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Nancy B. White  
Assistant General Counsel-Florida

BellSouth Telecommunications, Inc.  
c/o Nancy H. Sims  
Suite 400  
150 South Monroe Street  
Tallahassee, Florida 32301  
Telephone (305) 347-5558

May 15, 1997

Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: **Docket No. 961346-TP**  
**Telenet of South Florida, Inc.**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response and Memorandum in Opposition to Motion for Reconsideration of Telenet of South Florida, Inc., which we ask that you file in the captioned matter.

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 to the parties shown on the attached Certificate of Service.

Sincerely,

*Nancy B. White*  
Nancy B. White (BW)

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU 3 \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1 \_\_\_\_\_
- LET 3 \_\_\_\_\_
- CCC \_\_\_\_\_
- ROH \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Enclosures

cc: All parties of record  
A. M. Lombardo  
R. G. Beatty  
William J. Ellenberg II

RECEIVED & FILED  
*[Signature]*  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
**04864 MAY 15 97**  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration	)	
of Dispute with BellSouth	)	Docket No. 961346-TP
Telecommunications, Inc.	)	
Regarding Call Forwarding, by	)	
Telenet of South Florida, Inc.	)	
_____	)	Filed: May 15, 1997

**BELLSOUTH TELECOMMUNICATION, INC.'S RESPONSE AND  
MEMORANDUM IN OPPOSITION TO MOTION FOR RECONSIDERATION  
OF TELENET OF SOUTH FLORIDA, INC.**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files, pursuant to Rule 25-22.060(1)(b), Florida Administrative Code, its Response and Memorandum in Opposition to the Motion for Reconsideration filed by Telenet of South Florida, Inc. ("Telenet"), and states the following:

1. Telenet's Motion for Reconsideration should be rejected because it fails entirely to raise a legally or factually cognizable basis for the relief requested. The purpose of a motion for reconsideration is to bring to the Florida Public Service Commission's ("Commission") attention some material and relevant point of fact or law that was overlooked or that the Commission failed to consider. Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962). Telenet's motion, however, raises absolutely nothing that the Commission has overlooked. Telenet's motion simply raises again the issue of whether it is appropriate for BellSouth to offer Call Forwarding with the toll restriction contained in Section

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A13.9.1.A.1 of BellSouth's General Subscriber Service Tariff. This section of the tariff states that call forwarding shall not be used to extend calls to avoid the payment of toll charges. The Commission, in Order No. PSC-97-0462-FOF-TP ("Order") issued on April 23, 1997 found that this tariff section was appropriate, reasonable and nondiscriminatory. Telenet raises several points that it believes require the Commission to reconsider the Order. In fact, all of these points were analyzed by the Commission in reaching the decision.

2. Telenet's claims may be grouped into two separate categories: (1) facts/issues not properly before the Commission, but which the Commission considered and (2) facts/issues not properly before the Commission, but which the Commission should have considered. Telenet claims that the existence vel non of a local interconnection arrangement and consequently, the application of terminating access charges, was not properly before the Commission. Telenet claims that the formal issue of the case was narrow and did not include consideration of terminating access charges. Such a claim is wholly without merit.

3. Section 364.16(3)(a), Florida Statutes prohibits the delivery of traffic via a local interconnection arrangement without the payment of terminating access charges. The tariff restriction at issue prohibits the avoidance of toll charges by use of call forwarding. Access charges are clearly a part of toll, and

therefore, an appropriate piece of the issue. Moreover, the Commission cannot ignore Florida law. In this instance, Section 364.16(3)(a), Florida Statutes is clearly applicable. The application of the statute is inherent in the formal issue of the case. The statute is inevitably brought into the consideration of whether it is appropriate for BellSouth to offer call forwarding with the restriction. To prevent the statute from consideration would be to ignore and subvert Florida law. This the Commission cannot do. The Commission must consider the result of Telenet's violation of BellSouth's tariff restriction and that result is the nonpayment of terminating access charges as required by Florida law. This the Commission did.

4. The Commission specifically found that an "interconnection arrangement" existed as required by Florida law. (Order, pp. 9-10). Telenet argues that, because there was no formal written agreement between BellSouth and Telenet, there is no interconnection arrangement. The Commission, however, acknowledged that, while no formal agreement existed, Telenet had admitted to a physical connection between BellSouth and Telenet that constituted an interconnection arrangement. Therefore, terminating access charges were found to be applicable. (Id.). Thus, Telenet has raised nothing in its Motion with regard to this that has not already been considered by the Commission. It is interesting to note that at no time during this proceeding did

Telenet object to any discussion or testimony concerning the applicability of Section 364.16(3)(a), Florida Statutes. Their complaint should not be heard now.

5. Telenet also claims that there was no finding by the Commission that BellSouth's tariff restriction was reasonable. BellSouth is, quite frankly, astounded by the absurdity of this claim. Part and parcel of the formal issue was the question of whether BellSouth's tariff was reasonable and nondiscriminatory. Telenet seeks reconsideration on the basis that while the Commission made a determination that the restriction was nondiscriminatory, it failed to state that the restriction was reasonable. Page six of the Order contains a section entitled "Reasonableness and Discrimination". In this section of the Order, the Commission specifically considered whether the tariff restriction was nondiscriminatory and reasonable. Thus, Telenet has not met the standard for reconsideration.

6. Finally in this category, Telenet claims that the Commission overlooked its ruling in Order No. PSC-96-1579-FOF-TP (the AT&T Arbitration Order) that no resale restriction should be allowed. Telenet, however, ignores the fact that the Commission has authority to approve reasonable and nondiscriminatory restrictions on resale under Section 364.161(2), Florida Statutes and Section 251(c)(4)(B) of the Telecommunications Act of 1996. In effect, Telenet argues that because certain resale restrictions were rejected in

the AT&T arbitration, the Commission is prohibited from determining that the restriction of issue in this case is reasonable. However, the AT&T arbitration Order and the applicable law do not support this proposition. Once again, Telenet has not met the standard for reconsideration.

7. In its second category of claims, Telenet argues that the Commission should have considered Telenet's "Petition" and issue on unbundling. Telenet claims that the Commission failed to consider Telenet's request for the unbundling of call forwarding. This is wholly without merit. First, as noted by the Commission in its Order, Telenet itself declined to add an issue regarding unbundling to the proceeding. (Order, p. 2). Moreover, Telenet's testimony regarding unbundling was struck by the Prehearing Officer over the objections of Telenet. Telenet is merely reploting the same ground and has not met the standard for reconsideration.

8. Telenet further argues that because the Commission did not consider its unbundling request and because the Commission relied on Section 364.16(3)(a), Florida Statutes, Telenet has been deprived of due process. Such a contention is singularly without basis. As noted above, the application of Florida law is inherent in any Florida proceeding. Moreover, Telenet itself apparently did not raise the unbundling issues until it was too late. Essentially, Telenet is seeking reconsideration because it failed to raise an issue and has

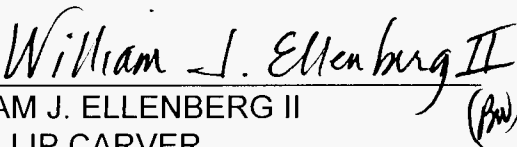
apparently come to regret its decision. Such hindsight does not support a reconsideration of this decision. Therefore, the Commission's Order must stand.

WHEREFORE, for the reasons set forth above, BellSouth respectfully requests the entry of an Order denying Telenet's Motion for Reconsideration in its entirety.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
\_\_\_\_\_ (BW)

ROBERT G. BEATTY  
NANCY B. WHITE  
c/o Nancy H. Sims  
150 So. Monroe St., Suite 400  
Tallahassee, FL 32301  
(305) 347-5555

  
\_\_\_\_\_ (BW)

WILLIAM J. ELLENBERG II  
J. PHILLIP CARVER  
Suite 4300  
675 W. Peachtree St., NE  
Atlanta, GA 30375  
(404) 335-0711

CERTIFICATE OF SERVICE  
DOCKET NO. 961346-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 15<sup>th</sup> day of May, 1997 to the following:

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

Charlie Pelligrini  
Staff Counsel  
Florida Public Service  
Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

  
\_\_\_\_\_  
Nancy B. White (Att)