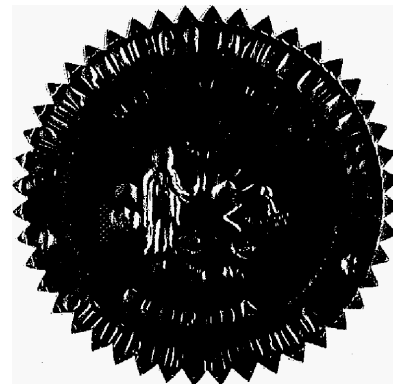


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030829-TP

In the Matter of:

COMPLAINT OF FLORIDA DIGITAL  
NETWORK, INC. d/b/a FDN COMMUNICATIONS  
AGAINST BELLSOUTH TELECOMMUNICATIONS,  
INC. FOR RESOLUTION OF CERTAIN  
BILLING DISPUTES AND ENFORCEMENT OF  
UNBUNDLED NETWORK ELEMENT (UNE) ORDERS  
AND INTERCONNECTION AGREEMENTS.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER RUDOLPH "RUDY" BRADLEY  
Prehearing Officer

DATE: Tuesday, September 14, 2004

TIME: Commenced at 9:38 a.m.  
Concluded at 9:55 a.m.

PLACE: Betty Easley Conference Center  
Room 152  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: TRICIA DEMARTE, RPR  
Official FPSC Reporter  
(850) 413-6734

## 1 APPEARANCES:

2 MATTHEW FEIL, ESQUIRE, and SCOTT KASSMAN, ESQUIRE,  
3 FDN Communications, 2301 Lucien Way, Suite 200, Maitland,  
4 Florida 32751, appearing on behalf of FDN Communications,  
5 participating telephonically.

6 MEREDITH MAYS, ESQUIRE, and NANCY WHITE, ESQUIRE,  
7 BellSouth Telecommunications, Inc. c/o Ms. Nancy H. Sims, 150  
8 South Monroe Street, Suite 400, Tallahassee, Florida 32301,  
9 appearing on behalf of BellSouth Telecommunications, Inc.,  
10 participating telephonically.

11 LEE FORDHAM, ESQUIRE, FPSC General Counsel's Office,  
12 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,  
13 appearing on behalf of the Commission Staff.

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## P R O C E E D I N G S

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2 COMMISSIONER BRADLEY: This prehearing is called to  
3 order. Docket Number 030829-TP, the substance of the docket is  
4 a complaint of Florida Digital Network against BellSouth  
5 alleging overbilling disputes and enforcement of UNE orders and  
6 interconnection agreements. And as I previously stated, this  
7 prehearing conference has been called to order.

8 I guess maybe I've read the notice, but if it's  
9 appropriate, anything that needs to be repeated, Mr. Fordham,  
10 you may --

11 MR. FORDHAM: It was noticed, Commissioner, on  
12 September 3rd, 2004, and it was noticed for the purposes set  
13 forth in the notice.

14 COMMISSIONER BRADLEY: Thank you. Appearances.

15 MS. MAYS: Good morning, Commissioner. Meredith Mays  
16 and Nancy White on behalf of the BellSouth.

17 MR. KASSMAN: Good morning, Commissioner. Scott  
18 Kassman on behalf of FDN Communications. I'd also like to  
19 enter an appearance for Matthew Feil.

20 MR. FORDHAM: And Lee Fordham representing the  
21 Commission.

22 COMMISSIONER BRADLEY: Are there any preliminary  
23 matters?

24 MR. FORDHAM: Commissioner, there is. First of all,  
25 there's a pending motion for reconsideration and/or

1 clarification. Staff believes that it's totally the option of  
2 the Prehearing Officer whether to do the clarification part of  
3 that or not, but staff also believes that the reconsideration  
4 component has to be dealt with by the full panel and therefore  
5 could not be done at the prehearing.

6 As the Commissioner is aware, we could not possibly  
7 get that on the September 21st agenda, and therefore, perhaps  
8 the most likely or most expedient option would be to have it  
9 done as a preliminary matter the morning of the hearing, but we  
10 would defer to the Commissioner.

11 There is one agenda prior to the hearing, but it's  
12 only the day before. So the difference in one day may not  
13 justify a separate trip or a separate experience for the  
14 parties in this thing. It may be more expedient just to hold  
15 it until the hearing, the morning of the hearing, but in any  
16 event, that motion would need to be dealt with.

17 COMMISSIONER BRADLEY: Thank you, Mr. Fordham. My  
18 ruling would be this. I believe that a motion for  
19 reconsideration and clarification should go before the full  
20 panel assigned to the docket, and that presents us, as you  
21 mentioned, with two alternatives: The October 5th, 2004 agenda  
22 conference or the October the 6th, 2004 hearing.

23 In the interest of administrative efficiency, it is  
24 my ruling that FDN's motion for reconsideration and  
25 clarification be handled as a preliminary matter at the start

1 of the administrative hearing on October the 6th, 2004.

2 MR. FORDHAM: Okay. Thank you, sir.

3 COMMISSIONER BRADLEY: Are there any other  
4 preliminary matters?

5 MR. FORDHAM: Commissioner, one thing staff would  
6 like to address, we have on a few occasions recently in  
7 discussions determined that some of the parties as well as some  
8 of the Commissioners may feel there's greater value to having a  
9 more in-depth opening statement for their case as opposed to  
10 the witness summaries before each testimony. And that again  
11 would be totally at your discretion whether to continue the  
12 traditional practice of witness summaries and a very brief  
13 opening statement as opposed to a longer, more detailed opening  
14 statement trading off the witness summaries, and that may be  
15 something you would want to decide yourself or allow input from  
16 the parties on that.

17 COMMISSIONER BRADLEY: Well, I guess my only question  
18 would be this. What would the value be of having lengthier  
19 preliminary discussions at the top as compared to shorter  
20 summaries?

21 MR. FORDHAM: Well, I think it's something where  
22 different people maybe have different feelings about it. But  
23 giving a few more minutes for opening statement, **some** of the  
24 parties have felt they could do a better job of outlining their  
25 case for the Commission for purposes of having the Commission

1 know up front what's coming, so to speak.

2 COMMISSIONER BRADLEY: I'll tell you what my ruling  
3 would be. What I'm going to do is to roll that issue also into  
4 the previous matter; that would be a decision that will be made  
5 on October the 6th by the full panel.

6 MR. FORDHAM: That will be fine, sir. And staff has  
7 no other preliminary matters, Commissioner.

8 COMMISSIONER BRADLEY: Thank you. Now, it is my  
9 intent to proceed through the draft prehearing order section by  
10 section. If there are any other questions or clarifications or  
11 changes or anything to be called to my attention, please let me  
12 know at the appropriate time. And with that we will begin.

13 I have a draft prehearing order provided by my office  
14 last Friday. Does everyone have a copy?

15 MS. MAYS: We have a copy.

16 COMMISSIONER BRADLEY: We have some technical  
17 problems here.

18 MS. MAYS: Sorry about that.

19 COMMISSIONER BRADLEY: Can everyone hear me? FDN?  
20 BellSouth?

21 MS. WHITE: Yes, sir.

22 MR. KASSMAN: Yes.

23 COMMISSIONER BRADLEY: Okay. BellSouth, can you hear  
24 me?

25 MS. MAYS: Yes, sir.

1 COMMISSIONER BRADLEY: FDN, can you hear me?

2 MR. KASSMAN: Yes, sir.

3 COMMISSIONER BRADLEY: Okay. Would you all be so  
4 kind as to respond to my question?

5 MS. WHITE: Yes, we received the draft prehearing  
6 statement.

7 COMMISSIONER BRADLEY: Okay. FDN.

8 MR. KASSMAN: Yes, FDN has received the draft as  
9 well.

10 COMMISSIONER BRADLEY: Okay. Thank you. We'll begin  
11 with Section I, the conduct of proceedings. Any comments?

12 MS. MAYS: No comments from BellSouth.

13 COMMISSIONER BRADLEY: Okay. Section II, case  
14 background.

15 MS. MAYS: BellSouth has one comment on case  
16 background. There was an amended complaint and an amended  
17 answer filed as well. It's a minor point, but we just thought  
18 we'd point that out.

19 MR. FORDHAM: Staff will add that, Commissioner, in  
20 the final prehearing order.

21 COMMISSIONER BRADLEY: Okay. FDN, Section II.

22 MR. KASSMAN: FDN has no comment, no changes.

23 COMMISSIONER BRADLEY: Okay. Section III, attendance  
24 at the hearing.

25 MS. MAYS: This is BellSouth. We had made an offer

1 to dispose of this matter without the need for a hearing, and I  
2 just wasn't sure on this section. I did not think FDN had  
3 agreed. The offer stands, but it appears that this section  
4 contemplates I'm not sure what exactly.

5 MR. KASSMAN: That's correct. FDN is not willing to  
6 resolve this matter without going to hearing.

7 MS. MAYS: So I think we probably need to change that  
8 section.

9 MR. FORDHAM: We'll do that, Commissioner. We'll  
10 make that change.

11 COMMISSIONER BRADLEY: Thank you. Section IV,  
12 pending motions.

13 MR. FORDHAM: We've addressed that motion for  
14 reconsideration in the preliminary matters, Commissioner, and  
15 that's all staff's aware of.

16 COMMISSIONER BRADLEY: Thank you. Just for the  
17 record, there is a pending motion, as I previously stated, for  
18 reconsideration of my order on a motion to compel currently  
19 pending to be addressed by the panel as well as the additional  
20 issue that I discussed earlier, just for the record.

21 Section V, proposed stipulations.

22 MS. MAYS: BellSouth has no changes.

23 MR. KASSMAN: FDN has no changes. But we would like  
24 to note that we are willing to stipulate in the discovery, the  
25 exhibits, and the parties' interconnection agreements if



1 BellSouth is so willing.

2 MS. MAYS: BellSouth is agreeable to that.

3 COMMISSIONER BRADLEY: Okay. What is the impact of  
4 that stipulation?

5 MR. FORDHAM: Commissioner, since we don't have a  
6 complete listing of exhibits maybe this is not the appropriate  
7 forum to stipulate until we get a total list and each party has  
8 exchanged their list of proposed exhibits. Normally that's  
9 done the morning of the hearing, but if they wanted to do it  
10 now it certainly doesn't offend staff.

11 COMMISSIONER BRADLEY: I need a comment from the two  
12 parties.

13 MS. MAYS: It would probably be clearer if we  
14 prepared lists and exchanged them. So let's -- if it's  
15 agreeable to FDN, I think we should probably do that. We may  
16 be able to do it before the hearing, but we should probably  
17 have a list that can be attached.

18 COMMISSIONER BRADLEY: FDN.

19 MR. KASSMAN: FDN agrees.

20 MR. FORDHAM: And staff will also be submitting a  
21 list to the parties of the exhibits that we would seek  
22 stipulation for.

23 COMMISSIONER BRADLEY: Okay. Section VI, open  
24 proceedings and procedure for confidential information.

25 MS. MAYS: No comments from BellSouth.

1 MR. KASSMAN: No comments from FDN.

2 COMMISSIONER BRADLEY: Thank you. Section VII,  
3 pending confidentiality matters.

4 MS. MAYS: No comments from BellSouth.

5 MR. KASSMAN: No comments from FDN.

6 COMMISSIONER BRADLEY: Thank you. Section VIII,  
7 opening statements.

8 MS. MAYS: BellSouth is certainly willing to address  
9 this prior to the hearing. We would just note that as a  
10 practical matter it would be helpful to know prior to the day  
11 of the hearing whether or not the opening statements would be  
12 longer. With a decision by the panel the morning of the  
13 hearing we basically have to prepare for both outcomes as  
14 opposed to just doing witness summaries or the longer opening  
15 statement, but if that's the desire of the Commission, we will  
16 simply do that and go from there. We do believe that the  
17 longer opening statements and no witness summaries is a more  
18 efficient way to present our position.

19 MR. KASSMAN: FDN agrees with BellSouth.

20 COMMISSIONER BRADLEY: Okay. Well, previously I  
21 stated that that would be a decision that will be made by the  
22 full panel, and I'm going to stick with that decision. We'll  
23 make that decision on the 6th of October.

24 Section IX, witnesses: Oath, prefiled testimony,  
25 exhibits, and cross-examination.

1 MS. MAYS: FDN has -- I'm sorry. Now I'm telling  
2 (inaudible). BellSouth has no comments.

3 MR. KASSMAN: It's not unusual, is it? FDN has no  
4 comment.

5 COMMISSIONER BRADLEY: Okay. Section X, order of  
6 witnesses.

7 MS. MAYS: BellSouth has a comment here. This is  
8 FDN's complaint and we believe their witnesses should go first.  
9 And so we suggest that the witness order be revised to reflect  
10 the FDN panel first followed by Cynthia Clark and Carlos  
11 Morillo thereafter. We also --

12 MR. KASSMAN: FDN doesn't have an issue with that,  
13 but we would like to note that we would like both Dr. Ankum and  
14 Ms. Warren to testify as a panel.

15 COMMISSIONER BRADLEY: Well, is that also an issue  
16 that the full panel should decide on, make a decision about?

17 MR. KASSMAN: I'm sorry?

18 COMMISSIONER BRADLEY: Is that also an issue that I  
19 need to send to the full panel?

20 MS. MAYS: We would respectfully submit,  
21 Commissioner, that that would be an issue that could be  
22 resolved now. I think it's simply a procedural matter.  
23 Typically the complaining party does present first, and I think  
24 this was probably just out of order.

25 COMMISSIONER BRADLEY: Okay. Well, I need the two

1 parties to stipulate.

2 MS. MAYS: BellSouth would stipulate that the panel  
3 of Dr. August Ankum and Sharon Warren would be the  
4 first witnesses followed by Cynthia Clark and then Carlos  
5 Morillo.

6 COMMISSIONER BRADLEY: FDN.

7 MR. KASSMAN: FDN so stipulates.

8 MS. MAYS: BellSouth has two additional comments to  
9 this section; one is minor. I do not believe Sharon Warren has  
10 direct testimony and that's simply a notation. And with  
11 respect to the rebuttal testimony of Carlos Morillo, we did  
12 file revised rebuttal testimony on the rebuttal, and so it  
13 should reflect revised as opposed to adopting on the rebuttal.  
14 Those are all the comments we have.

15 COMMISSIONER BRADLEY: FDN, do you agree?

16 MR. KASSMAN: Yes, FDN agrees.

17 MR. FORDHAM: Commissioner, the other question that  
18 we might address is whether we should combine their rebuttal  
19 and direct testimony as calling them twice -- as opposed to  
20 calling them twice.

21 COMMISSIONER BRADLEY: Okay. I need comments from  
22 the parties.

23 MS. MAYS: BellSouth agrees to combining the  
24 testimonies.

25 MR. KASSMAN: As does FDN.

1 MR. FORDHAM: Okay. Thank you.

2 COMMISSIONER BRADLEY: Thank you. Section XI,  
3 exhibits.

4 MS. MAYS: BellSouth has one change. There should be  
5 an additional exhibit referenced CM-1 under Witness Carlos  
6 Morillo, which is the correspondence regarding UNE rate zones.

7 COMMISSIONER BRADLEY: FDN.

8 MR. KASSMAN: Yes, FDN has one change. I noticed the  
9 dispute analysis spreadsheet is listed twice both for Dr. Ankum  
10 and Sharon Warren. That exhibit is actually a Sharon Warren  
11 exhibit. So FDN respectfully requests that that exhibit ID be  
12 changed to SRW-1. That will be listed once.

13 COMMISSIONER BRADLEY: Thank you. Section XII, basic  
14 positions. Oh, I'm sorry. Any other discussion about --  
15 relative to exhibits?

16 MS. MAYS: No, sir.

17 COMMISSIONER BRADLEY: Okay. Thank you.  
18 Section XII, basic positions.

19 MS. MAYS: BellSouth believes that it reflects all of  
20 our statements accurately.

21 COMMISSIONER BRADLEY: FDN.

22 MR. KASSMAN: FDN believes the draft appropriately  
23 reflects its positions.

24 COMMISSIONER BRADLEY: Thank you. Section XII,  
25 issues and positions. Issue 1.

1 MS. MAYS: I'm sorry, Commissioner, could you repeat  
2 where you are?

3 COMMISSIONER BRADLEY: Okay. I'm on Section XII,  
4 issues and positions --

5 MS. MAYS: I lost my place. I'm sorry.

6 COMMISSIONER BRADLEY: -- and I'm on Issue 1.

7 MS. MAYS: BellSouth has no changes.

8 COMMISSIONER BRADLEY: FDN.

9 MR. KASSMAN: FDN has no changes.

10 COMMISSIONER BRADLEY: Okay. Moving along to Issue  
11 2.

12 MS. MAYS: BellSouth has no changes.

13 MR. KASSMAN: FDN has no changes.

14 COMMISSIONER BRADLEY: Thank you. Issue 3.

15 MS. MAYS: Same.

16 MR. KASSMAN: FDN has no changes.

17 COMMISSIONER BRADLEY: Thank you. Issue 4.

18 MS. MAYS: BellSouth has no changes.

19 MR. KASSMAN: FDN has no changes.

20 COMMISSIONER BRADLEY: Thank you. Issue 5.

21 MS. MAYS: BellSouth has no changes.

22 MR. KASSMAN: FDN has no changes.

23 COMMISSIONER BRADLEY: Thank you. Issue 6.

24 MS. MAYS: BellSouth has no changes.

25 MR. KASSMAN: FDN has no changes.

1           COMMISSIONER BRADLEY: Thank you. We now need to go  
2 to Section XIV, post-hearing procedures.

3           MS. MAYS: The only suggestion -- BellSouth has one  
4 suggestion here. It's not a big one. But we're not sure that  
5 the parties need up to 40 pages in their post-hearing brief,  
6 and we would propose that the post-hearing briefs be limited to  
7 30 pages.

8           MR. KASSMAN: FDN agrees.

9           COMMISSIONER BRADLEY: It would be my ruling that we  
10 limit post-hearing briefs to 30 pages.

11           Is there anything else to come before the Prehearing  
12 Officer at this time?

13           MR. FORDHAM: Staff has nothing further,  
14 Commissioner.

15           MS. MAYS: Nothing further from BellSouth.

16           MR. KASSMAN: FDN has nothing further.

17           COMMISSIONER BRADLEY: Thank you for your  
18 participation. And this prehearing conference is adjourned.

19           (Prehearing conference adjourned at 9:55 a.m.)

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1 STATE OF FLORIDA        )  
                                   :  
 2 COUNTY OF LEON         )

CERTIFICATE OF REPORTER

3  
 4                I, TRICIA DeMARTE, RPR, Official Commission Reporter,  
 do hereby certify that the foregoing proceeding was heard at  
 the time and place herein stated.

5  
 6                IT IS FURTHER CERTIFIED that I stenographically  
 reported the said proceedings; that the same has been  
 transcribed under my direct supervision; and that this  
 7 transcript constitutes a true transcription of my notes of said  
 proceedings.

8  
 9                I FURTHER CERTIFY that I am not a relative, employee,  
 attorney or counsel of any of the parties, nor am I a relative  
 or employee of any of the parties' attorneys or counsel  
 10 connected with the action, nor am I financially interested in  
 the action.

11                DATED THIS 17th DAY OF SEPTEMBER, 2004.

12  
 13                *Tricia DeMarte*

14                \_\_\_\_\_  
 TRICIA DeMARTE, RPR  
 FPSC Official Commission Reporter  
 15                (850) 413-6736

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