

ORIGINAL

Timolyn Henry

From: Cara Gowan [CGowan@mail.fdn.com]
Sent: Monday, January 24, 2005 3:45 PM
To: Filings@psc.state.fl.us
Cc: Susan Masterton; 'kenneth.schifman@mail.sprint.com'; Matthew Feil
Subject: Docket No. 041464

Please file the attached Response to Sprint - Florida, Inc. Petition for Arbitration on behalf of FDN Communications in the following docket:

- 1) Docket No. 041464; Petition of Sprint - Florida, Incorporated for arbitration of an Interconnection Agreement with Florida Digital Network, Inc. pursuant to Section 252 of the Telecommunications Act of 1996

The document to be filed in above-referenced docket consists of a cover letter, Response of Florida Digital Network, Inc. d/b/a FDN Communications to Sprint - Florida, Inc. Petition for Arbitration, the Certificate of Service, and Attachment A for a total of fifteen (15) pages.

The person who is responsible for electronically filing these documents is:

Name: Matthew Feil
Address: FDN Communications
2301 Lucien Way, Ste. 200
Maitland, FL 32751
Phone No: 407-835-0460
Email: mfeil@mail.fdn.com

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ORIGINAL

January 24, 2005

Ms. Blanca S. Bayo
Director, Division of the Commission
Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

via Electronic Mail

Re: Docket No. 041464; Petition of Sprint – Florida, Incorporated for arbitration of an Interconnection Agreement with Florida Digital Network, Inc. pursuant to Section 252 of the Telecommunications Act of 1996

Dear Ms. Bayo:

Attached please find FDN Communications' Response to Sprint – Florida, Inc. Petition for Arbitration for electronic filing in the above-referenced matter.

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

Sincerely,

s/ Matthew Feil

Matthew Feil
General Counsel
FDN Communications

DOCUMENT NUMBER-DATE

00844 JAN 24 05

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of Sprint-Florida, Inc. for Arbitration of)
an Interconnection Agreement with Florida) Docket No. 041464-TP
Digital Network, Inc. Pursuant to Section 252 of)
the Telecommunications Act of 1996) Filed: January 24, 2001

**RESPONSE OF FLORIDA DIGITAL NETWORK, INC. d/b/a FDN
COMMUNICATIONS
TO SPRINT-FLORIDA, INC. PETITION FOR ARBITRATION**

Pursuant to 47 U.S.C. § 252(b)(3), Florida Digital, Inc., d/b/a FDN Communications
("FDN"), hereby responds to the Petition for Arbitration ("Petition") filed by Sprint-Florida, Inc.
("Sprint").

RESPONSES TO ENUMERATED ALLEGATIONS IN SPRINT PETITION

THE PARTIES

1. Admitted.
2. The allegations in paragraph 2 do not require a response.
3. Admitted.
4. Admitted. FDN requests that all pleadings, filings, and communications in this

proceeding be served upon its counsel:

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Michael C. Sloan
Swidler Berlin, LLP
3000 K Street, NW
Washington, DC 20007
Tel: 202-295-7500
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mfeil@mail.fdn.com

JURISDICTION

5. FDN admits that this Petition is timely filed. FDN notes that the Parties have conducted very little actual negotiations.

6. Admitted.

7. Admitted.

8. Admitted.

BACKGROUND

9. FDN admits that the parties' previously executed an interconnection agreement that expired by its own terms on December 26, 2003. By agreement between the parties, FDN and Sprint have continued to operate under that the terms of that interconnection agreement ever since.

10. FDN admits that it initiated negotiations for a successor agreement on July 25, 2003. FDN further admits that it sent Sprint proposed revisions to the Sprint "template" on November 20, 2003. Thereafter, redlines were exchanged between Sprint and FDN, and the FDN and Sprint negotiators at the time conducted several calls and exchanged correspondence by email on the redlines and issues, including in March, July and August 2004. FDN denies any implication that FDN failed to negotiate in good faith. FDN admits that the parties agreed to extend the arbitration petition filing deadline several times during 2004 and that by letter agreement dated September 29, 2004, mutually agreed to extend the deadline to January 1, 2005.

After the September 29 letter, both parties changed negotiators, making negotiations more difficult. Sprint's principal negotiator left Sprint's employ in October 2004; FDN's principal negotiator left FDN employ in early December 2004.

11. FDN admits that Sprint sent a revised template agreement on or about October 7, 2004, but is unable to admit or deny what constituted the most "significant" changes in this new version. FDN denies that it did not respond to the revised October 7, 2004, template, but notes that it was not clear at the time if Sprint demanded that negotiations re-start from the new template. FDN did not then agree to re-start negotiations using the new template.

12. FDN lacks knowledge as to whether "Sprint resent the current version" of the template agreement on December 1, 2004, but admits that its principal contact for these negotiations, Scott Kassman, left the company in December 2004 and that Mr. Feil replaced Mr. Kassman as FDN's chief negotiator. FDN admits that Sprint e-mailed Mr. Feil a template agreement on December 15, 2004. Sprint denied at that time it required FDN to re-start negotiations from this new template. After a December 16 conference call with Sprint, FDN ultimately agreed it would negotiate from the new template, since re-compiling the history of the two departed negotiators' points of agreement and disagreement could be cumbersome. On December 17, the parties scheduled a negotiation call for December 28. FDN provided Sprint with redlines of the new Sprint template on December 22. On the December 28 call, Sprint did not negotiate with FDN and instead stated there was insufficient time to review and discuss the FDN redlines and Sprint intended instead to file an arbitration petition by the end of the week.

13. FDN's December 22 redlines appear to be attached to Sprint's Petition as Attachment B. No additional response appears to be required to the assertions in this paragraph.

14. FDN does not accede to Sprint's characterization of which issues may be "primary" based on Sprint's review of FDN's redlines to the template agreement. No response is required to the other assertions in this paragraph.

15. FDN admits that the parties have been unable to conclude negotiations for a new agreement. FDN denies the implication it did not communicate with Sprint. FDN denies the implicit allegation that it has not negotiated in good faith.¹

16. No response appears to be required to the assertions in this paragraph. To the extent one is required, FDN admits: (1) it appealed the Commission's Sprint UNE Rate Order pursuant to Section 252(e)(6) of the Communications Act; (2) that appeal is currently pending in federal court; (3) no stay of the Commission's Order has been ruled on, and there has been no ruling that a stay is required, (4) and that the current interconnection agreement between the parties, which expired a year ago, has not been amended to reflect the rates established in the Commission's January 8, 2003 Order. FDN notes that Sprint has not filed a petition with the Commission seeking application of those UNE rates under the current interconnection agreement. If anything, the instant Petition was filed by Sprint to comply with the agreement between the parties to extend the deadlines provided by the Act.

ISSUESE TO BE RESOLVED

17. FDN admits that it sent Sprint proposed amendments to its template interconnection agreement on December 22, 2004. No response is required to the remainder of the assertions in this paragraph.

¹ In footnote 5 of its Petition, Sprint implies FDN could not negotiate because FDN's negotiator Feil had limited availability toward the end of 2004. However, Sprint omits that Mr. Feil referred to his limited in-office availability for a few days but provided Sprint with his cell phone number to conduct negotiations while out of the office. Sprint further omits the fact that Sprint's own negotiator indicated his limited availability around the Christmas Holiday.

18. FDN admits that there is a dispute between the Parties with respect to the definition of “local calling area” as reflected in Attachment B to the Petition.

19. FDN admits that Sprint has correctly characterized the dispute between the Parties with respect to the rates FDN should be required to pay Sprint for unbundled network elements.

20. FDN admits that there is a dispute between the parties respecting VOIP traffic. FDN maintains that VOIP should not be subject to intercarrier compensation.

21. FDN believes that Sprint continues to be obligated to provide all previously required UNEs under the FCC’s August 20, 2004 interim order. FDN also believes that when the FCC’s Order based upon its December 15, 2004 decision is released and becomes effective, the parties should either later negotiate amendment to the arbitrated agreement or, alternatively, this proceeding be recessed for a period of time sufficient for the parties to negotiate the UNE section of the Agreement based on that Order, rather than having the entire section litigated as part of this arbitration.

22. No response is required to the assertions in this paragraph. FDN notes that it has identified the specific issues in dispute between the parties in FDN’s Counter-Statement of Issues, Exhibit A hereto.²

ISSUES THAT HAVE BEEN RESOLVED

23. Denied. FDN reserves the right to identify additional issues in dispute between the parties up to and until the issue identification conference in this proceeding.

REQUEST FOR RELIEF

FDN asks that the Commission reject Sprint’s proposed Interconnection Agreement, reject Sprint’s requests for relief, and instead approve an agreement that conforms to the

² The paragraph sections in parenthesis at the end of the enumerated issues correspond to the sections of Attachment B to Sprint’s Petition.

proposed agreement that FDN sent Sprint on December 22, 2004, and with the positions FDN has taken above. As Sprint admits (at ¶ 17 of its Petition), Sprint has not yet reviewed FDN's comments. FDN believes that many issues could be resolved by continued negotiations, and suggests that the Commission consider staying this matter with instructions that the parties resume negotiations.³

RESPECTFULLY SUBMITTED, this 24th day of January, 2005.

s/ Matthew Feil

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³ Many areas of disagreement cannot be resolved until the FCC issue its Order based on its December 15, 2004 decision. FDN's proposal for disposition of the eventual TRO Remand Order is as set forth in the body of this Response. But there are numerous other areas of disagreement reflected in FDN's redline (attached as Attachment B to Sprint's Petition) which could be resolved by negotiation.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by e-mail and regular mail to the persons listed below this 24th day of January, 2005.

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s/ Matthew Feil

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Attachment A

FDN Response to Sprint Petition for Arbitration

1. Should “Business Day” be defined to exclude Sprint holidays or to exclude federal and Florida state holidays? FDN prefers the latter. (1.14)
2. Should “Collocation Space” be defined to include space in a “Building” or space in a “Premise”? FDN prefers the latter? (1.22)
3. Should “ISP-Bound Traffic” be defined to include traffic that is transmitted to an ISP “at any point during the duration of the transmission between the Parties”? FDN prefers that it is so defined. (1.62)
4. Should the “ISP Remand Order” be defined? FDN prefers that it is. (1.62)
5. Should provision be made for interim number portability? FDN prefers that it is. (1.64)
6. Should “local calling area” be defined such that the LATA may be the local calling area provided the originating carrier bears the cost for transporting originating calls in the LATA at least as far as the tandem serving the end user? FDN prefers it be so defined. (1.70)
7. Should “Parity” be defined to as to be limited to being subject to the availability, development and implementation of necessary industry standard interfaces? FDN prefers that it not be so limited. (1.81)
8. Should the definition of “Parity” incorporate the requirement that service not be inconsistent with FCC or Commission requirements? FDN prefer that it be so defined. (1.81)
9. Should the definition of “Parties” permit the use of a different definition if so indicated in the Agreement? FDN prefers that it do so. (1.83)
10. Should the Agreement include the definition of “Reverse Collocation”? FDN prefers that it does. (1.92)
11. Should the Agreement include a definition of “Virtual Point of Interconnection”? FDN prefers that the definition be excluded. (1.103/1.110)
12. In cases in which discontinuance is not permitted by Applicable Rules, should Sprint be permitted to discontinue any interconnection arrangement, Telecommunications Service, or Network Element due to network changes or upgrades? FDN prefers that Sprint not be permitted to do so. (3.1)

13. Should the Agreement contain a provision which attempts to fix an effective date for changes in Applicable Rules or should the negotiation and dispute resolution processes govern? FDN prefers the latter. (4.3)
14. Should Sprint be permitted to discontinue provisioning of arrangements that are no longer required under an order, immediately upon notice to FDN or should Sprint be required to negotiate an amendment and abide the dispute resolution process? FDN prefers the latter. (4.4)
15. Should the Term of the Agreement be two years or three years? FDN prefers three years. (5.1)
16. Should the Agreement contain a provision that it will not become effective if FDN has not paid all outstanding past due obligations to Sprint? FDN prefers that no such provision be included. (5.1)
17. If Sprint concludes from publicly available information that FDN is no longer doing business in Florida, may Sprint immediately terminate this Agreement, without providing FDN 10 days written notice? FDN prefers that 10 days written notice be required. (5.3)
18. If Sprint sells or trades all or substantially all of its assets in an exchange or group of exchanges, how much written notice must Sprint give prior to terminating the Agreement and should a follow-on agreement with the buyer be in place before termination? FDN prefers 150 days notice and a follow-on agreement. (5.5)
19. If Sprint sells or trades all or substantially all of its assets in an exchange or group of exchanges, may Sprint terminate the Agreement even if there is no follow-on agreement between FDN and the acquirer(s)? FDN prefers not. (5.5)
20. If the Agreement expires and the Parties are in arbitration or mediation before the Commission, should FDN be permitted to order additional services under the Agreement, or should it be limited to continuing services ordered prior to the expiration of the Agreement? FDN prefers the former. (6.2)
21. Should the right described in the preceding paragraph terminate upon the signing of a successor agreement that is not by its terms without Commission or FCC approval? FDN prefers that it not terminate until such a successor agreement is approved. (6.2)
22. Must Sprint provide notice and give FDN opportunity to cure before suspend processing orders or terminating service for nonpayment of undisputed bills not paid after the due date? FDN prefers that Sprint be required to provide notice. (7.2.1, 7.2.2)
23. May FDN disputes an invoice within a reasonable time after it discovers a dispute? FDN prefers that it have such right. (7.3)
24. Should FDN have the right to dispute an invoice that it has paid, in whole or in part? FDN prefers that it have such right. (7.3)

25. In the event that one Party audits the other, what type of support must the Audited Party give to the Auditing Party: “support” or “reasonable support”? FDN prefers “reasonable support.” (8.2)
26. Should a Party that is guilty of gross negligence or willful misconduct be exempt from paying consequential damages? FDN prefers no exemption. (10.1)
27. Should the Agreement’s limitation of liability clause contain a provision providing that it does not exempt Sprint from paying all sums required under any Commission approved service quality plan. FDN prefers that such a provision be included. (10.1)
28. Should FDN’s obligation to indemnify Sprint from claims by FDN’s subscribers be limited to claims with respect to service or facilities provided by Sprint to FDN for the use of FDN’s subscribers? FDN prefers that its obligation be so limited. (11.2)
29. Should each Party be required to obtain prior approval from the other before issuing any press release or publicity about this Agreement or discussing this Agreement in press or media interviews? FDN prefers that such prior approval not be required. (14.7)
30. Should a Party be permitted to assign this agreement upon 30 days’ written notice to the purchaser of all or substantially all of its assets? FDN prefers that a Party be so permitted. (16.2)
31. Should notice be sent by certified mail, return receipt requested, be effective when sent, without regard to the time of delivery? FDN prefers that such notice be effective when sent only if delivery takes no more than two business days. (20.2)
32. Is Section 34 of Sprint’s draft Agreement clear and unambiguous? FDN believes that it is not, and that negotiation between the Parties is required to make it comprehensible. (34)
33. For purposes of a deposit requirement, should the failure to pay a disputed amount result in the payment being considered not “current”? FDN prefers that it not be so considered. (36.1)
34. For purposes of a deposit requirement, should a claim be considered “current” if paid within 30 days of the due date? FDN maintains yes. (36.1, 36.8)
35. Should a security deposit be (a) equal to or (b) no more than, 2 months estimated or actual billings? FDN prefers (b). (36.4)
36. Should Sprint’s right to increase the amount of FDN’s security deposit be limited to two months estimated or actual billings? FDN prefers that it be so limited. (36.6)
37. Should Sprint be permitted to hold FDN’s security deposit without paying interest? FDN prefers that Sprint be required to pay the same rate of interest that it pays on security deposits of retail customers. (36.8)

38. Since the FCC's Interim Order did not eliminate any UNEs which Sprint was previously required to provide, which UNEs should be included in this Agreement and how should the TRO Remand Order be treated? FDN believes the Agreement should reflect the UNEs Sprint is lawfully required to provide prior to the TRO Remand Order and that the parties should negotiate the terms of the TRO Remand Order in accordance with standard change of law and dispute resolution procedures. (Part E, 39.1 through 53.2.2)
39. Should Sprint be required to provide UNEs or combinations of UNEs on the same rates, terms and conditions as Sprint has provided same to another carrier or under a BFR process and/or ICB pricing? FDN maintains the former. (41.1, 42.1)
40. For cooperative testing, should FDN be given 5 minutes to respond and should Sprint only be permitted to charge FDN for an abandoned test if Sprint itself shows up for the test on time as scheduled. FDN maintains yes. (44.2.2)
41. Should Sprint be required to make routine network modifications on UNE transport facilities? FDN maintains Sprint should. (53.1.2)
42. Should the Party originating, or the Party terminating, Internet-bound calls be obliged to order and pay for the necessary trunks? FDN prefers that the obligation be upon the originating carrier. (54.1.1)
43. If intraLATA calls are not treated as Local Traffic, should FDN be required to interconnect at every tandem in a LATA where it terminates traffic? FDN prefers no such requirement. (54.2.1)
44. Should the obligation to establish a physical point of interconnection on the other Party's network be reciprocal, or be limited to FDN? FDN prefers that it be reciprocal. (54.2.1, 54.2.1.1)
45. In a mid-span meet form of interconnection where the mid-point of the span is outside the boundary of Sprint's exchange, should Sprint be permitted to build facilities only to its exchange boundary, rather than to the midpoint? FDN prefers that each Party be required to build to the mid-point. (54.2.1.2)
46. Should FDN be required to establish a virtual point of interconnection in each of Sprint's local calling areas, and be required to compensate Sprint for carrying its own traffic from the virtual point of interconnection to the physical POI? FDN prefers not to be required to do so. (54.3, 55.1)
47. Should the parties utilize the "bill and keep" method of compensation for the exchange of local and Internet traffic? FDN prefers that they use this method. (55.2, 61.3.2)
48. Should VOIP traffic be subject to intercarrier charges? FDN believes not. (55.5)
49. Should only FDN, or both FDN and Sprint, be required to show the other Party its traffic studies regarding PLU? FDN prefers that this obligation be reciprocal. (55.6)

50. If the PLU factor requires changing, should it be changed for two years retroactively, or should be changed based upon the results of the traffic study? FDN prefers the latter. (55.6)
51. Should only FDN, or both FDN and Sprint, be required to transmit calling party numbers as required by FCC Rules? FDN prefers that this obligation be reciprocal. (55.6)
52. In the event that FDN elects to offer service within Sprint's serving area using a switch located outside Sprint's serving area, should FDN be required to provide the interconnection facility for both Parties' traffic outside Sprint's contiguous serving area in which CLEC offers service, at no charge to Sprint? FDN prefers that it not be so required. (55.7.2, 55.7.4)
53. Should trunk overforecasting be based on traffic volume from FDN to Sprint, or in both directions? FDN prefers that both directions be considered. (57.1.5.2)
54. To obtain transit services from Sprint, should FDN be required to have network and contractual arrangements with all necessary parties? FDN prefers not to be subject to such a requirement. (60.2)
55. Should FDN be required to use its best efforts to establish a direct connection with a third party carrier when the traffic exchanged between them reaches a DS-1 level, or should Sprint be automatically relieved of its obligation to transit such traffic? FDN prefers the former. (60.4.3)
56. Should FDN be required to pay Sprint for information on traffic originated by third parties and transited by Sprint to FDN? FDN prefers not to be obligated to pay. (60.6.2)
57. If the terminating Party requests, and the transiting Party does not provide, the terminating Party with the originating record in order for the terminating Party to bill the originating Party, should the terminating Party be permitted to default bill the transiting Party for transited traffic that does not identify the originating Party? FDN prefers that the Parties be permitted to do so. (60.6.3)
58. Should the Agreement address Sprint's refusing to port numbers of customers whose service has been suspended in light of the FPSC's existing rule regarding number porting? FDN prefers that the Agreement be silent and the rule govern. (67.1)
59. Should Sprint provide FDN access to the CNAM databases of other carriers? FDN prefers that it do so. (68.1.1)
60. Should Sprint be allowed to recover after hours costs without regard to whether such costs exceed the cost of conversion during normal hours? FDN maintains Sprint should not. (70.6.1.4.1)
61. Should the Agreement specify the FDN may order in combined status all elements Sprint routinely combines in Sprint's network? FDN prefers yes. (70.10)

62. Should the due date for FDN payments be within 30 days of the bill date or within 20 days of receipt, whichever is later? FDN prefers yes. (71.5)
63. Should the Parties charge each other for EMI records used to bill access charges to interexchange carriers? FDN prefers that they not do so. (71.9)
64. Should Sprint provide to FDN the necessary UNEs for FDN to provide E911/911 services to government agencies, and if such elements are not available to Sprint, should Sprint offer E911/911 service for resale by FDN to government agencies? FDN prefers that Sprint do so. (74.1.9)
65. Should Sprint be required to negotiate and solve through dispute resolution any desired collocation reclamations? FDN prefers yes. (74.6)
66. Should Sprint be permitted to supersede the pricing for services under the Agreement by filing tariffs? FDN prefers that it not be permitted to do so. (76.2)
67. Should Sprint be permitted to reclaim collocation space Collocation Space or any portion thereof, any Inner Duct, Outside Cable Duct, Cable Vault space or other Sprint-provided facility from FDN on 30 days notice in order to fulfill Sprint's common carrier obligations, any order or rule of the Commission or the FCC, or Sprint's tariffs to provide Telecommunications Services to its end user customers? FDN prefers that Sprint not have that right (77.6)
68. Should Collocation Space occupied by FDN constitute CLEC Premises or Sprint Premises? FDN prefers that it be considered Sprint Premises. (79.4)
69. Must Sprint's processing intervals for collocation applications be consistent with Applicable Law? FDN prefers that they be consistent with Applicable Law. (80.11)
70. Should CLEC be additionally responsible for Sprint's extraordinary space preparation costs, even if those costs are already accounted for in the agreed and ordinarily applicable rates? FDN prefers not. (83.4)
71. Should Sprint be permitted to recover its actual expenses incurred when FDN cancels a collocation order without providing FDN a detailed listing of all costs incurred? FDN prefers not. (83.7)
72. The Parties are agreed that if FDN does not place operation telecommunications equipment in its collocation space within 180 days, Sprint may terminate the space upon written notice. Should the 180 days start running upon FDN's acceptance of Sprint's price quote, or when the space is actually ready? FDN prefers the latter. (85.3)
73. Should intervals for collocation space augments be reduced from the intervals for new collocation space? FDN prefers that reduced intervals be available. (85.3, 85.4)
74. Should FDN be permitted to use cross connect service to connect FDN's equipment in FDN's Collocation Space to any services or facilities purchased under this Agreement or

any other Sprint services, such as special access services purchased under Sprint state and federal tariffs? FDN prefers that it be permitted to do so. (87.4)

75. Should building rules and security arrangements applicable to FDN's collocation arrangements be the same as those applicable to Sprint? FDN prefers that they be the same. (89.7)
76. Should FDN be permitted to access its collocation space without the need for a security escort? FDN prefers that it have that right. (89.7)
77. If FDN brings Hazardous Material onto Sprint's Premises without notification, or stores or disposes of such materials on Sprint's Premises in violation of any applicable environmental law, should FDN have an adequate time to cure before Sprint may terminate the applicable Collocation Space? FDN prefers that it have adequate time to cure. (90.9.2)
78. Should the rules applicable to FDN for safety, environmental protection, care, cleanliness and preservation of the Building, the Premises and the Collocation Space and its tenants and occupants also be applicable to Sprint? FDN prefers that such rules also be applicable to Sprint. (90.11.1)