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March 26, 2003

Ms. Blanca S. Bayo  
Division of Commission Clerk and  
Administrative Services  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32301

030300-TP

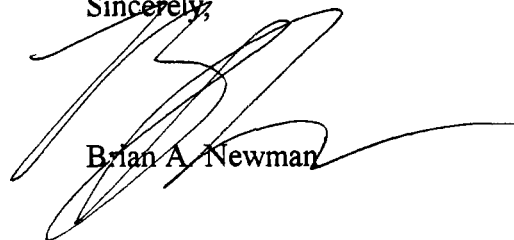
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03 MAR 26 PM 4:13  
COMMISSION  
CLERK

**In Re: Petition of Florida Public Telecommunications Association for Expedited Review of BellSouth Telecommunications, Inc.'s Tariffs with respect to Rates for Payphone Line Access, Usage, and Features**

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen (15) copies of a Petition of the Florida Public Telecommunications Association for Expedited Review of BellSouth Telecommunications Inc.'s Tariffs with respect to Rates for Payphone Line Access, Usage, and Features. If you have any questions, please feel free to contact our office.

Sincerely,



Brian A. Newman

BAN/wgp  
Enclosures

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

CORRECTED DATE ON PETITION

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition of Florida Public )  
Telecommunications Association )  
for Expedited Review of BellSouth )  
Telecommunications, Inc.'s Tariffs )  
with respect to Rates for Payphone )  
Line Access, Usage, and Features. )

Docket No.:

Filed: ~~May~~ 26, 2003

**MARCH**

**PETITION OF THE FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION  
FOR EXPEDITED REVIEW OF BELL SOUTH TELECOMMUNICATIONS INC.'S  
TARIFFS WITH RESPECT TO RATES FOR PAYPHONE LINE ACCESS,  
USAGE, AND FEATURES.**

1. The Florida Public Telecommunications Association ("FPTA") hereby respectfully petitions the Florida Public Service Commission ("FPSC" or "Commission"), pursuant to Chapters 120, 350, and 364, Florida Statutes, and Rules 25-22.036(2) and 28-106.201, Florida Administrative Code, to expeditiously review and determine whether BellSouth Telecommunications, Inc.'s ("BellSouth") Florida intrastate tariffs for pay telephone access services ("PTAS") rates comply with Chapter 364, Florida Statutes, Section 276 of the Telecommunications Act of 1996 ("the Act"), and orders of the Federal Communications Commission ("FCC") implementing Section 276 of the Act.

2. In February 1996, then President Bill Clinton signed the Act into law. Congress' express purpose for passing Section 276 of the Act was "... to promote competition among payphone service providers and promote the widespread deployment of payphone services to benefit the general public." As part of its implementation of the Act, the FCC required Incumbent Local Exchange Companies ("ILECs") to file tariffs at the state level establishing cost based, non-discriminatory rates for basic payphone access lines and related usage and ancillary services on or before April 15, 1997.

3. The FCC determined that to be “non-discriminatory,” the rates assessed by ILECs for payphone services tariffed at the state level must satisfy the FCC’s “new services test” (“NST”). The NST is a “cost-based” test that establishes pricing based upon the direct cost of providing the services, plus a reasonable amount of common overhead loadings. On January 31, 2002, the FCC issued an Order for the express purpose of clarifying the application of the NST to RBOC rates for PTAS.<sup>1</sup> The *January Order* provided that PTAS rates charged by RBOCs must comply with the NST and provided the basis for this Petition.

4. On August 11, 1998, in Docket No. 970281-TL, the FPSC issued an *Order* concluding that “[e]xisting incumbent local exchange company tariffs for smart and dumb line payphones services are cost-based, consistent with Section 276 of the Telecommunications Act of 1996, and nondiscriminatory.”<sup>2</sup> On March 9, 1999, the FPSC issued an *Order Closing Docket and Reinstating Order No. PSC-98-1088-FOF-TL*, and establishing the effective date of that *Order* as January 19, 1999.<sup>3</sup>

5. The rates found by the FPSC to be cost-based and consistent with the Act in Docket No 970281-TL included a federally tariffed monthly subscriber line charge. In its January orders, the FCC specifically disagreed with that finding and found that all RBOCs must reduce the monthly per line rate by the amount of the subscriber line charge to prevent the double recovery of costs associated with facilities involved in providing PTAS to PSPs.

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<sup>1</sup>*Order Directing Filings, FCC Memorandum Opinion and Order Bureau*, 17 FCC Rcd. 2051. (January 31, 2002) (*January Order*).

<sup>2</sup>*Order No. PSC-98-1088-FOF-TL* at 6, August 11, 1998.

<sup>3</sup>*Order No. PSC-99-0493-FOF-TL*, March 9, 1999.

6. Additionally, since the effective date of Docket 970281-TL, BellSouth's costs to provide PTAS have consistently decreased. Despite a decrease in costs, BellSouth has failed to correspondingly reduce the PTAS rates paid by PSPs. Accordingly, since January 20, 1999, BellSouth's PTAS rates have not been cost-based in violation of Section 276 of the Act and the FCC's implementing *Payphone Orders*.

7. BellSouth has violated Section 276 of the Act, the FCC's implementing *Payphone Orders* and Chapter 364, Florida Statutes, because BellSouth's PTAS rates for payphone access services have not been cost-based as required by the NST. In support of this Petition, FPTA states as follows:

#### **I. PARTIES**

8. The FPTA is a trade association whose members include independent pay telephone service providers ("PSPs"), operator services providers, and other public telecommunications related providers in Florida. The FPTA serves as an advocate for the payphone industry in the state of Florida. FPTA members own and operate approximately 30,000 public pay telephones throughout the State of Florida, typically installed at small businesses, public parks, airports, etc. In this fashion, FPTA members significantly contribute to the widespread deployment of pay phone service in the State and provide Floridians with access to the public communications switched network. In fact, many Floridians, particularly those with low income, utilize pay phones as their primary means of communication.

9. Many FPTA members are current customers of BellSouth or were customers of BellSouth at some time between January 20, 1999, and the date of this petition for purposes of

obtaining PTAS, which include public access lines (“PAL”), the mechanism by which PSP telephones connect to the public switched telephone network, and other “unbundled functionalities.”<sup>4</sup> The rates for such services in Florida are set forth in BellSouth’s tariffs filed with and approved by this Commission. Collectively, FPTA’s members are a group of substantially affected parties that both compete with BellSouth for placement of pay telephones and purchase underlying PTAS from BellSouth. As such, FPTA has standing to initiate this proceeding.

10. The name and address of Petitioner is as follows:

The Florida Public Telecommunications Association  
1140 Capital Circle S.E., Suite 11  
Tallahassee, Florida 32301

11. All pleadings, notices and other documents related to this proceedings should be provided to the following on behalf of Petitioner:

Peter M. Dunbar, Esq.  
Brian A. Newman, Esq.  
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.  
215 S. Monroe Street, 2<sup>nd</sup> Floor (32301)  
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12. BellSouth is a corporation organized and formed under the laws of the State of Georgia. BellSouth’s main office is located at 675 West Peachtree Street, Atlanta, Georgia 30375.

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<sup>4</sup>Order on Reconsideration, 11 FCC Rcd 21233 at ¶ 163 (Nov. 8, 1996) (*Reconsideration Order*), *aff’d in part and remanded in part*, *Ill. Pub. Telecomms. Ass’n. v. FCC*, 117 F.3d 55 (D.C.Cir. 1997).

BellSouth (i) is a “Regional Bell Operating Company” (“BOC”); (ii) is an ILEC under the terms of the Act, and is certificated as an ILEC in Florida to provide PTAS, among other telephone services; and (iii) provides payphone services to locations within the State of Florida in competition with PSPs, including FPTA members.

## **II. SUBSTANTIAL INTERESTS**

13. FPTA members both compete with BellSouth and purchase underlying PTAS from BellSouth. As such, their substantial interests are directly and substantially affected by BellSouth’s continued anticompetitive use of PTAS rates that exceed the rates permitted under Section 276 of the Act, the FCC’s implementing orders, and Chapter 364, Florida Statutes. Accordingly, BellSouth’s actions with respect to its PTAS rates directly and adversely affect the interests of FPTA’s members.

## **III. STATUTORY AUTHORITY**

14. The Commission has jurisdiction over this Petition pursuant to the following nonexhaustive list of provisions in the Florida Statutes: Section 361.01, Florida Statutes, which gives the Commission authority to regulate telecommunications companies; Section 361.051, Florida Statutes, which prohibits anticompetitive practices; Section 364.2281, Florida Statutes, which gives the Commission jurisdiction over anticompetitive behavior; Section 364.03, Florida Statutes, which requires rates to be fair, just, and reasonable; and, Section 361.14, Florida Statutes, which authorizes the Commission to determine and fix just and reasonable rates.

15. Additionally, the FCC affirmatively stated that it will rely upon state commissions such as the FPSC to ensure that rates, terms, and conditions applicable to the provision of basic payphone service comply with Section 276 of the Act.<sup>5</sup> Notwithstanding such reliance, the FCC has retained jurisdiction under Section 276 of the Act to ensure that all of its requirements are met.

#### IV. MATERIAL FACTS IN DISPUTE

16. Petitioner anticipates that disputed issues of material fact will include, but not be limited to, BellSouth's disagreement with some or all of Petitioner's contentions set forth in this Petition.

#### V. BELLSOUTH'S INTRASTATE PAY TELEPHONE ACCESS SERVICE RATES MUST BE REVISED IN ACCORDANCE WITH THE COST-BASED NEW SERVICES TEST

17. Congress enacted Section 276 of the Act to "promote competition among payphone service providers and promote the widespread deployment of payphone service to the benefit of the general public."<sup>6</sup> To that end, Section 276 prohibits a BOC from "prefer[ing] or discriminat[ing] in favor of its payphone service."<sup>7</sup> Section 276 also directs the FCC to promulgate regulations that

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<sup>5</sup>Order on Reconsideration, 11 FCC Rcd 21233 at ¶ 163 (Nov. 8, 1996) (*Reconsideration Order*), *aff'd in part and remanded in part*, *Ill. Pub. Telecomms. Ass'n. v. FCC*, 117 F.3d 55 (D.C. Cir. 1997); *In the Matter of Wisconsin Public Service Commission: Order Directing Filings, FCC Memorandum Opinion and Order Bureau*, 17 FCC Rcd. 2051 at ¶ 15. (January 31, 2002) (*January Order*).

<sup>6</sup>47 U.S.C. § 276(b)(1)(Supp. 2001); *North Carolina Utilities Commission*, 2002 WL 10254 at \*\*\*3.

<sup>7</sup>47 U.S.C. § 276(a).

“discontinue the intrastate and interstate payphone subsidies from basic exchange and exchange access revenues.”<sup>8</sup> Congress further directed the FCC to prescribe regulations to “terminat[e] the current system of payphone regulation” and “eliminate all discrimination between [a BOC] and independent payphones and all subsidies or cost recovery for BOC payphones.”<sup>9</sup> Additionally, any state requirement that is inconsistent with the FCC regulations is explicitly pre-empted by the Act.<sup>10</sup>

18. In response, the FCC issued a series of Orders (collectively “*Payphone Orders*”) interpreting the requirements of the Act with respect to the calculation of the costs of underlying payphone services, fundamentally restructuring the manner in which payphones and PTAS rates are regulated.<sup>11</sup> The FCC distinguished between the payphone equipment, such as the telephone itself, and the ILEC-provided network services needed to connect the payphone equipment to the public switched network. In enforcing the Act, the FCC required incumbent LECs to file tariffs to establish cost-based, non-discriminatory rates for basic local payphone interconnection services at the state level on or before April 15, 1997, consistent with Section 276 of the Act and the FCC’s Computer

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<sup>8</sup>47 U.S.C. 276(b)(1)(B).

<sup>9</sup>H.R. Rep. No. 104-204, at 88 (1995).

<sup>10</sup>47 U.S.C. 276(c).

<sup>11</sup>*Implementation of the Pay Telephone and Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, CC Docket No. 96-128, First Report and Order, 11 FCC Rcd 20541 (Sept. 20 1996); (“*First Payphone Order*”); Order on Reconsideration, 11 FCC Rcd 21233 (Nov. 8, 1996) (“*Reconsideration Order*”), *aff’d in part and remanded in part*, *Ill. Pub. Telecomms. Ass’n. v. FCC*, 117 F.3d 55 (D.C.Cir. 1997); Second Report and Order, 13 FCC Rcd 1778 (Oct. 9, 1997) (“*Second Payphone Order*”), *vacated and remanded*, *MCI Telecomms. Corp. v. FCC*, 143 F.3d 606 (D.C. Cir. 1998); Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (Feb. 4, 1999) (“*Third Payphone Order*”), *aff’d*, *American Pub. Communications Counsel v. FCC*, 215 F.3d 51 (D.C.Cir. 2000); *In the Matter of Wisconsin Public Service Commission: Order Directing Filings*, *FCC Memorandum Opinion and Order Bureau*, 17 FCC Rcd. 2051 (January 31, 2002).



III tariffing guidelines.<sup>12</sup> Additionally, ILECs were required to tariff at the state level “any basic network services or unbundled features used by a LEC’s operations to provide payphone services....”<sup>13</sup> To meet these requirements, LECs must, by necessity, separate the “basic payphone line” from the “network services or unbundled features” used by the LEC’s payphones.

19. Consistent with the Computer III tariffing guidelines, the FCC determined that the rates assessed by LECs for payphone services tariffed at the state level must satisfy the NST.<sup>14</sup> The NST is a cost-based test that establishes the direct cost of providing the service as a price floor, then allows the LECs to add only a reasonable amount of overhead to derive the overall price of the service.<sup>15</sup> In applying the NST, the FCC requires the following:

Once the direct costs have been identified, LECs will add an appropriate level of overhead costs to derive the overall price of the new service. To provide the flexibility needed to achieve efficient pricing, we are not mandating uniform loading, but BOCs will be expected to justify the loading methodology they select as well as any deviations from it.<sup>16</sup>

20. On January 31, 2002, the FCC issued the January Order, its most recent ruling clarifying and further interpreting the requirements of the Act and the application of the NST specifically to PTAS. The FCC’s stated purpose of the *January Order* is “to assist states in

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<sup>12</sup>*Second Payphone Order*, 13 FCC Rcd at 1780.

<sup>13</sup>*Reconsideration Order* at ¶¶ 162, 163.

<sup>14</sup>*See Amendment of Sections 64.702 of the FCC’s Rules and Regulations (Third Computer Inquiry)*, CC Docket No. 85-229, *Report and Order*, 104 FCC 2d 958 (1986).

<sup>15</sup>47 C.F.R. § 61.49(h).

<sup>16</sup>*Report and Order and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking*, 6 FCC Rcd 4524 at ¶ 44 (1991).

determining whether BOC's intrastate payphone line rates comply with Section 276 and [the FCC's] Payphone Orders"<sup>17</sup> and "assist states in applying the new services test to BOCs intrastate payphone rates."<sup>18</sup> In the January Order, the FCC confirmed that all BOCs must calculate PTAS rates in compliance with the NST.

21. In summary, the FCC's *January Order* concluded in part as follows:

a. Section 276 requires BOCs to set their intrastate payphone line rates, including usage rates, in compliance with the FCC's cost-based NST;<sup>19</sup>

b. Intrastate payphone service rates must be calculated using a forward-looking, direct cost methodology such as TELRIC or TSLRIC;<sup>20</sup>

c. Overhead loading rates for payphone lines must be cost-based, may be calculated using UNE overhead loading factors, provided that such rates do not exceed an upper limit calculated using the methodology from either the Physical Collocation Tariff Order or the ONA Tariff Order, and may not be set artificially high in order to subsidize or contribute to other LEC services. Additionally, any overhead allocations for payphone services that represent a significant departure from overhead allocations for UNE services must be justified by the LEC;<sup>21</sup>

d. The NST applies to usage sensitive as well as flat-rate elements of the services offered

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<sup>17</sup>*January Order* at ¶ 2.

<sup>18</sup>*January Order* at ¶ 68.

<sup>19</sup>*Reconsideration Order*, 11 FCC Rcd at 20614, para. 146; *January Order* at ¶¶ 2, 43-44, 68.

<sup>20</sup>*January Order* at ¶¶ 45-50, 68.

<sup>21</sup>*January Order* at ¶¶ 51-58, 68.

by PSPs. Therefore, any rate for local usage billed to a payphone line, as well as the monthly payphone line rate, must be cost based and priced in accordance with the NST; and

e. In establishing its cost-based, state-tariffed rate for PTAS, a BOC must reduce the monthly per line rate determined under the NST by the amount of the federally tariffed subscriber line charge (“SLC” or “EUCL”) to prevent double recovery of costs associated with the facilities involved in providing PTAS to PSPs.<sup>22</sup>

22. BellSouth’s tariff filings with the Commission fail to comply with the FCC’s requirements, Section 276 of the Act and the FCC’s implementing Payphone Orders. Specifically, since April 15, 1997 BellSouth’s intrastate PTAS rates have included an amount for the federally tariffed subscriber line charge thus providing a double recovery of costs. Additionally, on and after January 20, 1999, BellSouth’s intrastate PTAS rates have not been calculated in compliance with the FCC’s cost-based, forward-looking NST. BellSouth’s PTAS rates continue to be noncompliant with the requirements of the Act and the FCC’s implementing Payphone Orders for reasons which include, but are not limited to, the following:

a. BellSouth’s PTAS rates preclude the “widespread deployment” of pay telephones in complete contravention of Congress’ express purpose of passing Section 276 of the Act and, therefore, are contrary to the public interest;

b. BellSouth’s rates are calculated to recapture embedded costs rather than only those forward looking, direct economic costs associated with providing the services;

c. BellSouth’s rates include a federally tariffed SLC or EUCL and, therefore, allow for a double recovery of costs; and

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<sup>22</sup>January Order at ¶¶ 59-61, 68.

d. BellSouth's rates contain overhead allocations significantly exceeding the allocations for comparable services, such as unbundled UNEs and fail to take into account other sources of revenue resulting in a double recovery of costs.

23. Accordingly, BellSouth's PTAS rates are unfair, unjust, unreasonable, discriminatory, and anticompetitive. Moreover, BellSouth's PTAS rates violate Section 276 of the Act and the FCC's implementing Payphone Orders. In accordance with Chapter 364, Florida Statutes, and the FCC's Payphone Orders, the Commission is now being requested to determine and fix fair, just, and reasonable PTAS rates that BellSouth may charge its PSP customers calculated in accordance with the NST.

#### **VI. BELLSOUTH MUST REIMBURSE PSP CUSTOMERS FOR OVERCHARGES**

24. PSPs are entitled to a refund for (i) all amounts paid for subscriber line charges since April 15, 1997 and (ii) all PTAS fees paid to BellSouth since January 20, 1999 that exceed a cost-based rate calculated in accordance with the NST. BellSouth failed to reduce PTAS rates during the previous three years in spite of the fact that costs for providing those services to PSP's has declined dramatically. Therefore, since the PTAS rates exceed the cost of providing those services plus a reasonable overhead, BellSouth's PTAS rates have not been in compliance with the FCC's *Payphone Orders* and the NST, and PSP's are entitled to reimbursement for all such overcharges.

25. In the *January Order*, the FCC confirmed that in establishing its cost-based, state-tariffed charge for payphone line service, a BOC must reduce the monthly per line charge determined under the NST by the amount of the applicable federal tariffed SLC/EUCL in order to avoid over-

recovery of costs.<sup>23</sup> BellSouth has charged PSPs the EUCL charge in violation of the NST. Therefore, PSPs are entitled to a refund for the EUCL overcharges paid to BellSouth since April 15, 1997.

27. Pursuant to a letter dated April 10, 1997, from Michael K. Kellogg, the RBOC Payphone Coalition counsel, to the Deputy Chief of the Common Carrier Bureau (“CCB”), the RBOC Coalition, including BellSouth, requested that the FCC waive the requirement for the RBOCs to file intrastate payphone tariffs that met the NST by April 15, 1997. As a part of that request, Mr. Kellogg asserted that in the event a new tariff rate for PTAS is filed “to comply with the ‘new services’ test pursuant to this waiver and the new tariff rate is lower than the previous tariff rate as a result of applying the ‘new services’ test, the LEC will provide a credit or other compensation to purchasers back to April 15, 1997.”

22. In response to the RBOC Coalition’s request, CCB issued a *Waiver Order* dated April 15, 1997.<sup>24</sup> The *Waiver Order* granted all LECs a limited waiver, and stated that “[a] LEC who seeks to rely on the waiver...must reimburse its customers or provide credit from April 15, 1997 in situations where the newly tariffed rates, when effective, are lower than the existing tariffed rates.”<sup>25</sup> To date, Petitioner has not asked this Commission to address this issue. However, issuance of the FCC’s *January Order* clarified significant aspects of the FCC’s position rendering the issues, five years after the issuance of the *Waiver Order*, ripe for full consideration by this Commission.

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<sup>23</sup>*January Order* at ¶¶ 59-61.

<sup>24</sup>*In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, DA 97-805 (rel. Apr. 15, 1997) (*Waiver Order*).

<sup>25</sup>*Id.*

Accordingly, BellSouth should be directed to refund all overpayments, consisting of all EUCL charges, paid to BellSouth by PSPs since April 15, 1997.

## **VII. RELIEF REQUESTED**

**WHEREFORE**, Petitioner respectfully requests that the Commission:

A. Direct BellSouth to file cost studies that show the forward-looking economic costs that BellSouth incurs to provide PTAS service in its territories in Florida and direct BellSouth to fully explain and justify any deviations from the cost studies ultimately adopted in the context of the Commission's UNE proceeding in Docket 990649-TP;

B. Invalidate BellSouth PTAS rates, including rates for underlying pay telephone access lines, features, and usage if and where applicable;

C. Require BellSouth to expeditiously amend its tariff to include PTAS rates calculated in accordance with the NST, in compliance with Section 276 of the Act, as implemented by the FCC through the Payphone Orders or, in the alternative, determine and fix BellSouth's PTAS rates in accordance with the NST;

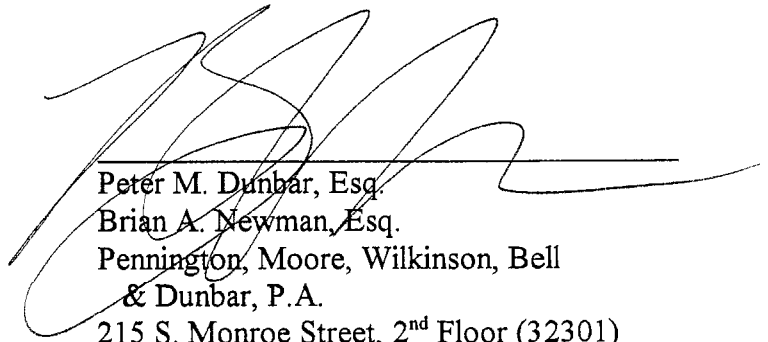
D. Direct BellSouth to refund all amounts paid for EUCL/SLC since April 15, 1997.

E. Direct BellSouth to refund to PSPs the difference between (a) the PTAS rates, including rates for access lines, features, and usage paid by PSPs to BellSouth since January 20, 1999, and (b) the lawful PTAS rates which should have been charged by BellSouth since January 20, 1999 if the rates had been properly calculated using the NST;

F. Schedule a formal administrative hearing to address disputed issues of fact and law regarding BellSouth's tariffed PTAS rates, including rates for access lines, features, and usage,

pursuant to Sections 120.569 and 120.57, Florida Statutes; and

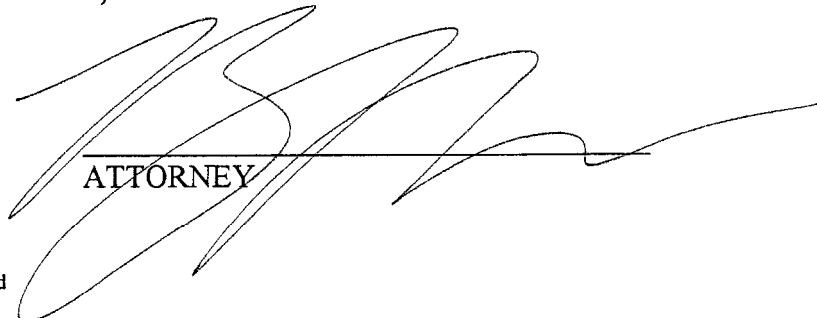
G. Grant such other relief as the Commission deems just and proper.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by over-night delivery to Meredith E. Mays, Regulatory Counsel, BellSouth Corporation, Legal Department, 675 West Peachtree Street, Suite 4300, Atlanta, Georgia 30375-0001 and Nancy B. White, General Counsel - Florida, BellSouth Telecommunications, Inc., Suite 1910, 150 W. Flagler St., Miami, Florida 33130, this 26<sup>th</sup> day of March, 2003.



ATTORNEY