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Sent: Wednesday, February 15, 2006 12:07 PM
To: Filings@psc.state.fl.us
Subject: E-filing for FPSC Docket 041464-TP
Importance: High
Attachments: FDN Response to Sprint Clarification Motion.doc

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To: Division of the Commission Clerk and Administrative Services

Please find attached for filing in the captioned docket FDN Communication's Response to Sprint-Florida, Inc's Motion for Clarification.

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

The person responsible for this filing is:

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Docket No. and Title: 041464-TP 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.

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

Number of pages of the document: 6 pages.

(e) Description of each document attached: Response to Sprint-Florida, Inc's Motion for Clarification by Florida Digital Network, Inc. d/b/a FDN Communications.

Thank You!
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Life is like a coin, you can spend it any way you wish, but you can only spend it once....

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

Docket No. 041464-TP
Filed: February 15, 2006

FDN'S RESPONSE TO SPRINT'S MOTION FOR CLARIFICATION

Florida Digital Network, Inc., d/b/a FDN Communications ("FDN"), respectfully submits this Response to the Motion for Clarification of Order No. PSC-06-0089-FOF-TP filed by Sprint-Florida Inc. on February 10, 2006 ("Motion for Clarification" or "Motion"). The Motion should be denied. The relief Sprint seeks is precluded by the Arbitration Order.¹ Moreover, the Stay Order is perfectly clear and there is no basis for the "clarification" Sprint seeks.² In support of this Response, FDN states as follows:

1. Sprint seeks "clarification" that the Stay Order issued by the Commission on February 8, 2006 means something other than what it says. But the Stay Order is clear. It recognizes that in light of Sprint's Motion for Reconsideration, which the Stay Order views as "present[ing] the possibility of change or greater clarification" of the Commission's Arbitration Order in this proceeding, the February 9, 2006 deadline for the parties to submit a conforming agreement is not "realistic." Stay Order at 1. Accordingly, the Stay Order requires the parties to hold-off filing a conforming agreement until the Commission rules on Sprint's Motion for Reconsideration. Because it is standard practice that interconnection agreements become

¹ Order on Arbitration, *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*, Florida PSC Dkt. No. 041464-TP, Order No. PSC-06-0027-FOF-TP (Jan. 10, 2006) ("Arbitration Order").

² See Order Granting Stay Pending Reconsideration, *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*, Florida PSC Dkt. No. 041464-TP, Order No. PSC-06-0089-PCO-TP (Feb. 8, 2006) ("Stay Order").

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effective with the filing and approval of those agreements by the Commission, *see* Arbitration Order at 31-32, it necessarily follows that the interconnection agreement arbitrated in this proceeding will not become effective until the Commission rules on Sprint's Motion for Reconsideration, the parties submit a conforming agreement, and the Commission approves that agreement. There is no confusion that this is what the Stay Order provides and, thus, no need for clarification. Accordingly, the Motion must be denied.

2. Moreover, the Stay Order is eminently sensible. It is based on the Commission's authority to issue orders necessary to promote the just, speedy, and inexpensive determination of all aspects of any case before it. *See* Stay Order at 1 (citing Florida Administrative Code Rule 28-106.211). The Stay Order achieves just that. It would be a waste of the parties' resources to have them prepare an agreement that conforms to the Commission's Arbitration Order, change the terms of that order on reconsideration, and then require the parties to submit a new conforming agreement.

3. Although there is no doubt about what the Stay Order requires, Sprint claims that it seeks "clarification" that the Stay Order "did not intend to stay the effective date of the provisions of the agreement, or at least did not intend to stay the effective date of those provisions for which neither party requested reconsideration." Motion at 1. But Sprint's claim that it seeks "clarification" is disingenuous. There is nothing in the Stay Order that suggests that the Prehearing Officer intended such a result, which, moreover, would conflict with the Arbitration Order. Sprint opposes "further delay in implementing the new rates" provided by the Arbitration Order and seeks to have the rates take effect *prior* to the execution of a new interconnection agreement. *Id* at 2, ¶ 2. But the Arbitration Order precludes that from

happening, and Sprint did not seek reconsideration of the Arbitration Order on this point. The Arbitration Order that, “the new UNE rates shall be implemented on a prospective basis only, without any retroactive treatment.” Arbitration Order at 31. The order goes on to explain that, “the new UNE rates will only be effective prospectively, and only upon the execution and approval of [the] new interconnection agreement[.]” *Id.* It goes without saying that the Prehearing Officer’s Stay Order, on its own, could not undo that result.

4. Almost everything else in Sprint’s Motion is frivolous. Although it is not necessary to consider these points to deny Sprint’s Motion, FDN addresses them for the sake of completeness:

(a) Sprint repeats the claim that it has made throughout this proceeding that FDN, through its “legal maneuvering,” is somehow responsible for delaying the implementation of the UNE rates established in Docket No. 990649.³ But as FDN explained in its Post Hearing Brief, there is simply no truth to that allegation. Since the Commission issued its Sprint UNE Rate Order in January 2003, Sprint always had the ability to petition the Commission to incorporate those rates into the parties 2001 Interconnection Agreement. For reasons known only to it, however, Sprint never did so. Instead, Sprint voluntarily executed a series of extensions to the 2001 Agreement, which as a matter of law kept the rates about which Sprint is now complaining legally in full force and effect. It is therefore highly disingenuous of Sprint to claim that *FDN* refused to adopt the new rates when *Sprint* expressly and repeatedly consented, without any condition relevant here, to the continuation of those rates, all the while failing to take the steps the Commission required if it wished to incorporate the 990649 rates into the 2001 Agreement.

(b) Sprint takes FDN to task for not conferring with it prior to filing its response to Sprint’s Motion for Reconsideration and Motion for Stay. *See* Motion at 2, ¶ 2. It is true that

³ *See* Order No. PSC-03-0058, Docket No. 990649B-TP (Jan. 8, 2003) (“Sprint UNE Rate Order”).

FDN's request is styled (in part) as a Motion for Stay, thus triggering the consultation requirement of FAC 28-106.204. In point of fact, however, FDN was merely opposing that portion of Sprint's Motion for Reconsideration which argued that the order should not be stayed pending the Commission's ruling on Sprint's Motion for Reconsideration. *See* Motion for Reconsideration at 23. Thus, it was arguably unnecessary for FDN to have titled its filing as a Motion. And, for the record, Sprint did not consult with FDN prior to filing either its Motion for Reconsideration⁴ or its Motion for Clarification.

(c) Sprint takes the Commission to task for not following *its* own procedural rules. *See* Motion at 2-3, ¶ 3. Sprint complains that the Stay Order was issued before it had an opportunity to respond to FDN's "Motion," and that because FDN provided e-mailed service after 5 p.m. on Friday February 1, 2006, it should have been given until February 9, 2006 to file its Opposition. *Id.* But Sprint concedes, as it must, that the Commission is not bound by the time guidelines of the Florida Administrative Code. Sprint Motion at 2 n.1. And as for Sprint's claim that it did not receive adequate service, FDN's records show that it served Sprint via e-mail at 5:09 p.m., less than 10 minutes "late." Most importantly, Sprint cannot show any prejudice resulting from the Commission's failure to consider Sprint's opposition (which presumably would have looked much like its Motion for Clarification), given that the relief it seeks is precluded by the Arbitration Order.

(d) Finally, there is no basis to Sprint's claim that the Commission erred by failing to follow the provisions of FAC § 25-22.061(2) or by not applying a similar standard in ruling on FDN's stay request. That rule applies to stays pending judicial review, not to temporary stays

⁴ FDN affirmatively asked Sprint if Sprint would be filing for reconsideration. Sprint said that it would, but could not identify the issues it would raise.

pending reconsideration, as is the case here, and Sprint cites no authority to support its contrary assertion.

CONCLUSION

For the foregoing reasons Sprint's Motion for Clarification should be DENIED.

RESPECTFULLY SUBMITTED, this 15TH day of February, 2006.

/s Matthew Feil

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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)
Act of 1996)
_____)

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 15th day of February, 2006.

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