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June 24, 2004

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**PUBLIC SERVICE
COMMISSION**

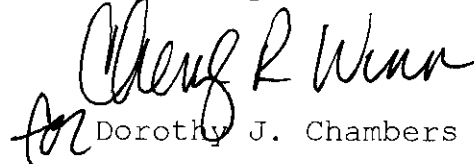
Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Adoption by Southern Digital Network, Inc. d/b/a FDN
Communications of the Interconnection Agreement
Between BellSouth Telecommunications, Inc. and MCI
WorldCom Communications, Inc.
PSC 2004-00244

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case is an original and ten (10) copies of BellSouth Telecommunications, Inc.'s Response to Notice of Intent of Southern Digital Network, Inc. d/b/a FDN Communications to Adopt Interconnection Agreement.

Sincerely,


for Dorothy J. Chambers

Enclosures

cc: Parties of Record

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADOPTION BY SOUTHERN DIGITAL NETWORK,)
INC. D/B/A FDN COMMUNICATIONS OF THE)
INTERCONNECTION AGREEMENT BETWEEN) CASE NO. 2004-00244
BELLSOUTH TELECOMMUNICATIONS, INC. AND)
MCI WORLDCOM COMMUNICATIONS, INC)

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
TO NOTICE OF INTENT OF SOUTHERN DIGITAL NETWORK,
INC. D/B/A FDN COMMUNICATIONS
TO ADOPT INTERCONNECTION AGREEMENT

BellSouth Telecommunications, Inc., ("BellSouth"), by counsel, responds to the Notice of Intent of Southern Digital Network, Inc. d/b/a FDN Communications, ("FDN"), to Adopt Interconnection Agreement.

On June 14, 2004, FDN filed a request to adopt the interconnection agreement between BellSouth and MCI WorldCom Communications ("MCI WorldCom"). BellSouth opposes FDN's request to adopt this Agreement and respectfully requests this Commission issue an order requiring that FDN adopt the MCI WorldCom agreement only upon modification of the Agreement so that it is compliant with existing law. Alternately, FDN may request to adopt an agreement that has been modified to incorporate the current law.

BACKGROUND

On June 14, 2004, BellSouth acknowledged via email FDN's request to adopt the MCI agreement in the states of Alabama, Kentucky, and North Carolina. In BellSouth's response, FDN was advised that in order to proceed, the parties needed to execute an agreement that is compliant with current law and to that end BellSouth would include appropriate language to the proposed adoptions to make them compliant with the TRO and the vacatur of certain portions of the TRO. BellSouth offered to provide, if FDN desired, an adoption of an agreement compliant with the D.C. Circuit's Order which significantly changed the rules to which BellSouth is required to provide service, including vacatur of certain FCC rules provided under the Triennial Review Order.

On June 17, 2004, BellSouth provided FDN with an alternative proposal that would permit adding simply a TRO compliant Attachment 2 to either the proposed amendment adding the additional states to the current agreement or to the proposed adoption of MCI. The alternative proposal was made to expedite the FDN request and allow for negotiations of the final TRO compliant provisions once the parties came to resolution.

BellSouth has no objection to FDN adopting the BellSouth/MCI interconnection agreement so long as the agreement incorporates the provisions necessary for compliance with

current law.¹ The following provisions of the MCI agreement are not compliant with current law if FDN were to be allowed to adopt this agreement in its present format. First, the intercarrier compensation provisions for ISP traffic in the local interconnection attachment of the agreement must be conformed to the FCC's ISP Remand Order. Second, the UNE attachment of the agreement must be conformed to the new rates, terms, and conditions set forth in the FCC's TRO.

With respect to the ISP Remand Order, the FCC made clear in its Order that carriers that did not exchange ISP traffic with the ILEC in the first quarter of 2001 are not eligible to receive compensation for ISP traffic. Thus, in accordance with applicable law, that portion of the agreement concerning compensation for ISP traffic must be amended for FDN. With respect to the TRO, the provisions of the agreement that must be conformed in this matter include, but are not limited to provisions relating to broadband loops, entrance facilities, call related databases and EELs. Since the mandate of the U.S. Court of Appeals for the D.C. Circuit now has been issued, there also is a requirement to conform the agreement to the ruling of that court. Further, there can be no doubt under the FCC's Orders that the agreement must be conformed to the ISP Remand

¹ Of course, BellSouth has no objection to FDN adopting any of the other TRO compliant interconnection agreements in Kentucky. See attached list.

Order and the TRO before adoption can be completed and in compliance with the current rules.

BellSouth acknowledges that it is obligated to make interconnection agreements available for 252(i) adoption "for a reasonable period of time after the approved agreement is available for public inspection". 47 C.F.R. § 51.809(c). The reasonable period of time to adopt the UNE attachment of an agreement without modification expired no later than October 2, 2003, the effective date of the TRO and perhaps as early as August 20, 2003, the date the TRO was released. At the latest, after October 2, 2003, portions of the UNE attachment of the agreement no longer were compliant with the law, and thus the reasonable adoption period for such a contract, without amendment to conform to the law, expired. In an effort to work with carriers, BellSouth agreed that carriers may opt in to non-compliant agreements until BellSouth provided its TRO compliance standard agreement. BellSouth provided to CLECs a proposal of a TRO complaint attachment in November of 2003.

The FCC's ISP Remand Order confirms that the "reasonable period of time" during which agreements may be adopted expires upon the publication of an FCC order altering the regulatory

regime.² In the ISP case Remand Order, the FCC established a new interim compensation regime for ISP traffic. The Commission recognized the danger of perpetuating the old regime via carriers opting into agreements that predated the Commission's decision. To prevent this inequitable result, the Commission held: "[w]e conclude that any 'reasonable period of time' for making available rates applicable to the exchange of ISP-bound traffic expires upon the Commission's adoption in this Order of an intercarrier compensation mechanism for ISP-bound traffic." ISP Remand Order at fn. 155. In conjunction with its holding, the Commission noted that "[t]o permit a carrier to opt into a reciprocal compensation rate higher than the caps we impose here [i.e. opt-in to an old non-compliant agreement] during that window would seriously undermine our effort to curtail regulatory arbitrage and to begin a transition from dependence on intercarrier compensation and toward greater reliance on end-user recovery." *Id.* at fn. 154.

The same rationale controls the requested opt in for the case at hand, where FDN requests to adopt MCI's current UNE attachment. The reasonable period of time to opt-in to pre-TRO agreements with provisions that are inconsistent with the

² Order On Remand and Report and Order, in the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, 16 FCC Rcd 9151 (April 18, 2001) ("ISP Order").

effective portions of the TRO expired, at the latest, with the effective date of the TRO, and probably even earlier at its release date. To allow carriers to continue to opt-in to such portions of pre-TRO agreements that contain provisions non-compliant with current law would be contrary to public policy in that it would perpetuate a non-compliant regime and prevent the industry from moving forward under the new rules.

BellSouth has no objection to the Commission allowing FDN to adopt an agreement after it is conformed to the current legal requirements. In the alternative, FDN can take MCI's current agreement with the modifications incorporating BellSouth's TRO compliant attachments and, after execution, the parties can negotiate the attachments for the allotted times. The parties can then take any disputed issues to this Commission. However, given the significant legal issues and problems associated with FDN's request it is not appropriate for FDN to attempt to adopt a non-compliant agreement such as they attempted in their June 14, 2004, filing.

For these reasons, BellSouth respectfully requests that the Commission order that Southern Digital Network, Inc. d/b/a FDN Communications may adopt MCI's Interconnection Agreement only

upon acceptance of appropriate modifications to comply with existing law.

Respectfully submitted,

for Cheryl K. Wynn

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CERTIFICATE OF SERVICE

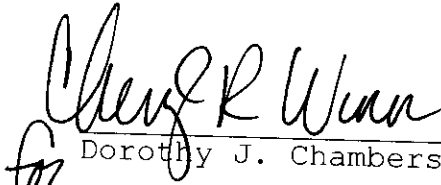
It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by mailing a copy thereof, this 24th day of June, 2004.

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for Dorothy J. Chambers

TRO Compliant Interconnection
Agreements In Kentucky

- 1) ACN Communications Services, Inc., effective January 17, 2004
- 2) American Farm Bureau, Inc. d/b/a The Farm Bureau Connection, effective January 15, 2004
- 3) IDT America Corporation d/b/a IDT, effective October 15, 2003
- 4) New Access Communications, LLC, effective October 25, 2003
- 5) Qwest Communications Corporation, effective February 19, 2004