

ORIGINAL

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: May 27, 2005
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DIRECT TESTIMONY OF KEVIN P. SMITH

ON BEHALF OF

FLORIDA DIGITAL NETWORK, INC. D/B/A FDN COMMUNICATIONS

May 27, 2005

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1 **Q. Please state your name and address.**

2 A. My name is Kevin P. Smith. My business address is 2301 Lucien Way,  
3 Suite 200, Maitland, Florida, 32751.

4 **Q. Who do you work for?**

5 A. I am Vice President of Marketing for FDN Communications (“FDN”).

6 **Q. What are your responsibilities as Vice President of Marketing for**  
7 **FDN?**

8 A. My department is responsible for overseeing all of FDN’s product  
9 development and management, corporate communications, training, ordering  
10 compliance (orders for end user services between FDN and other carriers),  
11 and advertising/PR efforts. Within the scope of the product management  
12 function my group has responsibility for product pricing and gross margin as  
13 well as determining what product will be available in what areas of the state.  
14 My department is also responsible for filing FDN’s tariffs at the State and  
15 Federal level.

16 **Q. Please describe your work experience in the telecommunications**  
17 **sector.**

18 A. Prior to joining FDN in 1999, I served as a technical consultant for AT&T  
19 Local Service in Ft Lauderdale, FL. I joined FDN in February of 1999 as a  
20 sales engineer in the Ft Lauderdale office. Then, in January 2000, I opened  
21 the Miami market with FDN serving as the city sales manager. In August  
22 2001 I was appointed Director of Marketing for FDN, and then I was  
23 promoted to Vice President of Marketing in February 2005.

1           **Q. Have you previously testified in a regulatory proceeding before a**  
2           **state utility commission, the FCC or a hearing officer?**

3           A. No, I have not.

4           **Q. What is the purpose of your testimony in this proceeding?**

5           A. I will testify in support of FDN's positions on several of the Issues  
6           remaining in this proceeding. I will address to some degree FDN's positions  
7           or concerns on Issues Nos. 5 (definition of local traffic), 21 (resale of Sprint  
8           contract arrangements), parts of 22 (TRO and TRRO implementation), as  
9           explained below, 25 (sub loop access), 27 (combinations/commingling), 29  
10          (network modifications), 35 – 39 (all relating to interconnection and  
11          intercarrier compensation), and one other matter not specifically identified as  
12          an issue in the tentative issue list, which concerns pre-ordering.

13                         Some of the issues which are still open, FDN considers to be mostly  
14          legal or involving issues of the proper interpretation of FCC rules or orders  
15          and, therefore, FDN may not address those issues in testimony. At the  
16          present time, issues in this category are the following: certain aspects of  
17          Issues Nos. 22 (TRO and TRRO implementation), as explained below, 23  
18          (self-certifying UNEs), and 24 (UNEs with meaningful amount of local  
19          traffic).

20                         As a preliminary matter, FDN believes that all of the parties' specific  
21          proposals, the points of agreement and disagreement and the draft  
22          interconnection agreement may not be totally developed at this time --

1           although much more so than when issues were tentatively identified. As the  
2           Commission is aware, Sprint’s petition was filed listing only broad areas of  
3           disagreement and without listing specific issues in dispute, because at that  
4           time of those filings the parties were not far along in negotiating from a more  
5           current Sprint template. The issues identified in the Order Establishing  
6           Procedure were based on draft agreements and proposals that the parties were  
7           working from prior to that point in time. The negotiation process was not  
8           then complete (and still is not). Since the Order Establishing Procedures,  
9           negotiations have been on-going and the parties have eliminated about 45  
10          issues. Indeed, on the eve of filing this testimony, the parties were still  
11          negotiating significant portions of the agreement and numerous issues were  
12          still open, with proposed language pending review by one side or the other.  
13          Under these circumstances, FDN reserves its right to make such supplemental  
14          filings, including supplementing this testimony, if FDN believes it is  
15          necessary to do so.

16          **ISSUE NO. 5 (HOW SHOULD LOCAL TRAFFIC BE DEFINED?)**

17          **Q. How should “local traffic” be defined, for purposes of determining**  
18          **the applicability of intercarrier compensation?**

19          A. The local calling area for purposes of intercarrier compensation should be  
20          defined as the LATA, provided FDN accepts the responsibility for carrying  
21          its local traffic at least as far as the Sprint tandem serving the end user  
22          customer.

23          **Q. Explain why FDN supports this proposal?**

1           A. Carriers pay one another reciprocal compensation for local calls and  
2           intrastate access for toll calls. The chief reason FDN supports this proposal is  
3           that an ILECs' local toll areas are artificial retail pricing boundaries and  
4           should not dictate whether a call is local or intrastate access for intercarrier  
5           compensation purposes. The cost for intrastate access in Florida is  
6           prohibitively high. Of the three major Florida ILECs, Sprint's intrastate  
7           access rates are the highest. FDN believes that the cost to the originating  
8           carrier for terminating intrastate access calls severely inhibit the originating  
9           carrier from lowering retail prices for all intraLATA calls on a widely-  
10          available basis or puts that originating carrier in a position of offering a  
11          product that is fiscally unsustainable. In any event, intercarrier compensation  
12          schemes that rely on the ILEC's retail local serving areas inhibit price  
13          competition for retail intraLATA services. FDN maintains that if the  
14          competitive barrier of high intrastate access charges is brought down,  
15          consumers would benefit greatly from a better array of calling plans in the  
16          LATA. FDN's proposal would spur much needed price competition in  
17          Sprint territory for such services, to the benefit of end users who could see  
18          dramatic price reductions for intraLATA calls. Further, FDN's proposal  
19          would also have the benefit of promoting facilities based competition.

20          **Q. You mentioned much-needed price competition in Sprint territory.**  
21          **What do the Florida PSC Competition Reports say about competition in**  
22          **Sprint territory?**

1 A. As of the last PSC report, CLEC market share in Sprint territory is still in  
2 single digits, just 8%. The year before, CLEC market share in Sprint territory  
3 was at 6%. The year before that, CLEC market share in Sprint territory was  
4 at 4%. The PSC reports reflect that wireline competition in Sprint territory is  
5 not at a desirable level for Florida consumers, and nowhere close to what it is  
6 in BellSouth territory. FDN believes its proposal for an expanded local  
7 calling area would improve wireline competition in Sprint territory. With  
8 other regulatory changes in the offing (i.e. the elimination of UNE-P), FDN  
9 believes that the Commission may be looking at a scenario where wireline  
10 competition actually decreases if the Commission does nothing.'

11 **Q. Why do you believe wireline competition in Sprint territory in**  
12 **Florida has lagged far behind competition in BellSouth territory in**  
13 **Florida?**

14 A. I think that there are a few basic reasons. Certainly, Sprint does not serve  
15 as many large urban centers as does BellSouth. In the initial phases of  
16 competition, at least, the influx of CLECs focused on larger urban areas.  
17 That initial phase of competitive deployment, however, is now over, and  
18 Sprint does serve what have been for the last few years some of the fastest  
19 growing areas of the state. And yet, wireline competition is still at a crawl in  
20 Sprint territory.

21 Geography aside, there are a few factors which I believe persist in  
22 deterring facility-based wireline competition in Sprint territory. The access  
23 charge barrier I discuss in my testimony is one. FDN and BellSouth have

1 interconnection terms whereby the parties agree to reciprocal compensation  
2 for calls terminated over local trunks within the LATA, and in South Florida  
3 FDN offers expanded area calling. I also believe that the prohibitively high  
4 UNE rates which the PSC had approved for Sprint is another reason. FDN is  
5 arbitrating Sprint's UNE rates in this proceeding. Further, Sprint has  
6 ordering and provisioning processes which are not as efficient as those of  
7 other Florida ILECs. The bottom line is that wireline competition in Sprint  
8 territory is at a less than desirable level -- a level which is not conducive to  
9 consumer choice.

10 **Q. What is your understanding of the disposition of the Commission's**  
11 **determination in the generic proceeding (Docket No. 000075) which**  
12 **addressed several issues regarding local calling areas and intercarrier**  
13 **compensation?**

14 A. My understanding is that the Commission attempted to create a default  
15 rule whereby the originating carrier's local calling area would govern. So, if  
16 the parties could not reach agreement on local calling area for intercarrier  
17 compensation purposes, this default rule would govern. It is apparent that the  
18 Commission recognized the barrier posed by intrastate access and that the  
19 Commission considered it desirable to promote consumer choice for different  
20 calling plans. However, the Florida Supreme Court overturned the  
21 Commission's decision because there was no record evidence regarding the  
22 competitive neutrality of the default the Commission favored. After the

1 appeal, the Commission decided to close the docket without a rule on local  
2 calling areas.

3 **Q. Is FDN's proposal in this case competitively neutral?**

4 A. I do not address whether the Commission need make such a finding.  
5 FDN's proposal is not the same as the originating carrier proposal, and the  
6 issue FDN presents is in the context of a specific arbitration between two  
7 carriers, not a rule case.

8 At a high level, I understand the ILEC argument about competitive  
9 neutrality to be the following. If a CLEC has an expanded calling area for  
10 intercarrier purposes, the CLEC has an advantage over IXCs because the IXC  
11 must still pay access charges for calls in the LATA. I think comparing the  
12 CLEC and IXC this way is an apples and oranges sort of comparison to start  
13 with. Typically, the CLEC directly interconnects with the ILEC through  
14 local interconnection trunks where each party terminates the other's traffic as  
15 part of a reciprocal relationship. The IXC, on the other hand, only uses local  
16 termination as an input to other types of calling services. Thus, both the  
17 economics and relationships are quite different. Further, an IXC could  
18 certainly become a CLEC and negotiate terms for local interconnection if it  
19 chose to do so and most are.

20 As I mentioned earlier, FDN and BellSouth have interconnection  
21 terms whereby the parties agree to reciprocal compensation for calls over  
22 local trunks within the LATA. Certainly, if there were legitimate legal



1 concerns about competitive neutrality or discrimination, BellSouth would not  
2 have agreed to this arrangement.

3 I also note that the days of the independent IXC offering stand-alone  
4 intraLATA services appear to be dwindling. The market pressures for  
5 bundled (local, toll, internet) services are a market reality. IXC-only  
6 offerings have been rapidly losing market share.

7 **Q. Why does FDN propose the condition that FDN, as the originating**  
8 **carrier, would bear responsibility to deliver calls at least as far as the**  
9 **ILEC tandem serving the end user?**

10 A. This call hand-off condition is an attempt at minimizing controversy over  
11 cost and call routing and delivery issues when making the LATA the local  
12 calling area and an attempt at promoting facilities based competition with the  
13 intraLATA retail price competition.

14 **Q. Under FDN's proposal, under what circumstances would access**  
15 **charges apply for calls within the LATA?**

16 A. Access charges would apply for intraLATA calls if FDN did not establish  
17 physical points of interconnection at all tandems in a given LATA. I think  
18 this can be done on a LATA-by-LATA approach, but does not have to be.

19 **Q. Why have the parties not been able to successfully negotiate this issue**  
20 **to resolution?**

21 A. FDN has been unwilling to capitulate on this issue for several reasons.  
22 First, it is FDN's adamant belief that the local toll calling areas established by  
23 an ILEC are artificial boundaries. Next, there is precedent for FDN's

1 proposal in the state, and the arrangement carriers like FDN have with  
2 BellSouth is such a precedent. Further, FDN's proposed obligation to  
3 transport its traffic to the serving tandem ensures facility based competition  
4 would be promoted. Finally, FDN believes that it proposal will foster  
5 competition and provide a viable alternative for the consumer, as various  
6 calling plans could be made more widely available in Sprint territory, where a  
7 boost to facilities based competition is clearly needed.

8 Although Sprint will have to speak for itself, I think Sprint's primary,  
9 if not its sole, resistance to this change is that Sprint believes that it is  
10 absolutely entitled to the stream of revenues it derives from intrastate access  
11 on calls in the LATA and that Sprint has no means of recovering that stream  
12 of revenue from other sources. In the generic reciprocal compensation case,  
13 Sprint alleged it needed all intrastate access funds to enable Sprint to fulfill  
14 universal service obligations. FDN does not believe Sprint is somehow  
15 entitled to this revenue from FDN and its customers.

16 **ISSUE NO. 21 (RESALE OF SPRINT CONTRACT SERVICE**  
17 **ARRANGEMENTS)**

18 **Q. What is the parties' dispute regarding this issue?**

19 A. At the time of this testimony, this issue was open for Sprint to consider an  
20 FDN proposal. FDN's position is that if FDN elects to resale Sprint service  
21 (pursuant to Section 251(b)(1) of the Act) to an end user under a contract or  
22 promotion, Sprint should not (as Sprint proposes) simply terminate its  
23 agreement with the end user, assess the end user any applicable termination

1 charges, and then resell to FDN what amounts to a brand new contract or  
2 promotion for that end user. FDN believes that this arrangement defeats the  
3 idea of reselling an existing service. If an end user is subject to a sizeable  
4 termination liability it's difficult to see how the economics would work for  
5 FDN or the end user for FDN to resell an agreement as Sprint proposes.  
6 FDN should be able to resell Sprint's services without end users incurring  
7 termination penalties. Sprint's response to FDN's proposal for resolving this  
8 is pending, so FDN may file supplemental information on this issue.

9 **ISSUE NO. 22 (TRO and TRRO IMPLEMENTATION)**

10 **Q. What are the parties' disputes regarding this issue?**

11 A. My understanding is that there are three parts of this issue which are yet  
12 to be resolved as of the date of this testimony: (a) The question of whether  
13 the TRRO's limitation of 10 DS-1 transport circuits should be applied to all  
14 routes where DS1 transport is available on an unbundled basis or only to  
15 those where DS3 transport is unavailable on an unbundled basis. I do not  
16 address this question in my testimony, since it is primarily a question of  
17 interpreting the TRRO. However, FDN disagrees with Sprint's interpretation  
18 and reserves the right to address in later testimony, if need be, and in its brief.  
19 (b) A question of which wire centers should be on the list of unimpaired Tier  
20 I and Tier II wire centers in Sprint territory. (c) The question of how the  
21 parties handle disputes in cases where after execution of the interconnection  
22 agreement Sprint identifies a wire center it wishes to add to the list of  
23 unimpaired Tier I and Tier II wire centers.

1           With regard to subpart (b), Sprint has not yet provided FDN with the  
2 data supporting the wire centers Sprint believes meet the unimpaired  
3 standards for transport in the TRRO. (None of Sprints wire centers are  
4 unimpaired for high capacity loops.) Until Sprint provides this information,  
5 FDN is not in a position to agree or disagree with Sprint’s assessment.

6           With regard to subpart (c), FDN has made compromise proposals  
7 which Sprint is considering. For the time being, however, FDN maintains  
8 that it should have the right to pursue dispute resolution for any subsequent  
9 Sprint attempt to add to the unimpaired wire center list, and Sprint should  
10 have to provide UNEs from that wire center pending resolution of the  
11 dispute. FDN is willing to self-certify eligibility under such circumstances  
12 pending resolution of the dispute, but the UNE should be available until the  
13 dispute is resolved.

14           **ISSUE NO. 23 (SELF-CERTIFYING UNES) & ISSUE NO. 24**  
15           **(MEANINGFUL AMOUNT OF LOCAL TRAFFIC)**

16           **Q. What are the parties’ disputes regarding these issues?**

17           A. My understanding is that the dispute regarding these issues stem from  
18 Sprint’s interpretation of the TRRO. Initially, Sprint maintained that FDN  
19 should self-certify every UNE it ordered and that every UNE FDN ordered  
20 had to have a “meaningful” amount of local traffic. I do not address this  
21 question in my testimony, since it is primarily a question of interpreting the  
22 TRRO. However, FDN disagrees with Sprint’s interpretation and reserves  
23 the right to address these issues in later testimony and in its brief.

1           **ISSUE NO. 25 (SUBLOOP ACCESS)**

2           **Q. What are the parties' disputes regarding this issue?**

3           A. My understanding is that as of the date of this testimony, this issue is  
4           open for Sprint to consider FDN proposed language. FDN's position is  
5           simply that if Sprint has offered subloop access to another carrier in a manner  
6           similar to what FDN proposes, FDN should be offered subloop access on the  
7           same rates, terms and conditions as the other carrier and should not have to  
8           go through an ICB or BFR process.

9           **ISSUE NO. 27 (COMBINATIONS/COMMINGLING)**

10          **Q. What are the parties' disputes regarding this issue?**

11          A. My understanding is that as of the date of this testimony the only open  
12          question concerns pricing for combinations. FDN has proposed that for those  
13          commingled services identified in the text of the agreement, the nonrecurring  
14          charges should be identified in the agreement. Sprint has not yet responded  
15          to this proposal. FDN reserves its right to argue that there should be no  
16          nonrecurring charges other than those identified in the agreement.

17          **ISSUE NO. 29 (NETWORK MODIFICATIONS)**

18          **Q. What are the parties' disputes regarding this issue?**

19          A. My understanding is that as of the date of this testimony, the only open  
20          question concerns when, or if, FDN should pay for certain routine network  
21          modifications. FDN provided Sprint proposed language which Sprint is  
22          reviewing. FDN's position is that if Sprint would perform a particular

1 network modification in the ordinary course for its own benefit, then FDN  
2 should not have to pay for that modification if FDN also benefited.

3 **ISSUES NOS. 35 – 39 (INTERCONNECTION AND INTERCARRIER**  
4 **COMPENSATION)**

5 **Q. What are the parties' disputes regarding these issues?**

6 A. My understanding is that as of the date of this testimony, there are several  
7 aspects of this issue still open. The parties seem to be in general agreement  
8 on bill and keep for local traffic, that each party is responsible for  
9 transporting its originating traffic to the physical point of interconnection,  
10 and that a point of interconnection should be established at a tandem in each  
11 LATA where the parties exchange local traffic. As the Commission is well  
12 aware, a CLEC is entitled to establish one point of interconnection per LATA  
13 for the mutual exchange of traffic.

14 However, FDN believes it should be FDN's option to establish a point  
15 of interconnection at more than one tandem in a multi-tandem LATA  
16 environment. FDN is willing to establish a physical point of interconnection  
17 in each tandem in a multi-tandem LATA **provided** it also can deem the  
18 LATA to be the local calling area for reciprocal compensation purposes.  
19 (FDN could also hand off calls and establish points of interconnection at the  
20 end office serving the geographical location of the end user where the call  
21 terminates.) While the parties are still negotiating, none of the proposals  
22 have been accepted, as it appears that the definition of the local calling area  
23 has been the chief obstacle. As above, FDN urges the Commission to resolve

1 the local calling area as FDN proposes and similarly resolve the  
2 interconnection issue.

3 The parties have not resolved how intercarrier compensation should  
4 work in a virtual NXX (VNXX) environment. While FDN does not take  
5 issue with the Commission's previous ruling that the end points of the call  
6 should dictate how the call is treated for intercarrier compensation purposes,  
7 FDN's basic concern with the Sprint drafted language is that full reciprocity  
8 seems to be lacking. Although the parties continue to work to resolve this  
9 issue, FDN believes that whatever language governs VNXX issues should  
10 apply equally to both parties.

11 The parties are also yet to resolve how or whether intercarrier  
12 compensation should apply to VOIP traffic. Until the parties can voluntarily  
13 resolve the subject, FDN maintains for now that the Commission should  
14 simply defer resolution of the issue until the FCC decides the IP Enabled  
15 Services cases before it and require the parties to negotiate an amendment to  
16 the agreement thereafter. In the meantime, FDN remains willing to negotiate  
17 a compromise on the VOIP issue as a part of a trade-off in which the local  
18 calling area is defined as the LATA.

19 **Q. Earlier you had mentioned one other matter which was not**  
20 **specifically identified as an issue in the Order Establishing Procedure.**  
21 **What are you asking the Commission to do there?**

22 A. This issue a historic problem in identifying those areas of difficulty for  
23 provisioning Sprint loops. Sprint has a significant percentage of loops served

1 through remote terminals. For Sprint to provision these loops for CLEC use,  
2 Sprint has to go through an internal process of creating, and executing on, an  
3 internal engineering design/build order. While Sprint now has enough  
4 experience with this process that, ultimately, it usually results in Sprint  
5 delivering to FDN a working loop, the process is manual and often takes a  
6 significant amount of time compared to ordinary loop provisioning. FDN  
7 believes that it is important for FDN to know in advance where loops served  
8 by remotes are located so that FDN can properly establish customer  
9 expectations as to installation requirements. There may be instances where  
10 prospective customers do not want to endure the extended provisioning  
11 process and may choose to cancel their order with FDN somewhere down the  
12 line as a result. FDN believes it could save FDN, the customer and Sprint  
13 time and resources if there was a means for FDN to determine up front which  
14 loops are served through remotes. FDN has proposed language for this  
15 purpose:

16  
17 Sprint will provide CLEC a means for accessing on a pre-ordering  
18 basis information identifying which Sprint loops are served through  
19 remote terminals, such information to be no less accurate or reliable  
20 than what Sprint has available to itself for provisioning its own  
21 services  
22

23 **Q. Does that conclude your direct testimony?**

24 A. Yes.