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

RE: Docket No. 961346-TP

Dear Ms. Bayo:

Enclosed please find an original and fifteen (15) copies of the TESTIMONY OF MITCHELL A. KUPINSKY ON BEHALF OF TELENET OF SOUTH FLORIDA, INC.

Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed, stamped envelope.

Sincerely,



Douglas G. Bonner, Esq.
Colin Alberts, Esq.

Counsel for Telenet of South Florida, 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 Federal Express this 7th day of January, 1997 to the following:

J. Phillip Carver
BellSouth Telecommunications, Inc.
Suite 400
150 So. Monroe Street
Tallahassee, Florida 32301

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



Betty Poteat

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Resolution of Petition(s) to Establish Right)
of Access of Telenet of South Florida, Inc.)
to Call Forwarding Lines Offered by BellSouth)
Telecommunications, Inc., and for Arbitration)

Docket No. 961346-TP

**TESTIMONY OF
MITCHELL A. KUPINSKY
ON BEHALF OF
TELENET OF SOUTH FLORIDA, INC.**

January 8, 1997

DOCUMENT NUMBER-DATE

00180 JAN-85

FPSC-RECORDS/REPORTING

**DIRECT TESTIMONY OF
MITCHELL A. KUPINSKY
ON BEHALF OF
TELENET OF SOUTH FLORIDA, INC.**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Mitchell A. Kupinsky. My business address is Telenet of South Florida,
3 Inc. ("Telenet"), 10422 Taft Street, Pembroke Pines, Florida 33026.

4 **Q. WHAT IS YOUR POSITION WITH TELENET OF SOUTH FLORIDA, INC.?**

5 A. I am the Vice President and Chief Executive Officer.

6 **Q. WHAT ARE YOUR RESPONSIBILITIES IN THAT POSITION?**

7 A. I am responsible for both the day-to-day operations and strategic direction of Telenet.
8 In this capacity I am responsible for coordinating negotiations with the suppliers and
9 local exchange carriers, including BellSouth Telecommunications, Inc.
10 ("BellSouth"), that Telenet needs agreements with if it is to provide service to its
11 customers.

12 **Q. PLEASE DESCRIBE YOUR PREVIOUS PROFESSIONAL EXPERIENCE
13 AND EDUCATIONAL BACKGROUND.**

14 A. I have a B.S. in General Business from New York University. I began work in the
15 telecommunications industry in January 1988 as an apprentice with Martek Electric
16 for commercial communications wiring projects throughout southern California,
17 which gave me invaluable experience in the construction and maintenance of

1 telecommunications networks. I remained associated with Martek until December
2 1992. From January 1993 until November 1995, I was employed at Park Granada
3 Investments, as an associate, where I was responsible for conducting financial
4 analyses on several potential investment properties, as well as selling and purchasing
5 numerous such properties. I joined Telenet upon its founding in November 1995,
6 where I have been since. During this time period, I have been involved in all aspects
7 of starting up and running the business, including hiring personnel, marketing, sales,
8 and technical operations.

9 **Q. PLEASE DESCRIBE THE OPERATIONS OF TELENET OF SOUTH**
10 **FLORIDA, INC.**

11 **A.** Telenet of South Florida, Inc. is a telecommunications company with operations
12 throughout the tri-county area of Dade, Broward and Palm Beach counties. Telenet
13 was the among the first Florida Alternative Local Exchange Carriers ("ALECs") to
14 be certified by the Florida Public Service Commission ("Commission").

15 Since May 1996, Telenet has offered local exchange services in competition
16 with BellSouth. Telenet uses a computer voice mail network which provides all
17 customers with access codes and enables them to use what are usually considered toll
18 call lines for a flat fee within the existing service area. This is accomplished by

1 utilizing forwarding lines to create direct connections between each Telenet
2 Interactive Voice Response (“IVR”) switching system, which route calls between
3 each other. Long-distance links between IVRs are broken up by forwarding links
4 into shorter cascaded local links. Telenet is currently offering service on the
5 Southeast coast of Florida, between Broward, Palm Beach and Dade counties, from
6 Homestead to Boynton (and prospectively to Jupiter).

7 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

8 **A.** No.

9 **Q. IS TELENET CURRENTLY CERTIFICATED TO PROVIDE SERVICE IN**
10 **FLORIDA?**

11 **A.** Yes. The Commission, in its Decision of April 17, 1996 in Docket No. 960043-TX,
12 certified Telenet to operate as an Alternative Local Exchange Carrier in Florida.

13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 **A.** I am testifying in support of Telenet’s Petition for Arbitration of rates, terms and
15 conditions filed with the Commission pursuant to Florida Statutes section 364.161.
16 Telenet’s attempts at negotiations with BellSouth have failed to yield acceptable
17 arrangements. Telenet is therefore petitioning the Commission, in accordance with
18 the above-referenced statute, for BellSouth to provide unbundled services, network

1 features, functions or capabilities, and specifically the unbundled call forwarding
2 services and supporting hardware. The Commission has framed this arbitration in
3 terms of the question of whether BellSouth may sell its Call Forwarding service
4 subject to the restrictions of its General Subscriber Service Tariff ("Tariff").

5 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

6 **A.** BellSouth's tariff restrictions on the use of call forwarding services are not beneficial
7 to the public interest, unnecessary from an economic standpoint, are anticompetitive,
8 and are impermissible under Florida or federal law. Moreover, BellSouth has an
9 affirmative obligation to sell call forwarding services to ALECs under 47 U.S.C.
10 sections 251 (c)(4)(B) and (b)(1).

11 Consistent with the passage of the Telecommunications Act of 1996 and
12 Florida Statutes section 36, the Commission should remove all anticompetitive and
13 unreasonable restrictions from BellSouth tariffs. Allowing BellSouth to maintain its
14 monopoly for intraLATA telephone calls does not aid the development of
15 competition or ensure universal service. BellSouth claims that restriction of the
16 usage of Call Forwarding services by its customers, clearly aimed at resellers so as
17 to preserve BellSouth's intraLATA toll revenues, should be disregarded unless and
18 until it demonstrates that with respect to certain customers or areas -- when all

1 revenues from the customer are considered and costs are properly distributed between
2 the various services -- BellSouth cannot recover its costs for furnishing Call
3 Forwarding services. BellSouth Tariff section A13.9.1A.1.

4 The Commission should reject any attempt by BellSouth to use the tariffed
5 restrictions on the use of Call Forwarding services as a means of preventing new
6 entrants from competing for its lucrative intraLATA toll market.

7 **Q. AS A THRESHOLD MATTER, WHAT IS MEANT BY THE TERM "CALL**
8 **FORWARDING SERVICES"?**

9 **A.** By "Call Forwarding" services, I refer to a variety of arrangements that BellSouth,
10 and nearly every other incumbent LEC in the nation, offers to end-users, which allow
11 for the routing of incoming calls to be sent to another telephone number and location
12 by means of dialing an appropriate code. BellSouth offers such arrangements in its
13 Tariff.

14 **Q. SPECIFICALLY, WHAT CALL FORWARDING SERVICES ARE**
15 **REQUIRED FOR TELENET TO PROVIDE VIABLE COMPETITIVE**
16 **LOCAL EXCHANGE SERVICE?**

17 **A.** Telenet requires "remote access to call forwarding." This type of call forwarding
18 offers the "Multi path feature," which allows for a multi path call forwarding

1 customer such as Telenet to specify the number of calls that can be received and
2 forwarded simultaneously to the forward-to-telephone number. In areas with older
3 central offices, or 1-A's, a "Special Assembly" is required in order to obtain this
4 multi path feature. Also needed are standard business lines with prestige service
5 features such as "user transfer" and "3 way calling," and "T-1 lines" which Bell
6 South markets as "Mega Link Channel Service" which also includes the installation
7 Network Access Registers ("NARs"), which interface and connect with the various
8 IVR switches.

9 **Q. WAS THERE AGREEMENT ON ANY OF THESE SERVICE ISSUES WITH**
10 **BELLSOUTH?**

11 **A.** No. BellSouth and Telenet have been unable to reach a permanent agreement after
12 BellSouth initially placed orders for Telenet. Throughout November and December
13 of 1995, I personally placed orders for services including multi-path call forwarding
14 offered by BellSouth, and we received them. This allowed Telenet to create its initial
15 network in Dade and Broward counties. On June 4, 1996, William Demers was hired
16 as General Manager for Telenet. Mr. Demers and I began negotiations with
17 BellSouth representatives in July 1996 in order to obtain the connections and
18 assemblies from BellSouth necessary for Telenet's operations to expand to Palm

1 Beach county, and to resolve outstanding problems with systems already installed.
2 Among the services sought by Telenet throughout this period was a system known
3 as "remote access to call forwarding," which has multipath features. BellSouth
4 representatives assured Mr. Demers that BellSouth would be happy to provide
5 Telenet with whatever BellSouth services were needed, in September, 1996. Mr.
6 Demers and I had made it clear in July and August negotiations with BellSouth that
7 Telenet would be seeking to use multi-path call forwarding, and as a result Telenet
8 relied upon BellSouth's representations that it would provide all necessary services
9 in going forward with establishing its operating plan and expanding its network.

10 Based on these meetings, my father, Marvin Kupinsky, Telenet's President
11 and sole stockholder, made a substantial investment to purchase a network of these
12 lines, and placed orders for "special assemblies" for business purposes which were
13 obvious to the vendor, BellSouth. Moreover, through Telenet marketing efforts,
14 approximately 100 customers had become Telenet customers, and are currently using
15 the existing service. At least 250 additional customers have also made commitments
16 to use Telenet's services once operations are fully extended to Palm Beach County.

17 Thus, since November 1995, and particularly from July, 1996 to date,
18 numerous work orders have been processed by BellSouth for Telenet as its network

1 architecture was built and expanded. In late August and early September of 1996,
2 testing done by Telenet revealed that a large percentage of the lines which Telenet
3 had earlier purchased from BellSouth were not equipped with the multipath call
4 forwarding features that had been ordered in conjunction with the lines and which
5 BellSouth had originally agreed to provide.

6 On September 16, 1996, a meeting was held between Mr. Demers, Marvin
7 Kupinsky, and myself, of Telenet, and O.G. "Doc" Moore and Tony Aniello,
8 representing BellSouth. The purpose of this meeting was to arrange for the sale by
9 BellSouth to Telenet of special assemblies and T-1 lines which would enable Telenet
10 to expand its service offerings and service growing customer demand (including
11 service to its 250 newer customers), and to allow Telenet to ascertain why the
12 ordered multi-path call forwarding features had not been provided with the lines
13 ordered in July and August. The assemblies and T-1 lines would allow call
14 multiplexing as envisioned in Telenet's operational plan.

15 On September 17, 1996, the day after the September 16 meeting, BellSouth
16 indicated for the first time, that in its view, Telenet's services were in violation of the
17 BellSouth General Subscriber Service Tariff ("Tariff"), and that Telenet would have

1 to negotiate a Resale Agreement with BellSouth if it wished to continue to use multi-
2 path call forwarding.

3 On September 19, 1996, BellSouth stated by letter to Telenet that it would not
4 authorize any new service for Telenet on behalf of BellSouth until Telenet initiated
5 a request for a Resale Agreement. Telenet is not delinquent in payments to
6 BellSouth for any services provided and BellSouth is not claiming that any payments
7 are past due.

8 Then, on October 10, 1996, Demers again spoke with Moore. Moore stated
9 that BellSouth had decided that Telenet's operations, particularly the use of multi-
10 path call forwarding, was a violation of Section A13.9.1A.1 of BellSouth's Tariff.
11 Moore then stated that Telenet was on notice of this tariff violation and demanded
12 that Telenet cease and desist use of multi-path call forwarding. By letter dated
13 October 15, 1996, BellSouth advised Telenet that in the absence of "proof" that a
14 violation of BellSouth's call forwarding tariff was not occurring, BellSouth would
15 remove its provision of multi-path call forwarding services on November 21, 1996.

1 **Q. YOU STATED ABOVE THAT THE COMMISSION SHOULD FACILITATE**
2 **COMPETITION IN THE LOCAL EXCHANGE MARKET BY REQUIRING**
3 **BELLSOUTH TO OFFER ITS CALL FORWARDING SERVICES AND**
4 **SUPPORTING HARDWARE ON AN UNBUNDLED BASIS. WHY IS THIS**
5 **NECESSARY?**

6 A. The importance of unbundling Call Forwarding services to the development of actual
7 competition derives directly from BellSouth's continued control of significant
8 monopoly elements. Unbundled (and equally available) call forwarding, without end-
9 user restrictions, will provide access to an essential bottleneck facility controlled by
10 BellSouth, and introduce much needed competition in the intraLATA market
11 dominated by BellSouth.

12 BellSouth continues to have monopoly control over the longer lines of the
13 intraLATA portion of the telecommunications network. Service between most
14 BellSouth customers spread out over the tri-county area of Southeastern Florida, and
15 in other portions of the state, is virtually the exclusive province of BellSouth. This
16 monopoly results from the fact that this intraLATA network consists mostly of
17 transmission facilities carrying large volumes of traffic, spread over wide geographic
18 areas. The only economically efficient avenue for competitors is to utilize the

1 BellSouth intraLATA lines at cost-based rates. To construct ubiquitous competing
2 transmission and switching facilities would be cost-prohibitive. The intraLATA
3 network, therefore, is an essential bottleneck service for any potential provider of
4 alternative local exchange service.

5 Given the benefits of its monopoly status, BellSouth has constructed
6 intraLATA networks that provide access to every interexchange carrier and virtually
7 all residential and business premises in its territory. In building these networks,
8 BellSouth has had the singular advantage of favorable governmental franchises,
9 access to rights-of-way, unique tax treatment, access to buildings on an unpaid basis,
10 and protection against competition. Companies such as Telenet that now seek to
11 compete in the provision of intraLATA service cannot possibly enjoy these
12 advantages, and it would be both impossible and economically inefficient in most
13 cases for them to seek to construct duplicate intraLATA lines and facilities.
14 Replication of the existing intraLATA network (using either facilities similar to
15 BellSouth's or alternative technologies such as wireless loops or cable television
16 plant), to say nothing of employing leased private lines, would be cost-prohibitive;
17 moreover, competitors cannot obtain public and private rights-of-way, franchises, or
18 building access on the same terms as BellSouth enjoys.

1 **Q. WHAT SPECIFIC UNBUNDLED FEATURES, FUNCTIONS AND**
2 **CAPABILITIES SHOULD BE MADE AVAILABLE?**

3 A. The portion of intraLATA service that Telenet seeks to provide Florida consumers
4 with can be represented as being comprised of two key components: the lines, which
5 provide the transmission path between customers in different counties, and the
6 multiplexing systems, which allow the interface to the switch, and the capability to
7 originate, forward and terminate calls as Telenet's network requires. Unbundling the
8 Call Forwarding services consists of physically unbundling the line and routing
9 switch elements, and pricing them individually on an economically viable basis.

10 Specifically, BellSouth should immediately unbundle and make available on
11 a nondiscriminatory basis all of its Call Forwarding services, including two separate
12 elements: the lines, both standard (prestige services) and T-1 (Mega Link Channel
13 Services) plus the routing factors and hardware, or special assembly, that allow for
14 multi path call forwarding.

15 In order for Telenet to efficiently offer telephone services to end users,
16 BellSouth should unbundle and separately price and offer these elements such that
17 Telenet will be able to lease and interconnect to whichever of these unbundled

1 elements Telenet requires and to combine the BellSouth-provided elements with
2 facilities and services that Telenet may provide itself in the future.

3 **Q. PLEASE DESCRIBE THE PUBLIC INTEREST BENEFITS ASSOCIATED**
4 **WITH TELENET'S PROPOSED OFFERING OF LOCAL SERVICES IN**
5 **FLORIDA.**

6 **A.** As described above, a grant of Telenet's application will further the public interest
7 by expanding the availability of alternative sources of local services in the state. The
8 State of Florida has already recognized the overall benefits of competition in the
9 local exchange market, given that communications services should be available from
10 a variety of providers. It is my opinion that Telenet's service will provide Florida
11 customers with new options for their local service needs. Telenet will offer high
12 quality service by reselling the services of the incumbent local exchange carriers, and
13 will provide its customers with innovative customer care and service. Moreover, the
14 presence of Telenet in the market will provide an incentive for BellSouth to reduce
15 its high intraLATA toll prices, offer more innovative services, and improve its
16 quality of service, thereby benefitting all consumers in Florida. Thus, the public will
17 benefit from Telenet's entry both directly, through the use of the high-quality,
18 competitively priced and reliable local exchange services that will be offered, and

1 indirectly because the expanded presence of Telenet in this market will motivate
2 BellSouth and others to be competitive. The recent experience of Florida and other
3 states with the introduction of competition, and particularly resale competition, into
4 other telecommunications markets, such as long distance, competitive access, and
5 customer premises equipment has led to all of these public interest benefits in each
6 of these markets. Telenet is eager to be among the first companies in this state to
7 bring these public interest benefits to the market for local services. And because
8 Telenet is currently a successful, rapidly growing provider of telecommunications
9 services, it is my opinion that Telenet will indeed be able to bring those benefits to
10 consumers in this state.

11 **Q. DOES THE RECENTLY ENACTED FLORIDA TELECOMMUNICATIONS**
12 **LAW REQUIRE THE COMMISSION TO ESTABLISH ACCESS FOR**
13 **ALTERNATIVE LOCAL EXCHANGE CARRIERS TO UNBUNDLED**
14 **NETWORK ELEMENTS SUCH AS CALL FORWARDING SERVICES AT**
15 **JUST RATES AND REASONABLE TERMS?**

16 **A.** While I am not a lawyer, my reading of the statute indicates that the Commission
17 shall establish access to unbundled network elements, and that the wording which
18 provides for “features, functions, and capabilities, including . . . systems and routing

1 processes" clearly includes the Call Forwarding services which Telenet seeks from
2 BellSouth. Florida Statutes section 364.161(1). In establishing this right of access,
3 I also note that the statute requires that BellSouth, as an incumbent LEC, may not
4 impose any restrictions on the resale of those services and facilities except as this
5 Commission may determine are reasonable. Florida Statutes section 364.161(2).
6 Telenet's Petition is meant to bring BellSouth's unlawful tariff restriction to the
7 Commission's attention, and to demonstrate that it is manifestly unreasonable and
8 anticompetitive.

9 **Q. HAVE INCUMBENT LECS IN OTHER STATES SHOWN A WILLINGNESS**
10 **TO ESTABLISH A FAIR METHOD OF MAKING CALL FORWARDING**
11 **SERVICES AVAILABLE FOR RESALE TO NEW CARRIERS?**

12 **A.** No. To my knowledge, the incumbent LECs have fairly consistently attempted to
13 use tariff restrictions as a means to deny alternate carriers access to network elements
14 such as Call Forwarding. This prevents local exchange competition -- particularly
15 residential service -- from being offered on an economically viable basis. When
16 examined, it is clear that these restrictions are really designed to maintain the LECs'
17 revenues at existing levels, shielding the LEC from any impact resulting from
18 competition.

1 **Q. DO YOU KNOW OF ANY SIMILAR LEGAL CHALLENGES TO THESE**
2 **TYPES OF TARIFF RESTRICTIONS?**

3 **A.** Yes. In Ohio, at least two companies have sought to employ similar services to
4 compete with the intraLATA toll service dominated by the incumbent LECs that are
5 entrenched in that state. Informed of tariff restrictions after they already were in
6 operation, and facing disconnect orders, one of these companies (Ohio Direct
7 Communications, Inc.) filed a complaint with the Ohio Public Utilities Commission
8 against the relevant LECs, seeking similar relief as Telenet does, and on much the
9 same grounds. This can be found in *In the Matter of the Complaint of Ohio Direct*
10 *Communications, Inc. vs. Alltel Ohio, Inc. and The Western Reserve Telephone*
11 *Company relative to the alleged proposed termination of service, because of*
12 *inadequate notice, violation of policy of the state of Ohio, discrimination, undue*
13 *regulation, and to prevent injury to the public*, Docket No. 95-819-TP-CSS. The
14 other similarly situated alternative carrier, Ohio Toll Free, Inc., and the main
15 incumbent LEC in that state, Ameritech-Ohio, Inc., have intervened in that case,
16 taking opposite positions. The Ohio Commission has yet to render a decision in this
17 docket.

1 **Q. WHY WOULD UPHOLDING THE TARIFF RESTRICTION OF CALL**
2 **FORWARDING SERVICES VIOLATE FLORIDA LAW AND THE**
3 **TELECOMMUNICATIONS ACT OF 1996?**

4 **A.** Clearly that approach would violate both the spirit and letter of the Florida statutes
5 and the federal Telecommunications Act of 1996. If an alternate carrier is forced to
6 offer its services at a loss, or is barred from acquiring necessary services from an
7 incumbent LEC, it is clearly foreclosed from entry. The entry of new alternate
8 carriers was explicitly envisioned by the Florida Legislature when it passed new
9 telecommunications legislation. Moreover, the very section of the Statute which
10 allows Telenet to seek arbitration before this Commission expressly forbids
11 unreasonable restrictions on unbundled element resale by BellSouth, among others.
12 The Commission's staff recently concluded that Telenet's petition states a cause of
13 action for which relief may be sought from the Commission, and it recommended
14 that the Commission deny BellSouth's motion to dismiss Telenet's petition.
15 Memorandum to Director, Division of Records and Reporting, December 26, 1996.
16 The tariff restriction BellSouth is relying on is certainly unreasonable and
17 anticompetitive under existing law, and the Commission must reject it.

Direct Testimony of Mitchell A. Kupinsky
Telenet of South Florida, Inc., Fla. PSC Docket No. 961346-TP
January 8, 1997
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1 Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

2 A. Yes.