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COLIN M. ALBERTS  
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December 16, 1996

VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo  
Director, Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

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Re: **Docket No. 961346-TP**  
**Telenet of South Florida, Inc.**

Dear Ms. Bayo:

Please find enclosed an original and 15 copies of Telenet of South Florida, Inc.'s Opposition to BellSouth Telecommunications, Inc.'s Motion to Dismiss, which we ask that you file in the above-referenced docket. Copies have been served to the parties shown on the attached Certificate of Service.

Please date stamp and return the enclosed reference copy in the self-addressed, postage-prepaid envelope.

Thank you for your attention to this matter. If you have any questions concerning this filing, please do not hesitate to contact us.

Very Truly Yours,



Doug G. Bonner  
Colin M. Alberts

Counsel for Telenet of South Florida, Inc.

ACK \_\_\_\_\_

AFA \_\_\_\_\_

APP \_\_\_\_\_

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cc. Mitch Kupinsky (Telenet)  
Charlie Pellegrini (Commission)  
J. Phillip Carver (BellSouth)

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Resolution of Petition(s) to Establish Right )  
of Access of Telenet of South Florida, Inc. ) Docket No. 961346-TP  
to Call Forwarding Lines Offered by BellSouth ) Filed: December 17, 1996  
Telecommunications, Inc., and for Arbitration )

**TELENET OF SOUTH FLORIDA, INC.'S OPPOSITION  
BELLSOUTH TELECOMMUNICATION'S MOTION TO DISMISS**

Telenet of South Florida, Inc., ("Telenet"), pursuant to Rule 25-22.037, Florida Administrative Code, files its Opposition to the "Answer and Motion to Dismiss" ("Motion") of BellSouth Telecommunications, Inc. ("BellSouth") to Telenet's Petition for Arbitration ("Petition"). BellSouth's Motion is without merit and the Florida Public Service Commission ("Commission") should deny this motion for the following reasons: (1) the Petition sets forth a proper case for arbitration under applicable Fla. Stat. § 364.161; and (2) the irreparable and immediate harm threatened by BellSouth as a result of its actions make a petition for arbitration a more appropriate procedure before the Commission. Telenet opposes BellSouth's Motion and states as grounds of support thereof the following:

1. Fla. Stat. § 364.161 (the "Resale Arbitration provision") specifies a process to be utilized in the wake of the momentous changes occurring in telecommunications law, both on the state and on the federal level. Incumbent local exchange carrier monopolies ("ILECs") such as BellSouth are now directed to begin a process of unbundling network elements, and to begin providing these elements to competitive local exchange carriers, such as Telenet, on an equal access basis. On the state level, this imperative is reflected in the Resale Arbitration provision. This mandate is found in Sections 251 and 252 of the Communications

Act of 1934 as amended by the Telecommunications Act of 1996, 47 U.S.C. §151, *et. seq.* (“1996 Act”).

2. Section 153(29) of the 1996 Act defines “network element” as both “a facility or equipment used in the provision of a telecommunications service” and “features, functions, and capabilities that are provided by means of such facility or equipment.” The Federal Communications Commission (“FCC”) interprets this definition as allowing a competitive carrier to purchase the right to obtain exclusive access to an entire element (such as the local loop) or some feature, function or capability of the element (with respect to shared facilities such as common transport). *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order “FCC Interconnection Order”), stayed on other grounds, *Iowa Utilities Bd. v. F.C.C.*, 1996 Westlaw 589204 (8th Cir. October 15, 1996), ¶ 258.

3. The FCC also interprets this definition broadly, to include “facilities or equipment used in the provision of a telecommunications service,” and all “features, functions, and capabilities that are provided by means of such facility or equipment including . . . databases, signaling systems . . . used in the transmission, routing, or other provision of a telecommunications service.” FCC Interconnection Order ¶ 262. Thus the definition includes software and elements sold directly to end users as retail services, such as call forwarding and caller ID.

4. The Resale Arbitration provision expressly directs BellSouth to make available for resale “all of its network features, functions and capabilities, *including access to ...*

*systems and routing processes.*” Fla. Stat. § 364.161(1) (emphasis added). This provision fully applies to multi-path call forwarding as one element which BellSouth is obligated to unbundle and resell. Thus the Commission’s enforcement of the Resale Arbitration provision encourages the development of local competition and consumer options which underlie Florida law and the 1996 Act.

5. BellSouth’s formulaic argument that the Resale Arbitration provision is not meant to apply to the current dispute is based on weak semantics and a selective reading of the statute. BellSouth focuses upon the language of “terms, conditions and prices” which the statute frames as the substance of disputes between ILECs and new carriers. Motion at 6.<sup>1</sup> BellSouth then illogically argues that the very denial of tariffed services -- based upon a tariffed use restriction -- is somehow excluded from “terms” and “conditions,” and thus not the purview of the statute in question.

6. BellSouth also provides ample reason for the Commission to regard the Resale Arbitration provision as the correct procedure in this case. BellSouth claims that “the only sticking point is that Telenet wishes to resell these services in a manner that is *in direct contravention of the restrictions that are set forth in the tariff...*” BellSouth Motion ¶21; emphasis added. The Resale Arbitration provision mandates that “no local exchange telecommunications company may impose *any restrictions on the resale of its services or facilities except those which the Commission may determine are reasonable.*” Fla. Stat. §

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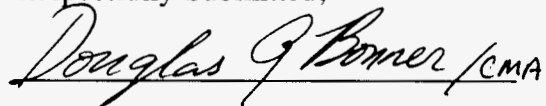
<sup>1</sup> BellSouth does not dispute, and readily admits, that the Resale Arbitration provision applies to disputes concerning requests to purchase unbundled network elements or services purchased for resale. Motion at 6, ¶20.

364.161(2); emphasis added. The statute is clear that disputes regarding tariff restrictions on the use of network elements and services for resale are meant to be resolved by the Commission using the arbitration method, procedure and schedule set out in Section 364.161.

7. The 120-day arbitration schedule that the Resale Arbitration provision mandates is the real reason that BellSouth wishes to dismiss the Petition and to reconstitute it as a "Complaint" subject to Rule 25-22.036 of the Florida. By setting the 120-day deadline for Commission determination, the Florida legislature was obviously sensitive to the monopoly power of BellSouth, and of its ability to use time to its advantage to delay and hinder the provision of unbundled elements and retail services to competitors such as Telenet. The statute provides for an accelerated schedule, not to augment burdens upon an already-busy Commission, but instead to give new carriers a speedy resolution of disputes with ILECs concerning unbundling or service requests for bottleneck elements and services. BellSouth cannot be allowed to circumvent the Florida statute enacted by the Florida legislature to promote local exchange competition in Florida.

For the foregoing reasons, BellSouth's Motion should be denied.

Respectfully Submitted,

 *Douglas G. Bonner* /CMA

SWIDLER & BERLIN, CHTD.

Douglas G. Bonner

(Fla. Bar No. 376825)

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Attorneys for Plaintiff

Telenet of South Florida, Inc.

Dated: December 17, 1996

**CERTIFICATE OF SERVICE  
DOCKET NO. 961346-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by  
U.S. Mail this 16th day of December, 1996 to the following:

Robert G. Beatty  
J. Phillip Carver  
BellSouth Telecommunications, Inc.  
Suite 1910  
150 West Flagler Street  
Miami, Florida 33130

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850



Colin M. Alberts