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COMMISSION CLERK

January 30, 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. 030852-TP 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. Bayo:

Enclosed please find an original and seven (7) copies of FDN Communications
Prehearing Statement.

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

Sincerely,

Matthew Feil
FDN Communications
General Counsel

- AUS _____
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- CMP _____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising)
from Federal Communications Commission) Docket No. 030852-TP
Triennial UNE review: Location Specific-Review)
For DS1, DS3, and Dark Fiber Loops and)
Route-Specific Review for DS1, DS3, and Dark)
Fiber Transport)
_____)

PREHEARING STATEMENT OF 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: Ryan Hand, FDN’s Vice-President of Operations and Engineering. At this time, FDN reserves the right to call agents, officers and employees of BellSouth Telecommunications, Inc., (“BellSouth”), Verizon Florida, Inc. (“Verizon”) and any other persons or entities BellSouth or Verizon rely on for information supportive of their claims, 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, surrebuttal testimony has not yet been filed. Surrebuttal is not due until February 4, 2004. FDN therefore requests to amend this Prehearing Statement as necessary to reflect the content of its and other parties’ surrebutal testimony.

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B. Known Exhibits

FDN did not prefile any exhibits with the prefiled rebuttal of Mr. Hand. However, FDN reserves the right to identify and introduce 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 dedicated transport "trigger" company on only a handful of routes in BellSouth territory and is not a self-provisioned dedicated transport "trigger" company on any routes in Verizon territory. FDN is neither a self-provisioned nor a wholesale loop "trigger" company at any customer locations in either BellSouth or Verizon territory. Similarly, FDN is not a wholesale dedicated transport "trigger" company on any routes in BellSouth or Verizon territory.

Moreover, FDN agrees with FCCA and Covad that the cases presented by BellSouth and Verizon are based on erroneous assumptions, flawed inferences, hearsay and, to put it succinctly, evidence woefully inadequate to grant any relief under the TRO and Florida's APA. The FCCA's motion to strike and Covad's motion for summary order should be granted.

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.

DS-1 Loops (§51.319(a)(4)(ii))

Issue 1:

To what specific customer locations have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-1 facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and offer DS-1 loops over their own facilities on a widely available basis to other carriers? For each such location, do the wholesale providers have access to the entire customer location, including each individual unit within the location?

FDN:

FDN does not offer DS-1 loops (or any loops) on a widely available basis to other carriers. (Hand)

DS-3 Loops (§51.319(a)(5))

Issue 2:

To what specific customer locations have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, either (1) deployed their own DS-3 facilities and actually serve customers via those facilities or (2) deployed DS-3 facilities by attaching their own optronics to activate dark fiber obtained under a long-term indefeasible right of use and actually serve customers via those facilities at that location?

FDN:

FDN does not serve any customer locations using DS-3 loops as described in the issue. (Hand)

Issue 3:

To what specific customer locations have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-3 facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and offer DS-3 loops over these facilities on a widely available wholesale basis to other carriers? For each such location, do the wholesale providers have access to the entire customer location, including each individual unit within the location?

FDN:

FDN does not offer DS-3 loops (or any loops) on a widely available basis to other carriers. (Hand)

Issue 4:

If neither the self-provisioning or the wholesale triggers for DS-3 loops is satisfied at a specific customer location, using the potential deployment criteria specified in §51.319(a)(5)(ii), what evidence of non-impairment for a DS-3 loop at a specific customer location exists? Is this evidence sufficient to conclude that there is no impairment at a specific customer location?

FDN:

BellSouth has not properly evaluated the potential deployment criteria of the TRO and, therefore, no evidence exists to support a finding of no impairment to any specific customer locations.

Dark Fiber Loops (§51.319(a)(6))

Issue 5:

To what specific customer locations have two or more competing providers deployed their own dark fiber facilities, including dark fiber owned by the carrier or obtained under a long-term indefeasible right of use (but excluding ILEC unbundled dark fiber)?

FDN:

FDN does serve any customer locations using dark fiber loops. (Hand)

Issue 6:

If the self-provisioning trigger for dark fiber loops is not satisfied at a specific customer location, using the potential deployment criteria specified in §51.319(a)(6)(ii), what evidence of non-impairment for dark fiber loops at a specific customer location exists? Is this evidence sufficient to conclude that there is no impairment at a specific customer location?

FDN:

BellSouth has not properly evaluated the potential deployment criteria of the TRO and, therefore, no evidence exists to support a finding of no impairment to any specific customer locations.

Dedicated DS-1 Transport (§51.319(e)(1)(ii))

Issue 7:

Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-1 level dedicated transport facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and are willing to provide DS-1 level transport immediately over their own facilities on a widely available basis to other carriers?

FDN:

Neither BellSouth nor Verizon have identified FDN as a wholesale provider of DS-1 dedicated transport and, FDN affirmatively states that it is not a wholesale provider of DS-1 dedicated transport (or dedicated transport at any capacity level). (Hand)

Issue 8:

For any particular route where at least two competing providers will provide wholesale DS-1 dedicated transport, do both competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise? If so, can requesting carriers obtain reasonable and nondiscriminatory access to those competing providers' termination points through a cross-connect to the providers' collocations either at the ILEC premise or similar arrangement if located at a non-ILEC premise?

FDN:

The ILECs have presented inadequate evidence to support their positions regarding wholesale availability of DS-1 transport.

Dedicated DS-3 Transport (§51.319(e)(2))

Issue 9:

Along what particular routes have three or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-3 level dedicated transport facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and are operationally ready to use those transport facilities?

FDN:

FDN has self-deployed and operational DS-3 dedicated transport on only a handful of routes in BellSouth's footprint. FDN has not self-deployed transport on any routes in Verizon's footprint. BellSouth's assumptions regarding the CLEC's network architecture are not correct. (Hand)

Issue 10:

For any particular route where at least three competing providers have self-provisioned DS-3 level dedicated transport facilities, do the competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise?

FDN:

For those routes which FDN may be counted as having self-deployed dark fiber dedicated transport for the purposes of this proceeding, FDN's facilities terminate in a BellSouth collocation arrangement. (Hand)

Issue 11:

Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-3 level dedicated transport facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber), are operationally ready to use those transport facilities, and are willing to provide DS-3 level dedicated transport immediately over their facilities on a widely available wholesale basis to other carriers?

FDN:

Neither BellSouth nor Verizon have identified FDN as a wholesale provider of DS-3 dedicated transport and FDN affirmatively states that it is not a wholesale provider of DS-3 dedicated transport (or dedicated transport at any capacity level). (Hand)

Issue 12:

For any particular route where at least two competing providers will provide wholesale DS-3 level dedicated transport, do both competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise? If so, can requesting carriers obtain reasonable and nondiscriminatory access to those competing providers' termination points through a cross-connect to the providers' collocations either at the ILEC premise or similar arrangement if located at a non-ILEC premise?

FDN:

The ILECs have presented inadequate evidence to support their positions regarding wholesale availability of DS-3 transport.

Issue 13:

If neither the self-provisioning nor the wholesale triggers for DS-3 level dedicated transport is satisfied along a route, using the potential deployment criteria specified in §51.319(e)(2)(ii), what evidence of non-impairment for DS-3 level dedicated transport on a specific route exists? Is this evidence sufficient to conclude that there is no impairment along this route?

FDN:

BellSouth has not properly evaluated the potential deployment criteria of the TRO and, therefore, no evidence exists to support a finding of no impairment for any particular routes.

Dark Fiber Transport (§51.319(e)(3))

Issue 14:

Along what particular routes have three or more competing providers, not affiliated with each other or the ILEC, deployed their own dark fiber transport facilities?

FDN:

FDN has self-deployed dark fiber dedicated transport on only a handful of routes in BellSouth's footprint. FDN has not self-deployed transport on any routes in Verizon's footprint. BellSouth's assumptions regarding CLECs' network architecture are not correct. (Hand)

Issue 15:

For any particular route where at least three competing providers have self-provisioned dark fiber dedicated transport facilities, do the competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise?

FDN:

For those routes which FDN counted as self-deploying dark fiber dedicated transport for the purposes of this proceeding, FDN's facilities terminate in a BellSouth collocation arrangement. (Hand)

Issue 16:

Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, deployed their own dark fiber transport facilities (including dark fiber obtained from an entity other than the ILEC), are operationally ready to lease or sell those transport facilities to provide transport along the route, and are willing to provide dark fiber immediately over their facilities on a widely available wholesale basis to other carriers?

FDN:

Neither BellSouth nor Verizon have identified FDN as a wholesale provider of dark fiber dedicated transport and, for avoidance of doubt, FDN affirmatively states that it is not a wholesale provider of dark fiber dedicated transport (or dedicated transport at any capacity level). (Hand)

Issue 17:

For any particular route where at least two competing providers will provide wholesale dark fiber, do both competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise? If so, can requesting carriers obtain reasonable and nondiscriminatory access to those competing providers' termination points through a cross-connect to the providers' collocations either at the ILEC premise or similar arrangement if located at a non-ILEC premise?

FDN:

The ILECs have presented inadequate evidence to support their positions regarding wholesale availability of dark fiber transport.

Issue 18:

For any particular route where at least two competing providers will provide such wholesale dark fiber, do these providers have sufficient quantities of dark fiber available to satisfy current demand along that route? If not, should the wholesale trigger for dark fiber be determined to be satisfied along that route?

FDN:

The ILECs have presented inadequate evidence to support their positions regarding wholesale availability of dark fiber transport. Accordingly, the wholesale trigger should not be deemed satisfied on any route.

Issue 19:

If neither the self-provisioning or the wholesale triggers for dark fiber transport is satisfied along a route, using the potential deployment criteria specified in §51.319(e)(3)(ii), what evidence of non-impairment for dark fiber on a specific route exists? Is this evidence sufficient to conclude that there is no impairment along this route?

FDN:

BellSouth has not properly evaluated the potential deployment criteria of the TRO and, therefore, no evidence exists to support a finding of no impairment for any particular routes.

Issue 20:

If unbundling requirements for loops at customer-specific locations or dedicated transport along a specific route are eliminated, what are the appropriate transition period and requirements, if any, after which a CLEC no longer is entitled to these loops or transport under Section 251(c)(3)?

FDN:

The Commission should require a reasonable transition period. Furthermore, FDN maintains that the Commission should address such specifics as how CLECs will order loops and transport after they are “de-listed” *e.g.*, what “form” the orders will take, how the ordering process will work, and what ordering and provisioning intervals will apply.

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, other than various pending motions for confidential treatment of certain information produced in discovery, at the time of serving this filing.

I. Pending Confidentiality Issues

Other than the FDN motions for confidentiality referenced above, FDN is not aware of any pending confidentiality issues raised by FDN 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 30th day of January 2004.

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

Matthew Feil
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CERTIFICATE OF SERVICE

Docket 030852-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 30th day of January, 2004.

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A handwritten signature in black ink, appearing to read "Matthew Feil". The signature is written in a cursive style with a large, sweeping flourish at the end.

Matthew Feil

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