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Legal Department

NANCY B. WHITE  
General Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404)335-0710

January 27, 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 Rebuttal 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.

Sincerely,

*Nancy B. White (SL)*

Nancy B. White

ACK \_\_\_\_\_

AFA \_\_\_\_\_

APP \_\_\_\_\_

CAF \_\_\_\_\_

Enclosures

CMU Green \_\_\_\_\_

All Parties of Record

CTR \_\_\_\_\_

A. M. Lombardo

EAG \_\_\_\_\_

R. G. Beatty

LEG 1 \_\_\_\_\_

W. J. Ellenberg

LIN 2 tag \_\_\_\_\_

OPC \_\_\_\_\_

RCH \_\_\_\_\_

SEC 1 \_\_\_\_\_

WAS \_\_\_\_\_

OTH \_\_\_\_\_

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DOCKET NO. 961346-TP

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

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

Nancy S. White (Bd)

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BELLSOUTH TELECOMMUNICATIONS, INC.  
REBUTTAL TESTIMONY OF ROBERT SCHEYE  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 961346-TP  
JANUARY 27, 1997

Q. Please state your name, address and position with BellSouth telecommunications, inc. ("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 address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. Have you filed direct testimony in this docket?

A. Yes. I filed direct testimony on behalf of BellSouth on January 15, 1997

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my testimony is to rebut the position of Telenet Of South Florida, Inc. (Telenet) that the toll bypass prohibition in the Call Forwarding tariff should be removed and not applied to Telenet. I rebut specific allegations raised in the direct testimony of Mitchell Kupinsky. Additionally, I clarify the difference between a tariff obligation imposed upon customers

1 who purchase a service and restrictions on resale. Finally, BellSouth  
2 requests that the Commission affirm the toll bypass prohibition in the tariff  
3 as reasonable and nondiscriminatory and also confirm BellSouth's  
4 authority to discontinue Call Forwarding service for its continued misuse.  
5

6 Q. What is Telenet requesting and claiming in its testimony?  
7

8 A. Basically, at the heart of this issue, is that Telenet wants to use BellSouth's  
9 Call Forwarding service to provide intraLATA toll service to its customers.  
10 The current General Subscriber Service Tariff as referenced in Section  
11 A13.9.A.1 prohibits the use of Call Forwarding to bypass toll charges.  
12 Telenet wants to use the service in precisely this manner. Mr. Kupinsky  
13 claims that the toll bypass prohibition in the tariff is unreasonable and  
14 discriminatory. He further claims that this tariff prohibition is not  
15 permissible under the Florida Statute and is inconsistent with the  
16 Telecommunications Act of 1996 ("the Act") because it is an anti-  
17 competitive resale restriction. He alleges that unrestricted use of Call  
18 Forwarding is required for Telenet to compete in the local and toll markets.  
19 Finally, he claims that he has attempted to negotiate an agreement with  
20 BellSouth as an alternate local exchange company (ALEC) and that  
21 BellSouth is attempting to thwart competition by retaining the toll bypass  
22 prohibition.  
23

24 Q. What is BellSouth's response?  
25

1 A. These allegations are totally without merit. Mr. Kupinsky has attempted to  
2 confuse the issues by mixing various concepts -- tariff obligations with  
3 resale restrictions and toll competition with local competition. The  
4 Commission should not be misled through the guise of Telenet's petition  
5 and testimony or through these arbitration proceedings that this is a local  
6 competition issue. It is not. Rather, the fundamental issue being  
7 questioned today is whether the service definition and obligations in  
8 BellSouth's tariff apply to the purchasers of the tariffed service. The  
9 specific question is whether BellSouth may sell its Call Forwarding service  
10 subject to the restriction (the toll bypass prohibition) in its GSST.

11  
12 The answer is absolutely yes. To do anything otherwise would undermine  
13 the entire underlying principles of the tariff process under which a service  
14 is offered, priced and purchased. I will further explain BellSouth's position  
15 by addressing each of Mr. Kupinsky's allegations.

16  
17 Q. Mr. Kupinsky alleges that the toll bypass prohibition in the tariff is  
18 unreasonable, discriminatory and anti-competitive. What is your  
19 response?

20  
21 A. The toll bypass prohibition is none of the above. The tariff requirement is  
22 reasonable because it reflects the nature of the service being offered and  
23 essentially defines the service offering. The dispute is over the  
24 fundamental use of the service and how one service (call forwarding)  
25 relates to another service (intraLATA toll or access).

1 The Commission and the Florida Statutes have established a clear policy  
2 direction for the pricing of local service with a required flat rate option and  
3 for maintaining basic residential service at affordable rates. Local calling  
4 areas have been established through tariffs and Commission proceedings  
5 to delineate local calling areas and to meet community of interest needs.  
6 As this Commission well knows, these local calling areas vary in size,  
7 number of access lines and geographic boundaries. Definitions of services  
8 in BellSouth's tariffs have been established to identify these calling areas,  
9 to define the geographic area for which the flat rate is to be applied and to  
10 distinguish between local, toll and access services. Prices have been  
11 established to recognize these distinctions and reflect Commission policies  
12 for these services. Descriptions of services can include the use to be  
13 made of these services and have been included in the tariffs. The Call  
14 Forwarding service includes a description to clearly indicate that the  
15 service was not to be used to bypass toll charges. This description and  
16 requirement was deemed reasonable when the tariff was approved.

17

18 Further, the toll bypass prohibition is reasonable because Call Forwarding  
19 was not designed as a toll service. Using Call Forwarding to transfer calls  
20 from one central office to another to complete a toll call is not an efficient  
21 use of the network. The prohibition is not discriminatory nor is it anti-  
22 competitive. Call Forwarding is a Custom Calling Feature which can be  
23 used by resellers to enhance their own offerings of local exchange service.  
24 BellSouth's end users and resellers who purchase the tariffed service are  
25 subject to the service capabilities. Further, it cannot be anti-competitive

1 because there are multiple alternative options for resellers to use for  
2 developing competitive services.

3

4 Q. Does the toll bypass prohibition in the call forwarding tariff violate the  
5 Florida Statute and intent of the Telecom act as alleged by Mr. Kupinsky?

6

7 A. No. Mr. Kupinsky is attempting to mislead this Commission to believe that  
8 the toll bypass prohibition is a resale restriction, and as such, resellers are  
9 not subject to the tariff obligation. The toll bypass prohibition is not a  
10 resale restriction. Neither does the fact that the purchaser is a competitor  
11 mean that the tariff requirements are no longer applicable.

12

13 The Florida Statute provides the Commission with the authority to review  
14 and evaluate the reasonableness of BellSouth's tariffs. The tariff  
15 description for Call Forwarding defines the nature of the service.

16 BellSouth is attempting to enforce the tariff. Mr. Kupinsky's request is  
17 actually a complaint on the reasonableness of the tariff not a complaint on  
18 his ability to resell BellSouth's service. He has raised the apparitions of  
19 resale restriction and local competition only as a means to circumvent the  
20 tariff and provide toll service without paying toll and/or access charges.

21

22 Q. Please explain your contention.

23

24 A. The most appropriate explanation is a description of Telenet's or rather Mr.  
25 Kupinsky's own request for service from BellSouth. As Mr. Kupinsky states

1 in his testimony, he personally placed orders for a number of services and  
2 features, some of which were Call Forwarding services. In fact, he set up  
3 nine different accounts in the personal names of himself, his father and  
4 Granada Investments. These accounts were each billed separately with a  
5 billing address to Calabasas, California. Mr. Kupinsky placed orders at  
6 different times, for different services at different locations.

7  
8 These initial service orders were placed by Mr. Kupinsky through the  
9 normal business office and "pool" of BellSouth Service Representatives  
10 whose normal job is to randomly receive and process BellSouth service  
11 requests from all South Florida business customers. Therefore, Mr.  
12 Kupinsky's orders were handled in the same manner as requests from  
13 other business customers for retail services. In other words, BellSouth's  
14 initial involvement was establishing accounts for Mr. Kupinsky, not Telenet,  
15 as a business customer and not as an alternate local exchange company.

16  
17 As the complexity and volume of the orders increased, a special assembly  
18 was requested and Mr. Kupinsky's accounts were turned over to an  
19 Account Executive to service the customer's needs. It was not until these  
20 multiple accounts for the various locations were consolidated that  
21 BellSouth determined the Call Forwarding services purchased through  
22 these accounts were being used as means to bypass toll charges.

23 Similarly, after discussions and meeting with Mr. Kupinsky, BellSouth  
24 became aware that these accounts were associated with Telenet and were  
25 informed that Telenet was a certified alternate local exchange company.



1

2           Once BellSouth became aware of Telenet's misuse of the Call Forwarding  
3           services, representatives of Telenet were informed that their use of Call  
4           Forwarding was in violation of the tariff and that continued misuse of the  
5           service would result in termination of the Call Forwarding services.

6           Additionally, Mr. Kupinsky and other Telenet representatives, as an  
7           alternate local exchange company, were asked to contact the appropriate  
8           BellSouth representatives to negotiate an interconnection or resale  
9           agreement. Telenet declined to do this but rather insisted on our  
10          processing orders as requested and using the service as a toll service.

11          Telenet filed an injunction with the Court to prevent BellSouth from  
12          discontinuing the service and filed the petition with the Commission to  
13          arbitrate the disputed issue. BellSouth, Telenet and the Commission staff  
14          met and agreed to a compromise that BellSouth would continue to provide  
15          Telenet service, but no new orders would be processed until these  
16          proceedings were resolved.

17

18    Q.    Please explain your contention that the toll bypass prohibition is not a  
19          resale restriction.

20

21    A.    As stated previously, this requirement defines the nature of the service that  
22          is being purchased by BellSouth's customers, both end users and  
23          resellers. Second, Telenet is not actually reselling Call Forwarding Service  
24          to its end users. In other words, Telenet's end users are not utilizing Call  
25          Forwarding service to forward incoming calls to their telephone number to

1 another number. Rather, Telenet has purchased Call Forwarding services  
2 for its own business purposes to forward incoming calls to their local  
3 numbers associated with service purchased from BellSouth from location  
4 to location to complete a call that would otherwise be a toll call. In doing  
5 so, Telenet is avoiding the payment of toll or applicable access charges.  
6 Telenet is then providing their customers toll service because, despite the  
7 number of call forwarding devices employed, the end to end  
8 communication is toll. As such, the certification from this Commission for  
9 this type of service should be that of an interexchange carrier.  
10 Nevertheless, Telenet is the customer who is reselling and clearly misusing  
11 Call Forwarding service.

12  
13 Q. In light of the FCC's Order concerning resale limitations, is BellSouth's  
14 position consistent with this Order?

15  
16 A. Yes. While the FCC did not directly address the issue in this proceeding,  
17 there are similarities with the Order. For example, the FCC in its Order  
18 stated that the use of volume discounts could not be used to restrict the  
19 resale of services. Specifically, the FCC ruled that a reseller's end users  
20 did not have to meet the volume threshold in an incumbent's tariff in order  
21 to subscribe to the service. However, the purchaser of the service, the  
22 reseller, has to meet the threshold requirement. In other words, the  
23 reseller qualifies for the price if its usage volume meets the various volume  
24 requirements as outlined by the tariff. The FCC specified that the reseller  
25 could not get the price without meeting the requirements. The threshold

1 requirement for volume service is not a service restriction but defines the  
2 terms and price under which the purchaser is leasing the service.

3 Similarly, the toll bypass prohibition defines the Call Forwarding service as  
4 a local service and what is being purchased.

5  
6 Q. If the Commission did consider the toll bypass prohibition in the tariff as a  
7 resale restriction, would this prohibition be in violation of the Florida Statute  
8 or the intent of the act?

9  
10 A. No. Even if the Commission were to define the toll service prohibition as a  
11 resale restriction, the Commission could still determine that it is reasonable  
12 and nondiscriminatory. As described in my direct testimony, the Florida  
13 Statute and the FCC Order provide the Commission with the authority to  
14 place reasonable and nondiscriminatory restrictions on the resale of  
15 service. The toll bypass prohibition is clearly reasonable and  
16 nondiscriminatory as has already been discussed.

17  
18 On the other hand, Telenet's proposed resolution for this issue in my  
19 opinion violates the Florida Statute. Telenet is asking for the Commission  
20 to resolve its "resale or interconnection" dispute by removing the toll  
21 bypass prohibition so that Telenet can use the service to provide toll  
22 service. Section 364.16(3) of the Florida Statutes prohibits a "local  
23 exchange company or an alternate local exchange company from  
24 knowingly delivering traffic, for which terminating access service charges  
25 would otherwise apply, through a local interconnection arrangement

1 without paying the appropriate charges for such terminating access  
2 service.” Use of Call Forwarding as a toll service could result in the bypass  
3 of access charges. The Florida Statute clearly did not intend for  
4 interconnection or resale agreements or arbitrated decisions to be used as  
5 a means to bypass access charges.

6  
7 A. Telenet claims that unrestricted use of Call Forwarding is needed to  
8 compete in the intraLATA market. What is BellSouth's response?

9  
10 A. Call Forwarding service is not required to compete for intraLATA toll nor is  
11 it an appropriate means to use to provide toll service. Telenet would like  
12 you to think that the toll bypass prohibition on Call Forwarding service  
13 forces them to build their own facilities to compete for toll service. That is  
14 not true. Telenet has multiple options to compete in the toll market.  
15 Telenet today can use any of BST's intraLATA toll services on a resale  
16 basis and/or they can resell a comparable service provided by AT&T, MCI,  
17 LDDS, Sprint, etc. to compete. Additionally, Telenet can provide its own  
18 facilities to complete toll calls. There is no shortage of services available  
19 for Telenet's use nor is there any shortage of toll competition which has  
20 accelerated with the implementation of 1+ intraLATA presubscription.  
21 Telenet can offer toll service in a wide variety of ways without the use of  
22 Call Forwarding.

23

1 Q. Telenet alleges on page 5 of its testimony that the toll bypass prohibition is  
2 clearly aimed at resellers so as to preserve intraLATA toll revenues. What  
3 is BellSouth's response?  
4

5 A. As stated in my direct testimony, the service requirement on Call  
6 Forwarding is applicable to all customers of this service. All subscribers  
7 who purchase this service from BellSouth are prohibited from utilizing the  
8 service to bypass toll charges. Mr. Kupinsky or Telenet is a customer  
9 using Call Forwarding.  
10

11 Q. Mr. Kupinsky alleges on page 16 that incumbent local exchange carriers  
12 have been attempting to deny access to network elements such as Call  
13 Forwarding which prevents local exchange competition from being offered  
14 on an economically viable basis. What is your response?  
15

16 A. Absolutely not. BellSouth offers its retail services, including its Call  
17 Forwarding services, for resale. Consistent with the Florida Statutes and  
18 the Telecommunications Act of 1996, BellSouth has entered into  
19 negotiations with and reached agreements with forty facility-based carriers  
20 or resellers in the region. The Commission has reviewed and approved  
21 many of these agreements which include provisions for the resale of its  
22 services. BellSouth does not oppose the resale of Call Forwarding service  
23 to Telenet. Once BellSouth and Telenet reach a negotiated agreement,  
24 Telenet can purchase local exchange service and Call Forwarding service  
25 at the resale discount price and resell such service in direct competition

1 with BellSouth for local service. However, use of Call Forwarding in the  
2 manner that Telenet is currently using it does not introduce efficient  
3 competition, rather it just accentuates and accelerates tariff arbitrage and  
4 undermines the terms under which a service is purchased.

5  
6 Q. Mr. Kupinsky alleges that Telenet has attempted to negotiate an  
7 agreement with BellSouth. What is your response?

8  
9 A. Mr. Kupinsky has placed orders with our business office and marketing  
10 representatives have worked with him on these requests. As stated  
11 previously, BellSouth did not know that Mr. Kupinsky was acting on the  
12 behalf of an alternate local exchange company when he placed his initial  
13 orders. Mr. Kupinsky nor Telenet had requested to negotiate a resale or  
14 an interconnection agreement with BellSouth as envisioned by the Florida  
15 Statute. As soon as BellSouth became aware that Telenet was an ALEC,  
16 Telenet was informed that the appropriate course would be to negotiate a  
17 resale or interconnection agreement like all other prospective ALECs. To  
18 my knowledge, no such request has been made by Telenet.

19  
20 Q. Are there any other issues that need to be addressed?

21  
22 A. Yes. Telenet has raised the Call Forwarding service as a request for  
23 unbundled service in its petition. Telenet's petition and testimony is the  
24 first mention that any unbundling issue may be involved. Telenet has not  
25 previously made an unbundling request of BellSouth nor has unbundling

1           been an issue in discussions with Mr. Kupinsky or Telenet about their  
2           accounts. As a result, BellSouth has requested that this portion of  
3           Telenet's testimony be struck as it is not an appropriate issue in this  
4           proceeding for arbitration. Additionally, in the Issue Identification  
5           conference, Telenet was specifically asked by the Staff about whether  
6           unbundling was to be included in this proceeding. Telenet said no.  
7           Consequently, the sole issue raised for arbitration was whether or not  
8           BellSouth could sell its Call Forwarding service subject to the requirements  
9           of Section A13.9.A.1 in its tariff. This is the only issue that has been  
10          identified as an appropriate issue for arbitration.

11

12    Q.    What is BellSouth recommending that the Commission do to resolve this  
13          arbitration request?

14

15    A.    BellSouth recommends that the Commission find that the toll bypass  
16          prohibition in the tariff for its Call Forwarding services is reasonable and  
17          nondiscriminatory to purchasers of this service and that this service  
18          definition should be retained. Further, the Commission should determine  
19          that BellSouth must enforce the provisions of its tariff and that Call  
20          Forwarding service to Telenet would be discontinued if Call Forwarding  
21          service is used as a means to bypass toll charges. Further, in the event  
22          that the Commission views the tariff requirement as one that limits resale,  
23          the Commission should find that such resale limitation is just and  
24          reasonable.

25

1 Q. Does this conclude your testimony?

2

3 A. Yes.

4

5

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