

ORIGINAL

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Sent: Friday, April 01, 2005 11:12 AM
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Cc: Jeremy Susac; Kira Scott; susan.masterson@mail.sprint.com;
kenneth.schifman@mail.sprint.com; mfeil@mail.fdn.com; Branfman, Eric; Sloan, Michael
Subject: Docket No. 041464
Attachments: FDN Preliminary Issue List.pdf

Please file the attached Preliminary List of Issues on behalf of Florida Digital Network, Inc. d/b/a FDN Communications in the following docket:

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 the above-referenced docket consists of a cover letter, the certificate of service, and the Florida Digital Network, Inc. d/b/a FDN Communications Preliminary List of Issues for a total of 9 pages.

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

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<<FDN Preliminary Issue List.pdf>>

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DOCUMENT NUMBER-DATE

03185 APR-1 05

ORIGINAL

VIA EMAIL

April 1, 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

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 the Florida Digital Network, Inc. d/b/a FDN Communications ("FDN") Preliminary List of Issues for electronic filing in the above-referenced matter. Please note that Sprint made comprehensive changes to the draft on March 21, 2005. Most of these changes reflect Sprint's interpretation of the FCC's Order on Remand in WC Docket No. 04-313 and CoreComm Docket No. 01-338 (Triennial Review Remand Order). Because FDN received these revisions in the last 10 days, FDN's review is not yet complete, and as a result, FDN's Preliminary List of Issues will likely need to be updated in the near future.

If you have any questions concerning this filing, please do not hesitate to contact the undersigned at (202) 424-7500.

Respectfully submitted,

s/ Eric J. Branfman

Eric J. Branfman
Michael C. Sloan

Counsel to Florida Digital Network, Inc.

cc: Matthew Feil, FDN

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 1st day of April, 2005.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Florida Digital, Inc., d/b/a FDN Communications ("FDN"), hereby provides its preliminary issue list as requested by Staff in its March 22, 2005 memorandum.

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" refer to any Sprint premises? FDN maintains it should. (1.23)
3. Should the definition of "parties" cross reference other provisions of the agreement? FDN maintains it should. (1.87)
4. Should "virtual point of interconnection" be included in the definition section? FDN maintains it should not, since a VPOI scheme for intercarrier compensation does not comport with FCC or Commission precedent.
5. 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)
6. Should the Agreement contain a provision that 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)
7. 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)
8. Should the Term of the Agreement be two years or three years? FDN prefers three years. (5.1)

9. 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)
10. 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)
11. 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 an assignment to or follow-on agreement with the buyer be in place? FDN prefers 150 days notice and, at a minimum, an assignment. (5.5)
12. 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)
13. 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)
14. May FDN dispute an invoice within a reasonable time after it discovers a dispute? FDN prefers that it have such right. (7.3)
15. Should a Party that is guilty of gross negligence or willful misconduct be exempt from paying consequential damages? FDN prefers no exemption. (10.1)
16. Should each Party be required to obtain prior approval from the other before issuing any press release or making any public statement about the Agreement or the other party? FDN prefers that such prior approval not be required. (14.7)
17. 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)
18. 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)
19. Should the Force Majeure provision have an exception as proposed by Sprint regarding "discontinued facilities"? FDN maintains it should not. (23.1)
20. 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)
21. Is it necessary for FDN to self-certify every single UNE order it submits to Sprint? If so, how? FDN believes that certification should only be necessary where required by the

- FCC, such as for EEL orders or for orders where there is a dispute between the parties regarding a wire center's UNE eligibility. (40.4)
22. Is it proper to restrict UNE availability to where there is a "meaningful amount of Local Traffic." FDN maintains it is not. (40.4.2)
 23. Are Sections 44, 48, 49 and 50 regarding UNE availability consistent with the TRO and TRRO? FDN has not had sufficient time to review the revision Sprint provided on March 23, 2005. This issue may have to be broken into several issues once that review is complete.
 24. Should subloop access be available to FDN consistent with Sprint's offered access to other carriers and should such access be at a splice point near the Sprint RT? FDN maintains it should (45.1, 45.2)
 25. 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,)
 26. 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)
 27. Should Sprint be required to make routine network modifications on UNE transport facilities? If so, at what price? FDN maintains Sprint should provide routine modifications for transport. Sprint has not yet proposed a price. (53.1.)
 28. On what terms should Sprint offer loop conditioning? FDN maintains that conditioning should be available for subloops, the HFP of copper loops, and legacy copper. Further, testing of conditioned loops should test the data capability of the loops. (53.2)
 29. 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)
 30. What are the appropriate arrangements for points of interconnection to the other Party's network? FDN's position will depend on the definition of local traffic. (54.2.1, 54.2.1.1)
 31. 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)
 32. 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)

33. 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)
34. What should the agreement provide, if anything, regarding virtual NXXs? FDN does not believe it’s necessary for the agreement to specify. (55.4)
35. Should VOIP traffic be subject to intercarrier charges? FDN believes not. (55.5)
36. 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)
37. If the PLU factor requires changing, should it be changed for two years retroactively, or should be changed based upon the results of a traffic study? FDN prefers the latter. (55.6)
38. 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)
39. 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)
40. Should trunk overforecasting be based on traffic volume from FDN to Sprint, or in both directions? FDN prefers than both directions be considered. (57.1.5.2)
41. 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)
42. Should FDN be required to pay Sprint for information on traffic originated by third parties and transited by Sprint to FDN? FDN should not to be obligated to pay. (60.6.2)
43. 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)
44. 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)
45. Should Sprint provide FDN access to the CNAM databases of other carriers? FDN prefers that it do so. (68.1.1)

46. 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)
47. 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)
48. 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)
49. 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)
50. 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)
51. Are Sprint's March 23, 2005, proposed changes to the collocation section of the agreement proper? FDN has not developed a position on Sprint's changes at this time. After that review, this issue may evolve into several issues.
52. Should Sprint be required to negotiate and solve through dispute resolution any desired collocation reclamations? FDN prefers yes. (74.6)
53. 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)
54. 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)
55. Should Collocation Space occupied by FDN constitute CLEC Premises or Sprint Premises? FDN prefers that it be considered Sprint Premises. (79.4)
56. Must Sprint's processing intervals for collocation applications be consistent with Applicable Law? FDN prefers that they be consistent with Applicable Law. (80.11)
57. 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)
58. 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)

59. 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)
60. 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)
61. 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)
62. 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)
63. 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)
64. 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)
65. 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)
66. What are the appropriate recurring and non-recurring UNE rates? FDN will propose adjustments to the cost study Sprint claims supports the rates Sprint requests in this proceeding or produce its own cost study. FDN understand that Sprint intends to amend the last price schedule provided FDN to reflect rates consistent with the TRRO and a collocation proceeding. FDN's position on those rate changes will be developed upon reviewing the Sprint proposal.

RESPECTFULLY SUBMITTED, this 1st day of April, 2005.

s/ Eric J. Branfman

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