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February 19, 2001

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

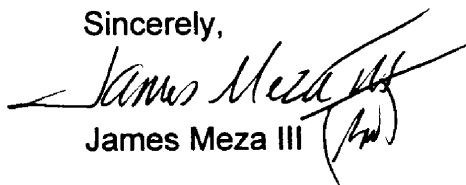
Re: Docket No. 010098-TP (Florida Digital)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Florida Digital Network, Inc.'s Petition for Arbitration, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER-DATE

02301 FEB 19 2001

FPSC-RECORDS/REPORTING

**CERTIFICATE OF SERVICE
DOCKET NO. 010098-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
U.S. Mail this 19th day of February, 2001 to the following:

**Felicia Banks
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850**

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James Meza III

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Digital Network,)	Docket No. 010098-TP
Inc., for Arbitration of Certain Terms and)	
Resale Agreement with BellSouth)	
Telecommunications, Inc. Under the)	
Telecommunications Act of 1996)	
_____)	Filed: February 19, 2001

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSES TO
FLORIDA DIGITAL NETWORK, INC.'S PETITION FOR ARBITRATION**

Pursuant to 47 U.S.C. § 252(b)(3), BellSouth Telecommunications, Inc. ("BellSouth") responds to the Petition for Arbitration ("Petition") filed by Florida Digital Networks, Inc. ("FDN") and says:

INTRODUCTION

Sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act") encourage negotiations between parties to reach local interconnection agreements. Section 251(c)(1) of the 1996 Act requires incumbent local exchange companies ("ILECs") to negotiate the particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and 251(c)(2-6).

Since passage of the 1996 Act on February 8, 1996, BellSouth has successfully conducted negotiations with a large number of alternative local exchange company ("ALECs") in Florida. To date, the Florida Public Service Commission ("Commission") has approved numerous agreements between BellSouth and ALECs. The nature and extent of these agreements vary depending on the individual needs of the companies, but the conclusion is inescapable – BellSouth has a record of embracing competition and displaying willingness to compromise and interconnect on fair and reasonable terms.

As part of the negotiation process, the 1996 Act allows a party to petition a state commission for arbitration of unresolved issues.¹ The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.² The petitioning party must submit along with its petition “all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issue discussed and resolved by the parties.”³ A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes within 25 days after the Commission receives the petition.⁴ The 1996 Act limits the Commission’s consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.⁵

BellSouth and FDN entered into an Interconnection Agreement (“Agreement”) that expired on June 2, 2000. The Agreement provides that BellSouth and FDN will continue to operate pursuant to the terms of the Agreement until such time as a new interconnection agreement is executed. The parties have been negotiating in an attempt to reach a new agreement, but although BellSouth and FDN negotiated in good faith, the parties have been unable to reach agreement on some issues. As a result, FDN filed its Petition for Arbitration.

¹ 47 U.S.C. § 252(b)(2).

² *See generally*, 47 U.S.C. §§ 252 (b)(2)(A) and 252 (b)(4).

³ 47 U.S.C. § 252(b)(2).

⁴ 47 U.S.C. § 252(b)(3).

⁵ 47 U.S.C. § 252(b)(4).

Through the arbitration process, the Commission must resolve the unresolved issues ensuring that the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, then form the basis for arbitration. Issues or topics not specifically related to these areas should be outside the scope of an arbitration proceeding. Once the Commission has provided guidance on the unresolved issues, the parties must incorporate those resolutions into a final agreement to be submitted to the Commission for approval.⁶

In this Response, BellSouth addresses each of the nine issues FDN has presented in its Petition, and, except for Issue 9, which is the subject of a pending Motion for More Definite Statement, BellSouth presents a clear statement of BellSouth's position on these issues. BellSouth does not attempt to represent FDN's position on these issues, nor does BellSouth respond to the various statements that FDN has made regarding BellSouth's positions on the issues to be decided.

BellSouth responds below to each of the separately numbered paragraphs of FDN's Petition for Arbitration:

FDN'S INTRODUCTORY STATEMENTS

1. BellSouth admits the FDN has a Certificate of Authority (ALEC Certificate No. 5715) issued by the Florida Public Service Commission ("Commission") that authorizes FDN to provide local exchange service in Florida. BellSouth also admits, upon information and belief, that FDN is a "telecommunications carrier" and "local

⁶ 47 U.S.C. § 252(a).

exchange carrier” as these terms are defined under the Telecommunications Act of 1996. BellSouth denies the remaining allegations of paragraph 1 for lack of knowledge.

2. The allegations of Paragraph 2 of the Petition require no response from BellSouth.

3. With regard to Paragraph 3 of the Petition, BellSouth admits that it is a corporation organized and formed under the laws of the State of Georgia, having an office at 675 West Peachtree Street, Atlanta, Georgia, 30375. BellSouth also admits that it provides local exchange and other services within Florida and elsewhere and that it is a “Bell Operating Company” and an “incumbent local exchange carrier” (“ILEC”) under the terms of the Act.

4. BellSouth admits the allegations of Paragraph 4 of the Petition.

5. BellSouth admits that the negotiations between the parties have dealt with numerous issues and that the parties used the KMC Telecom-BellSouth Interconnection Agreement as a base document for negotiations. BellSouth also admits that the parties have been able to resolve a number of issues but certain issues are still unresolved. The parties have continued negotiations after FDN filed its Petition, and BellSouth expects that some of the outstanding issues may be resolved in the near future. Subject to the positions set forth in BellSouth's Motion for a More Definite Statement, BellSouth admits that FDN in its Petition requested that the Commission arbitrate the issues identified in the Petition.

6. With regard to Paragraph 6, BellSouth admits that a draft of the Interconnection Agreement was attached as Exhibit A to the Petition. Because negotiations continue, BellSouth denies that Exhibit A reflects the current state of

negotiations. The remaining allegations of Paragraph 6 of the Petition do not require a response from BellSouth.

7. BellSouth denies the allegations of Paragraph 7.

STATEMENT OF THE ISSUES

8-25. In those instances where the parties have not agreed to language in the draft agreement on any rate, term or condition, BellSouth respectfully requests that the Commission order language consistent with that proposed by BellSouth. BellSouth denies that this section of the Petition sets forth BellSouth's position in a complete or accurate manner. In accordance with § 252 (b)(3) of the Act, BellSouth sets forth below its position on each of the nine unresolved issues identified by FDN in its Petition.

ISSUE 1: Should BellSouth be required to provide FDN just, reasonable and nondiscriminatory access to UNEs such that xDSL service over a UNE loop is available when a customer and number port to FDN local service?

BellSouth's Position: Under the FCC's January 19, 2001 Line Splitting Order, BellSouth has absolutely no obligation to provide xDSL service when, as here, BellSouth is not the voice provider. *See* FCC Order 01-26 at ¶ 26. In that order, the FCC explicitly held that "[a]lthough the Line Sharing Order obligates incumbent LECs to make the high frequency portion of the loop separately available to competing carriers on loops where incumbent LECs provide voice service, it does not require that they provide xDSL service when they are not [*sic*] longer the voice provider." *Id.* Accordingly, BellSouth is not required to provide FDN with the requested access.

ISSUE 2: What are the appropriate reciprocal compensation rates and should reciprocal compensation payments be made for calls bound to ISP?

BellSouth's Position: This issue relates to reciprocal compensation for ISP traffic, which is currently the subject of generic docket 000075-TP. In the interest of judicial economy, BellSouth submits that this issue should be moved to the generic docket. In any event, BellSouth's long-standing position is that reciprocal compensation should not apply to ISP-bound traffic. Based on the Act and the FCC's Local Competition First Report and Order issued August 8, 1996, reciprocal compensation obligations under Section 251(b)(5) apply only to local traffic, which does not include ISP-bound traffic.

ISSUE 3: Should FDN be consulted on BellSouth's disposition of trouble tickets and not billed for troubles BellSouth cannot identify as being caused by FDN?

BellSouth's Position: BellSouth denies FDN's characterization and statements as to how BellSouth technicians respond to a trouble ticket. If FDN reports a trouble ticket and BellSouth does not find any trouble on BellSouth's network, FDN should pay BellSouth the cost associated with checking the trouble ticket. If FDN is able to prove that the trouble was within BellSouth's network, BellSouth submits that it would not bill FDN or would credit FDN any amount billed.

Additionally, it is BellSouth's normal procedure to notify an ALEC prior to closing out a trouble ticket and to allow that ALEC to conduct acceptance testing for 15 minutes at no charge. For repeated trouble reports and upon request of the ALEC, BellSouth will hold a report open for 24 hours to allow the ALEC to determine if the

trouble returns. If it does, then FDN can reopen the same ticket and BellSouth will address the problem.

ISSUE 4: Where BellSouth cannot meet the required due date for an FDN customer move order (change of location), should FDN be entitled to receive retail BellSouth service to the new customer location at no cost until the move order is executed so the customer does not lose FDN-provided dial tone?

BellSouth's Position: BellSouth denies FDN's characterization and statements regarding how BellSouth handles a move order for FDN. BellSouth attempts to execute move orders in a timely fashion, but there are occasions it is unable to do so. In such instance, BellSouth is not required to provide retail service at no cost. In fact, BellSouth does not provide free retail service in this situation for other ALECS or its own retail customers. This issue is really a service quality and performance standards issue. Like any other ALEC, if FDN has a problem with the quality of BellSouth's services, then it should bring the matter to the Commission through the proper procedural vehicle, which is not arbitration under the Act. To allow FDN to raise service quality issues in an arbitration proceeding would allow FDN to circumvent the rules that other ALECs must follow.

ISSUE 5: Should BellSouth be required to tag all FDN UNE loops with FDN's name and the circuit ID?

BellSouth's Position: BellSouth denies FDN's characterizations and statements regarding BellSouth's procedures for tagging UNE loops. FDN argues that BellSouth "ordinarily" dispatches a technician to a new retail customer but rarely dispatches a technician to the customer's premises to provision a loop. As a result, BellSouth does not

have an opportunity to tag FDN's loops. However, contrary to FDN's statements, BellSouth does not "ordinarily" dispatch a technician to the premises of one of its retail customers if no field work is required. Further, BellSouth does not tag UNE loops at no cost for any other ALEC. BellSouth will dispatch a technician to tag all of FDN's unbundled loops if FDN is willing to pay for this service on a time and material basis in compliance with the rates, terms, and conditions of the appropriate tariff.

ISSUE 6: Shall BellSouth be required to test dial tone up to the NID on all UNE SL-1 and SL-2 loops without additional charge?

BellSouth's Position: BellSouth denies FDN's statements and characterizations regarding BellSouth's execution of UNE loops. As with Issue 5, BellSouth does not normally dispatch a technician to test for dial tone at the customer demarcation point after a cutover, unless a field dispatch is required. BellSouth does not provide this service for any other ALEC. BellSouth is willing to test dial tone up to the NID on all UNE SL-1 and SL-2 loops if FDN agrees to pay for this service on a time and material basis pursuant to the rates, terms, and conditions of the appropriate tariff.

ISSUE 7: Should BellSouth be required to notify FDN prior to changing the loop make-up of any FDN UNE loops?

BellSouth's Position. BellSouth is willing to notify FDN of any loop modification that could potentially disrupt service to an FDN end-user. There is no need to notify FDN when a loop modification does not disrupt service to the FDN end-user and the modified loop maintains the loop parameters of the particular loop FDN is paying for pursuant to BellSouth technical standard TR 73600.

ISSUE 8: Should BellSouth be required to allow FDN the option of an FDN-dedicated and funded frame attendant for UNE loop cutovers?

BellSouth's Position: BellSouth denies FDN's characterizations and statements regarding BellSouth's appointment rates for UNE connection services. BellSouth attempts to perform all service requests in a timely fashion, but there are occasions it is unable to do so. BellSouth is not required to dedicate a technician to FDN. BellSouth does not dedicate frame attendants to provision service to particular BellSouth end-users, its affiliates, or any other ALEC.

This issue is really a service quality and performance measures issues. If FDN has a problem with the quality of BellSouth's services, then it should bring the matter to the Commission through the proper procedural vehicle, which is not arbitration under the Act.

ISSUE 9: Should the Commission address any unresolved issues between BellSouth and FDN regarding rights-of-way, conduit and pole attachments?

BellSouth's Position: BellSouth filed a Motion for a More Definite Statement as to this Issue because it is vague and ambiguous. Because BellSouth is unclear as to what issues FDN is attempting to address via arbitration in Issue 9, BellSouth can only state that the terms and conditions it proposed regarding rights-of-way, conduit and pole attachments are reasonable. BellSouth will amend this response if its Motion for More Definite Statement is granted and FDN files an amended Petition.

FDN's REQUEST FOR RELIEF

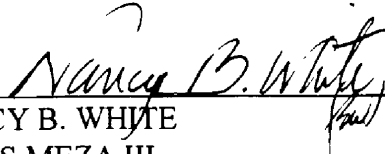
To the extent necessary, BellSouth denies the allegations in FDN's request for relief. BellSouth respectfully requests that the Commission enter an order in favor of

BellSouth on each of the issues set forth herein, and grant BellSouth such other relief as the Commission deems just and proper.

Any allegation in the Petition not specifically admitted herein is expressly denied.

Respectfully submitted this 19th day of February, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.



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