

State of Florida



Public Service Commission  
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION  
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DATE: MAY 8, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES (BAYO)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (DOWDS) *DB*  
OFFICE OF THE GENERAL COUNSEL (BANKS) *FRB* *FRZ*

RE: DOCKET NO. 010098-TP - PETITION BY FLORIDA DIGITAL  
NETWORK, INC. FOR ARBITRATION OF CERTAIN TERMS AND  
CONDITIONS OF PROPOSED INTERCONNECTION AND RESALE  
AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC. UNDER  
THE TELECOMMUNICATIONS ACT OF 1996.

AGENDA: 05/20/03 - REGULAR AGENDA - POST-HEARING DECISION -  
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010098(3).RCM

CASE BACKGROUND

Pursuant to Section 252 of the Telecommunications Act of 1996 (Act), Florida Digital Network, Inc. (FDN) petitioned for arbitration with BellSouth Telecommunications, Inc. (BellSouth) on January 24, 2001. On February 19, 2001, BellSouth filed its Response to FDN's petition for arbitration. On April 9, 2001, FDN filed a Motion to Amend Arbitration Petition. On April 16, 2001, BellSouth filed its Response In Opposition to the Motion. FDN filed its Reply to BellSouth's Opposition to Motion to Amend Arbitration Petition on April 30, 2001. On May 22, 2001, Order No. PSC-01-1168-PCO-TP was issued granting FDN's Motion to Amend Arbitration Petition.

Prior to the administrative hearing, the parties resolved all issues except one. An administrative hearing was held on August 15, 2001. On September 26, 2001, FDN filed a Motion to Supplement

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Record of Proceeding. BellSouth filed a timely opposition to FDN's motion on October 3, 2001. On December 6, 2001, Order No. PSC-01-2351-PCO-TP was issued denying FDN's Motion to Supplement Record of Proceeding. This docket was considered at the April 23, 2002, Agenda Conference. On June 5, 2002, Order No. PSC-02-0765-FOF-TP, Final Order on Arbitration, was issued.

On June 17, 2002, FDN filed a Motion for Clarification, or Reconsideration. BellSouth filed its Response to this motion on June 24, 2002.

On June 20, 2002, BellSouth filed a Motion for Reconsideration, or in the Alternative, Clarification. FDN filed its Response/Opposition to this motion on June 27, 2002. On that same day, FDN also filed a Cross-Motion for Reconsideration. BellSouth filed a Motion to Strike Cross-Motion for Reconsideration, or in the Alternative, Response to FDN's Cross-Motion on July 5, 2002.

We note that in their pleadings both parties also had requested an extension of time to file an interconnection agreement. On July 3, 2002, Order No. PSC-02-0884-PCO-TP was issued granting BellSouth's request for extension of time to file an interconnection agreement. On October 21, 2002, Order No. PSC-02-1453-FOF-TP was issued Denying Motions for Reconsideration, Cross-Motion for Reconsideration and Motion to Strike.

On November 20, 2002, BellSouth filed its executed interconnection agreement with FDN. On February 5, 2003, BellSouth filed a replacement agreement that contains updated Florida rates for unbundled network elements. Although the parties were able to reach agreement on most points, disagreements remained as to the specific language that should be incorporated into the agreement to reflect the Commission's decision as to BellSouth's obligation " . . .to continue to provide its FastAccess Internet Service to end users who obtain voice service from FDN over UNE loops." (Order No. PSC-02-0765-FOF-TP (FDN Order), p. 11) On this same date BellSouth also submitted its Position in Support of its Proposed Contract Language (BellSouth Position), in which it set forth its proposed language where there was a dispute; similarly, FDN's proposed language was contained in its Motion to Approve Interconnection Agreement filed contemporaneously (FDN Motion to Approve). On December 2, 2002, FDN filed a Response to BellSouth's Position in Support of Proposed Contract Language (FDN Response).

On March 21, 2003, the Commission issued Order No. PSC-03-0395-FOF-TP, in which the Commission resolved the issues pertaining

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to what language should be contained in the parties' agreement to memorialize the FastAccess-related decisions. The parties were directed to file a final interconnection agreement incorporating the Commission's decision within 30 days.

On April 17, 2003, the parties submitted an amendment to the February 5, 2003 agreement to reflect the Commission's decisions in Order No. PSC-03-0395-FOF-TP. This recommendation concerns approval of the agreement.

This Commission is vested with jurisdiction in this matter pursuant to Section 252 of the Act to arbitrate interconnection agreements, as well as Sections 364.161 and 364.162, Florida Statutes.

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**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission approve the arbitrated interconnection agreement between BellSouth and FDN in Docket No. 010098-TP?

**RECOMMENDATION:** Yes. The Commission should approve the arbitrated interconnection agreement between BellSouth and FDN in Docket No. 010098-TP. (DOWDS)

**STAFF ANALYSIS:** On April 17, 2003, BellSouth and FDN filed for approval of their final executed amendment to their Interconnection Agreement, pursuant to Order No. PSC-03-395-FOF-TP; the amendment is Attachment A to this recommendation. Staff has reviewed the agreement, and believes that it complies with the Commission's decisions in the aforementioned order, as well as the Act. Therefore, staff recommends that the Commission approve the arbitrated interconnection agreement between BellSouth and FDN.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. If the Commission approves staff's recommendation in Issue 1, no further action will be required in this docket. Therefore, this docket may be closed. (**BANKS**)

**STAFF ANALYSIS:** If the Commission approves staff's recommendation in Issue 1, no further action will be required in this docket. Therefore, this docket may be closed.

**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
FLORIDA DIGITAL NETWORK, INC.  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED FEBRUARY 5, 2003**

Pursuant to this Amendment, (the "Amendment"), Florida Digital Network, Inc. ("FDN"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain *Interconnection Agreement between the Parties* dated February 5, 2003 ("Agreement") to be effective on the date of the last signature executing the Amendment.

WHEREAS, BellSouth and FDN entered into the Agreement on February 5, 2003 and;

WHEREAS, The Florida Public Service Commission has issued its order in Docket 010098-TP resolving the parties disputed language for the BellSouth/Florida Digital Network Interconnection Agreement;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Parties agree to add a new Section 2.10 to Attachment 2 of the Agreement, titled Continued Provision of FastAccess to FDN End User. Section 2.10 is set forth in Exhibit 1 of this Amendment, attached hereto and incorporated herein by this reference.
2. This Amendment shall be deemed effective on the date of the last signature of both Parties ("Effective Date").
3. All of the other provisions of the Agreement, dated February 5, 2003 shall remain in full force and effect.
4. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

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IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

Florida Digital Network, Inc.  
By: [Signature]  
Name: Michael J. Gallagher  
Title: CEO  
Date: 4/15/03

BellSouth Telecommunications, Inc.  
By: [Signature]  
Name: Elizabeth R.A. Shirashi  
Title: Director  
Date: 4/16/03

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Exhibit 1



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- 2.10 **Continued Provision of FastAccess to FDN End Users**
- 2.10.1. In order to comply with the Florida Public Service Commission's Order in Docket No. 010098-TP, and notwithstanding any contrary provisions in this Agreement, BellSouth Tariff F.C.C. Number 1, or any other agreements or tariffs of BellSouth, in cases in which BellSouth provides BellSouth® FastAccess® Internet Service ("FastAccess") to an end-user and FDN submits an authorized request to provide voice service to that end-user, BellSouth shall continue to provide FastAccess to the end-user who obtains voice service from FDN over UNE loops.
- 2.10.1.1 BellSouth may not evade any of its obligations under this subsection 2.10 by offering or providing any of the services or component services under this subsection through any affiliate, including, but not limited to, BellSouth.net, Inc. or successor by corporate merger.
- 2.10.1.2 Regardless of how BellSouth provisions its FastAccess to an end-user, when an end-user switches to FDN voice service, BellSouth's FastAccess will not be terminated, suspended or interrupted, except as may be expressly provided for herein, and BellSouth's continuation of its FastAccess to the end-user switching to FDN voice service shall be a seamless or transparent transition for the end user such that there shall be no more than a momentary disruption of FastAccess and voice services.
- 2.10.1.3 Where BellSouth's FastAccess could be provisioned over the high-frequency portion of a loop coexistent with FDN circuit-switched voice services on the same loop, BellSouth may elect to maintain the BellSouth FastAccess on the same loop such that the FastAccess is not altered when the end-user switches to FDN's voice service.
- 2.10.1.4 BellSouth may satisfy its obligations under this Section 2.10 by providing FastAccess on a BellSouth owned and maintained loop, ("Standalone FastAccess"), that is separate and distinct from the line FDN uses for voice services. Where feasible, and where a loop is available for FDN voice services that satisfies all of the standards set forth in this Agreement, BellSouth may elect to maintain FastAccess on the extant loop and FDN voice services will be provisioned over a second loop.
- 2.10.1.5 BellSouth may not impose an additional charge to the end-user associated with the provision of FastAccess on a second loop. Notwithstanding the foregoing, the end-user shall not be entitled to any discounts on FastAccess associated with the purchase of other BellSouth products, e.g., the Complete Choice discount.
- 2.10.1.6 BellSouth may request that the End User's FastAccess service be billed to a credit card. If the End User does not provide a credit card number to BellSouth for billing purposes, the parties shall cooperatively determine an alternative means to bill the End User. If the End User refuses to allow BellSouth access to his premises where necessary to perform any re-wiring, BellSouth may discontinue the provision of FastAccess service to the End User.

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- 2.10.1.7 If the Parties are unable to reach agreement on an alternative means to billing the end user, the Parties may petition the Commission for relief as appropriate regarding the dispute.
- 2.10.1.8 In implementing the Commission's Order in Docket No. 010098-TP, BellSouth shall not create any additional barriers to FDN's ability to compete in the local exchange services market.
- 2.10.1.9 Nothing in this Section 2.10 shall require BellSouth to continue providing FastAccess to an end-user who fails to pay all charges associated with FastAccess or otherwise fails to comply with the end-user's Service Agreement with BellSouth or the applicable Acceptable Use policies for FastAccess.
- 2.10.1.10 In the event BellSouth elects to comply with this Section 2.10 by providing FastAccess on an FDN UNE Loop, FDN shall make available to BellSouth at no charge the high frequency spectrum on such UNE Loop for purposes of providing the underlying DSL transport.
- 2.10.2 **Provisioning**
- 2.10.2.1 FDN and BellSouth shall each establish a single point of contact ("SPOC") for purposes of the provision of FastAccess pursuant to this Section 2.10.
- 2.10.2.2 When FDN submits an LSR for a UNE loop, and there is a DSL USOC on the end-user's service record, the LCSC will auto-clarify the order.
- 2.10.2.3 Upon receiving the auto-clarified order, FDN shall notify the BellSouth SPOC, and the BellSouth SPOC shall determine whether the end-user is a FastAccess customer.
- 2.10.2.4 FDN and BellSouth will develop processes to promptly correct problems with or disconnections of FastAccess service to FDN voice end users.
- 2.10.2.5 If the end user does not have FastAccess but has some other DSL service, BellSouth shall remove the DSL service associated USOC and process the FDN LSR for the UNE loop.
- 2.10.2.6 If the end user receives FastAccess service, FDN shall forward to the SPOC end user contact information (i.e. telephone number or email address) in order for BellSouth to perform its obligations under this Section 2.10. FDN may include such contact information on the LSR. After receipt of contact information from FDN, BellSouth shall have three days to make the election as to which line FastAccess service will be provisioned on as set forth in 2.10.2.7 and to notify FDN of that election. If BellSouth contacts the end user during this process, BellSouth may do so only to validate the end user's current and future FastAccess services and facilities. During such contact, BellSouth will not engage in any winback or retention efforts, and BellSouth will refer the end user to FDN to answer any questions regarding the end user's FDN services.
- 2.10.2.7 After election by BellSouth as to which line FastAccess will be provisioned on (either the existing loop, or on a second facility) FDN will submit a revised LSR for the

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conversion of the voice service to a UNE loop. If BellSouth elects to move the FastAccess to a new Standalone loop, FDN will submit an LSR with a due date 14 calendar days from submission to allow BellSouth sufficient time to transition the FastAccess service to the second line. If BellSouth elects to keep the FastAccess service on the current facilities and provision FDN voice services on the same or separate facilities, FDN will submit a revised LSR for voice service on such facilities using standard processes and intervals, and allow the FastAccess service to remain on the current facilities.

- 2.10.2.8 If BellSouth believes that it is important and correct to continue to provide Fast Access over a separate facility and such facilities are not available and the parties cannot reach an agreement about how the Fast Access would be provisioned, the Parties can file a petition with the Commission seeking relief as appropriate.
- 2.10.2.9 FDN authorizes BellSouth to access the entire UNE loop for testing purposes.
- 2.10.2.10 FDN and BellSouth agree that after the initial 90 days (and every 90 days thereafter) of provisioning FastAccess service in accordance with this Section 2.10, FDN and BellSouth will meet to discuss and negotiate in good faith any means for improving and streamlining the provisioning process.