



ORIGINAL

RECEIVED-FPSC

JAN 29 AM 11:03

COMMISSION CLERK

January 28, 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
Objections to FCCA's First Set of Interrogatories (Nos. 1-10) and First Request for
Production of Documents (No. 1).

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

Sincerely,

Handwritten signature of Matthew Feil

Matthew Feil
FDN Communications
General Counsel

- AUS
CAF
CMP
COM
CTR
ECR
GCL
OPC
MMS
SEC
OTH

LOCAL

LONG DISTANCE

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

DOCUMENT NUMBER-DATE

01337 JAN 29 03

FPSC-COMMISSION CLERK

**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. )  
\_\_\_\_\_ )

**FDN COMMUNICATION’S OBJECTIONS TO  
FCCA’S FISRT SET OF INTERROGATORIES (NOS. 1 – 10) AND FIRST  
REQUEST FOR PRODUCTION OF DOCUMENTS (NO. 1)**

Florida Digital Network, Inc., d/b/a FDN Communications (“FDN”), pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.280, Florida Rules of Civil Procedure, hereby submits the following Objections to the FCCA’s First Set of Interrogatories (Nos. 1 – 10) and First Request for Production of Documents (No. 1), served electronically on January 21, 2004.

The objections stated herein are preliminary in nature and are made at this time to comply with the 7-calendar day requirement set forth in Order No. PSC-03-1054-PCO-TP issued on September 22, 2003, as amended, by the Florida Public Service Commission (“Commission”). Should additional grounds for objection be discovered as FDN prepares its answers to the above-referenced discovery requests, FDN reserves the right to supplement, revise, or modify its objections at the time it serves its responses.

**GENERAL OBJECTIONS**

1. FDN objects to each discovery request to the extent that it seeks to impose an obligation on FDN to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such request is overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules.

DOCUMENT NUMBER-DATE

01337 JAN 29 3

FPSC-COMMISSION CLERK

2. FDN objects to each discovery request to the extent that it is intended to apply to matters other than those directly at issue in this proceeding. FDN objects to each such request as being irrelevant, overly broad, unduly burdensome, and oppressive.

3. FDN objects to each discovery request to the extent that it requests information that is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege.

4. FDN objects to each discovery request to the extent that it is vague, ambiguous, overly broad, imprecise, or to the extent that it utilizes terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these requests. Answers, if any, provided by FDN in response these requests will be provided subject to, and without waiver of, the foregoing objection.

5. FDN objects to each discovery request to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action. FDN will attempt to note below and/or in its responses each instance where this objection applies.

6. FDN objects to providing information to the extent that such information is already in the public record before the Commission or in the possession of the party propounding the discovery.

7. FDN objects to each discovery request to the extent that it seeks to impose obligations on FDN that exceed the requirements of the Florida Rules of Civil Procedure or Florida Law.

8. FDN objects to each discovery request to the extent that responding to it would be unduly burdensome, expensive, oppressive, or excessively time consuming.

9. FDN objects to each discovery request to the extent that it is not limited to any stated period of time and, therefore is overly broad and unduly burdensome.

10. FDN is a small corporation with employees located in many different locations in Florida. In the course of its business, FDN creates documents that are not subject to Commission or FCC retention of records requirements. These documents may be kept in different locations and may be moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every document will be identified in response to these requests. To the extent a request is not otherwise objectionable, FDN will conduct a search of the files that are reasonably expected to contain the requested information. To the extent that the requests purport to require more, FDN objects on the grounds that compliance would impose an undue burden or expense.

11. In certain circumstances, FDN may determine upon investigation and analysis that information responsive to certain discovery requests to which objections are not otherwise asserted are confidential and proprietary and should not be produced at all or should be produced only under an appropriate confidentiality agreement and protective order. By agreeing to provide such information in response to such a discovery request, FDN is not waiving its right to insist upon appropriate protection of confidentiality by means of a confidentiality agreement and protective order. FDN hereby asserts its right to require such protection of any and all documents that may qualify for protection under

the Florida Rules of Civil Procedure and other applicable statutes, rules and legal requirements.

12. FDN objects to any discovery requests to the extent any definitions or instructions purport to expand FDN's obligations under applicable law. FDN will comply with applicable law.

13. FDN objects to the discovery requests to the extent they purport to require FDN to conduct any analysis or create information not prepared by FDN or its consultants in preparation for this case. FDN will only comply with its obligations under applicable law.

14. FDN objects to the discovery requests to the extent the requests require information for operations outside the State of Florida.

15. For each specific objection FDN may pose to the discovery here or hereafter, FDN incorporates all of the foregoing general objections.

#### **SPECIFIC OBJECTIONS**

16. FDN objects to FCCA Interrogatories Nos. 4, 5(b), 7(b) and 8(b) and (c) on the grounds that the information sought, specifically, growth data, is not relevant or reasonably calculated to lead to the discovery of admissible evidence. FDN also objects to FCCA Interrogatories Nos. 3(b), 3(c), 4(b), 4(c) on the grounds that the information sought, specifically T-1 data, is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. FDN also objects to FCCA Interrogatory No. 6 on the grounds that the information sought, specifically data on FDN customer contracts or lack thereof, is not relevant or reasonably calculated to lead to the discovery of admissible evidence. The FCCA persists in its efforts to embellish the trigger tests of the TRO and

the referenced discovery requests are designed to obtain information regarding those improper embellishments. For self-provisioned switch providers to qualify as trigger companies, the TRO does not state that the mass market customers served (or any subset thereof) must meet a “de minimus” test, does not state that 51% (or any other percentage) of the company’s switch capacity must serve mass market customers, does not state that the trigger companies must have a growth rate of greater than “x,” and so on. Nor does the TRO does say – even hint -- that the states are authorized to or must examine what percentage of a trigger company’s customers have signed a contract of one duration or another. This proceeding is not the forum for the FCCA to test the validity or invalidity of any FCC findings in the TRO. The FCCA’s opportunity to challenge FCC findings is by a direct appeal of the TRO to the Courts, not by testing those findings before the state commissions.

17. FDN objects to FCCA Interrogatories No. 9 and 10 on the grounds that it solicits information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, is overly broad and vague. Any and all “contractual arrangements and/or other agreements” whether written or oral is undefined and is so broad and vague as to encompass matters with no bearing on this case. FDN also objects on the grounds that the request solicits information that is proprietary and confidential.

Respectfully submitted, this 28 day of January 2004

A handwritten signature in black ink, appearing to read "Matthew Feil", written in a cursive style.

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

**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 28 day of Jan, 2004.

BellSouth Telecommunications, Inc.  
D. Lackey/M. Mays/N. White/J. Meza/A. Shore  
c/o Ms. Nancy H. Sims  
150 South Monroe Street  
Suite 400  
Tallahassee, FL 32301-1556  
[nancy.sims@bellsouth.com](mailto:nancy.sims@bellsouth.com)  
[linda.hobbs@bellsouth.com](mailto:linda.hobbs@bellsouth.com)  
[chantel.stevens@bellsouth.com](mailto:chantel.stevens@bellsouth.com)  
[douglas.lackey@bellsouth.com](mailto:douglas.lackey@bellsouth.com)  
[meredith.mays@bellsouth.com](mailto:meredith.mays@bellsouth.com)  
[nancy.white@bellsouth.com](mailto:nancy.white@bellsouth.com)

McWhirter Law Firm  
Vicki Gordon Kaufman  
117 South Gadsden Street  
Tallahassee, FL 32301  
[vkaufman@mac-law.com](mailto:vkaufman@mac-law.com)

Verizon Florida, Inc.  
Richard Chapkis/Kimberly Caswell  
One Tampa City Center  
201 North Franklin Street (33602)  
P.O. Box 110, FLTC 0007  
Tampa, FL 33601-0110  
[richard.chapkis@verizon.com](mailto:richard.chapkis@verizon.com)  
[david.christian@verizon.com](mailto:david.christian@verizon.com)  
[terry.scobie@verizon.com](mailto:terry.scobie@verizon.com)

AT&T Communications of the  
Southern States, LLC  
Ms. Lisa A. Sapper  
1200 Peachtree Street, N.E.  
Suite 8100  
Atlanta, GA 30309-3579  
[lisariley@att.com](mailto:lisariley@att.com)

Mr. Adam Teitzman/Jason Rojas  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
[ateitzma@psc.state.fl.us](mailto:ateitzma@psc.state.fl.us)  
[jrojas@psc.state.fl.us](mailto:jrojas@psc.state.fl.us)  
[jsusac@psc.state.fl.us](mailto:jsusac@psc.state.fl.us)  
[wgarcia@psc.state.fl.us](mailto:wgarcia@psc.state.fl.us)  
[vmckay@psc.state.fl.us](mailto:vmckay@psc.state.fl.us)  
[plee@psc.state.fl.us](mailto:plee@psc.state.fl.us)

Covad Communications Company  
Mr. Charles E. Watkins  
1230 Peachtree Street, N.E.  
19<sup>th</sup> Floor  
Atlanta, GA 30309-3574  
[gwatkins@covad.com](mailto:gwatkins@covad.com)

Florida Cable Telecom Assoc., Inc.  
Michael A. Gross  
246 East 6<sup>th</sup> Avenue  
Suite 100  
Tallahassee, FL 32303  
[mgross@fcta.com](mailto:mgross@fcta.com)

AARP  
200 West College Street  
Tallahassee, FL 32301

AT&T  
Tracy Hatch  
101 North Monroe Street  
Suite 700  
Tallahassee, FL 32301-1549  
[thatch@att.com](mailto:thatch@att.com)



ITC DeltaCom  
Ms. Nanette S. Edwards  
4092 South Memorial Parkway  
Huntsville, AL 35802-4343  
[nedwards@itcdeltacom.com](mailto:nedwards@itcdeltacom.com)

KMC Telecom III, LLC  
Marva Brown Johnson, Esq.  
1755 North Brown Road  
Lawrenceville, GA 30043-8119  
[marva.johnson@kmctelecom.com](mailto:marva.johnson@kmctelecom.com)

Messer Law Firm  
Floyd Self/Norman Horton  
P.O. Box 1876  
Tallahassee, FL 32302-1876  
[fself@lawfla.com](mailto:fself@lawfla.com)  
[nhorton@lawfla.com](mailto:nhorton@lawfla.com)

Sprint Communications Corp.  
Susan Masterton  
P.O. Box 2214  
Tallahassee, FL 32316-2214  
[susan.masterton@mail.sprint.com](mailto:susan.masterton@mail.sprint.com)  
[chrystal.whitt@mail.sprint.com](mailto:chrystal.whitt@mail.sprint.com)

Allegiance Telecom, Inc.  
Charles Gerkin, Jr., Esq.  
9201 N Central Expressway  
Dallas, TX 75231  
[charles.gerkin@allegiancetelecom.com](mailto:charles.gerkin@allegiancetelecom.com)

Moyle Law Firm  
Jon Moyle, Jr.  
The Perkins House  
118 N Gadsden Street  
Tallahassee, FL 32301  
[jmoylejr@moylelaw.com](mailto:jmoylejr@moylelaw.com)

Florida Competitive Carriers Assoc  
C/O McWhirter Law Firm  
Joseph McGlothlin/Vicki Kaufman  
117 South Gadsden Street  
Tallahassee, FL 32301  
[jmgllothlin@mac-law.com](mailto:jmgllothlin@mac-law.com)

MCI WorldCom Communications, Inc.  
Ms. Donna C. McNulty  
1203 Governors Square Boulevard  
Suite 201  
Tallahassee, FL 32301-2960  
[donna.mcnutly@mci.com](mailto:donna.mcnutly@mci.com)

MCI WorldCom Communications, Inc.  
De O'Roark, Esq.  
Six Concourse Parkway  
Suite 3200  
Atlanta, GA 30328  
[de.oroark@wcom.com](mailto:de.oroark@wcom.com)

Xspedius Communications  
Ms. Rabinai E. Carson  
5555 Winghaven Boulevard  
Suite 300  
O'Fallon, MO 63366-3868  
[rabinai.carson@xspedius.com](mailto:rabinai.carson@xspedius.com)

Allegiance Telecom, Inc. (IL)  
Theresa Larkin  
700 East Butterfield Road  
Lombard, IL 60148  
[terry.larkin@algx.com](mailto:terry.larkin@algx.com)

Casey & Gentz, LLP  
Bill Magness  
919 Congress Avenue, Suite 1060  
Austin, TX 78701

Supra Telecom  
Jonathan Audu  
1311 Executive Center Drive Suite 220  
Tallahassee, FL 32301-5027  
[jonathan.audu@stis.com](mailto:jonathan.audu@stis.com)

BellSouth BSE, Inc  
Mr. Mario L. Soto  
400 Perimeter Center Terrace  
Suite 400  
Atlanta, GA 30346-1231  
[mario.soto@bellsouth.com](mailto:mario.soto@bellsouth.com)

NewSouth Communications Corp.  
Jake E. Jennings  
Two North Main Center  
Greenville, SC 29601-2719  
[jejennings@newsouth.com](mailto:jejennings@newsouth.com)

Comm. South Companies, Inc.  
Sheri Pringle  
P.O. Box 570159  
Dallas, TX 75357-9900  
[springle@commsouth.net](mailto:springle@commsouth.net)

Granite Telecommunications, LLC  
Rand Currier/Geoff Cookman  
234 Copeland Street  
Quincy, MA 02169-4005  
[rcurrier@granitenet.com](mailto:rcurrier@granitenet.com)

Phone Club Corporation  
Carlos Jordan  
168 S.E. 1<sup>st</sup> Street, Suite 705  
Miami, FL 33131-1423  
[phoneclubcorp@aol.com](mailto:phoneclubcorp@aol.com)

Tier 3 Communications  
Kim Brown  
2235 First Street, Suite 217  
Ft. Myers, FL 33901-2981  
[steve@tier3communications.net](mailto:steve@tier3communications.net)

Sprint (KS)  
Kenneth A Schifman  
6450 Sprint Parkway  
Mailstop: KSOPHN0212-2A303  
Overland Park, KS 66251-6100

Supra Telecom  
Jorge Cruz-Bastillo  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, FL 33133-3005  
[jorge.cruz-bastillo@stis.com](mailto:jorge.cruz-bastillo@stis.com)

Access Integrated Networks, Inc.  
Mr. Mark A. Ozanick  
4885 Riverside Drive, Suite 107  
Macon, GA 31210-1148  
[mark.ozanick@accesscomm.com](mailto:mark.ozanick@accesscomm.com)

Miller Isar, Inc.  
Andrew O. Isar  
7901 Skansie Avenue, St. 240  
Gig Harbor, WA 98335  
[aisar@millerisar.com](mailto:aisar@millerisar.com)

Ben Johnson Associates, Inc.  
John Nesmith  
2252 Killearn Center Blvd.  
Tallahassee, FL 32309  
[jn@benjohnsonassociates.com](mailto:jn@benjohnsonassociates.com)

Universal Telecom, Inc.  
Jennifer Hart  
P.O. Box 679  
LaGrange, KY 40031-0679  
[Jenniferh@universaltelecominc.com](mailto:Jenniferh@universaltelecominc.com)

Sprint (NC)  
H. Edward Phillips, III  
14111 Capital Boulevard  
Mailstop: NCWKFR0313-3161  
Wake Forest, NC 27587-5900

Z-Tel Communications, Inc.  
Thomas Koutsky  
1200 19<sup>th</sup> Street, NW  
Suite 500  
Washington, DC 20036  
[tkoutsky@z-tel.com](mailto:tkoutsky@z-tel.com)

Office of the Public Counsel  
C/O The Florida Legislature  
Charles J. Beck, Deputy Public Counsel  
111 Wets Madison Street  
Room 812  
Tallahassee, FL 32399-1400  
[beck.charles@leg.state.fl.us](mailto:beck.charles@leg.state.fl.us)

Michael B. Twomey, Esq.  
PO Box 5256  
Tallahassee, FL 32314-5256  
[miketwomey@talstar.com](mailto:miketwomey@talstar.com)

A handwritten signature in black ink, appearing to read "Matthew Feil", written over a horizontal line.

Matthew Feil  
Scott A. Kassman  
FDN Communications  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801  
(407) 835-0460  
(407) 447-6636  
[mfeil@mail.fdn.com](mailto:mfeil@mail.fdn.com)  
[skassman@mail.fdn.com](mailto:skassman@mail.fdn.com)