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July 6, 2005

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 041464-TP


Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint-Florida, Incorporated is Sprint's Response to FDN's Motion to Compel Responses to First Set of Interrogatories and First Request for Production of Documents.

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

Please acknowledge receipt of this filing by stamping and initialing a copy of this letter and returning same to my assistant. If you have any questions, please do not hesitate to call me at 850/599-1560.

Sincerely,

Susan S. Masterton | 

Susan S. Masterton

Enclosure

**CERTIFICATE OF SERVICE
DOCKET NO. 041464-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic and U.S. mail on this 7th day of July, 2005 to the following:

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Susan S. Masterton | 
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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-TP
with Florida Digital Network, Inc. Pursuant to)	
Section 252 of the Telecommunications)	Filed: July 6, 2005
Act of 1996)	
)	

**SPRINT FLORIDA, INCORPORATED'S RESPONSE
TO FDN'S MOTION TO COMPEL RESPONSES TO
FIRST SET OF INTERROGATORIES AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Sprint-Florida, Incorporated (hereinafter "Sprint") hereby files its Response to the Motion to Compel Response to First Set of Interrogatories and First Request for Production of Documents (hereinafter "Motion to Compel") filed by Florida Digital Network, Inc., d/b/a FDN Communications (hereinafter, "FDN") and served on Sprint by electronic mail on June 28, 2005.

Introduction

Fundamentally, FDN's Motion to Compel is based on FDN's belief that it has the absolute right to relitigate in this arbitration proceeding the UNE rates the Commission previously approved for Sprint in the context of a generic proceeding in which FDN was a party and participated. See, Docket No. 990469B, In re: investigation into pricing of unbundled network elements (Sprint/Verizon track) hereinafter "Sprint UNE Docket") FDN was unhappy with the Commission's decision in the generic proceeding, Order No. PSC-03-0058-FOF-TP, as evidenced by its filing of a Motion for Reconsideration of the decision (which the Commission denied) and its appeal of the decision, which is currently pending in federal court. Despite the work and effort expended by Sprint, the

Commission and the parties in the generic docket, which spanned a three-year period and involved numerous discovery requests to Sprint concerning all facets of Sprint's cost studies and proposed rates, FDN believes it should be able to require Sprint to engage in the same duplicative effort and expense in this proceeding to revisit the same cost studies and rates and, based on FDN's Direct Testimony, on the same bases as FDN's previous challenges to the Commission decision.¹ For the reasons set forth in this Response, the Commission should reject FDN's attempts to nullify the Commission decision in the generic proceeding, both as a matter of policy and as a matter of law.

Responses Related to Individual Discovery Requests Interrogatory Nos. 1-81 and Document Request Nos. 1-15

The identified Interrogatories and PODs all involve FDN's attempt to impose on Sprint voluminous and burdensome discovery requests relating to the development of the cost studies that were examined and ruled on by the Commission in the Sprint UNE Docket. In paragraph 2 of its Motion, FDN states that it has the legal right to arbitrate, and the Commission has the duty to resolve, all of the issues identified by the parties to an arbitration proceeding. FDN completely ignores provisions of the Act and case law that authorize the Commission to set UNE rates in a generic proceeding. Paragraph (g) of Section 252 of the Telecommunications Act of 1996 (47 U.S.C. § 252(g)) provides that "Where not inconsistent with the requirements of this Act, a state commission may, to the extent practical, consolidate proceedings under section 214(e), 251(f), 253 and this section in order to reduce administrative burdens on telecommunications carriers, other

¹ See, Sprint's Response in Opposition to FDN's Motion for Postponement and Motion to Strike FDN's Direct Panel Testimony, Filed June 14, 2005 at pp. 6-9; Rebuttal Testimony of James M. Maples, filed June 24, 2005, at pp 22-29 and Exh. JMM -3.

parties to the proceedings, and the State Commission in carrying out its responsibilities under this Act.” This provision has been interpreted to authorize generic proceedings to establish UNE rates. See, *Quest v. Koppendayer*, 2004 U.S. Dist. LEXIS 6064 (U.S. Dist. Ct. for Minnesota).

FDN should be precluded from now raising that the result in the generic proceeding cannot be applied to FDN in this proceeding. FDN was one of the competitive local companies that participated in the generic proceeding to establish UNE rates and never raised in that proceeding that the Commission was not authorized to establish rates in a generic proceeding. FDN should not be able to now claim that the results of that proceeding are not applicable to FDN or inconsistent with 252 of the Act.

In Docket No. 990649 (later separated into Tracks A and B), the Commission held a three-year long generic proceeding to establish TELRIC-based, deaveraged UNE rates for the three major ILECs in Florida, including Sprint. FDN was a party to this proceeding and participated to varying degrees (at its option) in the proceedings as they related to each of the ILECs. In the Sprint proceeding, FDN chose not to file testimony but participated in the stipulation of the parties to waive cross-examination and filed a lengthy brief addressing Sprint’s proposed UNE rates based on the record that consisted of pre-filed testimony, depositions and discovery in the docket. As discussed above, FDN was unhappy with the Commission’s ruling in the docket and has continued to pursue available legal avenues to challenge the decision. Not content with challenging the decision through the appropriate legal channels, FDN apparently seeks to re-litigate Sprint’s UNE rates in their entirety in this two party arbitration, without providing any sufficient grounds for why the rates established in the generic docket are no longer

applicable or, specifically should not be applicable to FDN. FDN's rationale for relitigating the rates appears to be merely that they are now "almost three years old and based upon four-year old data and assumptions." (FDN Motion at paragraph 3)

Astoundingly, FDN relies on its own refusal to negotiate with Sprint in good faith to incorporate the Commission-approved rates in the parties' interconnection agreement as support for its attempt to relitigate those rates in this arbitration. (See FDN Motion to Compel at paragraph 5) And FDN insists that it should be allowed to continue to compensate Sprint under rates that were agreed to almost 5 years ago rather than the rates the Commission established in 2003.

FDN's attempt to relitigate the rates approved by in the Commission's generic UNE proceeding is not mandated by sections 251 and 252 of the Act and should be rejected. To the extent that the Commission determines that rates it approved for Sprint in January 2003 (which have never been adopted by FDN and which FDN has resisted adopting from their inception) are stale, then a proceeding to re-evaluate the rates should not be based on a narrow re-examination of the cost study Sprint filed in Docket No. 990649B, as FDN is attempting to do, but should be based on new cost studies filed by Sprint to address all of Sprint's UNE rates and UNE rate structure. Ideally, any new rates should be considered in a generic proceeding that allows other potentially affected CLECs to participate.

Barring a Commission determination that Sprint's rates are stale and should be revisited in their entirety with the filing new cost studies and discovery related to those studies and new rates, Sprint has properly objected pursuant to the applicable discovery

rules² to FDN's discovery requests that are designed to impose an undue burden and expense on Sprint to respond and produce documents that duplicate the discovery efforts made in the Sprint UNE Docket. The Commission has already considered, explored and decided the validity of Sprint's previously filed cost studies and rates. Contrary to FDN's specious claims in paragraphs 2 and 3 of its Motion, the issue in this arbitration is and has always been whether the Commission-approved rates should be incorporated into Sprint's agreement with FDN. FDN's request for the underlying cost study and discovery requests designed to revisit the validity of the cost study are not relevant or likely to lead to the discovery of admissible evidence concerning this issue. Therefore, despite FDN's assertions in paragraph 8 of its Motion to Compel the discovery is not proper under the applicable standard set forth in Rule 1.280 of the Florida Rules of Civil Procedure. Therefore, FDN's requests for the cost study and its unduly burdensome, expensive and time consuming requests for detailed information regarding the cost studies, contained in Interrogatory Nos. 1-81 and POD Nos. 1-15, should be rejected and FDN's Motion to Compel should be denied.

Interrogatory Nos. 91 and 92

In paragraph 10 of its Motion, FDN asks the Commission to compel Sprint to respond to FDN's Interrogatory No. 91, which asks Sprint to provide on a route by route basis the number of UNE transport circuits purchased by FDN from Sprint on certain transport routes. Sprint responded by providing information identifying the routes Sprint has determined are impaired. The remaining information requested by FDN is information which is already in the possession of FDN, so that burden of compiling the information would be no greater burden for FDN than it is for Sprint. FDN erroneously

² Rule 1.280, F.R.C.P.

compares Sprint's response to the evidentiary objections that may be made at trial. While Sprint understands that discovery objections as to relevance and privilege may overlap with objections related to the admissibility of evidence available at trial, other objections, such as undue burden or that the discovery requested is publicly or otherwise available to the requestor, are applicable in the discovery context only. That is the basis of Sprint's response to Interrogatory No. 91. Sprint's response is valid and FDN's Motion to Compel Sprint to further respond to FDN's Interrogatory No. 91 should be denied.


Similarly, in paragraph 11 of its Motion, FDN requests Sprint to compile for FDN the amount of intrastate access minutes and revenues Sprint has billed FDN. Sprint objected to this Interrogatory because the relevant billings are already in FDN's possession. Given that FDN would only have to review the bills it received from Sprint to ascertain the requested information, while Sprint would have to segregate FDN's billings from other carriers to provide the answer the question as it relates only to FDN, the information requested by FDN is actually more readily available to FDN than it is to Sprint. Therefore, Sprint's objection to this Interrogatory is valid and FDN's Motion to Compel as it relates to Interrogatory No. 92 should be denied.

Conclusion

FDN improperly seeks to re-litigate the UNE rates approved by the Commission for Sprint in the generic Sprint UNE proceeding. Sprint has properly objected to FDN's requests related to this improper attempt to revisit and reinvestigate the previously approved rates. In addition, in Interrogatory Nos. 91 & 92 FDN improperly requests Sprint provide information that is already in FDN's possession. Sprint's response and objections to FDN's discovery are appropriate and comply with the applicable discovery

rules. Therefore, FDN's Motion to Compel should be denied.

RESPECTFULLY SUBMITTED this 6th day of July 2005.

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