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March 5, 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 Brief of the Evidence. 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
Nancy B. White (2)

Enclosures

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

- JK _____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration)
of Dispute with BellSouth)
Telecommunications, Inc.)
Regarding Call Forwarding, by)
Telenet of South Florida, Inc.)
_____)

Docket No. 961346-TP
Filed: March 5, 1997

BELLSOUTH TELECOMMUNICATIONS, INC.
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STATEMENT OF THE CASE

On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 (the "Act"), which provided the statutory framework for opening up the local telecommunications market to competition, as well as the entry by Regional Bell Operating Companies into the long distance market. The Act set forth, in Sections 251 and 252, the new obligations imposed upon Incumbent Local Exchange Companies ("ILECs") such as BellSouth, including the duty to negotiate with Alternative Local Exchange Companies ("ALECs") the necessary rates, terms and conditions of interconnection between the ILECs and the ALECs. In addition, Section 364.161, Florida Statutes provides for negotiation of the terms and conditions for unbundling and interconnection.

Pursuant to Section 252 of the Act and Section 364.161, Florida Statutes, Telenet of South Florida, Inc. ("Telenet") filed a Petition for Arbitration with the Florida Public Service Commission, formally requesting arbitration on the single issue involved. The procedural order (PSC-97-0041-PCO-TP) was issued on January 9, 1997, establishing a hearing for February 12, 1997. On November 5, 1996, BellSouth filed its Response to Telenet's Petition. Telenet presented the testimony of Mitchell Kupinsky and BellSouth presented the testimony of Robert Scheye.

This brief is submitted in accordance with the post-hearing procedure of Rule 25-22.056, Florida Administrative Code. The statement of each issue identified in this matter is followed immediately by a summary of position on that issue and a discussion of the basis of that position. Each summary of BellSouth's position is labeled accordingly and marked by an asterisk. In any

instance in which BellSouth's position on several issues is similar or identical, the discussion has been combined or cross referenced rather than repeated.

STATEMENT OF BASIC POSITION

Telenet is reselling Custom Calling Services, specifically the Call Forwarding features, so as to avoid the payment of toll charges, all in violation of the rules, regulations and nature of the service. Section A13.9.1.A of BellSouth's General Subscriber Service Tariff states that Call Forwarding is for the transference of local calls and may not be used to extend calls to avoid payment of toll charges. Telenet uses Call Forwarding to forward calls from one local calling area to another that would otherwise be toll calls between the call originator and the call terminator.

BellSouth's tariffed terms and conditions concerning the Call Forwarding features are reasonable and nondiscriminatory. The terms and conditions promote efficient use of the network, affect the price of the service and were approved by this Commission. These terms and conditions are supported under Florida law, as well as the Telecommunications Act of 1996.

Moreover, 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." Telenet's use of Call Forwarding results in the delivery of traffic for which terminating access service charges would otherwise apply. Florida law, therefore, does not allow Telenet's interconnection arrangement to be a conduit for the bypass of access charges.

The sole issue in this docket is whether BellSouth may offer Call Forwarding with the toll restriction discussed above. The sole point of Telenet's arbitration is to challenge that restriction. There has been no request made by Telenet to BellSouth for unbundled network elements. Telenet has not made an appropriate request of BellSouth for the unbundling of Call Forwarding service pursuant to either the Act or Florida Statutes. Telenet's supposed unbundling request is totally irrelevant to the issue to be determined in this docket, i.e., whether BellSouth may sell Call Forwarding services to Telenet subject to the tariffed toll restriction. BellSouth's tariff is reasonable and nondiscriminatory. The tariff conforms to both the Act and Florida Statutes. For these reasons, BellSouth's tariff should be upheld by the Commission.

Issue No. 1: May BellSouth Telecommunications, Inc., sell its Call Forwarding service to Telenet of South Florida, Inc., subject to the restrictions of Section A13.9.1.A.1 of BellSouth Telecommunications, Inc.'s General Subscriber Service Tariff?

* Position: Yes. Section A13.9.1.A.1 of BellSouth's General Subscriber Services Tariff is reasonable, nondiscriminatory, and applicable to Telenet.

In November of 1995, Telenet began purchasing business lines and call forwarding service from BellSouth in Florida. (Tr. p. 61). These business lines with the call forwarding feature were ordered from BellSouth in the names of Mitchell Kupinsky, Marvin Kupinsky, and Park Granada Investments. (Tr. pp. 80-81). Until October of 1996, no service was ordered from BellSouth in the name of Telenet. (Tr. p. 83). All of the orders were placed through BellSouth's business office with a BellSouth service representative under the terms and conditions of

BellSouth tariff. (Tr. pp. 81 and 86). At no time did any representative of Telenet advise BellSouth that Telenet was using the lines and the call forwarding service to offer service to customers. (Tr. p. 86).

Telenet became a certificated ALEC in April of 1996 and began serving customers in May of 1996. (Tr. pp. 61 and 83-84). Telenet uses business lines and call forwarding from BellSouth in conjunction with interactive voice response switching systems (“IVRs”) to provide phone service between Dade, Broward, and Palm Beach counties. (Tr. p. 65 and Exhibit p.p. 89 and 14). Basically, for a flat rate of 10 cents per call, Telenet allows its customer to call from one BellSouth local calling area to another BellSouth calling area. (Tr. p. 65). Telenet’s business is designed to allow customers to make calls for which toll charges would normally apply. (Tr. p. 66).

Section A13.9.1.A.1 of 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. In addition, calls may be transferred to a long distance message telecommunications point subject to availability of necessary facilities in the central office from which the calls are to be transferred.” When such calls are transferred to a number in another local exchange area, toll rates are charged to the end user transferring the call. (Tr. p. 124).

Call Forwarding features are auxiliary features/services offered in addition to basic telephone service. Call Forwarding Variable provides an arrangement for transferring incoming calls to another local telephone number. The intended use of Call Forwarding Variable is to allow subscribers to re-direct their incoming calls while temporarily away from the location

where they normally receive them. The Remote Access enhancement to the Call Forwarding Variable feature is intended to allow subscribers to activate/deactivate the feature from a remote location. (Tr. p. 125). Call Forwarding Variable Multipath provides the capability to specify the number of calling paths that can be forwarded simultaneously. Businesses are the most common users of this feature -- mainly in conjunction with Memory Call or Telephone Answering Services. (Tr. pp. 125-126).

Telenet is using BellSouth's Call Forwarding features to forward calls from one local calling area to another to avoid paying toll charges. Telenet has locations throughout the SouthEast Florida LATA. Each location is chosen so that it is within the local calling area or the extended local calling area of the forwarding location, but includes unique areas that are local from one location but would be toll from another. This arrangement allows calls to be passed from one location to another that would otherwise require a toll call without incurring a toll charge (e.g., from West Palm Beach to Miami). At each location, Telenet subscribes to one or more of BellSouth's Call Forwarding features. Local calls may then be call forwarded along paths that terminate in what have been established by this Commission as long distance points. In other words, a call is terminated in a location that is outside the local calling area of the originating location and therefore is a long distance call. (Tr. p. 126).

Section A13.9.1.A.1 of BellSouth's General Subscriber Service Tariff 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." Telenet is using the Call Forwarding features as an arrangement to transfer calls originating from one

local calling area to another local calling area for the express purpose of avoiding payment of toll charges between the station originating the call and the station terminating the call. Telenet's misuse of the service should not be permitted. (Tr. p. 127).

This limitation of the use of Call Forwarding is not a resale restriction but rather defines the nature of the service. The definition and the tariff limitation define the proper usage of the service in all instances, whether sold as a retail service or as a resold service. (Tr. pp. 127 and 176). It is clear from the tariff that the intended purpose of the Call Forwarding is to ensure that appropriate rates are applied when calls are transferred outside the local calling area. The tariff specifically prohibits any systematic use of the service to avoid the payment of toll charges. Telenet's use is more than a violation of a particular tariff term and condition, it is essentially an attempt to displace one service through the misuse of another service. (Tr. p. 128).

Section 364.161(2), Florida Statutes provides that: "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." 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 services 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. (Tr. p. 130).

The tariff limitations placed on BellSouth's Call Forwarding Service are reasonable and nondiscriminatory. First, the tariff limitation promotes more efficient use of the network. Call Forwarding was not designed as a toll service. Using Call Forwarding to transfer calls from one central office to another to complete a toll call will generate additional traffic over facilities that were not engineered for such inordinate use. (Tr. p. 131). This is demonstrated by Mr. Kupinsky's testimony that "it takes about 10-15 seconds" to connect a Telenet call. (Tr. pp. 94-95). This is an inordinately long time for connection. A toll call that goes through BellSouth's network typically routes in an efficient manner from the central office through the toll network, to the terminating end. Telenet's call goes from local switch to local switch to local switch, etc. (Tr. p. 177). This multiple switching is what causes the delay in call connection, as well as providing a detrimental effect on the quality of service. (Tr. p. 180).

Second, the price of the Call Forwarding service is clearly affected by the terms and conditions found in the tariff just as the terms and conditions affect the price of other tariffed services. If the unrestricted use of Call Forwarding were permitted, and particularly as a means of bypassing toll charges, BellSouth would need to modify the price significantly to recognize that it had become a toll and access substitute or even reconsider whether or not this service should continue to be offered. (Tr. p. 131). The Commission and the Florida law have established a clear policy direction for the pricing of local service with a required flat rate option

and for maintaining basic residential service at affordable rates. Local calling areas have been established through tariffs and Commission proceedings to delineate local calling areas and to meet community of interest needs. As this Commission well knows, these local calling areas vary in size, number of access lines and geographic boundaries. Definitions of services in BellSouth's tariffs have been established to identify these calling areas, to define the geographic area for which the flat rate is to be applied and to distinguish between local, toll and access services. Prices have been established to recognize these distinctions and reflect Commission policies for these services. Descriptions of services can include the tariffs. The Call Forwarding service includes a description to clearly indicate that the service is not to be used to bypass toll charges. This description and requirement was deemed reasonable when the tariff was approved. (Tr. p. 138).

Further, the toll bypass prohibition is reasonable because Call Forwarding was not designed as a toll service. Using Call Forwarding to transfer calls from one central office to another to complete a toll call is not an efficient use of the network. The prohibition is not discriminatory nor is it anti-competitive. Call Forwarding is a Custom Calling Feature which can be used by resellers who purchase the tariffed service are subject to the service capabilities. Further, it cannot be anti-competitive because there are multiple alternative options for resellers to use for developing competitive services. (Tr. pp. 138-139). These alternatives include the purchase of intraLATA toll service from BellSouth at the wholesale discount, the reselling of BellSouth's WATS service, the reselling of BellSouth's ECS service, the reselling of service from interexchange carriers, and the building by Telenet of its own network. (Tr. pp. 78-80). Telenet admitted that these other options had not been considered or analyzed. (Id.).

Third, 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. (Tr. p. 132).

Fourth, 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. Moreover, the problems listed herein would be exacerbated in the case of a resale customer. (Tr. pp. 181-182).

Telenet claims that its local calling area encompasses the entirety of Dade, Broward, and Palm Beach Counties. (Tr. pp. 66-67 and Exhibit 2, MAK-1). Any customer in any of these counties can call any numbers in these counties for 10 cents. (Tr. p. 67). If the calls were made through BellSouth, the calls would either be ECS or toll. If these calls were made through an interexchange carrier, the calls would be toll and the interexchange carriers would pay access charges to BellSouth. (Tr. pp. 69 and 128). Telenet does not pay access charges to BellSouth. (Id.)

IntraLATA toll is designed to provide for the provision of a non-local call between two points within a Florida LATA. For an intraLATA call, BellSouth will either receive toll or

access. If an interLATA call is made by a BellSouth end user, BellSouth bills access charges to the interexchange carrier carrying the call. Telenet, in its use of Call Forwarding features circumvents the appropriate tariffs and charges established for long distance calls. (Tr. p. 128). Telenet claims that it is providing local exchange service to its customers. Telenet makes this claim based on the fact that Telenet designated the three county area as its local calling area and, therefore, all calls placed with the three county area are local Telenet calls. (Tr. p. 75). Mr. Scheye, the witness for BellSouth, testified that local exchange service consists of elements such as dial tone, access to 911 service, access to long distance carriers, and access to operator services. (Tr. pp. 179-180). Telenet provides absolutely none of these elements to its customers; BellSouth is the company that provides these elements to Telenet's customers. (Tr. pp. 65-66 and 180). Telenet is not providing local exchange service as required by the certificate issued by this Commission. Telenet subscribers dial an access code to use Telenet's service; similar to dialing around for an interexchange carrier. Therefore, they are providing service not as an ALEC, but as an IXC.

Section 364.16(3)(a) Florida Statutes states:

“No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver 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.”

There can be no doubt that BellSouth and Telenet have an “interconnection arrangement” as contemplated by the statute. Although there is no signed “interconnection agreement” between the two companies pursuant to Section 364.161 or 162, Florida Statutes, the two companies are physically connected via BellSouth's business lines and call forwarding service and Telenet's

IVR switching system. (Tr. p. 98). Telenet claims that it is not violating Section 364.16(3)(a) and does not owe BellSouth access charges because the call never leaves the BellSouth network. (Tr. p. 99). However, as noted by Commissioner Kiesling, when the call goes from BellSouth's lines into Telenet's IVR and then back out, that is a break in BellSouth's service. (Tr. p. 99). Moreover, Section 364.16(3)(a) does not require a carrier to terminate a call in order to incur liability for access charges. Consequently, Telenet is in violation of Section 364.16(3)(a), a violation which this Commission should not and cannot allow.

CONCLUSION

BellSouth recommends that the Commission find that the toll bypass prohibition in the tariff for its Call Forwarding services is reasonable and nondiscriminatory to purchasers of this service and that this service definition should be retained. Further, the Commission should determine that BellSouth must enforce the provisions of its tariff and that Call Forwarding service to Telenet should be discontinued if Call Forwarding service is used as a means to bypass

toll charges. Further, in the event that the Commission views the tariff requirement as one that limits resale, the Commission should find that such resale limitation is just and reasonable.

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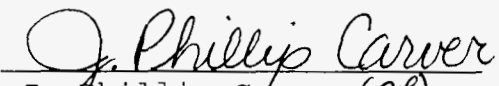
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CERTIFICATE OF SERVICE
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