Order conforming with Order No. PSC-02-0765-FOF-TP, in accordance with Order No. PSC-02-0884-PCO-TP, Order Granting Extension of Time to File Interconnection Agreement. Thereafter, this Docket should remain open pending approval by us of the filed agreement.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Digital Network, Inc.'s Motion for Reconsideration is hereby denied. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Motion for Reconsideration is hereby denied. It is further

ORDERED that BellSouth Telecommunication's Inc.'s Motion to Strike is hereby denied. It is further

ORDERED that Florida Digital Network, Inc.'s Cross-Motion for Reconsideration is hereby denied.

ORDERED that the parties shall file an interconnection agreement as set forth in the body of this Order. It is further

ORDERED that this docket shall remain open pending the approval of the interconnection agreement.

By ORDER of the Florida Public Service Commission this 21st Day of October, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing Services

This is a facsimile copy. Go to the Commission's Web site, http://www.floridapsc.com or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)
FRB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

EXHIBIT "3"

~~BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION~~

In re: Petition by Florida Digital Network, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996.	DOCKET NO. 010098-TP ORDER NO. PSC-03-0395-FOF-TP ISSUED: March 21, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON

ORDER RESOLVING PARTIES' DISPUTED LANGUAGE

BY THE COMMISSION:

I.CASE BACKGROUND

Pursuant to Section 252 of the Telecommunications Act of 1996 (Act), Florida Digital Network, Inc. (FDN) petitioned for arbitration with BellSouth Telecommunications, Inc. (BellSouth) on January 24, 2001. On February 19, 2001, BellSouth filed its Response to FDN's petition for arbitration. On April 9, 2001, FDN filed a Motion to Amend Arbitration Petition. On April 16, 2001, BellSouth filed its Response In Opposition to the Motion. FDN filed its Reply to BellSouth's Opposition to Motion to Amend Arbitration Petition on April 30, 2001. On May 22, 2001, Order No. PSC-01-1168-PCO-TP was issued granting FDN's Motion to Amend Arbitration Petition.

Prior to the administrative hearing, the parties resolved all issues except one. An administrative hearing was held on August 15, 2001. On September 26, 2001, FDN filed a Motion to Supplement Record of Proceeding. BellSouth filed a timely opposition to FDN's motion on October 3, 2001. On December 6, 2001, Order No. PSC-01-2351-PCO-TP was issued denying FDN's Motion to Supplement Record of Proceeding. This docket was considered at the April 23, 2002, Agenda Conference. On June 5, 2002, Order No. PSC-02-0765-FOF-TP, Final Order on Arbitration, was issued.

On June 17, 2002, FDN filed a Motion for Clarification, or Reconsideration. BellSouth filed its Response to this motion on June 24, 2002.

On June 20, 2002, BellSouth filed a Motion for Reconsideration, or in the Alternative, Clarification. FDN filed its Response/Opposition to this motion on June 27, 2002. On that same day, FDN also filed a Cross-Motion for Reconsideration. BellSouth filed a Motion to Strike Cross-Motion for Reconsideration, or in the Alternative, Response to FDN's Cross-Motion on July 5, 2002.

We note that in their pleadings both parties also had requested an extension of time to file an interconnection agreement. On July 3, 2002, Order No. PSC-02-0884-PCO-TP was issued granting BellSouth's request for extension of time to file an interconnection agreement. On October 21, 2002, Order No. PSC-02-1453-FOF-TP was issued Denying Motions for Reconsideration, Cross-Motion for Reconsideration and Motion to Strike.

On November 20, 2002, BellSouth filed its executed interconnection agreement with FDN. (On February 5, 2003 BellSouth filed a replacement agreement that contains updated Florida rates for unbundled network elements.) Although the parties were able to reach agreement on most points, disagreements remained as to the specific language that should be incorporated into the agreement to reflect the Commission's decision as to BellSouth's obligation " . . .to continue to provide its FastAccess Internet Service to end users who obtain voice service from FDN over UNE loops." On this same date, BellSouth also submitted its Position in Support of its Proposed Contract Language (BellSouth Position), in which it sets forth its proposed language where there is a dispute; similarly, FDN's proposed language is contained in its Motion to Approve Interconnection Agreement filed contemporaneously (FDN Motion to Approve). On December 2, 2002, FDN filed a Response to BellSouth's Position in Support of Proposed Contract Language (FDN Response).

This Order addresses which language, where the parties are in disagreement, shall be included in the final executed interconnection agreement filed by BellSouth and FDN.

We are vested with jurisdiction in this matter pursuant to Section 252 of the Act to arbitrate interconnection agreements, as well as Sections 364.161 and 364.162, Florida Statutes.

II. ANALYSIS

In its Position in Support of its Proposed Contract Language, BellSouth identifies seven major areas where the parties disagree as to the wording that should be reflected in their agreement. For ease of reference, we follow the format in BellSouth's filing, discussing the views and arguments of BellSouth and FDN on each area, and then provide separate findings as to language for each of the seven areas. Language in dispute will be underlined.

A. Section 2.10.1

BellSouth language:

> In order to comply with the Florida Public Service Commission's Order in Docket No. 010098-TP, and notwithstanding any contrary provisions in this Agreement, BellSouth Tariff F.C.C. Number 1, or any other agreements or tariffs of BellSouth, in cases in which BellSouth provides BellSouth® FastAccess® Internet Service ("FastAccess") to an end-user and FDN submits an authorized request to provide voice service to that end-user, BellSouth shall continue to provide FastAccess to the end-user who obtains voice service from FDN over UNE loops.

FDN language:

> In order to comply with the Florida Public Service Commission's Order in Docket No. 010098-TP, and notwithstanding any contrary provisions in this Agreement, BellSouth Tariff F.C.C. Number 1, or any other agreements or tariffs of BellSouth, in cases in which BellSouth provides xDSL services (as defined in this Section 2.10) to an end user and FDN submits an authorized request to provide voice service to that end user, BellSouth shall continue to provide xDSL services to the end user.

There are two aspects in dispute here.

1. FastAccess service v. xDSL services

BellSouth believes that we only ordered it to continue providing FastAccess, its high-speed Internet access service, when

a customer migrates his voice service to FDN. FDN notes that other independent Internet service providers, such as Earthlink or AOL, can subscribe to BellSouth's tariffed interstate ADSL transport offering and offer a high-speed Internet access service in competition with BellSouth. FDN notes that under BellSouth's interpretation of our order, if a BellSouth voice customer who, e.g., receives AOL's high-speed Internet Access service switches his voice service to FDN, BellSouth would be allowed to discontinue the provision of the interstate ADSL service, thus eliminating the customer's AOL high-speed Internet access service. FDN asserts that we did not intend BellSouth's restrictive reading, which it believes is arbitrary, capricious, and unsupported by the record in this proceeding.

Finding

In the FDN order, we concluded: "Pursuant to Sections 364.01(4)(b), (4)(d), (4)(g), and 364.10, Florida Statutes, as well as Sections 202 and 706 of the Act, we find that for the purpose of the new interconnection agreement, BellSouth shall continue to provide its FastAccess Internet Access Service to end users who obtain voice service from FDN over UNE loops." (emphasis added) FDN contends that BellSouth bases its interpretation on "occasional" uses of the term "FastAccess" in our order. We note that FDN cites to nowhere in the record where we raised similar concerns pertaining to other ISPs.

We believe that the occurrence of the term "FastAccess Internet Access Service" in the ordering statement unequivocally supports BellSouth's language. Therefore, we find that BellSouth's language shall be adopted as set forth.

2. UNE loops v. UNE-P

BellSouth interprets our order narrowly, as only requiring them to continue providing FastAccess over a FDN UNE loop, but not over a UNE-P, if FDN were to subscribe to one. BellSouth asserts that the issue in the arbitration only dealt with FastAccess on UNE loops and that there is no record evidence regarding UNE-P. Moreover, BellSouth notes that as a facilities-based provider, FDN purchases UNE loops from BellSouth.

FDN disputes BellSouth's view of our FDN order, initially noting that BellSouth's position is absurd because a UNE-P is a type of UNE loop. In its Response FDN states:

> Shortly after the Commission issued its award in the FDN arbitration, the Commission permitted Supra Telecom to incorporate the FDN arbitration award into its own interconnection agreement. The relief the Commission provided Supra, which was based on the FDN award and on the record from the FDN arbitration, expressly obligated BellSouth to continue providing its DSL service when an end-user converts its voice service to Supra utilizing a UNE-P line. It would make no sense at all for the Commission to sanction an inconsistent result here, as BellSouth requests.

Finding

We agree that in some sense a UNE-P is a form of loop, as argued by FDN. We also note that we concluded on reconsideration in Docket No. 001305-TP (Supra/BellSouth arbitration) that BellSouth was obligated to continue providing FastAccess when a customer converts his voice service to Supra using a UNE-P line. However, we believe the two proceedings are distinguishable. In the Supra docket, Supra, who currently is a UNE-P provider, expressly complained that BellSouth was disconnecting FastAccess when Supra migrated a FastAccess customer to UNE-P. In fact, the approved language in the Supra/BellSouth agreement implementing this provision is limited to UNE-P:

> 2.16.7 Where a BellSouth voice customer who is subscribing to BellSouth FastAccess internet service converts its voice service to Supra utilizing a UNE-P line, BellSouth will continue to provide Fast Access service to that end user.

In contrast, as noted by BellSouth, there is no mention in the FDN proceeding of continuing FastAccess in conjunction with UNE-P because FDN represented itself as not being a UNE-P provider; rather, they obtain UNE loops from BellSouth, not UNE-P.

We find that BellSouth's language, which references UNE loops, shall be adopted.

2. Section 2.10.1.2

BellSouth language: None

FDN language:

For purposes of this subsection 2.10, BellSouth xDSL services include, but are not limited to, (i) the xDSL telecommunications services sold to information services providers on a wholesale basis and/or other customers pursuant to any BellSouth contract or tariff, and (ii) retail information services provided by BellSouth that utilize xDSL telecommunications provided by BellSouth.

We find that BellSouth's obligation to continue providing high-speed Internet access service is limited to its FastAccess information service.

3. BellSouth Section 2.10.1.5; FDN Section 2.10.1.5.1 and 2.10.1.5.2

BellSouth language:

2.10.1.5 BellSouth may not impose an additional charge to the end-user associated with the provision of FastAccess on a second loop. Notwithstanding the foregoing, the end-user shall not be entitled to any discounts on FastAccess associated with the purchase of other BellSouth products, e.g., the Complete Choice discount.

FDN language:

2.10.1.5.1 BellSouth may not impose any additional charges on FDN, FDN's customers, or BellSouth's xDSL customer related to the implementation of this Section 2.10.

2.10.1.5.2 The contractual or tariffed rates, terms and conditions under which BellSouth xDSL services are provided will not make any distinction based upon the type, or volume of voice or any other services provided to the customer location.

In its Position BellSouth indicates that it currently provides a $4.95 Complete Choice discount to its retail voice customers who subscribe to both Complete Choice and FastAccess. It objects to FDN's proposed language because it presumably would require BellSouth to offer this discount to FDN's voice customers who subscribe to the stand-alone FastAccess service. BellSouth contends nothing in federal or state law mandates that it ". . .pass on a combined offering discount to customers who fail to meet the conditions for the combined offer." It notes that anomalous discrimination could occur. For example, a BellSouth FastAccess business customer who did not also subscribe to Complete Choice would pay $79.95 per month. However, under FDN's theory, a FDN FastAccess business customer, who also did not have BellSouth's Complete Choice, would

instead pay $75.00. BellSouth observes that its proposed language is consistent with the comments of two of the Commissioners who participated in the agenda conference dealing with the parties' motions for reconsideration, where they stated that there may be justification for affording a BellSouth customer a discount when multiple services are provided in conjunction with FastAccess. Finally, BellSouth asserts that FDN's language effectively requires the stand-alone FastAccess offering to be identical to BellSouth's standard retail FastAccess service. However, the stand-alone product BellSouth proposes to offer will not have a back-up dial-up account, and will be billed only to a credit card.

FDN considers its proposed language to be non-discrimination provisions that are necessary in order to achieve the goal of our FDN arbitration order. FDN alleges that its §2.10.1.5.2 "...simply requires BellSouth to provide its xDSL service on a stand-alone basis without regard to other services that BellSouth may provide the end-user. FDN is particularly concerned about the impact of product "bundles" of voice and data services in which an excessive share of the "cost" of the bundled services is inappropriately imputed to the xDSL services that end-users acquire an [sic] individual basis." FDN further argues that we must reject BellSouth's proposed language in its §2.10.1.5, which disqualifies FDN voice customers who retain their FastAccess from receiving discounts associated with purchasing other BellSouth products. FDN states that BellSouth's linking of discounts on FastAccess to a customer's buying BellSouth voice products "...would constitute virtually the same type of tying arrangement that the Commission found unlawful in the first place."

Finding

As noted by BellSouth, this issue was debated by the presiding panel at the October 1, 2002, Agenda Conference. After much discussion, there was agreement that there could be legitimate justification for discounts for those customers that obtain all of their services from BellSouth, such as a package price.

Accordingly, we believe that there could be circumstances where a customer is entitled to a discount that need not be made available to a customer who subscribed only to FastAccess. As such, we find that BellSouth's proposed language shall be adopted, while excluding FDN's proposed language.

D. BellSouth Section 2.10.1.6; FDN Section 2.10.1.5.4

BellSouth language:

2.10.1.6 BellSouth shall bill the end user for FastAccess via a credit card. In the event the end user does not have a credit card or does not agree to any conditions associated with Standalone FastAccess, BellSouth shall be relieved of its obligations

to continue to provide FastAccess to end users who obtain voice service from FDN over UNE loops.

FDN language:

2.10.1.5.4 BellSouth will continue to provide end users receiving FDN voice service and BellSouth xDSL service the same billing options for xDSL service as before, or the parties will collaborate on the development of a billing system that will permit FDN to provide billing services to end-users that receive BellSouth xDSL services.

BellSouth states that it bills its end users for FastAccess either on their bill for BellSouth voice services or on a credit card, and notes that its billing systems currently can only generate a bill where the end user is a retail voice customer. Accordingly, since the FastAccess end user will be a FDN voice customer rather than a BellSouth voice customer, BellSouth opines that its only option is to bill such FastAccess customers to a credit card. Further, BellSouth asserts that if the customer declines to pay by credit card, BellSouth should no longer be obligated to provide FastAccess to the customer.

BellSouth also notes that in order to provision the FastAccess on a second loop, there may be occasions where BellSouth will need to re-wire the end user's jacks. Where this occurs, the customer will need to approve the re-wiring and provide BellSouth access to the premises. Here too, if the customer objects to the re-wiring or providing BellSouth access, BellSouth believes it should be relieved of its obligation to provide FastAccess.

FDN objects to BellSouth's proposed language in Section 2.10.1.6. In its Motion to Approve, FDN contends that BellSouth has provided no justification for why, when a FastAccess customer does not take his voice service from BellSouth, he must provide a credit card for billing. FDN believes that such a practice would inconvenience and annoy many customers. As an alternative, FDN proposes that FDN and BellSouth arrive at a mutually acceptable arrangement whereby FDN could bill customers for BellSouth-provisioned FastAccess. FDN asserts that "[i]t is not reasonable for BellSouth to incur the additional expense of provisioning xDSL on an expensive stand alone loop but then claim that it is too expensive to send a paper bill to the customer for that service." Moreover, FDN believes that "BellSouth's alleged billing problems should not serve as an excuse relieving BellSouth of its obligation to provide ALEC voice end users xDSL service, thereby suppressing competition in the voice market."

Finding

Unfortunately, neither of our two prior orders in this proceeding nor the discussion at the reconsideration agenda conference provide unequivocal direction as to this implementation matter.

We believe it is reasonable and is not discriminatory for BellSouth to request FDN FastAccess customers to be billed to a credit card, because this is an option available to BellSouth's own customers. However, we do not believe that BellSouth discontinuing a customer's FastAccess service merely because he declines to offer up a credit card for billing comports with the intent of our prior decisions. To the contrary, we believe it is incumbent upon the parties to remedy any billing problems. We agree with BellSouth that where a FastAccess customer does not provide access to his premises to perform any needed re-wiring, BellSouth should be relieved of its obligation to offer FastAccess. Because the parties have agreed that a FastAccess customer who migrates his voice service to FDN will have his FastAccess provisioned on a standalone loop, then it appears to us that situations like this may arise where it is technically infeasible for BellSouth to provide service. We believe that neither party's language is precisely on point, though FDN's comes closest.

We find that FDN's language should be modified to reflect that: (a) BellSouth may request that service be billed to a credit card but cannot discontinue service if this request is declined; (b) BellSouth may discontinue FastAccess service if access to the customer's premises to perform any necessary re-wiring is denied; and (c) where a customer declines credit card billing, it is incumbent on the parties to arrive at an alternative way to bill the customer. Accordingly, the following language shall be adopted for inclusion in the parties' agreement, while noting that the parties are free to negotiate alternative language that comports with this Order:

> 2.10.1.6 BellSouth may request that the end user's FastAccess service be billed to a credit card. If the end user does not provide a credit card number to BellSouth for billing purposes, the parties shall cooperatively determine an alternative means to bill the end user. If the end user refuses to allow BellSouth access to his premises where necessary to perform any re-wiring, BellSouth may discontinue the provision of FastAccess service to the end user.

We note further that if parties are unable to reach an agreement on an alternative means to billing the end user, parties may petition the Commission for relief as appropriate regarding the dispute.

5. BellSouth Section 2.10.2.5; no comparable FDN language

BellSouth language:

> <u>If the end user does not have FastAccess but has some other DSL service, BellSouth shall remove the DSL service associated USOC and process the FDN LSR for the UNE loop.</u>

As noted by BellSouth, this issue again pertains to whether we ordered BellSouth to continue providing its interstate tariffed DSL transport service, or its retail FastAccess Internet

access service. As discussed above, we believe we were quite clear that our decision pertained solely to the provision of FastAccess Internet access service, not the interstate DLS transport offering.

Accordingly, we find that BellSouth's language shall be adopted.

6. BellSouth Section 2.10.2.6; FDN Section 2.10.2.4

BellSouth language:

> If the end user receives FastAccess service, FDN shall forward to the SPOC end user contact information (i.e. telephone number or email address) in order for BellSouth to perform its obligations under this Section 2.10. FDN may include such contact information on the LSR. After receipt of contact information from FDN, BellSouth shall have three days to make the election as to which line FastAccess service will be provisioned on as set forth in 2.10.2.7 and to notify FDN of that election. If BellSouth contacts the end user during this process, BellSouth may do so only to validate the end user's current and future FastAccess services and facilities. During such contact, BellSouth will not engage in any winback or retention efforts, and BellSouth will refer the end user to FDN to answer any questions regarding the end user's FDN services.

FDN language:

> If the end user receives xDSL service, FDN shall forward to the SPOC end user contact information (i.e. telephone number or email address) in order for BellSouth to perform its obligation under this Section 2.10. FDN may include such contact information on the LSR. After receipt of contact information from FDN, BellSouth shall have three days to make the election as to which line xDSL service will be provisioned on as set forth in 2.10.2.5 and to notify FDN of that election. If BellSouth contacts the end user during this process, BellSouth may do so only to validate the end user's current xDSL services and facilities. During such contact, BellSouth will not engage in any winback or retention efforts, and BellSouth will refer the end user to FDN to answer any questions regarding the end user's services.

BellSouth states that its addition of "and future" is intended to indicate that it is permitted to discuss with the end user how his FastAccess service would be provisioned prospectively, including

> (e.g. if a new loop is to be used, how the rewiring would be performed); how it would be billed (e.g. if the customer currently has a multiservice discount, how the billing would change); and any other necessary information the customer would need

in order to proceed with the transition to FDN voice services. (BellSouth Position, p. 10)

BellSouth argues that prohibiting it from discussing such matters with the end user could undermine the transition being a seamless one; moreover, failure by BellSouth to disclose such pertinent information could subject BellSouth to customer complaints. Similarly, BellSouth's insertion of the word "FDN" in the last sentence is designed to clarify that customer referrals to FDN should only pertain to FDN-provided services; BellSouth believes that inquiries about FastAccess, a BellSouth-provided service, should be handled by BellSouth, not FDN.

FDN contends that if BellSouth must contact FDN's voice customer, such contact should be restricted to "...discussing and validating *current* facilities and services." Fundamentally, it appears FDN is concerned that during such customer contacts BellSouth will demean the FastAccess service that will be received by the customer due to his switching to FDN's voice service. FDN believes such contacts are a "license for mischief."

Finding

It is unclear as to what FDN means by "current facilities and services," in that it has agreed to BellSouth's proposal to provision FastAccess for customers who migrate to FDN voice on a separate, stand-alone loop. It appears inevitable that a FastAccess customer will experience a change to his current service, because the line on which the FastAccess is to be provisioned will no longer also have voice capabilities. Contrary to FDN's view, we believe that BellSouth would be negligent if it failed to inform the customer of any potential change in his service. However, we note that BellSouth's use of the phrase "and future" does not render the sentence in which it appears completely clear and unambiguous to us; nevertheless, we accept BellSouth's representation that customer contacts will be for the limited purposes described in its Position. We acknowledge FDN's concerns and trust that BellSouth's customer contact when service is modified would be minimized and competitively neutral.

Accordingly, we find that BellSouth's language shall be adopted.

7. BellSouth Section 2.10.2.8; no comparable FDN language

BellSouth language:

If a second facility is not available for either the Standalone Service or the newly ordered UNE loop, then BellSouth shall be relieved from its obligation to continue to provide FastAccess service, provided that the number of locations where facilities are not available does not exceed 10% of total UNE orders with FastAccess.

BellSouth again argues that providing its FastAccess service on a standalone basis is the only way it can satisfy our decision without violating various federal orders. It asserts that if it were to put BellSouth's high-speed Internet access service on a UNE loop,

> BellSouth would be providing its tariffed DSL service for itself in a way that is different from how it would be providing it for other ISPs. This would put BellSouth in violation of the FCC's orders in the Computer Inquiry III cases; in violation of the FCC's Open Network Architecture orders; and in violation of its own federally filed CEI plan.

Moreover, BellSouth contends that if it put FastAccess on FDN's UNE loops, other ISPs would argue that BellSouth was obligated to make its interstate DSL offering available to them on UNE loops, too. As a compromise, BellSouth offers that if it is unable to provision standalone FastAccess on more than 10% of UNE orders, it would ". . .have to figure out for itself some other way of meeting its obligation to continue to provide FastAccess." (Position, p.11)

FDN objects vehemently to BellSouth's proposal, stating that it is ". . .unsupportable and would eviscerate the Commission's Arbitration Order." FDN states that the record in this proceeding provides no basis for BellSouth being excused even a single time from complying with this Commission's decision, let alone 10% of the time.

Finding

We note that BellSouth argued on reconsideration that to put its FastAccess service on a UNE loop would be a violation of its FCC tariff. In the Reconsideration Order, we determined that we were not constrained by a FCC tariff and that under Section 251(d) we can impose additional requirements as long as they are not inconsistent with FCC rules, orders, or federal statutes. We concluded that BellSouth had not shown that our decision was in conflict with any controlling law and thus dismissed BellSouth's argument.

Our decision states that "BellSouth shall continue to provide its FastAccess Internet Service to end users who obtain voice service from FDN over UNE loops." We have found no basis in our orders or deliberations in this proceeding to carve out an exception, whether it be for a single customer or 10% of FDN's UNE orders. Accordingly, BellSouth must comply with our specific decision.

We find that Section 2.10.2.8 shall not be included in the parties' agreement. However, if BellSouth believes that it is important and correct to continue to provide FastAccess over a separate facility and such facilities are not available and the parties can not reach an agreement about how the Fast Access would be provisioned, parties can file a petition seeking relief as appropriate.

Accordingly, the parties shall file the final interconnection agreement in accordance with the specific findings as set forth in this Order within 30 days from the issuance date of the Order resolving the disputed contract language.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the parties shall file the final interconnection in accordance with the specific findings as set forth in this Order. It is further

ORDERED that the parties shall file the final interconnection agreement within 30 days from the issuance date of this Order resolving the disputed contract language. It is further

ORDERED that this docket shall remain open in order that the parties may file a final interconnection agreement.

By ORDER of the Florida Public Service Commission this 21stday of March, 2003.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

This is a facsimile copy. Go to the Commission's Web site, http://www.floridapsc.com or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)

FRB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak

Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

EXHIBIT "4"

Supra Telecom

Telephone: (850) 402-0510
Fax: (850) 402-0522
www.supratelecom.com

1311 Executive Center Drive, Suite 200
Tallahassee, Fl 32301-5027

December 18, 2002

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02 DEC 18 PM 2:25
COMMISSION CLERK

Mrs. Blanca Bayo, Director
Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 323099-0850

RE: Complaint of Supra Telecommunications Systems, Inc., Against BellSouth Telecommunications, Inc. For Non-Compliance With Commission Order No. PSC-02-0878-FOF-TP

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Complaint Against BellSouth Telecommunications, Inc. (BellSouth) For Non-Compliance With Commission Order No. PSC-02-0878-FOF-TP, as clarified by Order No. PSC-02-1453-FOF-TP, and provision 2.16.7 of the parties' Present Interconnection Agreement.

We have enclosed a copy of this letter and ask that you mark it to indicate that the original was file, and thereupon return it to me, copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Jorge L Cruz-Bustillo /aFB

Jorge L. Cruz-Bustillo
Assistant General Counsel

RECEIVED & FILED
RLM
FPSC-BUREAU OF RECORDS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Hand-Delivery on this 18th day of December 2002, to the following:

Beth Keating, (for staff counsel)
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Nancy B. White
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

SUPRA TELECOMMUNICATIONS &
INFORMATION SYSTEMS, INC.
2620 S. W. Avenue
Miami, Florida 33133
Telephone (305) 476 – 4252
Facsimile (305) 443 - 9516

Jorge L. Cruz-Bustillo /CRS

JORGE L. CRUZ-BUSTILLO

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Supra Telecommunication & Information Systems, Inc., against BellSouth Telecommunication, Inc.'s for Non-Compliance with Commission Order No. PSC-02-0878-FOF-TP	)	Docket No.:_____
		Filed: December 18, 2002

COMPLAINT
OF SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC., AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. FOR NON-COMPLIANCE WITH COMMISSION ORDER NO. PSC-02-0878-FOF-TP

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra"), by and through its undersigned counsel and pursuant to Florida Statutes § 364.058,[1] and Rules 25-2.036(2), 25-22.036(3)(b), and 28-106.201 of the Florida Administrative Code, files this Complaint and request for Expedited Relief against BellSouth Telecommunications, Inc. ("BellSouth") in regard to its practice of refusing to provide its FastAccess Internet Service ("FastAccess") to customers who receive voice service from Supra. This practice is a barrier to competition and interferes with a consumers' ability to select the provider of choice. Expedited relief[2] is necessary to compel BellSouth to perform its obligations in accordance with Commission Order No. PSC-02-0878-FOF-TP as clarified by Order No. PSC-02-1453-FOF-TP as memorialized in

[1] Section 364.058, Florida Statutes, provides: "(1) Upon petition or its own motion, the commission may conduct a limited or expedited proceeding to consider and act upon any matter within its jurisdiction."

[2] In filing this Complaint, Supra has followed the procedures for expedited processing set out in the June 19, 2001, Commission memorandum from Noreen S. Davis to then Chairman, E. Leon Jacobs. The primary purpose of this Complaint is to evaluate whether BellSouth has violated Commission orders and Florida Statures and whether to impose a penalty therefore. Supra has filed its Complaint and exhibits together, and this matter is limited to a single issue Though the process described in Ms. Davis' memorandum was originally envisioned as applicable to complaints arising from interconnection agreements (which this would also qualify), it is equally useful in the context of this single issue complaint regarding BellSouth's compliance with Commission orders. It is critical that the Commission use an expedited process to quickly resolve this matter and to order BellSouth to cease its continued violation of Commission orders.

provision 2.16.7, in Attachment 2, pg. 12, of the parties' Present Interconnection Agreement ("Present Agreement"). In support of its Complaint, Supra states the following:

Since Commission Order No. PSC-02-0878-FOF-TP was entered in Docket 001305-TP, BellSouth has refused to comply with that portion of the Order requiring BellSouth to continue to provide FastAccess Service to those BellSouth voice customers who choose to switch their voice provider to Supra.

1. Supra is a competitive local exchange carrier certified by the Florida Public Service Commission ("Commission") to provide telecommunications services in Florida. Supra's service of process address is

Brian W. Chaiken, General Counsel
Supra Telecommunications & Information Systems, Inc.
2620 SW 27th Ave
Miami, FL 33133-3005

2. Pursuant to Rule 25-22.036(3)(b)(3), Florida Administrative Code, this Complaint is being lodged against BellSouth an incumbent local exchange carrier certified by the Commission to provide local exchange telecommunications services in Florida. BellSouth 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's service of process address is

Nancy B. White, General Counsel
c/o Nancy H. Sims, Director of Regulatory Affairs
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

FACTUAL ALLEGATIONS

3. Pursuant to Rule 25-22.036(3)(b)(1), Florida Administrative Code, the order that has been violated is Commission Order No. PSC-02-0878-FOF-TP ("July 1st Order") in Docket No. 001305-TP issued on July 1, 2002. This Order was subsequently clarified in Commission Order

No. PSC-02-1453-FOF-TP ("October 21st Order") issued on October 21, 2002. In the July 1st Order this Commission found that BellSouth's "practice of disconnecting FastAccess Internet Service when the [BellSouth] customer switches voice providers creates a barrier to competition in the local exchange telecommunications market." *See* Order at pg. 50.

4. The above referenced July 1st Order has its origin in the Florida Digital Network ("FDN")/BellSouth arbitration. *See* Order at pg. 50. This Commission found, in Supra's case, that "the decision regarding BellSouth's policy on FastAccess went to the legality of that [BellSouth] policy under Florida law and our [Commission] jurisdiction to address it." Id. "Thus, the decision at issue here does not hinge on any different or additional facts present in Docket No. 010098-TP [FDN/BellSouth arbitration] that are not present in this Docket." Id. "As such, our decision is not restricted solely to that arbitration." Id.

5. On August 22, 2002, the Commission approved a new Interconnection Agreement between Supra and BellSouth.

6. To implement this Commission's decision involving consumer choice, this Commission approved Section 2.16.7, in Attachment 2, pg. 12, of the parties' Present Agreement, which reads as follows:

> **Where a BellSouth voice customer who is subscribing to BellSouth FastAccess Internet service converts its voice service to Supra utilizing a UNE-P line, BellSouth will continue to provide FastAccess service to that end user.**

Background of FDN decision

7. On June 5, 2002, the Commission issued Order No. PSC-02-0765-FOF-TP in Docket No. 010098-TP (In re: Petition by Florida Digital Network, Inc.) for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996) ("FDN Order").

8. In the FDN Order of June 5th this Commission concluded that "BellSouth shall continue to provide FastAccess [BellSouth's DSL service] even when BellSouth is no longer the voice provider because the underlying purpose of such a requirement is to encourage competition in the local exchange telecommunications market, which is consistent with Section 251 of the Act and with Chapter 364, Florida Statutes." Id. at 10.

9. This Commission went on to find that BellSouth's "practice **unreasonably penalizes** customers who desire to have access to voice service from FDN [or Supra in our case] and DSL from BellSouth." Id. at 11. (Emphasis added). "Furthermore, because we find that this practice creates a barrier to competition in the local telecommunications market in that customers could be dissuaded by this [BellSouth] practice from choosing FDN or another ALEC [e.g. Supra] as their voice service provider, this practice is also in violation of Section 364.01(4), Florida Statutes."

10. As noted in ¶ 4 above, this Commission incorporated its decision from the FDN Order into Supra's arbitration Order No. PSC-02-0878-FOF-TP of July 1, 2002.

11. Both FDN and BellSouth filed Motions for Reconsideration regarding the FDN Order.

12. On October 21, 2002 the Commission issued Order No. PSC-02-1453-FOF-TP ("FDN Recon Order") addressing both FDN and BellSouth's motions for reconsideration.

13. In the FDN Recon Order this Commission ruled as follows: "[o]ur decision [initial FDN Order] envisioned that FastAccess customer's Internet access service would **not** be altered when the customer switched voice providers." (Emphasis added). FDN Recon Order at pg. 5, 2nd paragraph.

14. The finding quoted above, was made in response to a BellSouth request for clarification. In particular, BellSouth asked this Commission to "clarify that BellSouth is not required to provide FastAccess service over a UNE loop, but instead BellSouth may provide that service over a new loop that it installs to serve the end user's premises." Id. at pg. 5.

15. In its response to BellSouth's request for clarification, FDN stated that "BellSouth's provisioning proposal would be harmful and undermine the Commissions intent." FDN Recon Order at pg. 5. "Further, FDN asserts that second loops are not ubiquitously available and an additional loop would reduce the efficient use of the existing loop plant." Id.

16. After careful consideration of both positions, this Commission wrote the following: "Although the issue of **how** FastAccess was to be provisioned when a BellSouth customer changes his voice service to FDN [or Supra] was not addressed in the Commission's [initial FDN] Order, we believe that FDN's position is in line with the tenor of our decision." FDN Recon Order at pg. 5. (Emphasis added). "While the Order is silent on provisioning, we believe our decision envisioned that FastAccess customer's Internet access service **would not be altered** when the customer switched voice providers." Id. (Emphasis added).

17. The Commission's decision in the FDN Recon Order not only required that a customer's Internet access service "would not be altered," but more importantly, the decision clarified that "BellSouth's migration of its FastAccess Internet Service to an FDN customer [or Supra] **shall be a seamless transition** for a customer changing voice service from BellSouth to FDN [or Supra] in a manner that **does not create an additional barrier** to entry into the local voice market." (Emphasis added). FDN Recon Order at pg. 6.

18. Pursuant to Rule 25-22.036(3)(b)(2), Florida Administrative Code, the following paragraphs will outline the actions Supra contends are a direct violation of this Commission's decision in Order No. PSC-02-0878-FOF-TP entered on July 1, 2002.

19. BellSouth sent Supra a letter, dated August 26, 2002, outlining BellSouth's plan to comply with this Commission's Order and provision 2.16.7, in Attachment 2, pg. 12, of the parties' Present Agreement. (The August 26, 2002 Letter is attached hereto as **Exhibit A**).

20. In particular, in this August 26th Letter BellSouth writes: "This is to advise Supra Telecommunications (Supra) that BellSouth will offer stand-alone FastAccess service to BellSouth FastAccess DSL end users in Florida who are converting their voice service to Supra where Supra will utilize an Unbundled Network Element-Platform (UNE-P) service." "The stand-alone FastAccess service will be available on September 4, 2002."[3] (Emphasis added). *See* Exhibit A, ¶ 1.

21. The stand-alone FastAccess service offered in BellSouth's August 26, 2002 Letter requires the consumer to have a second line installed at his or her home.

22. In BellSouth's proposal of August 26, 2002, BellSouth writes: "BellSouth.net will contact the end user concerning the lines that are determined to have FastAccess. BellSouth.net will discuss the terms and conditions of the transfer with the end user. These Terms and Conditions will include: **RATE CHANGES** . . . **BILLING CHANGES**: The end user will be required to provide a credit card for billing the FastAccess, [and] **DATA ONLY**: The FastAccess service will provide data only with no fax capability and no back up dialing capability. The end user will be requested to accept these terms and conditions." *See* Exhibit A, pg. 2 (Stand Alone FastAccess Proposal). (Emphasis added).

[3] On November 22, 2002 BellSouth will write to Supra stating the "process" for ensuring a seamless conversion has "not yet been finalized."