

Meredith Mays
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September 3, 2003

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

Re: Docket No. 030829-TP (FDN Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Answer and Counterclaim which we ask that you file in the above referenced docket.

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

Sincerely,



Meredith Mays (KA)

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

503650

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

-
**CERTIFICATE OF SERVICE
DOCKET NO. 030829-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
U.S. Mail this 3rd day of September, 2003 to the following:

Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Matthew Feil, Esq.
Scott A. Kassman, Esq.
FDN Communications
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Meredith E. Mays (CM)

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In Re:)	
)	
Complaint of FDN Communications for)	Docket No. 030829-TP
Resolution of Certain Billing Disputes)	
And Enforcement of UNE Orders and)	Filed: September 3, 2003
Interconnection Agreements with)	
BellSouth Telecommunications, Inc.)	
_____)	

**ANSWER AND COUNTERCLAIM OF
BELLSOUTH TELECOMMUNICATIONS, INC.**

INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Answer and Counterclaim to the Complaint of Florida Digital Network, Inc. d/b/a FDN Communications Inc. ("FDN"). FDN's complaint is nothing more than an attempt to avoid its contractual obligations, this attempt should be rejected by this Commission for the reasons below:

1. FDN criticizes BellSouth for charging it certain disconnection fees, which it contractually agreed to pay. FDN seeks to circumvent its contractual obligations by claiming that it will pay certain disconnection fees, but not others and that neither the relevant interconnection agreements nor prior Commission orders addressed such charges. These claims are meritless. To the extent that FDN had any concerns about when disconnection fees apply, FDN could and should have raised any such concerns in connection with Docket No. 990649-TP (*UNE Docket*). Likewise, FDN's complaints about the application of the disconnection fees and BellSouth's promotional tariffs were rejected in Docket No. 020119 (*Key Customer Docket*). Consequently, FDN's claims relating to the application of the disconnection fees are precluded based on the doctrines of *res judicata* and collateral estoppel.

2. FDN's allegations about BellSouth's implementation of the Commission ordered geographically deaveraged UNE rate zones are likewise without merit. The relevant contracts between BellSouth and FDN refer to BellSouth's interconnection website for the central office designations associated with state commission ordered geographically deaveraged zones, which state commissions are required to create. *See* 47 C.F.R. § 51.507(f). Such zone designations are subject to change by order of the state commission, which orders BellSouth must comply with. BellSouth has at all times charged FDN the rates applicable to the geographically ordered zones established by the Commission. FDN's claim that the *zones* can only be changed by amendment to interconnection agreements is wrong, and is illogical. Applying FDN's logic, anytime a Commission changes rate zones, then BellSouth would only implement the rate zones on a rolling basis as agreements are amended, which would be administratively burdensome and completely impractical. Instead, BellSouth has at all times charged FDN the agreed upon contractual rate applicable to the UNE products FDN orders. Stated simply, geographically ordered zones are subject to change by Commission order, which changes are implemented in BellSouth's systems and applied to the entire CLEC community. *Rates*, however, must be changed by amendment.¹

FDN's Complaint should be dismissed in its entirety and the Commission should make clear that FDN must live up to its agreed upon contractual obligations.

RESPONSE TO SPECIFIC ALLEGATIONS

BellSouth responds to the specific allegations in the Complaint as follows:

¹ It is unlikely FDN would be complaining had the Commission changed former zone 2 wire centers to zone 1 wire centers, which would have resulted in FDN being charged the specified contract rate for zone 1 UNEs, likely resulting in decreased billing to FDN; however, this is precisely the outcome in certain instances, which outcome is wholly dependent on the Commission ordered geographically deaveraged rate zones.

1. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1.

2. BellSouth admits the allegations of Paragraph 2 of the Complaint.

3. The allegations of Paragraph 3 do not require a response. BellSouth requests that all notices, pleadings and other communications regarding this Docket be served upon the following BellSouth representatives:

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4. BellSouth admits that the Commission has jurisdiction under the statutory provisions referenced in Paragraph 4 of the Complaint and that the Commission has jurisdiction to interpret and enforce interconnection agreements. BellSouth also admits that the Commission has jurisdiction under the orders and agreements referenced in Paragraph 4 of the Complaint, but denies that FDN has stated a claim under these orders and agreements upon which relief can be granted by the Commission.

5. BellSouth admits that FDN submitted billing disputes concerning disconnection charges on or about January 2002. BellSouth denies that it did not begin charging disconnection fees until that time and states that FDN contractually agreed to pay certain nonrecurring disconnection charges beginning on or about September 5, 2001. Upon information and belief,

BellSouth began billing disconnection charges to FDN in November 2001. BellSouth denies any remaining allegations in Paragraph 5.

6. Upon information and belief, BellSouth admits that FDN pays for some, but not all disconnection charges that it is billed. BellSouth also admits that FDN has disputed certain disconnection charges. BellSouth denies that FDN should not be required to pay for all disconnection charges that have been billed to it. BellSouth affirmatively states that this Commission separated installation and disconnection charges in nonrecurring rates. *See* Order No. PSC-98-0604-FOF-TP, issued April 29, 1998, p. 69. BellSouth also denies that it is the cost causer of disconnect fees (see Order No. PSC-98-0604-FOF-TP, p. 68) (“AT&T/MCI witness . . . proposes that disconnect costs be modeled separately, and that *the CLEC pay for them* only at the time such activity is physically performed). Thereafter, this Commission set disconnection rates in Order No. PSC-01-1181-FOF-TP. BellSouth denies any remaining allegations in Paragraph 6.

7.(a) BellSouth denies that its disconnection charges and its Key Customer and Simple Solutions programs (“Programs”) are anticompetitive. BellSouth states further that the rates, terms, and conditions of its Programs speak for themselves and that FDN raised this issue in its pre-filed testimony in Docket No. 020119 as well as in its discovery responses to Staff’s discovery in that docket.² BellSouth denies any remaining allegations in Paragraph 7(a).

7.(b) BellSouth states that FDN has confused the costs associated with installation and disconnection work, which this Commission has separated into two distinct nonrecurring rates.

² *See* prefiled Direct Testimony of Michael P. Gallagher, p. 7 and FDN’s Response to Staff’s Interrogatory 36, subparts C, D, and E. FDN initiated the *Key Customer* docket *after* the time it submitted its first billing dispute concerning disconnection charges. FDN could and should have resolved this issue in either that docket or in the *UNE Docket*, a proceeding in which FDN sponsored witness testimony on Issue 9, which concerned recurring and nonrecurring charges for specified UNES. FDN’s prehearing statement in the *UNE Docket* included *proposed disconnection rates*, which rates were set forth in this Commission’s Pre-Hearing Order No. PSC-00-1655-PFO-TP. FDN should not be permitted to collaterally attack matters decided in prior dockets through this Complaint.

The nonrecurring installation charge reflects costs associated with provisioning an unbundled loop to the CLEC's collocation space. Thus, no disconnect activities are reflected in these installation rates. Once FDN purchases an unbundled loop and subsequently loses the customer served by that unbundled loop to another CLEC or to BellSouth, the only way to recover the costs BellSouth incurs to remove the connection from FDN's collocation space is through application of the disconnect charge; a charge authorized by this Commission. BellSouth denies any remaining allegations in Paragraph 7(b).

8. BellSouth admits the allegations in Paragraph 8. BellSouth clarifies that the BellSouth-MCImetro Agreement was approved on or about June 19, 1997.

9. BellSouth admits that FDN executed an agreement, titled "Interim Agreement" effective on October 20, 2000, the terms of which speak for themselves. BellSouth also admits that the parties executed an Agreement effective September 5, 2001 ("Standalone Agreement"). The Standalone Agreement incorporated this Commission's May 2001 UNE rates, which rates included disconnection charges. BellSouth affirmatively asserts that the parties' interconnection agreements speak for themselves. BellSouth denies any remaining allegations in Paragraph 9.

10. BellSouth admits the allegations in Paragraph 10.

11. The provision in the interconnection agreement referenced in Paragraph 11 of the Complaint speaks for itself, and no further response from BellSouth is required.

12. The provision in the interconnection agreement referenced in Paragraph 12 of the Complaint speaks for itself, and no further response from BellSouth is required.

13. The provision in the interconnection agreement referenced in Paragraph 13 of the Complaint speaks for itself, and no further response from BellSouth is required.

14. The provision in the interconnection agreement referenced in Paragraph 14 of the Complaint speaks for itself, and no further response from BellSouth is required.

15. The provision in the interconnection agreement referenced in Paragraph 15 of the Complaint speaks for itself, and no further response from BellSouth is required.

16. BellSouth admits the parties agreed to disconnection rates in the Standalone Agreement effective September 5, 2001. BellSouth also admits the parties agreed to disconnection rates in the 2003 Agreement. Any orders issued by this Commission speak for themselves, and no further response from BellSouth concerning the content of such orders is required. BellSouth affirmatively states that it was incumbent upon FDN, as either a party to Docket No. 990649-TP in which disconnection rates were approved, or in Docket No. 020119, in which FDN complained of certain disconnection charges, to litigate to finality such issues then, rather than seeking resolution in this docket. FDN's claims are barred by the doctrines of res judicata and collateral estoppel. BellSouth denies any remaining allegations in Paragraph 16 and affirmatively denies that FDN "cannot be precluded from raising" such issues in this proceeding.

17. BellSouth admits the allegations contained in Paragraph 17 of the Complaint.

18. BellSouth admits that FDN has disputed approximately \$100,000 in disconnection charges. BellSouth denies any remaining allegations in Paragraph 18 and expressly denies that it acted wrongfully or conducted itself in an anticompetitive manner.

19. BellSouth admits that, consistent with the terms of the parties' agreement, seeking dispute resolution with this Commission is appropriate; however, BellSouth denies that FDN has stated a claim for which the Commission can grant relief. BellSouth specifically denies that FDN has been left with "no choice" but to seek resolution with this Commission because FDN

could have accepted the denial of its dispute and paid the disconnection charges at issue in this docket, which FDN has not paid. BellSouth denies any remaining allegations in Paragraph 19.

20. BellSouth admits the Commission issued the order referenced in Paragraph 20 of the Complaint. This order speaks for itself and no further response from BellSouth is required.

21. BellSouth admits the Commission issued the order referenced in Paragraph 21 of the Complaint. This order speaks for itself and no further response from BellSouth is required.

22. BellSouth admits the parties executed a Standalone Agreement, effective September 5, 2001. BellSouth denies that the parties agreed to certain UNE rate *zones* in any agreements or amendments that preceded the 2003 Agreement; rather, because the geographically deaveraged UNE Zone designations are subject to change, the central office designations appear on the following BellSouth website:

http://www.interconnection.bellsouth.com/become_a_clec/html/interconnection.html.

The geographically deaveraged UNE zones are subject to change by Commission order and in October 2002, in compliance with the *120-day Order*, BellSouth modified its Florida deaveraged UNE zone designations. BellSouth admits that FDN was charged contractually agreed upon rates at all times, which rates corresponded to the appropriate Commission ordered deaveraged UNE zone designations consistent with all applicable interconnection agreements between the parties. Except as thus stated, BellSouth denies the allegations in Paragraph 22 of the Complaint.

23. BellSouth denies that it can only implement UNE deaveraged rate zone designations ordered by the Commission by amendment to interconnection agreements. BellSouth admits that rate changes ordered by the Commission must be reflected in amendments to interconnection agreements. BellSouth denies any remaining allegations of Paragraph 23 of the Complaint.

24. BellSouth admits that FDN has submitted certain disputes relating to BellSouth's implementation of the Florida deaveraged UNE zone designations after issuance of the *120-day Order*. BellSouth states further that it first received notice of FDN's billing dispute relating to this zone issue on or about November 18, 2002. BellSouth denies any remaining allegations of Paragraph 24 of the Complaint.

25. BellSouth admits that FDN has disputed approximately \$85,000 relating to BellSouth's implementation of the Florida deaveraged UNE zone designations established in the *120-day Order*. BellSouth denies the remaining allegations of Paragraph 25 and expressly denies that it has acted illegally or has overcharged FDN.

26. BellSouth admits that, consistent with the terms of the parties' agreement, seeking dispute resolution with this Commission is appropriate; however, BellSouth denies that FDN has stated a claim for which the Commission can grant relief. BellSouth specifically denies that FDN has been left with "no choice" but to seek resolution with this Commission because FDN could have accepted the denial of its dispute and paid the charges relating to this rate zone dispute, which FDN has not paid. BellSouth denies any remaining allegations in Paragraph 26 of the Complaint.

27. BellSouth incorporates by reference its responses to Paragraphs 1 through 26 of the Complaint.

28. BellSouth denies the allegations of Paragraph 28, expressly denies that FDN has stated a claim for which relief can be granted, and expressly denies that FDN is entitled to any of the relief that it requests. BellSouth states further that FDN has not paid any of the disputed charges; thus, even if FDN prevailed in this dispute (which it should not) no refund, interest, or

late payment charges would be due to FDN. BellSouth denies any remaining allegations in Paragraph 28 of the Complaint.

29. BellSouth incorporates its responses to Paragraphs 1 through 28 of the Complaint as if fully set forth herein.

30. The Commission orders referenced in the Complaint speak for themselves, and no further response from BellSouth is required concerning the first two sentences in Paragraph 30 of the Complaint. BellSouth denies the allegations in the third (and last) sentence in Paragraph 30 of the Complaint.

31. BellSouth admits that FDN has disputed approximately \$85,000 in billing relating to UNE zone changes, which disputed charges FDN has not paid to BellSouth. BellSouth denies any remaining allegations in Paragraph 31.

32. BellSouth denies the allegations of Paragraph 32, expressly denies that FDN is entitled to any refund or other amounts, expressly denies that FDN has stated a claim for which relief can be granted, and expressly denies that FDN is entitled to any of the relief that it requests. BellSouth states further that FDN has not paid any of the disputed charges; thus, even if FDN prevailed in this dispute (which it should not) no refund, interest, or late payment charges would be due to FDN. BellSouth denies any remaining allegations in Paragraph 32 of the Complaint.

33. BellSouth incorporates by reference its responses to Paragraphs 1-4, 8-15, 20-26 of the Complaint as if fully set forth herein.

34. BellSouth admits that the parties' agreements contain provisions that address changes in law and further admits that the parties can amend agreements to incorporate UNE rates ordered by the Commission. BellSouth denies any remaining allegations in Paragraph 34

of the Complaint and specifically denies that it breached its contractual obligations; rather, FDN's refusal to pay BellSouth the charges at issue constitutes a breach of FDN's contractual obligations to BellSouth.

35. BellSouth admits that FDN has disputed approximately \$85,000 in billing relating to UNE zone changes, which disputed charges FDN has not paid to BellSouth. BellSouth denies any remaining allegations in Paragraph 35 of the Complaint.

36. BellSouth denies the allegations of Paragraph 36, expressly denies that FDN is entitled to any refund or other amounts, expressly denies that FDN has stated a claim for which relief can be granted, and expressly denies that FDN is entitled to any of the relief that it requests. BellSouth states further that FDN has not paid any of the disputed charges; thus, even if FDN prevailed in this dispute (which it should not) no refund, interest, or late payment charges would be due to FDN.

37. Any allegations not expressly admitted are hereby denied.

38. BellSouth asserts the following affirmative defenses:

AFFIRMATIVE DEFENSES

39. FDN's claims are barred by the doctrines of res judicata and collateral estoppel.

40. FDN has failed to state a claim for which this Commission can grant relief.

41. FDN has failed to specify any statute or rule that BellSouth has violated.

COUNTERCLAIM

42. BellSouth hereby incorporates by reference the previous paragraphs numbered 1 through 41.

43. This Complaint is an attempt by a company to circumvent contractually agreed upon charges to BellSouth. BellSouth has rendered service to FDN, pursuant to the rates, terms

and conditions of the applicable interconnection agreements between the parties. As a result, FDN has been appropriately billed approximately \$185,000.00, which FDN has unjustifiably refused to pay. FDN, however, is legally liable to pay this money to BellSouth, and its contentions to the contrary are without merit. By failing to pay BellSouth, FDN has breached its contractual obligations.

WHEREFORE, BellSouth respectfully requests the Commission to enter an Order in BellSouth's favor, deny FDN the relief sought, establish the amount of FDN's contractual obligation to BellSouth, order FDN to immediately pay this amount in full, plus interest and late payment charges, and granting BellSouth such other relief as the Commission deems just and equitable.

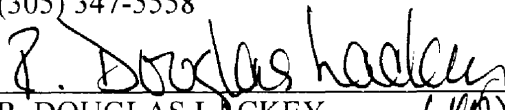
Respectfully submitted, this 3rd September, 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.



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