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From: Matthew Feil [mfeil@mail.fdn.com]
Sent: Friday, July 22, 2005 2:31 PM
To: Filings@psc.state.fl.us
Subject: RE: Docket No. 041269-TP
Attachments: FDN Response to Bell Motion for Summary.doc

To: Division of the Commission Clerk and Administrative Services

Please find attached for filing in the captioned docket FDN Communication's Response to BellSouth Telecommunication's Motion for Summary Final Order.

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: 041269-TP, Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.

(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: 5 pages.

(e) Description of each document attached: FDN Communications' Response to BellSouth Telecommunications, Inc.'s Motion for Summary Final Order, or, in the Alternative, Motion for Declaratory Ruling.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Establish Generic Docket)	
To Consider Amendments to Interconnection)	Docket No. 041269-TP
Agreements Resulting from Changes in Law by)	
BellSouth Telecommunications, Inc.)	Filed: July 22, 2005
)	

FDN COMMUNICATIONS' RESPONSE TO BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION FOR SUMMARY FINAL ORDER OR, IN THE ALTERNATIVE, MOTION FOR DECLARATORY RULING

Pursuant to Rule 28-106.204, Florida Administrative Code, Florida Digital Network, Inc., d/b/a FDN Communications ("FDN") hereby responds to Motion for Summary Final Order or, in the Alternative, Motion for Declaratory Ruling ("Motion") filed by BellSouth Telecommunications, Inc. ("BellSouth") on July 15, 2005, as follows:

1. FDN generally supports the response of the Competitive Carriers of the South, Inc. ("CompSouth") filed in opposition to BellSouth's Motion. BellSouth's motion asserts that BellSouth seeks to narrow the Commission's work. However, the Motion actually requires this Commission to do its work twice or, minimally, not as efficiently as desired.

2. FDN recognizes that the issue list in this docket may evolve as discovery and negotiations proceed and that the Commission may be able to resolve some narrow legal issues up front. But, most issues which BellSouth has characterized in its Motion as legal questions are really disputes over implementation language in interconnection agreements. As such, the issues are inappropriate for summary resolution, and a ruling now will yield little net progress in this docket. For instance, Issue 23 involves hybrid loops as to which BellSouth asks the Commission to "make clear that BellSouth is not obligated to unbundle the next generation elements of its hybrid loops." (BellSouth

Motion, p. 43) Even if the Commission determined that 47 CFR § 51.319(a)(2) governed the unbundling for hybrid loops, this finding would make little net progress on the question of what interconnection agreement language is required to implement the FCC rule.

3. The Motion's discussion of EELS audits (Issue 28) is also illustrative. There, BellSouth requests that this Commission hold that it has "the right to conduct an annual audit of each CLEC it chooses to determine whether the CLEC has complied with the EELs eligibility requirements." (Motion, p. 62). While the parties may desire to negotiate language to implement BellSouth's audit rights, there can be no legitimate dispute that BELLSOUTH has a right to conduct an audit to ensure that CLECs satisfy the EELs eligibility criteria. However, BellSouth requests that, as a matter of law, the Commission declare that BellSouth has "an **absolute** legal right" to conduct an annual audit of each CLEC it chooses exceeds the TRRO. This Commission cannot, as BellSouth asks, declare as a matter of law that BellSouth's right is "absolute." Paragraph 626 of the TRRO states, "Incumbent LECs should have a **limited right** to audit compliance with the qualifying service eligibility criteria," and it is how those rights are to be exercised that is the real issue the Commission must address. The appropriate exercise of BellSouth's audit rights is not proper for summary adjudication.

WHEREFORE, FDN urges the Commission to deny BellSouth's Motion or, alternatively, restrict any partial summary judgment or declaratory rulings to the finite, exclusively legal questions that would yield meaningful net progress in the ultimate disposition of this docket.

RESPECTFULLY SUBMITTED, this 22nd day of July, 2005.

/s/ Matthew Feil

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the following by U.S. mail this 20th day of June, 2005.

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This 22nd of July, 2005.

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