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January 23, 1997

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Strike, which we ask that you file in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

J. Phillip Carver
J. Phillip Carver (BWS)

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FA _____
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AF _____
MU Carver
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Enclosures
/vf
cc: All parties of record
A. M. Lombardo
R. G. Beatty
William J. Ellenberg II

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution of Petition(s) to)
Establish Right of Access of Telenet of) Docket No. 961346-TP
South Florida, Inc. to Call Forwarding)
Lines Offered by BellSouth)
Telecommunications, Inc. and for Arbitration) Filed: January 23, 1997

BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO STRIKE

BellSouth Telecommunications, Inc., ("BellSouth" or the "Company"), hereby files, pursuant to Rule 25-22.037, Florida Administrative Code, its Motion to Strike portions of the Testimony and the Prehearing Statement of Telenet of South Florida, Inc. ("Telenet"), and states in support thereof the following:

1. The gravamen of the Petition by Telenet is that the Petitioner wishes to purchase Call Forwarding from BellSouth's General Subscriber Services Tariff and then resell it for the express purpose of allowing its customers to systematically avoid toll charges. BellSouth's tariff states that the service is not intended to be used in this way, and BellSouth routinely enforces this limitation on use of the service. Despite the general thrust of the Petition, Telenet also states, almost as an aside, the following:

16. Telenet proposes that BellSouth's long run incremental costs should serve as the target price and cap for unbundled network elements (such as multi-path

Call Forwarding) where such elements must be employed by competitive carriers to compete realistically and practically with the entrenched monopoly service provider, BellSouth.

(Petition, par. 16, p. 6).

2. Throughout the pleadings and subsequent testimony filed by Telenet in this proceeding, there appears to be a fundamental confusion on the part of Telenet between the purchase for resale of a BellSouth service (i.e., a service offering by BellSouth to its customers) and the purchase of unbundled network elements that, when put together in a particular configuration, comprise a service. The above-quoted language from paragraph 16 of the Petition, however, would appear to reflect something more than Telenet's confusion regarding the distinction between resale and unbundling. Instead, Telenet would appear to be requesting, albeit vaguely and ambiguously, that Call Forwarding be broken down into its component network elements and priced in some manner other than that which is reflected in the tariff.

3. The Petition, however, does not allege that Telenet has made at any time a request for the cost-based purchase of the unbundled network elements that compose remote Call Forwarding, nor does it allege that there were any negotiations in this regard. Further, there is nothing in the Petition or in any of the testimony that has been filed to date to support this request

for cost-based pricing by identifying the elements in question, proposing a price, or providing any support for a particular price.

4. Nevertheless, at the time of the issue identification conference on January 2, 1997 the Florida Public Service Commission Staff ("Staff") made specific inquiry of Telenet's counsel as to whether it wished to have an unbundling issue included in this docket. Telenet specifically stated that it did not wish to have this issue considered by the Commission at this time. Accordingly, the sole issue for consideration by this Commission concerns the limitations in BellSouth's tariff on the use of call forwarding and whether the limitations apply in this instance.

5. Inexplicably, Telenet filed direct testimony approximately on January 7, 1997 in which it has again raised the unbundled element issue that it has expressly declined to include as part of this docket. Specifically, in the testimony of Mitchell A. Kupinsky (Page 11, line 18 through page 12, line 1; page 13, line 1 through page 14, line 2) Telenet makes the argument that BellSouth should be required to unbundle and separately price the network elements that comprise the services that Telenet wishes to buy on a resale basis. As stated above,

this testimony is entirely at odds with the affirmative decision of Telenet to restrict the issues in this docket to the single issue that has been identified for resolution. Moreover, the "unbundled element" issue is not a proper subject for arbitration at this time because Telenet has never requested that unbundled elements (as opposed to services) be sold to it or that these elements be priced in an unbundled, cost-based manner.

6. This portion of the testimony of Mr. Kupinsky has absolutely no relevance to the "resale restriction" issue that has been identified as the sole, proper subject of this docket. Accordingly, the above identified testimony by Mr. Kupinsky should be stricken.

7. Portions of Telenet's Prehearing Statement should also be stricken. The Order Establishing Procedure (Order No. PSC-97-0041-PCO-TP) issued January 9, 1997 in this proceeding clearly states that "[p]ursuant to Rule 25-22.048, Florida Administrative Code, each party shall prefile, in writing, all testimony that it intends to sponsor" (Order Establishing Procedure, p. 2). Telenet has prefiled the testimony of Mr. Kupinsky in compliance with this rule. However, in its Prehearing Statement, Telenet has identified William Demers and Ruth Jordan as additional

witnesses to testify on the topic of "the course of negotiations on the issues". (Telenet Prehearing Statement, p. 1).

8. It would appear to be the intention of Telenet to attempt to present these witnesses at the time of the hearing for the purpose of giving direct testimony that has not been prefiled. Assuming this is Telenet's intention, this action would not only be in direct contravention of the Order Establishing Procedure, but would also violate the Rules of this Commission. BellSouth submits that the appropriate response of the Commission to Telenet's attempt should be to strike these witnesses from Telenet's Prehearing Statement and to further order that, having failed to prefile the testimony of these witnesses, Telenet shall not be allowed to have them testify in this proceeding in a manner that necessarily violates this Commission's Rules and the above-referenced Order.

WHEREFORE, for the reasons set forth above, BellSouth respectfully requests the entry of an Order striking the above-identified portions of the testimony of Mr. Kupinsky, striking the above identified portions of the Prehearing Statement of Telenet, and further providing that witnesses may not appear that have not prefiled testimony.

Respectfully Submitted this 23rd day of January, 1997.

BELLSOUTH TELECOMMUNICATIONS, INC.

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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 23rd day of January, 1997 to the following:

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