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Sent: Tuesday, July 05, 2005 4:12 PM
To: Filings@psc.state.fl.us
Subject: RE: E-Filing for Docket No. 041464
Attachments: FDN Prehearing Statement.doc

To: Division of the Commission Clerk and Administrative Services

Please find attached for filing in the captioned docket FDN Communications' Prehearing Statement.

In accordance with the Commission's e-filing procedures, the following information is provided:

(a) The person responsible for this filing is:

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(b) Docket No. and Title: Docket No. 041464 -TP - Petition for Arbitration of Certain Unresolved Issues Associated with Negotiations for Interconnection, Collocation, and Resale Agreement with Florida Digital Network, Inc., d/b/a FDN Communications by Sprint-Florida, Incorporated

(c) The party on whose behalf the document is filed: Florida Digital Network, Inc. d/b/a FDN Communications

(d) Number of pages of the document: 15 pages.

(e) Description of each document attached: FDN Communications' Prehearing Statement.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Sprint-Florida, Inc. for)	
Arbitration of an Interconnection Agreement)	Docket No. 041464
with Florida Digital Network, Inc. Pursuant to)	
Section 252 of the Telecommunications)	Filed: July 5, 2005
Act of 1996)	
_____)	

PREHEARING STATEMENT OF FLORIDA DIGITAL NETWORK, INC.
d/b/a FDN COMMUNICATIONS

Pursuant to Order No. PSC-05-0496-PCO-TP, issued May 5, 2005, (“Order on Procedure”), Florida Digital Network, Inc., d/b/a FDN Communications (“FDN”) hereby files its Prehearing Statement in the captioned docket as follows:

A. Known Witnesses

At this time, FDN has prefiled testimony for the following witnesses for the Issues identified in the Order on Procedure and/or below for this docket.

<u>Witness</u>	<u>Issue No.</u>
<u>Direct</u>	
Kevin P. Smith	5, 21, 22, 23, 24, 25, 27, 29, 34 36, 37, 38, 39, 62
Panel of Dr. August Ankum, Warren R. Fischer, CPA, and Sidney L. Morrison	30, 34
<u>Rebuttal</u>	
Kevin P. Smith	5, 21, 22, 23, 24, 25, 27, 29, 34 36, 37, 38, 39

FDN reserves the right to call agents, officers and employees of Sprint Florida, Inc. (“Sprint”), as necessary, as adverse party witnesses, pending review of the parties’ prehearing statements, rebuttal testimony and depositions, if any, and FDN reserves its right to cross examine the witnesses of any other party.

B. Known Exhibits

At this time, FDN has prefiled exhibits for the Issues identified in the Order on Procedure and/or below for this docket as follows:

<u>Witness</u>	<u>Exhibit ID</u>	<u>Description</u>
Smith	KPS-1	Extension Agreements
Panel (Ankum, Fischer, Morrison)	AHA-1 WRF-1 SLM-1	Dr. Ankum’s C.V. Warren R. Fischer’s C.V. Sidney L. Morrison’s C.V.
Ankum	AHA-2	Sprint Objections and Discovery Responses

FDN reserves the right to identify and introduce additional exhibits during cross-examination of other parties’ witnesses and re-direct of its own, if any, and, to the extent permitted by Commission rules and the Florida Rules of Civil Procedure, to identify and introduce the depositions of other parties’ agents, officers and employees.

C. Statement of Basic Position

Wireline competition in Sprint’s territory lags behind that of competition in the BellSouth and Verizon territories, and FDN is one of the few facilities-based carriers left in Sprint territory. If the Commission is to fulfill the promise of facilities-based competition in Sprint territory, and promote the benefits consumers receive from that competition, the Commission must adopt the

positions FDN has proposed for the arbitrated interconnection agreement. Sprint's stubborn adherence to the status quo and the preservation of its dominant market share are the obstacles to resolution of the open issues. For instance, the Commission should accept FDN's proposal for a LATA-wide local calling area for purposes of intercarrier compensation. Sprint has rejected all of the compromises and trade-offs FDN has offered on this issue; yet, Sprint's concerns over its COLR obligations from loss of FDN intraLATA terminating access and insuring a level playing field for disparate carriers are unsubstantiated or immaterial.

Additionally, the Commission cannot expect facilities-based competition in Sprint territory to be sustainable if the Commission does not adjust the UNE rates Sprint has proposed. Sprint has denied FDN its rights under the Telecom Act to examine Sprint's cost study and to arbitrate the appropriate UNE rates. As of the time of this filing, the Commission has not (despite FDN's request for relief) enforced FDN's legal rights. The Commission must afford FDN reasonable opportunity to arbitrate in full the appropriate UNE rates.

D – F. Statement of Issues and Positions

Below is a list of issues, as identified in the Commission's Order on Procedure and FDN's tentative positions on those issues.

ISSUE 1 How should "business day" be defined?

FDN: Resolved by the parties.

ISSUE 2 How should "collocation space" be defined?

FDN: Resolved by the parties.

ISSUE 3 How should "parties" be defined?

FDN: Resolved by the parties.

ISSUE 4 Should “virtual point of interconnection” be included in the definition section? If so, how should it be defined?

FDN: Resolved by the parties.

ISSUE 5 How should “local traffic” be defined?

FDN: “Local traffic” should be defined as traffic originated and terminated in the LATA provided FDN transports its originated traffic at least as far as the tandem serving the called party.

ISSUE 6 Should “high frequency portion of the local loop” be included in the definition section? If so, how should it be defined?

FDN: Resolved by the parties.

ISSUE 7 How should “local loop” be defined?

FDN: Resolved by the parties.

ISSUE 8 Should “reverse collocation” be included in the definition section? If so, how should it be defined?

FDN: Resolved by the parties.

ISSUE 9 What language should be included in the Agreement to address “changes in law?”

FDN: Resolved by the parties.

ISSUE 10 What is the appropriate term of the Agreement?

FDN: Resolved by the parties.

ISSUE 11 Should the Agreement take effect if FDN has outstanding amounts due to Sprint?

FDN: Resolved by the parties.

ISSUE 12 If Sprint sells or trades all or substantially all of its assets in an exchange or group of exchanges, what terms and conditions should apply?

FDN: Resolved by the parties.

ISSUE 13 What terms should apply to an assignment of the Agreement when all or substantially all of the assets of a party are purchased or traded?

FDN: Resolved by the parties.

ISSUE 14 What are the appropriate terms for services after the Agreement's end date?

FDN: Resolved by the parties.

ISSUE 15 Must Sprint provide notice and give FDN an opportunity to cure before suspending processing orders or terminating service for nonpayment of undisputed bills not paid after the due date? If so, on what terms and conditions?

FDN: Resolved by the parties.

ISSUE 16 How long after an invoice is rendered may FDN dispute the invoice, and what are the terms and conditions governing the dispute?

FDN: Resolved by the parties.

ISSUE 17 What terms should apply to public statements or press releases referring to either of the parties, their affiliates, or the Agreement?

FDN: Resolved by the parties.

ISSUE 18 When should notice sent by certified mail, return receipt requested, be effective?

FDN: Resolved by the parties.

ISSUE 19 Should the force majeure provision have an exception as proposed by Sprint?

FDN: Resolved by the parties.

ISSUE 20 What are the terms and conditions applicable to the use and reassignment of Sprint's facilities when a new order is submitted?

FDN: Resolved by the parties.

ISSUE 21 What are the appropriate terms and conditions applicable to the resale of Contract Service arrangements, Special arrangements, or Individual Case Basis (ICB) arrangements?

FDN: FDN should be permitted to resell any term agreement between Sprint and a retail customer at a wholesale discount. FDN should be able assume an existing agreement, and FDN should not be responsible for early termination fees if the customer leaves early to go back to Sprint service.

ISSUE 22 What terms and conditions should be included to reflect the FCC's TRO and TRRO decisions?

FDN: FDN should be given direct notice of any Sprint determination to add to the list of wire centers where unbundling of certain high capacity UNEs does not apply. At a minimum, FDN should have party status in a proceeding where another carrier challenges such a Sprint determination. Further, Sprint's assertion that there is a cap of 10 DS-1 dedicated transport circuits applicable on routes between all wire centers of all tiers, is inconsistent with applicable law.

ISSUE 23 When should FDN be required to self-certify unbundled network elements (UNEs)? When self-certification is required, how should FDN self-certify?

FDN: FDN should not be required to self-certify all UNE orders.

ISSUE 24 May Sprint restrict UNE availability where there is not a "meaningful amount of local traffic?" If so, what is a "meaningful amount of local traffic?"

FDN: No. UNEs may be used to provide telecommunications or any other service consistent with applicable law. There is no FCC rule or order that restrict UNEs to the provision of local exchange service. Other than the restrictions on EELs, the only use prohibitions the FCC has established for UNEs are that a UNE may not be accessed for the sole purpose of providing CMRS or IXC services.

ISSUE 25 When and how should Sprint make subloop access available to FDN?

FDN: If Sprint has provided subloop access to another carrier, FDN should be offered such access on the same rates, terms and conditions should FDN make a similar request. ICB and BFR processes should be used only if FDN is requesting unique, never-been-tried access to a subloop.

ISSUE 26 Should Sprint be required to provide UNEs or combinations of UNEs on the same rates, terms and conditions as Sprint has provided to another carrier or under a Bona Fide Request (BFR) process and/or ICB pricing? If so, how should the rates, terms and conditions be incorporated into the parties' Agreement?

FDN: Resolved by the parties.

ISSUE 27 Under what circumstances must Sprint, at FDN's request, combine and provide individual network elements that are routinely combined in Sprint's network?

FDN: All nonrecurring charges for commingled services should be identified in the agreement and any vague language regarding charges deleted. While identifying most of its charges, Sprint has not been clear what charges if any stem from its proposed language that "CLEC will compensate Sprint the costs of work performed to Commingle UNEs or UNE combinations with wholesale services."

ISSUE 28 How should cooperative testing be conducted and what charges should apply, if any?

FDN: Resolved by the parties.

ISSUE 29 What rates, terms and conditions should apply to routine network modifications on UNEs available under the Agreement?

FDN: The agreement should include provisions that preclude Sprint from recovering RNM charges where Sprint may already recover its costs in rates or where Sprint performs a RNM in the ordinary course for its own principal benefit or provides an RNM to its own end use customer at no additional charge.

ISSUE 30 On what rates, terms and conditions should Sprint offer loop conditioning?

FDN: Rates for conditioning remain outstanding. See FDN position on Issue No. 34 regarding UNE rates.

ISSUE 31 Is Sprint obligated to provide Line Information Data Bases (LIDB) and Advanced Intelligent Network (AIN) platform and databases as UNEs under 251 and FCC rules? If so, what are the rates, terms and conditions?

FDN: Resolved by the parties.

ISSUE 32 Is Sprint obligated to provide access to other companies' Caller ID with NAME (CNAM) databases as UNEs under 251 and FCC rules? If so, under what rates, terms and conditions?

FDN: Resolved by the parties.

ISSUE 33 Should Sprint have a distinct obligation to 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 have a distinct obligation to offer E911/911 services for resale by FDN to government agencies?

FDN: Resolved by the parties.

ISSUE 34 What are the appropriate rates for UNEs and related services provided under the Agreement?

FDN: Sprint has denied FDN its rights to examine the cost study, as well as FDN's right to arbitrate the appropriate UNE rates. The Commission must proceed in this matter so as to afford FDN reasonable opportunity to arbitrate in full the appropriate UNE rates. The UNE rates and zones approved should be no higher than those in place for FDN today.

ISSUE 35 What are the parties' obligations regarding interconnection facilities?

FDN: FDN is required to have just one POI per LATA. FDN agrees to one POI at one Sprint tandem in each LATA.

ISSUE 36 What terms should apply to establishing Points of Interconnection (POI)?

FDN: FDN may not be required to establish more than one POI per LATA. Where there is more than one tandem in a LATA, FDN proposes to establish POIs at both

tandems where FDN's NXXs are homed, provided the local calling area for intercarrier compensation purposes is the LATA.

ISSUE 37 What are the appropriate terms for transport and termination compensation for:
(a) local traffic
(b) non-local traffic
(c) ISP-bound traffic?

FDN: Local and ISP bound traffic should be compensated on a bill and keep basis, consistent with the parties agreed language. Local traffic should be defined consistent with FDN's positions in Issues Nos. 5 and 36. Non local traffic should be compensated at tariffed access rates.

ISSUE 38 What are the appropriate terms for compensation and costs of calls terminated to end users physically located outside the local calling area in which their NPA/NXXs are homed (Virtual NXXs)?

FDN: The terms should be reciprocal such that both FDN and Sprint VNXX traffic, if any, is treated/compensated for the same regardless of the directional flow of such traffic.

ISSUE 39 What are the appropriate terms for compensation and costs of calls that are transmitted, in whole or in part, via the public Internet or a private IP network (VoIP)?

FDN: There is no need for the agreement to address VoIP traffic at this time. The Commission should await an FCC determination on the status of VoIP traffic in the IP Enabled Services docket and then permit the parties to negotiate amendment thereafter.

ISSUE 40 What should be each party's obligations for identifying and reporting its Percent Local Usage (PLU) factor, and how should billing be adjusted for a change in factors?

FDN: Resolved by the parties.

ISSUE 41 What are each party's obligations for transmitting the calling party number (CPN) for each call being terminated on the other's network?

FDN: Resolved by the parties.

ISSUE 42 What are the appropriate terms regarding trunk forecasting?

FDN: Resolved by the parties.

ISSUE 43 What are the appropriate terms, conditions and compensation for transit traffic?

FDN: Resolved by the parties.

ISSUE 44 In order to obtain transit services from Sprint, should FDN be required to have network and contractual arrangements with all necessary parties?

FDN: Resolved by the parties.

ISSUE 45 Should FDN be required to pay Sprint for information on traffic originated by third parties and transited by Sprint to FDN?

FDN: Resolved by the parties.

ISSUE 46 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: Resolved by the parties.

ISSUE 47 What are the appropriate terms, conditions and compensation for indirect traffic?

FDN: Resolved by the parties.

ISSUE 48 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? If so, how?

FDN: Resolved by the parties.

ISSUE 49 What charges, if any, should apply to a request made by FDN to coordinate conversions after normal working hours, or on Saturdays, Sundays, or Sprint holidays?

FDN: Resolved by the parties.

ISSUE 50 Within how many days must FDN pay Sprint's bills?

FDN: Resolved by the parties.

ISSUE 51 For what billing records may a party charge the other?

FDN: Resolved by the parties.

ISSUE 52 What are the appropriate terms and conditions for collocation to implement FPSC Order No. PSC-04-0895-FOF-TP as amended by PSC-04-0895A-FOF-TP?

FDN: Resolved by the parties.

ISSUE 53 What are the appropriate terms and conditions for reclamation of collocation space or reclamation of any other Sprint-provided facility and how should disputes regarding collocation reclamations be resolved?

FDN: Resolved by the parties.

ISSUE 54 Should collocation space occupied by FDN constitute CLEC premises or Sprint premises?

FDN: Resolved by the parties.

ISSUE 55 What are the appropriate intervals for processing collocation applications?

FDN: Resolved by the parties.

ISSUE 56 What should the intervals be for collocation space augments?

FDN: Resolved by the parties.

ISSUE 57 Under what conditions, if any, should FDN be responsible for Sprint's extraordinary space preparation and maintenance costs?

FDN: Resolved by the parties.

ISSUE 58 When should the 180-day period for placing operational telecommunications equipment in FDN's collocation space begin?

FDN: Resolved by the parties.

ISSUE 59 Under what circumstances, if any, should FDN be permitted to use cross connect services 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: Resolved by the parties.

ISSUE 60 Under what circumstances should FDN be permitted to access its collocation space without the need for a security escort?

FDN: Resolved by the parties.

ISSUE 61 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: Resolved by the parties.

ISSUE 62¹ Should Sprint provide FDN a means for accessing on a pre-ordering basis information identifying which Sprint loops are served through remote terminals?

FDN: Yes, and such information should be the same as that available to Sprint.

G. Stipulated Issues

FDN is unaware of any stipulated issues for this proceeding at the time of serving this filing, other than to the extent issues identified in the Order on Procedure have since been resolved by the parties.

H. Pending Motions

FDN's Motion for Postponement, filed June 7, and FDN's First Motion to Compel, filed June 29, are pending.

¹ This issue was not included in the tentative issue list attached to the Order on Procedure, but is allowed under the terms of the Order on Procedure and is addressed in the parties' testimony.

I. Pending Confidentiality Issues

FDN does not have any pending confidentiality requests pending at the time of serving this filing.

J. Order Establishing Procedure Requirements

To FDN's knowledge, at the time of serving this filing, there are no requirements of the Order on Procedure that cannot be complied with, other than in the following respect. FDN has been denied the right to file meaningful testimony on Issue No. 34 (UNE Rates) and has sought remedies to cure that violation of its rights, primarily by amendment to the Order on Procedure and have also filed a Motion to Compel.

K. Decisions or Pending Decisions

A decision by the district court in FDN's pending petition to overturn the Commission's final order setting Sprint UNE rates in Docket No. 990649B or by the Florida Supreme Court in the parallel appeal made to that court may impact the Commission's resolution of Issue No. 34. Otherwise, FDN is not aware of a pending FCC or court decision that has preempted or may preempt or otherwise impact the Commission's ability to resolve any of the above issues

L. Objections to Expert Qualifications

A number of Sprint witnesses in this proceeding render opinions on what should be or may be considered legal issues. Sprint witness Maples, for instance, opines on the interpretation of the FCC's rules and orders on several issues. In the past, the Commission has permitted non-lawyers to render opinions on legal matters, but the Commission has typically not accepted such opinions as those of legal experts. If the Commission accepts the legal opinions of these non-lawyers as expert legal opinions, then FDN would reserve its right to conduct voir dire of those witnesses as

to those legal opinions. Otherwise, FDN would reserve its right to conduct cross examination of the witnesses on the bases for their opinions.

RESPECTFULLY SUBMITTED, this 5th day of July, 2005.

/S Matthew Feil

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by e-mail and U.S. mail to the persons listed below this 29th day of June, 2005.

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