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June 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 Hand Delivery

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 for filing in the above matter on behalf of FDN Communications the prefiled rebuttal testimony and exhibit of Kevin P. Smith and the prefiled rebuttal testimony and exhibit of Dr. August Ankum.

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

C: Susan Masterton (by email, U.S. mail)
Kira Scott (by email, U.S. mail)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the prefiled rebuttal testimony and exhibit Kevin P. Smith and the prefiled rebuttal testimony and exhibit of Dr. August Ankum was sent by e-mail and regular mail to the persons listed below this 24th day of June, 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: June 24, 2005
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REBUTTAL TESTIMONY OF KEVIN P. SMITH

ON BEHALF OF

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

June 24, 2005

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

2 A. My name is Kevin P. Smith. I am Vice President of Marketing for FDN
3 Communications (“FDN”).

4 **Q. Are you the same Kevin P. Smith who filed direct testimony in this**
5 **proceeding?**

6 A. Yes.

7 **Q. What is the purpose of your rebuttal testimony?**

8 A. I will be rebutting parts of the direct testimony of Sprint witnesses
9 Sywenki, Givner, and Maples.

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

11 **Q. Sprint witness Sywenki states on page 5, line 6, that if the LATA is**
12 **the local calling area as FDN has proposed, “Sprint will be exposed to**
13 **significant reductions in access revenue.” Does FDN agree?**

14 A. No. FDN does not believe that the intraLATA intrastate access revenues
15 that FDN pays Sprint are significant enough to jeopardize Sprint’s
16 subsidization of its carrier of last resort duties. FDN’s proposal, the
17 Commission should note, would have no impact on Sprint’s interLATA
18 intrastate access revenues, only intraLATA intrastate access. The
19 Commission should compare FDN’s intraLATA intrastate access payments
20 to Sprint with the total amount Sprint claims it needs for its carrier of last
21 resort obligations (COLR) in Florida. FDN seriously doubts that what FDN
22 pays Sprint in the way of intraLATA intrastate access revenues represents a

1 significant percentage, or anything above a de minimus percentage, of the
2 total Sprint claims it collected via access charges for its COLR obligations.

3 Further, Sprint should not be heard to argue that it is not just
4 intraLATA intrastate access revenues from FDN that the Commission should
5 concern itself with, because other carriers could opt into the FDN-Sprint
6 interconnection agreement and thus diminish Sprint's access subsidies. As
7 the Commission is aware, the FCC changed its rules such that a carrier
8 requesting to opt into another carrier's interconnection agreement with an
9 ILEC must opt into the entire agreement and cannot opt into just parts of an
10 agreement. The FCC essentially agreed with the ILECs' argument that this
11 new rule would give carriers greater flexibility in negotiating resolutions to
12 carrier-specific issues. FDN has negotiated with Sprint with the spirit of this
13 new rule in mind. FDN has made proposals to Sprint to trade-off a LATA-
14 wide local calling area in exchange for other concessions that other carriers
15 may not consider desirable. For instance, as part of a proposal that would
16 involve a LATA-wide local calling area, FDN offered to agree to
17 interconnect at each tandem (and bear responsibility for the cost of
18 transporting its traffic to each) in a multi-tandem LATA, even though FDN
19 has no legal obligation to do that. Moreover, despite almost universal debate
20 regarding the status of VOIP traffic and the FCC's pending dockets on that
21 subject, FDN also indicated its willingness to agree to terms whereby VOIP
22 traffic could be subject to intercarrier compensation if Sprint would accept a

1 LATA-wide local calling area. All of FDN's proposed concessions were to
2 no avail, however, as Sprint refused all of FDN's suggested compromises.

3 As I pointed out in my direct testimony, wireline competition in
4 Sprint territory lags behind wireline competition in BellSouth and Verizon
5 territory in Florida. FDN is one of the few facilities-based carriers still
6 operating in Sprint territory, and, overall, the rate of CLEC births and the rate
7 of CLEC market expansions are certainly not what they once were. So, it
8 would not seem likely that a host of other carriers would line up behind FDN
9 to opt into the FDN-Sprint agreement merely because there was a provision
10 for LATA-wide local calling for intercarrier purposes in the agreement and
11 despite the additional concessions that FDN offered that favor Sprint. FDN's
12 interconnection agreement with BellSouth has LATA-wide local calling
13 available, and FDN is not aware of a flood of carriers opting into that
14 agreement (though other carriers may have a LATA-wide arrangement with
15 BellSouth).

16 In any event, even if other carriers did eagerly opt into FDN's
17 proposed agreement with Sprint, that is all the better for consumers and
18 facilities-based competition in Sprint territory.

19 **Q. Mr. Sywenki also states on page 6, line 1, "Because Sprint, as an**
20 **ILEC, is not permitted to adjust its regulated rates without Commission**
21 **approval, it has no alternative to recover the loss of intercarrier**
22 **compensation revenue caused by redrawing the local traffic boundary**
23 **line. Does FDN agree?**

1 A. No. Mr. Sywenki's statement is not persuasive on a number of levels.
2 First, Mr. Sywenki states that **because Sprint would have to ask** for
3 Commission approval to change regulated rates, **Sprint has no way** to
4 recover diminished access revenue. Thus, Mr. Sywenki at least admits that
5 Sprint could recover any loss in access revenue that might result from
6 adopting FDN's proposal through "regulated rates" if it asked. Additionally,
7 while I'm not sure what Mr. Sywenki means when he refers to "regulated
8 rates," I understand that the incumbents' rates for non-basic services (multi-
9 line business and features, for instance) are subject to change on 15 days'
10 notice, without Commission approval, and that non-basic service rates can
11 increase 6% within a 12 month period in all markets and up to 20% a year in
12 markets with a competitor. So, Sprint could increase non-basic rates without
13 Commission approval. As FDN's Marketing V.P., I see ILECs in Florida
14 change their pricing for non-basic services often, just by a tariff filing with
15 the Commission. By just such a tariff filing effective in November 2004,
16 Sprint made a number of changes to several non-basic service rates, which I
17 believe resulted in a net revenue increase.

18 With respect to basic service (residential and single-line business), I
19 recognize that price-cap incumbents like Sprint can raise their rates without
20 Commission approval (although the percentage increase is limited to inflation
21 less 1 percent) and could raise basic rates by a greater percentage with
22 Commission approval. In any case, contrary to Mr. Sywenki's assertion,
23 Sprint clearly has the ability to seek additional revenue opportunities with its

1 non-basic services without asking for Commission approval, even if subsidies
2 from FDN (or other CLECs) through intraLATA intrastate access payments
3 were diminished. If Sprint believed it had to make up for lost revenue in one
4 arena, it would act just like any other economically rational firm and attempt
5 to recover that revenue through other available means, and non-basic services
6 are another means for Sprint.

7 **Q. Mr. Sywenki states on page 6, line 7, that FDN is not harmed by**
8 **Sprint's definition of local traffic and on page 6, line 13 that Sprint is not**
9 **dictating how FDN defines its local calling area. Does FDN agree?**

10 A. No. FDN maintains that it is harmed because above-cost intrastate access
11 charges are a competitive barrier that blocks FDN from offering customers
12 different local calling plans. Additionally, the Commission should concern
13 itself with Florida's consumers being harmed because of Sprint's insistence
14 that all of Sprint's competitors remain in lock-step with the artificial
15 boundaries of Sprint's local calling areas.

16 FDN could not economically offer a wide-area local calling product
17 in Sprint territory, while paying Sprint's high intrastate access rates on
18 intraLATA calls. The Commission itself recognized the barrier of access
19 charges in the generic reciprocal compensation case, where, in its final order,
20 the Commission said,

21 Using the ILEC's retail local calling area appears to effectively
22 preclude an ALEC from offering more expansive calling scopes.
23 Although an ALEC may define its retail local calling area as it sees
24 fit, this decision is constrained by the cost of intercarrier
25 compensation. An ALEC would be hard pressed to offer local calling

1 in situations where the form of intercarrier compensation is access
2 charges, due to the unattractive economics
3

4 (Order No. PSC-02-1248-FOF-TP, page 52.) That access barrier still exists,
5 and the barrier is a detriment to FDN and Florida consumers in Sprint
6 territory. Despite the Commission's prior recognition, Sprint does not even
7 acknowledge in this case that access charges pose a competitive barrier;
8 Sprint instead passes it off, saying FDN can, in theory, do whatever it
9 chooses with regard to retail local calling. There is theory and then there's
10 reality. A carrier could in theory charge \$10 for a local calling service and
11 pay \$12 in access costs for the service, but the reality is that no one will do
12 that on a sustainable basis. FDN wants to offer on a wide scale basis to
13 customers in Sprint territory expansive local calling products in the LATA,
14 but FDN is economically barred from doing so by Sprint's high access
15 charges.

16 As a specific example, FDN wishes to provide a wide area calling
17 option to customers in the Ft Myers LATA. This fast-growing region is
18 made up of three separate business areas in Naples, Ft Myers, and Port
19 Charlotte. Calling back and forth between these areas can be very costly on a
20 toll basis. Business customers in this area would benefit immensely from the
21 availability of an inexpensive, flat-rated wide area calling plan. The high
22 access rates and antiquated definition of local calling areas, however, make
23 offering such a package unadvisable from a cost standpoint, so FDN cannot
24 reasonably offer such a product. Meanwhile, consumers directly across the

1 peninsula in the similar (although larger) business triad of Miami, Ft
2 Lauderdale, and West Palm Beach, where BellSouth is the incumbent, do
3 have several wide area calling plans available from other carriers, such as
4 from FDN, Paetec and IDS.

5 The Commission should see that Sprint is unwilling to change how it
6 recovers even one penny of its access subsidies from FDN (and FDN's
7 customers) because Sprint has no desire to compete for customers against
8 new local calling product offerings. Sprint's positions in this arbitration are
9 positions of steadfast adherence to the status quo – a status quo in which
10 wireline competition in Sprint territory lags behind that of the other
11 incumbents, in which that low level of competition is subject to decrease, and
12 in which customers in Sprint territory suffer from the lack of choice.

13 **Q. Mr. Sywenki describes, beginning on page 6, line 18, and continuing**
14 **through page 8, line 2, that FDN's proposal creates competitive**
15 **disparities vis-à-vis Sprint and other providers. Is he right?**

16 A. No. The only competitive disparity here is the one suffered by consumers
17 in Sprint territory. Because of Sprint's position on this matter, those
18 customers are not offered different local calling products, while consumers in
19 BellSouth territory can and do see offers of different local calling plans.

20 On page 6, line 21, Mr. Sywenki again assumes that Sprint would lose
21 revenue, when, as I noted earlier, Sprint can recover that revenue and FDN
22 does not pay Sprint intraLATA intrastate access revenues that would represent
23 a significant percentage of Sprint's COLR obligation. Mr. Sywenki then

1 states that FDN would not be impacted as much as Sprint would from a
2 change to intercarrier compensation because only Sprint has a COLR
3 obligation. FDN does not believe this statement adds any significance to the
4 debate. Sprint has a COLR obligation, and FDN currently does not, even if
5 nothing changes regarding intercarrier compensation. Sprint does have the
6 ability to recover any lost intraLATA intrastate access subsidies which Sprint
7 chooses to recover elsewhere, and, under FDN's proposal, the LATA as the
8 local calling area for intercarrier purposes would apply to the mutual
9 exchange of traffic. So, as to intercarrier compensation and Sprint's COLR
10 obligation, there is no net change.

11 Mr. Sywenki then opines, starting on page 7, line 1, that FDN would
12 gain a competitive "advantage over Sprint and other carriers that would still
13 be subject to the existing ILEC local calling areas for determining
14 compensation." As I stated in my direct testimony, FDN believes that FDN
15 would not gain an inappropriate advantage over its competitors.

16 There would be no competitive advantage for FDN over Sprint. FDN
17 believes Sprint makes this argument because Sprint does not want to
18 compete. In BellSouth territory, there are LATA wide local intercarrier
19 arrangements on the books (including between FDN and BellSouth), and
20 there are different local calling products available in BellSouth territory. As
21 BellSouth competes with CLEC expanded local calling products in BellSouth
22 territory without incident, while maintaining its COLR obligations, so too

1 could Sprint compete with CLEC expanded local calling products in Sprint
2 territory and meet its COLR obligations.

3 Nor would there be a competitive advantage as between FDN and its
4 competitors, such as the IXCs that Mr. Sywenki references. The Commission
5 must recognize the essential differences between an IXC offering long
6 distance services and a facilities-based CLEC like FDN offering bundled
7 services. If an IXC wants to be like FDN, obtain a CLEC certificate, fund
8 and install a switch, build a network, establish local interconnection trunks
9 with a point of interconnection at each tandem in the LATA, bear the cost for
10 transporting its traffic to those points of interconnection, then the IXC could
11 have a claim to being treated like FDN for intercarrier compensation
12 purposes. Until then, there is no reason why the IXC should get the benefit
13 of an intercarrier compensation arrangement like the one FDN proposes in
14 this case when the IXC is not a bundled provider like FDN, cannot offer the
15 same services, and has not made the same facilities and financial
16 commitments that FDN is willing to make. Further, there have been no
17 complaints to the Commission that FDN knows of from IXCs in BellSouth
18 territory alleging a lack of competitive neutrality, though LATA-wide local
19 intercarrier arrangements exist in BellSouth territory.

20 The issue in this proceeding does not concern establishing a default
21 mechanism for intercarrier compensation for all ILECs and CLECs or
22 intercarrier compensation reform. FDN believes that customers in Sprint
23 territory are already suffering from a scarcity of wireline competition and

1 they should not have to wait for broader regulatory changes before they have
2 at least some access to additional choices of calling plans. FDN is poised to
3 offer those choices if the Commission approves FDN's proposal in this case.

4 **ISSUE NO. 21 (RESALE OF SPRINT CONTRACT SERVICE**
5 **ARRANGEMENTS)**

6 **Q. Mr. Maples devotes several pages of his testimony, page 5, line 20,**
7 **through page 8, line 16, to portraying FDN's position on this issue as a**
8 **position advocating a "fresh look" on contracts between Sprint and its**
9 **customers. Is Mr. Maples correct?**

10 A. No. Mr. Maples understanding of FDN's position is incorrect. FDN is
11 not asking for a term contract between Sprint and a Sprint end user to be
12 rewritten in order for FDN to resell those contracted services to that end user.
13 Rather, FDN is asking to resell, subject to a wholesale discount, the unaltered
14 contract between Sprint and the end user. So, to illustrate, consider the
15 example of Sprint's having a 3 year term contract with an end user. The
16 contract contains a termination fee that declines over the life of the term, and
17 FDN, in year two of the agreement, wants to resell the Sprint services to that
18 end user. FDN does not want to cancel the term of the existing agreement –
19 Sprint does. Sprint's proposal in this case is to terminate the customer's
20 contract with Sprint, force the customer to pay the early termination charge,
21 and then issue a new contract with FDN as reseller. So, from one point of
22 view, it is Sprint that's asking for a "fresh look" of a different kind.

1 FDN simply wants to resell the existing agreement to the end user at
2 the wholesale discount. Essentially, FDN assumes the agreement subject to
3 two provisos. One, FDN pays Sprint with the wholesale discount applied.
4 And two, FDN would not be responsible to Sprint for early termination
5 charges if the customer goes back to Sprint but would be if the customer went
6 to a third carrier or cancels the service. Sprint should not have an incentive
7 to lure this type of resale customer away from FDN so as to receive a
8 termination penalty with no economic justification, considering Sprint would
9 continue to have the economic benefit of the customer revenue.

10 As I stated in my direct testimony, FDN has offered Sprint a
11 compromise proposal on this issue. At this time, Sprint has not responded to
12 that proposal. Although FDN does not plan on widespread resale of Sprint
13 contracts as part of FDN's business model, FDN believes that it should be
14 able to avail itself of its right to resell consistent with the law if it decides to
15 do so at a later time.

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

17 **Q. On page 10, line 8, and again on page 13, line 8, Mr. Maples asserts**
18 **that FDN's dispute with Sprint's noticing proposal for dealing with**
19 **future changes to Sprint's list of unimpaired wire centers is limited to**
20 **notice. Is he correct?**

21 A. Not entirely. That is one of FDN's concerns, but FDN thinks that the
22 parties are not very far apart on this issue. It would seem a simple matter for
23 Sprint to directly notify CLECs with circuits in a wire center whose

1 impairment status is subject to change, just as Sprint would directly notify
2 CLEC applicants for collocation space when there is a space exhaust
3 condition. Sprint, however, seems to go one step beyond that by saying that
4 if another carrier disputes the reclassification of a wire center, FDN is bound
5 by the result of that dispute under that other carrier's interconnection
6 agreement whether FDN knew about the dispute or not and whether FDN had
7 a right to intervene in that other carrier's case or not. If the Commission does
8 not think it necessary for Sprint to provide FDN direct notice of a dispute
9 proceeding at the Commission, FDN can live with that decision, but FDN
10 should at least be assured that it has the right to participate as a party in that
11 proceeding if FDN is to be bound by the results of that proceeding and FDN
12 should have the right to submit self-certified UNE orders to Sprint pending
13 resolution of that dispute. If Sprint wants FDN to be bound by a proceeding
14 started by another carrier, Sprint should have no problem allowing FDN to
15 participate in that proceeding and treating the dispute as though it were
16 initiated under FDN's agreement. The Sprint-FDN interconnection agreement
17 should assure FDN of that right of participation.

18 **Q. Has FDN agreed to the list of unimpaired wire centers on Sprint's**
19 **proposed Exhibit A?**

20 A. No, not yet. The data Sprint provided FDN to support Sprint's proposed
21 list was not very detailed, so FDN may need to conduct additional discovery
22 regarding the wire centers on the list before it could agree with Sprint.

1 **Q. Does FDN agree with Mr. Maples' interpretation and rationale of the**
2 **FCC's 10 DS-1 transport circuit cap as stated on pages 14 and 15 of his**
3 **direct testimony?**

4 A. No, but, as indicated in my direct testimony, FDN believes that this issue
5 appears to be primarily a question of the interpretation of the TRRO, so FDN
6 reserves its right to address this issue in its FDN's briefing and in the
7 ordinary course of this proceeding.

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

10 **Q. On pages 16 through 20, Mr. Maples addresses his views regarding**
11 **what UNES can be used for and what he believes to be FDN's views on**
12 **that question. How does FDN respond to his testimony?**

13 A. This is primarily a legal issue, and FDN will address this issue in greater
14 detail in its brief. However, I note that Mr. Maples mischaracterizes FDN's
15 position when he states that FDN disagrees with Sprint's position that UNES
16 may not be used exclusively for the provision of interexchange or wireless
17 services (Maples Direct, page 16, line 14.).

18 Further, I would simply refer the Commission to FCC Rule 51.309,
19 which addresses CLECs' rights with respect to their use of UNES purchased
20 from ILECs. That rule provides that, "[e]xcept as provided in § 51.318, an
21 incumbent LEC shall not impose limitations, restrictions, or requirements on
22 requests for, or the use of, unbundled network elements for the service a
23 requesting telecommunications carrier seeks to offer." Other than the

1 EEL/commingling requirements in section 51.318, the only other limitation
2 in the FCC's rules on CLEC's right to use UNEs is appears in subsection (b)
3 of Rule 51.309, which states that "[a] requesting telecommunications carrier
4 may not access an unbundled network element for the exclusive provision of
5 mobile wireless services or interexchange services." The interconnection
6 agreement should reflect these FCC requirements – nothing more and nothing
7 less. FDN attempted to craft compromise language that Sprint would accept,
8 but the bottom line is that Sprint insists that all UNEs have to be used for
9 local exchange service, and that seems to be the core of the dispute.

10 **Q: What are FDN's views on Mr. Maples' testimony regarding**
11 **FDN's right to use UNEs to provide information services?**

12 A. Mr. Maples' testimony on this point is devoted to his views on the
13 parties' legal rights and obligations, which, of course, are a matter for the
14 lawyers and briefing. However, it is my understanding that FDN may
15 provide customers with information services, such as Internet-related
16 services, and has the right to do so "over" the UNEs it purchases from Sprint
17 and other ILECs. In other words, one may order an xDSL capable loop for
18 offering Internet services.

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

20 **Q. Does Mr. Maples direct testimony on pages 21 and 22 do anything to**
21 **change FDN's stance on this issue?**

22 A. No. FDN's position is simply that if Sprint has offered subloop access to
23 another carrier in a manner similar to what FDN is requesting, FDN should

1 be offered subloop access on the same rates, terms and conditions as the other
2 carrier and should not have to go through an ICB or BFR process. If a
3 request of a certain type has been fulfilled before, it would not necessarily be
4 “unusual.” While FDN does not use subloops at the present time, FDN
5 wishes to leave open the opportunity to do so on fair and reasonable terms.
6 The delays inherent in the BFR and ICB processes could in many cases cause
7 FDN to lose prospective customers, who may prefer to take service directly
8 from Sprint without experiencing those delays or from another CLEC who
9 already has a process in place with Sprint. Those customers would lose the
10 benefit of FDN’s competitive alternatives.

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

12 **Q. How does FDN respond to Mr. Maples’ direct testimony on pages 23**
13 **through 26?**

14 A. Mr. Maples acknowledges on page 26, line 11, that DS1/DS3 UNE loops
15 or dedicated transport commingled with Special Access DS1/DS3 transport
16 or channel terminations would be a common or primary focus of CLECs.
17 Commingled services of that description are even identified as available
18 services in the text of the interconnection agreement draft. Mr. Maples states
19 that the prices for the UNE components of a commingled service are based
20 on TELRIC and the prices for any wholesale components of a commingled
21 service are as provided in the applicable tariff. (Maples Direct, pages 24 -
22 25.) However, what Mr. Maples does not address is what, if any, additional
23 charges may stem from the disputed language appearing on page 23, lines 17

1 – 18, i.e., “CLEC will compensate Sprint the costs of work performed to
2 Commingle UNEs or UNE combinations with wholesale services.”

3 FDN’s position on this disputed language is clear. This issue
4 concerns services which Sprint itself acknowledges will be a common
5 commingled service that CLECs like FDN will request. All nonrecurring
6 charges for those services should be identified in the agreement. To the
7 extent Sprint cannot identify, support or explain the costs/charges stemming
8 from this disputed language, FDN believes that the disputed language should
9 be deleted.

10 Sprint’s answer to FDN Interrogatory No. 82 (attached to Dr.
11 Ankum’s rebuttal as Exhibit No. __ (AHA-2)) states that the connecting
12 facility used to commingle a UNE service with a wholesale service should be
13 a UNE, rather than wholesale, product, but Sprint has provided no detailed
14 description of this UNE or proposed NRCs or MRCs for the facility. It is not
15 clear from Sprint’s answer whether or how the discussion in response to FDN
16 Interrogatory No. 82 relates to the disputed language above. But, FDN
17 maintains that in the absence of rates in the agreement for the connecting
18 facility, Sprint should have to provision the services in the interconnection
19 agreement without assessing either a separate NRC or MRC for the
20 connecting facility until such time as a new NRC or MRC may be
21 incorporated into the parties’ interconnection agreement.

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ISSUE NO. 29 (NETWORK MODIFICATIONS)

Q. How does FDN respond to Mr. Maples’ testimony regarding this issue on pages 27 – 30?

A. The open question still concerns when, or if, FDN should pay for certain routine network modifications. Notably, Mr. Maples agrees that Sprint should not be able to double-recover its costs by charging FDN for a network modification if it has already recovered the same costs in rates. (Maples Direct at page 30, line 21.) However, he objects to just three words FDN proposed as a means to ensure against double recovery, i.e., “to the extent the costs are not recovered in the unbundled loop rates **or other rates.**” FDN stands by its proposed language. Even to the extent that Sprint may have recovered the costs through rates for another UNE or non-UNE service, it’s still a question of improper double recovery. If Sprint has a specific concern here, it has not come out with clear explanation or illustration of its concern.

Additionally, as I mentioned in my direct testimony, FDN has also submitted language to Sprint to incorporate the notion that if Sprint would perform a particular network modification in the ordinary course for its own benefit, then FDN should not have to pay for that modification simply because FDN also received a benefit from the work. Sprint has not yet responded to this proposal, and Mr. Maples did not address this aspect of the issue in his direct.

1 **ISSUES NOS. 35 – 39 (INTERCONNECTION AND INTERCARRIER**
2 **COMPENSATION)**

3 **Q. What is FDN’s response to Mr. Sywenki’s direct testimony on pages**
4 **8 and 9, regarding points of interconnection (Issue No. 36)?**

5 A. Mr. Sywenki’s statements are self-contradictory, even within the same
6 sentence. For instance, he states on page 8, line 8, that “FDN will not agree
7 to Sprint’s proposal to maintain one POI per LATA with a POI at each
8 tandem.” Needless to say, one cannot have **one** POI per LATA with a POI at
9 **each** tandem in the LATA when there is more than one tandem in the LATA.
10 Mr. Sywenki engages in a similar manipulation on page 9, line 8.

11 It is well established that a CLEC is only required to have one POI
12 per LATA for the mutual exchange of traffic. FDN has expressed its
13 willingness to go beyond the minimum required and establish a POI at each
14 Sprint tandem in the LATAs where FDN will mutually exchange local traffic
15 with Sprint, provided that the local calling area for intercarrier compensation
16 purposes is the LATA. In the absence of the LATA being the local calling
17 area, FDN should have the right to establish a POI at one tandem per LATA
18 if it chooses or at each tandem if it chooses. However, FDN should not be
19 required to establish a POI at each tandem in a multi-tandem LATA without
20 compromise from Sprint on the local calling area boundaries. Mr. Sywenki’s
21 description of “unnecessary double-tandeming” does not change the fact that
22 a CLEC is only required to have one POI per LATA and is only responsible
23 only for bearing the cost of transporting its traffic to that one POI.

1 **Q. With respect to Issue No. 38 regarding virtual NXX (VNXX) traffic,**
2 **what does FDN disagree with in Mr. Sywenki's direct testimony on pages**
3 **12 and 13?**

4 A. FDN's only real point of disagreement with Sprint on this issue is
5 reciprocity. Sprint's proposed language beginning on page 12, line 21, of
6 Mr. Sywenki's direct testimony applies to Sprint-originated traffic terminated
7 to a CLEC VNXX. FDN believes this language should be, "For CLEC or
8 Sprint originated traffic terminated to the other party's Virtual NXXs, neither
9 party shall be obligated to pay reciprocal compensation, including any shared
10 interconnection facility costs, for such traffic." FDN does not take issue in
11 this arbitration with the Commission's previous ruling that the end points of
12 the call should dictate how the call is treated for intercarrier compensation
13 purposes.

14 **Q. With respect to Issue No. 39 regarding VoIP traffic, what does FDN**
15 **disagree with from Mr. Sywenki's direct testimony on pages 14 through**
16 **16?**

17 A. FDN's position on this issue is largely unchanged, and Mr. Sywenki does
18 not offer anything new on the subject. If Sprint were to agree to FDN's
19 proposal on the local calling area, FDN could compromise on Sprint's
20 alternative language on VoIP traffic on page 14, line 18, through page 15,
21 line 11, with some minor wording changes. In the absence of that trade-off,
22 FDN maintains that the Commission should decide this issue by ruling that
23 there is no need for the interconnection agreement to specifically address

1 VoIP traffic at this time, but that if the FCC addresses the status of VoIP
2 traffic in greater detail in the IP Enabled Services matter, either party may
3 request additional negotiations.
4

5 **UNNUMBERED/UNIDENTIFIED ISSUE REGARDING EFFECTIVE**
6 **DATE OF RATES**

7 **Q. How does FDN respond to the direct testimony of Sprint and, in**
8 **particular, Mr. Givner, advocating that the Commission should approve**
9 **UNE rates in this case retroactive to Sprint's petition date?**

10 A. FDN maintains that Sprint's arguments on this issue must be rejected.
11 Sprint's theory seems to be that since Sprint could not successfully negotiate
12 an amendment to the existing interconnection agreement or a new
13 interconnection agreement with FDN to include the UNE rates that are under
14 appeal, the Commission should approve UNE rates in this case on a
15 retroactive basis, to the date of Sprint's December 30, 2004, petition.

16 FDN denies that it was "gaming" anything. The parties mutually
17 agreed to an extension of the arbitration window several times, and the
18 parties also agreed to abide by the existing interconnection agreement until a
19 new agreement was in place. These extension letters are filed with my
20 rebuttal testimony and identified as Exhibit No. ___ (KPS-1). Sprint agreed
21 to the very delay in the process it now complains about prior to Sprint's filing
22 the arbitration petition in this case, and Sprint should not be heard to

1 contradict those mutually agreed-to extensions now by alleging that FDN
2 alone occasioned delay.

3 Additionally, FDN fails to see the relevance of any of Mr. Givner's
4 complaints to the effect that FDN delayed negotiations **after** the arbitration
5 petition was filed. Even if the allegations of post-petition delay were true,
6 and they are not, FDN does not see how they matter. (FDN's response to
7 Sprint's petition explains the circumstances of the parties' negotiations before
8 the petition was filed.) Once the petition was filed, the Commission worked
9 through the issue identification process with the parties and set a hearing
10 schedule. If there was not another minute of negotiations after the petition
11 was filed and if not another issue was eliminated from the arbitration list
12 through negotiations, the parties would still be governed by the
13 Commission's schedule before a final agreement could be completed. And it
14 is not as though FDN failed to make its position clear that it intended to
15 arbitrate the proposed UNE rates. Mr. Givner also fails to mention that the
16 parties did indeed eliminate through negotiation some 40 issues after the
17 petition was filed and that negotiation calls were not outright "cancelled," but
18 were in fact rescheduled – they must have been held since 40 issues were
19 eliminated through negotiations. Mr. Givner further omits, as I mention in
20 my testimony above, that there are a number of FDN proposals still on the
21 table, and Sprint has not responded to those proposals since the parties' last
22 formal negotiation call just before direct testimony was filed almost a month
23 ago. To argue, as Sprint does, that FDN alone has caused unwarranted delay

1 such that FDN should have to suffer retroactive application of any part of the
2 new interconnection agreement is unwarranted.

3 **Q. Does that conclude your rebuttal testimony?**

4 A. Yes.

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Docket No: 041464
Exhibit No. _____ (KPS-1)
Page 1 of 6

November 21, 2003

Via Overnight Mail
Mr. John Chuang
Sr. Manager - Sprint BWM
KSOPHM0310-3A464
6480 Sprint Parkway
Overland Park, KS 66251

RE: FDN - Sprint Interconnection Agreement Negotiations

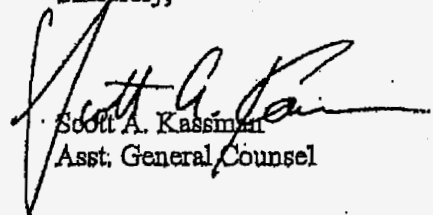
Dear John:

As you are aware, the Telecommunications Act of 1996 specifies a period of 135 days from the initial request for interconnection negotiations as the time frame to negotiate an agreement between the parties. The period from day 135 to day 160 is designated for arbitration of any open issues. As we discussed, the 160 day deadline falls on January 1, 2004, and we have not yet concluded our negotiations. Accordingly, FDN Communications requests that the deadline be extended for approximately 60 days until March 1, 2004.

To acknowledge Sprint's acceptance of the foregoing, please have a Sprint officer or employee with authority bind Sprint in such matters sign in the space provided below

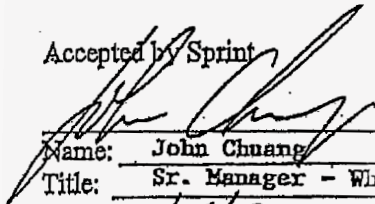
If you have any questions, please do not hesitate to contact me at 407-447-6636.

Sincerely,



Scott A. Kassman
Asst. General Counsel

Accepted by Sprint



Name: John Chuang
Title: Sr. Manager - Wholesale Services
Date: 11/25/03

LOCAL

LONG DISTANCE

INTERNET

390 North Orange Avenue • Suite 2000 • Orlando, FL 32801
407.835.0300 • Fax 407.835.0309 • www.fdn.com



Docket No. 041464
Exhibit No. _____ (KPS-1)
Page 2 of 6

February 5, 2004

Via Overnight & Electronic Mail

Mr. John Chuang
Sr. Manager - Sprint BWM
KSOPHM0310-3A464
6480 Sprint Parkway
Overland Park, KS 66251

RE: FDN - Sprint Interconnection Agreement Negotiations

Dear John:

Per our letter agreement dated November 21, 2003, Sprint and FDN Communications agreed to extend for 60 days, until March 1, 2004, the deadline for arbitrating any unresolved issues between the parties. Since it appears that we will not be able to conclude our negotiations before March 1, 2004, FDN requests that the parties extend the deadline an additional two months until May 1, 2004. As we discussed previously, the parties will continue to operate under the existing Interconnection and Resale Agreement until a new agreement is in place.

To acknowledge Sprint's acceptance of the foregoing, please have a Sprint officer or employee with authority bind Sprint in such matters sign in the space provided below

If you have any questions, please do not hesitate to contact me at 407-447-6636.

Sincerely,

Scott A. Kassman
Asst. General Counsel

Accepted by Sprint

Name: John Chuang
Title: Program Mgr II
Date: 2/11/04

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Docket No. 041464
Exhibit No. _____ (KPS-1)
Page 3 of 6

April 9, 2004

Via Overnight & Electronic Mail

Mr. John Chuang
Sr. Manager - Sprint BWM
KSOPHM0310-3A464
6480 Sprint Parkway
Overland Park, KS 66251

RE: FDN - Sprint Interconnection Agreement Negotiations

Dear John:

Per our letter agreement dated February 5, 2004, Sprint and FDN Communications agreed to extend for 60 days, until May 1, 2004, the deadline for arbitrating any unresolved issues between the parties. Since it appears that we will not be able to conclude our negotiations before May 1, 2004, FDN requests that the parties extend the deadline an additional three months until August 1, 2004. As we discussed previously, the parties will continue to operate under the existing Interconnection and Resale Agreement until a new agreement is in place.

To acknowledge Sprint's acceptance of the foregoing, please have a Sprint officer or employee with authority bind Sprint in such matters sign in the space provided below

If you have any questions, please do not hesitate to contact me at 407-447-6636.

Sincerely,

Scott A. Kassman
Asst. General Counsel

Accepted by Sprint

Name: John Chuang
Title: Sr. Mgr.
Date: 4/12/04

LOCAL . LONG DISTANCE . INTERNET

2301 Lucien Way • Suite 200 • Maitland, FL 32751
407.835.0300 • FAX 407.835.0309 • www.fdn.com



Docket No. 041464

Exhibit No. _____ (KPS-1)

Page 4 of 6

July 12, 2004

Via Overnight & Electronic Mail

Mr. John Chuang
Sr. Manager - Sprint BWM
MS: KSOPHM0310-1B370
6450 Sprint Parkway
Overland Park, KS 66251

RE: FDN - Sprint Interconnection Agreement Negotiations

Dear John:

Per our letter agreement dated April 9, 2004, Sprint and FDN Communications agreed to extend for approximately 90 days, until August 1, 2004, the deadline for arbitrating any unresolved issues between the parties. Since it appears that we will not be able to conclude our negotiations before August 1, 2004, FDN requests that the parties extend the deadline an additional two months until October 1, 2004. As we discussed previously, the parties will continue to operate under the existing Interconnection and Resale Agreement until a new agreement is in place.

To acknowledge Sprint's acceptance of the foregoing, please have a Sprint officer or employee with authority bind Sprint in such matters sign in the space provided below

If you have any questions, please do not hesitate to contact me at 407-447-6636.

Sincerely,

Scott A. Kassman
Asst. General Counsel

Accepted by Sprint

Name: John Chuang
Title: Sr. Mgr.
Date: 7/13/04

LOCAL

LONG DISTANCE

INTERNET



Docket No. 041464
Exhibit No. _____ (KPS-1)
Page 5 of 6

September 29, 2004

Via Overnight & Electronic Mail

Mr. Steven Givner
Sprint
6450 Sprint Parkway
Mailstop: KSOPHN0116-1B568
Overland Park, KS 66251

RE: FDN – Sprint Interconnection Agreement Negotiations

Dear Steven:

Per our letter agreement dated July 9, 2004, Sprint and FDN Communications agreed to extend for approximately 90 days, until October 1, 2004, the deadline for arbitrating any unresolved issues between the parties. Since it appears that we will not be able to conclude our negotiations before October 1, 2004, FDN requests that the parties extend the deadline approximately three months until January 1, 2005. As we discussed previously, the parties will continue to operate under the existing Interconnection and Resale Agreement until a new agreement is in place.

To acknowledge Sprint's acceptance of the foregoing, please have a Sprint officer or employee with authority bind Sprint in such matters sign in the space provided below

If you have any questions, please do not hesitate to contact me at 407-447-6636.

Sincerely,

Scott A. Kassman

Accepted by Sprint

A handwritten signature in black ink, appearing to read "William E. Cheek", is written over a horizontal line.

Name: William E. Cheek

Title: AVP – Strategic Sales & Account Management

Date: 9/30/04

75



Docket No. 041464
Exhibit No. _____ (KPS-1)
Page 6 of 6

September 29, 2004

Via Overnight & Electronic Mail

Mr. Steven Givner
Sprint
6450 Sprint Parkway
Mailstop: KSOPHN0116-1B568
Overland Park, KS 66251

RE: FDN – Sprint Interconnection Agreement Negotiations

Dear Steven:

Per our letter agreement dated July 9, 2004, Sprint and FDN Communications agreed to extend for approximately 90 days, until October 1, 2004, the deadline for arbitrating any unresolved issues between the parties. Since it appears that we will not be able to conclude our negotiations before October 1, 2004, FDN requests that the parties extend the deadline approximately three months until January 1, 2005. As we discussed previously, the parties will continue to operate under the existing Interconnection and Resale Agreement until a new agreement is in place.

To acknowledge Sprint's acceptance of the foregoing, please have a Sprint officer or employee with authority bind Sprint in such matters sign in the space provided below

If you have any questions, please do not hesitate to contact me at 407-447-6636.

Sincerely,

A handwritten signature in black ink that reads "Scott A. Kassman". The signature is written in a cursive style with a long horizontal stroke at the end.

Scott A. Kassman

Accepted by Sprint

Name: _____
Title: _____
Date: _____

15