A3 (with a scale of 1-4, 1 being the best and 4 being the worst); and (2) FDN's Dunn and Bradstreet's PAYDEX score, which is 53 (payments to vendors average 22 days beyond terms). See March 21, 2002 Letter of Sandra Cetti, attached hereto as Exhibit B. Thus, FDN continues to incur additional charges without any visible signs that it can pay its current charges, let alone the growing past due amount.

Unfortunately, in today's economic times, FDN's recent payment history and apparent financial distress is not something new for BellSouth.⁴ From January 2001 to the present, 68 carriers who purchased services from BellSouth have gone bankrupt or out of business, representing approximately \$103 million in uncollectible charges. In fact, with one recent bankruptcy filing, BellSouth was unable to recover over \$20 million in undisputed, legitimately owed charges.

¹ This figure does not include the _____ in CABS billings that FDN has disputed. FDN has not disputed any CRIS billings.

² Even if FDN was giving telecommunications service away, FDN would still not be excused from paying its bills.

³ For instance, since January 2002, FDN's past due billings have increased approximately _____ a month.

⁴ The recent downturn in the economy has effected both ALECs and ILECs.

BellSouth, like any other business, expects and requires payment for services received on a timely basis in order to survive. There is no doubt that FDN expects the same from its customers.

With this Answer and Counterclaim, BellSouth, among other things, is respectfully requesting that the Commission (1) recognize that FDN owes BellSouth in undisputed CABS and CRIS billings; (2) require FDN to pay all past due and undisputed amounts to BellSouth immediately; and (3) require FDN to place all disputed amounts in escrow.

ANSWER

Turning to the Complaint, BellSouth now answers the enumerated paragraphs, on a paragraph-by-paragraph basis, of the Complaint.

1. BellSouth admits that this Commission has the authority under Florida statutes and the Interconnection Agreement to resolve billing disputes arising out of FDN's purchase of services from BellSouth under the Interconnection Agreement and BellSouth's Florida intrastate tariffs. BellSouth denies that this Commission has jurisdiction over billing disputes arising out of FDN's purchase of interstate services from BellSouth's FCC Tariff No. 1.

2. BellSouth denies the allegations sets forth in Paragraph 2 of the Complaint.

3. BellSouth admits that FDN is certificated as an Alternative Local Exchange Company ("ALEC") in the State of Florida. BellSouth denies the remaining allegations in Paragraph 3 of the Complaint for lack of knowledge.

4. The allegations of Paragraph 4 of the Complaint do not require a response from BellSouth.

5. BellSouth admits the allegations of Paragraph 5.

6. BellSouth admits that (1) the Commission approved the current Interconnection Agreement on September 22, 1998 in Docket No. 980908-TP, Order No. PSC-98-1327-FOF-TP; (2) the Commission has approved 7 amendments to the Interconnection Agreement, and (3) FDN and BellSouth are currently arbitrating the terms of a new Interconnection Agreement. BellSouth denies the remaining allegations in Paragraph 6 of the Complaint.

7. BellSouth denies the allegations of Paragraph 7 of the Complaint.

8. BellSouth denies the allegations of Paragraph 8 of the Complaint.

9. BellSouth denies the allegations of Paragraph 9 of the Complaint, except to admit that the Interconnection Agreement contains a provision that addresses the reconciliation of billing disputes. The Interconnection Agreement speaks for itself and is the best evidence of its terms and conditions.

10. BellSouth denies the allegations of Paragraph 10 of the Complaint, except to admit that the dispute resolution process set forth in the Interconnection Agreement speaks for itself and is the best evidence of its terms and conditions. To the extent FDN is alleging that neither FDN nor BellSouth followed the required process for resolving billing under the Interconnection Agreement, it is denied. BellSouth has complied with the provisions of the Interconnection Agreement in resolving all billing disputes that were the subject of a "Notice of Discrepancy", as required by the Interconnection Agreement.

11. BellSouth denies the allegations of Paragraph 11 of the Complaint, except to admit that the Interconnection Agreement speaks for itself and is the best evidence of its terms and conditions.

12. BellSouth denies the allegations of Paragraph 12 of the Complaint, except to admit that FDN has submitted hundreds of written "Notices of Discrepancy" pursuant to the Interconnection Agreement. As a result of these Notices, BellSouth has credited FDN certain amounts when the disputes are upheld and has also denied certain disputes, without any further objection by FDN.

13. BellSouth denies the allegations of Paragraph 13, except to admit that BellSouth sent FDN, via certified mail, a demand letter dated January 29, 2002 for \$2,587,210.09, which is attached hereto as Exhibit C. That letter speaks for itself and is the best evidence of its terms and conditions.

13a.⁵ BellSouth denies the allegations of Paragraph 13a, except to admit that the January 29, 2002 demand letter and the Interconnection Agreement speak for themselves and are the best evidence of their terms and conditions. In addition to this general denial, BellSouth specifically denies any allegation that the January 29, 2002 demand letter is defective, because FDN, as evidenced by the fact that it referenced said letter in its Complaint, premised its Complaint on said letter, made approximately \$2.5 million in payments pursuant to that letter, and negotiated with BellSouth about the amounts in the demand letter, received the demand letter and has acquiesced to it.

⁵ FDN's Complaint contains two paragraphs identified as Paragraph 13. For the purpose of this Answer, BellSouth refers to the second Paragraph 13 as Paragraph 13a.

Moreover, BellSouth specifically denies FDN's allegations that it submitted a "Notice of Discrepancy" for a \$63,596.00 collocation charge ("Collocation Dispute") in October 2001. BellSouth has no evidence that FDN submitted said dispute at that time. In fact, BellSouth's records establish that FDN first submitted the Notice of Discrepancy for the Collocation Dispute on February 1, 2002, which was after BellSouth sent FDN the January 29, 2002 demand letter.

14. Regarding Paragraph 14 of the Complaint, BellSouth admits that, BellSouth and FDN began discussions regarding the January 29, 2002 demand letter in the afternoon of February 27, 2002 when BellSouth initiated said discussions. BellSouth specifically denies, however, any allegation that the parties discussed any disputed amounts in these initial discussions. Rather, the discussions centered solely on when and if FDN would satisfy the January 29, 2002 demand letter. Without contesting or challenging any of the rights asserted by BellSouth in the January 29, 2002 demand letter or of the amount set forth in that demand letter, FDN informed BellSouth on February 27, 2002 that it would make a partial payment on February 28, 2002 – the due date set forth in the demand letter.

BellSouth denies FDN's allegations regarding the time period in which FDN made partial payments to BellSouth, except to admit that on February 28, 2002, BellSouth received a payment of \$97,345.02, leaving an outstanding balance of \$2,489,865.07. Further, BellSouth admits that on March 1, 2002, BellSouth received two payments from FDN totaling \$1,017,843.41, leaving an outstanding balance of \$1,472,021.66. Because negotiations were continuing

and in the spirit of cooperation, BellSouth did not disconnect or terminate FDN's services on February 28, 2002 or March 1, 2002, notwithstanding FDN's failure to fully comply with the demand letter.

BellSouth denies any remaining allegations of Paragraph 14 of the Complaint.

15. BellSouth denies the allegations contained in Paragraph 15 of the Complaint, except to admit that, as of March 1, 2002, FDN did not satisfy the January 29, 2002 demand letter. BellSouth also admits that, within its rights under the Interconnection Agreement, BellSouth's FCC Tariff No. 1, and BellSouth's Florida E Tariff⁶, BellSouth stopped processing new service orders requested by FDN for those services that are billed through CABS on February 28, 2002 because FDN failed to satisfy the January 29, 2002 demand letter. The refusal to process FDN's new CABS orders did not disrupt service to FDN's current customer base. In addition, BellSouth did not and has not, up to this time,⁷ stopped processing orders for services that are billed through CRIS, which includes resale orders, UNE-P orders, and SL-1 loop orders.

BellSouth denies any remaining allegations of Paragraph 15 of the Complaint.

16. BellSouth denies the allegations of Paragraph 16 of the Complaint, except to admit that the parties continued to negotiate several issues, including FDN's failure to cure the January 29, 2002 demand letter, during the weekend of

⁶ See Section 20.1.1, Interconnection Agreement, attached hereto as Exhibit D; BellSouth's FCC Tariff No. 1 at Section 2.1.8, attached hereto as Exhibit E; BellSouth's Florida E Tariff at Section E2.1.8, attached hereto as Exhibit F.

March 2-3, 2002. It was BellSouth's understanding, based on discussions over that weekend that FDN agreed to wire to BellSouth the balance owed under the January 29, 2002 demand letter, or \$1,472,021.66, by 9:00 a.m. on Monday, March 4, 2002. BellSouth specifically denies any allegation that BellSouth agreed that the demand letter would be cured by a lesser payment of \$1,210,446.07.

17. BellSouth denies the allegations contained in Paragraph 17, except to admit that, contrary to FDN's statements over the March 2-3, 2002 weekend, FDN wired BellSouth \$1,210,446.07 at the close of business on March 4, 2002, leaving a balance owed of \$261,575.59. Despite the fact that FDN had still not complied with the January 29, 2002 demand letter five days after BellSouth had the right to terminate FDN, BellSouth, in the spirit of cooperation, did not disconnect or terminate FDN's service.

BellSouth further denies any allegation that BellSouth informed FDN on March 5, 2002 that it still owed \$207,193.46 under the January 29, 2002 demand letter. The amount that BellSouth informed FDN that it still owed was \$261,575.59. Further, in the parties' discussions on March 5, 2002, FDN agreed to wire \$426,798.31 to BellSouth on March 6, 2002. This amount included (1) \$165,222.72 for past due and undisputed CRIS billings subject to a February 18, 2002 demand notification; and (2) \$261,575.59 to satisfy the remainder owed under the January 29, 2002 demand letter for undisputed and past due CABS billings. Contrary to FDN's previous statements and without any explanation, on

⁷ While BellSouth has yet to stop processing CRIS orders, BellSouth reserves the right to exercise such a stoppage or any other rights available to it under the Interconnection Agreement


March 6, 2002, FDN wired to BellSouth only \$372,856.12. In a fax FDN sent to BellSouth, FDN requested that \$165,662.66 be applied to the outstanding CRIS bill and that \$207,293.46 be applied to the remaining owed under the January 29, 2002 demand letter. As a result, the above payment cured the delinquency on the CRIS billing but left FDN \$54,328.13 short on the CABS billing.

BellSouth denies any remaining allegations of Paragraph 17 of the Complaint.

18. BellSouth denies the allegations contained in Paragraph 18 of the Complaint, except to admit that, by March 6, 2002, or seven days after FDN was required to cure the January 29, 2002 demand letter and seven days after BellSouth had the right to disconnect FDN, FDN made several partial payments to BellSouth that totaled \$2,532,827.96, which was still short of the amount necessary to comply with the January 29, 2002 demand letter. BellSouth also admits that, notwithstanding these payments, BellSouth refused to process FDN's CABS orders because, from the expiration of the notice period on February 28, 2002 to March 6, 2002, BellSouth determined that \$1,106,543.72 in undisputed CABS billings became past due.⁸ Soon thereafter, BellSouth determined that an additional undisputed [redacted] in CABS billings became past due. See March 14, 2002 Demand Letter, attached hereto as Exhibit H. Accordingly, a total of [redacted] in undisputed CABS billing had become past due since February 28, 2002.

for FDN's failure to timely pay undisputed and past due CRIS bills.

⁸ In fact, on that same date, BellSouth sent FDN a second demand letter, notifying FDN that a total of [redacted] undisputed CRIS and CABS billings were over due and requesting that

If FDN had satisfied the full amount of the January 29, 2002 demand letter on February 28, 2002, March 1, 2002, on March 4, 2002 as promised, or even on March 5, 2002, BellSouth would have restored FDN's ordering capabilities for CABS orders at that time. Indeed, because FDN satisfied the amount that was owed and past due for CRIS billings on March 6, 2002, which was within the time specified in the February 18, 2002 CRIS notice, BellSouth did not stop processing CRIS orders, notwithstanding the fact that BellSouth subsequently determined that FDN owed  undisputed CRIS billings.⁹

BellSouth denies any allegation that FDN included a portion of the Collocation Dispute in the amount paid to BellSouth "because [FDN] thought BST would lift the embargo after receiving all requested amounts." Complaint at 9 n.21. At no time did BellSouth inform FDN that it would process FDN's orders if FDN paid something less than the full amount set forth in the January 29, 2002 demand letter. In addition, prior to March 6, 2002, FDN provided no explanation as to why it did not pay the full amount of the demand letter as promised. In fact, based on FDN's payment behavior and apparent stalling tactics, FDN's claim that it paid less than the full amount of the January 29, 2002 demand letter because of the Collocation Dispute appears to be nothing more than a convenient post-hoc rationalization for FDN's failure to comply with its March 5, 2002 commitment to pay the entire amount owed.

FDN pay that amount by April 5, 2002. See March 6, 2002 demand letter, attached hereto as Exhibit G.

⁹ In addition to the undisputed CABS billings, this amount is the subject of the March 6, 2002 and March 14, 2002 demand letters and BellSouth reserves the right to exercise any of its rights under the Interconnection Agreement for FDN's failure to pay this amount, including but not limited to the termination of service.

19. BellSouth denies the allegations of Paragraph 19, except to admit that BellSouth sent FDN a letter dated March 6, 2002 in which it notified FDN that it was in further default of the Interconnection Agreement and/or applicable tariffs for failing to pay \$2,248,961.52 in CRIS and CABS billings. See Exhibit G. The March 6, 2002 demand letter speaks for itself and is the best evidence of its terms and conditions. In addition, BellSouth specifically denies any allegation that the March 6, 2002 demand letter was defective, because FDN, as evidenced by the fact that FDN referenced said letter in its Complaint, premised its Complaint on said letter, and attached said letter to its Complaint, received and acknowledged the demand letter.

BellSouth also denies any allegation that, by requiring FDN to pay all sums that had become past due since the issuance of the March 6, 2002 demand letter in addition to the \$2,248,961.52, BellSouth is somehow seeking to negate FDN's right to withhold payment of disputed amounts or that BellSouth is attempting to circumnavigate the Interconnection Agreement. If FDN had submitted a written, good-faith "Notice of Discrepancy" for any amount that had become past due since the issuance of the demand letter, BellSouth would not, pursuant to the Interconnection Agreement, consider this disputed amount to be past due until the dispute is resolved.¹⁰ Further, there is nothing in the Interconnection Agreement that prohibits BellSouth from demanding payment from FDN for all amounts that are undisputed and that have become past due

¹⁰ It should be noted that taking this position and complying with the terms of the Interconnection Agreement has allowed other carriers to manipulate and abuse the dispute resolution procedure in order to avoid paying legitimate charges, notwithstanding the carrier's obligation to submit only

since the issuance of the demand letter. Indeed, such a requirement is necessary to avoid the scenario it currently finds itself in – repeatedly issuing demand letters month after month because an ALEC pays only the amount in the demand letter to avoid termination of service. Such a scenario results in ALECs, such as FDN, effectively obtaining free or reduced service because they only pay the amount set forth in the demand letter to avoid termination of services.

20. BellSouth denies the allegations of Paragraph 20 of the Complaint, except to admit that, BellSouth and FDN had a conference call on March 8, 2002. BellSouth also admits that, because additional CABS amounts became past due since the January 29, 2002 demand letter, BellSouth would not process FDN's CABS orders. BellSouth informed FDN that it would process FDN's CABS orders if BellSouth could be assured that FDN could and would pay all undisputed amounts that were past due. Accordingly, BellSouth proposed that, FDN put a sum certain into escrow, pending resolution of the remaining disputes and the parties continued negotiations. FDN rejected this offer and refused to put any amounts into deposit or escrow.

21. BellSouth denies the allegations of Paragraph 21 of the Complaint. BellSouth's decision to stop processing FDN's CABS orders as a result of FDN's failure to pay in undisputed CABS billings is authorized by both the Interconnection Agreement, BellSouth's FCC's Tariff No. 1, and BellSouth's Intrastate E Tariff. Specifically, the FCC Tariff as well as the Florida E Tariff expressly provide that BellSouth can refuse any requests for service if a carrier

good faith disputes. As set forth in greater detail in the Counterclaim infra, FDN appears to be doing just that in this proceeding.

fails to become current on past due amounts, after 30 days written notice. See FCC Tariff at 2.1.8(A), Exhibit E; Florida E Tariff at E2.1.8, Exhibit F. Thus, clearly under the FCC Tariff and the Florida E Tariff, BellSouth has the right to refuse to process FDN's CABS orders.

Similarly, Section 20.1.1. of the Interconnection Agreement provides that, if a breaching party fails to cure a breach for nonpayment within 30 days of receiving notice of said breach, "[t]he nonbreaching party shall be entitled to pursue all available legal and equitable remedies for such breach." In addition, the January 29, 2002 demand letter explicitly stated that "payments are expected for any current bills that may become due." See Exhibit C. Accordingly, because FDN failed to pay all undisputed amounts that became due since the issuance of the January 29, 2002 demand letter, BellSouth is entitled under the Interconnection Agreement to implement all legal and equitable remedies, which includes the refusal to process new CABS orders for FDN.¹¹

Moreover, BellSouth specifically denies any allegation that BellSouth has refused to follow the 120-day period under the Interconnection Agreement to resolve billing disputes. BellSouth has or is in the process of resolving all of FDN's "Notices of Discrepancy," which only amount to ..
Accordingly, pursuant to the Interconnection Agreement, this amount is not included as an undisputed amount.

BellSouth denies any remaining allegations of Paragraph 21 of the Complaint.

22. BellSouth denies the allegations contained in Paragraph 22 of the Complaint, except to admit that the Interconnection Agreement speaks for itself and is the best evidence of its terms and conditions. BellSouth specifically denies any allegation that BellSouth is attempting to disconnect FDN's service for nonpayment of disputed amounts. As stated above, since the issuance of the 30-day notice set forth in the January 29, 2002, demand letter, in undisputed CABS billings has become past due. The currently in dispute is not included in this past due amount.

Further BellSouth denies any allegation that FDN is not in breach of the Interconnection Agreement, FCC Tariff, or Florida E Tariff. While FDN has paid BellSouth \$2,532,827.96 pursuant to the January 29, 2002 demand letter, FDN is still in default of the Interconnection Agreement, the FCC Tariff, and the Florida E Tariff. This is so because FDN has failed to pay the full amount of the January 29, 2002 demand letter and all amounts that became past due since the issuance of that demand letter. See January 29, 2002 Demand Letter, Exhibit C. In fact, under BellSouth's FCC Tariff and Florida E Tariff, if BellSouth does not disconnect FDN for failure to cure a breach of nonpayment after giving 30 days notice and the breach continues, BellSouth can disconnect FDN without any additional notice.¹² Thus, FDN is still in breach of the Interconnection

¹¹ Alternatively, even if section 20.1.1 of the Interconnection Agreement does not apply, the Interconnection Agreement does not prohibit BellSouth's refusal to process orders for the failure to pay undisputed billings.

¹² Section 2.1.8 of BellSouth's FCC Tariff provides in pertinent part:

Unless the provisions of 2.2.1(B) or 2.5 following apply, if a customer fails to comply with 2.1.6 preceding or 2.2.2, 2.3.1, 2.3.4, 2.3.5, 2.3.10, or 2.4 following, including any payments to be made by it on the dates and times herein specified, the Telephone Company may, on thirty (30) days written notice by Certified U.S.

Agreement, the FCC Tariff, and the Florida E Tariff, and it is disingenuous for FDN to argue that it is not in default especially when it has yet to pay over in undisputed CABS billings and \$1.3 million in CRIS billings.

BellSouth denies any remaining allegations of Paragraph 22 of the Complaint.

23. BellSouth denies the allegations of Paragraph 23 of the Complaint. As previously stated, BellSouth is complying with the billing dispute process set forth in the Interconnection Agreement or as modified by the parties for all Notices of Discrepancies that FDN has provided. Further, BellSouth denies any argument by FDN that a "joint agreement" is required between the parties before any dispute can be closed. A joint agreement is only required under the Interconnection Agreement to close any billing period prior to the expiration of nine months from the issuance of the bill date. See Exhibit D, Attachment VIII, Section 3.1.18.3.¹³ There is no requirement that, after going through the billing dispute process, the parties have to jointly agree that a billing dispute is closed. Such an interpretation would nullify the provision of the Interconnection

Mail to the person designated by that customer to receive such notices of noncompliance, discontinue the provision of the services to the noncomplying customer at any time thereafter. In the case of such discontinuance, all applicable charges, including termination charges, shall become due. If the Telephone Company does not discontinue the provision of the services on the date specified in the thirty (30) days notice, and the customer's noncompliance continues, nothing contained herein shall preclude the Telephone Company's right to discontinue the provision of the services to the noncomplying customer without further notice."

The Florida E Tariff has identical language. See Florida E Tariff at E2.1.8, Exhibit F.
¹³ Attachment VIII, Section 3.1.18.3 provides: "Closure of a specific billing period shall occur by joint Agreement of the parties whereby the parties agree that such billing period is closed to any further analysis and financial transactions, except those resulting from an Audit. Closure shall take place within nine (9) months of the Bill Date." See Exhibit D.

Agreement giving this Commission the authority to resolve billing disputes when the parties cannot agree. See Exhibit D, Section 3.1.18.4.3.

24. BellSouth denies the allegations of Paragraph 24 of the Complaint.

25. BellSouth denies the allegations of Paragraph 25 of the Complaint and states that FDN's continual refusal to pay undisputed CRIS and CABS billings on time is detrimental to BellSouth, Florida end users, other ALECs, and FDN's customers.

26. BellSouth denies the allegations of Paragraph 26 of the Complaint. Immediately upon FDN informing BellSouth that a BellSouth representative allegedly made a disparaging statement about FDN to an alleged FDN customer, BellSouth conducted an investigation. That investigation revealed no evidence to support FDN's allegation.¹⁴ Further, BellSouth has a strict policy against any BellSouth employee making disparaging comments about its competitors. BellSouth takes this policy seriously and does not tolerate any violations.

27. BellSouth denies the allegations of Paragraph 27 of the Complaint, except to admit that immediate Commission action is necessary to address FDN's continual refusal to timely pay undisputed CABS and CRIS billings.

28. BellSouth denies FDN's prayer for relief, except to admit that, the Interconnection Agreement requires that the Commission resolve all disputes arising under the Interconnection Agreement within 60 days.

¹⁴ In addition to the lack of any evidence to support FDN's claim, FDN's allegation is further suspect because, upon being informed that BellSouth would conduct an investigation and take appropriate action if the investigation revealed a violation of BellSouth's policies, FDN requested that BellSouth not take any adverse action against the BellSouth employee involved.

29. Any allegation not expressly admitted herein, including those contained in the Introduction of FDN's Complaint, is denied.

WHEREFORE, BellSouth respectfully requests that the Commission deny all relief requested in FDN's Petition and dismiss the Petition with prejudice.

AFFIRMATIVE DEFENSES

The Commission lacks subject matter jurisdiction to address BellSouth's defenses under its FCC tariff. As grounds for this defense, BellSouth states the following:

1. The Commission has the authority to interpret and enforce BellSouth's intrastate tariffs, which have been filed and approved by the Commission. The Commission also has the authority to enforce and interpret Interconnection Agreements it has approved. See Section 364.162(1), Florida Statutes. The Commission, however, does not have the authority to interpret and enforce BellSouth's interstate tariffs, which have been filed and approved by the FCC. The primary reason for this lack of authority is the fact that the Commission does not have the authority to regulate interstate traffic. See 47 U.S.C. §152(b); Bell Atlantic MD. Inc. v. MCI WorldCom, Inc., 240 F. 3d 279, 299 (4th Cir. 2001).

2. In its Complaint, FDN has alleged that BellSouth was without authority under the Interconnection Agreement to refuse to process orders that were billed under CABS because FDN satisfied all but approximately \$53,000 of the January 29, 2002 demand letter, with the remainder owed being disputed. BellSouth's response, among others, is that BellSouth has the express right

under its FCC Tariff No. 1 to refuse to process orders when a carrier, like FDN, fails to cure a breach for nonpayment after 30 days notice. See Exhibit E, Section 2.1.8.

3. BellSouth's FCC's tariff is applicable to the instant dispute because the January 29, 2002 demand letter included billings for purchases FDN made under BellSouth's FCC tariff. Accordingly, to resolve FDN's Complaint, the Commission will have to interpret and apply BellSouth's rights and obligations under its interstate FCC tariff, which is beyond the Commission's jurisdiction.

4. Accordingly, because the Commission has no authority to interpret or enforce BellSouth's FCC tariff, the Commission should dismiss FDN's claim as it relates to those amount purchased under the FCC Tariff. In addition, the Commission should recognize that, resolution of FDN's Complaint solely under the terms and conditions of the Interconnection Agreement will not definitively resolve this matter. This is so because the appropriate forum, which is not the Commission, will have to determine whether BellSouth's actions or inactions were permitted under its FCC tariff.

COUNTERCLAIM

Pursuant to Florida Rule of Civil Procedure 1.170 and Rule 25-22.036, F.A.C., BellSouth submits the following Counterclaim to FDN's Complaint.

JURISDICTION

1. The Commission has jurisdiction over this Counterclaim pursuant to Sections 364.162(1), Florida Statutes, which authorizes the Commission to "arbitrate any dispute regarding interpretation of interconnection or resale prices

and terms and conditions." The Commission also has jurisdiction under the parties' Interconnection Agreement. See Exhibit D, Section 23. Specifically, the Interconnection Agreement provides that "the parties agree that any dispute arising out of or relating to this Agreement that the parties themselves cannot resolve, may be submitted to the Commission for resolution." Id.

GENERAL FACTUAL ALLEGATIONS

2. BellSouth is Georgia corporation and an Incumbent Local Exchange Company regulated by the Commission and authorized to provide local exchange telecommunications and intraLATA toll telecommunications in the State of Florida.

3. FDN is a Delaware corporation with its principal place of business located in Orlando, Florida. FDN is a certificated Alternative Local Exchange Company. FDN's address is 390 North Orange Avenue, Suite 2000, Orlando, FL 32801.

4. BellSouth and FDN are parties to an Interconnection Agreement that was approved by the Commission on September 22, 1998 in Docket No. 980908-TP, Order No. PSC-98-1327-FOF-TP. That agreement had an expiration date of June 2, 2000. FDN and BellSouth are currently negotiating a new Interconnection Agreement and are operating under the current Interconnection Agreement until the new agreement is finalized.

CLAIMS FOR RELIEF

I. FDN Owes BellSouth ¹⁵ In Undisputed Past Due Billings.

5. FDN currently owes BellSouth _____ in CRIS (UNE and resale) and CABS (access) charges.

6. Of this amount, _____ is for current charges and _____ for CRIS; _____ for CABS) is past due and undisputed.

7. The Interconnection Agreement requires FDN to submit a "Notice of Discrepancy" for any billing discrepancy. See Exhibit D, Attachment VIII, Section 3.1.18. Since execution of and pursuant to the Interconnection Agreement, FDN has submitted hundreds of written "Notices of Discrepancy" with supporting documentation. FDN has submitted these "notices" through several mediums, including fax and e-mail.

8. In a March 8, 2002 conference call, FDN, for the first time, made a vague, unsupported assertion that it was disputing over _____ in BellSouth billings. FDN did not provide a detailed explanation as to what disputes were contained in this figure or if this dispute encompassed previously submitted or new disputes. Since the time of that call and despite the fact that the parties have exchanged numerous communications over the past couple of weeks, FDN has not (1) provided BellSouth with a written "Notice of Discrepancy" for this

¹⁵ If the Commission accepts BellSouth's argument that the Commission cannot resolve billing disputes arising out of BellSouth's FCC tariff, then this amount should be reduced by the amount

dispute; (2) provided any evidence to support a dispute; or (3) raised the \$5 million dispute again.

9. On March 14, 2002, BellSouth issued a third demand letter to FDN. See Exhibit H. This demand letter (1) informed FDN that, at that time, in CABS billings and in CRIS billings were owed and past due¹⁶; and (2) requested payment of this past due amount and any current bills that become due within 30 days. Id.

10. In the March 14, 2002 demand letter, BellSouth also provided a detailed analysis of all CABS disputes that were the subject of a "Notice of Discrepancy" and which were withheld from the undisputed portion of the CABS bill. Id. These disputes total and include the following:

- a. Bill and Keep on Trunks and Facilities -
- b. Collocation Dispute -
- c. Maintenance and Dispatch Charges -

See Exhibit G.¹⁷

of undisputed CABS billings that FDN purchased out of BellSouth's FCC Tariff. BellSouth will provide this amount in its pre-filed testimony.

¹⁶ From the issuance of that demand letter to the filing of this Counterclaim, the amount past due has increased to for CABS billings and for CRIS billings.

¹⁷ In the March 8, 2002 conference call, FDN, for the first time, verbally submitted two disputes: (1) a local interconnection billing issue where FDN alleged that BellSouth charged FDN an incorrect rate for local and ISP usage for four months; and (2) the UNE rate issue for the September and October 2001 bills where FDN stated that it did not pay either of these bills because BellSouth allegedly used the wrong UNE rate. Despite the fact that FDN did not submit these disputes in writing or with any documentation, BellSouth agreed to look at these verbal disputes solely for the purpose of and in the hopes of facilitating settlement. BellSouth's investigation revealed that, regarding the first issue, FDN was correct and on March 29, 2002 BellSouth issued a credit of approximately \$95,000 to FDN. See Exhibit H. Regarding the second issue, BellSouth's investigation revealed that BellSouth has already corrected the rate and issued appropriate credits and debits to FDN. Id.

11. BellSouth also notified FDN in the March 14, 2002 demand letter that it was not recognizing any CABS disputes other than those set forth in the March 14, 2002 demand letter. Specifically, BellSouth stated:

BellSouth does not recognize any disputes other than the ones mentioned above, and if Florida Digital has any CABS disputes other than the ones mentioned above they will need to be resubmitted to BellSouth for consideration. As of the date of this letter, however, the foregoing resolves every pending CABS dispute between our companies, or places the sums at issue in abeyance until the issues can be satisfactorily negotiated or resolved by other means.

See Exhibit H. To date, FDN has not objected to BellSouth's assertions regarding the total number of CABS disputes or the total amount of these disputes. In addition, since the issuance of the March 14, 2002 Demand Letter, FDN has not submitted any additional CABS disputes or otherwise attempted to resubmit any disputes.

12. Because FDN has not provided a legitimate Notice of Discrepancy, with supporting documentation, for any CABS disputes other than the set forth in the March 14, 2002 demand letter, FDN owes BellSouth is CABS charges.

13. In addition, to date, FDN has not submitted a "Notice of Discrepancy" for any CRIS billings. Accordingly, FDN owes BellSouth in past due CRIS billings.

14. Based on the foregoing and pursuant to Florida Statutes and the Interconnection Agreement, BellSouth requests that the Commission (1) find that

FDN owes BellSouth at least *

,¹⁸

in undisputed and past due CRIS and CABS billings and (2) order FDN to immediately pay BellSouth this amount.

II. FDN's Bill and Keep Dispute Is Invalid.

15. As an initial matter, BellSouth believes that this dispute is not subject to the Commission's jurisdiction because it only involves BellSouth's imposition of FCC tariff charges on FDN for certain USOCs. As explained in detail below, BellSouth was forced to apply these charges because FDN has repeatedly failed to provide BellSouth with the necessary information to allow BellSouth to determine whether FDN's traffic is interstate, intrastate, or local. In the event that this Commission rejects this contention and finds that it has jurisdiction to resolve this billing dispute, BellSouth respectfully requests that the Commission deny FDN's dispute for the following reasons.

16. FDN has submitted several "Notices of Discrepancy" regarding the application of bill and keep on trunks and dedicated facilities for local traffic. Essentially, FDN claims that the parties' bill and keep agreement applies to elements which are in a proposed, yet unexecuted, amendment.

17. Under the Interconnection Agreement, bill and keep applies to trunks and dedicated local interconnection elements that are in the Interconnection Agreement and used for local traffic. Each party reports factors to the other party in order to designate the local interconnection elements in the agreement that are used for local traffic (and thus subject to bill and keep).

¹⁸ As previously stated in note 15, supra, this figure should be reduced if the Commission accepts BellSouth's argument that it does not have the authority to resolve billing disputes arising out of

18. Pursuant to BellSouth's FCC Tariff No. 1, FDN is required to provide BellSouth with a Percent Interstate Usage ("PIU") factor to apportion between interstate and intrastate jurisdiction the services of switched local channel and switched dedicated interoffice channel. Further, both BellSouth and FDN report to each other a Percent Local Facility ("PLF") factor to apportion between the intrastate access and local jurisdiction for the same services. The absence of such a PLF factor indicates to BellSouth that a carrier is not using switched facilities for local traffic, and thus the PLF factor for local traffic defaults to zero.

19. Additionally, FDN provides BellSouth with factors on each order placed via the Access Service Request ("ASR") Process to indicate the jurisdiction of the installation of each service (whether the installation is via the FCC Access Tariff, Florida Access Tariff, or Local Interconnection Agreement).

20. Despite numerous requests for the PIU and PLF factors and also providing FDN with information to assist in the preparation of its factors, FDN did not provide BellSouth with such factors until late March, 2002 and only for prospective application.¹⁹ Consequently, BellSouth was forced to bill FDN all prior recurring charges on switched dedicated facilities from the FCC Tariff due to FDN's failure to provide the required factors.

21. FDN is also alleging that other elements contained in a proposed amendment, which has yet to be executed by either party, are also somehow in effect and thus subject to bill and keep. Specifically, BellSouth offered to

BellSouth's FCC Tariff.

incorporate additional elements in the Interconnection Agreement (and thus subject to bill and keep) on a prospective basis through a proposed amendment containing new and additional rate elements. See December 20, 2001 e-mail from Beth Shiroishi to Matt Feil, attached hereto as Exhibit I. To date, however, FDN has not executed such proposed amendment. Further, FDN has not responded to BellSouth's proposal, even after repeated inquiries by BellSouth.

22. Even if BellSouth and FDN executed the amendment containing the new and additional rates, such an agreement would only have prospective application and would not apply to the dispute currently at hand. As such, for the time period prior to the effective date of the amendment, bill and keep would still only apply to the elements in the agreement for the time period of the dispute. Notwithstanding these facts, FDN has disputed charges for the use of trunks and facilities, which are not subject to bill and keep.

23. In compliance with the Interconnection Agreement, this dispute has been through the entire dispute resolution process and the parties have still not reached a resolution. Accordingly, pursuant to Attachment VIII, Section 3.1.18.4.3 of the Interconnection Agreement, BellSouth requests that the Commission resolve this dispute and find that FDN's bill and keep dispute is invalid because (1) FDN did not submit appropriate factors for bill and keep to apply to the elements set forth in the Interconnection Agreement; (2) FDN has yet to execute an amendment incorporating new and additional rates; and (3)

¹⁹ FDN provided BellSouth with factors indicating that 5 percent of its switched dedicated facilities are interstate, 1.9 percent are intrastate access, and 93.1 percent are local.

even if FDN executed the proposed amendment, that agreement would only apply prospectively.

III. BellSouth's Requests Emergency Relief.

28. BellSouth requests that the Commission resolve this Counterclaim on an emergency basis. An emergency or expedited proceeding is necessary to prevent FDN from continuing to harm BellSouth by incurring additional charges while not paying its current bills or any past due and undisputed amounts. As previously explained, independent evidence suggests that FDN is experiencing a period of financial instability, which could lead to BellSouth being unable to collect the growing amount of charges owed by FDN. The sooner the Commission resolves this Counterclaim, the less of a risk BellSouth has that FDN will not be able to pay the amounts set forth above and any future charges.

29. In addition, the Interconnection Agreement requires that the Commission resolve any dispute within 60 days. See Exhibit D, Part A, Section 23. Pursuant to this provision, BellSouth requests that the Commission resolve this counterclaim within 60 days, if not sooner.

IV. FDN Should Make an Immediate Payment to BellSouth for all Undisputed Amounts and Escrow any Amounts in Dispute.

30. Based on FDN's payment history as well as independent financial evidence, BellSouth is concerned that FDN will not have the funds necessary to pay BellSouth the amount the Commission eventually finds to be past due and undisputed pursuant to BellSouth's Counterclaim.

31. Consequently, to minimize this risk, the Commission should require FDN to (1) immediately pay all amounts that it considers to be undisputed, which

should include, at a minimum, _____ in CRIS bills because FDN has raised no disputes as to these bills; and (2) put any disputed amounts in escrow with the Commission, pending resolution of this proceeding. The total amount paid or escrowed should equal, at a minimum, \$²⁰_____, which is the total amount of CRIS and CABS bills that BellSouth considers to be past due and undisputed and the value of FDN's bill and keep dispute.

PRAYER FOR RELIEF

WHEREFORE, BellSouth respectfully requests that the Commission (1) find that FDN owes BellSouth at least _____ (or as subsequently modified to reflect the extent of the Commission's jurisdiction to resolve certain billing disputes) in undisputed and past due CRIS and CABS billings and order FDN to immediately pay BellSouth this amount; (2) determine that FDN's bill and keep dispute is invalid if the Commission finds that it has the authority to address this dispute; (3) address BellSouth's counterclaim on an expedited, emergency basis but no later than 60 days; and (4) require FDN to immediately pay all amounts that it considers to be undisputed, which should include, at a minimum, \$1,961,073.80 in CRIS bills because FDN has raised no disputes as to these bills and to put any amounts that FDN considers to be disputed in escrow with the Commission, pending resolution of this proceeding.

²⁰ As previously stated, if this Commission determines that it does not have jurisdiction over amounts that were billed pursuant to BellSouth's FCC Tariff, this figure should be reduced by the amount of CABS billings that represents FDN's purchase of services out of the FCC Tariff. BellSouth will provide the Commission with this amount in its pre-filed direct testimony.

Respectfully submitted this 3rd day of April, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

NANCY B. WHITE (BA)
JAMES MEZA III

c/o Nancy H. Sims
150 So. Monroe Street, Suite 400
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R. DOUGLAS LACKEY (BA)
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Atlanta, GA 30375
(404) 335-0747

440140

1 CHAIRMAN JABER: BellSouth.

2 MR. TURNER: Thank you, Madam Chair.

3 CROSS EXAMINATION

4 BY MR. TURNER:

5 Q Good afternoon, Mr. Gallagher. I'm Patrick Turner.

6 I think we have met on a couple of occasions before.

7 A Good afternoon.

8 Q Mr. Gallagher, we can agree, can't we, that FDN was

9 founded in about 1998?

10 A Yes.

11 Q And its mission, according to your testimony, is

12 offering bundled service packages, including local, long

13 distance, and Internet to small and medium-sized businesses, is

14 that correct?

15 A That is correct.

16 Q How many access lines today does FDN serve in the

17 State of Florida?

18 A Approximately 70,000.

19 Q Now, let me ask you this. On January the 30th of

20 2002, didn't FDN issue a press release announcing it serves

21 more than 75,000 phone lines in Florida?

22 A We included data lines, as well. So we have 70,000

23 voice lines and 10,000 data lines. So we have 80,000 total

24 lines.

25 Q Okay. Of those 80,000 total lines, how many serve

1 business customers?

2 A All of them.

3 Q Now, in August of 2001 during the arbitration

4 hearings, you testified that FDN was serving about 60,000 lines

5 in the State of Florida, right?

6 A That is correct.

7 Q Did that 60,000 number include voice and data or

8 voice only?

9 A I believe that included data at the time, as well.

10 Q Okay. So between August of 2001 and today, FDN has

11 gained approximately 20,000 total access lines, right?

12 A That is correct.

13 Q That is an increase of more than 25 percent in that

14 six-month period, isn't it?

15 A Yes.

16 Q Now, FDN owns Class 5 Nortel DMS 500 central office

17 switches in Florida, right?

18 A Yes.

19 Q How many?

20 A Four.

21 Q And as I understand it, FDN connects these switches

22 to end users through facilities that FDN has collocated at

23 BellSouth's central offices, right?

24 A That is correct.

25 Q And if I understood your summary correctly, you are

Network Operations
1 Chase Corporate Center
Suite 300
Birmingham, AL 35244

Nancy A. (Lynn) Smith
Operations Assistant Vice President

January 29, 2002

Florida Digital Network
Attention: Ms. Patricia Reid/Network Audit
390 North Orange Avenue
Orlando, Florida 32801

PLEASE REMIT PAYMENT TO:
BellSouth Network & Carrier Services
250 Williams Street
Suite 5010 NW
Atlanta, Georgia 30303

Certified: 7000 0600 0028 0826 4948

Dear Ms. Reid:

Repeated attempts to collect past due amounts from Florida Digital Network have been unsuccessful and to date full payment has not been received. Florida Digital Network's account is currently in default in the amount of \$2,587,210.09 and subject to disconnection. Within the \$2,587,210.09, Florida Digital Network has failed to pay \$151,727.15 relating to collocation space. Florida Digital Network's interconnection agreement requires you to pay your bills promptly and failure to do so puts Florida Digital Network in default of the interconnection agreement. Pursuant to BellSouth tariffs and/or the agreement between BellSouth Telecommunications and Florida Digital Network defining our business terms, consider this written notice that BellSouth will proceed with the discontinuance of existing services in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee on February 28, 2002. Pursuant to the same tariffs or agreement, it is Florida Digital Network's responsibility to notify its end users of this impending disconnection.

In order to continue services, Florida Digital Network must pay, in immediately available funds, the present undisputed balance in the sum of \$2,587,210.09 to BellSouth. Also, payments are expected for any current bills that may become due. If service is interrupted, full non-recurring charges will be applicable to re-establish service. In addition, a security deposit may be required for the re-established service based on your projected recurrent billing amount.

If you have questions regarding your account, please contact your Collections Service Representative, Katrina Whiteley, at (205) 714-5851, Extension 6-7530.

Sincerely,

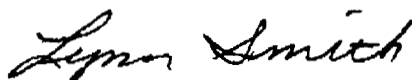


EXHIBIT C

**PART A
GENERAL TERMS AND CONDITIONS**

Section 1. Scope of this Agreement

1.1 This Agreement, including Parts A, B, and C, specifies the rights and obligations of each party with respect to the purchase and sale of Interconnection, Local Resale, Network Elements and ancillary services. This PART A sets forth the general terms and conditions governing this Agreement. Certain terms used in this Agreement shall have the meanings defined in PART B – DEFINITIONS, or as otherwise elsewhere defined throughout this Agreement. Other terms used but not defined herein will have the meanings ascribed to them in the Act and the applicable FCC Rules and Regulations in effect. PART C sets forth, among other things, descriptions of the services, pricing, technical and business requirements, and physical and network security requirements.

LIST OF ATTACHMENTS COMPRISING PART C:

- I. Price Schedule
- II. Local Resale
- III. Network Elements
- IV. Interconnection
- V. Collocation
- VI. Rights of Way
- VII. Number Portability
- VIII. Business Process Requirements
- IX. Security Requirements
- X. Credits for Performance Standards Failures

1.2 BellSouth shall provide the services pursuant to this Agreement. Except as provided below, BellSouth shall not discontinue or refuse to provide any service provided or required hereunder without MCI's prior written agreement. Such agreement shall not be unreasonably withheld. BellSouth shall not discontinue any telecommunications service available for resale unless BellSouth provides MCI's prior written notice of its intent to discontinue any such service. BellSouth agrees to make any such service available to MCI for resale to MCI customers who are subscribers to such services from MCI until the date BellSouth discontinues any such service for BellSouth's customers. BellSouth also agrees to adopt a reasonable, nondiscriminatory transition schedule for BellSouth and MCI customers who may be purchasing any such service.

1.2.1 Left Blank Intentionally

MCImetro-BellSouth Florida Interconnection Agreement

1.2.2 Left Blank Intentionally

Section 2. Regulatory Approvals

2.1 This Agreement, and any amendment or modification hereof, will be submitted to the state regulatory body for approval in accordance with Section 252 of the Act. Should the state regulatory body deny approval of the Agreement or any part thereof, the parties agree to consider whether any additional and appropriate judicial or administrative efforts are necessary to gain approval of said part or Agreement. If it is mutually determined that the part or Agreement must be renegotiated to gain approval by the state regulatory body, the parties agree to do so on an expedited basis. If the parties fail to reach agreement, either party may seek resolution pursuant to Section 23 (Dispute Resolution Procedures) of this Agreement.

2.2 In the event the FCC or the State regulatory body promulgates rules or regulations, or issues orders, or a court with appropriate jurisdiction issues orders, which make unlawful any provision of this Agreement, the parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which are consistent with such rules, regulations or orders. In the event the parties cannot agree on an amendment within thirty (30) days from the date any such rules, regulations or orders become effective, then the parties shall resolve their dispute under the applicable procedures set forth in Section 23 (Dispute Resolution Procedures) hereof.

2.3 In the event BellSouth is required by any governmental authority to file a tariff or make another similar filing ("Filing") in order to implement this Agreement, BellSouth shall (i) consult with MCIm reasonably in advance of such Filing about the form and substance of such Filing, (ii) provide to MCIm its proposed tariff and obtain MCIm's agreement on the form and substance of such Filing, and (iii) take all steps reasonably necessary to ensure that such Filing imposes obligations upon BellSouth that are no less favorable than those provided in this Agreement and preserves for MCIm the full benefit of the rights otherwise provided in this Agreement. In no event shall BellSouth file any tariff to implement this Agreement that purports to govern the services provided hereunder that is inconsistent with the rates and other terms and conditions set forth in this Agreement unless such rate or other terms and conditions are more favorable than those set forth in this Agreement.

2.4 In the event that any final and nonappealable legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of MCIm or BellSouth to perform any material terms of this Agreement, or in the event a judicial or administrative stay of such action is not sought or granted, MCIm or BellSouth may, on thirty (30) days written notice (delivered not later than thirty (30) days following the date on which such action has become

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legally binding and has otherwise become final and nonappealable) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the dispute shall be resolved in accordance with Section 23 (Dispute Resolution Procedures) of this Agreement.

2.5 The parties intend that any additional services requested by either party relating to the subject matter of this Agreement will be incorporated into this Agreement by amendment.

Section 3. Term of Agreement

This Agreement shall become binding upon execution by the parties and continue for a period of 3 years, unless earlier terminated in accordance with Section 20 (Termination). No later than 180 days prior to the expiration of this Agreement, the parties agree to commence negotiations with regard to the terms, conditions and prices of a follow on agreement for the provision of services to be effective on or before the expiration date of this Agreement ("Follow-on Agreement"). The Parties further agree that any such Follow-on Agreement shall be for a term of no less than three years unless the Parties agree otherwise.

If, within 135 days of commencing the negotiation referenced above, the Parties are unable to satisfactorily negotiate new terms, conditions and prices, either Party may petition the State regulatory body to establish an appropriate Follow-on Agreement pursuant to 47 U.S.C. 252. The Parties agree that in such event they shall encourage the State regulatory body to issue its order regarding such Follow-on Agreement no later than the expiration date of this Agreement. The Parties further agree that in the event the State regulatory body does not issue its order by the expiration date of this Agreement or if the Parties continue beyond the expiration date of this Agreement to negotiate without State regulatory body intervention, the terms, conditions and prices ultimately ordered by the State regulatory body, or negotiated by the Parties, will be effective retroactive to the day following the expiration date of this Agreement. Until the Follow-on Agreement becomes effective, BellSouth shall provide Services pursuant to the terms, conditions and prices of this Agreement that are then in effect.

Section 4. Charges and Payment

In consideration of the services provided by BellSouth under this Agreement, MCIm shall pay the charges set forth in Attachment I. The billing and payment procedures for charges incurred by MCIm hereunder are set forth in Attachment VIII.

Section 13. Continuing Obligations

13.1 Except as otherwise provided herein, each party shall perform its obligations hereunder at a performance level no less than the level which it uses for its own operations, or those of its Affiliates, but in no event shall a party use less than reasonable care in the performance of its duties hereunder.

13.2 BellSouth agrees that Interconnection will be provided in a competitively neutral fashion, at any technically feasible point within its network as stated in this Agreement and that such Interconnection will contain all the same features, functions and capabilities, and be at least equal in quality to the level provided by BellSouth to itself or its Affiliates.

13.3 BellSouth agrees that it will provide to MCIm on a nondiscriminatory basis unbundled Network Elements and ancillary services as set forth in this Agreement and the operations support systems as set forth in this Agreement. BellSouth further agrees that these services, or their functional components, will contain all the same features, functions and capabilities and be provided at a level of quality at least equal to the level which it provides to itself or its Affiliates.

13.4 BellSouth agrees that it will provide to MCIm nondiscriminatory access to, poles, ducts, conduits, and rights of way owned or controlled by BellSouth in accordance with the requirements of Section 224 of the Act.

13.5 BellSouth Agrees that it will provide nondiscriminatory access to telephone numbers for as long as BellSouth remains the code administrator for the North American Numbering Plan.

13.6 BellSouth agrees that it will provide to MCIm, in a competitively neutral fashion, interim number portability as set forth herein and in accordance with the applicable rules, regulations and orders of the FCC and this Commission, including the First Report and Order, released July 2, 1996 in CC Docket No. 95-116, regarding Telephone Number Portability, in effect.

13.7 BellSouth agrees that it will provide to MCIm, in a competitively neutral fashion, dialing parity for local exchange service and interexchange service pursuant to the applicable rules, regulations and orders of the state regulatory body and the FCC in effect.

13.8 BellSouth agrees that order entry, provisioning, installation, trouble resolution, maintenance, billing, and service quality with respect to Local Resale will be provided at least as expeditiously as BellSouth provides for itself or for its own retail local service or to others, or to its Affiliates, and that it will provide such services to MCIm in a competitively neutral fashion.

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13.9 BellSouth agrees that it will provide on a nondiscriminatory basis space on its premises for physical or virtual collocation, as MCIm may specify, for equipment necessary for MCIm's interconnection and access to unbundled network elements.

Section 14. Notices

Except as otherwise provided herein, all notices or other communication hereunder shall be deemed to have been duly given when made in writing and delivered in person by overnight courier, or deposited in the United States mail, certified mail, postage prepaid, return receipt requested and addressed as follows:

To MCIm: MCImetro Access Transmission Services, Inc.
8521 Leesburg Pike
Vienna, VA 22182

Copy to: General Counsel
MCI Communications Corporation
1801 Pennsylvania Ave, N.W.
Washington, DC 20006

To BellSouth: Clifford H. Bowers
BellSouth Telecommunications, Inc.
1960 W. Exchange Pl., Ste. 402
Tucker, GA 30084

Copy to: General Attorney-Interconnection
BellSouth Telecommunications, Inc
Suite 4300
675 W. Peachtree Street, N.E.
Atlanta, Georgia 30375

If personal delivery or courier is selected to give notice, a receipt of such delivery shall be obtained. The address to which notices or communications may be given to either party may be changed by written notice given by such party to the other pursuant to this Section 14.

Section 15. Remedies

15.1 The obligations of BellSouth and the services offered under this Agreement are unique. Accordingly, in addition to any other available rights or remedies, MCIm may sue in equity for specific performance.

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If as a result of any proceeding or filing before any Court, State Commission, or the Federal Communications Commission, voluntary agreement or arbitration proceeding pursuant to the Act or pursuant to any applicable state law, BellSouth becomes obligated to provide Services and Elements, whether or not presently covered by this Agreement, to a third Party at rates or on terms and conditions more favorable to such third Party than the applicable provisions of this Agreement, MCI shall have the option to substitute such more favorable rates, terms, and conditions for the relevant provisions of this Agreement which shall apply to the same States as such other Party, and such substituted rates, terms or conditions shall be deemed to have been effective under this Agreement as of the effective date thereof. BellSouth shall provide to MCI any BellSouth agreement between BellSouth and any third Party within fifteen (15) days of the filing of such agreement with any state Commission.

Section 20. Termination

20.1 In the event of breach of any material provision of this Agreement by either party, the non-breaching party shall give the other party written notice thereof, and:

20.1.1 If such material breach is for non-payment of amounts due hereunder pursuant to Attachment VIII, Section 3.1.18, the breaching party shall cure such breach within thirty (30) days of receiving such notice. The non-breaching party shall be entitled to pursue all available legal and equitable remedies for such breach. Amounts disputed in good faith and withheld or set off shall not be deemed "amounts due hereunder" for the purpose of this provision.

20.1.2 If such material breach is for any failure to perform in accordance with this Agreement, which adversely affects the non-breaching party's subscribers, the non-breaching party shall give notice of the breach and the breaching party shall cure such breach to the non-breaching party's reasonable satisfaction within ten (10) business days, and if breaching party does not, the non-breaching party may, at its sole option, terminate this Agreement, or any parts hereof. The non-breaching party shall be entitled to pursue all available legal and equitable remedies for such breach. Notice under this Subsection 20.1.2 may be given electronically or by facsimile and in such case shall be deemed received when sent.

20.1.3 If such material breach is for any other failure to perform in accordance with this Agreement, the breaching party shall cure such breach to the non-breaching party's reasonable satisfaction within forty-five (45) days, and if it does not, the non-breaching party may, at its sole option terminate this Agreement, or any parts hereof. The non-breaching party shall be entitled to pursue all available legal and equitable remedies

for such breach.

20.2 Left Blank Intentionally.

Section 21. Confidentiality and Publicity

21.1 All confidential or proprietary information disclosed by either party during the negotiations and the term of this Agreement shall be protected by the parties in accordance with the terms of this Section 21. All information which is disclosed by one party ("Disclosing Party") to the other ("Recipient") in connection with this Agreement, or acquired in the course of performance of this Agreement, shall be deemed confidential and proprietary to the Disclosing Party and subject to this Agreement, such information including but not limited to, orders for services, usage information in any form, and Customer Proprietary Network Information ("CPNI") as that term is defined by the Act and the rules and regulations of the FCC ("Confidential Information").

21.1.1 For a period of eight (8) years from receipt of Confidential Information, Recipient shall (i) use it only for the purpose of performing under this Agreement, (ii) hold it in confidence and disclose it only to employees who have a need to know it in order to perform under this Agreement, and (iii) safeguard it from unauthorized use of Disclosure using no less than the degree of care with which Recipient safeguards its own Confidential Information. If Recipient wishes to disclose the Discloser's Confidential Information to a third party agent or consultant in order to perform Recipient's obligations hereunder, such third party must have executed a written agreement comparable in scope to the terms of this Section 21.

21.1.2 Recipient shall have no obligation to safeguard Confidential Information (i) which was in the Recipient's possession free of restriction prior to its receipt from Disclosing Party, (ii) which becomes publicly known or available through no breach of this Agreement by Recipient, (iii) which is rightfully acquired by Recipient free of restrictions on its Disclosure, or (iv) which is independently developed by personnel of Recipient to whom the Disclosing Party's Confidential Information had not been previously disclosed. Recipient may disclose Confidential Information if required by law, a court, or governmental agency, provided that Disclosing Party has been notified of the requirement promptly after Recipient becomes aware of the requirement, and provided that Recipient undertakes all lawful measures to avoid disclosing such information until Disclosing Party has had reasonable time to obtain a protective order. Recipient agrees to comply with any protective order that covers the Confidential Information to be disclosed.

MCImetro-BallSouth Florida Interconnection Agreement

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

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

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

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

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

Section 23. Dispute Resolution Procedures

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

MCImetro-BellSouth Florida Interconnection Agreement

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

Section 24. Bona Fide Request Process for Further Unbundling

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

Section 25. Branding

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

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

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

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measure, report or track for itself or its own subscribers. In the event such system is not developed exclusively for MCI, but rather is developed for use with other CLECs, as well as MCI, BellSouth shall allocate to MCI, on a competitively neutral basis, MCI's share of the costs associated with such system.

Section 3. Connectivity Billing and Recording

This Section 3 describes the requirements for BellSouth to bill and record all charges MCI incurs for purchasing services under this Agreement.

3.1 Procedures

3.1.1 BellSouth shall comply with various industry, OBF, and other standards referred to throughout this Agreement. To satisfy these requirements, both parties shall adhere to mutually agreed upon interpretations of all standards referred to in this Agreement.

3.1.2 BellSouth shall record and bill in accordance with this Agreement those charges MCI incurs as a result of MCI purchasing from BellSouth services, as set forth in this Agreement (hereinafter "Connectivity Charges").

3.1.3. BellSouth will bill charges for interconnection and resale (within 180 days of the execution of this agreement) in a CABS format. BellSouth will conform each CABS bill in accordance with CABS guidelines.

3.1.4 Each service purchased by MCI shall be assigned a separate and unique billing code in the form agreed to by the parties and such code shall be provided to MCI on each Connectivity Bill in which charges for such services appear.

3.1.4.1 Each such billing code shall enable MCI to identify the service as ordered by MCI.

3.1.5 Each Connectivity Bill shall set forth the quantity and description of each such service provided and billed to MCI. All Connectivity Charges billed to MCI shall indicate the state from which such charges were incurred.

3.1.6 BellSouth shall bill MCI for each service supplied by BellSouth to MCI pursuant to this Agreement at the rates forth in this Agreement.

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3.1.7 BellSouth shall bill MCI for the Connectivity Charges incurred; provided that, for those usage based Connectivity Charges where actual charge information is not determinable by BellSouth because the jurisdiction (i.e., interstate, interstate/interLATA, intrastate, intrastate/ intraLATA, local) of the traffic is unidentifiable, or for other reason, the parties shall jointly develop a process to determine the appropriate charges.

3.1.8 Measurement of usage-based Connectivity Charges shall be in actual conversation seconds. The total conversation seconds per chargeable traffic types shall be totaled for the entire monthly bill cycle and then rounded to the next whole minute. State tariffs apply for resold usage plans.

3.1.9 BellSouth shall provide to MCI at no additional charge a Single Point of Contact through a Local Carrier Service Center (LCSC), or similar function, for handling any Connectivity Billing questions or problems that may arise during the implementation and performance of the terms and conditions of this Agreement.

3.1.10 BellSouth shall provide single point of contact for handling of any data exchange questions or problems that may arise during the implementation and performance of the terms and conditions of this Agreement.

3.1.11 As soon as possible after completion of this Agreement, each party shall provide the other party written notice of which form of the monthly Connectivity Bill is to be deemed the official bill to assist the parties in resolving any conflicts that may arise between the official bill and another form of bill received via a different media which purportedly contain the same charges as are on the official bill.

3.1.12 If either party requests an additional copy(ies) of a bill, such party shall pay the other party a reasonable fee per additional bill copy, unless such copy was requested due to errors, omissions, or corrections or the failure of the transmission to comply with the specifications set forth in this Agreement.

3.1.13 When sending Connectivity Bills via electronic transmission, to avoid transmission failures or the receipt of Connectivity Billing information that cannot be processed, MCI shall provide BellSouth process specifications. Both parties shall comply with processing specifications when transmitting Connectivity Billing data to each other. Both parties shall provide notice to the other party if a Connectivity Billing transmission is received that does not

**** MCImetro - BellSouth Florida Interconnection Agreement**

meet specifications or that such party cannot process. Such transmission shall be corrected and resubmitted to the other party, at the resubmitting party's sole expense, in a form that can be processed. The payment due date for such resubmitted transmissions shall be thirty (30) days from the issue date of the bill in a form that can be processed and that meets the specifications set forth in this Attachment.

3.1.14 BellSouth shall deliver to a location specified by MCI, billing information via Network Data Mover (NDM), magnetic tape or paper, as agreed to by MCI and BellSouth. In the event of an emergency, system failure or other such condition which prevents BellSouth from transmitting via NDM, BellSouth shall notify MCI of such difficulties within twenty four (24) hours of detection. BellSouth shall deliver to a location specified by MCI billing information via magnetic tape or paper, as agreed to by MCI and BellSouth. The parties acknowledge that all tapes transmitted to the other party via US Mail or Overnight Delivery and which contain Connectivity Billing data shall not be returned to the sending party.

3.1.15 Subject to the terms of this Agreement, including without limitation Section 3.1.18 of this Attachment VIII, MCI shall pay BellSouth within thirty (30) days from the issue date of the bill. If the payment due date is a Saturday, Sunday or has been designated a bank holiday payment shall be made the next business day.

3.1.16 Left Blank Intentionally

3.1.17 Left Blank Intentionally

3.1.18 Bill Reconciliation

3.1.18.1 Each party agrees to notify the other party upon the discovery of a billing discrepancy "Notice of Discrepancy".

3.1.18.2 In the event of such Notice of Discrepancy, the parties shall endeavor to resolve the discrepancy within sixty (60) calendar days notification using normal business procedures. If the discrepancy is disputed, resolution of such dispute is expected to occur at the first level of management resulting in a recommendation for settlement of the dispute and closure of a specific billing period.

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3.1.18.3 Closure of a specific billing period shall occur by joint Agreement of the parties whereby the parties agree that such billing period is closed to any further analysis and financial transactions, except those resulting from an Audit. Closure shall take place within nine (9) months of the Bill Date. The month being closed represents those Connectivity Charges that were billed or should have been billed by the respective Bill Date.

3.1.18.4 If the dispute is not resolved within the allotted time frame, the following resolution procedure shall begin:

3.1.18.4.1 If the dispute is not resolved within sixty (60) days of the Notice of Discrepancy, the dispute shall be escalated to the second level of management for resolution.

3.1.18.4.2 If the dispute is not resolved within ninety (90) days of Notice of Discrepancy, the dispute shall be escalated to the third level of management for resolution.

3.1.18.4.3 If the dispute is not resolved within one hundred and twenty (120) days of the Notice of Discrepancy, the dispute may be resolved pursuant to Section 23 (Dispute Resolution Procedures) of Part A of this Agreement.

3.1.18.5 If MCIm disputes Connectivity Charges and the dispute is resolved in favor of MCIm, BellSouth shall credit the Connectivity Bill of MCIm for the amount of the disputed charges.

3.1.19 BellSouth shall reimburse MCIm for incorrect Connectivity Billing charges including without limitation: overcharges, services ordered or requested but not delivered, interrupted services, services of poor quality; and Installation problems if caused by BellSouth. Such reimbursements shall be set forth in the appropriate section of the Connectivity Bill pursuant to CABS, or SECAB standards.

3.1.20 Left Blank Intentionally

3.1.21 When MCIm collocates with BellSouth in BellSouth's facility as described in this Agreement, capital expenditures (e.g., costs associated with building the "cage"), shall not be included in the

ACCESS SERVICE

2 - General Regulations (Cont'd)

2.1 Undertaking of the Telephone Company (Cont'd)

2.1.7 Changes and Substitutions (Cont'd)

be within the range as set forth in Section 6 and Section 7 following. The Telephone Company shall not be responsible if any such substitution, change or rearrangement renders any customer furnished services obsolete or requires modification or alteration thereof or otherwise affects their use or performance. If such substitution, change or rearrangement materially affects the operating characteristics of the facility, the Telephone Company will provide reasonable notification to the customer in writing. Reasonable time will be allowed for any redesign and implementation required by the change in operating characteristics. The Telephone Company will work cooperatively with the customer to determine reasonable notification requirements.

2.1.8 Refusal and Discontinuance of Service

- (A) Unless the provisions of 2.2.1(B) or 2.5 following apply, if a customer fails to comply with 2.1.6 preceding or 2.2.2, 2.3.1, 2.3.4, 2.3.5, 2.3.10 or 2.4 following, including any payments to be made by it on the dates and times herein specified, the Telephone Company may, on thirty (30) days written notice by Certified U.S. Mail to the person designated by that customer to receive such notices of noncompliance, refuse additional applications for service and/or refuse to complete any pending orders for service by the noncomplying customer at any time thereafter. If the Telephone Company does not refuse additional applications for service on the date specified in the thirty (30) days notice, and the customer's noncompliance continues, nothing contained herein shall preclude the Telephone Company's right to refuse additional applications for service to the noncomplying customer without further notice. (T)
- (B) Unless the provisions of 2.2.1(B) or 2.5 following apply, if a customer fails to comply with 2.1.6 preceding or 2.2.2, 2.3.1, 2.3.4, 2.3.5, 2.3.10 or 2.4 following, including any payments to be made by it on the dates and times herein specified, the Telephone Company may, on thirty (30) days written notice by Certified U.S. Mail to the person designated by that customer to receive such notices of noncompliance, discontinue the provision of the services to the noncomplying customer at any time thereafter. In the case of such discontinuance, all applicable charges, including termination charges, shall become due. If the Telephone Company does not (T)

EXHIBIT E

ACCESS SERVICE

2 - General Regulations (Cont'd)

2.1 Undertaking of the Telephone Company (Cont'd)

2.1.8 Refusal and Discontinuance of Service (Cont'd)

(B) (Cont'd)

discontinue the provision of the services involved on the date specified in the thirty (30) days notice, and the customer's noncompliance continues, nothing contained herein shall preclude the Telephone Company's right to discontinue the provision of the services to the noncomplying customer without further notice.

- (C) If the National Exchange Carrier Association, Inc., notifies the Telephone Company in writing that the Customer has failed to comply with Section 8 of the NATIONAL EXCHANGE CARRIER ASSOCIATION, INC. (NECA) TARIFF F.C.C. NO. 5 (Lifeline Assistance and Universal Service Fund charges) including any Customer's failure to make payments on the date and time specified therein, the Telephone Company, may, on thirty days' written notice to the Customer by Certified U.S. Mail, take any of the following actions: - (1) refuse additional applications for service and/or (2) refuse to complete any pending orders for service and/or (3) discontinue the provision of existing service(s) to the Customer. In the case of discontinuance, all applicable charges, including termination charges, shall become due and payable to the Company in immediately available funds. (T)
(T)

2.1.9 Limitation of Use of Metallic Facilities

Signals applied to the metallic facility shall conform to the limitations set forth in Technical Reference Publication AS No. 1. In the case of application of dc telegraph signaling systems, the customer shall be responsible, at its expense, for the provision of current limiting devices to protect the Telephone Company facilities from excessive current due to abnormal conditions and for the provision of noise mitigation networks when required to reduce excessive noise.

2.1.10 Notification of Service-Affecting Activities

The Telephone Company will provide the customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to,

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ACCESS SERVICES TARIFF

First Revised Page 4
Cancels Original Page 4

ISSUED: February 2, 1998
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: February 17, 1998

E2. GENERAL REGULATIONS**E2.1 Undertaking of the Company (Cont'd)****E2.1.5 Installation and Termination of Services**

With the exception of BellSouth Expanded Interconnection Service arrangements, the Access Services provided under this Tariff (a) will include any entrance cable or drop wiring and wire or intrabuilding cable to that point where provision is made for termination of the Company's outside distribution network facilities at a location of minimum penetration inside of the IC terminal location or End User premises and, (b) will be installed by the Company to such point of termination. This point of termination is defined as the Point of Interface at the IC terminal location and the Network Interface at the End User premises.

Provisions addressing BellSouth Expanded Interconnection Service arrangements are contained in Section E20. following.

E2.1.6 Maintenance of Services

The services provided under this Tariff shall be maintained by the Company. The IC or others may not rearrange, move, disconnect, remove or attempt to repair any facilities provided by the Company, other than by connection or disconnection to any interface means used, except with the written consent of the Company.

E2.1.7 Changes and Substitutions

Except as provided for equipment and systems subject to F.C.C. Part 68 Regulations at 47C.F.R. Section 68-110(b), the Company may, where such action is reasonably required in the operation of its business:

- A. Substitute, change or rearrange any facilities used in providing service under this Tariff, including but not limited to:
 1. Substitution of different metallic facilities,
 2. Substitution of carrier or derived facilities for metallic facilities used to provide other than metallic facilities, and
 3. Substitution of metallic facilities for carrier or derived facilities used to provide other than metallic facilities,
- B. Change minimum protection criteria,
- C. Change operating or maintenance characteristics of facilities, or,
- D. Change operations or procedures of the Company.

In case of any such substitution, change or rearrangement, the transmission parameters will be within the range as set forth in Sections E6. and E7. following. The Company shall not be responsible if any such substitution, change or rearrangement renders any IC furnished services obsolete or requires modification or alteration thereof or otherwise affects their use or performance. If such substitution, change or rearrangement materially affects the operating characteristics of the facility, the Company will provide reasonable notification to the IC in writing. Reasonable time will be allowed for any redesign and implementation required by the change in operating characteristics. The Company will work cooperatively with the IC to determine reasonable notification requirements.

E2.1.8 Refusal and Discontinuance of Service

- A. Unless the provisions of E2.2.1.B. or E2.5 following apply, if the IC or End User fails to comply with E2.1.6 preceding or E2.2.2, E2.3.1, E2.3.6, E2.3.7 or E2.4 following, including any payments to be made by it on the dates and times herein specified, the Company may, on thirty (30) days written notice to the person designated by the IC or End User to receive such notices of noncompliance, refuse additional applications for service and/or refuse to complete any pending orders for service by the noncomplying IC or End User at any time thereafter. If the Company does not refuse additional applications for service on the date specified in the thirty (30) days notice and the IC's or End User's noncompliance continues, nothing contained herein shall preclude the Company's right to refuse additional applications for service to the noncomplying IC or End User without further notice.

EXHIBIT F

Material appearing on this page previously appeared on page(s) 3 of this section.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: July 1, 1996
BY: Joseph P. Lacher, President - FL
Miami, Florida

ACCESS SERVICE TARIFF

Original Page 5

EFFECTIVE: July 15, 1996

E2. GENERAL REGULATIONS¹

(N)

E2.1 Undertaking of the Company (Cont'd)**E2.1.8 Refusal and Discontinuance of Service (Cont'd)**

- B. Unless the provisions of E2.2.1.B. or E2.5 following apply, if the IC or End User fails to comply with E2.1.6 preceding or E2.2.2, E2.3.1, E2.3.6, E2.3.7 or E2.4 following, including any payments to be made by it on the dates and times herein specified, the Company may, on thirty (30) days written notice, to the person designated by the IC or End User to receive such notices of noncompliance, discontinue the provision of the services to the noncomplying IC or End User at any time thereafter. In the case of such discontinuance, all applicable charges, including termination charges, shall become due. If the Company does not discontinue the provision of the services involved on the date specified in the thirty (30) days notice, and the IC's or End User's noncompliance continues, nothing contained herein shall preclude the Company's right to discontinue the provision of the services to the noncomplying IC or End User without further notice.
- C. In any event, if evidence is not presented to the Company that the IC has obtained a certificate of public convenience and necessity from the Florida Public Service Commission, the Company will not provide services contained in this Tariff to the IC.

If at any time after service has been provided to a certified IC, the IC's certificate of public convenience and necessity is revoked by the Florida Public Service Commission, the Company will, on thirty (30) days notice to the person designated by the IC to receive such notices, discontinue the provision of the services to the IC at any time thereafter. In the case of such discontinuance, all applicable charges, including termination charges, shall become due.

E2.1.9 Quotation Charge

A nonrecurring charge (USOC QPA) for the preparation of a quotation applies whenever an IC requests an estimate of rates and charges for any service for which the rates and charges are determined on an individual case basis prior to placing an order for service. The charge includes the costs associated with the development and preparation of the quotation. A bill for the quotation preparation will be rendered. The quotation is valid for 90 days and will identify all estimated costs associated with the provision of the facilities needed to satisfy the IC's service requirements. Within this 90 day period, if the IC orders the service as quoted and service is subsequently provided, the Quotation Charge will be credited to the IC's account. If the IC cancels the request for a quotation prior to its completion, the IC will be billed for the costs incurred, for quotation preparation, through the cancellation date.

E2.1.10 Limitation of Use of Metallic Facilities

Signals applied to the metallic facility shall conform to the limitations set forth in Technical Reference Publication AS No. 1. In the case of application of dc telegraph signaling systems, the IC shall be responsible, at its expense, for the provision of current limiting devices to protect the Company facilities from excessive current due to abnormal conditions and for the provision of noise mitigation networks when required to reduce excessive noise.

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

Network Operations
1 Chase Corporate Center
Suite 300
Birmingham, AL 35244

Nancy A. (Lynn) Smith
Operations Assistant Vice President

March 6, 2002

VIA FACSIMILE
and VIA FEDERAL EXPRESS

Florida Digital Network
Attention: Ms. Patricia Reid/Network Audit
390 North Orange Avenue
Orlando, Florida 32801

PLEASE REMIT PAYMENT TO:
BellSouth Network & Carrier Services
250 Williams Street
Suite 5010 NW
Atlanta, Georgia 30303

Dear Ms. Reid:

Repeated attempts to collect past due amounts from Florida Digital Network have been unsuccessful and to date full payment has not been received. Florida Digital Network's account is currently in default as of the date of this letter in the amount of \$1,106,403.72 for access services, and \$1,142,557.80 for UNE and resale services, for a total of \$2,248,961.52, and is subject to disconnection. Moreover, please be advised that any and all additional sums that come due over the next thirty (30) days must also be paid in full to avoid disconnection. Florida Digital Network's interconnection agreement requires you to pay your bills promptly and failure to do so puts Florida Digital Network in default of the interconnection agreement. Pursuant to BellSouth tariffs and/or the agreement between BellSouth Telecommunications and Florida Digital Network defining our business terms, consider this written notice that BellSouth will proceed with the discontinuance of existing services in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee on April 5, 2002 if such payment is not received by 4:00 p.m. Eastern Standard Time. Pursuant to the same tariffs or agreement, it is Florida Digital Network's responsibility to notify its end users of this impending disconnection.

EXHIBIT G

Florida Digital Network
March 6, 2002
Page 2

In order to continue services, Florida Digital Network must pay by April 5, 2002 no later than 4:00 p.m. Eastern Standard Time, in immediately available funds, the present undisputed balance in the sum of \$2,248,961.52 to BellSouth. Again, as stated above, payments are also expected for any current bills that may become due over the next thirty (30) days. Additionally, if service is interrupted, full non-recurring charges will be applicable to re-establish service. In addition, a security deposit may be required for the re-established service based on your projected recurrent billing amount.

If you have questions regarding your account, please contact your Collections Service Representative, Katrina Whitely, at (205) 714-5851, Extension 6-7530.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lynn Smith".

cc: Mr. Matt File
Mr. Steven Russell