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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 Prefiled  
Surrebuttal Testimony of Michael P. Gallagher.

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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FPSC-COMMISSION CLERK

**ORIGINAL**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Implementation of requirements arising )  
from Federal Communications Commission )  
triennial UNE review: Local Circuit Switching )  
for Mass Market Customers. )  
\_\_\_\_\_ )

Docket No. 030851-TP

**PREFILED SURREBUTTAL TESTIMONY OF**

**MICHAEL P. GALLAGHER**

**SUBMITTED BY:**

**FDN COMMUNICATIONS**

**Filed January 28, 2004**

1 **Q. Please state your name and address.**

2 A. My name is Michael P. Gallagher. My business address is 390 North  
3 Orange Avenue, Suite 2000, Orlando, Florida, 32801.

4 **Q. Are you the same Michael P. Gallagher who provided rebuttal**  
5 **testimony in this proceeding?**

6 A. Yes.

7 **Q. What is the purpose of your surrebuttal testimony in this**  
8 **proceeding?**

9 A. The purpose of my surrebuttal is to address the supplemental rebuttal  
10 filed by FCCA witness Gillan on January 22, 2004, and briefly comment on  
11 certain aspects of the rebuttal testimony of the BellSouth and Verizon  
12 witnesses regarding batch processing.

13 **Q. On pages 2 through 5 of his supplemental rebuttal and in**  
14 **Confidential Exhibit No. \_\_ (JPG-10), FCCA witness Gillan alleges that**  
15 **BellSouth's named trigger companies are not "actively" providing**  
16 **service to the mass market and do not have sufficient market share to**  
17 **justify a finding of nonimpairment for local circuit switching. Do you**  
18 **agree with Mr. Gillan?**

19 A. I do not believe the FDN/Mpower numbers Mr. Gillan used are what  
20 he says they are or show what he claims they show. Further, as I explained in  
21 my rebuttal testimony, FDN is a trigger company under the TRO and the

1 embellishments witnesses like Mr. Gillan suggest the Commission should  
2 make to the trigger tests of the TRO are unwarranted.

3 Mr. Gillan supplemental rebuttal was filed January 22 and surrebuttal  
4 in this case was due on January 28. The FCCA did provide FDN with the  
5 FDN/Mpower numbers included in Mr. Gillan's supplemental exhibit.  
6 However, prior to filing this surrebuttal, FDN had not obtained a detailed  
7 explanation of what is included in the confidential data Mr. Gillan says he  
8 relied on in arriving at those numbers, namely BellSouth's responses to Item  
9 No. 3 of an AT&T Subpoena and AT&T Interrogatory No. 125. Once an  
10 explanation of the underlying data is received and reviewed, FDN may  
11 supplement this surrebuttal testimony. Therefore, while FDN is without the  
12 benefit of knowing precisely what data BellSouth provided AT&T, FDN can  
13 regardless maintain that the confidential data Mr. Gillan reports for  
14 FDN/Mpower in his supplemental rebuttal is not what Mr. Gillan says it is.

15 Mr. Gillan reports and relies on numbers for "In-service UNE Loops."  
16 But Mr. Gillan's numbers for FDN/Mpower cannot be reconciled with what  
17 FDN reported to the PSC for FDN/Mpower in FDN's confidential response  
18 to the staff's data request; and the figures in FDN's response to the data  
19 request reflect what FDN knows to be correct. As I stated in my rebuttal,  
20 FDN serves approximately two-thirds of the total UNE-L loops BellSouth  
21 witness Ruscilli reported in his direct testimony -- more than three times the  
22 number Mr. Gillan reports for FDN in his supplemental rebuttal. Considering

1 that the information Mr. Gillan cites for FDN is not correct, the rest of his  
2 analysis and conclusions are likewise probably incorrect.

3 In any case, as I indicated in my rebuttal, Mr. Gillan's arguments (and  
4 other CLEC witness arguments) that trigger companies must meet additional  
5 criteria, such as meeting unspecified growth criteria to be "actively"  
6 providing service or meeting some kind of threshold market share criteria, are  
7 not appropriate considerations under the TRO.

8 **Q. BellSouth witness Ainsworth states on page 3, lines 11 – 14, and on**  
9 **page 11, lines 17 – 18, of his rebuttal that BellSouth designated the batch**  
10 **hot cut process to convert UNE-P arrangements "given the**  
11 **predominance of UNE-P arrangements" and because the TRO more or**  
12 **less intended the batch process only for UNE-P conversions. Does FDN**  
13 **agree?**

14 A. No. As I mentioned in my rebuttal testimony, a batch process is defined  
15 in the TRO rules as:

16 [A] process by which the incumbent LEC simultaneously migrates  
17 two or more loops from one carrier's local circuit switch to  
18 another carrier's local circuit switch, giving rise to operational and  
19 economic efficiencies not available when migrating loops from one  
20 carrier's local circuit switch to another carrier's local circuit  
21 switch on a line-by-line basis.  
22

23 (Emphasis added.) The rule does not restrict batch processing to one-time  
24 conversions from UNE-P to UNE-L. If the FCC meant for the state

1 commissions to approve in 9 months a batch process just for one-time UNE-P  
2 conversions, the FCC could have easily said so in the rule, but it did not.  
3 Instead, the FCC said that if the state commissions deem a batch process  
4 necessary to alleviate impairment, then the state commissions have to  
5 approve in 9 months a batch process as stated in the rule – a process that must  
6 encompass cutovers from the ILEC’s to a UNE-L CLEC.

7 **Q. Do BellSouth and Verizon take consistent positions on the question of**  
8 **which services must be eligible for batch processing?**

9 A. No, they do not. Verizon’s batch proposal, though falling short in other  
10 respects, at least recognizes that ILEC-to-CLEC UNE-L cuts are required to  
11 be eligible for batch processing, consistent with the TRO. In the Verizon  
12 Panel’s rebuttal testimony on page 9, lines 22 – 25, the Panel acknowledges,  
13 “Verizon’s batch hot cut process . . . will govern the ‘everyday’ conversions  
14 of customers from Verizon to a CLEC, if requested by the CLEC, in addition  
15 to the transition of the embedded base of UNE-P to UNE-L.” By contrast,  
16 BellSouth’s batch process covers only one-time conversions from UNE-P to  
17 UNE-L, and therefore falls short of the TRO requirement. So, if the  
18 Commission finds that a batch process is necessary, BellSouth’s proposal  
19 fails to comply from the start.

20 **Q. Verizon and BellSouth persist in defending their batch proposals in**  
21 **their rebuttal cases. What must the Commission consider in establishing**  
22 **a batch process?**

1           A. The Commission should consider the comments above and those I  
2           mentioned in my rebuttal. If the Commission approves a batch process, the  
3           Commission will have done so to alleviate sources of impairment and to  
4           improve hot cut efficiencies. So, for example, a CLEC could have the option  
5           of coordinating/designating due dates and times for multiple orders in the  
6           same CO without extended intervals. If a CLEC had 10 orders for a given  
7           CO and wanted them all worked on one day within a set time period, the  
8           CLEC should be able to do so. And, since the ILEC would work a batch of  
9           orders at one time in one CO, redundant labor costs associated with first loop  
10          NRCs should be reduced, and, in particular, order coordination charges for  
11          the orders in the batch should be significantly reduced.

12          **Q. Does that conclude your surrebuttal testimony?**

13          A. Yes.

14  
15  
16  
17  
18  
19  
20

**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 2<sup>nd</sup> day of January, 2004.

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