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April 16, 2004

Mrs. Blanca S. Bayó  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 030829-TP (FDN Complaint)**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Direct Testimony of Kathy K. Blake and Cynthia A. Clark, which we ask that you file in the above referenced docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

  
Meredith Mays (KMB)

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

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**CERTIFICATE OF SERVICE  
DOCKET NO. 030829-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail, Hand Delivery\* and/or Fedex this 16<sup>th</sup> day of April, 2004 to the following:

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Meredith E. Mays *KH*

**(+) signed Protective Agreement  
(\* ) Hand Delivery**

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BELLSOUTH TELECOMMUNICATIONS, INC.  
DIRECT TESTIMONY OF KATHY K. BLAKE  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 030829-TP  
APRIL 16, 2004

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy Implementation. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Florida State University in 1981, with a Bachelor of Science degree in Business Management. After graduation, I began employment with Southern Bell as a Supervisor in the Customer Services Organization in Miami, Florida. In 1982, I moved to Atlanta where I have held various positions involving Staff Support, Product Management, Negotiations, and Market Management within the BellSouth Customer Services and Interconnection Services Organizations. In 1997, I moved into the State Regulatory Organization where my responsibilities included issues

1 management and policy witness support. I assumed my current responsibilities  
2 in July 2003.

3

4 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

5

6 A. My testimony addresses the issues related to Florida Digital Network, Inc.'s  
7 ("FDN") complaint filed with the Florida Public Service Commission  
8 ("Commission") on August 14, 2003 ("Complaint"), and FDN's amended  
9 complaint filed on November 21, 2003 ("Amended Complaint"). I specifically  
10 address the issues set forth in Attachment A of the Commission's Procedural  
11 Order, Order No. PSC-04-0121-PCO-TP, issued on February 4, 2004  
12 (*"Procedural Order"*).

13

14 Q. BEFORE ADDRESSING EACH SPECIFIC ISSUE, DO YOU HAVE AN  
15 OVERALL REACTION TO FDN'S COMPLAINT?

16

17 A. Yes. To put it simply, FDN is attempting to circumvent its obligation to pay  
18 contractually agreed upon rates and charges. The rates contained in the parties'  
19 Interconnection Agreement include all recurring and nonrecurring rates  
20 applicable to specific elements – nonrecurring installation rates apply at the  
21 time a CLEC acquires an end user customers; recurring rates apply on a  
22 monthly basis; and the nonrecurring disconnect rates apply when a particular  
23 element is disconnected. With respect to the deaveraged recurring rates, it is  
24 the state commissions who establish the rate zones. These zones are subject to  
25 change based on state commission order. If a state commission orders such a

1 change, an amendment to an interconnection agreement is not necessary in  
2 order to implement such commission order.

3  
4 In this proceeding, FDN takes issue with some, but not all, of the nonrecurring  
5 disconnect rates that it has been billed. These rates are contained in the parties'  
6 Interconnection Agreement, without limitation. Nothing in the parties  
7 Agreement permits FDN to pay some, but not all, disconnect charges.  
8 However, FDN refuses to pay for nonrecurring disconnect charges that apply  
9 when an FDN customer chooses to switch service to BellSouth or to another  
10 provider, and FDN does not issue the actual disconnection order. There is no  
11 contractual language that authorizes FDN's interpretation of when disconnect  
12 charges are applicable.

13  
14 FDN's dispute is without basis considering that this Commission has  
15 considered and approved the application of nonrecurring disconnect charges in  
16 proceedings in which competitive local exchange carriers ("CLECs")  
17 recognized that such disconnect charges are a cost of providing service. FDN's  
18 dispute is particularly troublesome considering FDN was a party to Docket No.  
19 990649-TP and prefiled testimony and a prehearing statement, both of which  
20 included proposed disconnect rates. Furthermore, FDN did not seek  
21 reconsideration of Order No. PSC-01-1181-FOF-TP, issued May 25, 2001  
22 ("*UNE Cost Order*"), in which the Commission approved the application of  
23 disconnect charges.  
24

1 With respect to UNE zone rate changes, at all times BellSouth charged FDN  
2 the UNE zone-specific rates contained within the parties' Agreement as  
3 applied to the particular UNE rate zone. When a commission modifies UNE  
4 rate zones, there is always a possibility that rates for certain elements will  
5 immediately decrease or increase depending upon the modification. For  
6 example, an unbundled loop ("UNE-L") in rate zone 1 is normally less than the  
7 same loop in rate zone 2. Thus, if rate zone 1 wire centers are moved to rate  
8 zone 2, or vice versa, a CLEC ordering a UNE-L from the affected wire center  
9 will immediately be charged the applicable UNE zone rate, as contained in its  
10 interconnection agreement. BellSouth believes that FDN's dispute is more  
11 reflective of its disagreement with this Commission's decision to move certain  
12 wire centers from UNE zone 1 to UNE zone 2 than it is a dispute concerning  
13 BellSouth's implementation of the Commission ordered zone changes. When  
14 the Commission issued Order No. PSC-02-1311-FOF-TP ("*120-day UNE*  
15 *Order*"), FDN could have sought reconsideration of the wire center  
16 redesignations. However, FDN did not seek reconsideration of such order.

17  
18 ***Issue 1: In consideration of cost-causer, economic, and competitive principles,***  
19 ***under what circumstances should BellSouth be allowed to assess a***  
20 ***disconnect charge to FDN.***

21

22 Q. WHAT IS BELLSOUTH'S POSITION REGARDING THIS ISSUE?

23

24 A. BellSouth is authorized, pursuant to the Commission's *UNE Cost Order* and  
25 the parties' Interconnection Agreement, to assess a nonrecurring disconnect

1 charge each time it disconnects an element with an associated disconnect  
2 charge. There are no cost-causation, economic, or competitive principles  
3 embodied in the terms and conditions of the parties' Agreement that limit the  
4 application of disconnection charges, nor should FDN be permitted to argue  
5 that any such principles trump the terms and conditions of the Agreement.  
6

7 The particular elements that are at issue in this proceeding (according to  
8 FDN's response to BellSouth's First Interrogatories, No. 3) are as follows:  
9 UEAL2 (2 wire analog voice grade loop – service level 1; 2 wire voice grade  
10 analog loop – service level 2); PE1P2 (cross connect); and SOMAN (manual  
11 service order charge, per LSR, disconnect only). The Interconnection  
12 Agreement between the parties reflects a nonrecurring disconnect rate  
13 associated with each such element. (See pages 1-2 of 53 of Attachment 2 or  
14 Page 139-140 of 532 of the Agreement for SOMAN and the SL1 and SL2  
15 rates; see also p. 13 of 53 of Attachment 2 or Page 151 of 532 of the  
16 Agreement for the cross connect rates). According to the Interconnection  
17 Agreement, therefore, BellSouth is expressly authorized to charge a  
18 nonrecurring disconnect rate each time any such elements provided to FDN are  
19 actually disconnected. It is important to note that the Interconnection  
20 Agreement does not limit the disconnect charges to orders actually placed by  
21 FDN.  
22

1 Q. ARE THERE ANY REGULATORY DECISIONS THAT ADDRESS THIS  
2 ISSUE?

3

4 A. Yes. This issue first arose in Florida in connection with a multi-party  
5 arbitration proceeding initiated in 1996 between BellSouth and several CLECs,  
6 Docket Nos. 960757-TP, 960833-TP, and 960846-TP. In that proceeding, this  
7 Commission decided to separate installation and disconnection rates.

8

9 In Order No. PSC-98-0604-FOF-TP (“1998 Arbitration Order”), the  
10 Commission stated “[e]liminating disconnect costs from up-front NRCs is a  
11 logical way to relieve some of the burden associated with high start-up costs.  
12 CLECs understand and accept that disconnect costs exist, and we believe it is  
13 more appropriate to assess those charges at the time the costs are in fact  
14 incurred.” (1998 Arbitration Order, p. 79).

15

16 This Commission maintained separate disconnection charges in its *UNE Cost*  
17 *Order*, which established the disconnect rates contained in the current FDN  
18 Interconnection Agreement.

19

20 Q. ARE YOU AWARE OF ANY COST-CAUSATION, ECONOMIC, OR  
21 COMPETITIVE PRINCIPLES THAT WOULD LIMIT BELLSOUTH’S  
22 ABILITY TO ASSESS DISCONNECTION CHARGES TO FDN?

23

24 A. I am not. As I understand FDN’s Complaint, FDN essentially asserts that it is  
25 not the cost-causer of disconnection orders that it does not actually issue. FDN



1 is fundamentally advocating a position that seeks to eliminate nonrecurring  
2 disconnection charges.

3  
4 When nonrecurring rates were first established, BellSouth did not separate  
5 installation costs and disconnection costs. Instead, BellSouth choose to follow  
6 the rate structure found in retail nonrecurring charges. Traditionally,  
7 BellSouth charges both the installation and disconnect charge when a retail  
8 customer orders service. In 1996, BellSouth maintained this same position in  
9 the arbitration proceedings. BellSouth's position was not adopted, and this  
10 Commission chose to separate installation and disconnection costs in an effort  
11 to reduce some of the upfront costs incurred by CLECs. The act of separating  
12 installation and disconnection charges, however, does not change the fact that  
13 the disconnection costs are caused by the initial order for CLEC service. In  
14 other words, when FDN places an order for a UNE loop from BellSouth, there  
15 are costs incurred by BellSouth in performing the work activities to attach the  
16 loop to FDN's switch (i.e. installation charges). Similarly, if a customer  
17 chooses later to return to BellSouth (or another CLEC), there are costs  
18 involved to disconnect the loop from FDN's switch (i.e., disconnect charges).  
19 None of the costs would have been incurred to begin with but for FDN's initial  
20 service order.

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***Issue 2: In light of Order Nos. PSC-01-1181-FOF-TP and PSC 02-1311-FOF-TP and the parties interconnection agreements, does BellSouth appropriately assess disconnect charges when BellSouth issues an order for an FDN customer to port out?***

Q. WHAT IS BELLSOUTH’S POSITION REGARDING THIS ISSUE?

A. BellSouth properly assesses disconnection charges to FDN. When one of FDN’s customers ports out of FDN’s network, FDN is assessed the disconnect charge for the specific element(s) being disconnected. As the Commission discussed in the *1998 Arbitration Order*, CLECs have the ability to negotiate the terms and conditions for specific rates before entering into an interconnection agreement with BellSouth. (See *1998 Arbitration Order*, p. 79.) If FDN desired to limit the application of disconnect charges, it should have sought to negotiate such language before entering into an agreement that does not make any such distinction.

***Issue 3: In order to implement changes in rate zone designations, is it necessary for the parties to negotiate an amendment to their interconnection agreement?***

1 Q. WHAT IS BELLSOUTH'S POSITION REGARDING THIS ISSUE?  
2  
3 A. The agreement between BellSouth and FDN does not require a contract  
4 amendment to implement UNE rate zone changes. The parties'  
5 Interconnection Agreement contains a reference to a BellSouth website that  
6 lists the wire center designation ordered by state commissions. When a state  
7 commission order requires changes to the zone designation for a wire center,  
8 BellSouth updates its billing systems to implement the commission's order and  
9 issues a carrier notification letter informing CLECs of the change in wire  
10 center designation. On October 10, 2002, BellSouth sent a Carrier Notification  
11 letter advising CLECs of the implementation of the rate zone changes resulting  
12 from the Commission's *120-day UNE Order*. See Exhibit KKB-1 for a copy  
13 of the Carrier Notification Letter. BellSouth's website was updated  
14 accordingly. Pursuant to the parties' Agreement, once the website  
15 modification occurred BellSouth was contractually authorized to bill FDN the  
16 rates applicable to the particular UNE zone.

17  
18 ***Issue 4: In light of policy considerations, the parties' interconnection agreements,***  
19 ***Order Nos. PSC-01-1181-FOF-TP and PSC 02-1311-FOF-TP, and any***  
20 ***other applicable regulatory requirements, can BellSouth implement***  
21 ***changes in rate zone designations without implementing any associated***  
22 ***changed rates?***

23

1 Q. WHAT IS BELLSOUTH'S POSITION REGARDING THIS ISSUE?

2

3 A. There are no policy considerations or Commission orders that preclude the  
4 implementation of UNE rate zone changes pursuant to the applicable language  
5 in the parties' Agreement which refers to the website discussed above. The  
6 parties' Agreement authorizes BellSouth to implement rate zone redesignations  
7 without the need for a contract amendment. Moreover, BellSouth's billing  
8 systems are not capable of having a single wire center assigned to multiple rate  
9 zones. To implement the *120-day UNE Order*, the necessary changes to the  
10 wire center designation became effective on the specific day the redesignation  
11 information was entered into the billing system. Rate zone designations are  
12 established pursuant to Commission order and are applicable to all CLECs for  
13 the billing of their individually negotiated deaveraged rate elements.

14

15 *Issue 5: Given the resolution of Issues 1, 2, and 3 above, what remedies are*  
16 *appropriate?*

17

18 Q. WHAT IS BELLSOUTH'S POSITION REGARDING THIS ISSUE?

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20 A. The appropriate remedy in this proceeding is to require FDN to promptly  
21 submit payment to BellSouth for the charges it has thus far refused to pay,  
22 along with applicable late fees, which amount is provided in Ms. Clark's direct  
23 testimony.

24

1     ***Issue 6: Should all or any portion of the parties' claims or counterclaims be***  
2                     ***barred by the doctrines of res judicata or collateral estoppel?***

3  
4     Q.     WHAT IS BELLSOUTH'S POSITION REGARDING THIS ISSUE?

5  
6     A.     BellSouth will more fully address the legal aspects of these doctrines in its post  
7             hearing brief. From a policy perspective, however, my understanding is that  
8             various principles prevent parties from raising claims that could have and  
9             should have been raised at other times or in other proceedings. FDN was a  
10            party to the UNE cost proceedings and had ample opportunity to address its  
11            position regarding nonrecurring disconnect charges in that docket. In addition  
12            to the UNE cost proceedings, FDN raised similar arguments relating to  
13            disconnect charges in the Commission's Key Customer proceeding. (See  
14            Docket No. 020119.) However, in Order No. PSC 03-0726-FOF-TP ("*Key*  
15            *Customer Decision*"), this Commission did not address disconnect charges.  
16            FDN did file a Motion for Reconsideration of the Key Customer Decision but  
17            did not raise any arguments or comment further concerning disconnect  
18            charges. Also, FDN voluntarily entered into the contractual provisions that  
19            address both the disconnect fees and the website reference to UNE rate zones.  
20            FDN could have arbitrated such contractual provisions had the parties been  
21            unable to mutually agree to the relevant language. As a matter of policy, this  
22            Commission can and should require FDN to live up to its contractual  
23            obligations. FDN's discovery responses suggest that changes in the  
24            competitive environment should lead to an order in its favor; however, such  
25            arguments would be more appropriately raised in future proceedings rather

1 than as an attempt to circumvent existing obligations, which is what FDN  
2 seeks to do.

3

4 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

5

6 A. Yes.

**BellSouth Telecommunications Inc.**  
**FPSC Docket 030829-TP**  
**Exhibit KKB-1**



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**BellSouth Interconnection Services**

675 West Peachtree Street  
Atlanta, Georgia 30375

**Carrier Notification  
SN91083370**

Date: October 10, 2002

To: Competitive Local Exchange Carriers (CLECs)

Subject: CLECs- Geographically Deaveraged Unbundled Network Elements (UNE) Rate Zones

This is to advise that pursuant to Florida Public Service Commission Order dated September 27, 2002, issued in Docket No. 990649A-TP, and Tennessee Regulatory Authority Ruling, issued August 5, 2002, in Docket No. 01-00339, modifications were made to the geographically deaveraged UNE rate zones. BellSouth has reflected these changes in its systems.

The list of wire centers assigned to each UNE rate zone for each state in the BellSouth Region can be found on the BellSouth Interconnection Services' Web site located at:

[http://www.interconnection.bellsouth.com/become\\_a\\_clec/docs/interconnection/deavuzns.pdf](http://www.interconnection.bellsouth.com/become_a_clec/docs/interconnection/deavuzns.pdf)

Please contact your BellSouth Local Contract Manager with any questions.

Sincerely,

**ORIGINAL SIGNED BY JERRY HENDRIX**

Jerry Hendrix – Assistant Vice President  
BellSouth Interconnection Services