

FLORIDA PUBLIC SERVICE COMMISSION  
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M E M O R A N D U M

MARCH 20, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (SIRIANNI) *MPS JED*  
DIVISION OF LEGAL SERVICES (PELLEGRINI) *MRB for CP*

RE: DOCKET NO. 961346-TP - PETITION FOR ARBITRATION OF  
DISPUTE WITH BELLSOUTH TELECOMMUNICATIONS, INC.,  
REGARDING CALL FORWARDING, BY TELENET OF SOUTH FLORIDA,  
INC.

AGENDA: APRIL 1, 1997 - REGULAR AGENDA - POST HEARING DECISION -  
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: OTHER CRITICAL DATES: APRIL 1, 1997

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\961346TP.RCM

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CASE BACKGROUND

On November 12, 1996, pursuant to Section 364.161(1), Florida Statutes, Telenet of South Florida, Inc., (Telenet) filed a petition for arbitration of its dispute with BellSouth Telecommunications, Inc., (BellSouth) concerning the provisioning of call forwarding. BellSouth has declined to continue selling call forwarding to Telenet, alleging that Telenet uses the service in violation of section A13.9.1.A.1 of BellSouth's General Subscriber Service Tariff. Telenet alleges that the tariff provision is an anticompetitive restriction and that it has not been able to reach a resale agreement with BellSouth. Although Section 364.161(1), Florida Statutes, requires that the Commission arbitrate the dispute within 120 days, the parties have stated that they do not object in this case to the Commission extending that time and rendering its decision by April 1, 1997.

BellSouth at first advised Telenet that it would terminate all call forwarding services to Telenet on November 21, 1996. Later, this date was extended to December 5, 1996, in order to provide the parties with time to work out conditions by which the status quo could be preserved until the Commission's decision.

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At the same time it filed its petition for arbitration with this Commission, Telenet filed a petition for a temporary injunction in the Seventeenth Judicial Circuit, Broward County. However, Telenet later requested that its petition for temporary injunction be stayed, in light of an agreement it reached with BellSouth by which Telenet would be permitted to continue to provide call forwarding services to existing, but not new, customers for the duration of this proceeding.

On December 5, 1996, BellSouth filed its answer and response to Telenet's petition and a motion to dismiss. Telenet filed its opposition to BellSouth's motion to dismiss on December 17, 1996. In Order No. PSC-97-0072-FOF-TP, issued January 23, 1997, the Commission denied BellSouth's motion to dismiss. Subsequently, a hearing was held on February 12, 1997, at which time the parties presented their evidence and positions to the Commission. This docket is now before the Commission for its review and decision.

Staff would point out that the sole issue in this proceeding is whether BellSouth may continue to sell its call forwarding services subject to the tariff restrictions. At the issue identification meeting held in this proceeding on January 2, 1997, Telenet declined the addition of an issue regarding the unbundling and pricing of call forwarding services. Thereafter, the Commission granted BellSouth's motion to strike portions of Telenet's testimony regarding the unbundling and pricing of its call forwarding services. While BellSouth is required by Section 364.161 (1), Florida Statutes, to offer for resale, upon request, any features, functions or capabilities to the extent technically and economically feasible, the appropriate terms, conditions and price for a resold service are not issues for the Commission to arbitrate in this proceeding. While the unbundling and pricing of BellSouth's call forwarding services are not at issue in this proceeding, this Commission has always encouraged parties to negotiate in order to promote competition. Staff would encourage BellSouth and Telenet to continue their negotiations to arrive at an appropriate arrangement that enables Telenet to continue providing service to end users.

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### DISCUSSION OF ISSUES

**ISSUE 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?

**RECOMMENDATION:** Yes. BellSouth Telecommunications, Inc., should be permitted to sell its call forwarding service to Telenet of South Florida, Inc., subject to the restrictions of Section A13.9.1.A.1 of its General Subscriber Service Tariff. Pursuant to Section 364.16(3)(a), Florida Statutes, Telenet of South Florida, Inc., should not be permitted to avoid access charges on calls that would normally be toll calls.

### POSITION OF PARTIES

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

**TELENET:** No. BellSouth has a duty to resell call forwarding services to Telenet under 47 U.S.C. sections 251(b)(1) and (c)(4)(B). BellSouth's tariff restrictions on the use of call forwarding services violate Florida Law and the 1996 Act. The restrictions are not in the public interest of providing competitive alternatives to Florida consumers.

**STAFF ANALYSIS:** Pursuant to Section 364.161, Florida Statutes, Telenet filed a Petition for Arbitration regarding the reasonableness of BellSouth's tariff restriction on the resale of its call forwarding services. Telenet is currently reselling BellSouth's call forwarding services in such a way that it avoids the payment of toll or access charges, which violates BellSouth's tariff.

In this analysis, staff first describes the business relationship between Telenet and BellSouth, and then the service that Telenet intends to provide based on BellSouth's call forwarding service. Next, staff provides an analysis of the tariff restriction that is in contention, followed by an analysis of the parties' arguments concerning whether the tariff restriction is reasonable and nondiscriminatory, or not. Finally, staff evaluates BellSouth's contention that access charges are applicable and Telenet's contention that it is delivering calls within its local calling area.

Business Relationship

Telenet was certified by this Commission as an alternative local exchange company (ALEC) in April of 1996. (TR 31) Telenet witness Kupinsky asserts it has offered local exchange services in the tri-county area of Dade, Broward and Palm Beach counties in competition with BellSouth since May 1996. (TR 30) Telenet contends it began purchasing call forwarding features, as well as standard business lines with other features, in November of 1995. (TR 61; 86-87) Witness Kupinsky stated that the lines at first were purchased in names other than Telenet since Telenet was not yet formed as a corporation. (TR 80-81) Moreover, Telenet asserts that it did not indicate to BellSouth customer representatives that its customers would be using the business lines or call forwarding services to avoid BellSouth's toll charges. (TR 87) BellSouth asserts there was no way for its customer representatives to discern how Telenet intended to use the service, whether for resale or not. (EXH 4, p. 13)

According to BellSouth, Telenet intends to resell call forwarding features associated with custom calling service, such as call forwarding variable, call forwarding variable multipath and remote access call forwarding variable. BellSouth believes this is a misuse of its call forwarding services and violates the nature and purpose of the services. (TR 129) BellSouth witness Scheye stated that Telenet has not attempted to negotiate a resale agreement pursuant to the applicable law; therefore, he claimed, Telenet is not authorized to resell any of BellSouth's retail services. (EXH 4, p. 15) However, BellSouth later asserted that the resale of the call forwarding services is not at issue, but only Telenet's intention to use these services as a means to bypass long distance charges. (TR 124)

Staff agrees with BellSouth that the sole issue in this docket is whether BellSouth may continue to sell its call forwarding services subject to the tariff restrictions. However, staff would note, that upon request, BellSouth is required by Section 364.161 (1), Florida Statutes, to offer for resale any features, functions or capabilities to the extent technically and economically feasible.

Telenet Service

Telenet currently has approximately 239 customers with about another 100 prospective customers. (EXH 3, pp. 8-9) In the provision of Telenet's service, a customer dials a local phone number that gives them access to Telenet's computer voice mail network. The customer then enters an access code and the telephone

number the customer wishes to reach. (EXH 3, p.13) Telenet's voice mail network enables Telenet's customers to place what are generally considered toll calls for a flat fee of 10 cents per call within the existing service area. (TR 30, 65) Telenet asserts this is accomplished by using forwarding lines to create direct connections between each Telenet Interactive Voice Response (IVR) switching system, each of which routes calls between each other. (TR 30-31) What would normally be a long distance or ECS call is broken into a series of local calls. (TR 31)

For instance, a Telenet customer in the Miami area calling a number in Pompano would dial a local number in Miami to reach Telenet's IVR. Once in Telenet's computer system, the customer would enter an access code and the number the customer wishes to call. The IVR located in Miami would place the customer on hold and look in the routing table for the correct forwarding number required for the call to reach the IVR in Pompano. As a result, the Miami IVR would call a local number in North Dade, which would call another local number in Hollywood. The Hollywood number would call a local number in Fort Lauderdale, which would call a local number in the Pompano IVR. At this point, the two IVRs would connect and the call would be placed. (TR 94) Witness Kupinsky asserts that this process takes about 10 to 15 seconds. (TR 94)

While a Telenet customer would pay 10 cents for the call described above, or any call within the tri-county area in which Telenet operates, a customer making the same call on BellSouth's network would pay the applicable ECS or toll rate. (TR 93) In addition, Telenet does not pay any access charges to BellSouth. (TR 69) However, Telenet witness Kupinsky agreed that if these calls were made through AT&T, for example, the calls would be toll, and AT&T would pay access charges to BellSouth. (TR 69)

#### Tariff Interpretation

In Section A13.9.1.A.1 of BellSouth's GSST, call forwarding variable is described as follows:

This provides 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. (EXH 4)

Telenet asserts call forwarding is a key element in its network, and it would not be able to compete without the use of call forwarding services. (EXH 3, p. 22) Witness Kupinsky contends that Telenet requires "remote access to call forwarding," which

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offers the multi path feature. (TR 33) Remote access allows subscribers to activate or deactivate the feature from a remote location. Call forwarding multipath provides the capability to specify the number of calling paths that can be forwarded simultaneously. (TR 125)

BellSouth argues that Telenet's use of multi-path call forwarding violates Section A13.9.1.A.1. (TR 123) The specific part of the tariff in question states:

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. (EXH 4)

Telenet witness Kupinsky asserts that the restriction in BellSouth's tariff on call forwarding services is anticompetitive and discriminatory towards ALECs and resellers. (EXH 3, p.22; TR 61) Telenet contends that the restriction is an artificial barrier to entry and is detrimental to the consumers of South Florida since BellSouth continues to charge monopolistic rates. (TR 61-62) Telenet Witness Kupinsky points out that even if Telenet were to purchase intraLATA toll service from BellSouth at a 20% wholesale discount, it would cost Telenet 16 cents per minute, which is substantially higher than its current flat rate of 10 cents per call. (TR 61-62) Thus, Telenet believes BellSouth's intraLATA network is an essential bottleneck facility for any provider of competitive local exchange service. (TR 38) Furthermore, Telenet believes that call forwarding, without end-user restrictions, must be provided to introduce competition in the intraLATA market dominated by BellSouth. (TR 38)

Staff realizes Telenet's intent is to offer prices to consumers that are less than those offered by its competitors. However, staff would point out that the 16 cents per minute available to Telenet through BellSouth's wholesale discount is less than BellSouth's current intraLATA toll rate of 21 cents per minute. (TR 61) In addition, as discussed below, there are other alternatives available to Telenet to provide intraLATA toll services to consumers.

As briefly noted above, BellSouth argues that its limitation on the use of call forwarding is not a resale restriction, but that it defines the nature of the service. BellSouth witness Scheye believes that the definition and the tariff limitation define the

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proper usage of the service in all instances, whether sold as a retail service or as a resold service. (TR 127) BellSouth contends that the tariff is clear that the appropriate rates should be applied for the purpose of call forwarding when calls are transferred outside the local calling area. Witness Scheye states that the tariff specifically prohibits any systematic use of the service to avoid the payment of toll charges. BellSouth believes that 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 128)

Telenet argues that BellSouth's contention that the provision is not a restriction but rather is definitional is disingenuous and is an attempt by BellSouth to obscure clear-cut state and federal directives. (BR p. 6) BellSouth asserts that even if the Commission were to define the toll service prohibition as a resale restriction, the Commission could still determine that it is reasonable and nondiscriminatory. (TR 143)

Section 364.161 (2), Florida Statutes, in part, 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. (emphasis supplied)

In addition, Section 251(c)(4)(B) of the Act states that it is the duty of the incumbent LEC

not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service, except that a State commission may, consistent with 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 subscribers. (emphasis supplied)

The FCC, in FCC 96-325, First Report and Order, CC Docket No. 96-98, at ¶939, concluded that, since restrictions and conditions may have anticompetitive results, all resale restrictions are

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presumptively unreasonable. However, staff believes that this Commission has the authority to approve reasonable and nondiscriminatory restrictions on resale under Florida law and the Act.

#### Reasonableness and Discrimination

BellSouth asserts that the toll bypass prohibition is clearly reasonable and nondiscriminatory for several reasons. (TR 143) First, witness Scheye asserts that the tariff limitation promotes more efficient use of the network. BellSouth contends that call forwarding was not designed as a toll service, and 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 an unintended use. (TR 131) However, staff would note that BellSouth confirmed that it has no studies or surveys that demonstrate that Telenet's resale of call forwarding to bypass intraLATA toll will adversely affect its network. (EXH 4, p. 151) In addition, witness Scheye testified that Telenet's demand for BellSouth's call forwarding service is not technically infeasible, and it will not exceed BellSouth's network capability. (TR 183-184)

Staff believes that if Telenet's volume grew or if other carriers used this same arrangement, it could ultimately lead to an inefficient use of BellSouth's network. However, staff does not believe there is sufficient evidence at this time to determine if BellSouth's network would be adversely affected by Telenet's use of call forwarding to bypass toll. Therefore, staff does not believe that this argument tends to prove the restriction to be reasonable.

Second, BellSouth asserts that the price of the call forwarding services is affected by the terms and conditions found in the tariff, just as the terms and conditions affect the price of other tariffed services. BellSouth claims that the elimination of the call forwarding restriction would erase distinctions between toll and local service and create tariff arbitrage. Witness Scheye contends that 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 to continue to offer the service. (TR 131)

Witness Scheye asserts that local calling areas have been established through tariffs and Commission proceedings to delineate local calling areas and to meet community of interest needs. BellSouth contends that the definitions of services in its tariffs have been established to identify these calling areas, and to



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distinguish between local, toll and access services. Thus, BellSouth asserts that its prices have been established to recognize these distinctions and reflect Commission policies for these services. (TR 138)

Telenet argues that it has long been recognized by the FCC that arbitrage practices promote lower consumer rates and improved services. Witness Kupinsky also asserts that arbitrage is a method of introducing much-needed competition in a market that has belonged exclusively to BellSouth. (TR 53-54)

Staff would note that this Commission has devoted much attention to the local calling areas of consumers in Florida. Staff believes this is illustrated by the extensive Commission proceedings resulting in the implementation of extended area calling (EAS) and extended calling service (ECS) throughout Florida. In addition, Part IV of Chapter 25-4, Florida Administrative Code, Commission rules regarding the classification of telephone exchanges and extended area service, provides specific requirements that must be met in order for a toll route to be converted to an EAS or ECS route. Moreover, in Order No. PSC-93-0108-FOF-TL, issued January 21, 1993, this Commission stated that EAS was created to provide specific areas that had an established community of interest with another area some form of toll relief. (Order at 102) Therefore, staff agrees with BellSouth that this Commission has set certain policies regarding the price distinction between local and toll services.

Third, BellSouth argues that the terms and conditions currently contained in the call forwarding tariff were approved by this Commission. BellSouth asserts that such terms and conditions would not have been approved if this Commission found them to be unreasonable or discriminatory. Witness Scheye contends that the terms and conditions that 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 132) However, witness Scheye later agreed that the burden lies with BellSouth to demonstrate that its tariff restriction is reasonable and non-discriminatory. (TR 176)

Telenet argues that this Commission has never previously addressed whether BellSouth's tariff restriction is an unreasonable or discriminatory restriction, since BellSouth's tariff was filed prior to the passage of Section 364.161(2), Florida Statutes, or the Act. (BR p. 5; TR 162) Telenet also asserts that BellSouth's argument that call forwarding may need to be repriced to account

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for the loss of intraLATA toll is not at issue in this docket. Telenet contends that if BellSouth wishes to reprice its service it can accomplish that in another proceeding. (BR p. 10)

Staff agrees with Telenet on both of these points. Staff realizes that there have been many changes in the telecommunications industry since BellSouth's tariff was approved. Staff believes that when the Commission approved BellSouth's tariff regarding call forwarding services, the approval was based on its appropriateness at that time. Staff believes that it is entirely appropriate for the Commission to reexamine whether the tariff is reasonable in today's circumstances. If BellSouth believes that its call forwarding services are being used for purposes other than it initially intended, then BellSouth may wish to re-evaluate its tariff.

Fourth, BellSouth argues that 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. Witness Scheye contends that this limitation is applied to anyone who uses the service. BellSouth asserts that the limitation is nondiscriminatory as to both BellSouth's customers and to reseller's customers. In fact, Witness Scheye contends that to apply the restriction to BellSouth's customers, but not to other end user customers, would be discriminatory. (TR 132) Staff agrees with BellSouth that the restriction on its call forwarding service is not discriminatory to resellers or to a reseller's end users. Staff believes that the service limitations on BellSouth's call forwarding services should be uniform across all carriers.

#### Access Charges

BellSouth argues that the unrestricted resale of call forwarding by Telenet results in the delivery of traffic for which terminating access service charges would otherwise apply. (TR 133) Specifically, Section 364.16(3)(a), Florida Statutes, states that:

No local exchange telecommunications company or alternative local exchange 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.

Telenet does not pay any access charges to BellSouth. (TR 69) Telenet witness Kupinsky agreed that if these calls were made

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through an IXC such as AT&T, however, the calls would be toll, and AT&T would pay access charges to BellSouth. (TR 69) BellSouth argues that the statute did not intend for interconnection or resale arrangements to be a conduit for the bypass of access charges. (TR 133) Staff agrees.

Based on the nature of the service that Telenet provides, BellSouth believes it has an interconnection arrangement with Telenet, as contemplated by Chapter 364, Florida Statutes. (TR 164) Although there is no signed "interconnection agreement" between the two companies pursuant to Sections 364.161 or 364.162, Florida Statutes, Telenet's witness Kupinsky agreed that the two companies are physically connected through BellSouth's business lines and call forwarding service and Telenet's IVR switching system. (TR 98) Telenet asserts it is not receiving traffic from IXCs for which terminating access charges would apply; it is merely enhancing the LEC services already provided by BellSouth. Furthermore, since no IXC is involved, Telenet argues that bypass of terminating access charges is not at issue. (TR 56)

Telenet asserts that it is not violating section 364.16(3)(a), Florida Statutes, and does not owe BellSouth access charges because the call never leaves the BellSouth network. (TR 98-99) Although Telenet owns its IVRs, witness Kupinsky argues that the call remains on the BellSouth line even when it is in the IVRs. (TR 99) Staff disagrees with Telenet that the call never leaves the BellSouth network. While staff realizes that the IVRs are the only network components that Telenet owns, the IVRs are a crucial component in the provision of Telenet's service. Therefore, staff believes there is a break in BellSouth's service when the call goes from BellSouth's lines into Telenet's IVR and then back out into BellSouth's network. Therefore, staff believes terminating access charges are applicable.

#### Local Calling Area

Telenet contends that its local calling area consists of the three county region of Dade, Broward and Palm Beach counties. (TR 31) Witness Kupinsky asserts that when a Telenet customer is using its system, it is a local call because the customer is calling within Telenet's local calling area. However, if that same customer were to use BellSouth's network, or make that same call through AT&T, it would be either an ECS or a toll call. (EXH 3, p. 54; TR 69)

BellSouth argues that intraLATA toll is designed to provide a non-local call between two points within a Florida LATA. BellSouth will either receive toll or access for the intraLATA call. (TR 128)

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BellSouth witness Scheye asserts that Telenet's use of its call forwarding services circumvents the appropriate tariffs and charges established for long distance calls. (TR 128) BellSouth argues that while Telenet claims it provides local exchange service to end users, it does not provide any of the essential elements that make up basic local exchange service. (TR 65-66) Section 364.337 (2), Florida Statutes, states that basic local telecommunications service provided by an ALEC must include access to operator services, 911 services, and relay services for the hearing impaired. BellSouth asserts that it is the company that provides these elements to Telenet's customers. (TR 65-66; 180)

Although Telenet states in its price list that it does not provide basic local exchange service, witness Kupinsky testified that Telenet provides local exchange service in competition with BellSouth. (EXH 3, p. 158; TR 30) Telenet asserts it does not provide basic local service since it does not provide dial tone; instead, it provides intraLATA call switching for customers. (TR 12; EXH 3, p. 159)

BellSouth asserts that since customers dial an access code to use Telenet's service, similar to dialing around for an IXC, they are actually providing service as an IXC, not an ALEC. (BR p. 10; TR 50-51) Telenet witness Kupinsky agrees it is an intraLATA toll provider since it provides calls within the LATA. (TR 71; EXH 3) However, Telenet asserts it does not function as an IXC since it has designated the entire three county area in which it operates as its local calling area. (TR 71-72; 75) Telenet asserts that since an ALEC has full statewide authority, the LEC's local calling area is not necessarily the same as the ALEC's. (EXH 3, p. 54) Furthermore, Telenet asserts that this Commission, in Order No. PSC-96-1231-FOF-TP, issued October 1, 1996, stated that the ALEC's local calling area may or may not be the same as the LEC's local calling area. (BR p. 10)

Staff agrees that an ALEC has full statewide authority when it receives certification from this Commission, and has the authority to designate its local calling area in whatever way it chooses. However, as discussed earlier, Section 364.16 (3)(a), Florida Statutes, does not allow an ALEC to knowingly deliver traffic where terminating access charges would otherwise apply. Therefore, while an ALEC may have a different local calling area than an incumbent LEC, it is required by statute to pay the applicable access charges.

### Options

BellSouth also argues that the toll bypass restriction in its tariff is not discriminatory or anticompetitive because there are several alternative options for resellers to use for developing competitive services. (TR 139) BellSouth witness Scheye explained that these alternatives include the reselling of BellSouth's ECS service, the reselling of BellSouth's WATS service, the purchase of intraLATA toll service from BellSouth at the wholesale discount, the reselling of service from interexchange carriers, and the opportunity for Telenet to build its own infrastructure. (EXH 4; TR 133)

While Telenet asserts it did not consider every available alternative, Telenet witness Kupinsky testified it considered alternatives such as the purchase of BellSouth's intraLATA toll service at the wholesale discount, and the building of its own infrastructure. However, witness Kupinsky stated that these alternatives were not a part of Telenet's business plan. In addition, Telenet asserts that these alternatives would not provide real savings to the customer because the customer prices would basically be the same as offered by BellSouth. (TR 78-79) Nonetheless, as mentioned earlier, if Telenet were to purchase intraLATA toll service from BellSouth at a 20% discounted wholesale rate, it would cost Telenet 16 cents per minute. While Telenet asserts that this discounted rate is substantially higher than its current flat rate of 10 cents per call, staff would note that this is still less than BellSouth's current intraLATA toll rate of 21 cents per minute. (TR 61-62)

### Conclusion

Based on the foregoing, staff believes that BellSouth may continue to sell its Call Forwarding service to Telenet subject to the restrictions of Section A13.9.1.A.1 of its tariff. Staff believes that Telenet may charge its end users whatever it wishes for the service it provides. However, staff does not believe that Telenet can avoid the payment of access charges on calls that would normally be toll calls. Telenet has argued throughout this proceeding that it is not an IXC, nor a LEC to which the terms of Section 364.16(3)(a), Florida Statutes, apply. Therefore, it claims access charges are not applicable. Staff disagrees. While Telenet is currently certificated by this Commission as an ALEC and claims it provides local exchange service, Telenet agrees that it is an intraLATA toll provider since it provides calls within the LATA. Regardless of whether Telenet is certificated as an IXC or an ALEC, staff believes that the bypass of access charges is in violation of Section 364.16(3)(a) of the Florida Statutes.

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While there have been numerous changes in the telecommunications industry since the initial approval of BellSouth's tariff for call forwarding services, staff believes that there are certain matters that have not changed since that time. For instance, staff does not believe that the Commission's view on the application of access charges to toll calls is any different now than it was at the time BellSouth's tariff was approved. While there may be a need to re-evaluate the appropriateness of BellSouth's tariff restrictions, staff does not believe that the Commission is currently in a posture to endorse the bypass of access charges as suggested by Telenet. Therefore, staff recommends that BellSouth be permitted to continue to sell its call forwarding services to Telenet subject to the tariff restrictions of Section A13.9.1.A.1. Staff would note that this Commission has always encouraged negotiations to promote competition. Since the unbundling and pricing of BellSouth's call forwarding services are not at issue in this proceeding, staff would encourage BellSouth and Telenet to continue their negotiations to arrive at an appropriate arrangement that enables Telenet to continue providing service to end users.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: This docket should be closed. Following the Commission's decision in this matter, nothing will remain for the Commission to do.