

**ORIGINAL**

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**Sent:** Thursday, September 29, 2005 12:56 PM  
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**Subject:** Docket No. 041269-TP  
**Attachments:** Docket No. 041269 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: 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: 10 pages

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

*Thanks!*

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In re: Petition to Establish Generic Docket )  
to Consider Amendments to Interconnection )  
Agreements Resulting from Changes of Law )  
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Docket No. 041269-TP

Filed: September 29, 2005

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

Pursuant to Order No. PSC-05-0736-PCO-TP, issued July 11, 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 not prefiled testimony for any witnesses for the Issues identified in the Order on Procedure for this docket. FDN reserves the right to call agents, officers and employees of BellSouth Telecommunications, Inc. (“BellSouth”) and any other party carriers, 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 not prefiled any exhibits for the Issues identified in the Order on Procedure for this docket. However, 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**

The changes in law brought about by the TRO and TRRO should be reflected in interconnection agreement amendments generally consistent with the proposals of the CLEC carriers in this proceeding. Further, in any instance where the Commission believes the TRO or TRRO does not provide guidance as clear as desirable to resolve an issue, the Commission should resolve the question so as to protect the rights of the parties while minimizing disruption and detriment to customers, carriers and competition.

## **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. References below to Joint CLECs refers to CompSouth and the CLEC carriers who have filed a joint prehearing statement in this case. FDN may alter its position prior to issuance of the prehearing order, based on its review of additional filings and other parties’ prehearing statements.

- 1. TRRO / FINAL RULES: What is the appropriate language to implement the FCC’s transition plan for (1) switching, (2) high capacity loops and (3) dedicated transport as detailed in the FCC’s Triennial Review Remand Order (“TRRO”), issued February 4, 2005?**

FDN: Agree with Joint CLECs.

- 2. TRRO / FINAL RULES:**

- a) **How should existing ICAs be modified to address BellSouth’s obligation to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations?**
- b) **What is the appropriate way to implement in new agreements pending in arbitration any modifications to BellSouth’s obligations to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations?**

FDN: Agree with Joint CLECs and agree with ITC DeltaCom regarding the charge for “grooming” a service (without field work) to a CLEC’s own or third party’s collocation arrangement.

- 3. TRRO / FINAL RULES: What is the appropriate language to implement BellSouth’s obligation to provide Section 251 unbundled access to high capacity loops and dedicated transport and how should the following terms be defined?**

- (i) **Business Line**
- (ii) **Fiber-Based Collocation**
- (iii) **Building**
- (iv) **Route**

FDN: Agree with Joint CLECs.

- 4. TRRO / FINAL RULES:**

- a) **Does the Commission have the authority to determine whether or not BellSouth’s application of the FCC’s Section 251 non-impairment criteria for high-capacity loops and transport is appropriate?**
- b) **What procedures should be used to identify those wire centers that satisfy the FCC’s Section 251 non-impairment criteria for high-capacity loops and transport?**
- c) **What language should be included in agreements to reflect the procedures identified in (b)?**

FDN: Agree with Joint CLECs.

**5. TRRO / FINAL RULES: Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?**

FDN: Agree with Joint CLECs.

**6. TRRO / FINAL RULES: Once a determination is made that CLECs are not impaired without access to high capacity loops or dedicated transport pursuant to the FCC's rules, can changed circumstances reverse that conclusion, and if so, what process should be included in Interconnection Agreements to implement such changes?**

FDN: FDN understands that this issue has been resolved and/or is no longer in dispute.

**7. TRRO / FINAL RULES:**

- (a) Does the Commission have the authority to require BellSouth to include in its interconnection agreements entered into pursuant to Section 252, network elements under either state law, or pursuant to Section 271 or any other federal law other than Section 251?**
- (b) If the answer to part (a) is affirmative in any respect, does the Commission have the authority to establish rates for such elements?**
- (c) If the answer to part (a) or (b) is affirmative in any respect, (i) what language, if any, should be included in the ICA with regard to the rates for such elements, and (ii) what language, if any, should be included in the ICA with regard to the terms and conditions for such elements?**

FDN: Agree with Joint CLECs.

**8. TRRO / FINAL RULES: What conditions, if any, should be imposed on moving, adding, or changing orders to a CLEC's respective embedded bases of switching, high-capacity loops and dedicated transport, and what is the appropriate language to implement such conditions, if any?**

FDN: Agree with Joint CLECs.

**9. TRRO/FINAL RULES: What rates, terms, and conditions should govern the transition of existing network elements that BellSouth is no longer obligated to provide as Section 251 UNEs to non-Section 251 network elements and other services and (a) what is the proper treatment for such network elements at the end of the transition period; and (b) what is the appropriate transition period, and what are the appropriate rates, terms and conditions during such transition period, for unbundled high capacity loops, high capacity transport, and dark fiber transport in and between wire centers that do not meet the FCC's non-impairment standards at this time, but that meet such standards in the future?**

FDN: Agree with Joint CLECs and agree with ITC DeltaCom .

**10. TRRO / FINAL RULES: What rates, terms and conditions, if any, should apply to UNEs that are not converted on or before March 11, 2006, and what impact, if**

any, should the conduct of the parties have upon the determination of the applicable rates, terms and conditions that apply in such circumstances?

FDN: Agree with Joint CLECs.

**11. TRRO / FINAL RULES:** Should identifiable orders properly placed that should have been provisioned before March 11, 2005, but were not provisioned due to BellSouth errors in order processing or provisioning, be included in the “embedded base?”

FDN: No position.

**12. TRRO / FINAL RULES:** Should network elements de-listed under Section 251(c) (3) be removed from the SQM/PMA/SEEM?

FDN: Agree with Joint CLECs.

**13. TRO - COMMINGLING:** What is the scope of commingling allowed under the FCC’s rules and orders and what language should be included in Interconnection Agreements to implement commingling (including rates)?

FDN: Agree with Joint CLECs.

**14. TRO - CONVERSIONS:** Is BellSouth required to provide conversion of special access circuits to UNE pricing, and, if so, at what rates, terms and conditions and during what timeframe should such new requests for such conversions be effectuated?

FDN: Agree with Joint CLECs.

**15. TRO – CONVERSIONS:** What are the appropriate rates, terms, conditions and effective dates, if any, for conversion requests that were pending on the effective date of the TRO?

FDN: No position.

**16. TRO – LINE SHARING:** Is BellSouth obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC customers after October 1, 2004?

FDN: No position.

**17. TRO – LINE SHARING – TRANSITION:** If the answer to foregoing issue is negative, what is the appropriate language for transitioning off a CLEC’s existing line sharing arrangements?

FDN: No position.

**18. TRO – LINE SPLITTING: What is the appropriate ICA language to implement BellSouth’s obligations with regard to line splitting?**

FDN: Agree with Joint CLECs.

**19. TRO – SUB-LOOP CONCENTRATION: a) What is the appropriate ICA language, if any, to address sub loop feeder or sub loop concentration? b) Do the FCC’s rules for sub loops for multi-unit premises limit CLEC access to copper facilities only or do they also include access to fiber facilities? c) What are the suitable points of access for sub-loops for multi-unit premises?**

FDN: FDN understands that this issue has been resolved and/or is no longer in dispute. However, FDN withholds consent to such resolution until it has reviewed the pertinent language.

**20. TRO – PACKET SWITCHING: What is the appropriate ICA language, if any, to address packet switching?**

FDN: FDN agrees this issue has been resolved and/or is no longer in dispute.

**21. TRO – CALL-RELATED DATABASES: What is the appropriate ICA language, if any, to address access to call related databases?**

FDN: Agree with Joint CLECs.

**22. TRO – GREENFIELD AREAS: a) What is the appropriate definition of minimum point of entry (“MPOE”)? b) What is the appropriate language to implement BellSouth’s obligation, if any, to offer unbundled access to newly-deployed or ‘greenfield’ fiber loops, including fiber loops deployed to the minimum point of entry (“MPOE”) of a multiple dwelling unit that is predominantly residential, and what, if any, impact does the ownership of the inside wiring from the MPOE to each end user have on this obligation?**

FDN: Agree with Joint CLECs.

**23. TRO – HYBRID LOOPS: What is the appropriate ICA language to implement BellSouth’s obligation to provide unbundled access to hybrid loops?**

FDN: Agree with Joint CLECs.

**24. TRO – END USER PREMISES: Under the FCC’s definition of a loop found in 47 C.F.R. §51.319(a), is a mobile switching center or cell site an “end user customer’s premises”?**

FDN: FDN agrees that this issue has been resolved and/or is no longer in dispute.

**25. TRO – ROUTINE NETWORK MODIFICATION:** What is the appropriate ICA language to implement BellSouth’s obligation to provide routine network modifications?

FDN: Agree with Joint CLECs.

**26. TRO – ROUTINE NETWORK MODIFICATION:** What is the appropriate process for establishing a rate, if any, to allow for the cost of a routine network modification that is not already recovered in Commission-approved recurring or non-recurring rates? What is the appropriate language, if any, to incorporate into the ICAs?

FDN: Agree with Joint CLECs.

**27. TRO – FIBER TO THE HOME:** What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?

FDN: Agree with Joint CLECs.

**28. TRO – EELS AUDITS:** What is the appropriate ICA language to implement BellSouth’s EEL audit rights, if any, under the TRO?

FDN: Agree with Joint CLECs.

**29. 252(i):** What is the appropriate language to implement the FCC’s “entire agreement” rule under Section 252(i)?

FDN: FDN agrees that this issue has been resolved and/or is no longer in dispute.

**30. ISP Remand Core Forbearance Order:** What language should be used to incorporate the FCC’s *ISP Remand Core Forbearance Order* into interconnection agreements?

FDN: Agree with Joint CLECs.

**31. How should the determinations made in this proceeding be incorporated into existing Section 252 interconnection agreements?**

FDN: Interconnection agreements should be amended consistent with the Commission’s decision in this case (including reconsideration, if any) within no more than 45 days, then filed with and approved by the Commission.

#### **G. Stipulated Issues**

FDN is unaware of any stipulated issues for this proceeding at the time of serving this filing, other than as may be identified in the issue list above.

**H. Pending Motions**

FDN has no pending motions at this time.

**I. Pending Confidentiality Issues**

FDN has a pending motion for specified confidential classification, filed September 12, 2005.

**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.

**K. Decisions or Pending Decisions**

Decisions by the FCC on pending motions for reconsideration or clarification to the TRRO and any court rulings on any appeals of or mandamus petitions regarding the TRRO pending or to be filed with the D.C. Circuit Court of Appeals may preempt or otherwise impact the Commission's ability to resolve any of the above issues. Otherwise, FDN is not aware of and FCC or court decision that has or may preempt or otherwise impact the Commission's ability to resolve any of the above issues

**L. Objections to Expert Qualifications**

At this time, FDN does not intend to voir dire any witnesses as to their expert qualifications. However, FDN reserves its right to conduct cross examination of the witnesses as to the bases for their opinions.

Respectfully submitted this 29th of September, 2005

*/s/ Matthew Feil*

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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 of Law )  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent by e-mail, for those with an email address listed below, and U.S. mail to the persons listed below this 29<sup>th</sup> day of September 2005.

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*s/ Matthew Feil*

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