

Meredith Mays  
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0750

January 14, 2005

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 Post-Hearing Brief, 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

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 FedEx this 14<sup>th</sup> day of January, 2005 to the following:

Lee Fordham\*  
Staff Counsel  
Florida Public Service Commission  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Tel. No.: 850 413-6199  
[cfordham@psc.state.fl.us](mailto:cfordham@psc.state.fl.us)  
[ischindl@psc.state.fl.us](mailto:ischindl@psc.state.fl.us)

Matthew Feil (+)  
Scott Kassman(+)  
FDN Communications  
2301 Lucien Way  
Suite 200  
Maitland, FL 32751  
Tel. No. 407 835-0460  
Fax No. 407 835-0309  
[mfeil@mail.fdn.com](mailto:mfeil@mail.fdn.com)  
[skassman@mail.fdn.com](mailto:skassman@mail.fdn.com)

  
Meredith E. Mays

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

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of FDN Communications )  
For Resolution of Certain Billing Disputes ) Docket No. 030829-TP  
And Enforcement of UNE Orders and )  
Interconnection Agreements with BellSouth ) Filed: January 14, 2005  
Telecommunications, Inc. )  
\_\_\_\_\_ )

**BELLSOUTH TELECOMMUNICATIONS, INC.'S POST-HEARING BRIEF**

**I. INTRODUCTION**

This case involves legitimate charges that BellSouth has billed FDN, charges that FDN has refused to pay. The parties agree on the facts leading up to the dispute; the disagreement centers on divergent views of contractual language and Commission orders. Resolution of the parties' dispute requires answers to the following two questions:

1. In 1998, this Commission established separate installation and disconnection non-recurring charges for unbundled loops in a proceeding involving multiple CLECs. BellSouth and FDN included Commission approved disconnection rates that had been set using the Commission's established rate structure into their interconnection agreements. Is FDN obligated to provide BellSouth nonrecurring disconnect charges that it has refused to pay?
2. On September 27, 2002, this Commission ordered the reclassification of several central offices within certain UNE rate zones and BellSouth implemented the modified central office structure in its billing systems. Is FDN obligated to pay BellSouth the charges associated with the central office changes resulting from this Commission's order?

BellSouth respectfully requests that the Commission answer both questions<sup>1</sup> affirmatively.

**II. BACKGROUND**

In a series of interconnection agreements FDN unequivocally agreed to pay BellSouth nonrecurring disconnect fees at rates set by this Commission. FDN further agreed that central

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<sup>1</sup> There are six specified issues in this case; however, all of the issues relate to these two fundamental questions.

offices associated with UNE rate zones would be listed on BellSouth's website and agreed that BellSouth could provide FDN with internet notification of certain changes to the interconnection agreement. BellSouth has complied with the parties' contractual provisions with respect to both issues, FDN has not. The chronology outlining the key Commission orders, relevant contractual language, and related proceedings follows.

#### Establishment of Nonrecurring Disconnect Fees

In 1998, this Commission established separate nonrecurring installation and disconnection charges in Order No. PSC-98-0604-FOF-TP ("Disconnect Order") in an arbitration proceeding between BellSouth, AT&T, MCI, and Metropolitan Fiber Systems of Florida, Inc.<sup>2</sup> While BellSouth had proposed that both installation and disconnection costs should be recovered one time, when initial service is established, this Commission disagreed.<sup>3</sup> In relevant part, this Commission rejected the BellSouth's proposal of recovering disconnect costs at the time of installation, finding instead that "[e]liminating disconnect costs from up-front NRCs is a logical way to relieve some of the burden associated with high start-up costs. CLECs understand and accept that disconnect costs exist, and we believe it is more appropriate to assess those charges at the time the costs are in fact incurred."

#### 1998 Agreement – FDN and BellSouth

Following the issuance of the Disconnect Order, BellSouth and FDN entered into their first interconnection agreement on July 1, 1998 ("1998 Agreement"). FDN adopted an existing MCI agreement from 1997, which included the following language "[t]he charges that [FDN]

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<sup>2</sup> Tr. at 155.

<sup>3</sup> Tr. at 167-168.

shall pay to BellSouth for Network Elements are set forth in Table 1 of this Attachment.”<sup>4</sup> The 1998 Agreement was effective until June 3, 2000. After the expiration of the 1998 Agreement, BellSouth and FDN extended its terms and conditions, including the mandatory payment provision, through two subsequent agreements, one dated October 20, 2000 (“Interim Agreement”)<sup>5</sup> and another dated September 5, 2001 (“Standalone Agreement”)<sup>6</sup>.

### UNE Cost Proceedings

Shortly after BellSouth and FDN entered into the 1998 Agreement, a number of Florida CLECs filed a petition requesting this Commission to set deaveraged UNE rates. This Commission opened a generic UNE pricing docket, 990649-TP, which resulted in an initial order dated May 25, 2001 (“May UNE Cost Order”) followed by an order on reconsideration dated October 18, 2001 (“UNE Reconsideration Cost Order”) (referred to collectively as “UNE Cost Orders”). Among other things, the UNE Cost Orders continued the separate nonrecurring installation and disconnection rate structure first established in 1998 and set specific rates applicable to the disconnection of UNE loops.<sup>7</sup> The May UNE Cost Order also included as Appendix B a list of central offices within particular UNE rate zones. BellSouth and FDN were

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<sup>4</sup> See Attachment 1, excerpt from 1998 Agreement, Attachment I – 1, Section 3, p. 39 and Part A – 4, p. 5, Section 4 (“[i]n consideration of the services provided by BellSouth under this Agreement, [FDN] shall pay the charges set forth in Attachment I.” See also Exh. 16, Tab 8. In prehearing statements, the parties agreed that all agreements shall be officially recognized by this Commission. These agreements are also on file with this Commission. For ease of reference, BellSouth has attached relevant excerpts from the parties’ agreements.

<sup>5</sup> See Attachment 2, Interim Agreement, General Terms and Conditions, p. 4 (“WHEREAS, until such time as the Parties execute the New Interconnection Agreement, BellSouth and FDN shall continue to operate under the rates, terms and conditions of the Expired Interconnection Agreement”).

<sup>6</sup> See Attachment 3, Standalone Agreement, p. 3 (WHEREAS, until such time as the Parties execute the New Interconnection Agreement, BellSouth and FDN shall continue to operate under the rates, terms and conditions of the Expired Interconnection Agreements”) and p. 4 (all of the other provisions of the Expired Agreement, dated July 1, 1998, shall remain in full force and effect ....).

<sup>7</sup> See Tr. at 155 and UNE Cost Order.

active parties in the UNE docket, and both filed testimony that included proposed nonrecurring disconnect rates. FDN's proposed testimony never excluded the application of nonrecurring disconnect charges from customer migration situations.<sup>8</sup>

#### Impact of UNE Cost Proceedings on BellSouth and FDN

BellSouth and FDN incorporated the rates resulting from the UNE Cost Orders into their September 5, 2001 Standalone Agreement, which had extended the mandatory payment provision language from the 1998 Agreement. The new rates included nonrecurring disconnect charges for unbundled loops, as established by the Commission as a result of the UNE Cost Orders. In addition, the Standalone Agreement included language that allowed BellSouth to provide FDN with Internet notice of certain contractual changes<sup>9</sup> and a specific reference to BellSouth's website for a listing of central offices associated with particular UNE rate zones.<sup>10</sup>

In 2002, this Commission concluded its consideration of additional materials submitted in Docket No. 990649-TP following the UNE Cost Orders, and issued Order No. PSC 02-1311-FOF-TP ("120-day Order"). As a result of the 120-day Order, the nonrecurring disconnect rates

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<sup>8</sup> See, e.g., Exh. 2, FDN's response to BellSouth's Interrogatory 6. FDN admits that it prefiled testimony in Docket 990649-TP included recommended nonrecurring disconnect rates. FDN suggests that it had no obligation to exclude or address the application of disconnection charges to migration or 'winback' situations. FDN's claim cannot withstand scrutiny given this Commission's separate installation and disconnection rate structure. It was incumbent on FDN to seek a limitation on the application of disconnect rates.

<sup>9</sup> See Attachment 3. Section 21.1 of the Standalone Agreement provides "BellSouth may provide FDN notice via Internet posting of price changes, changes to the terms and conditions of service available for resale, changes to business processes and policies, notices of new service offerings and changes to service offerings not requiring an amendment to this Agreement, notices required to be posted to BellSouth's website, and any other information of general applicability to CLECs." Identical language was contained in the parties' Interim Agreement at Section 22.2.1.

<sup>10</sup> See Tr. at 158 and Attachment 3, Standalone Agreement, Exhibit 1, p. 22 of 88, which provides "[t]he 'Zone' shown in the sections for stand-alone loops or loops as part of a combination refers to Geographically Deaveraged UNE Zones. To view Geographically Deaveraged UNE Zone Designations by Central Office, refer to Internet Website: [http://www.interconnection.bellsouth.com/become\\_a\\_clec/html/interconnection.htm](http://www.interconnection.bellsouth.com/become_a_clec/html/interconnection.htm)."

for UNE loops were modified slightly and some certain offices were moved between UNE rate zones.<sup>11</sup> BellSouth implemented the central office changes consistent with its normal process; namely, by issuing a Carrier Notification Letter advising all CLECs of the systems changes that had been made to place each central office into the Commission-ordered UNE rate zone.<sup>12</sup> BellSouth's systems cannot identify a given central office with more than one UNE rate zone, which FDN has not contested.<sup>13</sup> BellSouth continued to bill FDN the agreed upon contractual rates; if a given central office became part of a different UNE zone the contractual rate applicable to that zone would apply.<sup>14</sup>

After BellSouth modified its systems to comply with the central office assignments set forth in the 120-day Order, the parties communicated about an interconnection agreement amendment. FDN requested an amendment on December 10, 2002; BellSouth provided the requested amendment on December 27, 2002.<sup>15</sup> The parties entered into a new interconnection agreement on February 3, 2003 ("Current Agreement"), which includes the rates this Commission established in its 120-day Order. The Current Agreement also contains mandatory payment language,<sup>16</sup> nonrecurring charges associated with unbundled loops,<sup>17</sup> provisions relating

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<sup>11</sup> For example, in the UNE Cost Order, a Cocoa Beach central office identified as CCBHFLMA was part of Zone 1 in the 120-day Order, this office moved to Zone 2. Likewise, in the UNE Cost Order, a Miami West Hollywood central office identified as MIAMFLWD was in Zone 2, but in the 120-day Order this office was moved to zone 1. See Appendix B in the UNE Cost Order and the 120-day Order for a full listing of the central offices identified by UNE zones. BellSouth billed and charged FDN the agreed upon contractual rates until the rates were modified by amendment. See Hearing Exh. 17.

<sup>12</sup> See Tr. at 158 and Exh. 14.

<sup>13</sup> See Tr. at 159.

<sup>14</sup> See Tr. at 158, and 177-179; also Exh. 17.

<sup>15</sup> Tr. at 177 and Exh. 15.

<sup>16</sup> See Attachment 4, Current Agreement, Attachment 2, Section 1.7.1 ("[t]he prices that FDN shall pay to BellSouth for Network Elements and Other Services are set forth in Exhibit B to this Attachment.")

<sup>17</sup> *Id.* at Attachment 2 price sheet (beginning at page 139).

to internet notification,<sup>18</sup> and a reference to BellSouth's website for central office designations.<sup>19</sup>

### Key Customer Docket

In 2002, during the time when the proceedings leading to the 120-Day Order were occurring, FDN was actively pursuing a complaint against BellSouth's promotional winback tariffs in Docket No. 020119 ("Key Customer docket"). Specifically, in prefiled testimony, FDN's witness Michael Gallagher complained about BellSouth's practice of assessing nonrecurring disconnection fees.<sup>20</sup> Despite this complaint in FDN's October 2002 prefiled testimony, FDN elected to forego pursuing any objection to disconnection charges associated with winbacks or migrations as an enumerated issue, an option available to FDN until January 8, 2003 -- the date of the prehearing order in the Key Customer docket.<sup>21</sup> Consistent with Commission practice and procedure, FDN has waived its right to complain further about this issue. Moreover, although FDN waived the issue of nonrecurring disconnection charges, FDN continued to complain about the alleged unfairness of disconnection fees associated with winbacks in discovery responses to staff. FDN also cross-examined BellSouth's policy witness on this point during the Key Customer hearing.<sup>22</sup> Ultimately, this Commission rejected FDN's

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<sup>18</sup> *Id.* at General Terms and Conditions, Section 25.3 ("BellSouth shall provide FDN notice via Internet posting of price changes . . .").

<sup>19</sup> *Id.* at Attachment 2 price sheet (beginning at page 139) ("[t]he 'Zone' shown in the section for stand-alone loops or loops as a part of a combination refers to Geographically Deaveraged UNE Zones. To view Geographically Deaveraged UNE Zone Designations by CO, refer to Internet Website:

[http://www.interconnection.bellsouth.com/become\\_a\\_clec/html/interconnection.htm](http://www.interconnection.bellsouth.com/become_a_clec/html/interconnection.htm).").

<sup>20</sup> *See* Hearing Exh. 16, Tab 6.

<sup>21</sup> *See* Hearing Exh. 16, Tab 10 (according to FDN, "[a] final, exhaustive list of issues is established only upon the issuance of the Pre-Hearing Order."). *See also* Order No. PSC-02-1295-PCO-TP, p. 7 ("[a]ny issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party . . .").

<sup>22</sup> *Id.*



winback complaints, issuing Order No. PSC-03-0726-TP (“Key Customer Order”) on June 19, 2003. FDN filed this complaint less than two months after the Key Customer Order was issued.

### III. ISSUES AND POSITIONS

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

#### **SUMMARY OF BELLSOUTH’S POSITION**

\*\*\* BellSouth is authorized, pursuant to the parties’ interconnection agreements and Commission orders, to assess a nonrecurring disconnect charge each time an FDN UNE-loop is disconnected from FDN’s service. FDN contractually agreed to pay disconnect charges without limitation. \*\*\*

#### **DISCUSSION**

##### The Relevant Contractual Language Requires FDN to Pay BellSouth

In resolving the billing dispute concerning nonrecurring disconnection fees, the Commission should decide this issue by enforcing the clear and unambiguous contractual language between BellSouth and FDN. Despite FDN’s unhappiness with the outcome of the Key Customer docket, this billing dispute is a straightforward contractual matter and does not involve an issue of first impression or an issue of broad policy. From 1998 to present, FDN has been contractually obligated – FDN *shall pay* – nonrecurring disconnection charges associated with UNE-loops. Florida law provides that “the construction of all written instruments is a question of law to be determined by the court where the language used is clear, plain, certain, undisputed, unambiguous, unequivocal and not subject to conflicting inferences.”<sup>23</sup> Moreover, this Commission should consider the plain language of the contract and take care not to give the

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<sup>23</sup> *Royal American Realty Inc. v. Bank of Palm Beach*, 215 So.2d 336, 337 (Fla. 4<sup>th</sup> DCA 1968) (citations omitted); also *Okeelanta Corp. v. Bygrave*, 660 So. 2d 743, 747 (Fla. 4<sup>th</sup> DCA 1995)(citations omitted).

contract any meaning beyond that expressed.<sup>24</sup> When the language is clear and unambiguous, it must be construed to mean "just what the language therein implies and nothing more."<sup>25</sup> Consequently, "no word or part of an agreement is to be treated as a redundancy or surplusage if any meaning, reasonable and consistent with other parts can be given to it."<sup>26</sup>

The relevant contractual language between the parties authorizes nonrecurring disconnect fees and includes applicable rates.<sup>27</sup> FDN's interpretation of the contractual language would render it meaningless – it is difficult to imagine language that is clearer than an unlimited obligation to disconnection fees. Because FDN must pay disconnection fees and because the contract includes applicable disconnection rates without limitation, an order requiring prompt payment to BellSouth should be issued.

In an effort to circumvent the unambiguous contractual language, FDN concedes that it pays nonrecurring disconnection charges assessed when a customer moves or terminates FDN service altogether or terminates one line of a multi-line account.<sup>28</sup> FDN's concession speaks volumes, because despite its self-serving interpretation there is no contractual language to support this practice. The contractual language requires FDN to pay nonrecurring disconnection charges per rate element and sets forth the applicable rate for each UNE. This language supports an order in BellSouth's favor, regardless of the type of disconnection that has occurred; indeed, the Commission in large measure need only direct FDN to release funds it freely acknowledged it has held in a liability reserve fund earmarked as an expense.<sup>29</sup>

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<sup>24</sup> *Walgreen Co. v. Habitat Dev. Corp.*, 655 So. 2d 164, 165 (Fla. 3d DCA 1995)(citations omitted).

<sup>25</sup> *Id.*

<sup>26</sup> *Royal American Realty Inc. v. Bank of Palm Beach*, 215 So.2d 336, 337 (Fla. 4<sup>th</sup> DCA 1968).

<sup>27</sup> Tr. at 154, 157, 173-174.

<sup>28</sup> Tr. at 44, 70, and 72.

<sup>29</sup> Exh. 10 and Tr. at 114.

### FDN's Attempts to Circumvent the Contractual Language Fail

In its pleadings, its testimony, and during the hearing, FDN has done everything possible to divert the Commission's attention from the unambiguous contractual language by raising a series of red herrings. Each of FDN's theories, designed to obfuscate the Commission, should be rejected out of hand.

FDN's primary attack on disconnect fees relates to misguided economic theory and its view that when an end user migrates to BellSouth or to another carrier, FDN is not the cost-causer.<sup>30</sup> FDN's theory does not pass muster. While any economist can freely opine as to his or her theories of choice, FDN's expert witness readily acknowledged that he did not seek to interpret the legal import of the relevant contractual language.<sup>31</sup> No theory, view, or opinion can trump contract language, and FDN's expert witness conceded that parties are free to enter into contractual arrangements of their choosing.<sup>32</sup> Finally, FDN's expert witness undertook a limited analysis in any event, failing to inquire into related proceedings and failing to investigate negotiations between the parties.<sup>33</sup>

Even if FDN's economist had proffered a valid explanation for setting aside contractual language (he did not), his simplistic cost-causation view fails to pass scrutiny. FDN ignores any role or benefit it derives over the life cycle of an end user customer, claiming instead that

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<sup>30</sup> See Tr. at 72.

<sup>31</sup> See Tr. at 94. Dr. Ankum testified "I'm not addressing the legal questions. I'm not addressing what's in the interconnection agreement. All I'm addressing is from an economic perspective."

<sup>32</sup> See Exh. 3, p. 19. Dr. Ankum testified "in general, CLECs and ILECs can have a fair amount of leeway in negotiating terms to interconnection agreements . . . ."

<sup>33</sup> *Id.*, at p. 17, 30-32. Dr. Ankum testified he had not talked to anybody who actually negotiated the interconnection agreements for FDN (other than conversations with counsel); Dr. Ankum also testified that he did not review FDN's prefiled testimony in Docket No. 990649 in which it recommended a nonrecurring disconnect rate; Dr. Ankum testified that he had not reviewed any testimony or discovery from the Key Customer docket.

BellSouth or another carrier is the cost-causer for disconnection fees in migration situations.<sup>34</sup> FDN also ignores that the initial order for a UNE-loop begins a series of events, which may lead to a later customer migration.<sup>35</sup> No work would have been required to migrate the end user's service from FDN to another carrier had it not been for FDN's initial installation order.<sup>36</sup>

FDN also suggests that prior Commission orders – the 1998 Order and the UNE Cost Order – did not contemplate winback situations. This suggestion is nonsensical. This Commission purposefully designed a rate structure in which “CLECs understand and accept that disconnect costs exist.” This structure encourages CLEC entry and competition by allowing CLECs to either defer disconnection costs or avoid disconnection charges entirely if a customer is won and retained. That structure, however, does not and cannot ignore the legitimate costs that result when customers migrate between carriers. To suggest that the Commission was not aware of “winbacks” in 1998 or in 2001 is flatly contradicted by the number of carriers participating in each proceeding. Simply because the term “winback” became common telecommunications lingo after the issuance of these orders does not mean this Commission did not issue its orders with an understanding of a competitive market in which end users can freely choose between many carriers.<sup>37</sup>

To bolster its argument that winbacks and migrations were never addressed in prior decisions, FDN suggests that a single sentence in the UNE Cost Order – that nonrecurring activities are those that benefit only the specific ALEC – precludes application of nonrecurring

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<sup>34</sup> See Tr. at 44.

<sup>35</sup> See Tr. at 156, 171. See also Exh. 5, BellSouth's Response to FDN's Interrogatory No. 10 (b).

<sup>36</sup> Tr. at 156, 171.

<sup>37</sup> Likewise, FDN's gratuitous claim that a BellSouth document detailing central office winback procedures dated after the UNE Cost Order means customer migrations were not contemplated is simply wrong. Customer migrations logically were part and parcel of any rates set in a proceeding between carriers whether or not this precise terminology was used in 1998 or in 2001.

disconnect fees. FDN's position is without merit. This FDN argument, if accepted and extended to its logical conclusion, would negate all nonrecurring disconnect fees. For example, how does FDN benefit when its multi-line customer drops a line, or when its customer moves outside of Florida and FDN pays the associated nonrecurring disconnection fees? Arguably the only benefit to a disconnection charge in such circumstance is the benefit to the end user, yet FDN pays nonrecurring disconnection fees without objection in such situations. The "benefit" envisioned in the UNE Cost Order must logically mean the benefit that FDN enjoyed over the lifetime of the customer service relationship and FDN's attempt to avoid paying its bills by parsing out one sentence from a voluminous decision must be rejected.

In a last-ditch attempt to salvage its billing dispute, at the hearing FDN conceded that BellSouth should be paid the rates associated with nonrecurring disconnection *cross connect* charges, but that BellSouth should not be permitted to recover the higher nonrecurring disconnection charges associated with UNE loops.<sup>38</sup> While FDN's concession narrows the issue before the Commission,<sup>39</sup> it ignores the realities inherent in setting rates for an average universe of UNEs. FDN's concession also misconstrues the nature of BellSouth's cost studies, which this Commission evaluated in setting UNE rates in the UNE Cost Orders and the 120-day Order.

With respect to UNE loops, FDN's argument would mean this Commission would have to treat loops that are migrated between carriers as a separate sub-category of loops. While this

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<sup>38</sup> Tr. at 100. The parties initially agreed to nonrecurring cross connect disconnect rates through an amendment to their Standalone Agreement. *See Attachment 3*. The parties' Current Agreement includes nonrecurring cross connect disconnect rates. *See Attachment 4*.

<sup>39</sup> FDN's discovery responses indicated that it was nonrecurring disconnection charges associated with SL1 and SL2 loops, cross-connects and manual service ordering charges. *See Exh. 2*, FDN's response to Interrogatory No. 3. BellSouth has previously explained that FDN a manual service ordering charge is not imposed unless FDN actually places an LSR, thus this issue is moot. *See Tr. at 175*. FDN's concession at hearing resolves the dispute concerning cross connect charges, thus the only remaining matter for resolution concerns the dispute over the loop disconnection charges.

theory may be of interest in the next UNE cost proceeding, FDN should not receive the equivalent of a free pass to avoid disconnection charges set after a UNE proceeding that did not distinguish loops in the manner that FDN suggests.

Concerning the costs associated with UNE loops, FDN attempts to avoid its contractual obligations. FDN's theory is that the rates set by this Commission included work times associated with a physical disconnection of the loop plant between the main distribution frame and an end user's house, an activity that may not be necessary each time a customer migrates between carriers. FDN disregards completely, however, the entirety of BellSouth's discovery responses and cost studies which detail a number of loop disconnection tasks, including central office work.<sup>40</sup> Specifically, BellSouth's cost studies include work times for central office employees, including wiring work performed at collocation sites.<sup>41</sup> Moreover, BellSouth's studies capture a significant portion of the central office work necessary to migrate customers between carriers in the *loop rates*.<sup>42</sup> This Commission recognized "BellSouth's cost studies include work activities and work times for the first installation, and each additional installation, as well as for the first disconnect and each additional disconnect."<sup>43</sup> Likewise, this Commission acknowledged "[s]ome of the same work categories may not be included in the additional installation or the first and additional disconnect, and the work times may differ."<sup>44</sup>

Additionally, the Commission is fully aware of the work involved in setting UNE rates, which work necessarily requires work times to be averaged, physical loop plant to be viewed

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<sup>40</sup> See Tr. at 199.

<sup>41</sup> See Exh. 5.

<sup>42</sup> See Exh. 5. Because central office work times are divided between the UNE loop (e.g., SL1 and SL2) and the UNE cross connect with the majority of work captured in the loop rate, if FDN paid only the UNE cross connect rate when an SL1 or SL2 loop is disconnected then BellSouth would not fully recover its costs.

<sup>43</sup> May UNE Cost Order, p. 297.

<sup>44</sup> *Id.*

with certain average characteristics, and applies common sense probabilities and assumptions. The May UNE Cost Order specifically addressed how often a technician would be dispatched to the field when setting the rates for UNE loops.<sup>45</sup> The Commission explained that “determining the work activities, work times and probabilities that the work will occur is an appropriate way to determine nonrecurring costs” and, recognizing that technicians are not always required in a given situation, made certain adjustments to BellSouth’s work times.<sup>46</sup> Thus, the nonrecurring disconnection rates associated with UNE loops explicitly include adjustments that capture the average UNE loop – including both loops that are physically disconnected beyond the main frame as well as loops that are not physically disconnected at the main frame yet require systems work in the central office. Because the Commission did *not* create subcategories for every conceivable loop type and applied adjustments and averages to the entire universe of loops, FDN has no basis to avoid paying nonrecurring rates applicable when its SL1 and SL2 UNE loops are disconnected by BellSouth – whether such loops are disconnected in a customer migration scenario or otherwise. At the conclusion of this case, this Commission should require FDN to abide by its orders and the rate structure resulting from its orders. Any other outcome would result in BellSouth having to shoulder legitimate, recognized costs based upon FDN’s unhappiness with a rate structure the Commission adopted and one that BellSouth has implemented and relied upon since 1998.

**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?**

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<sup>45</sup> *Id.*, p. 349-350 (Sprint raised a point identical to FDN’s argument; namely, that with regard to disconnect activities the costs would be limited to jumper disconnections. This Commission determined the “appropriate way” to address such concerns was through “adjustments to Bell’s work times.”)

<sup>46</sup> *Id.*

## SUMMARY OF BELLSOUTH'S POSITION

\*\*\* Yes. BellSouth properly assesses disconnection charges to FDN. \*\*\*

## DISCUSSION

As explained more fully above, the contractual provisions between the parties and this Commission's prior orders fully support the assessment of nonrecurring disconnect charges. Moreover, FDN freely admits that the placement of the order is not the controlling factor; rather, FDN seeks to avoid all disconnection charges whether an end user is migrating from FDN to BellSouth or from FDN to another CLEC.<sup>47</sup> While FDN's unhappiness with losing a customer is understandable, penalizing BellSouth for FDN's loss after the establishment of a cost structure that separates installation and disconnection charges is not. This Commission decided upon a structure and set rates that are embodied in contractual language between the parties. FDN should be required to live up to its end of the bargain. Moreover, by requiring FDN to pay for the full benefit it received over the life of a customer, this Commission may encourage FDN to devise new methods of retaining and maintaining its customers. In any event, that customers elect to migrate service from FDN is a reality of a competitive market. FDN should not be insulated from competition by failing to shoulder its appropriate share of costs, which costs were created when FDN requested the UNEs to provide service to its customers.<sup>48</sup>

**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?**

## SUMMARY OF BELLSOUTH'S POSITION

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<sup>47</sup> See Tr. at 73.

<sup>48</sup> See May UNE Cost Order, p. 332-333 ("we are persuaded by BellSouth witnesses Caldwell and Varner that when an ALEC requests service, *there are specific activities that occur that may not occur otherwise and these activities should be costed and priced separately from recurring costs and prices.*") (emphasis supplied).



\*\*\* No. The agreements between BellSouth and FDN never required a contract amendment to implement UNE rate zone changes. \*\*\*

## DISCUSSION

The unambiguous contractual language between BellSouth and FDN resolves this issue. Both parties acknowledged and agreed that central offices would be listed on BellSouth's website. Both parties acknowledged and agreed that BellSouth could provide notice via website postings of certain changes to the interconnection agreements. BellSouth complied fully with the parties' agreements – BellSouth modified the central offices associated with Florida UNE rate zones following a carrier notification letter to the industry.<sup>49</sup> BellSouth followed its standard practice, a practice that has been implemented throughout the region on multiple occasions without incident.

Despite the contractual language, FDN claims that the central offices that make up each UNE rate zone cannot be separated from UNE rates. The problem with FDN's argument is that the interconnection agreement addresses central offices *specifically*. The inclusion of the website reference to central offices is not mere circumstance – as Mr. Morillo testified, BellSouth's systems do not allow a given central office to appear in multiple zones.<sup>50</sup> By including language that puts FDN on notice that central offices are listed on its website and by sending a carrier notification letter to the industry, BellSouth sought to comply fully with its contractual obligations, and the Commission should require FDN to uphold its end of the bargain.

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

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<sup>49</sup> See Exh. 14.

<sup>50</sup> Tr. at 159.

## SUMMARY OF BELLSOUTH'S POSITION

\*\*\* Yes. The relevant contractual terms between the parties authorize BellSouth to implement rate zone redesignations without the need for a contract amendment. \*\*\*

## DISCUSSION

As set forth above, the relevant contractual language between the parties fully authorized BellSouth's implementation of central office changes *without* the need for a prior contract amendment. While FDN suggests that changing central offices alone without implementing new UNE rates creates an imbalance, FDN continues to disregard reality and the language in the Commission's 120-day Order.

In relevant part, the 120-day Order *only requires a contract amendment before charging the newly established UNE rates.*<sup>51</sup> There is no dispute that BellSouth complied fully with this aspect of the 120-day Order; FDN acknowledges that the rates adopted in the 120-day Order became effective *after* the parties' executed the Current Agreement. Instead, FDN's complaint focuses on the limited situations in which a UNE loop ordered from a particular central office became part of a different *zone*. Because FDN has not contested that BellSouth's systems can only include a central office in one UNE rate zones at a time, the practical impact of FDN's view would mean that BellSouth could only have implemented the systems changes necessary to implement this Commission's 120-day Order after each and every CLEC had executed an amendment to its interconnection agreement. FDN fails to consider the length of time and work effort involved in hundreds of contract amendments. FDN also fails to consider the impact of one CLEC waiting to sign an amendment and another CLEC promptly signing an amendment.

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<sup>51</sup> See 120-day Order, p. 115 ("we find that it is appropriate for the *rates* to become effective when the interconnection agreements are amended to reflect the approved UNE rates and the amended agreement becomes effective under the law.") (emphasis supplied).

The CLEC that signs an amendment could claim a breach of contract if BellSouth fails to timely bill it the newly agreed upon rates and would likely be unwilling to accept the failure of its CLEC brethren to sign an amendment as a justifiable basis for delaying it the benefits of new rates.<sup>52</sup> FDN's solution would present only more delays and complaints and should be rejected by the Commission.

FDN also ignores its inaction by disputing all charges associated with central office changes – BellSouth promptly provided it with a contract amendment in December 2002, yet FDN seeks to avoid charges assessed into January and February of 2003. More importantly, the entire billing dispute could have been avoided if FDN had promptly requested and executed a contract amendment to begin with. The Commission should require FDN to submit payment for all outstanding UNE rate zone charges.

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

#### **SUMMARY OF BELLSOUTH'S POSITION**

\*\*\* The appropriate remedy in this proceeding is to require FDN to promptly submit payment to BellSouth for all outstanding disconnect and UNE rate zone charges, along with late payment fees after a joint billing reconciliation effort. \*\*\*

#### **DISCUSSION**

This Commission should order FDN to pay all outstanding disputes relating to UNE loop disconnection charges as well as UNE rate zones. While the parties have presented this Commission evidence of such amounts, both parties acknowledged that a joint billing reconciliation effort should occur, and the final amount that FDN should pay BellSouth should

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<sup>52</sup> See, e.g., May UNE Cost Order, p. 470 (“AT&T witness King argued that the recurring and non-recurring rates and charges *should take effective immediately after we approve and order them.*”) (emphasis supplied).

result from such an effort.<sup>53</sup> Thus, BellSouth requests that the Commission order FDN to pay outstanding, unpaid amounts as well as late payment fees, and also requests that the Commission direct the parties to work together to reach agreement on the actual dollar figure.

In resolving this issue, the Commission should disregard FDN's attempt to paint prior BellSouth billing credits as some type of concession. Any FDN argument claiming billing mistakes operates as a concession is readily dispelled by FDN's deficient records – records that admittedly include amounts from Georgia accounts and records that fail to impose any methodical process or procedure for evaluating whether unpaid, disputed amounts are considered either “winnable” or as an “expense.”<sup>54</sup> The only logical conclusion of an analysis of the billing records would result in a requirement that FDN immediately pay BellSouth amounts it has categorized as an expense, while BellSouth have to forego any claim to its mistakenly provided credits. The better outcome would be for this Commission to allow BellSouth to reverse erroneous credits provided so that it is fully compensated pursuant to the terms of the parties' agreements, an outcome consistent with the parties' “no waiver” contractual language.<sup>55</sup>

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

#### **SUMMARY OF BELLSOUTH'S POSITION**

\*\*\* Yes. FDN was a party of record in Docket No. 990649-TP and in Docket No. 020119. If FDN desired to limit the application of disconnect fees, it should have raised such concerns there and FDN should not have a third bite at the apple here. \*\*\*

#### **DISCUSSION**

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<sup>53</sup> See Exh. 8, p. 21; and Exh. 4, pp. 23-24.

<sup>54</sup> See Tr. at 111-112, and 114.

<sup>55</sup> See Attachments 1 – 4.

The legal doctrines of res judicata and collateral estoppel are legal principles designed to prevent relitigation of previously decided issues.<sup>56</sup> These are important principles because they "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication."<sup>57</sup> Res judicata, or claim preclusion, commonly means that a final judgment on the merits bars the parties from relitigating issues that were or *that might have been raised in the previous action*.<sup>58</sup> Collateral estoppel, or issue preclusion, precludes relitigation of an issue that has already been determined by a valid judgment.<sup>59</sup> Both doctrines examine the following key points: (1) are the two actions identical; (2) do the actions involve the same parties; and (3) was an order on the merits issued by an adjudicatory body in the first action such that the second action should be precluded.<sup>60</sup> In this case, the key elements are satisfied, and the doctrines of res judicata and collateral estoppel bar FDN's attempt to avoid nonrecurring disconnection charges.

FDN's Objection to Nonrecurring Disconnection Fees Is Precluded by the UNE Cost Orders and the Key Customer Docket

In both the UNE Cost Orders and in the Key Customer Docket, BellSouth and FDN participated in proceedings in which nonrecurring disconnection charges were at issue. In the May UNE Cost Order, this Commission examined Sprint's objections to work times; Sprint contended as FDN's witness Dr. Ankum claimed, that jumper work alone was involved in certain

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<sup>56</sup> *Tuma v. Dade County Pub. Sch.*, 989 F. Supp. 1471 (S.D. Fla. 1998).

<sup>57</sup> *Id.*, 989 F. Supp. at 1473.

<sup>58</sup> *Cooper v. Federal Reserve Bank*, 467 U.S. 867, 874 (1984); *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (S. Ct. 1981).

<sup>59</sup> *Stogniew v. McQueen*, 656 So. 2d 917, 919 (Fla. 1995).

<sup>60</sup> The precise language used by courts varies from case to case. In essence these doctrines consider two actions together to determine whether one case should prevent a party from relitigating a claim or issue in a later case. *See generally*, *Stogniew*, 656 So.2d at 919; *Husky Industries v. Griffith*, 422 So.2d 996, 999 (Fla. 5<sup>th</sup> DCA 1982); *Pollak v. Courshon*, 768 So.2d 2, 6 (Fla. 3<sup>rd</sup> DCA 2000).

loop disconnection activities. In the Key Customer Docket, FDN itself filed testimony complaining of nonrecurring disconnection charges.

In this case, the Commission can apply either *res judicata* and/or collateral estoppel to preclude FDN's complaints against nonrecurring disconnection charges. In relevant part, the UNE Cost Orders addressed the work times and rates for UNEs, including loops. The Key Customer Case involved an FDN attack against BellSouth's winback tariffs. This case involves a billing dispute, and an alleged breach of contract claim. Although these actions vary to some degree, *res judicata* requires only that "the facts essential to the maintenance of the action" be identical.<sup>61</sup> Here, the essential facts – the imposition of nonrecurring disconnection rates and the nature of the work times involved to determine the appropriate rates are identical to facts presented and litigated in the UNE Cost Orders and in Key Customer. Because *res judicata* bars even those claims that were not directly raised, but that could have been raised, FDN has no basis to maintain any further objection to nonrecurring disconnection charges that it could and should have raised in earlier proceedings.

In the alternative, if the Commission deems the cases sufficiently different such that *res judicata* does not apply, (BellSouth submits the cases are sufficiently similar to satisfy the *res judicata* standard), the doctrine of collateral estoppel would preclude FDN's objections. Collateral estoppel applies even if two cases or causes of action are different, in which case the judgment in the first case estops the parties from litigating in the second case issues that are common to both.<sup>62</sup>

In reviewing FDN's complaints about nonrecurring disconnection charges in this docket and considering the UNE Cost Orders and the Key Customer Docket, it is clear that all actions

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<sup>61</sup> *Husky Industries*, 422 So.2d at 5-6.

<sup>62</sup> *Id.*, at 6-7.

address the manner in which BellSouth charges FDN nonrecurring disconnect fees, the work times involved in the rates for such fees, and winback situations. This Commission necessarily considered all of these points, and determined that BellSouth should assess nonrecurring disconnection charges and set the applicable rate resulting from its evaluation of the work tasks. In doing so, the UNE Cost Orders and the Key Customer Order preclude FDN from raising complaints about the nature of these fees, the work involved in disconnecting a loop, and the imposition of such fees when a customer migrates between carriers. FDN has waived any right to further litigate these points now, and the Commission should reject out of hand its untimely attack at this juncture.

The Parties in this Action Are Identical to the Parties in the Key Customer Docket

It is readily apparent that both FDN and BellSouth were parties in the proceedings resulting in the UNE Cost Orders and the Key Customer Order. Thus, this Commission is authorized to hold FDN bound by its prior decisions.

The UNE Cost Orders and Key Customer Order Constitute Effective Decisions that Preclude Relitigation Over UNE Loop Disconnection Charges

FDN cannot dispute that this Commission issued final decisions on the merits in its UNE Cost Orders and in the Key Customer Order. Decisions rendered by administrative agencies have preclusive effect.<sup>63</sup> The term “administrative preclusion” refers to a judicial proceeding in which the prior decision of an administrative agency is given res judicata or collateral estoppel effect.<sup>64</sup> Florida courts recognize administrative preclusion.<sup>65</sup> Consequently, this Commission’s

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<sup>63</sup> See *Astoria Federal Sav. and Loan Ass’n v. Solimono*, 501 U.S. 104, 107-108 (1991); *University of Tennessee v. Elliott*, 478 U.S. 788, 798 (1986); *U.S. v. Utah Const. & Min. Co.*, 384 U.S. 394, 422 (1966).

<sup>64</sup> *Solimono*, 501 U.S. at 109.

<sup>65</sup> Where an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it, as to which the parties have had an adequate opportunity to litigate, the

decision in the Key Customer Docket prevents FDN's attack against nonrecurring disconnection charges here.

#### IV. CONCLUSION

BellSouth requests that this Commission order FDN to submit full payment for nonrecurring loop disconnection charges and UNE rate zone charges as well as late payment fees following the completion of a joint billing reconciliation effort.

Respectfully submitted this 14th day of January, 2005.

BELLSOUTH TELECOMMUNICATIONS, INC.

 *Nancy B. White* RN

NANCY B. WHITE

c/o Nancy Sims

150 South Monroe Street, Suite 400

Tallahassee, FL 32301

(305) 347-5561

 *R. Douglas Lackey* RN

R. DOUGLAS LACKEY

MEREDITH E. MAYS

Suite 4300

675 W. Peachtree St., NE

Atlanta, GA 30375

(404) 335-0750

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court will apply res judicata or collateral estoppel to enforce repose. *United States Fidelity and Guar. Co. v. Odoms*, 444 So. 2d 78, 80 (Fla. 5th DCA 1984)(citing *Jet Air Freight v. Jet Air Freight Delivery, Inc.*, 264 So. 2d 35 (Fla. 3d DCA), cert. denied, 267 So. 2d 833 (Fla. 1972).



**Attachments to the Post-Hearing Brief of BellSouth Telecommunications, Inc.**

1. Selected excerpts from the Parties' 1998 Agreement, which adopted the 1997 Agreement between BellSouth and MCI.
2. Selected excerpts from the Parties' Interim Agreement.
3. Selected excerpts from the Parties' Standalone Agreement.
4. Selected excerpts from the Parties' Current Agreement.

# ATTACHMENT 1

## **AGREEMENT**

This Agreement, which shall become effective as of the 1<sup>st</sup> day of July, 1998, is entered into by and between Florida Digital Network, Inc. ("FDN") on behalf of itself, and BellSouth Telecommunications, Inc. ("BellSouth"), a Georgia corporation, having an office at 675 W. Peachtree Street, Atlanta, Georgia 30375, on behalf of itself and its successors and assigns.

**WHEREAS**, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1997; and

**WHEREAS**, section 252(i) of the Act requires BellSouth to make available any interconnection, service, or network element provided under an agreement approved by the appropriate state regulatory body to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in its entirety; and

**WHEREAS**, FDN has requested that BellSouth make available the interconnection agreement in its entirety executed between BellSouth and MCI, dated June 3, 1997 for the state of Florida.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants of this Agreement, FDN and BellSouth hereby agree as follows:

1. FDN and BellSouth shall adopt in its entirety the MCI Interconnection Agreement dated June 3, 1997 and any and all amendments to said agreement executed and approved by the appropriate state regulatory commission as of the date of the execution of this Agreement. The MCI Interconnection Agreement and all amendments are attached hereto as Exhibit 1 and incorporated herein by this reference.
2. The term of this Agreement shall be from the effective date and shall expire as set forth in Part A, section 3 of the MCI Interconnection Agreement. For the purposes of determining the expiration date of this Agreement pursuant to Part A, section 3 of the MCI Interconnection Agreement, the effective date shall be June 19, 1997.
3. At least 30 days after execution, BellSouth shall provide and make available to FDN a copy of all amendments to the MCI Interconnection Agreement executed after the effective date of this Agreement. FDN shall notify BellSouth of acceptance or rejection of the amendment within 30 days of receipt of said amendment.
4. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, addressed to:

BellSouth Telecommunications, Inc.  
OLEC Account Team  
Room E4E1  
3535 Colonnade Parkway  
Birmingham, Alabama 35243

and

General Attorney - COU  
675 W. Peachtree Street  
Suite 4300  
Atlanta, Georgia 30375

Florida Digital Network, Inc.  
Michael Gallagher  
1199 North Orange Avenue  
Orlando, Florida 32804

or at such other address as the intended recipient previously shall have designated by written notice to the other Party. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

BellSouth Telecommunications, Inc.

Florida Digital Network, Inc.

Jerry Hendrix (signature on original)

Mike Gallagher (signature on original)

DATE

DATE

7/1/98

6/29/98

242254.1

**MCImetro/BellSouth INTERCONNECTION AGREEMENT**

This Interconnection Agreement (the "Agreement"), effective [insert date], 199 (the "Effective Date"), is entered into by and between BellSouth Telecommunications, Inc. ("BellSouth"), a Florida corporation, and MCImetro Access Transmission Services, Inc. ("MCIm"), a Delaware corporation, and to establish the rates, terms and conditions for interconnection, local resale, ancillary services and purchase of unbundled network elements (individually referred to as the "service" or collectively as the "services").

WHEREAS, the parties wish to interconnect their local exchange networks in a technically and economically efficient manner for the transmission and termination of calls ("Interconnection"); and

WHEREAS, MCIm wishes to purchase Telecommunications Services for resale to others ("Local Resale" or "Services for Resale"), and BellSouth is willing to provide such service pursuant to the terms and conditions of this Agreement; and

WHEREAS, MCIm wishes to purchase on an unbundled basis Network Elements, and BellSouth is willing to provide such services; and

WHEREAS, MCIm wishes to purchase ancillary services such as access to poles, ducts conduits and rights of way and collocation of equipment at BellSouth's facilities on the terms and subject to the conditions of this Agreement; and

WHEREAS, the parties intend the rates, terms and conditions of this Agreement, and their performance of obligations thereunder, to comply with the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), the applicable Rules and Regulations of the Federal Communications Commission ("FCC") in effect, and the orders, rules and regulations of the state regulatory body.

Now, therefore, in consideration of the terms and conditions contained herein, BellSouth and MCIm hereby mutually agree as follows:

## MCImetro-BellSouth Florida Interconnection Agreement

terms are not renegotiated within ninety (90) days after such notice, the dispute shall be resolved in accordance with Section 23 (Dispute Resolution Procedures) of this Agreement.

2.5 The parties intend that any additional services requested by either party relating to the subject matter of this Agreement will be incorporated into this Agreement by amendment.

### **Section 3. Term of Agreement**

This Agreement shall become binding upon execution by the parties and continue for a period of 3 years, unless earlier terminated in accordance with Section 20 (Termination). No later than 180 days prior to the expiration of this Agreement, the parties agree to commence negotiations with regard to the terms, conditions and prices of a follow on agreement for the provision of services to be effective on or before the expiration date of this Agreement ("Follow-on Agreement"). The Parties further agree that any such Follow-on Agreement shall be for a term of no less than three years unless the Parties agree otherwise.

If, within 135 days of commencing the negotiation referenced above, the Parties are unable to satisfactorily negotiate new terms, conditions and prices, either Party may petition the State regulatory body to establish an appropriate Follow-on Agreement pursuant to 47 U.S.C. '252. The Parties agree that in such event they shall encourage the State regulatory body to issue its order regarding such Follow-on Agreement no later than the expiration date of this Agreement. The Parties further agree that in the event the State regulatory body does not issue its order by the expiration date of this Agreement or if the Parties continue beyond the expiration date of this Agreement to negotiate without State regulatory body intervention, the terms, conditions and prices ultimately ordered by the State regulatory body, or negotiated by the Parties, will be effective retroactive to the day following the expiration date of this Agreement. Until the Follow-on Agreement becomes effective, BellSouth shall provide Services pursuant to the terms, conditions and prices of this Agreement that are then in effect.

### **Section 4. Charges and Payment**

In consideration of the services provided by BellSouth under this Agreement, MCIm shall pay the charges set forth in Attachment I. The billing and payment procedures for charges incurred by MCIm hereunder are set forth in Attachment VIII.

### **Section 5. Assignment and Subcontract**

5.1 Any assignment by either party to any non-affiliated entity of any right,

## MCImetro-BellSouth Florida Interconnection Agreement

### **Section 16. Waivers**

16.1 No waiver of any provisions of this Agreement and no consent to any default under this Agreement shall be effective unless the same shall be in writing and properly executed by or on behalf of the party against whom such waiver or consent is claimed.

16.2 No course of dealing or failure of any party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.

16.3 Waiver by either party of any default by the other party shall not be deemed a waiver of any other default.

### **Section 17. Survival**

The following provisions of this Part A shall survive the expiration or termination of this Agreement: Sections 10, 11, 12, 21, 22, 26 and 27, and any other obligations to be performed after the expiration or termination of the Agreement.

### **Section 18. Force Majeure**

Neither party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, strikes, nuclear accidents, floods, power blackouts, or unusually severe weather.

In the event of any such excused delay in the performance of a party's obligations(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of delay. In the event of such delay, the delaying party shall perform its obligations at a performance level no less than that which it uses for its own operations and will resume performance in a nondiscriminatory manner.

### **Section 19. Non-Discriminatory Treatment**

If as a result of any proceeding or filing before any Court, State Commission, or the Federal Communications Commission, voluntary agreement or arbitration proceeding pursuant to the Act or pursuant to any applicable state law, BellSouth becomes obligated to provide Services and Elements, whether or not presently covered by this Agreement, to a third Party at rates or on terms and conditions more favorable to such third Party than the applicable provisions of this Agreement, MCI shall have the option to substitute such more favorable rates, terms, and conditions for the relevant provisions of this Agreement which shall apply to the same States as such other Party, and such substituted rates, terms or conditions shall be deemed to have been effective under this Agreement as of the effective date thereof. BellSouth shall provide to MCI any BellSouth

## MCImetro-BellSouth Florida Interconnection Agreement

No provision of this Agreement shall be deemed waived, amended or modified by either party unless such a waiver, amendment or modification is in writing, dated, and signed by both parties.

### **Section 29. Severability**

Subject to Section 2 - Regulatory Approvals, if any part of this Agreement is held to be invalid for any reason, such invalidity will affect only the portion of this Agreement which is invalid. In all other respects this Agreement will stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect.

### **Section 30. Headings Not Controlling**

The headings and numbering of Sections, Parts and Attachments in this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

### **Section 31. Entire Agreement**

This Agreement, including all Parts and Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.

### **Section 32. Counterparts**

This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

### **Section 33. Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

### **Section 34.**

The parties acknowledge that the terms of this agreement were established pursuant to an order of the Florida Public Service Commission. Any or all of the terms of this agreement may be altered or abrogated by a successful challenge to the agreement (or to the order approving the agreement) as permitted by applicable law. By signing this agreement, the parties do not waive their right to pursue such a challenge.



**ATTACHMENT I**  
**PRICE SCHEDULE**

**1. General Principles**

1.1 All rates provided under this Agreement are permanent unless otherwise indicated in Table I, subject to true-up, and shall remain in effect until the Commission determines otherwise or unless they are not in accordance with all applicable provisions of the Act, the Rules and Regulations of the FCC in effect, or the Commission's rules and regulations, in which case Part A, Section 2 shall apply.

1.2 Except as otherwise specified in this Agreement, the Act or any Commission order, each Party shall be responsible for all costs and expenses that it incurs to comply with its obligation under this Agreement.

**2. Local Service Resale**

The rates that MCIm shall pay to BellSouth for Resale shall be an amount equal to BellSouth's tariffed rates for each resold service as reduced by a percentage amount equal to the wholesale discount (set forth below in section 2.1, below). If BellSouth reduces such tariffed rates during the term of this Agreement, the wholesale discount shall be applied to the reduced tariffed rates.

2.1 The following wholesale discount will apply to all Telecommunications Services available for resale in Florida:

Residential Service: 21.83 %

Business Service: 16.81 %

**3. Unbundled Network Elements**

The charges that MCIm shall pay to BellSouth for Network Elements are set forth in Table 1 of this Attachment.

**4. Ancillary Functions and Supporting Elements**

The interim prices for collocation, AIN and other Ancillary Functions or Supporting Elements that MCIm shall pay to BellSouth are set forth in Table 1 of this Attachment.

# ATTACHMENT 2

## INTERIM AGREEMENT

**THIS INTERIM AGREEMENT** is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and Florida Digital Network, Inc. ("FDN"), a Delaware corporation, and shall be deemed effective as of the last date of signature by the Parties. This Agreement may refer to either BellSouth or FDN or both as a "Party" or "Parties."

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in, *inter alia*, the state of Florida; and

WHEREAS, FDN is a CLEC authorized to provide telecommunications services in, *inter alia*, the state of Florida; and

WHEREAS, BellSouth and FDN have entered into good faith negotiations pursuant to the Act to renegotiate an interconnection agreement ("New Interconnection Agreement") to replace the existing interconnection agreement between the Parties, which expired on June 3, 2000 ("Expired Interconnection Agreement"); and

WHEREAS, until such time as the Parties execute the New Interconnection Agreement, BellSouth and FDN shall continue to operate under the rates, terms and conditions of the Expired Interconnection Agreement; and

WHEREAS, subsequent to the expiration of the Expired Interconnection Agreement, during the pendency of the interconnection negotiations the FCC entered an Order dated November 5, 1999, in CC Docket No. 96-98, Third Report and Order ("UNE Remand Order"); and

WHEREAS, subsequent to the expiration of the Expired Interconnection Agreement, during the pendency of the interconnection negotiations between BellSouth and FDN, the FCC entered a Supplemental Order Clarification dated June 2, 2000, in CC Docket No. 96-98, Third Report and Order ("Supplemental Clarifying Order"); and

WHEREAS, BellSouth and FDN desire to implement the FCC UNE Remand Order and Supplemental Clarifying Order on an interim basis until such time as the New Interconnection Agreement is executed by the Parties or for a year, whichever is shorter; and

WHEREAS, the Parties acknowledge that this the subject matter of the FCC UNE Remand Order and Supplemental Clarifying Order is subject to further regulatory rule-making by the FCC and/or state Commissions. Notwithstanding the execution of this Agreement, the Parties do not intend to waive any rights or obligations, which may arise from a subsequent regulatory rule-making or judicial decision; and

WHEREAS, FDN also desires to purchase from BellSouth the Universal Digital Channel (UDC) Loop.

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and FDN agree as follows:

**1. Definitions**

**Affiliate** is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

**Commission** is defined as the appropriate regulatory agency in the state of Florida.

**Competitive Local Exchange Carrier (CLEC)** means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

**End User** means the ultimate user of the Telecommunications Service.

**FCC** means the Federal Communication Commission.

**Telecommunications** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**Telecommunications Service** means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

**Telecommunications Act of 1996 ("Act")** means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47, U.S.C. Section 1 et. seq.).

**2. Term of the Agreement**

**2.1** The term of this Agreement shall be one year or until the Parties execute the New Interconnection Agreement, whichever is sooner. The term of this Agreement shall begin on the last date of signature by the Parties and shall apply to the state of Florida.

**2.2** The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement ("Subsequent Agreement"). If as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, then except as set forth in Section 2.3.2 below, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this Agreement after expiration shall be as set forth in Section 2.3 below.

Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

16.4 Notwithstanding anything to the contrary in this Agreement, this Agreement shall not be amended or modified after the expiration date hereof as set forth in Section 2 above.

**17. Non-waiver of Legal Rights**

Execution of this Agreement by either Party does not confirm or infer that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

**18. Severability**

If any provision of this Agreement, or the application of such provision to either Party or circumstance, shall be held invalid, the remainder of the Agreement, or the application of any such provision to the Parties or circumstances other than those to which it is held invalid, shall not be affected thereby, provided that the Parties shall attempt to reformulate such invalid provision to give effect to such portions thereof as may be valid without defeating the intent of such provision.

**19. Waivers**

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

**20. Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

**21. Arm's Length Negotiations**

This Agreement was executed after arm's length negotiations between the undersigned Parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all Parties.

**22. Notices**

**21. Arm's Length Negotiations**

This Agreement was executed after arm's length negotiations between the undersigned Parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all Parties.

**22. Notices**

22.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by US mail postage prepaid, address to:

**BellSouth Telecommunications, Inc.**

Account Team  
600 North 19<sup>th</sup> Street  
Birmingham, Alabama 35203

and

General Attorney - COU  
Suite 4300  
675 W. Peachtree St.  
Atlanta, GA 30375

**Florida Digital Network, Inc.**

*390 North Orange  
Ave., Suite 200  
Orlando, FL  
32801*

Michael P. Gallagher  
1199 North Orange Ave.  
Orlando, Florida 32804

*Michael P. Gallagher  
MPG*

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

22.2 Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

22.2.1 Notwithstanding the foregoing, BellSouth may provide FDN notice via Internet posting of price changes, changes to the terms and conditions of services available for resale, changes to business processes and policies, notices of new service offerings, and changes to service offerings not requiring an amendment to this Agreement, notices required to be posted to BellSouth's website, and any other information of general applicability to CLECs.

**23. Rule of Construction**

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

are obligated to provide access to Interconnection, services and Network Elements to FDN as a requesting carrier under the Act).

**32. Survival**

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**33. Entire Agreement**

This Agreement and its Attachments, incorporated herein by this reference, sets forth the entire understanding and supersedes prior Agreements between the Parties relating to Universal Digital Channel (UDC) Loops and unbundled network element combinations and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

**BellSouth Telecommunications, Inc.**

**Florida Digital Network, Inc.**

On file  
Signature

on file  
Signature

Jerry Hendrix  
Name

Mike Gallagher  
Name

Senior Director  
Title

CEO  
Title

10/20/2000  
Date

10/09/2000  
Date

# ATTACHMENT 3



**Agreement Between  
BellSouth Telecommunications Inc.  
And  
Florida Digital Network, Inc.**

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., (“BellSouth”), a Georgia corporation, and Florida Digital Network, Inc. (“FDN”), a Delaware corporation, and shall be deemed effective as of the last date of signature by the Parties. This Agreement may refer to either BellSouth or FDN or both as a “Party” or “Parties.”

**WITNESSETH**

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in, *inter alia*, the state of Florida; and

WHEREAS, FDN is a CLEC authorized to provide telecommunications services in, *inter alia*, the state of Florida; and

WHEREAS, BellSouth and FDN have entered into good faith negotiations pursuant to the Act to renegotiate an interconnection agreement (“New Interconnection Agreement”) to replace the existing interconnection agreement between the Parties, which expired on June 3, 2000 (“Expired Interconnection Agreement”); and

WHEREAS, until such time as the Parties execute the New Interconnection Agreement, BellSouth and FDN shall continue to operate under the rates, terms and conditions of the Expired Interconnection Agreements; and

WHEREAS, BellSouth and FDN are currently involved in an arbitration proceeding (the “Arbitration”) before the Florida Public Services Commission to resolve any and all disputes which arose during the course of the negotiations; and

WHEREAS, FDN desires access to incorporate rates for UNE’s as set forth by the Florida Public Service Commission in Docket Number 990649-TP/Order Number PSC-01-1181-FOF-TP issued on May 25, 2001.

**NOW THEREFORE**, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BellSouth and FDN hereby covenant and agree as follows:

1. Attachment 1, Table 1-1, 1-2, 1-3, 1-4, 1-5 of the Expired Agreement is hereby amended to include those rates ordered by the Florida Public Service Commission in Docket Number 990649-TP as set forth in Exhibit 1 attached hereto and incorporated herein by this reference.

2. Attachment 1, Exhibit A of the Interim Agreement dated October 20, 2000 and the Amendment to the Interim Agreement to add Dark Fiber rates dated March 20, 2001 are hereby amended to include those rates ordered by the Florida Public Service Commission in Docket Number 990649-TP as set forth in Exhibit 1 attached hereto and incorporated herein by this reference. Further, both said Interim Agreements are amended such that the term of those agreements coincides with the term of this Agreement.
3. Any rate in the expired Agreement that is not expressly replaced by the rates set forth in Exhibit 1 and as described in paragraphs 1 and 2 above shall remain in full force and effect in accordance with the terms of the Expired Agreement.
4. The Parties agree that all of the other provisions of the Expired Agreement, dated July 1, 1998, shall remain in full force and effect, except as stated in the Interim Agreements dated October 20, 2000, and March 20, 2001
5. The Parties further agree that either or both of the Parties is authorized to submit this Agreement to the applicable PSC or other regulatory body having jurisdiction over the subject matter of this Agreement, for approval subject to Section 252(e) of the federal Telecommunications Act of 1996.
6. Notwithstanding anything herein to the contrary, the parties do not intend to, and nothing herein shall, alter the terms of that certain Confidential Settlement Agreement dated April 18, 2001.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

**BellSouth Telecommunications, Inc.**

**Florida Digital Network**

By: Signature on file

By: Signature on file

Name: C.W. Boltz

Name: Mike Gallagher

Title: Managing Director

Title: CEO

Date: 9-5-01

Date: 8/22/01

**1. Term of the Agreement**

1.1 The term of this Agreement shall be one year or until the Parties execute the New Interconnection Agreement, whichever is sooner. The term of this Agreement shall begin on the last date of signature by the Parties and shall apply to the state of Florida.

1.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement ("Subsequent Agreement"). If as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, then except as set forth in Section 1.3.2 below, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this Agreement after expiration shall be as set forth in Section 1.3 below.

1.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in Section 1.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate terms, conditions and prices for the Subsequent Agreement pursuant to 47 U.S.C. 252. In the event the Commission does not issue its order prior to the expiration date of this Agreement, or if the Parties continue beyond the expiration date of this Agreement to negotiate the Subsequent Agreement without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the Parties, will be effective retroactive to the day following the expiration date of this Agreement.

15.4 Notwithstanding anything to the contrary in this Agreement, this Agreement shall not be amended or modified after the expiration date hereof as set forth in Section 1 above.

**16. Non-waiver of Legal Rights**

Execution of this Agreement by either Party does not confirm or infer that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

**17. Severability**

If any provision of this Agreement, or the application of such provision to either Party or circumstance, shall be held invalid, the remainder of the Agreement, or the application of any such provision to the Parties or circumstances other than those to which it is held invalid, shall not be affected thereby, provided that the Parties shall attempt to reformulate such invalid provision to give effect to such portions thereof as may be valid without defeating the intent of such provision.

**18. Waivers**

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

**19. Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

**20. Arm's Length Negotiations**

This Agreement was executed after arm's length negotiations between the undersigned Parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all Parties.

**21. Notices**

21.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by US mail postage prepaid, address to:

**BellSouth Telecommunications, Inc.**

Account Team  
600 North 19<sup>th</sup> Street  
Birmingham, Alabama 35203

and

General Attorney - COU  
Suite 4300  
675 W. Peachtree St.  
Atlanta, GA 30375

**Florida Digital Network, Inc.**

Michael P. Gallagher  
390 North Orange Ave.  
Suite  
Orlando, Florida 3280

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

21.2 Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

21.2.1 Notwithstanding the foregoing, BellSouth may provide FDN notice via Internet posting of price changes, changes to the terms and conditions of services available for resale, changes to business processes and policies, notices of new service offerings, and changes to service offerings not requiring an amendment to this Agreement, notices required to be posted to BellSouth's website, and any other information of general applicability to CLECs.

**22. Rule of Construction**

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

**23. Headings of No Force or Effect**

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

**24. Multiple Counterparts**

UNBUNDLED NETWORK ELEMENTS  
Florida

CATEGORY	NOTES	UNBUNDLED NETWORK ELEMENT	Interim	Zone	ICS	USOC	RATES					OSS RATES					
							Res	First	Advt	First	Advt	BOMBC	BOMAN	BOMAN	BOMAN	BOMAN	BOMAN
The "Zone" shown in the sections for stand-alone loops or loops as part of a combination refers to Geographically Deaveraged UNE Zones. To view Geographically Deaveraged UNE Zone Designations by Central Office, refer to Internet Website: <a href="http://www.inter">http://www.inter</a>																	
<b>UNBUNDLED EXCHANGE ACCESS LOOP</b>																	
<b>2-WIRE ANALOG VOICE GRADE LOOP</b>																	
		2-Wire Analog Voice Grade Loop - Service Level 1- Zone 1		1	UEANL	UEAL2	\$11.74	\$44.68	\$20.57	\$23.10	\$5.92	\$10.73					\$1.65
		2-Wire Analog Voice Grade Loop - Service Level 1- Zone 2		2	UEANL	UEAL2	\$16.26	\$44.68	\$20.57	\$23.10	\$5.92	\$10.73					\$1.65
		2-Wire Analog Voice Grade Loop - Service Level 1- Zone 3		3	UEANL	UEAL2	\$30.75	\$44.68	\$20.57	\$23.10	\$5.92	\$10.73					\$1.65
		2 Wire Analog Voice Grade Loop-Service Level 1-Line Splitting- Zone 1		1	UEPSR	UEALS	\$11.74	\$44.68	\$20.57	\$23.10	\$5.92	\$10.73					\$1.65
		2 Wire Analog Voice Grade Loop-Service Level 1-Line Splitting- Zone 2		2	UEPSR	UEALS	\$16.26	\$44.68	\$20.57	\$23.10	\$5.92	\$10.73					\$1.65
		2 Wire Analog Voice Grade Loop-Service Level 1-Line Splitting- Zone 3		3	UEPSR	UEALS	\$30.75	\$44.68	\$20.57	\$23.10	\$5.92	\$10.73					\$1.65
		Engineering Information Document (EI)			UEANL			\$26.77	\$26.77								
		Manual Order Coordination for UVL-SL 1 (per loop)			UEANL	UEAMC		\$6.12	\$6.12								
		Order Coordination for Specified Conversion Time for UVL-SL 1 (per LSR)			UEANL	OCOSL		\$20.75	\$20.75								
		2-Wire Analog Voice Grade Loop - Service Level 2 w/Loop or Ground Start Signaling - Zone 1		1	UEA	UEAL2	\$13.43	\$122.38	\$74.35	\$57.28	\$10.83	\$10.73					\$1.65
		2-Wire Analog Voice Grade Loop - Service Level 2 w/Loop or Ground Start Signaling - Zone 2		2	UEA	UEAL2	\$18.80	\$122.38	\$74.35	\$57.28	\$10.83	\$10.73					\$1.65
		2-Wire Analog Voice Grade Loop - Service Level 2 w/Loop or Ground Start Signaling - Zone 3		3	UEA	UEAL2	\$35.18	\$122.38	\$74.35	\$57.28	\$10.83	\$10.73					\$1.65
		Order Coordination for Specified Conversion Time (per LSR)			UEA	OCOSL		\$20.75									
		2-Wire Analog Voice Grade Loop - Service Level 2 w/Reverse Battery Signaling - Zone 1		1	UEA	UEAR2	\$13.43	\$122.38	\$74.35	\$57.28	\$10.83	\$10.73					\$1.65
		2-Wire Analog Voice Grade Loop - Service Level 2 w/Reverse Battery Signaling - Zone 2		2	UEA	UEAR2	\$18.80	\$122.38	\$74.35	\$57.28	\$10.83	\$10.73					\$1.65
		2-Wire Analog Voice Grade Loop - Service Level 2 w/Reverse Battery Signaling - Zone 3		3	UEA	UEAR2	\$35.18	\$122.38	\$74.35	\$57.28	\$10.83	\$10.73					\$1.65
		Order Coordination for Specified Conversion Time (per LSR)			UEA	OCOSL		\$20.75									
<b>4-WIRE ANALOG VOICE GRADE LOOP</b>																	
		4-Wire Analog Voice Grade Loop - Zone 1		1	UEA	UEAL4	\$21.23	\$151.34	\$103.82	\$80.47	\$14.02	\$10.73					\$1.65
		4-Wire Analog Voice Grade Loop - Zone 2		2	UEA	UEAL4	\$29.41	\$151.34	\$103.82	\$80.47	\$14.02	\$10.73					\$1.65
		4-Wire Analog Voice Grade Loop - Zone 3		3	UEA	UEAL4	\$55.83	\$151.34	\$103.82	\$80.47	\$14.02	\$10.73					\$1.65
		Order Coordination for Specified Conversion Time (per LSR)			UEA	OCOSL		\$20.75									
<b>2-WIRE ISDN DIGITAL GRADE LOOP</b>																	
		2-Wire ISDN Digital Grade Loop - Zone 1		1	UDN	UHL2X	\$20.44	\$133.15	\$85.12	\$58.10	\$9.65	\$10.73					\$1.65
		2-Wire ISDN Digital Grade Loop - Zone 2		2	UDN	UHL2X	\$28.31	\$133.15	\$85.12	\$58.10	\$9.65	\$10.73					\$1.65
		2-Wire ISDN Digital Grade Loop - Zone 3		3	UDN	UHL2X	\$53.58	\$133.15	\$85.12	\$58.10	\$9.65	\$10.73					\$1.65
		Order Coordination for Specified Conversion Time (per LSR)			UDN	OCOSL		\$20.75									
<b>2-WIRE UNIVERSAL DIGITAL CHANNEL (UDC) COMPATIBLE LOOP</b>																	
		2-Wire Universal Digital Channel (UDC) Compatible Loop - Zone 1		1	UDC	UDC2X	\$20.44	\$133.15	\$85.12	\$58.10	\$9.65	\$10.73					\$1.65
		2-Wire Universal Digital Channel (UDC) Compatible Loop - Zone 2		2	UDC	UDC2X	\$28.31	\$133.15	\$85.12	\$58.10	\$9.65	\$10.73					\$1.65
		2-Wire Universal Digital Channel (UDC) Compatible Loop - Zone 3		3	UDC	UDC2X	\$53.58	\$133.15	\$85.12	\$58.10	\$9.65	\$10.73					\$1.65
<b>2-WIRE ASYMMETRICAL DIGITAL SUBSCRIBER LINE (ADSL) COMPATIBLE LOOP</b>																	

**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
FLORIDA DIGITAL NETWORK, INC.  
AND  
BELL SOUTH TELECOMMUNICATIONS, INC.  
DATED SEPTEMBER 5, 2001**

Pursuant to this Amendment, (the "Amendment"), Florida Digital Network, Inc. ("FDN"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated September 5, 2001 ("Agreement").

WHEREAS, BellSouth and FDN entered into the Agreement on September 5, 2001, and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Interim Agreement entered into between FDN and BellSouth is hereby amended to include a new Section 6 and all its subsections as follows:
  6. CLEC to CLEC Conversions for Unbundled Loops
    - 6.1.1 CLEC to CLEC Conversion for Unbundled Loops may be used by FDN when converting an existing unbundled loop from another CLEC for the same end-user.
      - 6.1.1.1 The loop type being converted must be included in FDN Interconnection Agreement before requesting a conversion. FDN must have an end-user letter of authorization (LOA) on file (it must be available if requested by BellSouth).
      - 6.1.1.2 The loop being converted must be the same loop type with no requested changes to the loop; must be at the same end-user location and the same serving wire center. The loop conversion must not require an outside dispatch.
      - 6.1.1.3 For the conversion process, Order Coordination comes standard on 2 Wire Unbundled Voice Loop-SL2, 4 Wire Unbundled Voice Loop, 2 Wire ADSL Compatible Loop, 2 and 4 Wire HDSL Compatible Loop, 2 Wire Unbundled ISDN Loop, 2 Wire Unbundled Universal Digital Channel Loop, 4 Wire Unbundled Digital/DSO (19.2/56/64 kbps), and 4 Unbundled DS1/ISDN Loop.
      - 6.1.1.4 Order Coordination is available as a chargeable option on Unbundled Voice Loop-SL1, Unbundled Copper Loop-Non Designed, and Unbundled Copper Loop-Designed.
2. Attachment 1, Exhibit A Rates is hereby modified to include the rates for CLEC to CLEC Conversions for Unbundled Loops as set forth in Exhibit 1 attached hereto and incorporated herein by this reference.

3. All of the other provisions of the Agreement, dated September 5, 2001, shall remain in full force and effect.
4. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

This Amendment shall be deemed effective 30 calendar days following the date of the last signature of both Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

**Florida Digital Network, Inc.**  
By: signature on file

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \* \_\_\_\_\_

**BellSouth Telecommunications, Inc.**  
By: signature on file

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \* \_\_\_\_\_

\*effective date April 11, 2002



## **EXHIBIT 1**

**UNBUNDLED NETWORK ELEMENTS - Florida**

CATEGORY	RATE ELEMENTS	Unit in Zone	RCS	USOC	RATES(\$)						
					Inc	Nonrecurrent	First Addtl	First Nonrecurrent Disconnected	SOMEC	SOMAN	SOMAN
OPERATIONAL SUPPORT SYSTEMS											

NOTE: (1) Electronic Service Order: FDM should contact its contract negotiator if it prefers the state specific electronic service ordering charges as ordered by the State Commission. The electronic service ordering charges currently contained in this rate exhibit is the BellSouth regional electronic service ordering charge. FDM may elect either the state specific Commission ordered rates for the electronic service ordering charges, or FDM may elect the regional electronic service ordering charge.

NOTE: (2) Any element that can be ordered electronically will be billed according to the SOMEC rate listed in this category. Please refer to BellSouth's Business Rules for Local Ordering (BBR-LO) to determine if a product can be ordered electronically. For those elements that cannot be ordered electronically at present per the BBR-LO, the listed SOMEC rate in this category reflects the charge that would be billed to a CLEC once electronic ordering capabilities come on-line for that element. Otherwise, the manual ordering charge, SOMAN, will be applied to a CLEC's bill when it submits an LSR to BellSouth.

UNBUNDLED EXCHANGE ACCESS LOOP (UN-EX1)	CLEC to CLEC Conversion Charge without outside dispatch	UREWO	UEAN	48.11	22.01	131.83	38.27	11.90
2-WIRE ANALOG VOICE GRADE LOOP	CLEC to CLEC Conversion Charge without outside dispatch	UREWO	UEAN	48.11	22.01	131.83	38.27	11.90
		UREWO	UEAN	48.11	22.01	131.83	38.27	11.90
3-WIRE ISDN DIGITAL GRADE LOOP	CLEC to CLEC Conversion Charge without outside dispatch	UREWO	UEAN	48.11	22.01	131.83	38.27	11.90
3-WIRE Unimodal Digital Channel (UDC) COMPATIBLE LOOP	CLEC to CLEC Conversion Charge without outside dispatch	UREWO	UDN	121.17	33.08	131.83	33.08	11.90
2-WIRE ASYMMETRICAL DIGITAL SUBSCRIBER LINE (ADSL) COMPATIBLE LOOP	CLEC to CLEC Conversion Charge without outside dispatch	UREWO	UDC	121.17	33.08	131.83	33.08	11.90
2-WIRE HIGH BIT RATE DIGITAL SUBSCRIBER LINE (HDSL) COMPATIBLE LOOP	CLEC to CLEC Conversion Charge without outside dispatch	UREWO	UHL	134.40	29.33	134.40	29.33	11.90
4-WIRE HIGH BIT RATE DIGITAL SUBSCRIBER LINE (HDSL) COMPATIBLE LOOP	CLEC to CLEC Conversion Charge without outside dispatch	UREWO	UHL	134.40	29.33	134.40	29.33	11.90
4-WIRE DS1 DIGITAL LOOP	CLEC to CLEC Conversion Charge without outside dispatch	UREWO	UHL	134.40	29.33	134.40	29.33	11.90
4-WIRE 18.2, 56 OR 64 Kbps DIGITAL GRADE LOOP	CLEC to CLEC Conversion Charge without outside dispatch	UREWO	USL	130.25	40.04	130.25	40.04	11.90
2-WIRE UNBUNDLED COPPER LOOP	CLEC to CLEC Conversion Charge without outside dispatch	UREWO	UDL	131.87	38.88	131.87	38.88	11.90
4-WIRE COPPER LOOP (UCL-4N)	CLEC to CLEC Conversion Charge without outside dispatch	UREWO	UCL	123.81	31.41	123.81	31.41	11.90
4-WIRE COPPER LOOP	CLEC to CLEC Conversion Charge without outside dispatch	UREWO	UCL	123.81	31.41	123.81	31.41	11.90
		UREWO	UEQ	44.89	22.01	44.89	22.01	11.90
		UREWO	UCL	123.81	31.41	123.81	31.41	11.90
		UREWO	UCL	123.81	31.41	123.81	31.41	11.90

**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
FLORIDA DIGITAL NETWORK, INC.  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED SEPTEMBER 5, 2001**

Pursuant to this Amendment, (the "Amendment"), Florida Digital Network, Inc. ("FDN"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated September 5, 2001 ("Agreement").

WHEREAS, BellSouth and FDN entered into the Agreement on September 5, 2001, and;

WHEREAS, BellSouth and FDN amended the Interim Agreement to include a new Section 6 and all its subsections and,

WHEREAS, The Parties desire to change the effective date of the Amendment;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Amendment to the Interim Agreement dated March 12, 2002 is amended to make the effective date of the Amendment March 12, 2002 for all terms, conditions, and rates.
2. All of the other provisions of the Agreement, dated September 5, 2001, shall remain in full force and effect.
3. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

This Amendment shall be deemed effective the date of the last signature of both Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

**Florida Digital Network, Inc.**  
By: signature on file

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ \*

**BellSouth Telecommunications, Inc.**  
By: signature on file

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ \*

\* effective date March 12, 2002

**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
FLORIDA DIGITAL NETWORK, INC.  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED SEPTEMBER 5, 2001**

Pursuant to this Amendment, (the "Amendment"), Florida Digital Network, Inc. ("FDN"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated September 5, 2001 ("Agreement").

WHEREAS, BellSouth and FDN entered into the Agreement on September 5, 2001, and;

WHEREAS, BellSouth and FDN have entered into good faith negotiations pursuant to the Act to renegotiate an interconnection agreement ("New Interconnection Agreement") to replace the existing interconnection agreement between the Parties, which expired on June 2, 2000 ("Expired Interconnection Agreement"); and,

WHEREAS, BellSouth and FDN desire to extend the termination date of this Agreement; and,

WHEREAS, BellSouth and FDN desire to add Expedite charges and Cross Connect rates to this Agreement;

WHEREAS, until such time as the Parties execute the New Interconnection Agreement, BellSouth and FDN shall continue to operate under the rates, terms and conditions of the Expired Interconnection Agreements; and

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Section 1 Term of Agreement of the General Terms and Conditions of the Interconnection Agreement is deleted in its entirety and replaced with the following Section 1 Term of Agreement below:
  1. **Term of the Agreement**
    - 1.1 The term of this Agreement shall be from September 5, 2001 to February 4, 2003 or until the Parties execute the New Interconnection Agreement, whichever is sooner and shall apply to the state of Florida. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.
    - 1.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement ("Subsequent Agreement"). If as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, then except as set forth in Section 1.3.2 below, this Agreement

shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this Agreement after expiration shall be as set forth in Section 1.3 below.

- 1.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in Section 1.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate terms, conditions and prices for the Subsequent Agreement pursuant to 47 U.S.C. 252. In the event the Commission does not issue its order prior to the expiration date of this Agreement, or if the Parties continue beyond the expiration date of this Agreement to negotiate the Subsequent Agreement without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the Parties, will be effective as of the date as stated in the Subsequent Agreement and shall not be applied retroactively to the expiration date of this Agreement unless the Parties subsequently agree otherwise.
  - 1.3.1 Except as set forth in Section 1.3.2 below, Notwithstanding the foregoing, in the event that as of the date of expiration of this Agreement and conversion of this Agreement to a month-to-month term, the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section 1.3 above, then either Party may terminate this Agreement upon sixty (60) days notice to the other Party. In the event that BellSouth terminates this Agreement as provided above, BellSouth shall continue to offer services to FDN pursuant to (1) the terms, conditions and rates set forth in BellSouth's Statement of Generally Available Terms (SGAT) to the extent an SGAT has been approved by the applicable Commission(s) or (2) an agreement adopted by FDN pursuant to 47 U.S.C. § 252 and the FCC rules and regulations regarding availability and adoption of agreements. If any state Commission has not approved a BellSouth SGAT, then upon BellSouth's termination of this Agreement as provided herein, BellSouth will continue to provide services to FDN pursuant to BellSouth's then current standard interconnection agreement. In the event that the SGAT or BellSouth's standard interconnection agreement becomes effective as between the Parties, the Parties may continue to negotiate a Subsequent Agreement, and the terms of such Subsequent Agreement shall be effective as of the date stated in the Subsequent Agreement and shall not be applied retroactively to the expiration date of this Agreement unless the Parties subsequently agree otherwise.
  - 1.3.2 Notwithstanding Section 1.3 above, in the event that as of the date of expiration of this Agreement the Parties have not entered into a Subsequent Agreement and (1) no arbitration proceeding has been filed in accordance with Section 1.2 above, and (2) FDN either is not certified as a CLEC in any particular state to which this Agreement applies or has not ordered any services under this Agreement as of the date of expiration, then this Agreement shall not continue on a month to month basis but shall be deemed terminated as of the expiration date hereof.
2. Service Date Advancement Charges (a.k.a Expedites) terms and conditions will apply in accordance with the language below and is incorporated herein by this reference.

Service Date Advancement Charges (a.k.a. Expedites). For Service Date Advancement requests by FDN, Service Date Advancement charges will apply for intervals less than the standard interval as outlined in the BellSouth Product and Services Interval Guide. The charges as set forth in Exhibit 1 to this Amendment will apply as applicable.

3. Exhibit 1-Unbundled Network Element Rates to the Agreement dated September 5, 2001 is amended to add Service Date Advancement Charges (a.k.a. Expedites) as set forth in Exhibit 1 attached hereto and herein incorporated by reference as Exhibit 1 to this amendment
4. Exhibit 1-Unbundled Network Element Rates to the Agreement dated September 5, 2001 is amended to add Virtual 2-Fiber and 4-Fiber cross connect rates as set forth in Exhibit 1 attached hereto and herein incorporated by reference as Exhibit 1 to this amendment.
5. Exhibit A-Physical Collocation Rates-Florida to the Agreement dated July 1, 1998 is amended to delete Physical Collocation Optical Cross Connect, PE1F2 USOC and rates and replace with Physical, 2-Fiber and 4-Fiber cross connect USOCs and rates as set forth in Exhibit 1 attached hereto and herein incorporated by reference as Exhibit 1 to this amendment.
6. All of the other provisions of the Agreement, dated September 5, 2001, shall remain in full force and effect.
7. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.
8. This Amendment shall be deemed effective September 4, 2002.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

**Florida Digital Network, Inc.**  
By: signature on file

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ \*

**BellSouth Telecommunications, Inc.**  
By: signature on file

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ \*

\* effective date September 4, 2002

UNBUNDLED NETWORK ELEMENTS - Florida													
CATEGORY	RATE ELEMENTS	Interim Zone	BSC	UROC	RATER(T)	Nonrecouping				Disconnected			
						Rate	Per	Rate	Per	Rate	Per	Rate	Per
						Nonrecouping	Per	Rate <td>Per</td> <td>Rate <td>Per</td> <td>Rate <td>Per</td> </td></td>	Per	Rate <td>Per</td> <td>Rate <td>Per</td> </td>	Per	Rate <td>Per</td>	Per
						Per	Rate <td>Per</td> <td>Rate <td>Per</td> <td>Rate <td>Per</td> <td>Rate</td> </td></td>	Per	Rate <td>Per</td> <td>Rate <td>Per</td> <td>Rate</td> </td>	Per	Rate <td>Per</td> <td>Rate</td>	Per	Rate
						Rate	Per	Rate <td>Per</td> <td>Rate <td>Per</td> <td>Rate <td>Per</td> </td></td>	Per	Rate <td>Per</td> <td>Rate <td>Per</td> </td>	Per	Rate <td>Per</td>	Per
						Per	Rate <td>Per</td> <td>Rate <td>Per</td> <td>Rate <td>Per</td> <td>Rate</td> </td></td>	Per	Rate <td>Per</td> <td>Rate <td>Per</td> <td>Rate</td> </td>	Per	Rate <td>Per</td> <td>Rate</td>	Per	Rate
						Rate	Per	Rate <td>Per</td> <td>Rate <td>Per</td> <td>Rate <td>Per</td> </td></td>	Per	Rate <td>Per</td> <td>Rate <td>Per</td> </td>	Per	Rate <td>Per</td>	Per
						Per	Rate <td>Per</td> <td>Rate <td>Per</td> <td>Rate <td>Per</td> <td>Rate</td> </td></td>	Per	Rate <td>Per</td> <td>Rate <td>Per</td> <td>Rate</td> </td>	Per	Rate <td>Per</td> <td>Rate</td>	Per	Rate
						Rate	Per	Rate <td>Per</td> <td>Rate <td>Per</td> <td>Rate <td>Per</td> </td></td>	Per	Rate <td>Per</td> <td>Rate <td>Per</td> </td>	Per	Rate <td>Per</td>	Per

# ATTACHMENT 4



**INTERCONNECTION  
AGREEMENT  
BETWEEN  
BELLSOUTH TELECOMMUNICATIONS INC.  
AND  
FLORIDA DIGITAL NETWORK, INC.**

## AGREEMENT

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., (“BellSouth”), a Georgia corporation, and Florida Digital Network, Inc. (“FDN”), a Delaware Corporation, and shall be deemed effective as of the date of the last signature of both Parties (“Effective Date”). This Agreement may refer to either BellSouth or FDN or both as a “Party” or “Parties.”

### WITNESSETH

WHEREAS, BellSouth is an incumbent local exchange telecommunications company (“ILEC”) authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, FDN is a competitive local exchange telecommunications company (“CLEC”) authorized to provide telecommunications services in the state of Florida, and

WHEREAS, the Parties wish to resell BellSouth’s telecommunications services and/or interconnect their facilities, for FDN to purchase network elements and other services from BellSouth, and to exchange traffic specifically for the purposes of fulfilling their applicable obligations pursuant to sections 251 and 252 of the Telecommunications Act of 1996 (“the Act”).

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and FDN agree as follows:

1. **Purpose:**

The resale, access and interconnection obligations contained herein are intended to enable FDN to provide competing telephone exchange service to residential and business subscribers within the territory of BellSouth. The Parties agree that FDN will not be considered to have offered telecommunications services to the public in any state within BellSouth’s region until such time as it has ordered services for resale or interconnection facilities for the purposes of providing business and/or residential local exchange service to customers. Furthermore, the Parties agree that execution of this agreement will not preclude either party from advocating its position before the Commission or a court of competent jurisdiction.

BST 6/10/2002

1.1 **CLEC Certification**

1.1.1 Prior to execution of this Agreement, FDN agrees to provide BellSouth in writing FDN's CLEC certification for all states covered by this Agreement except Kentucky prior to BellSouth filing this Agreement with the appropriate Commission for approval.

1.1.2 To the extent FDN is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, FDN will notify BellSouth in writing and provide CLEC certification when it becomes certified to operate in any other state covered by this Agreement. Upon notification, BellSouth will file this Agreement with the appropriate Commission for approval.

2. **Term of the Agreement**

2.1 The term of this Agreement shall be three years, beginning on the Effective Date and shall apply to the BellSouth territory in the state of Florida. Notwithstanding the provisions of the predecessor agreement, the rates, terms, and conditions of this Agreement shall be applied as of the Effective Date hereof.

2.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement ("Subsequent Agreement").

2.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in Section 2.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate terms, conditions and prices for the Subsequent Agreement pursuant to 47 U.S.C. 252.

2.4 If, as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties or the Commission has not used its order ruling on the petition of either Party, this Agreement shall be extended on a month-to-month basis. Upon conversion to a month-to-month term, either Party, may terminate this Agreement upon sixty (60) days notice to the other party, provided, however that in no event shall this Agreement be terminated any earlier than one hundred eighty (180) days following the original expiration date of the Agreement. In the event BellSouth terminates this Agreement as provided above, BellSouth shall continue to provide services to FDN pursuant to (1) the terms, conditions and rates set forth in BellSouth's standard interconnection agreement in effect and available to CLECs requesting negotiations pursuant to Section 251 of the Act or (2) an agreement adopted by FDN pursuant to Section 20 of this Agreement. Neither party shall refuse to provide services to the other Party during negotiations of the Subsequent Agreement during the transition from this Agreement to the Subsequent Agreement. In the event that the Parties begin operating under BellSouth's standard interconnection agreement or an agreement

21. **Modification of Agreement**

21.1 If FDN changes its name or makes changes to its identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of FDN to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

21.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

21.3 Execution of this Agreement by either Party does not confirm or infer that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

21.4 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material rates, terms, or conditions of this Agreement, or the ability of FDN or BellSouth to perform any material terms of this Agreement, FDN or BellSouth may, on fifteen (15) business days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within forty-five (45) business days after such notice, the Dispute may be referred to the Dispute Resolution procedure set forth in Section 15.

22. **Waivers**

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

23. **Governing Law**

Where applicable, this Agreement shall be governed by and construed in accordance with federal and applicable state substantive telecommunications law, including regulations of the FCC and appropriate Commissions. In all other respects, this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the state of Florida.

24. **Arm's Length Negotiations**

This Agreement was executed after arm's length negotiations between the undersigned Parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all Parties.

25. **Notices**

25.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, addressed to:

**BellSouth Telecommunications, Inc.**

BellSouth Local Contract Manager  
8<sup>th</sup> Floor  
600 North 19<sup>th</sup> Street  
Birmingham, Alabama 35203

and

ICS Attorney -  
Suite 4300  
675 W. Peachtree St.  
Atlanta, GA 30375

**Florida Digital Network, Inc.**

Michael P. Gallagher  
390 North Orange Ave.  
Suite 2000  
Orlando, Florida 32801-1640

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

25.2 Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

25.3 BellSouth shall provide FDN notice via Internet posting of price changes and of changes to the terms and conditions of services available for resale.

imposed upon the other Party for such other Party's noncompliance, and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

39. **Rule of Construction**

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

40. **Headings of No Force or Effect**

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

41. **Multiple Counterparts**

This Agreement may be executed multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

42. **Implementation of Agreement**

If FDN is a facilities based provider or a facilities based and resale provider, this section shall apply. Within 60 days of the execution of this Agreement or within 30 days of FDN placing its first order, whichever is later, the Parties will adopt a schedule for the implementation of the Agreement. The schedule shall state with specificity time frames for submission of including but not limited to, network design, interconnection points, collocation arrangement requests, pre-sales testing and full operational time frames for the business and residential markets. An implementation template to be used for the implementation schedule is contained in Attachment 10 of this Agreement.

43. **Additional Fair Competition Requirements**

43.1 In the event that either Party transfers facilities or other assets to an Affiliate which are necessary to comply with its obligations under this Agreement, the obligations hereunder shall survive and transfer to such Affiliate.

43.2 BellSouth shall allow local exchange customers of FDN to select BellSouth for the provision of intraLATA toll services on a nondiscriminatory basis; provided, however, that prior to establishment of BellSouth as the intraLATA toll carrier for FDN local exchange customers, the Parties shall negotiate a billing and collections agreement on commercially reasonable terms whereby FDN shall bill the customer on BellSouth's behalf and shall

**The following services are included as options for purchase by FDN. FDN shall elect said services by written request to its Account Manager if applicable.**

Optional Daily Usage File (ODUF)  
Enhanced Optional Daily Usage File (EODUF)  
Access Daily Usage File (ADUF)  
Line Information Database (LIDB) Storage  
Centralized Message Distribution Service (CMDS)  
Calling Name (CNAM)

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year above first written.

**BellSouth Telecommunications, Inc.**

**Florida Digital Network, Inc.**

\_\_\_\_\_  
Original Signature on File  
Signature

\_\_\_\_\_  
Original Signature on File  
Signature

\_\_\_\_\_  
Jerry D. Hendrex  
Name

\_\_\_\_\_  
Michael P. Gallagher  
Name

\_\_\_\_\_  
Assistant Vice President  
Title

\_\_\_\_\_  
CEO  
Title

\_\_\_\_\_  
2/5/2003  
Date

\_\_\_\_\_  
2/3/2003  
Date

BST 6/10/2002



## **ACCESS TO NETWORK ELEMENTS AND OTHER SERVICES**

### **1 Introduction**

- 1.1 This Attachment sets forth rates, terms and conditions for Network Elements and combinations of Network Elements that BellSouth agrees to offer to FDN in accordance with its obligations under Section 251(c)(3) of the Act. Additionally, this Attachment sets forth the rates, terms and conditions for other services BellSouth makes available to FDN. The price for each Network Element and combination of Network Elements and other services are set forth in Exhibit B of this Agreement. Additionally, the provision of a particular Network Element or service may require FDN to purchase other Network Elements or services.
- 1.2 For purposes of this Agreement, "Network Element" is defined to mean a facility or equipment FDN used in the provision of a telecommunications service. For purposes of this Agreement, combinations of Network Elements shall be referred to as "Combinations."
- 1.3 Except upon request by FDN, BellSouth shall not separate requested network elements that BellSouth currently combines.
- 1.3 BellSouth shall, upon request of FDN, and to the extent technically feasible, provide to FDN access to its Network Elements for the provision of FDN's telecommunications services. If no rate is identified in this Agreement, the rate for the specific service or function will be as set forth in the applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.
- 1.4 FDN may purchase Network Elements and other services from BellSouth for the purpose of combining such network elements in any manner FDN chooses to provide telecommunication services to its intended users, including recreating existing BellSouth services. With the exception of UNE-P and the sub-loop Network Elements which are located outside of the central office, BellSouth shall deliver the Network Elements purchased by FDN to the demarcation point associated with FDN's collocation arrangement.
- 1.5 BellSouth shall comply with the requirements as set forth in the technical references within this Attachment 2.
- 1.6 FDN may not purchase unbundled network elements (UNEs) or convert special access circuits to UNEs if such network elements will be used to provide wireless telecommunications services.
- 1.7 Rates
- 1.7.1 The prices that FDN shall pay to BellSouth for Network Elements and Other Services are set forth in Exhibit B to this Attachment. If FDN purchases a



service(s) from a tariff, all terms and conditions and rates as set forth in such tariff shall apply.

- 1.7.2 Rates, terms and conditions for order cancellation charges and Service Date Advancement Charges will apply in accordance with Attachment 6 and are incorporated herein by this reference.
- 1.7.3 If FDN modifies an order after being sent a Firm Order Confirmation (FOC) from BellSouth, any costs incurred by BellSouth to accommodate the modification will be paid by FDN in accordance with FCC No. 1 Tariff, Section 5, Order Modification Charge (OMC).
- 1.7.4 A one-month minimum billing period shall apply to all UNE conversions or new installations.
- 1.7.5 Standards for Network Elements  
BellSouth shall comply with the requirements set forth in the technical references, as well as any performance or other requirements identified in this Attachment. If one or more of the requirements set forth in this Agreement are in conflict, the parties shall mutually agree on which requirement shall apply. If the parties cannot reach agreement, the dispute resolution process set forth in Section 12 of the General Terms and Conditions of this Agreement, incorporated herein by this reference, shall apply.

## **2 Unbundled Loops**

### **2.1 General**

- 2.1.1 The local loop Network Element ("Loop") is defined as a transmission facility between a distribution frame (or its equivalent) in BellSouth's central office and the loop demarcation point at an end-user customer premises, including inside wire owned by BellSouth. The local loop Network Element includes all features, functions, and capabilities of the transmission facilities, including dark fiber and attached electronics (except those used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers) and line conditioning. The loop shall include the use of all test access functionality, including, smart jacks, for both voice and data. FDN may access such test access functionality through its collocation space and/or the end users' side of the point of demarcation. FDN shall be entitled to order all loops set forth in Exhibit B of this Attachment. Unless otherwise requested and negotiated, all loops will be provisioned with the appropriate Network Interface Device (NID).
- 2.1.2 The provisioning of a Loop to FDN's collocation space will require cross-office cabling and cross-connections within the central office to connect the Loop to a local switch or to other transmission equipment. These cross-connects are

separate components, that are not considered a part of the Loop, and thus, have a separate charge.

- 2.1.3 To the extent available within BellSouth's network at a particular location, BellSouth will offer Loops capable of supporting telecommunications services. If a requested loop type is not available, and cannot be made available through BellSouth's Unbundled Loop Modification process, then FDN can use the Special Construction process to request that BellSouth place facilities in order to meet FDN's loop requirements. Standard Loop intervals shall not apply to the Special Construction process.
- 2.1.4 Where facilities are available, BellSouth will install Loops in compliance with BellSouth's Products and Services Interval Guide available at the website at <http://www.interconnection.bellsouth.com>. For orders of 15 or more Loops, the installation and any applicable Order Coordination as described below will be handled on a project basis, and the intervals will be set by the BellSouth project manager for that order. When Loops require a Service Inquiry (SI) prior to issuing the order to determine if facilities are available, the interval for the SI process is separate from the installation interval.
- 2.1.5 The Loop shall be provided to FDN in accordance with BellSouth's TR73600 Unbundled Local Loop Technical Specification and applicable industry standard technical references.
- 2.1.6 FDN may utilize the unbundled Loops to provide any telecommunications service it wishes, so long as such services are consistent with industry standards and BellSouth's TR73600.
- 2.1.7 BellSouth will only provision, maintain and repair the Loops to the standards that are consistent with the type of Loop ordered. In those cases where FDN has requested that BellSouth modify a Loop so that it no longer meets the technical parameters of the original Loop type (e.g., voice grade, ISDN, ADSL, etc.) the resulting Loop will be maintained as an unbundled copper Loop (UCL), and FDN shall pay the recurring and non-recurring charges for a UCL. For non-service specific loops (e.g. UCL, Loops modified by FDN using the Unbundled Loop Modification (ULM) process), BellSouth will only support that the Loop has copper continuity and balanced tip-and-ring.
- 2.1.8 **Loop Testing/Trouble Reporting**
- 2.1.8.1 FDN will be responsible for testing and isolating troubles on the Loops. FDN must test and isolate trouble to the BellSouth portion of a designed/non-designed unbundled loop (e.g., UVL-SL2, UCL-D, UVL-SL1, UCL-ND, etc.) before reporting repair to the UNE Customer Wholesale Interconnection Network Services (CWINS) Center. At the time of the trouble report, FDN will provide the



UNBUNDLED NETWORK ELEMENTS - Florida

CATEGORY	RATE ELEMENTS	Interf m	Zone	BCS	USOC	RATES(\$)				Svc Order Submitted Elec per LSR	Svc Order Submitted Manually per LSR	Attachment 2		Exhibit B			
						Rec	Nonrecurring		Disconnect			SOMEK	SOMAN	SOMAN	SOMAN	SOMAN	SOMAN
							First	Add'l									
<b>UNBUNDLED EXCHANGE ACCESS LOOP</b>																	
<b>2-WIRE ANALOG VOICE GRADE LOOP</b>																	
	2-Wire Analog Voice Grade Loop - Service Level 2 w/Loop or Ground Start Signaling - Zone 1		1	UEA	UEAL2	12.24	135.75	82.47	63.53	12.01		11.90					
	2-Wire Analog Voice Grade Loop - Service Level 2 w/Loop or Ground Start Signaling - Zone 2		2	UEA	UEAL2	17.40	135.75	82.47	63.53	12.01		11.90					
	2-Wire Analog Voice Grade Loop - Service Level 2 w/Loop or Ground Start Signaling - Zone 3		3	UEA	UEAL2	30.87	135.75	82.47	63.53	12.01		11.90					
	Order Coordination for Specified Conversion Time (per LSR)			UEA	OCOSL		23.02										
	2-Wire Analog Voice Grade Loop - Service Level 2 w/Reverse Battery Signaling - Zone 1		1	UEA	UEAR2	12.24	135.75	82.47	63.53	12.01		11.90					
	2-Wire Analog Voice Grade Loop - Service Level 2 w/Reverse Battery Signaling - Zone 2		2	UEA	UEAR2	17.40	135.75	82.47	63.53	12.01		11.90					
	2-Wire Analog Voice Grade Loop - Service Level 2 w/Reverse Battery Signaling - Zone 3		3	UEA	UEAR2	30.87	135.75	82.47	63.53	12.01		11.90					
	Order Coordination for Specified Conversion Time (per LSR)			UEA	OCOSL		23.02										
	CLEC to CLEC Conversion Charge without outside dispatch			UEA	UREWO		87.71	36.35				11.90					
<b>4-WIRE ANALOG VOICE GRADE LOOP</b>																	
	4-Wire Analog Voice Grade Loop - Zone 1		1	UEA	UEAL4	18.89	167.96	115.15	67.08	15.56		11.90					
	4-Wire Analog Voice Grade Loop - Zone 2		2	UEA	UEAL4	26.84	167.96	115.15	67.08	15.56		11.90					
	4-Wire Analog Voice Grade Loop - Zone 3		3	UEA	UEAL4	47.82	167.96	115.15	67.08	15.56		11.90					
	Order Coordination for Specified Conversion Time (per LSR)			UEA	OCOSL		23.02										
	CLEC to CLEC Conversion Charge without outside dispatch			UEA	UREWO		87.71	36.35				11.90					
<b>2-WIRE ISDN DIGITAL GRADE LOOP</b>																	
	2-Wire ISDN Digital Grade Loop - Zone 1		1	UDN	U1L2X	19.26	147.69	94.41	62.23	10.71		11.90					
	2-Wire ISDN Digital Grade Loop - Zone 2		2	UDN	U1L2X	27.40	147.69	94.41	62.23	10.71		11.90					
	2-Wire ISDN Digital Grade Loop - Zone 3		3	UDN	U1L2X	46.82	147.69	94.41	62.23	10.71		11.90					
	Order Coordination For Specified Conversion Time (per LSR)			UDN	OCOSL		23.02										
	CLEC to CLEC Conversion Charge without outside dispatch			UDN	UREWO		91.81	44.15				11.90					
<b>2-WIRE Universal Digital Channel (UDC) COMPATIBLE LOOP</b>																	
	2-Wire Universal Digital Channel (UDC) Compatible Loop - Zone 1		1	UDC	UDC2X	19.26	147.69	94.41	62.23	10.71		11.90					
	2-Wire Universal Digital Channel (UDC) Compatible Loop - Zone 2		2	UDC	UDC2X	27.40	147.69	94.41	62.23	10.71		11.90					
	2-Wire Universal Digital Channel (UDC) Compatible Loop - Zone 3		3	UDC	UDC2X	46.82	147.69	94.41	62.23	10.71		11.90					
	CLEC to CLEC Conversion Charge without outside dispatch			UDC	UREWO		91.81	44.15				11.90					
<b>2-WIRE ASYMMETRICAL DIGITAL SUBSCRIBER LINE (ADSL) COMPATIBLE LOOP</b>																	
	2 Wire Unbundled ADSL Loop including manual service inquiry & facility reservation - Zone 1		1	UAL	UAL2X	8.30	149.53	103.85	75.05	15.63		11.90					
	2 Wire Unbundled ADSL Loop including manual service inquiry & facility reservation - Zone 2		2	UAL	UAL2X	11.80	149.53	103.85	75.05	15.63		11.90					
	2 Wire Unbundled ADSL Loop including manual service inquiry & facility reservation - Zone 3		3	UAL	UAL2X	20.94	149.53	103.85	75.05	15.63		11.90					
	Order Coordination for Specified Conversion Time (per LSR)			UAL	OCOSL		23.02										
	2 Wire Unbundled ADSL Loop without manual service inquiry & facility reservation - Zone 1		1	UAL	UAL2W	8.30	124.83	71.12	60.64	9.12		11.90					
	2 Wire Unbundled ADSL Loop without manual service inquiry & facility reservation - Zone 2		2	UAL	UAL2W	11.80	124.83	71.12	60.64	9.12		11.90					
	2 Wire Unbundled ADSL Loop without manual service inquiry & facility reservation - Zone 3		3	UAL	UAL2W	20.94	124.83	71.12	60.64	9.12		11.90					
	Order Coordination for Specified Conversion Time (per LSR)			UAL	OCOSL		23.02										
	CLEC to CLEC Conversion Charge without outside dispatch			UAL	UREWO		86.19	40.39				11.90					
<b>2-WIRE HIGH BIT RATE DIGITAL SUBSCRIBER LINE (HDSL) COMPATIBLE LOOP</b>																	
	2 Wire Unbundled HDSL Loop including manual service inquiry & facility reservation - Zone 1		1	UHL	UHL2X	7.22	159.09	113.41	75.05	15.63		11.90					
	2 Wire Unbundled HDSL Loop including manual service inquiry & facility reservation - Zone 2		2	UHL	UHL2X	10.26	159.09	113.41	75.05	15.63		11.90					

CATEGORY	RATE ELEMENTS	Inter m	Zone	BCS	USOC	RATES(\$)						Attachment 2		Exhibit B		
						Rec	Nonrecurring		Nonrecurring Disconnect		Svc Order Submitted E/Sec per LBR	Incremental Charge - Manual Svc Order vs. Electronic-1st	Incremental Charge - Manual Svc Order vs. Electronic-Addt	Incremental Charge - Manual Svc Order vs. Electronic-Disce 1st	Incremental Charge - Manual Svc Order vs. Electronic-Disce Addt	
							File	Adst	File	Adst						SOMAN
	Virtual Collocation 2-Wire Cross Connect, Exchange Port 2-Wire Side PBX Trunk - Bus			UEPSP	VEIR2	0.0502	11.57	11.57								
	Virtual Collocation 2-Wire Cross Connect, Exchange Port 2-Wire Voice Grade PBX Trunk - Bus			UEPSE	VEIR2	0.0502	11.57	11.57								
	Virtual Collocation 2-Wire Cross Connect, Exchange Port 2-Wire Analog Bus			UEPSB	VEIR2	0.0502	11.57	11.57								
	Virtual Collocation 2-Wire Cross Connect, Exchange Port 2-Wire ISDN			UEPSX	VEIR2	0.0502	11.57	11.57								
	Virtual Collocation 2-Wire Cross Connect, Exchange Port 2-Wire ISDN			UEPTX	VEIR2	0.0502	11.57	11.57								
	Virtual Collocation 4-Wire Cross Connect, Exchange Port 4-Wire ISDN DS1			UEPEX	VEIRA	0.0502	11.57	11.57								
	VIRTUAL COLLOCATION															
	Virtual Collocation-2 Wire Cross Connects (Loop) for Line Splitting			UEPSR, UEPSB	VE1LS	0.0502	11.57	11.57								
	PHYSICAL COLLOCATION															
	Physical Collocation-2 Wire Cross Connects (Loop) for Line Splitting			UEPSR, UEPSB	PE1LS	0.0276	8.22	7.22	5.74	4.58						
	AIN BELLECTIVE CARRIER ROUTING			SRC	SRCEC		183,444.00	7,237.00								
	Regional Service Establishment			SRC	SRCEO		187.36	187.36	0.869	0.69						
	End Office Establishment			SRC												
	Query INTC. per query			SRC												
	AIN - BELL SOUTH AIN SMS ACCESS SERVICE															
	AIN SMS Access Service - Service Establishment, Per State, Initial Setup			AIN	CAMSE		43.56	43.56	44.93	44.93						
	AIN SMS Access Service - Port Connection - Dial/Shared Access			AIN	CAMPD		8.84	8.84	10.03	10.03						
	AIN SMS Access Service - Port Connection - ISDN Access			AIN	CAMP		8.84	8.84	10.03	10.03						
	AIN SMS Access Service - User Identification Codes - Per User ID Code			AIN	CAMAU		38.86	38.86	26.86	26.86						
	AIN SMS Access Service - Security Card, Per User ID Code, Initial or Replacement			AIN	CAMRC		75.10	75.10	12.93	12.93						
	AIN SMS Access Service - Storage, Per Unit (100 Kilobytes)															
	AIN SMS Access Service - Session, Per Minute															
	AIN SMS Access Service - Company Performed Session, Per Minute															
	AIN - BELL SOUTH AIN TOOLKIT SERVICE															
	AIN Toolkit Service - Service Establishment Charge, Per State, Initial Setup			CAI	BAPSC		43.56	43.56	44.93	44.93						
	AIN Toolkit Service - Training Session, Per Customer			CAI	BAPVX		8,439.00	8,439.00								
	AIN Toolkit Service - Trigger Access Charge, Per Trigger, Per DN, Term. Attempt				BAPTT		8.64	8.64	10.03	10.03						
	AIN Toolkit Service - Trigger Access Charge, Per Trigger, Per DN, Off-Hook Delay				BAPTD		8.64	8.64	10.03	10.03						
	AIN Toolkit Service - Trigger Access Charge, Per Trigger, Per DN, Off-Hook Immediate				BAPTM		8.64	8.64	10.03	10.03						
	AIN Toolkit Service - Trigger Access Charge, Per Trigger, Per DN, 10-Digit POIP				BAPTO		38.06	38.06	15.96	15.96						
	AIN Toolkit Service - Trigger Access Charge, Per Trigger, Per DN, CDP				BAPTC		38.06	38.06	15.96	15.96						
	AIN Toolkit Service - Query Charge, Per Query				BAPTF		38.06	38.06	15.96	15.96						
	AIN Toolkit Service - Type 1 Notice Charge, Per AIN Toolkit Subscription, Per Notice, Per Query															
	AIN Toolkit Service - SCP Storage Charge, Per SMS Access Account, Per 100 Kilobytes															
	AIN Toolkit Service - Monthly report - Per AIN Toolkit Service Subscription			CAI	BAPMS		8.64	8.64	8.06	8.06						

Section B2 of the Private Line Service Tariff or Section E2 of the Intrastate Access Tariff, as appropriate. In addition to any applicable late payment charges, either party may be charged a fee for all returned checks as set forth in Section A2 of the General Subscriber Services Tariff or pursuant to the applicable state law. .

- 1.7 Discontinuing Service to FDN. The procedures for discontinuing service to FDN are as follows:
- 1.7.1 BellSouth reserves the right to suspend or terminate service in the event of prohibited, unlawful or improper use of BellSouth facilities or service or any other violation or noncompliance by FDN of the rules and regulations contained in BellSouth's tariffs.
- 1.7.2 BellSouth reserves the right to suspend or terminate service for nonpayment of undisputed amounts as set forth herein, subject to applicable legal requirements. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the bill date in the month after the original bill date, BellSouth will provide written notice to FDN that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment is not received by the fifteenth (15) day following the date of the notice. In addition, BellSouth will provide written notice to FDN if BellSouth intends to discontinue the provision of existing services to FDN if payment of undisputed amounts is not received by the thirtieth (30) day following the date of the notice. This notice may be provided at the same time as the 15-day notice aforementioned.
- 1.7.3 In the case of such discontinuance, all billed and undisputed charges, as well as applicable termination charges, shall become due.
- 1.7.4 If BellSouth does not discontinue the provision of the service involved on the date specified in the thirty days notice and if either FDN's noncompliance continues as to undisputed arrears specified in the notice or satisfactory arrangements for payment due under the notice are not made, nothing herein shall preclude BellSouth's right to discontinue the provision of the services to FDN without further notice.
- 1.7.5 Upon discontinuance of service on FDN's account, service to FDN's end users may be denied in accordance with applicable legal requirements. BellSouth will reestablish service for FDN upon payment of all past due undisputed charges and the appropriate connection fee subject to BellSouth's normal application procedures. FDN is responsible for notifying its end users of the proposed service disconnection. If within fifteen (15) days after FDN has been denied service and no arrangements to reestablish service have been made consistent with this subsection, FDN's service may be discontinued.

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1.9 **Notices.** Notwithstanding anything to the contrary in this Agreement, all bills and notices regarding billing matters, including notices relating to security deposits, disconnection of services for nonpayment of charges, and rejection of additional orders from FDN, shall be forwarded to the individual and/or address provided by FDN in establishment of its billing account(s) with BellSouth, or to the individual and/or address subsequently provided by FDN as the contact for billing information. All monthly bills and notices described in this Section shall be forwarded to the same individual and/or address; provided, however, a final notice pursuant to Section 1.7.2 of disconnection of services purchased by FDN under this Agreement shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of this Agreement.

1.10 **Rates.** Rates for Optional Daily Usage File (ODUF), Enhanced Optional Daily Usage File (EODUF), Access Daily Usage File (ADUF), and Centralized Message Distribution Service (CMDS) are set out in Exhibit A to this Attachment. If no rate is identified in the contract, the rate for the specific service or function will be as set forth in applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.

2. **Billing Disputes**

2.1 Where the Parties have not agreed upon a billing quality assurance program, billing disputes shall be handled pursuant to the terms of this section.

2.1.1 Each Party agrees to notify the other Party upon the discovery of a billing dispute. FDN shall report all billing disputes to BellSouth using the Billing Adjustment Request Form (RF 1461) provided by BellSouth. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the notification date. If the Parties are unable within the 60 day period to reach resolution, then the aggrieved Party may pursue dispute resolution in accordance with the General Terms and Conditions of this Agreement.

2.2 For purposes of this Agreement, a billing dispute means a reported dispute of a specific amount of money actually billed by either Party. The dispute must be clearly explained by the disputing Party and supported by documentation, which clearly shows the basis for disputing charges. By way of example and not by limitation, a billing dispute will not include the refusal to pay all or part of a bill or bills when no support is provided for the dispute, nor shall a billing dispute include the refusal to pay other undisputed amounts owed by the billed Party. Claims by the billed Party for damages of any kind will not be considered a billing dispute for purposes of this Section. If the billing dispute is resolved in favor of the billing Party, the disputing Party will make immediate payment of any of the disputed amount owed to the billing Party or the billing Party shall have the right to pursue normal treatment procedures. Any credits due to the disputing Party, pursuant to

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the billing dispute, will be applied to the disputing Party's account by the billing Party immediately upon resolution of the dispute.

- 2.3 If a Party disputes a charge and does not pay such charge by the payment due date, or if a payment or any portion of a payment is received by either Party after the payment due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the other Party, then a late payment charge and interest, where applicable, shall be assessed. For bills rendered by either Party for payment, the late payment charge for both Parties shall be calculated based on the portion of the payment not received by the payment due date times the late factor as set forth in the following BellSouth tariffs: for services purchased from the General Subscribers Services Tariff for purposes of resale and for ports and non-designed loops, Section A2 of the General Subscriber Services Tariff; for services purchased from the Private Line Tariff for purposes of resale, Section B2 of the Private Line Service Tariff; and for network elements and other services and local interconnection charges, Section E2 of the Access Service Tariff. The Parties shall assess interest on previously assessed late payment charges only in a state where state law permits.

If a Party disputes charges and the dispute is resolved in favor of such Party, the other Party shall credit the bill of the disputing Party for the amount of the disputed charges along with any associated late payment charges and/or interest assessed upon the resolution of the dispute. Accordingly, if a Party disputes charges and the dispute is resolved in favor of the other Party, the disputing Party shall pay the other Party the amount of the disputed charges ~~and/or interest~~ and along with any associated late payment charges and/or interest assessed upon the resolution of the dispute.

### 3 **RAO Hosting**

- 3.1 RAO Hosting, Calling Card and Third Number Settlement System (CATS) and Non-Intercompany Settlement System (NICS) services provided to FDN by BellSouth will be in accordance with the methods and practices regularly adopted and applied by BellSouth to its own operations during the term of this Agreement, including such revisions as may be made from time to time by BellSouth and for which BellSouth will use best efforts to provide FDN written notice or electronic mail within thirty (30) days.
- 3.2 FDN shall furnish all relevant information required by BellSouth for the provision of RAO Hosting, CATS and NICS.
- 3.3 Applicable compensation amounts will be billed by BellSouth to FDN on a monthly basis in arrears. Amounts due from one Party to the other (excluding adjustments) are payable within thirty (30) days of receipt of the billing statement.

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