BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Digital Network, Inc. for Arbitration of Certain Terms and Resale Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996	)	Docket No. 010098-TP Dated: November 19, 2002

MOTION OF FLORIDA DIGITAL NETWORK, INC. TO APPROVE INTERCONNECTION AGREEMENT

Pursuant to the Commission's October 21, 2002 *Reconsideration Order,*[1] Florida Digital Network, Inc. ("FDN") and BellSouth Telecommunications, Inc. ("BellSouth") (collectively "the Parties") are submitting to the Commission today the product of their more than two-and-one-half years of negotiations, and subsequent arbitration, to establish a new interconnection agreement ("ICA"). For the reasons stated herein, this Motion asks the Commission to approve the language proposed by FDN, rather than that proposed by BellSouth.

INTRODUCTION

As the Commission is aware, the Parties arbitrated only one issue. FDN's arbitration petition defined the disputed issue as follows: "For purposes of the new interconnection agreement, should BellSouth be required to provide xDSL service over UNE loops when FDN is providing voice service over that loop?" During the arbitration, FDN explained that it sought the means to provide xDSL services to its customers both through unbundled network elements and the resale provisions of Section 251(c)(4) of the federal Communications Act. FDN also

[1] Order Denying Motions for Reconsideration, Cross-Motion for Reconsideration and Motion to Strike, Petition of Florida Digital Network, Inc. for Arbitration of Certain Terms and Resale Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996, Docket No. 010098-TP, Order No. PSC-02-1453-FOF-TP (Oct. 21, 2002).

EXHIBIT
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explained the anti-competitive impact of BellSouth's refusal to provide its DSL services to retail voice customers of FDN.

Although the Commission declined to provide the unbundling and resale relief FDN requested, it recognized the competitive harm caused by BellSouth's unreasonable insistence on tying xDSL service to the purchase of voice service from BellSouth. The Commission's *Arbitration Order* therefore ordered BellSouth to make xDSL service available to FDN's voice customers.[2]

Since the Commission issued its *Reconsideration Order* addressing the Parties' various motions for reconsideration and clarification, the Parties have attempted to negotiate mutually acceptable language that effectuates the spirit and letter of the Commission's order. The Parties have been largely successful. BellSouth is submitting today a full interconnection agreement that contains all the terms on which the Parties have been able to reach agreement.[3]

The Parties have, however, been unable to reach complete agreement on language implementing the DSL issue arbitrated before the Commission. Although § 2.10 of the proposed new ICA reflects that the Parties are in agreement on most of the terms that will govern BellSouth's new service obligation, several vitally important issues, reflected in the disputed contract language attached hereto, remain unresolved. For the Commission's convenience, FDN's proposed language is attached as Exhibit 1. BellSouth's proposal is Exhibit 2. A redline of the two (showing the changes that BellSouth would make to FDN's proposal) is attached as

[2] Final Order on Arbitration, *Petition of Florida Digital Network, Inc. for Arbitration of Certain Terms and Resale Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996*, Docket No. 010098-TP, Order No. PSC-02-0765-FOF-TP (June 5, 2002).

[3] At BellSouth's request, FDN also consented to renegotiate considerable portions of the agreement originally filed with the arbitration petition.

Exhibit 3. The bases for FDN's proposed language, and the reasons why it should be adopted in favor of BellSouth's alternative proposals, are addressed below.

I. BellSouth's Obligation to Provide xDSL Services Must Continue Even When a Second Stand-Alone Loop is Unavailable.

BellSouth asks to "be relieved from its obligation" to comply with the Commission's Arbitration Order when doing so would be inconvenient for BellSouth – in up to 10% of all cases. *See* BellSouth Proposed § 2.10.2 8. Such an exception is unsupportable and would eviscerate the Commission's Arbitration Order. Accordingly, the Commission should refuse to adopt BellSouth's proposed § 2.10.2.8.

In the *Arbitration Order*, the Commission ordered BellSouth to continue providing its DSL service to end-user customers even after the customer switches to FDN as its voice service provider. In its Petition for Reconsideration, BellSouth requested that it be permitted to comply with the Commission's order by provisioning service over a separate loop. Though the Commission, in its *Reconsideration Order*, refused to modify its *Arbitration Order* to accommodate BellSouth's request, FDN has consented, in principle, to the "two loop" approach. Thus, Sections 2.10.1.4 and 2.10.1.5 of the proposed ICA reflects the Parties' agreement that BellSouth can comply with the *Arbitration Order* either by provisioning its xDSL service, along with FDN voice service, either on one loop on a shared basis (§ 2.10.1.4 (defined herein as "loop sharing"[4])) or on two separate loops (defined as "Standalone Service" in § 2.10.1.5). But for a disagreement on nomenclature (discussed in section 2 of this letter), there is no disagreement on these provisions.

[4] FDN uses the term "loop sharing" herein to distinguish it from the terms "Line Sharing" and "Line Splitting" which have defined specifically defined regulatory definitions.

Despite the flexibility accorded BellSouth in the agreed-upon language, BellSouth has told FDN that intends to comply with the *Arbitration Order* by provisioning xDSL and voice service on separate loops (*i.e.*, Standalone Service), in all cases, and will not utilize the loop sharing arrangement requested by FDN in the arbitration. When a separate standalone loop is unavailable, BellSouth asks to be relieved of its obligation to continue providing DSL service, as required by the *Arbitration Order*.[5]

BellSouth's proposal is plainly unacceptable. There is no basis in the record of the arbitration proceeding to justify BellSouth's desire to be excused even once from the Commission's *Arbitration Order*, merely because BellSouth's preferred approach of using Standalone Service is unavailable, let alone 10% or more of the time, especially when BellSouth has conceded that there is no technical obstacle to loop sharing. Although FDN has accepted BellSouth's proposed Standalone approach so long as its customers do not bear any additional costs merely because BellSouth would prefer to provision two loops where one will do, or otherwise disadvantaged or discriminated against, FDN cannot accept BellSouth's request for a blanket exception from the *Arbitration Order*.

During the recent negotiations to implement the *Arbitration Order*, BellSouth's negotiators cited vaguely to "increased costs" associated with implementing the shared loop approach contemplated by § 2.10.1.4. Such costs, whether they are associated with provisioning the shared service or accounting for it in BellSouth's operation support systems, cannot warrant BellSouth evading its obligations under the *Arbitration Order*. Indeed, a BellSouth witness

[5] Although BellSouth's proposal would limit its right to not comply with the *Arbitration Order* to 10% of the time, even that limitation is plainly unacceptable. Moreover, BellSouth has provided no justification for the 10% figure, which appears to have been pulled from thin air.

testified at the arbitration (also vaguely) about the provisioning difficulties that would be associated with implementing a shared loop approach, and the Commission was unimpressed.[6]

Thus, BellSouth's request to be excused from performance whenever compliance would be inconvenient is plainly unacceptable and unsupportable. The Commission's *Arbitration Order* expressly found that the inconvenience that BellSouth would face in complying was outweighed by the benefit to Florida consumers that would result from eliminating BellSouth's anti-competitive tying arrangement. Because an arbitrary performance exception is unsupported by the record, and is plainly contrary to the letter and spirit of the Commission's order, BellSouth's proposed Section 2.10.2.8 must be rejected.

II. BellSouth Must Continue Serving All of its DSL Customers.

BellSouth concedes that the *Arbitration Order* requires it to continue to provide DSL service to customers who switch their voice service from BellSouth to FDN. But BellSouth proposes unreasonable restrictions on this obligation. Specifically, under its proposal, BellSouth's obligation would be limited to providing only its retail "FastAccess" service since that is the only subset of xDSL service specifically mentioned in the Reconsideration Order. Customers who receive BellSouth DSL service on a wholesale basis from independent ISPs, such as Earthlink or AOL, on the other hand, would not be entitled to continued DSL upon porting voice service to FDN. Because as much as 1/4 to 1/3 of BellSouth's DSL business consists of "wholesale" purchases by non-affiliated ISPs, BellSouth's proposal would mean that many Florida consumers would receive no benefit at all from the Commission's *Arbitration Order*.

[6] *See* Tr. at 315-16, 348-49, 364-68 (Williams).

FDN believes that the Commission did not intend to limit the *Arbitration Order* in the manner that BellSouth proposes. Accordingly, FDN proposes the use of the term "xDSL services" throughout Section 2.10 to describe BellSouth's obligations under the Commission's Order. FDN has further proposed a separate section 2.10.1.2 that defines DSL services as follows:

> 2.10.1.2 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.

FDN's proposed language assures that Florida consumers who receive DSL service from BellSouth can continue to do so regardless of who they choose to provide voice service. Providing consumers with such flexibility is important because, as the arbitration record reflects, BellSouth has a monopoly 98% share of the DSL market in Florida. Moreover, because of BellSouth's DLC-based network architecture, DSL competition is only conceivably *possible* in only 10 percent of the state. Thus, without the UNE relief that FDN requested and the Commission denied, BellSouth will be the exclusive provider of DSL in the state for years to come. Unless consumers can chose Internet Service Providers who are not affiliated with BellSouth, BellSouth will use its power in the DSL transport market to dominate the ISP market, as well

To limit BellSouth's obligation under the *Arbitration Order* to its retail FastAccess product would be arbitrary and capricious and unsupported by the record. As noted above, FDN's arbitration petition sought an order that "BellSouth be required to provide xDSL service over UNE loops when FDN is providing voice service over that loop" without reference to the specific FastAccess product. Indeed, FDN witness Gallagher testified almost exclusively about

the need to provide DSL to FDN's customers, and made only a couple of stray references to BellSouth's retail DSL offering.[7]

And there is nothing in the record to suggest that the competitive harm caused by BellSouth's tying arrangement is any less when the ISP is a provider other than BellSouth. Indeed, exactly the opposite is true. If BellSouth is permitted to disconnect DSL simply because it is not the ISP, the Commission will have failed to fully achieve its goal of furthering competition in the voice market. Customers who choose a non-affiliated ISP will have no ability to choose a different voice provider, and BellSouth will still be in a position to exercise its market power in the DSL market by coercing customers into choosing its voice services.[8]

Thus, it is vitally important that BellSouth be obligated to continue providing its DSL service even after consumers switch to CLECs for voice service. The fact that BellSouth has seized upon the Commission's occasional use of the term "FastAccess" in the order should not be controlling. Indeed, BellSouth's own Motion for Reconsideration explicitly assumed that the Commission's *Arbitration Order* would apply both to its "wholesale DSL regulated transport service and [its] retail non-regulated DSL-based Internet access service."[9]

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[7] *See, e.g.*, Tr. at 110-11, 137-41, 157, 164-67.

[8] BellSouth may also be violating the Communications Act and the FCC's *Computer Inquiry* rules by refusing to provide its common carrier services to requesting customers – e.g., non-affiliated ISPs requesting service. *See, e.g., Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket 96-61; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket 98-183, Report and Order, FCC 01-98 (rel. March 30, 2001) ¶ 46 (observing that "all carriers have a firm obligation under section 202 of the Act to not discriminate in their provision of transmission service to competitive Internet or other enhanced service providers").

[9] BellSouth Telecommunications, Inc.'s Petition for Reconsideration or, in the Alternative, Clarification with Regard to Section III of the Commission's Final Order on Arbitration at 3 (June 20, 2002).

Accordingly, FDN urges the Commission to adopt its use of the "xDSL services" nomenclature throughout § 2.10, which ties directly to FDN's proposed § 2.101.2, which defines the term as follows:

> § 2.101.2 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.

Similarly, the Commission should reject BellSouth's proposed § 2.10.2.5, which authorizes BellSouth to "remove the DSL service" provided to an "end user [that] does not have FastAccess but has some other DSL service."

III. The Commission Should Adopt FDN's Proposed Non-Discrimination Provisions.

FDN has proposed several non-discrimination provisions designed to prevent BellSouth from achieving indirectly what the Commission has expressly precluded it from doing directly. Thus, FDN has proposed the following provisions that BellSouth proposes to strike:

> 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, carrier, or volume of voice or any other services provided to the customer location.
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> * * *
>
> 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.

These non-discrimination provisions are vital to fully achieving the objective underlying the Commission's *Arbitration Order*. Thus, § 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 individual basis. For example, if BellSouth offered a bundled package of voice and DSL to end-users for $45, it must be prevented from charging FDN voice customers who continue to receive BellSouth's xDSL service an unreasonable pro-rated share of that $45.[10]

For the same reason, the Commission must reject BellSouth's proposed § 2.10.1.5. That provision would disqualify FDN voice customers who continue to receive BellSouth DSL from "any discounts on FastAccess associated with the purchase of other BellSouth products, e.g., the Complete Choice discount." BellSouth's wholly unconstrained provisioning of discounts to its xDSL customers if and only if they purchase voice service from BellSouth would constitute virtually the same type of tying arrangement that the Commission found unlawful in the first place.

Similarly, § 2.10.1.5.4 prevents BellSouth from adopting discriminatory billing practices. BellSouth currently provides customers with the option of a monthly paper bill or an automatic debit from the customer's credit card. To implement the Commission's *Arbitration Order*, BellSouth proposes that its xDSL customers be required to provide a credit card, only if they do not take their voice service from BellSouth. BellSouth has provided no justification for this discriminatory treatment, which would inconvenience and annoy some customers. Accordingly, FDN has rejected BellSouth's proposal. In the alternative, FDN proposes that the Parties develop a mutually agreeable arrangement whereby FDN be permitted to bill customers for xDSL services rendered by BellSouth. *See* FDN Proposed § 2.10.1.5 4. It is not reasonable for

[10] For example, it is one thing for BellSouth to provide its customers purchasing a bundled package of services with a $10 discount, but BellSouth should not be able to claim that $40 of the bundled package is attributable to DSL service and charge end-users who purchase voice from FDN, but DSL from BellSouth, $40 of the total $45 price.

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.

Finally, FDN objects to language in BellSouth's proposed Section 2.10.2.6 that would permit it to contact FDN's voice customers "to validate the end user's current and future FastAccess services and facilities." FDN proposes that the purpose of the contact be limited, if it must take place, to discussing and validating *current* facilities and services. Though BellSouth has agreed not to conduct any winback campaigns during these contacts, FDN is concerned that BellSouth will use these customer contacts to intimidate customers by disparaging the DSL service they will receive in the future if drop BellSouth's voice service. In other words, BellSouth will use the call as a license for mischief Accordingly, the nature of the call should be limited as delineated in FDN's proposed language.

CONCLUSION

Although this motion identifies a number of areas of disagreement, the parties have actually agreed to most of the language necessary to implement the Commission's Arbitration Order FDN believes that its proposed language best implements the spirit and policy objectives of the *Arbitration Order*. FDN is nevertheless prepared to work with the Commission and BellSouth further to achieve mutually acceptable language if the Commission is reluctant to choose one Party's proposal over another.

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Dated: November 19, 2002

FDN Proposed Attachment 2-UNE
Contract Terms for Florida Digital Network & BellSouth Interconnect Agreement

11/18/02

2.10 **Continued Provision of xDSL Services to FDN End Users**

2.10.1. 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.

2.10.1.1 BellSouth may not evade any of its obligations under this subsection 2.10 by offering or providing any of the services or component services under this subsection through any affiliate, including, but not limited to BellSouth.net, Inc. or successor by corporate merger.

2.10.1.2 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.

2.10.1.3 Regardless of how BellSouth provisions its xDSL services to an end user, when an end user switches to FDN voice service, BellSouth's xDSL service will not be terminated, suspended or interrupted, except as may be expressly provided for herein, and BellSouth's continuation of its xDSL service to the end user location switching to FDN service shall be a seamless or transparent transition for the end user such that there shall be no more than a momentary disruption of xDSL and voice services.

2.10.1.4 Where BellSouth's xDSL service could be provisioned over the high-frequency portion of a loop coexistent with circuit-switched voice services on the same loop, BellSouth may elect to maintain xDSL service on the same loop such that the xDSL service is not altered when the end-user switches to FDN voice service.

2.10.1.5 BellSouth may satisfy its obligations under this Section 2.10 by providing its xDSL services on a BellSouth owned and maintained loop, ("Standalone Service"), that is separate and distinct from the line FDN

uses for voice services. Where feasible, and where a loop is available for FDN services that satisfies all of the standards set forth in this Agreement, BellSouth may elect to maintain the xDSL services on the extant loop and FDN voice services will be provisioned over a second loop.

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, carrier, or volume of voice or any other services provided to the customer location.

2.10.1.5.3 In implementing the Commission's Order in Docket No. 010098-TP, BellSouth shall not create directly or indirectly any additonal barriers to FDN's ability to compete in the voice services market.

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.

2.10.1.6 Nothing in this Section 2.10 shall require BellSouth to continue providing xDSL services to an end user who fails to pay all charges associated with xDSL service or otherwise fails to comply with the end-user's Service Agreement with BellSouth or the applicable Acceptable Use policies.

2.10.1.7 In the event BellSouth elects to comply with this Section 2.10 by providing xDSL service on an FDN UNE Loop, FDN shall make available to BellSouth at no charge the high frequency spectrum on such UNE Loop for purposes of providing the underlying DSL transport.

2.10.2 **Provisioning**

2.10.2.1 FDN and BellSouth shall each establish a single point of contact ("SPOC") for purposes of the provision of BellSouth xDSL services pursuant to this Section 2.10.

2.10.2.2 When FDN submits an LSR for a UNE loop, and there is a DSL USOC on the end-user's service record, the LCSC will auto-clarify the order.

2.10.2.3 Upon receiving the auto-clarified order, FDN shall notify the BellSouth SPOC, and the BellSouth SPOC shall determine whether the end user is a BellSouth xDSL services customer.

2.10.2.4 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 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 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.

2.10.2.5 After election by BellSouth as to which line xDSL service will be provisioned on (either the existing or on a second facility) FDN will submit a revised LSR for the conversion of the voice service. If BellSouth elects to move the xDSL service to a new Standalone loop, FDN will submit an LSR with a due date 14 calendar days from submission to allow BellSouth sufficient time to transition the xDSL service to the second line. If BellSouth elects to keep the xDSL service on the current facilities and provision FDN voice services on the same or separate facilities, FDN will submit a revised LSR for voice service on such facilities using standard processes and intervals, and allow the xDSL service to remain on the current facilities.

2.10.2.6 FDN authorizes BellSouth to access the entire UNE loop for testing purposes.

2.10.2.7 FDN and BellSouth agree that after the initial 90 days (and every 90 days thereafter) of provisioning xDSL service in accordance with this Section 2.10, FDN and BellSouth will meet to discuss and negotiate in good faith any means for improving and streamlining the provisioning process.

2.10.2.8 FDN and BellSouth will develop processes to promptly correct problems with or disconnections of xDSL service to FDN voice end users.

BST Proposed Attachment 2-UNE
Contract Terms for Florida Digital Network & BellSouth Interconnect Agreement

11/18/02

2.10 **Continued Provision of FastAccess to FDN End Users**

2.10.1 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.

2.10.1.1 BellSouth may not evade any of its obligations under this subsection 2.10 by offering or providing any of the services or component services under this subsection through any affiliate, including, but not limited to, BellSouth.net, Inc. or successor by corporate merger.

2.10.1.2 Regardless of how BellSouth provisions its FastAccess to an end-user, when an end-user switches to FDN voice service, BellSouth's FastAccess will not be terminated, suspended or interrupted, except as may be expressly provided for herein, and BellSouth's continuation of its FastAccess to the end-user switching to FDN voice service shall be a seamless or transparent transition for the end user such that there shall be no more than a momentary disruption of FastAccess and voice services.

2.10.1.3 Where BellSouth's FastAccess could be provisioned over the high-frequency portion of a loop coexistent with FDN circuit-switched voice services on the same loop, BellSouth may elect to maintain the BellSouth FastAccess on the same loop such that the FastAccess is not altered when the end-user switches to FDN's voice service.

2.10.1.4 BellSouth may satisfy its obligations under this Section 2.10 by providing FastAccess on a BellSouth owned and maintained loop, ("Standalone FastAccess"), that is separate and distinct from the line FDN uses for voice services. Where feasible, and where a loop is available for FDN voice services that satisfies all of the standards set forth in this Agreement, BellSouth may elect to maintain FastAccess on the extant loop and FDN voice services will be provisioned over a second loop.

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.

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

2.10.1.7 In implementing the Commission's Order in Docket No. 010098-TP, BellSouth shall not create any additional barriers to FDN's ability to compete in the local exchange services market.

2.10.1.8 Nothing in this Section 2.10 shall require BellSouth to continue providing FastAccess to an end-user who fails to pay all charges associated with FastAccess or otherwise fails to comply with the end-user's Service Agreement with BellSouth or the applicable Acceptable Use policies for FastAccess.

2.10.1.9 In the event BellSouth elects to comply with this Section 2.10 by providing FastAccess on an FDN UNE Loop, FDN shall make available to BellSouth at no charge the high frequency spectrum on such UNE Loop for purposes of providing the underlying DSL transport.

2.10.2 **Provisioning**

2.10.2.1 FDN and BellSouth shall each establish a single point of contact ("SPOC") for purposes of the provision of FastAccess pursuant to this Section 2.10.

2.10.2.2 When FDN submits an LSR for a UNE loop, and there is a DSL USOC on the end-user's service record, the LCSC will auto-clarify the order.

2.10.2.3 Upon receiving the auto-clarified order, FDN shall notify the BellSouth SPOC, and the BellSouth SPOC shall determine whether the end-user is a FastAccess customer.

2.10.2.4 FDN and BellSouth will develop processes to promptly correct problems with or disconnections of FastAccess service to FDN voice end users.

2 10.2.5 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.

2.10 2.6 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.

2.10.2.7 After election by BellSouth as to which line FastAccess will be provisioned on (either the existing loop, or on a second facility) FDN will submit a revised LSR for the conversion of the voice service to a UNE loop. If BellSouth elects to move the FastAccess to a new Standalone loop, FDN will submit an LSR with a due date 14 calendar days from submission to allow BellSouth sufficient time to transition the FastAccess service to the second line. If BellSouth elects to keep the FastAccess service on the current facilities and provision FDN voice services on the same or separate facilities, FDN will submit a revised LSR for voice service on such facilities using standard processes and intervals, and allow the FastAccess service to remain on the current facilities.

2.10.2 8 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.

2.10.2.9 FDN authorizes BellSouth to access the entire UNE loop for testing purposes.

2.10.2.10 FDN and BellSouth agree that after the initial 90 days (and every 90 days thereafter) of provisioning FastAccess service in accordance with this Section 2.10, FDN and BellSouth will meet to discuss and negotiate in good faith any means for improving and streamlining the provisioning process.

FDNBST Proposed Attachment 2-UNE
~~Contract Terms for Florida Digital Network & BellSouth Interconnect~~
Agreement

11/18/02

2.10 **Continued Provision of ~~xDSL Services~~FastAccess to FDN End Users**

2.10.1. *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~~BellSouth® FastAccess® ~~this Section 2.10) to an end-user~~Internet Service ("FastAccess") to an end-user and FDN submits an authorized request to provide voice service to that ~~end user,~~end-user, BellSouth shall continue to provide ~~xDSL services to the end-user.~~ FastAccess to the end-user who obtains voice service from FDN over UNE loops.*

2.10.1.1 ~~2.10.1.1~~ BellSouth may not evade any of its obligations under this subsection 2.10 by offering or providing any of the services or component services under this subsection through any affiliate, including, but not limited to, BellSouth.net, Inc or successor by corporate merger.

~~2.10.1.2 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.~~

~~2.10.1.3~~2.10.1.2 Regardless of how BellSouth provisions its ~~xDSL services to an end-user, when an end-user~~FastAccess to an end-user, when an end-user switches to FDN voice service, BellSouth's ~~xDSL service~~FastAccess will not be terminated, suspended or interrupted, except as may be expressly provided for herein, and BellSouth's continuation of its ~~xDSL service to the end-user~~FastAccess to the end-user ~~location~~ switching to FDN voice service shall be a seamless or transparent transition for the end user such that there shall be no more than a momentary disruption of ~~xDSL~~ FastAccess and voice services.

~~2.10.1.4~~2.10.1.3 Where BellSouth's ~~xDSL service~~FastAccess could be provisioned over the high-frequency portion of a loop coexistent with FDN circuit-switched voice services on the same loop, BellSouth may elect to maintain ~~xDSL service~~the BellSouth FastAccess on the same loop such that the

~~xDSL service~~FastAccess is not altered when the end-user switches to ~~FDN voice service.~~FDN's voice service.

2.10.1.4 ~~2.10.1.5~~ BellSouth may satisfy its obligations under this Section 2.10 by providing ~~its xDSL services~~FastAccess on a BellSouth owned and maintained loop, ("Standalone ~~Service"),~~FastAccess"), that is separate and distinct from the line FDN uses for voice services. Where feasible, and where a loop is available for FDN voice services that satisfies all of the standards set forth in this Agreement, BellSouth may elect to maintain ~~the xDSL services~~FastAccess on the extant loop and FDN voice services will be provisioned over a second loop.

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

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

2 10.1.7 ~~2.10.1.5.3~~ In implementing the Commission's Order in Docket No. 010098-TP, BellSouth shall not create ~~directly or indirectly any additonal~~any additional barriers to FDN's ability to compete in the ~~voice services market.~~ local exchange services market.

~~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.~~

2.10.1.8 ~~2.10.1.6~~ Nothing in this Section 2.10 shall require BellSouth to continue providing ~~xDSL services to an end-user~~FastAccess to an end-user who fails to pay all charges associated with ~~xDSL service~~FastAccess or

otherwise fails to comply with the end-user's Service Agreement with BellSouth or the applicable Acceptable Use policies for FastAccess.

2.10.1.9 ~~2.10.1.7~~ In the event BellSouth elects to comply with this Section 2.10 by providing ~~xDSL service~~FastAccess on an FDN UNE Loop, FDN shall make available to BellSouth at no charge the high frequency spectrum on such UNE Loop for purposes of providing the underlying DSL transport.

2.10.2 **Provisioning**

2.10.2.1 ~~2.10.2.1~~ FDN and BellSouth shall each establish a single point of contact ("SPOC") for purposes of the provision of ~~BellSouth xDSL services~~FastAccess pursuant to this Section 2.10.

2.10.2.2 ~~2.10.2.2~~ When FDN submits an LSR for a UNE loop, and there is a DSL USOC on the end-user's service record, the LCSC will auto-clarify the order.

2.10.2.3 ~~2.10.2.3~~ Upon receiving the auto-clarified order, FDN shall notify the BellSouth SPOC, and the BellSouth SPOC shall determine whether the ~~end-user is a BellSouth xDSL services customer.~~end-user is a FastAccess customer.

2.10.2.4 FDN and BellSouth will develop processes to promptly correct problems with or disconnections of FastAccess service to FDN voice end users.

2.10.2.5 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.

2.10.2.6 ~~2.10.2.4~~ If the end user receives ~~xDSL~~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 ~~xDSL~~FastAccess service will be provisioned on as set forth in ~~2.10.2.5~~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 ~~xDSL~~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 ~~services.~~FDN services.

2.10.2.7 ~~2.10.2.5~~ After election by BellSouth as to which line ~~xDSL service~~FastAccess will be provisioned on (either the existing loop, or on a second facility) FDN will submit a revised LSR for the conversion of the voice ~~service.~~ service to a UNE loop. If BellSouth elects to move the ~~xDSL service~~FastAccess to a new Standalone loop, FDN will submit an LSR with a due date 14 calendar days from submission to allow BellSouth sufficient time to transition the ~~xDSL~~FastAccess service to the second ~~line.~~ line. If BellSouth elects to keep the ~~xDSL~~FastAccess service on the current facilities and provision FDN voice services on the same or separate facilities, FDN will submit a revised LSR for voice service on such facilities using standard processes and intervals, and allow the ~~xDSL~~FastAccess service to remain on the current ~~facilities.~~ facilities.

2.10.2.8 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.

2.10.2.9 ~~2.10.2.6~~ FDN authorizes BellSouth to access the entire UNE loop for testing purposes.

~~2.10.2.7~~ FDN and BellSouth agree that after the initial 90 days (and every 90 days thereafter) of provisioning ~~xDSL~~FastAccess service in accordance with this Section 2.10, FDN and BellSouth will meet to discuss and negotiate in good faith any means for improving and streamlining the provisioning process.

2.10.2.10

~~2.10.2.8 FDN and BellSouth will develop processes to promptly correct problems with or disconnections of xDSL service to FDN voice end users.~~