



December 10, 2003

Ms. Blanca Bayó, Director  
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& Administrative Services  
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via Overnight

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Re: Docket No. 981834-TP – Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory

Re: Docket No. 990321-TP - Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to insure that BellSouth Telecommunications, Inc., Sprint-Florida, Inc., and GTE Florida, inc. comply with obligation to provide alternative local exchange carriers with flexible, timely and cost-efficient physical collocation

Dear Ms. Bayó,

Please find enclosed for filing in the above dockets an original and seven (7) copies of FDN Communication's Motion for Reconsideration/Clarification. A diskette with an electronic version of the Prehearing Statement is also enclosed.

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

Sincerely,

Matthew Feil  
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General Counsel

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Competitive Carriers for )  
Commission action to support local competition )  
in BellSouth Telecommunications, Inc.'s service )  
territory. )  
\_\_\_\_\_ )

Docket No. 981834-TP

Petition of ACI Corp. d/b/a Accelerated )  
Connections, Inc. for generic investigation to )  
ensure that BellSouth Telecommunications, Inc., )  
Sprint-Florida, Incorporated, and GTE )  
Florida Incorporated comply with obligation )  
provide alternative local exchange )  
carriers with flexible, timely, and cost-efficient )  
physical collocation )  
\_\_\_\_\_ )

Docket No. 990321-TP

**MOTION FOR RECONSIDERATION AND/OR CLARIFICATION OF**  
**FLORIDA DIGITAL NETWORK, INC.**  
**d/b/a FDN COMMUNICATIONS**

Pursuant to Rule 25-22.060, Florida Administrative Code, Florida Digital Network, Inc., d/b/a FDN Communications ("FDN") respectfully moves the Commission to reconsider its Final Order issued in the captioned cases on November 26, 2003.<sup>1</sup> In support of this Motion, FDN states as follows:

**SUMMARY**

1. This motion concerns several aspects of the Commission's Final Order: (1) that collocation transfers would only be permitted for "in-place" facilities and a transfer of collocation in a space exhaust situation would only be permissible as part of the transfer of all of

<sup>1</sup> Order No. PSC-03-1358-FOF-TP (hereinafter "Final Order" or the "Order").

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an ALECs assets and (2) the treatment of dual redundant power feeds when ILECs bill ALECs for DC power.

2. In its ruling on collocation transfers, the Commission permitted transfers of only “in-place” facilities and stated that a transfer of collocation in a space exhaust situation would only be permissible as part of the transfer of all of an ALECs assets. In so ruling, the Commission overlooked the unchallenged testimony of BellSouth witness Gray, who stated (a) transferring space without in-place equipment was “not a problem,” but if an ALEC wanted to change space configuration, it would have to do so after the transfer (Tr. 96-97) and (b) avoidance of a space exhaust waiting list is not a concern when an ALEC sells all of its assets or customer base in a “market,” as opposed to selling its interests in every market (Tr. 98). Reconsideration or clarification on these points, as specified below, is warranted.

3. Relative to DC power, the Commission ruled: (a) “An ILEC’s per ampere (amp) rate for DC power provided to a CLEC’s collation space shall be based on amps used, not fused,” (b) “Charges for DC power should be calculated and applied based on the amount of power that the CLEC requests it be allowed to draw at a given time,” and (c) An ALEC should be given the option to order power feeds sized for ultimate demand and fused less for less than the feed’s draw, as specified by the CLEC. (Final Order at p. 40.) FDN reads the rulings described in (a) and (b) of the foregoing sentence so as to disallow billing for power redundancy, but FDN asks the Commission for clarification to be certain.

4. To resolve these matters, the Commission should reconsider/clarify the Final Order to state the following: (a) an ALEC may transfer collocation space without in-place equipment provided any new reconfiguration desired for the space takes place after the transfer, (b) an ALEC may transfer collocation space in a space exhaust office without additional review where

the transfer is part of the ALEC's sale its assets and/or customer base in a particular market, and (c) an ILEC billing for "amps used" and the power the ALEC requests be drawn at a given time excludes recurring charges for dual feed redundancy, as stated below.

### **STANDARD OF REVIEW**

5. A motion for reconsideration should be granted if it identifies a point of fact or law that was overlooked or which the Commission failed to consider in rendering its Order.<sup>2</sup> The motion should be based upon specific matters set forth in the record and susceptible to review.<sup>3</sup> The Commission's substantive determinations must be based upon evidence that is "sufficiently relevant and material that a reasonable man would accept it as adequate to support the conclusion reached."<sup>4</sup> The evidence must "establish a basis of fact from which the fact at issue can reasonably be inferred."<sup>5</sup> Findings wholly inadequate or not supported by the evidence will not be permitted to stand.<sup>6</sup> Additionally, clarification is warranted if a party has a genuine basis to claim that the order is ambiguous, unclear or inconsistent in a way that may affect a party's rights or interests, or if the Commission deems it necessary to explicate its ruling.

6. FDN maintains that the standard of review is met as to both the transfer and power billing issues identified in this motion. As to the former issue, FDN suggests the Commission overlooked part of the testimony of BellSouth witness Gray. As to the latter issue, FDN claims

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<sup>2</sup> See *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co v. King*, 146 So.2d 889 (Fla. 1962), *Pingree v. Quaintance*, 394 So.2d 162 (Fla. 1<sup>st</sup> DCA 1981); *In Re Aloha Utilities, Inc.*, Docket No. 991643-SU, Order PSC-01-0961-FOF-SU, 2001 WL 521385, \*4 (2001).

<sup>3</sup> *Id*

<sup>4</sup> *DeGroot v. Sheffield*, 95 So.2d 912, 916 (Fla. DCA 1957); see also, *Agrico Chem. Co. v. State of Fla. Dept. of Environmental Reg.*, 365 So.2d 759, 763 (Fla. 1<sup>st</sup> DCA 1979); *Ammerman v. Fla. Board of Pharmacy*, 174 So.2d 425, 426 (Fla.3d DCA 1965).

<sup>5</sup> *DeGroot*, 95 So.2d at 916.

<sup>6</sup> *Caranci v. Miami Glass & Engineering Co.*, 99 So.2d 252, 254 (Fla. 3d DCA 1957).

that the Commission's order is not as clear as it could be and that lack of clarity could impact FDN's interests.

### **COLLOCATION TRANSFERS**

7. BellSouth witness Mr. Gray conceded during cross examination that transfers need not be restricted to "in-place" collocation facilities. (T. 96 – 97.) Mr. Gray further testified that if an ALEC wanted to change space configuration after the transfer, that would be acceptable, and that transferring space without in-place equipment was "not a problem." (T. 97.)

8. The Order makes no mention or analysis of this cross examination testimony from Mr. Gray. FDN maintains that this testimony addresses an important point worthy of reconsideration. An ALEC interested in selling to another ALEC may have collocation interests in varying degrees of preparedness and/or operations. If an ALEC is selling all or some of its collocation interests, it makes little sense to differentiate those that have in-place equipment from those that do not, and permit the transfer of some but not others on that basis. Mr. Gray seems to have recognized this when he testified it was "not a problem" to transfer collocations without in-place equipment. Mr. Gray testified that because the transfer process was very manual, an ALEC should not be permitted to transfer collocations without in-place equipment and request reconditioning of the space at the same time. The transfer should conclude and precede reconditioning, he stated. If there is equipment in the collocation, the transfer should include the equipment. (T. 96 – 97.) Therefore, FDN asserts the Commission should reconsider/clarify the Order so as to permit transfers of collocations without in-place equipment provided the transfer is complete before the ILEC must process any new reconditioning requests.

9. During cross-examination BellSouth witness Gray also agreed that collocation space "scalping" for the purpose of waiting list avoidance was not a concern if an ALEC was going to

sell all of its assets or customers in a “market.” (T. 98.) Neither Verizon’s nor Sprint’s witnesses disagreed with Mr. Gray on this point. But the Order overlooks the market distinction. The Order only addresses a transfer of “all or substantially all” of the transferring CLEC’s assets. The reality is, as Mr. Gray seems to have recognized, that ALEC sales may come in all different shapes and sizes. Many ALECs have holdings in multiple states, not just Florida. An ALEC may sell its entire holdings nation-wide, or only its South Florida holdings or only its Jacksonville or Tampa area interests. Certainly, an ALEC would not sell off its interests in an entire geographic market just for purposes of waiting list avoidance, as Mr. Gray acknowledged. (T. 98.) Accordingly, the Commission should reconsider/clarify its decision so as to permit collocation transfers without requiring additional review(s) for waiting list issues where the transfer is in conjunction with the sale of an entire market, as opposed to the sale of the entire ALEC.

### **DC POWER BILLING**

10. As stated above, on the issue of DC power, the Commission ruled: (a) “An ILEC’s per ampere (amp) rate for DC power provided to a CLEC’s collocation space shall be based on **amps used, not fused,**” (b) “Charges for DC power should be calculated and applied based on **the amount of power that the CLEC requests it be allowed to draw at a given time,**” and (c) An ALEC should be given the option to order power feeds sized for ultimate demand and fused less for less than the feed’s draw, as specified by the CLEC. (Final Order at p. 40. Emphasis added.) As a preliminary matter, FDN presently considers it unlikely FDN will be able to or will choose to avail itself of the option described in (c) of the preceding sentence (the “Sprint Option”). Further, the Sprint Option is just that – an option. As the Order acknowledges, the Commission must also concern itself with how power is to be charged in all cases, not just when

the Sprint Option is chosen, and it is in the non Sprint Option cases where FDN requests clarification.

11. The Order provides that CLECs are to be billed on “amps used, not fused” and based on “the amount of power that the CLEC requests it be allowed to draw at a given time.” Both of these statements in the Order are consistent with the position FDN has taken throughout this proceeding relative to overbilling stemming from redundancy.<sup>7</sup> FDN’s position, as detailed in FDN’s post-hearing brief, is that industry standards require collocated equipment to have redundant dual feeds, so CLECs must request/order dual feeds. Collocated equipment, however, can only draw what it can draw at any given time, whether over one or both feeds, so if the CLEC requests the mandatory redundant feeds and an ILEC were to bill the same rate for both feeds (and, hence, above the draw of the equipment), the ILEC overbills.<sup>8</sup> The Commission also notes in the Order that the proper resolution of the billing issues is one that permits ILECs to recover legitimate costs while not allowing CLECs to be overbilled. (See page 38 of the Order.)

12. The Order does not reference FDN’s position with particularity. Certainly, what the Commission does say in the Order appears to support, adopt or encompass FDN’s position.

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<sup>7</sup> Proper billing for power has been an issue since the first Issue Identification conference between staff and the parties on September 12, 2002. All of the power billing issues were consolidated into Issues 6A – 6C. BellSouth’s prefiled testimony addressed redundancy (T. 150), as did Sprint’s (T. 335 – 336). FDN’s Prehearing Statement and the Prehearing Order reflect FDN’s position on the proper power billing, and redundancy in particular. FDN cross examined BellSouth and Verizon’s witnesses on power redundancy. And FDN thoroughly briefed the subject.

<sup>8</sup> All of this is supported by the record, and specifically, by the testimony of BellSouth witness Milner. Mr. Milner testified that for collocated equipment to be certified in accordance with Network Equipment Building Standards (“NEBS”), the equipment must have redundant power feeds. (T. 211.) Mr. Milner specifically agreed that if an ALEC has equipment that draws 40 amps of DC power, that equipment must have a 40 amp A feed fused appropriately and a 40 amp B feed. (T. 211.) Mr. Milner further agreed that if the power feeds were not sized for redundancy, NEBS would not be met. (T. 211.) Then, with respect to billing for power in relation to redundancy, Mr. Milner testified that BellSouth does not charge the ALEC on the individual amount of power available on each feed; i.e. BellSouth does not charge ALECs extra for the redundancy in the power feed. (T. 150.) Mr. Milner agreed that BellSouth’s not billing for redundant feeds recognized that equipment will not draw the required load over both feeds at the same time, and he went so far as to agree that for an ILEC to bill the same rate for both the primary and redundant feeds, the ILEC would be overbilling the ALEC. (T. 212.)

Through this motion, FDN seeks to avoid any doubt on the matter. FDN seeks clarification and confirmation that, consistent with BellSouth's current practice of not billing recurring charges for dual feed redundancy (T. 150), the Order does not permit billing recurring charges for dual feed redundancy.

13. The Commission is better served to clarify the Order as FDN requests now rather than face possible disputes in the future should an ILEC attempt to conjure ambiguity in the Order or attain additional revenue when changing billing practices consistent with either the instant Order or a future Commission order on collocation costs.<sup>9</sup> As supported in the record, CLECs must request/order redundant feeds because industry standards require CLECs to do so. And, even if there is some power draw over a redundant feed, collocated equipment cannot draw its required load over both feeds at the same time.<sup>10</sup> The Order does state, "Charges for DC power should be calculated and applied based on the amount of power that the CLEC requests it be **allowed to draw at a given time.**" This language should be pronounced to specifically foreclose billing recurring charges for dual feed redundancy, not just in the Sprint Option, but in every collocation environment. Accordingly, FDN requests clarification as aforesaid.

### **CONCLUSION**

For the foregoing reasons, the Commission should grant this Motion for Reconsideration and/or Clarification by ordering the following: (a) an ALEC may transfer collocation space without in-place equipment provided any new reconfiguration desired for the space takes place after the transfer, (b) an ALEC may transfer collocation space in a space exhaust office without

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<sup>9</sup> After state commissions reduced SBC's collocation power rates, SBC reversed its practice of not charging for redundant feeds in Texas, Oklahoma, Kansas, and Missouri. CLECs such as Birch Telecom, AT&T, Ionex Communications and TCG had to file complaints with the Commissions of those states as a result of SBC's conduct. See CLECs Attack SBC Again Over Power Charges, by Glenn Bischoff, TelephonyOnline.com, Aug 20 2003.

<sup>10</sup> See footnote 8, *supra*. Further, both Verizon witness Bailey and BellSouth witness Milner acknowledged collocated equipment cannot pull its total required draw over both feeds simultaneously. (T. 212, 513.)



additional review where the transfer is part of the ALEC's sale of its assets and/or customer base in a particular market, and (c) the Order's declaration that "charges for DC power should be calculated and applied based on the amount of power that the CLEC requests it be allowed to draw at a given time" forecloses billing recurring charges for dual feed redundancy.

RESPECTFULLY SUBMITTED, this 10 day of Dec., 2003.



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**CERTIFICATE OF SERVICE**  
**Docket No. 981834-TP and 990321-TP**

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 11<sup>th</sup> day of December, 2003.

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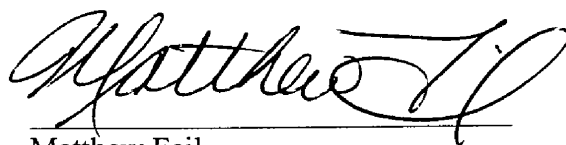
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