

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Arbitration) DOCKET NO. 961346-TP
of Dispute with BellSouth) ORDER NO. PSC-97-0151-PHO-TP
Telecommunications, Inc.,) ISSUED: February 11, 1997
Regarding Call Forwarding, by)
Telenet of South Florida, Inc.)

Pursuant to Notice, a Prehearing Conference was held on January 24, 1997, in Tallahassee, Florida, before Commissioner Joe A. Garcia, as Prehearing Officer.

APPEARANCES:

Douglas G. Bonner, Esquire, and Colin M. Alberts, Esquire, Swidler & Berlin, Chartered, 3000 K. Street N.W., Suite 300, Washington, D.C. 20007-5116
Telenet of South Florida, Inc.

J. Phillip Carver, Esquire, and Nancy B. White, Esquire, c/o Nancy H. Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301-1556
BellSouth Telecommunications, Inc.

Charles J. Pellegrini, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

On November 12, 1996, pursuant to Section 364.161(1), Florida Statutes, Telenet of South Florida, Inc., (Telenet) filed a petition for arbitration of its dispute with BellSouth Telecommunications, Inc., (BellSouth) concerning the provisioning of call forwarding services. BellSouth has declined to continue selling call forwarding to Telenet, alleging that Telenet uses the service in violation of section A13.9.1.A.1 of BellSouth's General Subscriber Service Tariff. Telenet alleges that the tariff provision is an anticompetitive restriction and that it has not been able to reach a resale agreement with BellSouth.

DOCUMENT NUMBER-DATE

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FPS-C-RECORDS/REPORTING

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to

examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

| <u>WITNESS</u> | <u>APPEARING FOR</u> | <u>ISSUE(S) #</u> |
|----------------------------|----------------------|-------------------|
| <u>DIRECT AND REBUTTAL</u> | | |
| Mitchell A. Kupinsky | Telenet | 1 |
| Robert C. Scheye | BellSouth | 1 |

V. BASIC POSITIONS

TELENET: Telenet seeks Commission arbitration of a tariff dispute with BellSouth on resale rates, terms and conditions of Call Forwarding service. These services should be provided to Telenet without existing unlawful use restrictions pursuant to the terms of the Telecommunications Act of 1996 and the applicable Florida Statutes.

BELLSOUTH:

Telenet is reselling Custom Calling Services, specifically the Call Forwarding features, so as to avoid

the payment of toll charges, all in violation of the rules, regulations and nature of the service. Section A13.9.1.A of BellSouth's General Subscriber Services Tariff states that Call Forwarding is the transference of local calls and may not be used to extend calls to avoid payment of toll charges. Telenet uses Call Forwarding to forward calls from one local calling area to another that would otherwise be a toll call between the call originator and the call terminator.

BellSouth's tariffed terms and conditions concerning the Call Forwarding features are reasonable and nondiscriminatory. The terms and conditions promote efficient use of the network, affect the price of the service and were approved by this Commission. These terms and conditions are supported under Florida law, as well as the Telecommunications Act of 1996.

STAFF: None pending discovery

VI. ISSUES AND POSITIONS

ISSUE 1: May BellSouth Telecommunications, Inc., sell its Call Forwarding service to Telenet of South Florida, Inc., subject to the restrictions of Section A13.9.1.A.1 of BellSouth Telecommunications, Inc.'s General Subscriber Service Tariff?

POSITIONS

TELENET: No. BellSouth's tariff restrictions on the use of call forwarding services are discriminatory, anticompetitive and violate Florida Statute Section 364.161(2) and the Federal Telecommunications Act of 1996. As such the restrictions are not in the public interest of providing competitive alternatives to Florida consumers. Moreover, BellSouth has an affirmative duty to resell call forwarding services to ALECs such as Telenet under 47 U.S.C. sections 251 (c) (4) (B) and (b) (1).

Consistent with the Telecommunications Act of 1996 and Chapter 364, Florida Statutes, the Commission should remove anticompetitive and unreasonable use restrictions on call forwarding from BellSouth tariffs, which hinder local exchange services competition. Allowing BellSouth to maintain its monopoly for intraLATA telephone toll

traffic does not aid the development of competition, ensure universal service, or serve the public interest.

The Commission should reject any attempt by BellSouth to use the tariffed restrictions on the use of Call Forwarding services as a means of preventing new entrants from competing for its lucrative intraLATA toll market.

BELLSOUTH:

Yes. Section A13.9.1.A.1 of BellSouth's General Subscriber Services Tariff is reasonable, nondiscriminatory, and applicable to Telenet.

STAFF: No position at this time.

VII. EXHIBIT LIST

| <u>WITNESS</u> | <u>PROFFERED BY</u> | <u>I.D. NO.</u> | <u>DESCRIPTION</u> |
|----------------------|---------------------|-----------------|--|
| Mitchell A. Kupinsky | Telenet | _____ MAK-1 | Diagram of the Telenet virtual network. |
| | | _____ MAK-2 | The BellSouth 11/03/95 letter re: service price quotations. |
| | | _____ MAK-3 | Telenet 9/16/96 memorandum re: memorialization of telephonic negotiations with BellSouth |
| | | _____ MAK-4 | BellSouth 9/19/96 letter re: refusal of new service. |
| | | _____ MAK-5 | Telenet 9/26/96 memorandum re: submission of ALEC license. |

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| <u>WITNESS</u> | <u>PROFFERED BY</u> | <u>I.D. NO.</u> | <u>DESCRIPTION</u> |
|----------------------|---------------------|-----------------|--|
| Mitchell A. Kupinsky | Telenet | <u>MAK-6</u> | BellSouth 10/04/96 memorandum re: special service arrangements. |
| | | <u>MAK-7</u> | Telenet 10/10/96 memorialization re: memorialization of telephonic negotiations with BellSouth. |
| | | <u>MAK-8</u> | BellSouth 10/15/96 letter re: threatened disconnection. |
| | | <u>MAK-9</u> | Telenet 11/07/96 memorandum re: memorialization of service order chronology. |
| | | <u>MAK-10</u> | Telenet 11/27/96 letter re: interim settlement agreement pending arbitration. |
| | | <u>MAK-11</u> | BellSouth 11/12/96 memorandum re: refusal to provide additional service. |

| <u>WITNESS</u> | <u>PROFFERED BY</u> | <u>I.D. NO.</u> | <u>DESCRIPTION</u> |
|----------------------|---------------------|-----------------|--|
| Mitchell A. Kupinsky | Telenet | <u>MAK-12</u> | Telenet 12/11/96 letter re: BellSouth's failure to abide by the interim settlement agreement. |

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

IX. PENDING MOTIONS

1. BellSouth's Motion to Strike, filed January 23, 1997.

X. RULINGS

1. Staff's oral motion to extend discovery to February 7, 1997, is granted.

2. Telenet is allowed until January 29, 1997, to file a response to BellSouth's Motion to Strike.

3. Staff's oral motion that Telenet witnesses William Demers and Ruth Jordan not be permitted to testify in this proceeding is granted.

4. BellSouth witness Scheye shall be deposed in person at the Commission's Tallahassee office.

It is therefore,

ORDERED by Commissioner Joe A. Garcia, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of Commissioner Joe Garcia, as Prehearing Officer,
this 11th day of February, 1997.



JOE GARCIA, Commissioner and
Prehearing Officer

(S E A L)

CJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

MEMORANDUM

FEBRUARY 11, 1997

RECEIVED
FEB 11 1997
11:55

TO: DIVISION OF RECORDS AND REPORTING FPSC-RECORDS/REPORTING
FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *CLM*
RE: DOCKET NO. 961346-TP - PETITION FOR ARBITRATION OF
DISPUTE WITH BELLSOUTH TELECOMMUNICATIONS, INC.,
REGARDING CALL FORWARDING, BY TELENET OF SOUTH FLORIDA,
INC.

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Attached is a PREHEARING ORDER, to be issued in the above
referenced docket. (Number of pages in Order - 9)

PLEASE ISSUE THIS ORDER AS SOON AS POSSIBLE TODAY. THANK YOU.

CJP/clp

Attachment

cc: Division of Communications (Greer, Sirianni)

I: 961346po.cjp

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VACANT. Telenet.
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