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January 15, 1997

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

RE: Docket No. 961346-TP

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Direct Testimony of Robert C. Scheye. Please file these documents in the captioned docket.

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 on the parties shown on the attached Certificate of Service by facsimile and Federal Express.

Sincerely,

*Nancy B. White*  
(AW)

Nancy B. White

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- IN 3
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Enclosures

cc: All Parties of Record  
A. M. Lombardo  
R. G. Beatty  
W. J. Ellenberg

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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 Facsimile and Federal Express this 15th day of January, 1997 to the following:

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Nancy B. White  
(Att)

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**BELLSOUTH TELECOMMUNICATIONS, INC.**  
**TESTIMONY OF ROBERT C. SCHEYE**  
**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**DOCKET NO. 961346-TP**  
**JANUARY 15, 1997**

Q. Please state your name, address and position with BellSouth Telecommunications, Inc. ( hereinafter referred to as "BellSouth" or "The Company").

A. My name is Robert C. Scheye and I am employed by BellSouth as a Senior Director in Strategic Management. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. Please give a brief description of your background and experience.

A. I began my telecommunications company career in 1967 with the Chesapeake and Potomac Telephone Company (C&P) after graduating from Loyola College with a Bachelor of Science in Economics. After several regulatory positions in C&P, I went to AT&T in 1979, where I was responsible for the Federal Communications Commission ("FCC") Docket dealing with competition in the long distance market. In 1982, with the announcement of divestiture, our organization became responsible for implementing the Modification of Final Judgment (MFJ) requirements related to nondiscriminatory access charges. In

1           1984, our organization became part of the divested regional companies' staff  
2           organization which became known as Bell Communications Research, Inc.  
3           (Bellcore). I joined BellSouth in 1987 as a Division Manager responsible for  
4           jurisdictional separations and other FCC related matters. In 1993, I moved to  
5           the BellSouth Strategic Management organization where I have been  
6           responsible for various issues including local exchange interconnection,  
7           unbundling and resale.

8

9   Q.    What is the purpose of your testimony?

10

11   A.    The purpose of my testimony is to respond to issues raised by Telenet of South  
12           Florida, Inc. (Telenet) in its request for arbitration by this Commission. Telenet  
13           has requested to resell Custom Calling Services, specifically the Call  
14           Forwarding Features, to avoid the payment of toll charges which violates the  
15           nature of the service and the rules and regulations of the service and, as such,  
16           Telenet's request should be denied by the Commission. BellSouth believes that  
17           Telenet's current use of the Custom Calling Services purchased under the  
18           General Subscriber Service Tariff (GSST) is in violation of the rules and  
19           regulations of the service.

20

21   Q.    Is Telenet authorized to resell local service from BellSouth at this time?

22

23   A.    No. The resale of a retail service can only be conducted after a negotiated or  
24           negotiated/arbitrated agreement has been reached and approved under the terms  
25           of Section 364.162, Florida Statutes or under the provisions of the

1 Telecommunications Act of 1996. No such agreement has been reached or  
2 arbitrated, therefore precluding Telenet from reselling service at this time.

3

4 Q. Why has BellSouth not been able to reach a negotiated agreement with Telenet?

5

6 A. Telenet has requested to resell Custom Calling Service, in particular, the Call  
7 Forwarding features associated with Custom Calling Service, such as Call  
8 Forwarding Variable, Call Forwarding Variable Multipath and Remote Access-  
9 Call Forwarding Variable. The resale of these services, as such, is not the issue.  
10 However, Telenet's apparent intentions are to use these services as a means to  
11 bypass long distance charges. This is contrary to the definition of the Call  
12 Forwarding service and violates the very nature and purpose of the service.

13

14 Q. Please describe the Call Forwarding Services.

15

16 A. Section A13.9.1. A.1. of the Tariff defines Call Forwarding as "... an  
17 arrangement for transferring incoming calls to another *local* service telephone  
18 number by dialing a code and the number of the service to which calls are to be  
19 transferred. In addition, calls may be transferred to a long distance message  
20 telecommunications point subject to availability of necessary facilities in the  
21 central office from which the calls are to be transferred." When such calls are  
22 transferred to a number in another local exchange area, toll rates are charged to  
23 the end user transferring the call. The same definition in the tariff continues:  
24 "Call Forwarding shall not be used to extend calls on a planned and continuing  
25 basis to intentionally avoid the payment in whole or in part, of message toll

1 charges that would regularly be applicable between the station originating the  
2 call and the station to which the call is transferred." This definition and tariff  
3 condition state quite clearly the proper usage of the Call Forwarding features.  
4

5 Q. Please explain the intended use of the Call Forwarding services.

6

7 A. Call Forwarding features are auxiliary features/services offered in addition to  
8 basic telephone service. Call Forward Variable provides an arrangement for  
9 transferring incoming calls to another local service telephone number. The user  
10 activates and deactivates the feature by dialing a code and the telephone number  
11 of the service to which calls are to be transferred. The intended use of Call  
12 Forwarding Variable is to allow subscribers to re-direct their incoming calls  
13 while temporarily away from the location where they normally receive them.  
14 For example, if you were expecting an important call at home but were  
15 obligated for dinner at a friend's, before you leave home you could code your  
16 phone to forward calls from your line to your friend's line.

17

18 The Remote Access enhancement to the Call Forwarding Variable feature is  
19 intended to allow subscribers to activate/deactivate the feature from a remote  
20 location. So if you forgot to code the Call Forwarding feature before you left  
21 home, you could use the Remote Access feature to code the Call Forwarding  
22 from your friend's telephone after your arrival.

23

24 Call Forwarding Variable Multipath provides the capability to specify the  
25 number of calling paths that can be forwarded simultaneously. Businesses are

1 the most common users of this feature -- mainly in conjunction with Memory  
2 Call or Telephone Answering Services.

3

4 Q. How is Telenet misusing these Call Forwarding features?

5

6 A. Telenet is using the Call Forwarding features to forward calls from one local  
7 calling area to another to avoid paying toll charges. Telenet has locations  
8 throughout the SouthEast Florida LATA. Each location is chosen so that it is  
9 within the local calling area or the extended local calling area of the forwarding  
10 location, but includes unique areas that are local from one location but would be  
11 toll from another. This arrangement allows calls to be passed from one location  
12 to another that would otherwise require a toll call without incurring a toll  
13 charge. At each location, Telenet subscribes to one or more of BellSouth's Call  
14 Forwarding features. Local calls may then be call forwarded along paths that  
15 terminate in what have been established by this Commission as long distance  
16 points. In other words, a call is terminated in a location that is outside the local  
17 calling areas of the originating location and therefore is a long distance call. To  
18 further illustrate, the following is an example of the flow-through of a Telenet  
19 customer's long distance call originating in West Palm Beach and terminating  
20 in Miami:

21

- 22 1. A local call is originated in West Palm Beach by the customer dialing a  
23 local Telenet business line.
- 24 2. The Telenet equipment answers the call and asks the end user to enter a  
25 Telenet authorization code.

- 1           3. The end user dials the desired telephone number in Miami.
- 2           4. The Telenet equipment compares the number dialed with their routing
- 3           tables to determine the appropriate forwarding number.
- 4           5. The call is forwarded to another local business line equipped with Call
- 5           Forwarding Multipath, for example, in Boynton Beach.
- 6           6. The call continues to be forwarded as above from location to location
- 7           (Delray Beach, Boca Raton, etc.) until a Telenet location is reached within
- 8           the local calling area of the called destination in Miami where it is then
- 9           processed to the called party.

10

11           In other words, contrary to its definition, Telenet is using the Call Forwarding  
12           features as an arrangement to transfer calls originating from one local calling  
13           area to another local calling area *for the express purpose of avoiding payment of*  
14           *toll charges* between the station originating the call and the station terminating  
15           the call. Telenet's misuse of the service should not be permitted.

16

17   Q.    How is BellSouth's position consistent with the Commission's findings in the  
18           arbitration cases regarding resale issues?

19

20   A.    The Commission determined that resale restrictions other than those specifically  
21           identified in its Order should not be imposed. BellSouth contends that the  
22           limitation of the use of Call Forwarding is not a resale restriction but rather  
23           defines the nature of the service. This definition and tariff limitation define the  
24           proper usage of the service in all instances, whether sold as a retail service or as  
25           a resold service. This limitation is a reasonable and nondiscriminatory



1 condition that applies to all competitors or users of the service, including  
2 BellSouth.

3  
4 IntraLATA toll is designed to provide for the provision of a non-local call  
5 between two points within a Florida LATA. For an intraLATA call BellSouth  
6 will either receive toll or access for the call. If an interLATA call is made by a  
7 BellSouth end user, BellSouth bills access charges to the interexchange carrier  
8 carrying the call. Telenet, in its use of Call Forwarding features is attempting to  
9 circumvent the appropriate tariffs and charges established for long distance  
10 calls.

11  
12 It is clear from the tariff that the intended purpose of the Call Forwarding is to  
13 ensure that appropriate rates are applied when calls are transferred outside the  
14 local calling area. The tariff specifically prohibits any systematic use of the  
15 service to avoid the payment of toll charges. Telenet's use is more than a  
16 violation of a particular tariff term and condition, it is essentially an attempt to  
17 displace one service through the misuse of another service.

18  
19 It is Telenet's intended purpose to place end to end calls that are toll in nature  
20 through the use of Call Forwarding capabilities. If BellSouth's tariffs were  
21 ambiguous or unclear, there may be an issue; however, the tariffs are quite  
22 clear. What Telenet is intending is a direct violation of BellSouth's tariff  
23 through the misuse of the service.

24  
25

1 Q. In light of the Commission's decision concerning resale, does BellSouth believe  
2 the Commission can deny Telenet's request?

3

4 A. Yes. First, BellSouth does not believe that this issue is comparable to the terms  
5 and conditions issues raised in the AT&T and MCI arbitration proceedings.

6 The Telenet issue goes directly to the nature of the service being offered.

7 However, even if the Commission were to find that the service limitation was a  
8 resale restriction, the Commission can still determine that it is a reasonable and  
9 nondiscriminatory limitation and that Telenet cannot use Call Forwarding in the  
10 manner they have requested. Both the Telecom Act and FCC Orders refer to  
11 the state commission's authority to impose just and reasonable limitations on  
12 resale. What Telenet is attempting to do is neither just nor reasonable; it is just  
13 the opposite.

14

15 BellSouth has offerings available for resale for intraLATA toll calling. Telenet  
16 is attempting to avoid use of those services through the misuse of another i.e.,  
17 Call Forwarding. Gaming the process, which appears to be what Telenet is  
18 attempting to do, is not reasonable and should not be permitted. There should  
19 be no doubt that both the Act and the FCC Order envisioned that the state  
20 commissions were fully entitled to prevent activities such as those envisioned  
21 here.

22

23 Q. Please describe the statutory and FCC Order references that provide the  
24 Commission with the authority to retain reasonable restrictions and terms and  
25 conditions on the resale of services?

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A. The Florida statute expressly provides that the Commission may determine the reasonableness of any limitations on the resale of a retail service. Section 364.161(2) of Florida Statutes states: “other than ensuring that the resale is of the same class of service, no local exchange telecommunications company may impose any restrictions on the resale of its services or facilities except those the commission may determine are reasonable.”

Further, the Telecommunications Act of 1996 (the Act) specifically permits the Commission to apply reasonable and nondiscriminatory restrictions on the resale of BellSouth’s retail services. Section 251(c)(4)(B) of the Act states that the local exchange company is “not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunication service, except that a State commission may, consistent with the regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of customers.”

The FCC, in its Order issued on August 8, 1996 specifically approved various resale restrictions. Neither the Florida statute, the Act nor the FCC’s Order preclude the local exchange company from imposing conditions and limitations on its services but rather prohibit only unreasonable or discriminatory conditions on the resale of such services.

1 Q. Are the limitations on the Call Forwarding service reasonable and  
2 nondiscriminatory?

3

4 A. Yes. The tariff limitation promotes more efficient use of the network. Call  
5 Forwarding was not designed as a toll service. Using Call Forwarding to  
6 transfer calls from one central office to another to complete a toll call will  
7 generate additional traffic over facilities that were not engineered for such  
8 inordinate use.

9

10 Second, the price of the Call Forwarding service is clearly affected by the terms  
11 and conditions found in the tariff just as the terms and conditions affect the  
12 price of other tariffed services. A cross-class example illustrates this  
13 relationship even though BellSouth realizes that the Commission retained the  
14 restriction which prevents residential service from being resold to business  
15 customers. The highest single line basic residential rate is \$10.65 while the  
16 business rate is many times higher. The price is directly affected by the terms  
17 and conditions of the service. Without restrictions, the price of many tariffed  
18 services would be higher. Further, elimination of the terms and conditions may  
19 affect the general availability of the service. Certainly, elimination of the Call  
20 Forwarding restriction would erase distinctions between toll and local service  
21 and create tariff arbitrage. If the unrestricted use of Call Forwarding were  
22 permitted, and particularly as a means of bypassing toll charges, BellSouth  
23 would need to modify the price significantly to recognize that it had become a  
24 toll and access substitute or even reconsider whether or not this service should  
25 continue to be offered.

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The terms and conditions currently contained in the Call Forwarding tariff were approved by this Commission. Such terms and conditions would not have been approved if this Commission found them to be unreasonable or discriminatory. Terms and conditions which determine the application of the tariff should be presumed reasonable for purposes of resale and should be applied to all end user customers of the tariffed service unless the Commission determines that a particular term or condition is unreasonable or discriminatory.

The service limitation is not discriminatory to resellers or to a reseller's end users because BellSouth's own end users cannot use Call Forwarding to bypass toll charges. This limitation is applied to anyone who uses the service. The limitation is reasonable and nondiscriminatory to both BellSouth customers and to a reseller's customers. In fact, to apply the restriction to BellSouth customers, but not to other end user customers, would be discriminatory.

Q. Are there other provisions in the Florida statute which support retaining the limitations on this service?

A. Yes. Section 364.16(3) of the Florida statutes prohibits a "local exchange company or an alternative local exchange company from knowingly delivering traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service." The unrestricted resale of Call Forwarding service by Telenet would also result in the delivery of traffic for

1       which terminating access service charges would otherwise apply. The Florida  
2       statute clearly did not intend for interconnection or resale arrangements to be a  
3       conduit for the bypass of access charges.

4

5   Q.   Telenet alleges that its unrestricted use of the Call Forwarding Service is  
6       required to compete in the intraLATA market? Is this true?

7

8   A.   No. Telenet only wants to use Call Forwarding as a means to bypass toll  
9       charges. Telenet has multiple ways it can compete for the toll market. Telenet  
10      can use its own facilities or use its facilities in combination with BellSouth  
11      unbundled elements to provide intraLATA long distance service. Telenet can  
12      also resell intraLATA service provided by other long distance companies or  
13      local companies or resell long distance services purchased from BellSouth at the  
14      avoided discount rate.

15

16   Q.   Telenet proposes that removal of the Tariff restrictions will advance the public  
17      interest for Florida telecommunications subscribers and "create a more robust  
18      and permanent form of local exchange competition". Do you agree?

19

20   A.   No. BellSouth supports full and open competition in the local exchange and  
21      long distance markets and believes that competition in the industry will benefit  
22      all Florida customers. Rules are being rewritten by this Commission and the  
23      Federal Communications Commission to develop a fair and even playing field  
24      for the telecommunications industry as a whole. However, the intent of  
25      legislation has not been to provide Telenet with the authority to misuse facilities

1 and set up an arbitrage situation such as they have and resell BellSouth's local  
2 service as toll service. Further, there are rules in place today, long adopted by  
3 this Commission, that establish pricing relationships between local and toll  
4 service. Allowing Telenet (and eventually others) to misuse Call Forwarding as  
5 a means to bypass toll service or access charges will undermine this process.

6

7 Q. Please summarize your testimony.

8

9 A. BellSouth provides Call Forwarding for local service usage as defined in its  
10 General Subscriber Service Tariff. The tariff specifically prohibits any  
11 systematic use of the service as a means to bypass toll calls and applies equally  
12 to all BellSouth end users of the service. Telenet's current use of the call  
13 forwarding features is in direct violation of the Tariff. BellSouth submits,  
14 therefore, that Telenet's complaint is without merit and proposes to discontinue  
15 Telenet's current subscription to the these features and to limit any further  
16 subscription for their intended use. BellSouth further requests that the  
17 Commission determine that the current terms and conditions included in the  
18 tariff are reasonable and nondiscriminatory and, therefore, that Telenet's request  
19 for unrestricted resale of this service should be rejected.

20

21 Q. Does this conclude your testimony?

22

23 A. Yes.

24

25