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July 24, 1997

VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

970730-TP

Dear Ms. Bayo:

Enclosed for filing are an original and sixteen (16) copies of a Opposition to BellSouth Telecommunications, Inc's Motion to Dismiss the Petition for Relief Under 47 U.S.C. §252(i) of Telenet of South Florida, Inc.

A copy of the Brief is also on the enclosed diskette formatted in WordPerfect 6.1 for Windows. Please date stamp the extra hard copy and return it in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Sincerely,

Melissa B. Rogers

Enclosures

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Original

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re:	)	
	)	
TELENET OF SOUTH FLORIDA, INC.	)	
	)	
Petition for Relief Under 47 U.S.C. §252(i)	)	Docket No. 970730-TP
To Opt Into Interconnection Agreement with	)	
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
	)	

OPPOSITION TO BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO DISMISS THE PETITION FOR RELIEF UNDER 47 U.S.C. § 251(i) OF TELENET OF SOUTH FLORIDA, INC.

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Dated: July 24, 1997

DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re:	)	
	)	
TELENET OF SOUTH FLORIDA, INC.,	)	
	)	
Petition for Relief Under 47 U.S.C. § 252(i)	)	Docket No. 970730-TP[1/]
To Opt Into Interconnection Agreement with	)	
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
	)	

OPPOSITION TO BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO DISMISS THE PETITION FOR RELIEF UNDER 47 U.S.C. § 251(i) OF TELENET OF SOUTH FLORIDA, INC.

Telenet of South Florida, Inc. ("Telenet"), by its undersigned attorneys, opposes BellSouth Telecommunications, Inc.'s ("BellSouth") Motion to Dismiss the Petition for Relief Under 47 U.S.C. § 251(i) of Telenet of South Florida, Inc. ("Motion").

INTRODUCTION

BellSouth is attempting to avoid a determination of Telenet's 252(i) rights by seeking a dismissal of Telenet's Section 252(i) Petition. Telenet has an absolute right to the same terms and conditions contained in the approved agreement between BellSouth and AT&T Corp. in Florida (the "AT&T Agreement"). That is the only issue before the Commission here and, without question,

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1/ This Opposition was initially filed on July 21, 1997 in response to BellSouth's Motion to Dismiss Telenet's 252(i) Petition which BellSouth improperly filed in Docket No. 961346-TP. Pursuant to the Commission's request, Telenet is re-filing its Opposition in the appropriate docket.

Telenet is entitled to relief. BellSouth seeks to avoid that plain entitlement through its speculations and hypotheses about Telenet's future intentions which, as discussed below, are irrelevant.

Instead of filing its Motion in this docket, as it should, BellSouth initially filed the Motion in Docket No. 961346-TP claiming that it offered the AT&T Agreement to Telenet with "one exception . . . the inclusion of a provision that would require Telenet to represent that it would utilize the agreement in a way that is consistent with Florida law and this Commission's order upholding the resale restriction." *Motion,* at 3. That representation is untrue. In fact, the revised agreement offered to Telenet by BellSouth differs from the AT&T Agreement in a number of material ways. By filing its Motion in Docket No. 961346-TP, BellSouth was attempting to avoid offering Telenet the more favorable terms and conditions contained in the AT&T Agreement, which BellSouth could otherwise be obligated to offer to any other ALEC in Florida. It cannot be permitted to do so.

FACTUAL BACKGROUND

On March 31, 1997, Telenet requested that BellSouth "unbundle its network features, functions, and capabilities, as well as access to signaling databases, systems and routing processes, including but not limited to those relating to Call Forwarding services, and offer them to Telenet." Telenet also requested that BellSouth "negotiate terms, conditions and prices of this unbundling."

On or about April 14, 1997, BellSouth offered to Telenet and provided it a copy of the AT&T Agreement in its entirety without modification or revision.[2/] Telenet accepted BellSouth's offer, and

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2/ BellSouth asserts: "Immediately after the conclusion of the hearing, BellSouth undertook to negotiate with Telenet a resale agreement that would incorporated the decision of the Commission in the arbitration. *Motion*, at 2. BellSouth is playing fast and loose with the facts. BellSouth (continued...)

the parties agreed that BellSouth would remove irrelevant attachments and send a "condensed version" of the agreement to Telenet for execution.

On May 14, 1997, BellSouth transmitted what purported to be a "condensed version" of the AT&T Agreement (the "Second Agreement"). In actuality, the Second Agreement differs in a number of material respects from the AT&T Agreement. It excludes beneficial terms and conditions contained in the AT&T Agreement and includes many new restrictions that were not contained in the original agreement. For example, the Second Agreement contains unique use and user restrictions on the resale of certain AT&T services in derogation of a Commission ruling upholding the absence of all use and user restrictions in the AT&T Agreement. *See In re: Petition by AT&T Communications of the Southern States, Inc.*, Docket No. 960833-TP, Order No. PSC-96-FOF-TP (December 31, 1996) at page 34.[3/] Many other revisions to the Commission-approved AT&T Agreement were also made by BellSouth in the Second Agreement provided to Telenet on May 14, 1997. These revisions were made without prior discussion with Telenet.

On June 13 , 1997, following a period of unsuccessful negotiations with BellSouth, Telenet filed its Section 252(i) Petition seeking an order requiring BellSouth to offer it the original AT&T

[2/](...continued)
initially offered to Telenet the AT&T Agreement, without any revisions. BellSouth then engaged in a "bait and switch" offering Telenet a substantially revised agreement which it claimed was merely "condensed."

[3/] In its December 31, 1996 Order, the Commission found that "no restrictions on the resale of services shall be allowed, except for restrictions applicable to the resale of grandfathered services, residential services, and Lifeline/LinkUP services to end users who are eligible to purchase such service directly from BellSouth."

Agreement. *Petition for Relief Under § 252(i) of Telenet of South Florida, Inc.* (the "Petition" or the "252(i) Petition").

ARGUMENT

Section 252(i) of the Telecommunications Act of 1996 provides that,

> [a] local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved by this section to which it is a party to any other requesting telecommunciations carrier upon the same terms and conditions as those provided in the agreement.

47 U.S.C. § 252(i)(1996). This provision gives Telenet the absolute right to "opt-in" to the AT&T Agreement, or any other Commission-approved interconnection agreement. *See e.g., In Re: Petitions by AT&T Communications of the Southern States, Inc.*, Docket No. 960847-TP, Order No. PSC-97-0064-FOF-TP (May 21, 1997).[4] Telenet wants services on the terms and conditions contained in the AT&T Agreement. That is the only issue before the Commission in this proceeding. Without question, Telenet is entitled to relief.

Ironically, BellSouth initially offered the AT&T Agreement to Telenet. After Telenet accepted the AT&T Agreement, BellSouth substantially revised the agreement changing a number of material terms without Telenet's consent. Following are samples of the material differences between the agreements:

- the Second Agreement states, "To the extent the items in 47 U.S.C. §271(c)(2)(b)[the competitive checklist] are contained within this Agreement, the parties agree that with the execution of this Agreement, BellSouth has met the requirements of 47 U.S.C. § 271(c)(2)(B)." *Second Agreement, Purpose.* No such provision exists in the AT&T Agreement;

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[4] The Commission issued an order approving the AT&T Agreement on June 19, 1997. *In re: Petition by At&T Communications of the Southern States, Inc.*, Docket No. 960833-TP, Order No. PSC-0724-FOF-TP (June 19, 1997).

- the AT&T Agreement allows resale of "any telecommunications service that BellSouth currently provides, or may offer hereafter." *AT&T Agreement*, Part I. The Second Agreement permits resale only of "the tariffed local exchange and toll telecommunications services of BellSouth contained in the General Subscriber Service Tariff and Private Line Service Tariff. . ." *Second Agreement*, XVII., A;

- the Second Agreement states that Telenet may not purchase resold services at the wholesale price for its own use. *Second Agreement*, XVII., A.1. The AT&T Agreement contains no such restriction;

- the Second Agreement places specific limitations on the combination of unbundled elements. *Second Agreement*, V., F. The AT&T Agreement permits any combination of network elements, *AT&T Agreement*, 30.5 and 1.A.;

- the Second Agreement divides transport and termination into two categories,: local traffic and IntraLATA toll traffic, *Second Agreement*, IV., A. & B., no similar distinction is made in the AT&T Agreement;

- the AT&T Agreement requires BellSouth to comply with certain industry standards in offering unbundling, *AT&T Agreement*, 30.10.1, which are absent in the Second Agreement;

- the AT&T Agreement requires BellSouth to provide customers access to White Page listings on a nondiscriminatory basis and requires Yellow pages listings be made available. *AT&T Agreement* 20.1 & 20.1. The Second Agreement requires only that White Pages listings be made available, *Second Agreement*, XI.;

- the Second Agreement permits BellSouth to collect an advance payment deposit from Telenet. *Second Agreement*, XVII., S. There is no such provision in the AT&T Agreement;

- the Second Agreement provides that Voice Mail service is available for resale only if a separate agreement is executed to provide the rates, terms and conditions for that service. *Second Agreement*, XVII., U. The AT&T Agreement includes Voice Mail service as a service that may be resold, *AT&T Agreement*, 25.13.

It is clear from a cursory review of this partial list of material differences that BellSouth's contention that there is only one substantive difference between the two agreements is false. Telenet filed its 252(i) Petition to force BellSouth to offer Telenet an interconnection agreement on the same

terms and conditions as those offered to AT&T (and presumably, to other Florida ALECs). It is entitled to proceed on that Petition.

Moreover, BellSouth's argument that the Commission's decisions in Docket No. 961346-TP[2] should apply retroactively to alter or amend the terms and conditions of the AT&T Agreement is a red herring. While BellSouth was arbitrating the AT&T Agreement, it knew that the operation of Section A13.9.1.A.1 of its General Subscriber Service Tariff was being disputed by Telenet. Telenet filed its *Petition for arbitration of Dispute with BellSouth Telecommunications, Inc. regarding Call Forwarding* ("Petition for Arbitration") on November 22, 1996. All relevant portions of the AT&T Agreement were approved by the Commission on December 31, 1996. *See In re: Petition by AT&T Communications of the Southern States, Inc.*, Docket No. 960833-TP, Order No. PSC-96-FOF-TP. Presumably BellSouth was also aware that it would have to permit Telenet to opt-in to the AT&T Agreement. Therefore, BellSouth had both notice and opportunity to arbitrate any terms and conditions it felt necessary to protect itself into the AT&T Agreement. Moreover, a review of the Commission's Order No. PSC-96-FOF-TP reveals that BellSouth strenuously urged this Commission to adopt a resale rule incorporating tariffed use and user restrictions as a condition of resale of BellSouth's telecommunications services. The Commission rejected BellSouth's position. *See, supra,* n.3.

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[2] *See In re: Petition for Arbitration of Dispute with BellSouth Telecommunications, Inc regarding Call Forwarding,* Docket No. 961346-TP, Order No. PSC-97-0462-FOF-TP (April 23, 1997), and *In re: Petition for Arbitration of Dispute with BellSouth Telecommunications, Inc. regarding Call Forwarding,* Docket No. 961346-TP, Order No. PSC-97-0861-FOF-TP (July 17, 1997).

BellSouth claims that Telenet is exercising its Section 252(i) rights solely to circumvent a Commission decision regarding Telenet's purchasing tariffed services subject to tariff restrictions *without* a Commission-approved interconnection agreement. Telenet should have the same rights as AT&T under the AT&T Agreement if Telenet exercises its 252(i) rights and opts into the AT&T Agreement. BellSouth conveniently forgets that other services would be available for resale under the AT&T Agreement, including WATS and intraLATA toll service (service options which the Commission referenced in its Arbitration Order) upon the same favorable terms that AT&T has in its agreement.

Finally, Telenet intends to appeal the Commission's final orders on its Petition for Arbitration. It also intends to pursue its 252(i) Petition. If, after final decisions on both matters, there is a conflict that requires resolution, the Commission will have the opportunity to settle the matter. Any such conflict, however, is entirely speculative and cannot be decided at this time.

CONCLUSION

For the foregoing reasons, Telenet respectfully requests that the Commission deny BellSouth's Motion to Dismiss Telenet's 252(i) Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July 1997, copies of the foregoing; **OPPOSITION TO BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO DISMISS THE PETITION FOR RELIEF UNDER 47 U.S.C. § 251(i) OF TELENET OF SOUTH FLORIDA, INC.** Docket No. 961346-TP, were sent via Federal Express to:

Ms. Blanca S. Bayo **(0 + 15)**
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

And First-class mail, postage pre-paid to:

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