June 8, 2002

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

by overnight delivery

Re: Docket No. 000075 – Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic subject to Section 251 of the Telecommunications Act of 1996 **(Phase IIA)**

Dear Ms. Bayó,

Please find enclosed for filing in the above docket an original and seven (7) copies of Florida Digital Network, Inc.'s Post-Hearing Brief and Statement of Issues and Positions. Also enclosed is a diskette containing a Word file version of said document.

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

Sincerely,

Matthew Feil
Florida Digital Network
General Counsel

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996	)	Docket No. 000075-TP (IIA) Filed: June 10, 2002

POST HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS OF FLORIDA DIGITAL NETWORK, INC.

Matthew Feil
General Counsel
Florida Digital Network, Inc.
390 N. Orange Avenue
Suite 2000
Orlando, FL 32801
(407) 835-0460

INTRODUCTION

ILEC-designated local calling areas are artificial boundaries that should not restrict competing LECs from providing different calling services over different call areas. However, these artificial boundaries definitely do restrict such alternatives because intrastate access charges in Florida pose a cost barrier. Retail price competition by LECs for in-LATA calling services has not occurred in Florida and will not occur because of the access cost barrier. Removing that barrier will provide a much-needed boost to competition in the State. Though ILECs like Verizon assert a LATA-wide local provision for reciprocal compensation is backdoor access reform or an attack on traditional subsidies for ILEC retail rates, such assertions must be seen for what they are: transparent attempts to have this Commission protect ILEC market share. Ironically, the ILECs have often argued that UNE rates must be set at cost to promote effective competition and that ILECs should not have to pay reciprocal compensation for ISP-bound traffic because that would subsidize the ALEC business model; and yet, the ILECs are perfectly at ease in asking the Commission to preserve ILEC market share by forcing ALECs to pay above-cost access charges to subsidize lower ILEC retail rates. The Commission cannot find such patently inconsistent positions persuasive, particularly when ILECs could not prove a definite impact on retail rates from the changes that might result from FDN's proposal. The ILECs' dubious arguments should not stand in the way of a certain and highly desirable competitive catalyst that will benefit Florida's consumers. The Commission should approve either FDN's proposal or the other ALECs' proposals for LATA-wide local reciprocal compensation.

FDN's proposal for a bill-and-keep default mechanism for reciprocal compensation is, in summary, as follows. Reciprocal compensation rates would not be charged for exchange of local traffic between LECs if, on a per LATA basis, traffic was roughly in balance (within 10%) and the originating carrier bears responsibility for delivering traffic at least as far as the access tandem serving the end user. Under FDN's proposal, if these conditions are not met, then reciprocal compensation rates should apply. Bill and keep should also apply if traffic exchanged between LECs did not exceed a threshold minimum. This proposal is a sound and fair one and well within the Commission's authority to approve.

Issue No. 13: How should a "local calling area" be defined, for purposes of determining the applicability of reciprocal compensation?

(a): What is the Commission's jurisdiction in this matter?

FDN: *The FCC directed states to determine if reciprocal compensation or access applies for traffic exchanged between LECs whose local service areas are not the same. The Florida Statutes direct the Commission to establish fair, reasonable and nondiscriminatory interconnection terms and to exercise its exclusive jurisdiction to encourage and promote competition. *

The Commission not only has clear authority to consider this matter, but it also has clear authority to approve FDN's proposal.

In paragraph 1035 of its First Report and Order on Local Competition, the FCC ruled:

> With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges. We expect the states to determine whether intrastate transport and

termination of traffic between competing LECs, where a portion of their local service areas are not the same, should be governed by section 251(b)(5)'s reciprocal compensation obligations or whether intrastate access charges should apply to the portions of their local service areas that are different.

(Emphasis supplied.) The crux of Issue 13 in this case is a request for the Commission to rule on a generic basis whether and under what conditions access or reciprocal compensation apply when an ALEC chooses the entire LATA as its local calling area and the competing ILEC's local calling area is not the LATA. In other words, a determination just as the FCC contemplated.

In their testimony, the ILEC witnesses quoted only the first sentence of the above quoted FCC paragraph. It is not clear what significance the ILECs attach to the first sentence, nor is it clear what the FCC meant by it when applied to the instant context. Nonetheless, the clarity of third sentence is unmistakable. Moreover, had the FCC meant that all ALEC local calling areas must be identical to or "consistent" in scope or development with ILEC local calling areas, the FCC could have simply said so, and there would have been no need for the third sentence. Harmonizing all the language in the paragraph compels the conclusion that the first sentence was intended as a mere summation of the state commissions' historic authority for addressing ILEC local calling areas.

The ILECs may assert the Commission has no jurisdiction to undertake action in this case that may in any way impact the existing intrastate access regime. Support for this argument, however, can be found nowhere in Chapter 364. The ILECs may argue that since Section 364.163(1), Florida Statutes, bars price cap LECs from increasing

intrastate access rates[1] and since Section 364.051(c) does not permit the Commission to review the rates of price cap LECs, the Commission must be without authority to determine that certain calls exchanged between LECs are "local" and therefore not subject to access rates. The conclusion, however, does not follow from their premise as a matter of law or as a matter of logic.

The Commission will not find anywhere in Section 364.163 or all of Chapter 364 a provision that either specifically or by implication preserves all in-LATA calls to the access regime rather than reciprocal compensation. Section 364.163 does not address the preservation of access revenues or revenue sources or the preservation of any calling areas or call routes to the access regime. Had the Legislature intended such preservation, it could have easily said so, and it did not. Access rates are instead the focus of the statute. Indeed, Section 364.163 actually supports FDN's argument in that the definition of "network access service" specifically excludes any "local interconnection arrangements," and a **local** interconnection arrangement is precisely what FDN advocates here.[2] Any ILEC argument that the Commission's authority in this matter is restricted by

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[1] The limitation applies for five years after the date of price cap election. Section 364.163(1), Florida Statutes.

[2] The term "local" is not defined in Chapter 364 though multiple references are made to "local exchange services" and "local exchange telecommunications services." Rule 25-4.003, Florida Administrative Code, does not define "local." However, Rule 25-4.003(32) defines "Local Service Area" or "Local Calling Area" as "The area within which telephone service is furnished subscribers under a specific schedule of rates and without toll charges. A LEC's local service area may include one or more exchanges areas or portions of exchange areas." Thus, a local calling area is any area for which a specific schedule of rates attaches, without toll charges, and a local calling area is not restricted to one exchange. "Toll charges" is not defined by the rule but are generally synonymous with measured long-distance charges. Rule 25-4.003(55) defines "Toll Provider" as "Any telecommunications company providing interLATA long distance telecommunications service." Rule 25-4.003(31) defines "Local Provider" as "Any telecommunications company providing local telecommunications services, excluding pay telephone providers and call aggregators." "Local Toll Provider" is defined as "Any telecommunications company providing intraLATA or intramarket area long distance telecommunications service." Rule 25-4.003(33).

the access regime in the statute must be summarily rejected. Calls exchanged via "local interconnection arrangements" cannot be treated as utilizing "network access services."

Additionally, FDN's proposal for LATA-wide local calling is consistent with the principle that the treatment of a call is governed by the end points of the call, contrary to BellSouth witness Shiroishi's opinion (Tr. 34). As described in FDN Witness Warren's testimony, calls originating and terminating in the LATA will be considered local, but the originating carrier must bear the burden of delivering the traffic at least as far as the access tandem serving the end user. (Tr. 264 - 265.) The end points of the in-LATA call determine the treatment of the call. The originating carrier's transport responsibility, under FDN's proposal, does not change the governance of the end points of the call but divides transport obligations just as the Commission divides those obligations in any local interconnection arrangement.[3]

FDN proposed its transport condition as a fair and reasonable compromise.[4] FDN supports a proposal for LATA-wide local calling without the aforementioned transport obligation, as other ALECs suggest. FDN recognizes, however, that with many local interconnection arrangements, there is debate concerning division of cost for call delivery and interconnection. For instance, Florida ILECs have complained that they should not have to burden the cost of transporting their originated traffic to a single point of

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[3] To address any concerns that a LEC may choose not to transport all calls within a given LATA at least as far as the end user's access tandem, the Commission could consider imposing other additional requirements that may prove reasonable and necessary. For instance, the Commission could consider establishing an "all or nothing " proposition such that substantially all intraLATA calls in a given LATA must be delivered at least as far as the access tandem serving the end user for LATA-wide reciprocal compensation to apply in that LATA.

[4] See Exhibit No. 7, p. 3 – 4.

interconnection in the LATA designated by the ALEC.[5] FDN's proposal is a concession on responsibility for transport to a defined delivery point, and FDN makes such concession only if the Commission favors LATA-wide local reciprocal compensation but does not accept the other ALECs' position on the issue. Given that BellSouth has already implemented LATA wide local with some ALECs and has litigated against having to deliver its traffic to any single point in the LATA, it is strange to hear BellSouth quibble with FDN's proposal in this regard. Further, Verizon witness Trimble accepted the idea that "ALECs should deliver the calls 'at least' as far as the ILEC tandem serving the terminating end user's geographic location."[6]

One other legal issue the ILEC witnesses have posed concerns Section 364.16(3)(a).[7] However, argument that this provision forbids the Commission from approving a LATA-wide local plan for reciprocal compensation is so misguided as to be hardly worth addressing. The plain meaning of 364.16(3)(a) is to prohibit any LEC from knowingly disguising access traffic as local, such as by stripping off call identifying information[8] and/or by routing interLATA traffic over local trunks. This section does not provide that ILEC local calling areas control intercarrier payment schemes; and no misapplied rules of statutory construction can contort it enough to make it so provide.

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[5] Id.

[6] Mr. Trimble, however, still objected to the principle of LATA-wide local as circumvention of the access regime. (Tr. 124.)

[7] Section 364.16(3)(a) provides, "No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic, for which terminating access service chares would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service."

[8] The Commission should take note that many of the ILEC-ALEC interconnection agreements on file provide that a certain percentage of traffic handed off without identifying call information is presumed subject to intrastate access charges.

The Legislature directed the Commission to promote competition. Section 364.01, Florida Statutes. By approving a LATA-wide local default as other ALECs or FDN propose, the Commission will open up Florida's LATAs for tremendous retail price competition to the benefit of Florida's consumers.

Issue No. 13 (b): Should the Commission establish a default definition of local calling area for the purpose of intercarrier compensation, to apply in the event parties cannot reach a negotiated agreement?

FDN: *Yes. A fair and reasonable default mechanism would promote efficiencies in negotiations, administration and arbitration of interconnection matters. Ultimately, the default the Commission chooses should achieve the Commission's goals. Promoting much-needed competition should be the Commission's primary objective.*

In principle, a fair and reasonable default mechanism would promote efficiencies in negotiations, administration and arbitration of interconnection matters. (Tr. 264.) And in analyzing the options here, the Commission has been asked to ensure that a default scheme properly balances the interests and bargaining positions of the parties. The testimony of Sprint Witness Ward exemplifies the dynamics involved. On the one hand, she complains that with a LATA-wide local default, ALECs would have no incentive to negotiate anything different (Tr. 175); but on the other hand, she ignores that the ILECs have no incentive to negotiate if the default is the ILEC calling area.

While striking a perfectly equal balance of interests may be desirable, it is not always readily achievable if the interests are diametrically opposed. Intuitively, there should also be little doubt that ILECs have superior bargaining power and resources when it comes to interconnection negotiations and arbitration disputes. Ultimately, however, the pivotal factor that should influence the Commission when setting a default

is the Commission's regulatory goals. The default definition of local calling area for the instant purposes should therefore achieve the goals the Commission is charged by the Legislature with achieving. Promoting competition is the goal that must take precedence, as discussed in the section below, and FDN's proposal will promote competition in the state. FDN's proposal also has the added benefit of balancing the parties' interests with a compromise.

Issue No. 13 (c): If so, should the default definition of local calling area for purposes of intercarrier compensation be: 1) LATA-wide local calling, 2) based upon the originating carrier's retail local calling area, or 3) some other default definition/mechanism?

FDN: *A default "local calling area" for reciprocal compensation purposes should be the LATA provided the originating LEC (1) transports calls originating in the LATA at least as far as the access tandem serving the end user in that LATA and (2) charges retail rates for in-LATA calls that are not toll rates.*

No party to this case has disputed or can dispute that ILEC intrastate access charges are above cost. No party disputed that access charges, to some extent, subsidize ILEC local retail rates.[9] No party disputes that high, above-cost intrastate access charges are a definite cost barrier to an ALEC's choice to expand its calling areas beyond those of a competing ILEC's.[10]

FDN maintains that another matter indisputable from the record is that removal of the access cost barrier for in-LATA calling would spur competition for retail pricing of

[9] The perceived extent and design of those subsidies is subject to debate, as is their significance to this case. Mr. Trimble admitted that access revenues were merely one source of retail subsidies. (E.g., Tr. 101.) He acknowledged that every time Verizon loses a business customer to a competitor, Verizon loses some of the subsidy from business class revenues. (Tr. 161 – 162.)

[10] While ILECs claimed ALECs could set their own local calling areas (Tr. 171), none denied that access costs were a barrier for different ALEC calling area choices. Thus, FDN's testimony that access costs are a barrier is unrefuted in the record. (See Tr. 264.)

in-LATA calling services to the benefit of Florida's consumers. (Tr. 264.) While Verizon witness Trimble alleged certain carriers might pocket the difference between access and reciprocal compensation costs and perhaps not follow through with lower retail rates, the Commission could take reasonable measures to prevent this. (Tr. 161.) Thus, Mr. Trimble's concern, based on conjecture to begin with,[11] is overcome with appropriate condition. No sound evidence is opposes FDN's assertion that LATA-wide local will spur LECs into retail price competition for in-LATA calling.

Also globally significant to this case is that BellSouth's position and, more importantly, its conduct and practices, are at odds with Verizon's position. Though BellSouth witness Shiroishi agreed in her rebuttal testimony and on the stand with much of Verizon witness Trimble's testimony, no amount of verbal gymnastics can evade the bottom line. What BellSouth has proposed on this issue[12] and what BellSouth has agreed to in its interconnection agreements[13] cannot be fully reconciled with Verizon's chief arguments against a LATA-wide local proposal. For instance, Verizon argues (as does Sprint) that permitting ALECs LATA-wide local reciprocal compensation arrangements would place IXCs and ILECs at a competitive disadvantage with ALECs; yet BellSouth has already agreed to LATA-wide local with ALECs and neither BellSouth nor any IXCs claim to suffer competitive disadvantage. Verizon argues that a LATA-wide local default might upset the subsidies to its basic retail rates; yet BellSouth has already agreed to

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[11] FDN witness Warren testified that where FDN was not required to pay access charges for in-LATA calls, FDN charged lower in-LATA retail rates. (Tr. 272.)

[12] BellSouth's primary default recommendation is that the originating carrier's local calling area should govern. (Tr.22.)

[13] Though the language in the interconnection agreements it has executed varies, BellSouth acknowledges, "There are interconnection agreements that treat intraLATA toll traffic as local traffic . . . ." (Exhibit No. 13, p.1.)

LATA-wide local with ALECs and identifies no resulting harm to its basic retail rates. Indeed, in response to many Verizon or Sprint arguments against LATA-wide local, the Commission can simply answer that the argument does not persuade because BellSouth has already implemented LATA-wide local without incident.[14]

Although mentioned in the Introduction, one other item bears emphasis here. The Commission has heard the ILECs' arguments that UNE rates must be cost-based if competition is to develop properly and efficiently. The Commission has also heard the ILECs' arguments that payment of reciprocal compensation for ISP-bound traffic is an inappropriate subsidy to the ALECs. The ILECs have maintained that if the Commission were to decide differently on either of those issues, it would be an affront to the Act. However, the ALECs must -- these same ILECs argue – must subsidize ILEC basic retail rates. Suddenly, the economic principles the ILECs espoused no longer pertain because those principles are pointed in the other direction.

Preservation of subsidies should not be cause to trample over competitive market opportunities. The Commission is charged with promoting competition and ensuring availability of consumer choices for all telecommunications services.[15] The Commission cannot turn away every chance it has to promote competition only to permit the ILECs to define the telecommunications market in the state. ALECs' subsidizing ILECs by way of above-cost access charges for in-LATA calls poses an unreasonable barrier to

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[14] FDN recognizes that BellSouth did not support LATA-wide local as a default. The default scenario, however, is not the point here. BellSouth has LATA-wide local arrangements with ALECs today, and the other Florida ILECs' attack the LATA-wide local concept in principle.

[15] Section 364.01, Florida Statutes.

competition. ILEC arguments to the contrary are nothing more than pretext to protect the ILECs from losing customers who want better prices and different services from ALECs.

FDN's Proposal

As exemplified in Exhibit No. 5, the drawing of part of the 460 LATA, each city in a LATA often has its own local calling area, and the local calling area for each city partially overlaps the local calling area of its neighbor city, and the overlapping layers of calling areas go on and on throughout the LATA. However, if a carrier of in-LATA calls could hand-off them off as "local" calls, without being charged intrastate access by the terminating carrier, these multi-layered, complex local calling areas could be erased, the barrier of access costs would be removed, price competition for calls between all of the cities within the LATA would flourish. (Tr. 264 -265.)

The ILECs' local serving areas are artificial retail pricing boundaries and should not dictate whether a call is access for intercarrier purposes. (Tr. 265.) The cost for intrastate access in Florida is prohibitively high,[16] so the cost to the originating carrier for terminating access calls precludes the originating carrier from lowering retail prices for all intraLATA calls. Intercarrier compensation schemes that rely on the ILEC's retail local serving areas foreclose price competition for retail intraLATA services. (Tr. 264 - 265.) The default definition of local calling area should be the LATA. To eliminate controversy over cost and call delivery issues associated with that default, transport obligations should be addressed. (Tr. 264 - 265.) Therefore, the originating carrier should hand off LATA-wide local calls at the ILEC access tandem serving the

[16] As noted earlier, none of the ILECs dispute that its intrastate access rates are above cost. The ILECs intrastate access tariffs are on file with the Commission for its consideration.

geographical location of the end user where the call terminates or, if the originator chooses, at the end office serving the geographical location of the end user where the call terminates. (Tr. 264 - 265.) This proposal would spur price competition for in-LATA calling services, to the benefit of the state's end users, who should see dramatic price reductions for intraLATA calls, and would have the added feature of promoting facilities-based competition. (Tr. 264 - 265.)

Verizon's Universal Service Objectives (USO) Argument

Acting on its obligations pursuant to Section 364.025(2), Florida Statutes, the Commission recognized in 1995 that the status of ILEC earnings and revenues did not warrant establishment of a formal universal service fund in Florida. In other words, the Commission found that ILEC revenues were adequate for the interim to support USO. The Commission did not presuppose that the moving parts of the ILEC big picture would remain constant, nor did the Commission explicitly find – at a time when ALECs had no customers – that emerging ALECs should subsidize ILEC retail rates by payment of above-cost access charges for calls that could be deemed local. Significantly, the Legislature directed that for any interim USO mechanism, which the statute permits only for a transitional period not to exceed January 1, 2004:

> The commission shall ensure that the interim mechanism does not impede the development of residential consumer choice or create an unreasonable barrier to competition.[17]

[17]Section 364.025(2), Florida Statutes.

The Commission's interim USO mechanism does not specifically require ALECs to subsidize ILEC retail rates through above-cost access charges, and it would not likely have done so because of this directive.[18]

In any case, even accepting that, like the "fund" itself, a requirement that ALECs subsidize the ILECs is "implicit" in the interim mechanism, the Commission does not have adequate basis in the record to find a possible alteration to the subsidy as contemplated in this case will actually be a change to the interim mechanism. Verizon witness Trimble admitted it was speculation on his part, but that maybe, in the long-term, there might be an effect on ILEC rates if the subsidies diminished. (Tr.146, 159.) The interim mechanism is in place only until January 1, 2004 – a year and a half away. Mr. Trimble's testimony constitutes no proof that a change to the interim mechanism will result from a LATA-wide local default for LECs, particularly a default of the variety FDN proposes.[19]

Verizon & Sprint's Competitive Neutrality and "Gaming" Arguments

The ILEC argument that IXCs and ILECs are competitively disadvantaged by a LATA-wide local scheme seems to begin and ends with a statement of the obvious: that IXCs are not local service providers and vice-versa.

[18] Referring to Order No. 12765, Mr. Trimble testified that the Commission recognized as early as 1983 that intrastate access charges support USO. However, in creating the intrastate access regime, that Order also recognized the need not to disrupt competition. Order No. 12765 at p. 5 – 6.

[19] Mr. Trimble's claim that a LATA-wide local default is not pro-consumer is premised largely on the same unsupported conjecture of an ILEC rate increase. His consumer detriment argument should therefore be rejected.

On an intercarrier basis, interconnected LECs performing reciprocal transport and termination services for each other's local traffic do not provide the same or functionally equivalent service as what a LEC provides an IXC, as Verizon's evidence recognizes:

> Long-distance carriers are instead providing calling services to end users, for which local termination constitutes an essential input. Local interconnection is thus a reciprocal relationship of termination services between carriers, whereas long-distance service is a vertical relationship in which local termination is just an input into the long-distance carrier's provision of calling services to end users. There is no reason that the economics of local interconnection should be assumed identical to those of the very different relationship inherent in long-distance access. [20]

Similarly, "local" and "toll" services are considered different for retail purposes because of the way the services are priced and provided, notwithstanding the geography covered. For instance, BellSouth's "Area Plus Service" is "tariffed as a basic local service, and allows a customer to complete flat-rated toll calls within a LATA for a monthly fee above the basic local calling rate . . . . "[21] IXCs may offer different toll products that could compete with this BellSouth service. Any advantage or disadvantage to the IXC is inherent because of the fundamental differences between the services. As for the argument that ILECs too are somehow disadvantaged in competing with ALECs who pay reciprocal compensation on a LATA-wide local regime, BellSouth's offering in-LATA calling as a local service rather than a toll service is proof to the contrary.

The ILECs also clamor that IXCs will attempt to "game" the system and "masquerade as a local carrier" to avoid access charges on in-LATA calls. (Tr. 38, 77.) FDN does not believe any IXC can "masquerade" as an ALEC. One is either an ALEC

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[20] Exhibit No. 2, p. 40 and 41 of DBT-2.

[21] Order No. PSC-01-1402-FOF-TP, issued June 28, 2001, p. 40.

or not. Moreover, if an IXC wants to prepare an ALEC business plan, get funded, get certified as an ALEC, enter interconnection agreements, buy and provision local trunks, market ALEC services and execute on that ALEC business plan, then so be it. There's no charade in that. AT&T was not masquerading as an ALEC when it signed an interconnection agreement with BellSouth for LATA-wide local reciprocal compensation. IXCs are permitted to respond to a shift in the competitive landscape by forming ALECs, but the ILECs are simply unwilling to accept that they should do so. Again, all the ILECs really argue is that competition for in-LATA calling services as FDN proposes here will cut into their market share.

FDN's Proposal is Feasible

Another complaint against FDN's proposal that is unsupported by the record is BellSouth's rebuttal argument that carriers' billing systems may not be able to jurisdictionalize traffic based on where a call is handed off. BellSouth chooses to bill on the basis of the originating carrier's reported jurisdictional factors (Tr. 22), and FDN does not propose a change to this BellSouth practice. As explained earlier, FDN's LATA-wide local plan includes a proposed division of transport obligations. BellSouth already has LATA-wide local with several ALECs, and BellSouth did not say it ceased reliance on factor reporting for billing notwithstanding the transport obligations for those agreements. Additionally, though opposing LATA-wide local generally, Verizon favored FDN's transport proposal without objecting due to any billing concerns.

LATA-wide Local Calling Services

As explained earlier, intrastate access charges on in-LATA calls is a cost barrier to ALECs that would expand their local calling services to include the entire LATA. Elimination of that barrier would provide a catalyst to price competition for in-LATA calling services among all LECs, ALECs and ILECs alike.

If a LEC pays reciprocal compensation on a LATA-wide local basis, FDN accepts for purposes of this case that the LEC's retail local calling services[22] should reflect the intercarrier compensation plan. So, an originating LEC should not charge "toll" retail rates for the in-LATA calls it does not pay access charges to terminate. Accordingly, for calls with end points outside the ILEC local calling area but within the LATA, carriers paying reciprocal compensation rather than intrastate access should not bill retail toll rates, but rather a flat per month charge or a flat per call charge conceptually similar in structure to ECS calls or BellSouth's Area Plus Service.

Issue No. 17: Should the Commission establish compensation mechanisms governing the transport and delivery or termination of traffic subject to Section 251 of the Act to be used in the absence of the parties reaching agreement or negotiating a compensation mechanism? If so, what should be the mechanism?

FDN: *Yes. A fair and reasonable default mechanism would promote efficiencies in negotiations, administration and arbitration of interconnection matters. The default should be as FDN proposes in subparts below.*

A fair and reasonable default mechanism will promote efficiencies in negotiations, administration and arbitration of interconnection agreements. (Tr. 267.) Bill and keep arrangements minimize carriers' billing, collection and tracking costs for

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[22]Rule 25-4.003(32), Florida Administrative Code, defines "Local Service Area" or "Local Calling Area" as "The area within which telephone service is furnished subscribers under a specific schedule of rates and without toll charges. A LEC's local service area may include one or more exchanges areas or portions of exchange areas."

intercarrier traffic exchanges. (Tr. 269.) As long as the definition and terms of the bill and keep default are adequately specified by the Commission, the need for regulatory intervention in reciprocal compensation disputes can be minimized. (Tr. 269.)

The Commission should not defer ruling on this issue until the FCC decides or does not decide, effective no sooner than May 2004,[23] the Unified Intercarrier Compensation Regime case. There is really no way of knowing when or if the FCC will decide that case, let alone what it will decide, and the FCC's existing rules support a Commission determination now. Moreover, if the purpose of a exploring a default mechanism to begin with was avoidance of repetitive interconnection arbitration issues, then by waiting to decide, the Commission will not achieve that avoidance. Therefore, FDN maintains that the issue is ripe for decision and should be decided currently.

The general terms of FDN's bill and keep proposal are discussed below under subpart (c).

Issue No. 17(a): Does the Commission have jurisdiction to establish bill and keep?

FDN: *Yes, aside from state law authority under Sections 364.16 and 364.162 to establish fair, reasonable and nondiscriminatory terms for interconnection, 47 CFR 51.713 grants the Commission authority to establish bill and keep arrangements and to presume traffic exchanges are roughly in balance.*

Issue No. 17 (b): What is the potential financial impact, if any, on ILECs and ALECs of bill and keep arrangements?

FDN: *Assuming the traffic balance/volume and transport conditions FDN proposes in the subparts below are approved and a succinct mechanism is in place, LEC expenses for monitoring, billing and collection of intercarrier compensation could be reduced, and LECs may be able to reallocate resources to end-user focused, competitive activities.*

[23] In ¶ 4 of the Notice of Proposed Rulemaking, released April 27, 2001, in CC Docket No. 01-92, the FCC indicates interest in establishing regimes that would not take effect until three years hence.

As the FCC has already concluded, bill and keep arrangements are inherently equitable if the terms are reciprocal and the traffic flow between the carriers is roughly equal in volume. (See 47 CFR 51.713, Tr. 269.) Under those circumstances, then, the net cost-revenue impact to individual carriers should be approximately zero. Bill and keep arrangements will also minimize both carriers' billing, collection and tracking costs and, thus, may promote competition or better services where resources devoted to reciprocal compensation matters can be reallocated to end-user focused, competitive activities (Tr. 269.) Additionally, from the standpoint of negotiations or disputes/arbitration, if the Commission establishes equitable and succinct terms for bill and keep, there should be no difficulty associated with a rebuttable presumption that traffic is in balance. If the parties know from their records that traffic has not been in balance, then it would be a waste of time for either party to even invoke the presumption as an issue.

Issue No. 17 (c): If the Commission imposes bill and keep as a default mechanism, will the Commission need to define generically "roughly balanced?" If so, how should the Commission define "roughly balanced?"

FDN: *Yes. On a per LATA basis, "roughly balanced" should mean there is a 10% or less variation in the volume of traffic exchanged between carriers over a reasonable period. Bill and keep should also apply where traffic exchanged does not meet a threshold minimum*

"Roughly balanced" should mean that local traffic exchanged between the parties, on a per LATA basis, is balanced within 10%. (Tr. 268.)[24] Traffic should be presumed

[24] FDN and Verizon both recommend the 10% figure as fair and reasonable. No party suggested a higher percentage, though some suggested a lower figure.

in balance unless one can show that traffic is not in balance over a reasonable period[25] and that the imbalance is expected to continue. (Tr. 268.) If the traffic is not in balance, then a default symmetrical measurable rate should be established on a LATA-wide basis. (Tr. 268.)

The Commission should also extend the application of bill and keep to instances where a minimum traffic volume is not met. (Tr. 268.) A traffic threshold requirement would reduce the administrative burdens of monitoring, billing and collection, and may reduce commission activity for resolving disagreements. (Tr. 268.) The threshold chosen should reflect that the administrative burden and resources required for reciprocal compensation billing, payment and collection is not justified for minutes below that threshold. (Tr. 268.) FDN recommends, therefore, that over 499,999 minutes per month, measured over a reasonable period, be set as a threshold to trigger application of a symmetrical rate or the roughly balanced presumption. (Tr. 268.)

The Commission cannot accept BellSouth witness Shiroishi's recommendation that a 3:1 exchange ratio should be deemed "roughly balanced."[26] Even cursory review of the FCC ISP Remand Order she references to support her recommendation reveals no pronouncement whatsoever regarding traffic balance presumptions. Rather, the presumption the 3:1 ratio the FCC established in that order pertained only to what traffic volumes would constitute ISP-bound traffic. If the FCC intended this 3:1 presumption to likewise apply to a bill and keep scheme, it would have said so and proposed amendment

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[25] FDN can accept Verizon witness Trimble's suggestion that three months is a reasonable period. (Tr. 111.)

[26] See Tr. 29.

to 47 CFR 51.713. It did not. Besides, suggesting that 3:1 is "in balance" defies common sense or reason. It is equivalent to putting a 300 lbs. wrestler and 100 lbs. wrestler in the same weight class. BellSouth's position is untenable in application and in the abstract.

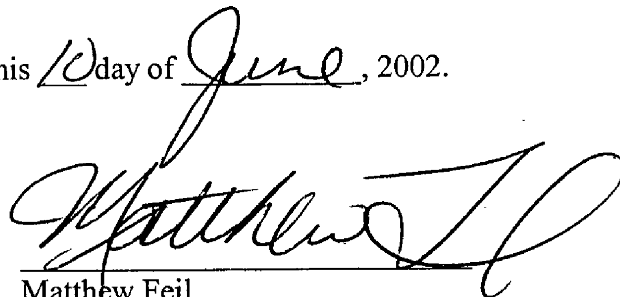
Nor can the Commission accept Verizon witness Trimble's suggestion that it consider a network architecture requirement that an ALEC deliver traffic to the point of switching nearest the terminating end user before bill and keep would apply. (Tr. 113.) Mr. Trimble himself acknowledges that bill and keep can provide benefits over explicit billing notwithstanding his suggested architecture requirement. (Tr. 114.) Further, the Commission has in prior arbitrations rejected point of interconnection arguments similar to those Mr. Trimble suggests.[27] If the Commission decides on any architecture requirement for bill and keep, it should, as a compromise, adopt FDN's suggestion that the originating carrier deliver local calls at least as far as the access tandem serving the end user. (Tr. 267.)

<u>Issue No. 17 (d)</u>: **What potential advantages or disadvantages would result from the imposition of bill and keep arrangements as a default mechanism, particularly in comparison to other mechanisms already presented in Phase II of this docket?**

<u>FDN</u>: ***Disadvantages to a bill and keep regime would only result where traffic is not over a minimum threshold and/or not roughly in balance or where there are unfair or unreasonable rules on interconnection architecture. ***

[27] See Exhibit No. 7, p. 3 – 4.

RESPECTFULLY SUBMITTED, this 10 day of June, 2002.



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by U.S. Mail (or by overnight delivery if designated with *) this 10 day of June 2002.

AT&T
Claudia Davant
101 North Monroe Street
Suite 700
Tallahassee, FL 32301-1549
Phone: (850) 425-6364
Fax: (850) 425-6361

AT &T Communications of
the Southern States, Inc. (GA)
Victoria Tate
1200 Peachtree Street
Suite 8017
Atlanta, GA 30309
Phone: (404) 810-7175

Ausley Law Firm
Jeffrey Wahlen
PO Box 391
Tallahassee, FL 32302
Phone: (850) 224-9115
Fax: (850) 222-7560

Florida Cable Telecommunications Assoc., Inc.
Michael A. Gross
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32303
Phone: (850) 681-1990
Fax: (850) 681-9676
Email: mgross@fcta.com

Beth Keating/Felicia Banks
Florida Public Service Comm.
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Alltel Corporate Services, Inc.
Stephen Refsell
One Allied Drive
Little Rock, AR 72203-2177
Phone: (501) 905-8330
Fax: (501) 905-6299

BellSouth Telecom.
Nancy B. White
c/o Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301-1556
Phone: (850) 224-7798
Fax: (850) 222-8640

MCI WorldCom
Ms. Donna McNulty
325 John Knox Road, Suite 105
Tallahassee, FL 32303-4131

Florida Competitive Carriers Assoc.
c/o McWhirter Law Firm
Joseph McGlothlin
Vicki Kaufman
117 S. Gadsden Street
Tallahassee, FL 32301
Phone: (850) 222-2525
Fax: (850) 222-5606
Email: jmcglothlin@mac-law.com,vkaufman@mac-law.com

Focal Communications Corporation
Mr. Paul Rebey
200 North LaSalle Street
Suite 1100
Chicago, IL 60601-1914
Phone: (312) 895-8491
Fax: (312) 895-8403
Email: prebey@focal.com

Gerry Law Firm
Charles Hudak/Ronald V. Jackson
3 Ravinia Drive #1450
Atlanta, GA 30346-2117
Phone: (770) 399-9500
Fax: (770) 395-0000

Hopping Law Firm
Richard Melson
PO Box 6526
Tallahassee, FL 32314
Phone: (850) 222-7500
Fax: (850) 224-8551

Katz, Kutter Law Firm
Charles Pellegrini/Patrick Wiggins
12th Floor
106 East College Avenue
Tallahassee, FL 32301
Phone: (850) 224-9634
Fax: (850) 222-0103

Global NAPS, Inc.
10 Merrymount Road
Quincy, MA 02169
Phone: (617) 507-5100
Fax: (617) 507-5200

KMC Telecom, Inc.
Mr. John McLaughlin
1755 North Brown Road
Lawrenceville, GA 30043-8119
Phone: (678) 985-6262
Fax: (678) 985-6213
Email: jmclau@kmctelecom.com

Kelley Law Firm
Genevieve Morelli
1200 19th Street NW
Suite 500
Washington, DC 20036
Phone: (202) 887-1230
Fax: (202) 955-9792
Email: gmorelli@kelleydrye.com

Landers Law Firm
Scheffel Wright
PO Box 271
Tallahassee, FL 32302
Phone: (850) 681-0311
Fax: (850) 224-5595

Level 3 Communications, LLC
Michael R. Romano, Esq.
1025 Eldorado Blvd.
Bloomfield, CO 80021-8869
Phone: (720) 888-7015
Fax: (720) 888-5134

Messer Law Firm
Norman Horton, Jr.
215 S. Monroe Street
Suite 701
Tallahassee, FL 32301-1876
Phone: (850) 222-0720
Fax: (850) 224-4359

Moyle Law Firm (Tall)
John Moyle/Cathy Sellers
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301
Phone: (850) 681-3828
Fax: (850) 681-8788
Email: jmoylejr@moylelaw.com

Orlando Telephone Company
Herb Bornack
4558 SW 35th Street, Suite 100
Orlando, FL 32811-6541
Phone: (407) 996-8900
Fax: (407) 996-8901

US LEC of Florida, Inc.
Ms. Wanda G. Montano
6801 Morrison Blvd.
Charlotte, NC 28211-3599

Pennington Law Firm
Peter Dunbar/Karen Camechis
PO Box 10095
Tallahassee, FL 32302-2095
Phone: (850) 222-3533
Fax: (850) 222-2126
Email: Pete@penningtonlawfirm.com

Rutledge Law Firm
Ken Hoffman
PO Box 551
Tallahassee, FL 32302-0551
Phone: (850) 681-6788
Fax: (850) 681-6515

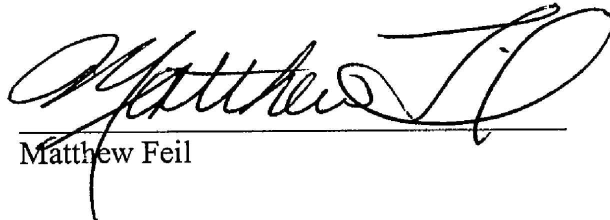
Sprint-Florida, Incorporated
Charles J. Rehwinkel/Susan Masterton
PO Box 2214
MS: FLTLHO0107
Tallahassee, FL 32316-2
Phone: (850) 847-0244
Fax: (850) 878-0777

Supra Telecom
Brian Chaiken
2620 SW 27th Avenue
Miami, FL 33133-3001
Phone: (305) 476-4248
Fax: (305) 443-1078
Email: bchaiken@stis.com

Time Warner Telecom of Florida, LP
Carolyn Marek
233 Bramerton Court
Franklin, TN 37069
Phone: (615) 376-6404
Fax: (615) 376-6405

Verizon Select Services Inc.
Kimberly Caswell
PO Box 110, FLTC0007
Tampa, FL 33601-0110
Phone: (813) 483-2617
Fax: (813) 223-4888

XO Florida, Inc.
Dana Shaffer
105 Molly Street
Suite 300
Nashville, TN 37201-2315
Phone: (615) 777-7700
Fax: (615) 345-1564



Matthew Feil