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**RECEIVED**

JUN 14 2004

PUBLIC SERVICE  
COMMISSION

June 14, 2004

**HAND DELIVERY**

Elizabeth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40601

**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. Pursuant to Section 252 of the Telecommunications Act of 1996**

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten (10) copies of FDN Communications' Notice of Intent to Adopt Interconnection Agreement in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copy and return it to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Very truly yours,

Allyson K. Sturgeon

AKS/ec  
Enclosures  
cc: Parties of Record

**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 )**  
**BELLSOUTH TELECOMMUNICATIONS, INC. AND) CASE NO. 2004-\_\_\_\_\_**  
**MCI WORLDCOM COMMUNICATIONS, INC. )**  
**PURSUANT TO SECTION 252 OF THE )**  
**TELECOMMUNICATIONS ACT OF 1996 )**

**NOTICE OF INTENT**  
**OF SOUTHERN DIGITAL NETWORK, INC. D/B/A**  
**FDN COMMUNICATIONS TO**  
**ADOPT INTERCONNECTION AGREEMENT**

Pursuant to KRS 278.040 and 278.260 and pursuant to Section 252(i) of the Federal Telecommunications Act (the "Act") and 47 C.F.R. §51.809, Southern Digital Network, Inc. d/b/a FDN Communications ("FDN") hereby files its Notice of Intent to adopt the interconnection agreement between BellSouth Telecommunications, Inc. ("BellSouth") and MCI WorldCom Communications, Inc. ("MCI WorldCom"). In support hereof, FDN states as follows:

1. Petitioner's full name and principal place of business are:

Southern Digital Network, Inc. d/b/a  
FDN Communications  
2301 Lucien Way, Suite. 200  
Maitland, Florida 32751

2. All pleadings, orders, notices and other correspondence with respect to this docket should be addressed to:

Allyson K. Sturgeon  
Ogden Newell & Welch PLLC  
1700 PNC Plaza, 500 West Jefferson Street  
Louisville, Kentucky 40202  
(502) 560-4228  
[asturgeon@ogdenlaw.com](mailto:asturgeon@ogdenlaw.com)

Matthew Feil  
FDN Communications  
2301 Lucien Way, Suite 200  
Maitland, Florida 32751  
(407) 835-0460  
[mfeil@mail.fdn.com](mailto:mfeil@mail.fdn.com)

Scott A. Kassman  
FDN Communications  
2301 Lucien Way, Suite 200  
Maitland, Florida 32751  
(407) 447-6636  
[skassman@mail.fdn.com](mailto:skassman@mail.fdn.com)

3. FDN is a utility within the meaning of KRS 278.010(3)(e) and is a duly certified competitive local exchange telecommunications carrier ("CLEC") in Kentucky.

4. BellSouth is a "local exchange carrier" in Kentucky, as the term "local exchange carrier" is defined by Section 252(j) and Section 251(h) of the Act.

5. FDN desires to begin providing service in Kentucky as soon as possible. However, FDN is unable to provide service because it does not have an interconnection agreement with BellSouth for Kentucky.

6. FDN desires to adopt an interconnection agreement approved by this Commission pursuant to Section 252(i) of the Act. The agreement FDN wishes to adopt is an agreement between MCI WorldCom and BellSouth, which was previously approved by the Kentucky Public Service Commission ("Commission"). The agreement to be adopted may be viewed on the Commission's web site at the following URLs:

[http://162.114.3.165/PSCICA/2000/2000-012/00502-AM\\_120902.pdf](http://162.114.3.165/PSCICA/2000/2000-012/00502-AM_120902.pdf)

[http://162.114.3.165/PSCICA/2000/2000-012/00502-AM\\_042503.pdf](http://162.114.3.165/PSCICA/2000/2000-012/00502-AM_042503.pdf)

[http://162.114.3.165/PSCICA/2000/2000-012/00502-AM\\_111303.pdf](http://162.114.3.165/PSCICA/2000/2000-012/00502-AM_111303.pdf)

7. The Agreement complies with the requirements for Commission approval in Section 252(e)(2) of the Act which provides that:

The State commission may only reject . . . an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that -

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a part to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience or necessity . . .

8. The Agreement does not discriminate against any other telecommunications carrier. Other carriers in Kentucky may obtain the interconnection agreement on the same terms.

9. By providing the means for FDN to compete with BellSouth in the provision of local exchange and exchange access service in Kentucky, the Agreement serves the public interest, convenience and necessity.

10. BellSouth has refused to permit FDN to opt-in to such agreement, until and unless FDN first agrees to adoption terms reflecting BellSouth's interpretation of the FCC's *Triennial Review Order*<sup>1</sup> and the D.C. Circuit Court of Appeals decision in *USTA II*.<sup>2</sup>

11. FDN proposed two alternatives to BellSouth for an FDN-BellSouth interconnection agreement to cover services in Kentucky. Alternative One was to expand the current FDN-BellSouth interconnection agreement for Georgia into a multi-state agreement, as the terms of the Georgia agreement contemplate and permit. Alternative Two was for FDN to adopt the interconnection agreement between MCI WorldCom and BellSouth for Kentucky.

<sup>1</sup> *In re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket N. 01-338, 96-98, 98-147, *Report and Order on Remand and Further Notice of Proposed Rulemaking*, (Rel. Aug. 2003) (the "*Triennial Review Order*").

<sup>2</sup> *United States Telecom. Ass'n v. FCC*, Nos. 00-1012, et al. (D.C. Cir Mar 2, 2004) (*USTA II*).

BellSouth rejected both options unless and until FDN first agreed via adoption papers of an amendment to incorporate into the prospective interconnection agreement terms reflecting BellSouth's interpretation of the *Triennial Review Order* and *USTA II*.<sup>3</sup>

12. FDN notified BellSouth of FDN's election to adopt the Agreement by letter dated June 11, 2004 delivered by overnight mail. A copy of the notice is attached hereto as Exhibit A.

13. This Commission has expressly recognized the right of providers to adopt the interconnection agreements of other telecommunications providers by notice to the Commission. *In the Matter of: Adoption by NuVox Communications, Inc. of the Interconnection Agreement Between Kentucky AllTel, Inc. and Prepaid Telecom, Inc. Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996*, Case No. 2003-00303, Order of August 8, 2003.

14. Nothing in Section 252(i) or 47 C.F.R. §51.809<sup>4</sup> or the statutes or rules of this Commission allow BellSouth to refuse FDN's request to adopt another carrier's agreement or allow BellSouth to condition the adoption in the manner BellSouth has demanded of FDN. BellSouth has therefore violated Section 252(i) and 47 C.F.R. §51.809.

15. The Agreement contains change of law provisions which will enable BellSouth to seek renegotiation of any parts of the Agreement affected by the *Triennial Review Order* or by *USTA II*, upon its effective date. FDN is willing to negotiate such proposed amendments in good faith.<sup>5</sup>

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<sup>3</sup> FDN's BellSouth negotiator and attorney informed FDN of its refusal via conference call on May 18 and confirmed this refusal in writing by email dated June 2, 2004.

<sup>4</sup> 47 C.F.R. §51.809 does not fix formal procedural requirements for adoption but establishes several substantive requirements, including that the ILEC must make adoption available without unreasonable delay.

<sup>5</sup> On information and belief, few, if any, CLECs in Kentucky have agreed to BellSouth's *Triennial Review Order* or *USTA II* proposed revision language. BellSouth has not sought arbitration pursuant to change of law provisions of existing interconnection agreements to incorporate *Triennial Review Order* and *USTA II* changes in BellSouth's nine-state region.

16. BellSouth has no legal authority to require revision of an approved interconnection agreement prior to adoption. Indeed, such conduct is contrary to the Act and implementing federal rules.

17. Permitting BellSouth to condition adoption of approved agreements on changes to those agreements would enable BellSouth to at least stall and at worst foreclose new entrants in Kentucky. Such conduct would invite arbitration every time a carrier wants to adopt all or any part of another carrier's agreement. Such a precedent would give BellSouth license to leverage unjustified agreement changes every time a carrier new to Kentucky wanted to exercise its Section 252(i) rights. The Commission cannot permit this toll on new entrants and, at the same time, hope to foster competition in the state and promote new telecommunications investment in Kentucky.

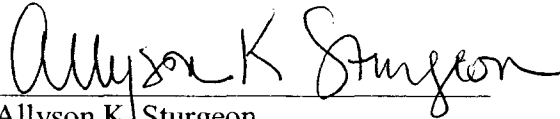
18. FDN does not believe that there are any material disputed issues of fact that the Commission needs to address at this time to grant the relief requested on the basis asserted in this Petition.

19. FDN requests expedited consideration of this Petition. FDN desires to begin marketing and providing service in Kentucky as soon as possible, and BellSouth is unreasonably and unlawfully delaying FDN's efforts.

**WHEREFORE**, FDN requests that the Commission promptly issue an order permitting FDN to opt-in to BellSouth's interconnection agreement with MCI WorldCom as described above.

Dated: June 14, 2004

Respectfully submitted,



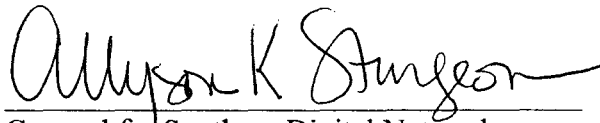
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Matthew Feil  
General Counsel  
FDN Communications  
2301 Lucien Way, Suite 200  
Maitland, Florida 32751  
(407) 835-0460  
[mfeil@mail.fdn.com](mailto:mfeil@mail.fdn.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Intent was served upon the following persons by regular mail on the 14th day of June 2004.

Hon. Dorothy Chambers  
BellSouth Telecommunications, Inc.  
601 West Chestnut Street, Room 410  
Post Office Box 32410  
Louisville, Kentucky 40232

A handwritten signature in black ink, reading "Allyson K. Sturgeon". The signature is written in a cursive, flowing style. The first name "Allyson" is written with a large, looped capital 'A'. The middle initial 'K' is smaller and positioned between the first and last names. The last name "Sturgeon" is written with a large, looped capital 'S' and a long, sweeping tail that extends to the right.

Counsel for Southern Digital Network  
d/b/a FDN Communications



# EXHIBIT A



June 11, 2004

**Via E-Mail & Overnight Mail**

Mr. John Hamman  
Manager, Interconnection Services  
BellSouth Telecommunications, Inc.  
675 West Peachtree Street, NE  
Room 34S91  
Atlanta, GA 30375

**RE: SOUTHERN DIGITAL NETWORK, INC. REQUEST PURSUANT TO §252(i) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, TO ADOPT THE INTERCONNECTION AGREEMENTS BETWEEN BELLSOUTH TELECOMMUNICATIONS, INC. AND MCI WORLD COM COMMUNICATIONS, INC. IN THE STATES OF NORTH CAROLINA & KENTUCKY AND THE INTERCONNECTION AGREEMENT BETWEEN BELLSOUTH TELECOMMUNICATIONS, INC. AND AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, LLC, IN THE STATE OF ALABAMA**

Dear Mr. Hamman:

Southern Digital Network, Inc. d/b/a FDN Communications (hereinafter referred to as "FDN") hereby notifies BellSouth Telecommunications, Inc. (hereinafter referred to as "BellSouth") of its election, pursuant to section 252(i) of the Communications Act of 1934, as amended ("the Act"), to adopt BellSouth's interconnection agreements with MCI WorldCom Communications, Inc. ("MCI WorldCom") in the states of North Carolina and Kentucky, and BellSouth's interconnection agreement with AT&T of the South Central States, LLC ("AT&T") in the state of Alabama.

The adopted agreements should include all approved amendments thereto. This request is predicated upon the assumption that the agreements described in this letter are the current agreements between BellSouth and MCI WorldCom, and BellSouth and AT&T.

FDN requests the following Notice/Contact information be inserted into the relevant portions of the agreements:

Michael P. Gallagher  
CEO  
FDN Communications  
2301 Lucien Way, Suite 200  
Maitland, FL 32751

LOCAL

LONG DISTANCE

INTERNET

Mr. John Hamman  
Page 2  
6/11/04

Copy to:  
Matthew J. Feil, Esq.  
General Counsel  
FDN Communications  
2301 Lucien Way, Suite 200  
Maitland, FL 32751

By execution of this adoption letter, neither FDN nor BellSouth waives any of its rights or remedies under the Act; the rules, decisions or administrative processes of the Federal Communications Commission; the rules and decisions of the PSC; or any other applicable law. In addition, FDN's adoption of the interconnection agreements does not affect any rights FDN has to negotiate amendments or successor agreements to the ones adopted herein, or to adopt replacement agreements.

If BellSouth's understanding of any of the statements in, or matters covered by, this adoption letter differs in any way from FDN's understanding, as set forth in this letter, please let me know immediately.

FDN requests that the adopted agreements take effect immediately upon receipt of the instant bona fide request, or upon approval of the pertinent state commission, if so required by those entities. Kindly contact me by close of business on Monday, June 14, 2004 in order to discuss your preferred procedures for the preparation and filing of the adopted versions of the selected agreement for FDN. I may be reached at (407) 835-0460. Upon filing, please include a copy of the PSC-set rates currently in effect as part of the adopted agreement. Please send all correspondence and documents related to this matter to the undersigned.

Thank you for your cooperation in this matter.

Sincerely yours,

  
Matthew J. Feil, Esq.  
General Counsel

**ACCEPTED AND AGREED TO:**  
**BellSouth Telecommunications, Inc.**

**BY (print)** \_\_\_\_\_

**BY (signature)** \_\_\_\_\_

**DATED June \_\_, 2004**

LOCAL

LONG DISTANCE

INTERNET