



October 8, 2003

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

via Overnight Mail

Re: Docket No. 030852-TP In re: Implementation of Requirements Arising from
FCC Triennial UNE Review: Location-Specific Review for DS1, DS3 and Dark
Fiber Loops, Route-Specific Review for DS1, DS3 and Dark Fiber Transport

Dear Ms. Bayó:

Enclosed please find an original and fifteen (15) copies of this letter for filing in the
above docket.

In accordance with the instruction given at the preliminary hearing held in the above
matter on October 6, 2003, I write on behalf of Florida Digital Network, Inc., d/b/a FDN
Communications ("FDN") to respond to certain preliminary and procedural matters
discussed at the hearing.

With regard to the document AT&T handed out at the October 6 hearing, a document
with the heading, "Proposed Modifications to Orders Establishing Procedure"
(hereinafter "Proposed Modifications"), FDN has a number of comments and questions.

The Proposed Modifications document seems to suggest that its entire contents be
incorporated into the Order Establishing Procedure. However, FDN agrees with the
Prehearing Officer's indication that a number of the provisions in the Proposed
Modifications are better suited to being stipulations and need not be addressed in any
order modifying the Order Establishing Procedure.

FDN has not attempted to delineate herein which provisions of the Proposed
Modifications are better suited to being stipulations, but FDN has particular concern with
those provisions that address region-wide discovery obligations/limitations. The
Proposed Modifications seem to state, for example, that if AT&T took the deposition of a
BellSouth witness in a Tennessee TRO case, another carrier would be foreclosed from
taking the deposition of that witness in Florida, regardless of whether that other carrier

L O C A L

L O N G D I S T A N C E

390 North Orange Avenue Suite 2000 Orlando, FL 32801
407.835.0300 Fax 407.835.0309 www.fdn.com

DOCUMENT FILED IN RE DATE

09848 OCT -98

FPSC-COMMISSION CLERK

operates in other BellSouth states. To this sort of outcome and other potentially unfair outcomes that may result from imposition of the region-wide approach, FDN has serious concerns. FDN understands the desire to conserve resources but questions the ramifications of imposing region-wide obligations/limitations. At this time, FDN does not agree that it would be appropriate to modify the Order Establishing Procedure to address the region-wide discovery issues suggested in the Proposed Modifications. However, the parties are certainly free to make stipulations regarding region-wide discovery as they deem appropriate.

FDN submits the Proposed Modifications are somewhat unclear in at least one request regarding delivery and receipt of electronic submissions. Off the record, Mr. Henry of AT&T indicated to me that as long as an email is sent before midnight on the date an item is due, it should be considered timely served. The Proposed Modifications go on to indicate the clock for a response to an item so served begins with "receipt," but receipt is not clearly delineated. FDN maintains that if a document is served electronically after 5:00 p.m., the response clock should start the following business day.

The Proposed Modifications contemplate only electronic service of documents on parties (via email or URL), with paper originals and copies being filed with the Commission. FDN does not object to this idea in principle, but believes that the one week time permitted for a paper follow-up after a party's request may not be appropriate in all cases. Presumably, if a party is requesting a paper copy, there is a reason for the request and, in some instances, the need may be urgent or a response date may be triggered. FDN would therefore suggest that there be greater flexibility for providing the paper copy depending on need and the size of the document. FDN suggests that if a Commission Order addresses this subject, the Order provide that a paper follow-up copy be provided to the requesting party "promptly and, wherever possible, within the time frame requested."

Finally, BellSouth verbally suggested at the October 6 hearing that the Commission permit parties to serve interrogatories and other discovery on nonparty carriers. In an October 7 letter, BellSouth suggests that the Commission simply decree that all entities that have Commission certificates be involuntarily made parties to this proceeding and Docket No. 030851. FDN believes that both BellSouth suggestions are problematic, and, in any event, such sweeping and serious substantive action would warrant pleadings and consideration by the full Commission.¹ Briefly stated, the Commission would at least need to consider its authority for and the necessity, fairness, administrative and logistical burdens, and evidentiary and procedural implications² of making all certificated entities parties by force. Further, the Commission should not delegate any of its information gathering authority to BellSouth (as BellSouth's October 7 letter suggests) simply because BellSouth asks for the convenience and benefit of such. The Commission is perfectly capable of identifying and gathering what information, if any, the Commission

¹ The BellSouth and FCCA Joint Emergency Motion filed September 24, 2003, mentions that the two sides to that filing were discussing discovery to nonparties. But no motion has been made on the subject to date.

² Among the procedural implications to consider is the applicability of the Proposed Modifications currently under advisement.

desires from the regulated community at large for purposes of the TRO cases. The workshop scheduled for October 28 illustrates the Commission's ability and designs in that regard.

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

Sincerely,



Matthew Feil
General Counsel
FDN Communications

C: Parties of Record (by email only)
Adam Teitzman (by email and U.S. mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by e-mail and regular mail to the persons listed below, other than those marked with an (*) who have been sent a copy via overnight mail, this 8th day of October, 2003.

BellSouth Telecommunications, Inc.
R, Douglas Lackey/Meredith E. Mays
c/o Ms. Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301-1556
nancy.sims@bellsouth.com

Mr. Adam Teitzman
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
ateitzman@psc.state.fl.us

McWhirter Law Firm
Vicki Kaufman
117 South Gadsden Street
Tallahassee, FL 32301
vkaufman@mac-law.com

Covad Communications Company
Mr. Charles E. Watkins
1230 Peachtree Street, N.E.
19th Floor
Atlanta, GA 30309-3574
gwatkins@covad.com

Verizon Florida, Inc.
Richard Chapkis
One Tampa City Center
201 North Franklin Street (33602)
P.O. Box 110, FLTC 0007
Tampa, FL 33601-0110
Richard.chapkis@verizon.com

Florida Cable Telecom Assoc., Inc.
Michael A. Gross
246 East 6th Avenue
Suite 100
Tallahassee, FL 32303
mgross@fcta.com



Matthew Feil
Scott A. Kassman
FDN Communications
390 North Orange Avenue
Suite 2000
Orlando, FL 32801
(407) 835-0460
mfeil@mail.fdn.com
skassman@mail.fdn.com