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ORIGINAL
FILE COPY

December 5, 1996

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 Answer and Response to the Petition of Telenet of South Florida, Inc. for Arbitration and Motion to Dismiss, 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

Enclosures

/vf

cc: All parties of record
A. M. Lombardo
R. G. Beatty
William J. Ellenberg II

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- SEC 1 _____
- WAS _____
- OTH _____

DOCUMENT NUMBER-DATE

13033 DEC-5 96

FPSC-RECORDS/REPORTING

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 5th day of December, 1996 to the following:

Douglas G. Bonner
Colin M. Alberts
SWINDLER & BERLIN, CHARTERED
3000 K Street, N.W. Suite 300
Washington, D.C. 20007
Attys. for Telenet

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

J. Phillip Carver (BL)
J. Phillip Carver

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: December 5, 1996

**BELLSOUTH TELECOMMUNICATIONS, INC.'S ANSWER AND RESPONSE TO
THE PETITION OF TELENET OF SOUTH FLORIDA, INC. FOR ARBITRATION
AND MOTION TO DISMISS**

BellSouth Telecommunications, Inc., ("BellSouth" or the "Company"), hereby files, pursuant to Rule 25-22.037, Florida Administrative Code, its Answer to the Petition of Telenet of South Florida, Inc. ("Telenet") and Motion to Dismiss and states as grounds in support thereof the following:

1. As to the allegations contained in Paragraphs 1 and 2 of the Petition, BellSouth is without sufficient information or knowledge to either admit or deny these allegations. Accordingly, they are deemed to be denied.

2. As to the allegations contained in Paragraph 3 of the Petition, BellSouth states that much of the substance of Paragraph 3 does not constitute factual allegations that require a response. All factual allegations that are contained in this paragraph are denied.

3. As to the allegations contained in Paragraph 4 of the Petition, BellSouth is without sufficient information or knowledge to either admit or deny these allegations. Accordingly, they are deemed to be denied.

4. As to the allegations contained in Paragraphs 5 through 9 of the Petition, these allegations are denied.

5. As to the allegations contained in Paragraph 10 of the Petition, BellSouth denies these allegations except to admit that the portions of the General Subscriber Service Tariff quoted therein appear to be set forth accurately.

6. As to the allegations contained in Paragraph 11 of the Petition, BellSouth states that much of the substance of Paragraph 11 does not constitute factual allegations that require a response. All factual allegations that are contained in this paragraph are denied.

7. As to the allegations contained in Paragraph 12 of the Petition, BellSouth admits that Telenet filed a document styled "Petition for Temporary Injunction" in the 17th Judicial Circuit In and For Broward County, Florida.

8. As to the allegations contained in Paragraph 13 of the Petition, most of the substance of this paragraph does not constitute factual allegations that require a response. The

factual allegations that are contained in this Paragraph are denied.

9. As to the allegations contained in Paragraph 14 of the Petition, most of the substance of this paragraph does not constitute factual allegations that require a response. The factual allegations that are contained in this Paragraph are denied.

10. As to the allegations contained in Paragraph 15 of the Petition, most of the substance of this paragraph does not constitute factual allegations that require a response. The factual allegations that are contained in this Paragraph are denied.

11. As to the allegations contained in Paragraph 16 of the Petition, most of the substance of this paragraph does not constitute factual allegations that require a response. The factual allegations that are contained in this Paragraph are denied. Specifically, BellSouth denies that there is any discrimination whatsoever in the application of the subject tariff.

12. As to the allegations contained in Paragraphs 17 and 18 of the Petition, much of the substance of these paragraphs do not constitute factual allegations that require a response. The

factual allegations that are contained in this Paragraph are denied.

13. As to the allegations contained in Paragraph 19 of the Petition, most of the substance of this paragraph does not constitute factual allegations that require a response. The factual allegations that are contained in this Paragraph are denied. Moreover, BellSouth specifically denies the allegations of this Paragraph as to the purpose of the tariff restrictions on Call Forwarding services. The subject restrictions apply to the usage of these services by any customer, regardless of whether the ultimate end user purchases the service directly from BellSouth or through a reseller.

14. As to the allegations contained in Paragraph 20 of the Petition, much of the substance of this paragraph does not constitute factual allegations that require a response. The factual allegations that are contained in this Paragraph are denied. Moreover, BellSouth specifically denies that the public interest would be served by eliminating the tariffed restrictions on the use of Call Forwarding.

15. As to the allegations contained in Paragraph 21 of the Petition, much of the substance of this paragraph does not constitute factual allegations that require a response. The

factual allegations that are contained in this Paragraph are denied. Nevertheless, BellSouth specifically denies that the tariff provision in question is unreasonable and/or discriminatory.

16. As to the allegations contained in Paragraph 22 of the Petition, these allegations are denied.

17. As to the allegations contained in Paragraph 23 of the Petition, BellSouth states that if this Petition raised an issue that is subject to arbitration, then the statutory 120 day limitation would apply. As set forth below, however, this is not a proper case for arbitration. Accordingly, these allegations are denied.

18. As to the allegations contained in the section of the Petition entitled "Demand for Relief", Paragraphs 1 and 2 do not contain factual allegations to which a response is required. Accordingly, they are deemed to be denied.

19. Any allegations of the Petition not specifically addressed above are hereby denied.

MOTION TO DISMISS

20. The Florida Public Service Commission ("Commission") should dismiss the Petition because it does not set forth a proper basis for arbitration under the pertinent Florida

statutory authority. Specifically, the Petitioner has requested arbitration pursuant to Section 364.161, Florida Statutes. This statutory provision sets forth a process whereby parties are to negotiate the "terms, conditions, and prices ..." of any feasible request for the purchase of unbundled network elements and/or services that are purchased for resale. (Section 364.161(1)). This statute further provides that if the parties are unable to negotiate an agreement for unbundling and/or resale, then the Commission shall arbitrate the dispute within 120 days.

21. A review of the allegations of the Petition, however, make clear that there is essentially no dispute as to prices, terms and conditions. Instead, Telenet simply wishes to purchase (and at the present time has, indeed, purchased) tariffed call forwarding services according to the terms, conditions and price that are set forth in the applicable tariff. 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, and which define the service offering.

22. Specifically, BellSouth's General Subscriber Service Tariff defines Call Forwarding as "... an arrangement for transferring incoming calls to another local service telephone number by dialing a code and the number of the service to which

calls are to be transferred. (A13.9.1.A.1,GSST) (emphasis added). Moreover, this same tariff section states that "Call Forwarding shall not be used to extend calls on a planned and continuing basis to intentionally avoid the payment in whole or in part of message toll charges that would regularly be applicable between the station originating the call and the station to which the call is transferred" (Id.).

23. The allegations of the complaint notwithstanding, the fact is that this definition and tariff restriction taken together, define the proper usage of the service in all instances. Call Forwarding is not intended to be utilized as a means to avoid toll calls. For this reason, the tariff specifically prohibits any systematic use of the service for this purpose. This restriction applies equally to end users of the service who purchase it from BellSouth as well as those who purchase the service from a reseller. BellSouth simply declined to sell the service to Telenet when it became clear that the Petitioner intended to use the service (or resell the service for use) in a way that violates this uniformly applied restriction. Thus, contrary to Telenet's allegations, there is absolutely nothing discriminatory about BellSouth's application of the tariff.

24. Nevertheless, Telenet apparently wishes to challenge either this tariff restriction or BellSouth's application of it. This being the case, the appropriate procedure is not to petition for arbitration, but rather to file a complaint. Telenet could utilize the procedures set forth in Rule 25-22.032, F.A.C. Alternatively, it could file a formal complaint under the general provisions of Rule 25-22.036, F.A.C. In either event, however, the subject dispute is not the proper subject of arbitration.

25. Although BellSouth believes that the arbitration Petition is inadequately pled, and that Telenet's "complaint" is ultimately without merit, BellSouth acknowledges that Telenet has the substantive right to challenge, in a proper procedural manner, the tariff restriction in question. For this reason, BellSouth would have no objection to the Commission treating the Petition for arbitration as if it were a properly filed Complaint that functions to seek a determination of the validity of BellSouth's tariff.

WHEREFORE, BellSouth respectfully requests the entry of an Order Dismissing the Petition for Arbitration of Telenet, or, alternatively, ordering that the Petition shall be treated, not as an arbitration request under 364.121, but rather as a complaint directed to the subject portion of BellSouth's tariff.

Respectfully Submitted this 5th day of December, 1996.

BELLSOUTH TELECOMMUNICATIONS, INC.

Robert G. Beatty (SL)

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