Matilda Sanders

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From: Claudia Ponce [cponce@mail.fdn.com]
Sent: Monday, August 01, 2005 1:47 PM
To: Filings@psc.state.fl.us
Subject: E-Filing for Docket No. 041464
Attachments: PSC Filing 041464.pdf

To: Division of the Commission Clerk and Administrative Services

Please find attached for filing in the captioned docket FDN Communications' Motion to Accept Supplemental Testimony of Dr. August Ankum.

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

(a) The person responsible for this filing is:

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(b) Docket No. and Title: Docket No. 041464 -TP – Petition for Arbitration of Certain Unresolved Issues Associated with Negotiations for Interconnection, Collocation, and Resale Agreement with Florida Digital Network, Inc., d/b/a FDN Communications by Sprint-Florida, Incorporated

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

(d) Number of pages of the document: 10 pages.

(e) Description of each document attached: FDN Communications' Motion to Accept Supplemental Testimony of Dr. August Ankum.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of certain unresolved issues associated with negotiations for interconnection, collocation, and resale agreement with Florida Digital Network, Inc. d/b/a FDN Communications, by Sprint-Florida, Incorporated.	Docket No. 041464-TP Filed: August 1, 2005

FDN COMMUNICATIONS' MOTION TO ACCEPT SUPPLEMENTAL TESTIMONY OF DR. AUGUST ANKUM

Florida Digital Network, Inc., d/b/a FDN Communications ("FDN"), respectfully moves the Prehearing Officer to accept for filing in the above-captioned proceeding the supplemental testimony of Gus Ankum, which is attached hereto. Although submission of testimony at this time is not specifically contemplated in the Order Establishing Procedure, Dr. Ankum's submission is necessary to present evidence responsive to Issue No. 34, as that issue has been redefined by the Prehearing Officer. In support of this Motion, FDN states as follow:

1. As the Commission is aware, Issue No. 34 is identified in Sprint's Petition for Arbitration, FDN's Response, and the parties' prehearing statements as follows: "What are the appropriate rates for UNEs and related services provided under the Agreement?" Until the Prehearing Officer's July 8 Order re-cast the meaning of this issue,[1] on its face, Issue No. 34 authorized arbitration of Sprint's UNE rates *de novo* in this proceeding. To that end, and even before the procedural schedule was established, FDN asked Sprint to provide it with the cost study it planned to rely on. In discussions between the parties, Sprint indicated that it planned to rely on the 990649 rates and directed FDN to that cost study. FDN sought the study so that it could demonstrate that it was an inappropriate basis for setting UNE rates. As the ILEC, of

[1] *See Order Denying Florida Digital Network, Inc. d/b/a FDN Communications' Motion for Postponement of and Establishment of, Due Dates and Granting Sprint-Florida Inc.'s Motion to Strike FDN's Direct Panel Testimony*, Fla. PSC Order No. PSC-05-0732-PCO-TP, July 8, 2005 ("July 8 Order").

course, Sprint has the burden to prove the reasonableness of the UNE rates it seeks to charge CLECs.[2]

2. Sprint never announced that it would not comply with FDN's request for a copy of the study, and Sprint *never* stated that it believed that FDN was precluded from litigating UNE rates by virtue of the rates established in the 2002 generic Sprint UNE rate proceeding (Docket 990649). FDN's first exposure to Sprint's issue foreclosure argument was in Sprint's Opposition to FDN's June 7 Motion for Postponement.

3. In the July 8 Order, however, the Prehearing Officer stated that he accepted Sprint's position and would not permit arbitration of UNE rates in this proceeding. FDN has moved for reconsideration, and oral argument on FDN's motion is scheduled for August 2. The instant Motion is premised on the assumption that FDN's Motion for Reconsideration is denied and/or that none of the relief FDN seeks relative to Issue No. 34 is granted.

4. Assuming that Issue No. 34 is now defined as "whether the UNE rates established in Docket No. 990649 should be incorporated into the interconnection agreement that is the subject of this arbitration?" FDN should be permitted to present evidence responsive to that issue. Whether the 990649 rates should be so incorporated is a disputed question of fact, and FDN must be accorded the opportunity to present evidence showing that it would be inappropriate to do so.

5. Dr. Ankum's supplemental testimony is designed to respond to Issue No. 34 as rewritten. As he explains, there are a number of reasons why it would be inappropriate to incorporate the 990649 rates into the parties' interconnection agreement on a going forward basis. For example, interest rates have declined significantly since 2002 and Sprint's forward-

[2] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15499, ¶ 680 (1996) (placing the burden squarely on the ILEC to "prove to the state commission the nature and magnitude of any forward-looking costs that it seeks to recover").

looking network design has changed as well. These factors should all be taken into account in considering whether it would be appropriate to incorporate rates set in 2002 into an interconnection agreement meant to run through 2008.

6. Although the QSI direct panel testimony contained some discussion of why the 990649 rates were probably not TELRIC compliant, that testimony was not based on any discovery[3] and was not focused on whether, how, and why assumptions made in 2001 and 2002 – the study period underlying the 990649 rates – may have changed since then., but was instead premised on the plain reading of Issue No. 34 and FDN's belief that FDN would be permitted, as the Telecom Act allows, to arbitrate UNE rates de novo. Thus, the original QSI direct panel testimony is not directly responsive to Issue No. 34, as since redefined by the August 8 Order. Dr. Ankum's supplemental testimony attempts to cure that deficiency and should, therefore, be accepted for filing.

7. For the reasons herein, the Commission should accept the attached supplemental testimony.

RESPECTFULLY SUBMITTED, this 1st day of August 2005.

/s/

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[3] At the time this Motion was drafted, the Prehearing Officer has not yet issued an order addressing whether Sprint should be compelled to answer FDN's discovery. Sprint's unresponsive answers to FDN discovery were attached to Dr. Ankum's rebuttal testimony, which was required to be filed July 24 by the Order Establishing Procedure. In Dr. Ankum's rebuttal, he states that FDN reserves the right to supplement his testimony in the event necessary, considering that the Prehearing Officer had not as of that date ruled on FDN's June 7 Motion for Postponement.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice and FDN's Third Set of Interrogatories were sent by e-mail and U.S. mail to the persons listed below this 1st day of August, 2005.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of Sprint–Florida, Inc. for Arbitration of an Interconnection Agreement with Florida Digital Network, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996	)))))	Docket No. 041464-TP Filed: August 1, 2005

SUPPLEMENTAL PANEL TESTIMONY OF AUGUST H. ANKUM

ON BEHALF OF

FLORIDA DIGITAL NETWORK, INC. D/B/A FDN COMMUNICATIONS

August 1, 2005

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME.

A. My name is Dr. August H. Ankum,

Q. ARE YOU THE SAME DR. AUGUST H. ANKUM WHO SUBMITTED TESTIMONY AS PART OF THE QSI PANEL EARLIER IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF THIS SUPPLEMENTAL TESTIMONY?

A. I understand that the nature of the issues in dispute in this proceeding have evolved from our original understanding and that the Commission will not determine new rates for unbundled network elements ("UNEs") in this proceeding. Rather, I understand that the issue is now whether it would be appropriate for the Commission to incorporate into the interconnection agreement being arbitrated in this proceeding the UNE rates established in the Commission's earlier Sprint UNE rate case (the "'0649 rates" or the "'0649 docket"),[1] which was heard by the Commission in the fall of 2002.

[1] *See* Final Order on Rates for Unbundled Network Elements Provided by Sprint-Florida, Inc., *Investigation into pricing of unbundled network elements (Sprint/Verizon track)*, Dkt. No. 990649B-TP, Order No. PSC-03-0058-FOF-TP (Jan. 8, 2003).

Q. AND WHAT ARE YOUR VIEWS ON THAT SUBJECT?

A. I believe that it would be inappropriate to do so.

Q. WHY?

A. As the QSI Panel alluded to in its earlier testimony, there are a number of reasons why it is reasonable to believe that the '0649 rates are not appropriate rates today. The '0649 rates are based on evidence Sprint submitted to the Commission in 2001 — four years ago. It is only logical to conclude that the underlying data is older still. Clearly, there is good reason to suspect that those rates, based on such stale data, might not be appropriate to include in a contract that will likely run from 2005 into 2008.

Q. PLEASE DISCUSS IN MORE DETAIL WHY YOU BELIEVE THAT THE IT IS INAPPROPRIATE TO BASE RATES ON DATA THAT ARE OLD.

A. Under the FCC's Rules and Regulations, UNE prices have to be set at costs that are forward-looking. While it may be impractical to continuously update cost studies to meet this requirement, at a minimum, it must hold that cost studies and data are *reasonably reflective* of costs that carriers currently incur and are expected to incur over the term of their interconnection agreements. I do not believe that the cost studies and rates the Commission approved in '0649 meet this requirement.

While the discovery we have requested would no doubt support our view that the '0649 rates are stale, I can point to several factors that have

plainly and materially changed in the intervening years even without that discovery. For example, '0649 rates are based on a consolidated cost of capital of 9.86%, with an assumed 11.49% cost of equity and 7.43% cost of debt. Under today's market conditions, however, these rates are at least three percentage points, if not more, too high.

Also affecting the appropriate cost of capital is the level of competition Sprint now faces in its service territory. As was affirmed by the FCC's *Triennial Review Order*, the '0649 rates were set based on the assumption that Sprint operates in a competitive market. But the risk-premium that should be reflected in the cost of capitol should be commensurate with that faced by Sprint's peer group, as determined by the market. These changes should be reflected in Sprint's UNE rates.

Changed circumstances also effect the appropriate assumptions regarding the deployment, cost, and depreciation of the facilities and equipment used to provide UNEs and therefore the rates that can reasonably be charged for those UNEs. In this regard, FDN is entitled to discovery on the extent to which Sprint has modified its telecommunications plant since 2000 and, even more importantly, on Sprint's forward-looking design assumptions which could dramatically affect forward-looking costs.

Telecommunications technologies continue to evolve at a rapid pace, altering the manner in which carriers build and expand their networks and serve customers. These technological developments have also resulted in significant, often downward, price changes for key technologies.

For example, FDN understands that Sprint has accelerated deployment of DLC loop plant, and that a considerable amount of copper loop plant has been retired. Likewise, there should be much better and more recent cost data available now in light of the considerable amount of reconstruction Sprint has likely undertaken in the aftermath of the recent hurricanes.

Further, DLC technologies continue to evolve rapidly and prices for those technologies follow a significantly downward trend. The same is true for SONET gear that Sprint may use in its network. Given the importance of these components in loop and transport studies, it would simply be wrong to not update the studies for these developments. Moreover, given the large number of vendors for these types of technologies, it is important that the Commission is able to examine Sprint specific information and technology choices and is able to update Sprint's cost studies accordingly. To not do so would be to set rates that are demonstrably not forward-looking or relevant to the term of the interconnection agreement.

While the above considerations impact costs supporting recurring charges, there are similar and just as important developments underway that impact the cost associated with non-recurring charges. For example, increasingly telephone company technicians are equipped with notebook computers and other handheld electronic devices that facilitate the efficient communication and transmission of information necessary for these technicians to install, cross-connect and disconnect facilities and services.

(As the QSI panel testimony noted previously, the '0649 non-recurring rates were based on almost no analytically valid cost support.) These developments need to be examined to see if they are appropriately reflected in Sprint's studies.

In short, consideration of new data is plainly and directly relevant to whether it makes sense to apply the '0649 rates in this proceeding. I'm sure that discovery from Sprint would shed additional light on these issues.

Finally, regulatory circumstances have also changed since 2002, as the Commission recognized when it began reexamining Verizon's UNE rates earlier this year. These changed circumstances should be factored into Sprint's forward-looking UNE rates.

Q: DOES THAT CONCLUDE YOUR TESTIMONY?

A: Yes.