



September 1, 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. 030829-TP Complaint of FDN Communications for Resolution of
Certain Billing Disputes and Enforcement of UNE Orders and Interconnection
Agreements with BellSouth Telecommunications, Inc.

Dear Ms. Bayo:

Please find enclosed for filing in the above docket an original and fifteen (15) copies of
the Revised Rebuttal Testimony of Dr. August H. Ankum and Sharon R. Warren,
submitted by Florida Digital Network, Inc. d/b/a FDN Communications ("FDN").

If you have any questions regarding the enclosed, please call me at 407-447-6636.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Kassman". The signature is written in a cursive, flowing style.

Scott A. Kassman
FDN Communications
Assistant General Counsel

LOCAL

LONG DISTANCE

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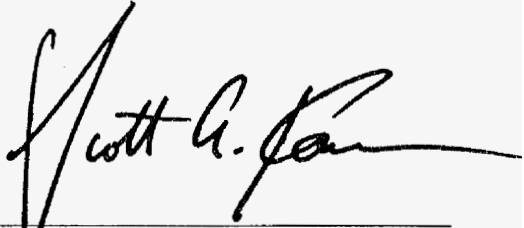
CERTIFICATE OF SERVICE

Docket 030829-TP

I hereby certify that a copy of the foregoing was sent by e-mail and regular mail to the persons listed below this 1st day of September, 2004.

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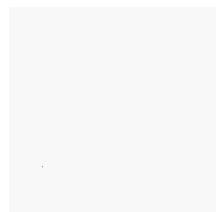
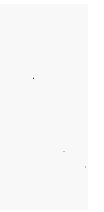
**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of Complaint of FDN)
Communications for Resolution of)
Certain Billing Disputes and)
Enforcement of UNE Orders and) Docket No. 030829-TP
Interconnection Agreements with)
BellSouth Telecommunications, Inc.)
)

**REVISED REBUTTAL TESTIMONY OF DR. AUGUST H. ANKUM
AND SHARON R. WARREN**

**On behalf of
Florida Digital Network, Inc. d/b/a FDN Communications**

September 2, 2004



1 **INTRODUCTION**

2 **Q. PLEASE STATE THE NAMES OF THE PANEL MEMBERS SUPPORTING THIS**
3 **TESTIMONY.**

4 A. The panel members supporting this testimony are Dr. August H.
5 Ankum and Ms. Sharon R. Warren.

6 *Qualifications of Dr. August H. Ankum*

7 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.**

8 A. My name is Dr. August H. Ankum. I am a Senior Vice President
9 at QSI Consulting, Inc., a consulting firm specializing in economics and
10 telecommunications issues. My business address is 1261 North Paulina,
11 Suite #8, Chicago, IL 60622.

12 **Q. ARE YOU THE SAME DR. AUGUST H. ANKUM THAT PRE-FILED DIRECT**
13 **TESTIMONY IN THIS PROCEEDING?**

14 A. Yes.

15 *Qualifications of Ms. Sharon R. Warren*

16 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.**

17 A. My name is Sharon R. Warren. I am Manager of Vendor Disputes
18 for FDN Communications. My business address is 2301 Lucien Way,
19 Suite 200, Maitland, Florida 32751.
20

21 **Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE.**

22 A. I have 15 years of experience in the telecommunications industry,
23 including 10 years at AMNEX, Inc., a Florida-based interexchange carrier
24 and operator services provider, where I held various positions in both the

1 Network Engineering & Operations and Finance organizations. The last
2 position I held at AMNEX was Director, Network Engineering. In my
3 capacity as Director, Network Engineering, I managed the Network
4 Design staff as well as the Network Auditing staff.

5 I began my employment with Florida Digital Network, Inc. in 1999
6 as a Supervisor, supervising the network provisioning and auditing teams.
7 Since 2002 I have been responsible for managing vendor disputes and
8 other projects for FDN's Finance department. Currently, I am responsible
9 for maintaining dispute and adjustment databases on a monthly basis,
10 working with vendors to ensure disputes are resolved and credits are
11 issued in timely fashion, and working with auditors to ensure disputes are
12 accurately identified and filed with the appropriate vendors.

13 **Q. PLEASE STATE THE PURPOSE OF YOUR TESTIMONY.**

14 **A.** The purpose of this testimony is to rebut the claims made by
15 BellSouth Telecommunications, Inc.'s ("BellSouth") in its pre-filed direct
and supplemental direct testimony in this docket. Specifically, our
testimony will address the following:

- BellSouth's allegations that Florida Digital Network, Inc. d/b/a FDN Communications ("FDN") is attempting to circumvent its obligations under the parties' Interconnection Agreements regarding disconnect NRCs and UNE rate zone changes;
- BellSouth's claims relative to the disconnect NRC issue that FDN, rather than BellSouth, is the cost causer;

1 • BellSouth's argument that, as a matter of law, FDN should be
2 precluded from raising the disconnect NRC issue in this
3 proceeding.

4 Further, FDN will discuss BellSouth's responses to FDN's
5 interrogatories and requests for production of documents. We will
6 demonstrate that the activities BellSouth identifies in those responses for
7 migrating customers, in situations such as BellSouth's winbacks, are
8 virtually all associated with service installation and service activation
9 required for BellSouth's own winback customers. FDN should not be
10 required to pay for these activities. Also, FDN will demonstrate that
11 BellSouth does, in fact, already charge its own end-users for these
12 activities and should not be allowed to double recover its costs.

13 Lastly, we will address BellSouth's testimony on rate zone changes
14 and BellSouth's claim that no contract amendments are required to the
15 Interconnection Agreement to implement UNE rate zone changes.

16 **Q. PLEASE STATE YOUR RECOMMENDATIONS.**

17 **A.** FDN's recommendations remain as stated in its direct testimony.

18 **DISCONNECT NRCS**

19 **Q. Overview --- FDN is not seeking to circumvent paying**
20 **appropriate disconnection charges**

21 **Q. DOES BELL SOUTH CAVALIERLY DISMISS FDN'S VALID CLAIMS?**

22 **A.** Yes. For example, on page 2 of her testimony, BellSouth witness
23 Kathy K. Blake states: "To put it simply, FDN is attempting to circumvent

1 its obligation to pay contractually agree upon rates and charges.” This
2 response is unfair and incorrect.

3 **Q. IS FDN SEEKING TO “CIRCUMVENT“ ITS OBLIGATION TO PAY**
4 **APPROPRIATELY APPLIED CHARGES?**

5 A. No. As noted in FDN’s Direct Testimony, FDN is not seeking to
6 re-litigate Commission established rates. Also, FDN is perfectly willing to
7 pay BellSouth’s Commission approved non-recurring charges where those
8 charges are applied appropriately. Clearly, FDN will pay all appropriate
9 disconnect charges when FDN initiates a request to BellSouth to
10 disconnect an FDN customer.

11 **Q. WITH RESPECT TO THE NONRECURRING CHARGES, PLEASE BRIEFLY**
12 **STATE AGAIN WHY BELL SOUTH’S APPLICATION OF DISCONNECT**
13 **CHARGES ARE NOT APPROPRIATE?**

14 A. As discussed in more detail in FDN’s Direct Testimony, BellSouth
15 bills FDN NRCs associated with BellSouth winbacks and customer
16 migrations to third party CLECs ordering through BellSouth. This is
17 inappropriate for a number of reasons. First, FDN is not the cost causer
18 associated with the activities that BellSouth performs when a customer
19 migrates from FDN to BellSouth’s network as a result of a winback.
20 Specifically, BellSouth performs a large number of activities to install and
21 activate service for its winback customer. FDN should not be required to
22 pay for those activities. Further, BellSouth often charges its winback
23 customers installation charges for these very same activities. This creates

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the likelihood that BellSouth double recovers its costs. This too is inappropriate.

FDN argues that the Commission approved disconnect charges for situations in which a CLEC initiates a request to disconnect a customer or facility does not include winbacks or port-outs to a UNE-P carrier, but rather instances in which, for example, customers with three lines want to disconnect one line, or situations in which a customer moves outside of a carrier's footprint and therefore must take service from a different provider. FDN does not believe that the Commission contemplated the application of disconnect charges in winback situations. Indeed, the cost studies that were filed by BellSouth do not even remotely reflect the situations of BellSouth winbacks. Again, from BellSouth's own responses to interrogatories and requests for the production of documents (to be discussed below) it is clear that virtually all of the activities BellSouth *simultaneous installation* of service for, say, BellSouth's winback customer.

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In what follows, we will first discuss why BellSouth misapplies the cost causation principle in defense of its inappropriate practices. Next, we will discuss in more detail BellSouth's responses to interrogatories and requests for production of documents to demonstrate that the disconnect charges are inappropriately applied.

1 **R. BellSouth Misapplies the Cost Causation Principle**

2 **Q. DOES BELL SOUTH DISAGREE WITH FDN'S CLAIM THAT FDN IS NOT THE**
3 **COST CAUSER WHEN IT HAS NOT INITIATED THE DISCONNECT**
4 **ACTIVITIES?**

5 **A.** Yes. Discussing the cost causation principle and its implications for the
6 current proceeding, Ms, Blake states the following:

7 FDN essentially asserts that it is not the cost causer of
8 disconnection orders that it does not actually issue. FDN
9 is fundamentally advocating a position that seeks to
10 eliminate nonrecurring disconnection charges.

11 She then goes on to explain her understanding of the cost causation
12 principle:

13 The act of separating installation and disconnection
14 charges, however, does not change the fact that the
15 disconnection costs are caused by the initial order for
16 CLEC service. In other words, when FDN places an order
17 for a UNE loop from BellSouth, there are costs incurred
18 by BellSouth in performing the work activities to attach
19 the loop to FDN's switch (i.e., installation charges).
20 Similarly, if a customer chooses later to return to
21 BellSouth (or another CLEC), there are costs involved to
22 disconnect the loop from FDN's switch (i.e., disconnect
23 charges). None of these costs would have been incurred
24 to begin with but for FDN's initial service order.

25 **Q. PLEASE COMMENT ON MS. BLAKE'S TESTIMONY.**

26 **A.** Ms. Blake's testimony misses the point. First, I agree with Ms.
27 Blake's general discussion of the cost causation principle and with the
28 conclusion that FDN is responsible for the costs associated with ordering,
29 installing the UNE loop. Again, FDN agrees that it should pay charges
30 relate to disconnection only in a non-winback or non-port out situation.

1 However, I disagree with Ms. Blake that this observation disposes of the
2 dispute. The reasons are as follows:

3 First, Ms. Blake's testimony addresses a situation in which FDN
4 orders the UNE loop and then FDN subsequently orders a disconnect of
5 the UNE loop (in the examples we've cited above). Those are not the
6 situations which are the subject of the instant dispute. Rather, what is at
7 issue here are the disconnect NRCs that BellSouth bills FDN in a winback
8 situation. Furthermore, BellSouth has misunderstood FDN's arguments as
9 hinging on which party issues the disconnect order. Currently, BellSouth
10 issues the disconnect order when it takes back a customer from FDN.
11 However, FDN's maintains that regardless of which party issues the
12 disconnect order, FDN should not be charged for activities associated with
13 migrating the customer to BellSouth or a carrier ordering through
14 BellSouth. For avoidance of doubt, FDN contends that it should rightfully
15 pay disconnect charges only in non-winback or non-port out situations
16 (e.g., a customer that wants to disconnect one line of a multi-line account).

17 Second, Ms.Blake's argument that BellSouth would not have
18 incurred such costs but for FDN's initial service order is specious at best.
19 FDN's initial service order is simply not the cause of BellSouth's
20 disconnect costs. When FDN initially orders service from BellSouth via
21 an order for a UNE loop, FDN pays BellSouth for the installation of that
22 loop. In other words, FDN causes BellSouth to incur costs associated with
23 that initial order for a UNE loop and FDN compensates BellSouth through

1 payment of installation NRCs. When BellSouth takes back that very same
2 customer, BellSouth starts a new chain of causation, causing itself to incur
3 costs.

4 Also, as will be demonstrated below, the work activities identified
5 by BellSouth for a customer migration from FDN to BellSouth are
6 precisely the same work activities as those required for installing and
7 activating service to the BellSouth winback customer. Not only is FDN
8 not the cost causer for the service installation and service activation
9 activities in these circumstances, BellSouth is in fact charging the end-user
10 for these same work activities.¹ (See discussion below.)

11 In sum, FDN maintains that Ms. Blake has either failed to apply or
12 has misapplied the cost causation principle to the disputed situations.

13 **Q. DOES MS. BLAKE ARGUE THAT NO “COST CAUSATION, ECONOMIC OR**
14 **COMPETITIVE PRINCIPLES” SHOULD BE ALLOWED TO TRUMP THE TERMS**
15 **AND CONDITIONS OF THE INTERCONNECTION AGREEMENT?**

16 **A.** Yes. On page 5 of her testimony, Ms. Blake states the following:

17 There are no cost-causation, economic or competitive
18 principles embodied in the terms and conditions of the
19 parties’ Agreement that limit the application of
20 disconnection charges, nor should FDN be permitted to
21 argue that any such principles trump the terms and
22 conditions of the Agreement

¹ In FDN’s direct testimony it expressed the concern that if FDN is required to pay the inappropriate disconnect charges then BellSouth has an added incentive to waive installation charges for its winback customers (since FDN is picking up the tab). In this situation, FDN would in effect be required to finance its own demise.

1 **Q. PLEASE COMMENT ON MS. BLAKE’S TESTIMONY.**

2 A. We do not believe that FDN is arguing that the “cost-causation,
3 economic or competitive principles” trump the terms of the
4 Interconnection Agreement. Rather, FDN is arguing that the terms and
5 conditions in the Interconnection Agreement *must inherently reflect* cost
6 causation, economic and competitive principles.

7 When the Commission approved various UNE rates in Docket No.
8 990649, it did so consistent with the cost causation, economic and
9 competitive principles embodied in the *Telecommunications Act of 1996*
10 (“96 Act) and the FCC’s *Local Competition Order* (implementing the
11 provisions of the 96 Act.) As such, the terms and conditions in the
12 Interconnection Agreement are supposed to reflect cost causation,
13 economic and competitive principles.

14 This also means that in case a dispute arises about whether certain
15 charges in the Interconnection Agreement are appropriately applied, it is
16 useful to fall back on the basic principles on which the Interconnection
17 Agreement is based.

18 **Q. DOES MS. BLAKE SUGGEST THAT BECAUSE THE INTERCONNECTION**
19 **AGREEMENT FAILS TO “LIMIT” WHEN DISCONNECT CHARGES CAN BE**
20 **IMPLEMENTED, BELL SOUTH IS ALLOWED TO APPLY THOSE CHARGES**
21 **AND FDN CANNOT OBJECT TO THEM?**

22 A. Yes. On page 5 of her testimony, Ms. Blake states the following:

23 It is important to note that the Interconnection Agreement
24 does not *limit* the disconnect charges to orders actually
25 placed by FDN. (Emphasis added.)

1 FDN disagrees with this testimony.

2 **Q. PLEASE STATE WHY YOU DISAGREE WITH MS. BLAKE ON THIS ISSUE.**

3 A. We have already explained why the rates in Interconnection
4 Agreements should be applied only in situations which correspond to the
5 activities for which the Commission approved non-recurring charges.
6 Further, Ms. Blake's contention suffers from the shortcoming that, if taken
7 literally, it would allow BellSouth to apply charges in all situations that
8 were not explicitly precluded in the Interconnection Agreement. That
9 could not possibly be right.

10 First, Ms. Blake's view of how to interpret the Interconnection
11 Agreement would make BellSouth the sole arbiter of what charges to
12 apply in situations not previously envisioned (in fact, it would make
13 BellSouth the sole arbiter on the question of whether certain situations
14 were previously envisioned at all). Second, this would mean that
15 BellSouth could just willy-nilly apply charges to FDN in any situation just
16 because the Interconnection Agreement fails to explicitly preclude
17 BellSouth from doing so. Surely, Ms. Blake's interpretation is
18 unreasonable and unworkable.

1 **S. BellSouth Admits that Its Retail Rates Are Intended to**
2 **Recover Installation and Disconnect Work Activities**

3 **Q. HAS FDN ARGUED IN ITS DIRECT TESTIMONY THAT IN SITUATIONS SUCH**
4 **AS BELL SOUTH WINBACKS, BELL SOUTH IS LIKELY TO DOUBLE RECOVER**
5 **CERTAIN COSTS?**

6 A. Yes. In FDN's direct testimony it noted that, because the
7 disconnect activities and the install activities occur simultaneously in
8 situations such as BellSouth winbacks, BellSouth is likely to double
9 recover the costs of certain activities. That is, BellSouth's winback
10 customer and FDN would in effect both be paying for the same set of
11 activities. FDN also argued that a likely double recovery would not take
12 place in situations in which FDN on its own accord is requesting a facility
13 disconnect (the previously cited examples). FDN believes that it is the
14 latter situation -- and not the former -- that should have formed the basis on
15 which the Commission approved its non-recurring disconnect charges.

16 **Q. DOES BELL SOUTH ADMIT THAT IT IS RECOVERING THE INSTALLATION**
17 **AND DISCONNECT CHARGES FROM ITS OWN END-USERS IN WINBACK**
18 **SITUATIONS?**

19 A. Yes. On page 7 of her testimony, Ms. Blake testifies:

20 BellSouth chose to follow the rate structure found in the
21 retail nonrecurring charges. Traditionally, BellSouth
22 charges both the installation and disconnect charges when
23 a retail customer orders service.

24 Thus, BellSouth admits that its retail charges are intended to
25 recover the costs associated with service installation. Given that the
26 service installation and disconnect activities occur simultaneously in

1 situations such as a BellSouth winback, BellSouth is likely to double
2 recover the costs of certain activities.

3 In a separate section below, we will discuss in more detail the fact
4 that service installation activities and service disconnect activities in
5 situations such as BellSouth winbacks occur simultaneously.

6 **Q. DO YOU KNOW WHAT RETAIL CHARGES BELL SOUTH APPLIES FOR**
7 **SERVICE INSTALLATION TO ITS WINBACK CUSTOMERS?**

8 **A.** FDN has served BellSouth with detailed interrogatories which ask
9 how BellSouth applies its retail charges. BellSouth has objected to these
10 interrogatories. However, we do know from the BellSouth Retail General
11 Subscriber Service tariff that, at a minimum, BellSouth applies line
12 connection charges ranging from \$40.88 for residential customers to
13 \$56.24 for business customers. When customer premises work is
14 required, additional charges apply.

15 Of course, under winback programs, BellSouth has an incentive to
16 waive certain retail charges so as to induce customers to migrate back. I
17 have already discussed in my direct testimony that if FDN is required to
18 pay the inappropriate disconnect charges, FDN is in effect forced to pay
19 for its own demise. That is, if BellSouth is permitted to recover from FDN
20 the cost of migrating the customer, BellSouth would be able to offer even
21 more aggressive winback programs. This dynamic is pernicious and, of
22 course, would seriously undermine the development of local competition.

1 **T. BellSouth's Responses to Interrogatories and Requests for**
2 **Production of Documents Show That the NRCs Are**
3 **Inappropriately Applied**

4 **Q. HAVE YOU REVIEWED BELL SOUTH'S RESPONSES TO INTERROGATORIES**
5 **AND REQUESTS FOR PRODUCTION OF DOCUMENTS?**

6 **A.** Yes, we have. BellSouth's responses are notable in that they
7 demonstrate the following:

- 8 • Installation and disconnect activities occur simultaneously in
9 situations such as BellSouth winbacks, and, thus, BellSouth is
10 likely to *double recover* certain costs.
- 11 • Certain documents, pertaining to BellSouth's winbacks, were
12 developed after the completion of Docket No. 990649 in which the
13 Commission set the non-recurring disconnection charges at issue in
14 the current proceeding. This suggests that the BellSouth studies
15 could not possibly have been able to reflect the procedures that are
16 currently in place. This also means that the disconnect charges
17 BellSouth applies to FDN in winback situations are not cost based,
18 as required by the FCC's Local Competition Order, in the sense
19 that they do not reflect the procedures described in the documents
20 produced by BellSouth in response to FDN's discovery.
- 21 • BellSouth's discussion of the service order activities demonstrates
22 that FDN is not the cost causer.

23 In what follows, we will discuss each of these issues in more
24 detail.

- 1
- Orders are received and printed.
 - Jumpers are wired in to the new assignment.
- 3 If the jumpers are wired before the due date:
- The jumpers will be "tied-in" from the new dial tone assignments but not connected to the facility assignment appearance.
 - On the due date the connections going to the UNE-Loop will be removed.
 - On the due date the connections will be completed to the new assignments provided on the order.
- 11 If wired on the due date:
- The jumper(s) is run from the new assignments to the facility assignment appearance.
 - The connections to the UNE-Loop will be removed.
 - The connections will be completed to the new assignments provided on the order.
- Work steps are completed in tracking systems.
- 18

19 It is clear from the above list of activities identified by BellSouth
20 that virtually every step in this process is related to the service installation
21 and service activation that BellSouth performs for its own winback
22 customer. Surely, FDN should not be required to pay for these activities.

23 There is one activity that appears to be explicitly related to FDN,
24 which is the removal or moving of the jumpers (identified by BellSouth.)
25 However, FDN does not believe that even the costs of this single activity
26 formed the basis of BellSouth's non-recurring studies and Commission
27 approved non-recurring charges.

28 **Q. PLEASE DISCUSS WHY YOU BELIEVE THAT THE COST OF REMOVING THE**
29 **JUMPERS IS MOST LIKELY NOT REFLECTED IN BELL SOUTH'S NON-**
30 **RECURRING STUDIES AND CHARGES.**

31 **A.** As is clear from the above list of activities (identified by
32 BellSouth), the removal or moving of the jumpers is an inherent part of the

1 service installation process in a winback situation. A such, the labor time
2 estimates for removing or moving jumpers as part of an installation
3 process will be different from the labor time estimates for removing
4 jumpers on a *standalone* basis when FDN, or other CLECs, request
5 service disconnection. In the latter situation, the technician needs to
6 perform the activities for the sole purpose of disconnecting a UNE-Loop --
7 in the former, there are economies achieved in simultaneously establishing
8 new jumpers. FDN contends that BellSouth's cost studies and
9 Commission approved non-recurring charges are based on the latter
10 situation in which the jumpers to the UNE-Loop are removed without
11 simultaneously establishing new service.

12 In any event, given that virtually all of the central office activities
13 identified by BellSouth are related to service installation, the removal of
14 the jumpers, as the sole activity that is arguably related to FDN, cannot
15 possibly serve as a justification for the full application of BellSouth's non-
16 recurring disconnect charges.²

² Further, in response to FDN's 2nd Set of Interrogatories (Interrogatory No. 4), BellSouth notes that it identifies disconnect cross-connect charges to FDN of \$6.57 for a 2-Wire Analog Voice Grade SL1 and \$12.01 for a 2-Wire Analog Voice Grade SL2. Thus, the removal of the jumpers in no event can justify the application of BellSouth's other non-recurring charges it imposes on FDN. (See FDN's direct testimony for all the non-recurring charges that FDN disputes.)

1 Q. PLEASE DISCUSS THE FIELD TECHNICIAN PROVISIONING PROCEDURES
2 IDENTIFIED BY BELL SOUTH AND SHOW THAT THESE ACTIVITIES ARE
3 VIRTUALLY ALL RELATED TO SERVICE INSTALLATION.

4 A. The outside plant/field work activities identified by BellSouth in
5 response to the aforementioned FDN's Interrogatories are the following:

- 6 • Review the service order, including the access remarks section of
7 the order, which may have contact information or other
8 information relevant for access.
- 9 • Perform appropriate field work.
- 10 • Contact Recent Change Memory Administration Group (RCMAG)
11 to release order in MARCH (a computer system that translates
12 line-related service order date into switch provisioning messages
13 and automatically transmits the messages to stored Program
14 Control Switches.)
- 15 • Contact Central office (CO) Frame to make cross-connects per
16 order.
- 17 • Verify BellSouth dial tone using BellSouth Automatic Number
18 Announcement (ANAC) code.
- 19 • Complete order in TechNet.
- 20 • Notify Work Management Center (WMC) if order Missed
21 Appointment (MA) or Pending Facilities (PF) to prevent customer
22 from losing dial tone.
- 23 • On every dispatch the technician should tag the BellSouth lines at
24 the demarcation.

25
26 BellSouth goes on to note: "RCMAG or CO frame will assist the
27 technician if there are problems with the dial tone."

28 Clearly, all of these activities are related to service installation. In
29 fact, while for the central office activities (discussed above) there was
30 possibly one activity more explicitly related to disconnecting FDN's
31 UNE-Loop, in the above list there is simply no activity that does not relate
32 to service installation and service activation that BellSouth performs for its
33 own winback customer. As with the central office activities, FDN argues
34 that it should not pay for the cost associated with these activities. Just as

1 | importantly, FDN does not believe that BellSouth's non-recurring cost
2 | studies and non-recurring charges were approved based on the above
3 | winback situation.

4 | **2. Processes Detailed in Documents Post Docket**
5 | **No. 990649-TP Cannot Have Formed the**
6 | **Basis for BellSouth's UNE Disconnect Non-**
7 | **Recurring Charges**

8 | **Q. PLEASE DISCUSS THE DOCUMENTS THAT BELL SOUTH PROVIDED IN**
9 | **RESPONSE TO FDN'S REQUESTS FOR PRODUCTION OF DOCUMENTS.**

10 | A. In response to FDN's 2nd Set of Interrogatories, Interrogatory Nos.
11 | 4 and 5, BellSouth provided FDN with a number of documents detailing
12 | the processes involved in migrating customers from FDN's network onto
13 | BellSouth's. BellSouth claims that FDN is the cost-causer of these
14 | activities and that its non-recurring charges were approved based on the
15 | costs associated with these activities. This claim is incorrect considering
16 | that some of the documents have been produced after the completion of
17 | Docket 990649A-TP. For example, BellSouth's Central Office Winback
18 | Procedures, JA-COWP-001BT, Issue 1, is dated October 2001, months
19 | after the Order was issued in May 2001. Other documents are even more
20 | current.

1 Q. IS IT NOT POSSIBLE THAT BELL SOUTH SIMPLY UPDATED THESE
2 DOCUMENTS AND THAT OLDER VERSIONS OF THESE DOCUMENTS DID
3 FORM THE BASIS OF BELL SOUTH'S COST STUDIES AND COMMISSION
4 APPROVED NON-RECURRING CHARGES.

5 A. This may be true in some instances. However, BellSouth's cost
6 studies (discussed in FDN's direct testimony) in no way indicate that the
7 work activities in those studies are related to the winback situations
8 described in the Central Office Winback Procedures document. For
9 example, the Central Office Winback Procedures document details various
10 different scenarios such as: (a) a BST telephone number returning to its
11 home switch; (b) a BST telephone number that had ported out and is
12 returning to BellSouth, but to a different serving switch; and, (c) a non-
13 BST telephone number ported in from another local service provider.
14 BellSouth's cost studies, on the other hand, do not appear to differentiate
15 between those three scenarios. As such, FDN maintains that these
16 scenarios were not envisioned at the time that BellSouth designed and
17 filed its cost studies.

1 **3. Responses to Interrogatories Show that FDN**
2 **Is Not the Cost Causer for Service Ordering**
3 **Activities**

4 **Q. YOU HAVE ALREADY DISCUSSED THE SERVICE PROVISIONING ACTIVITIES**
5 **AND DEMONSTRATED THAT THE DISCONNECT ACTIVITIES ARE IN FACT**
6 **INSTALLATION ACTIVITIES. BASED ON FDN'S REVIEW OF BELL SOUTH'S**
7 **INTERROGATORY RESPONSES, IS FDN THE COST CAUSER OF THESE**
8 **ACTIVITIES?**

9 A. No. In FDN's direct testimony it has already discussed the various
10 activities that FDN performs for BellSouth when BellSouth places a
11 service order request with FDN. We have also demonstrated that
12 BellSouth – and not FDN – is the cost causer when BellSouth initiates the
13 migration of the customer from FDN to BellSouth's network.

14 FDN has reviewed BellSouth's interrogatory responses and
15 contend that those responses confirm that BellSouth is the cost causer
16 when it initiates the migration of a customer. For example, in response to
17 FDN's 2nd Set of Interrogatories, Interrogatory No. 4, BellSouth
18 acknowledges that BellSouth "sends FDN a request for the CLEC
19 customer's service records per applicable methods and procedures."
20 BellSouth also acknowledges that it "emails or faxes to FDN a request for
21 a firm order confirmation (FOC)." BellSouth imposes further costs on
22 FDN:

23 telephone calls occur on an as needed basis concerning:
24 escalations, invalid clarifications, FOC status, updates on
25 backlog of orders pending FOC, and specific circuits.

1 In short, BellSouth's interrogatory responses show: (a) BellSouth
2 causes the service ordering activities to be initiated; and (b) BellSouth
3 imposes on FDN a variety of possible costs.

4 **Q. SHOULD BELLSOUTH COMPENSATE FDN FOR THE COSTS THAT IT**
5 **IMPOSES ON FDN?**

6 A. FDN has already discussed this issue in its direct testimony. We
7 have noted that if the Commission permits BellSouth to continue to apply
8 non-recurring charges in situations in which FDN is not the cost causer,
9 then the Commission should also require BellSouth to compensate FDN
10 for the various costs which FDN incurs when BellSouth contacts FDN
11 with a service request. There is no reason why FDN should be expected to
12 continue to perform these activities for BellSouth without proper
13 compensation.

14 **III. RES JUDICATA AND COLLATERAL ESTOPPEL**
15 **ARGUMENTS CANNOT JUSTIFY BELLSOUTH'S**
16 **INAPPROPRIATE APPLICATION OF NON-RECURRING**
17 **CHARGES**

18 **Q. HOW DO YOU RESPOND TO BELLSOUTH'S ASSERTIONS THAT**
19 **FDN'S CLAIMS SHOULD BE BARRED BY THE PRINCIPLES OF RES**
20 **JUDICATA AND COLLATERAL ESTOPPEL?**

21 A. FDN will more fully address the legal aspects of these doctrines in
22 its post hearing brief, but FDN's basic position is that BellSouth's *res*
23 *judicata* and collateral estoppel arguments are simply without merit.
24 Although we are not attorneys, we understand that collateral estoppel
25 applies only where issues were actually litigated and determined. FDN

1 maintains that the issue of how and when the disconnect fees apply was
2 never litigated, much less determined, by the Commission in the UNE
3 docket (Docket No. 990649). And while FDN may have tangentially
4 raised the matter of disconnect charges in the winback docket (Docket No.
5 020119), the Commission simply did not address the matter.

6 In its direct testimony, BellSouth contends that FDN had ample
7 opportunity but failed to raise in the UNE cost proceedings the issue of
8 disconnect NRCs in winback situations. Further, BellSouth contends that
9 FDN failed to seek reconsideration of the Commission's final order in
10 Docket No. 990649. As FDN has previously averred, the issue of
11 winbacks was largely unheard of at the time of the UNE cost proceeding.
12 Indeed, as we noted previously in this rebuttal testimony, BellSouth did
13 not even establish its own formal central office winback procedures until
14 October, 2001. Thus, it is highly unlikely that FDN could have raised the
15 issue of disconnect NRCs in winback situations at any time during the
16 UNE cost proceeding. In the alternative, if the Commission finds that
17 FDN could have raised the issue of disconnect NRCs in winback
18 situations during the UNE docket or immediately thereafter, FDN argues
19 that it did not raise the issue because it was (and is) clear to FDN that the
20 Commission ordered disconnect NRCs do not apply to situations in which
21 a customer ports back to BellSouth or ports out to a carrier ordering
22 through BellSouth. Therefore, if BellSouth believes that the Commission
23 ordered disconnect NRCs *do* apply to winbacks, FDN contends that it is

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1 BellSouth that should have sought reconsideration or clarification of the
2 Commission's order, not FDN.

3 Moreover, FDN contends that this case is no different from many
4 other billing disputes heard by the Commission where the application of a
5 rate or charge is at issue. BellSouth repeatedly disputed application of
6 reciprocal compensation on ISP-bound calls, but those claims were not
7 foreclosed simply because the PSC set reciprocal compensation rates in a
8 UNE proceeding.

9 **IV. UNE RATE ZONES**

10 **Q. DOES BELL SOUTH ARGUE THAT THE INTERCONNECTION AGREEMENT**
11 **DOES NOT NEED A CONTRACT AMENDMENT TO IMPLEMENT UNE RATE**
12 **ZONE CHANGES?**

13 A. Yes. On page 9 of her testimony, Ms. Blake states: "The agreement
14 between BellSouth and FDN does not require a contract amendment to
15 implement UNE rate zone changes." She then goes on to explain that the
16 Interconnection Agreement contains a reference to a website that lists wire
17 center designations ordered by the Commission. She concludes that "once
18 the website modification occurred, BellSouth was contractually authorized
19 to bill FDN the rates applicable to the particular UNE zone."

20 **Q. PLEASE COMMENT ON MS. BLAKE'S TESTIMONY THAT NO CONTRACT**
21 **AMENDMENT IS NEEDED TO IMPLEMENT A UNE RATE ZONE CHANGE.**

22 A. FDN strongly disagrees with Ms. Blake. First, the reference Ms.
23 Blake provides to the BellSouth website is simply a link to an

1 informational guide. This reference in the contract would not justify
2 BellSouth to unilaterally implement rate zone changes and amend the
3 Interconnection Agreement.

4 Contrary to Ms. Blake's testimony, the Change of Law section of
5 the Interconnection Agreement, (Part A, Section 2.2 of the 1998
6 Agreement), *requires* that the Agreement be amended. The
7 Interconnection Agreement provides, in pertinent part, that:

8 [i]n the event the FCC or state regulatory body
9 promulgates rules or regulations, or issues orders . . .
10 which make unlawful *any* provision of this Agreement,
11 the parties *shall* negotiate promptly and in good faith in
12 order to amend the Agreement to substitute contract
13 provisions which are consistent with such rules,
14 regulations or orders. In the event the parties cannot
15 agree on an amendment within thirty (30) days from the
16 date any such rules, regulations or orders become
17 effective, then the parties shall resolve their under the
18 applicable procedures set forth in Section 23 (Dispute
19 Resolution Procedures) herein."

20 Further, BellSouth's response implies that it believes any changes
21 to the deaveraged UNE zone structure made by the Commission are self-
22 executing, despite that such a scenario would render the associated new
23 rates (which BellSouth admits require an amendment to be executed
24 before they can be implemented) unlawful since they would not be
25 TELRIC-compliant.

26 **Q. MS. BLAKE ALSO RAISES OBJECTIONS RELATED TO THE CAPABILITIES OF**
27 **BELLSOUTH'S BILLING SYSTEMS, CORRECT?**

28 A. Yes. On page 10 of her testimony, Ms. Blake argues that
29 BellSouth's billing systems are incapable of having a single wire center

1 assigned to multiple rate zones. She notes: "Moreover, BellSouth's billing
2 systems are not capable of having a single wire center assigned to multiple
3 rate zones." Whether this is true or not, the argument provides no valid
4 justification for BellSouth to unilaterally implement the change in UNE
5 zone designations.

6 **V. AMOUNTS IN DISPUTE**

7 **Q. WHAT IS FDN'S VIEW OF THE AMOUNTS IN DISPUTE ASSOCIATED WITH**
8 **THE DISCONNECT NRCS?**

9 A. The amounts in dispute are as follows:

10	Q Accounts	\$97,642.84
11	N Accounts	\$36,489.42
12	Total	\$134,132.26

13 **Q. WHAT IS FDN'S VIEW OF THE AMOUNTS IN DISPUTE ASSOCIATED WITH**
14 **THE UNE ZONE CHANGES?**

15 A. The amounts in dispute are as follows:

16	Q Accounts	\$79,300.14
17	N Accounts	\$76,340.98
18	Total	\$155,641.12 ³

³ See Dispute Analysis Spreadsheets, attached hereto as Exhibit AHA/SRW-1.

1 **Q. REGARDING THE DISCONNECT DISPUTE, WHY ARE FDN'S Q ACCOUNT**
2 **AMOUNTS DIFFERENT FROM THE Q ACCOUNT AMOUNTS REFLECTED IN**
3 **BELLSOUTH'S DIRECT AND SUPPLEMENTAL DIRECT TESTIMONY ?**

4 **A.** The amounts are different because FDN's figures reflect new
5 disputes which FDN has filed with BellSouth. More importantly,
6 however, the amounts are different because BellSouth has been crediting
7 FDN for its disconnect disputes. FDN contends that by crediting FDN for
8 these disputes, BellSouth has tacitly admitted that it is wrongfully
9 assessing disconnect NRCs upon FDN when a customer ports back to
10 BellSouth or ports out to a carrier ordering through BellSouth.

11 **Q. REGARDING THE DISCONNECT DISPUTE, WHY ARE THE N ACCOUNT**
12 **AMOUNTS DIFFERENT FROM THE N ACCOUNT AMOUNTS REFLECTED IN**
13 **BELLSOUTH'S DIRECT AND SUPPLEMENTAL DIRECT TESTIMONY ?**

14 **A.** The amounts are different because FDN's figures reflect new disputes that
15 are filed as FDN see the charges on its bills. The numbers may also
16 diverge to the extent that BellSouth has overlooked some of the Mpower
17 BANs.

18 **Q. REGARDING THE UNE ZONE DISPUTE, WHY ARE THE Q ACCOUNT**
19 **AMOUNTS DIFFERENT FROM THE Q ACCOUNT AMOUNTS IN BELLSOUTH'S**
20 **DIRECT AND SUPPLEMENTAL DIRECT TESTIMONY ?**

21 **A.** BellSouth's figures do not reflect the entire universe of disputes that FDN
22 has submitted. For instance, BellSouth's numbers do not reflect FDN's
23 dispute on BAN 904-Q91-0025. The numbers may also diverge to the
24 extent that BellSouth has overlooked some of the Mpower BANs.

1 **Q. REGARDING THE UNE ZONE DISPUTE, WHY ARE THE N ACCOUNT**
2 **AMOUNTS DIFFERENT FROM THE N ACCOUNT AMOUNTS IN BELLSOUTH'S**
3 **DIRECT AND SUPPLEMENTAL DIRECT TESTIMONY ?**

4 A. BellSouth's figures do not reflect the entire universe of disputes that FDN
5 has submitted. The numbers may also diverge to the extent that BellSouth
6 has overlooked some of the Mpower BANs.

7 **Q. HOW DO YOU RESPOND TO BELLSOUTH'S CONTENTION THAT FDN HAS**
8 **NOT BEEN FORTHCOMING WITH CERTAIN INFORMATION?**

9 A. Nothing could be further from the truth. FDN has at all times provided
10 BellSouth with all data necessary to resolve these disputes.

11 **Q. HAS FDN INCLUDED IN ITS CALCULATIONS ANY DISPUTES RELATED TO**
12 **OTHER MATTERS?**

13 A. Contrary to BellSouth's assertions, FDN's calculations include only the
14 disconnect and UNE zone disputes.

15 **VI. CONCLUSION**

16 **Q. HAS ANYTHING IN BELLSOUTH'S TESTIMONY CAUSED FDN TO CHANGE**
17 **THE RECOMMENDATIONS STATED IN ITS DIRECT ESTIMONY?**

18 A. No. FDN's recommendations remain as previously stated in my direct
19 testimony.

20 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

21 A. Yes, it does.

22