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January 26, 2004

Ms. Blanca S. Bayo  
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. 030851-TP Implementation of Requirements Arising from FCC  
Triennial UNE Review: Local Circuit Switching for Mass Market Customers

Dear Ms. Bayo:

Enclosed please find an original and seven (7) copies of FDN Communications  
Prehearing Statement in the above referenced docket.

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

Sincerely,

Matthew Feil  
FDN Communications  
General Counsel

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Implementation of requirements arising ) Docket No. 030851-TP  
from Federal Communications Commission )  
triennial UNE review: Local Circuit Switching )  
for Mass Market Customers. )  
\_\_\_\_\_ )

**PREHEARING STATEMENT OF FLORIDA DIGITAL NETWORK, INC.**  
**d/b/a FDN COMMUNICATIONS**

Pursuant to Order No. PSC-03-1265-PCO-TP, issued November 7, 2003, as subsequently amended (“Order on Procedure”), Florida Digital Network, Inc., d/b/a FDN Communications (“FDN”) hereby files its Prehearing Statement in the captioned docket as follows:

A. Known Witnesses

FDN has prefiled the rebuttal testimony of one witness: Michael P. Gallagher, FDN’s CEO. At this time, FDN does reserve the right to call agents, officers and employees of BellSouth Telecommunications, Inc., (“BellSouth”), Verizon Florida, Inc. (“Verizon”) and any other parties as adverse party witnesses, pending review of the parties’ prehearing statements, testimony and depositions, if any, and FDN reserves its right to cross examine the witnesses of any other party.

At the time of filing this Prehearing Statement, rebuttal surrebutal testimony has not yet been filed and discovery has not been completed. Surrebutal is not due until January 27, 2004. FDN therefore requests to amend this Prehearing Statement, as necessary, to reflect the content of its and other parties’ surrebutal testimony and discovery responses.

B. Known Exhibits

FDN did not prefile exhibits with the prefiled rebuttal of Mr. Gallagher. However, FDN reserves the right to identify and introduce additional exhibits during cross-examination of other parties' witnesses and re-direct of its own, and, to the extent permitted by Commission rules and the Florida Rules of Civil Procedure, to identify and introduce the depositions of other parties' agents, officers and employees.

C. Statement of Basic Position

FDN is a self-provisioned circuit switching "trigger" company in FDN's serving markets in BellSouth and Verizon territory. Region-wide, FDN performs numerous hot cuts a day and believes that the current hot cut processes for BellSouth and Verizon work reasonably well. The Commission can ensure proper ILEC hot cut performance through stringent UNE-L focused performance plans and remedy payments. If the Commission establishes a batch process for hot cuts in this proceeding, FDN maintains that a batch process must incorporate certain features, namely: (1) the batch process must, as required by the TRO, cover hot cuts of the type FDN performs daily and not just one-time conversions of UNE-P to UNE-L as in BellSouth's proposal; (2) batch rates must be structured such that there is a significant and real overall reduction in non-recurring charges (NRCs), and (3) batch processes must reflect operational efficiencies and not needlessly extend hot cut intervals.

D – F. Statement of Issues and Positions

Below is a list of issues, as identified in the Commission's Order on Procedure and FDN's tentative positions on those issues.

**Market Definition (§51.319(d)(2)(i))**

**Issue No. 1: For purposes of this proceeding, what are the relevant markets for purposes of evaluating mass market impairment and how are they defined?**

FDN: FDN does not disagree with how BellSouth or Verizon have identified each geographic “market” in their territories for purposes of this proceeding, but FDN takes no position on how the Commission should define “market.” (Gallagher)

**Issue No. 2: In defining the relevant geographic areas to include in each of the markets, how should the following factors be taken into consideration and what relative weights should they be assigned:**

a) the locations of mass market customers actually being served by CLECs;

FDN: No position.

b) the variation in factors affecting CLECs’ ability to serve each group of customers; and

FDN: No position.

c) CLECs’ ability to target and serve specific markets profitably and efficiently using currently available technologies?

FDN: No position.

**Batch cut process (§51.319(d)(2)(ii))**

**Issue No. 3 (a) Does a batch cut process exist that satisfies the FCC’s requirements in the Triennial Review Order? If not, in which markets should the Commission establish a batch cut process?**

FDN: The current hot cut processes of BellSouth and Verizon work reasonably well. However, if the Commission approves a batch process for BellSouth and/or Verizon, the batch processes proposed by BellSouth and Verizon do not satisfy the TRO requirements. (Gallagher)

**(b) For those markets where a batch cut process should be established, what volume of loops should be included in the batch?**

FDN: Any batch process approved must be available to convert ILEC to CLEC UNE-L service, and as few as two loops could be eligible for batch processing under a properly formulated batch process. (Gallagher)

**(c) For those markets where a batch cut process should be established, what specific processes should be employed to perform the batch cut?**

FDN: Any batch process should reflect efficiencies of batch processing and not involve the protracted intervals proposed in this case by BellSouth and Verizon. Further, Verizon's batch process is flawed in that Verizon's proposal to notify NPAC on behalf of the CLEC may not work without real time coordination with the CLEC. (Gallagher)

**(d) For those markets where a batch cut process should be established, is the ILEC capable of migrating multiple lines that are served using unbundled local circuit switching to CLECs' switches in a timely manner?**

FDN: See FDN's positions on subparts (a) – (c) above. No position on the ILECs' ability to "scale" if unbundled local switching is eliminated.

**(e) For those markets where a batch cut process should be established, should the Commission establish an average completion interval performance metric for the provision of high volumes of loops?**

FDN: Performance metrics and remedy payments should be established for any batch processes approved.

**(f) For those markets where a batch cut process should be established, what rates should be established for performing the batch cut processes?**

FDN: BellSouth's proposed 10% discount off just the install portion of its nonrecurring charges (NRCs) and Verizon's proposal to change all hot cut rates so as to include an IDLC surcharge should be rejected. The Commission should approve batch rates that reflect real efficiencies of a batch process and that represent a real overall reduction to normal hot cut NRCs. (Gallagher)

**(g) Are there any markets in which a batch hot cut process need not be implemented? If so, for those markets where a batch cut process need not be established because absence of such a process is not impairing CLECs' ability to serve end users using DS0 loops to serve mass market customers without access to unbundled local circuit switching,**

**(i) what volume of unbundled loop migrations can be anticipated if CLECs no longer have access to unbundled local circuit switching;**

FDN: No position.

**(ii) how able is the ILEC to meet anticipated loop migration demand with its existing processes in a timely and efficient manner; and**

FDN: No position.

**(iii) what are the nonrecurring costs associated with the ILEC's existing hot cut process?**

FDN: Verizon's proposal to change all hot cut rates so as to include an IDLC surcharge should be rejected, since it will add to rather than alleviate impairment. The Commission should approve rates that will encourage UNE-L based competition. (Gallagher)

**Actual Switch Deployment: Local Switching Triggers (§51.319(d)(2)(iii)(A))**

**4. (a) In which markets are there three or more CLECs not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, serving mass market customers with their own switches?**

FDN: FDN is a trigger company in its Florida markets. The other ALECs improperly embellish the trigger TRO tests by adding criteria. No position at this time as to whether specific ALECs other than FDN may be trigger companies. (Gallagher)

**(b) In which markets are there two or more CLECs not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, who have their own switches and are offering wholesale local switching to customers serving DS0 capacity loops in that market?**

FDN: Since none of the ILECs in this proceeding have presented a case for meeting the wholesale trigger, this issue is moot.

**Potential for Self-Provisioning of Local Switching (§51.319(d)(2)(iii)(B))**

5. (a) **In which markets are there either two wholesale providers or three self provisioners of local switching not affiliated with each other or the ILEC, serving end users using DS1 or higher capacity loops? Where there are, can these switches be used to serve DS0 capacity loops in an economic fashion?**

FDN: FDN takes no position on the economics of potential deployment.

- (b) **In which markets are there any carriers with a self-provisioned switch, including an intermodal provider of service comparable in quality to that of the ILEC, serving end users using DS0 capacity loops?**

FDN: FDN takes no position on the economics of potential deployment. FDN is a trigger company in the markets FDN serves.

- (c) **In which markets do any of the following potential operational barriers render CLEC entry uneconomic absent access to unbundled local circuit switching:**

1. **The ILEC's performance in provisioning loops;**

FDN: FDN believes BellSouth's and Verizon's hot cut processes work reasonably well. The Commission can ensure performance with appropriate performance measures and remedy payments. (Gallagher)

2. **difficulties in obtaining collocation space due to lack of space or delays in provisioning by the ILEC; or**

FDN: No position.

3. **difficulties in obtaining cross-connects in the ILEC's wire centers?**

FDN: No position.

**(d) In which markets do any of the following potential economic barriers render CLEC entry uneconomic absent access to unbundled local circuit switching:**

**1. the costs of migrating ILEC loops to CLECs' switches;**

FDN: No position.

**2. the costs of backhauling voice circuits to CLECs' switches from the end offices serving the CLECs' end users?**

FDN: No position.

**(e) Taking into consideration the factors in (a) through (d), in what markets is it economic for CLECs to self-provision local switching and CLECs are thus not impaired without access to unbundled local circuit switching?**

FDN: No position.

**(f) For each market, what is the appropriate cut-off for multiline DS0 customers (where it is economic to serve a multiline customer with a DS1 loop)? That is, taking into account the point at which the increased revenue opportunity at a single location is sufficient to overcome impairment and the point at which multiline end users could be served economically by higher capacity loops and a CLEC's own switching (and thus be considered part of the DS1 enterprise market), what is the maximum number of DS0 loops that a CLEC can serve using unbundled local switching, when serving multiline end users at a single location?**

FDN: No position.



**Transitional use of unbundled local switching (§51.319(d)(2)(iii)(C))**

6. **If the triggers in §51.319(d)(2)(iii)(A) have not been satisfied for a given ILEC market and the economic and operational analysis described in §51.319(d)(2)(iii)(B) resulted in a finding that CLECs are impaired in that market absent access to unbundled local switching, would the CLECs' impairment be cured if unbundled local switching were only made available for a transitional period of 90 days or more? If so, what should be the duration of the transitional period?**

FDN: No position.

G. Stipulated Issues

FDN is unaware of any stipulated issues for this phase of the proceeding at the time of serving this filing.

H. Pending Motions

FDN has no pending motions at the time of this filing, other than various pending motions for confidential treatment of information produced in discovery and in the prefiled rebuttal testimony of BellSouth witness Ruscilli.

I. Pending Confidentiality Issues

Other than the FDN motions for confidentiality referenced above and FDN's belief that Verizon's proposed NRCs are not and should not be treated confidential, FDN has no pending confidentiality issues at the time of serving this filing.

J. Order Establishing Procedure Requirements

To FDN's knowledge, at the time of serving this filing, there are no requirements of the Order on Procedure that cannot be complied with.

K. Decisions or Pending Decisions

Other than possible action by the D.C. Circuit Court of Appeals in its pending review the FCC's TRO, at the time of serving this filing, FDN is not aware of any decision or pending FCC or court decision that has or may preempt or otherwise impact the Commission's ability to resolve any of the above issues.

L. Objections to Expert Qualifications

Witnesses in this proceeding may have rendered opinions on what may be considered legal issues. In the past, the Commission has permitted non-lawyers to render opinions on legal matters, but the Commission has typically not accepted such opinions as those of legal experts. If the Commission accepts the legal opinions of these non-lawyers as expert legal opinions, then FDN would reserve its right to conduct voir dire of those witnesses as to those legal opinions. FDN also reserves its right to conduct cross examination of the witnesses on their opinions.

RESPECTFULLY SUBMITTED, this 26 day of Jan, 2004.



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**CERTIFICATE OF SERVICE**

**Docket 030851-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 26<sup>th</sup> day of January, 2004.

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