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June 18, 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 in Opposition to Telenet's Emergency Motion for Stay, 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*  
(Ad)  
Nancy B. White

Enclosures  
/vf

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

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU *Green*
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1
- LIN 2
- OPC \_\_\_\_\_
- RCM \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

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EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
06144 JUN 18 97  
EPSC-RECORDS/REPORTING

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: June 18, 1997

**BELLSOUTH TELECOMMUNICATION, INC.'S  
RESPONSE IN OPPOSITION TO TELENET'S  
EMERGENCY MOTION FOR STAY**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, hereby files its Response in Opposition to Telenet of South Florida, Inc.'s ("Telenet") Emergency Motion for Stay of Order No. PSC-97-0462-FOF-TP ("Order") issued on April 23, 1997 in the above captioned proceeding. In support of its Response, BellSouth states the following:

1. Telenet's request for a stay is a belabored attempt to characterize the facts of this case in a manner which would fit within those circumstances which permit a stay under the rules of the Florida Public Service Commission ("Commission"). Telenet is trying to fit a square peg into a round hole. Furthermore, Telenet is deliberately mischaracterizing the facts and law.

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FPSC-REG/ORDS/REPORTING

2. Telenet requests that the Commission exercise its discretion and grant a stay pursuant to Rule 25-22.061(2), Florida Administrative Code. The Commission should decline Telenet's request as Telenet has failed to demonstrate that a stay is appropriate under the factors set forth in Rule 25-22.061(2). Moreover, Telenet mischaracterizes the legal standard for the granting of a stay.

3. Rule 25-22.061(2), Florida Administrative Code, specifically lists three factors the Commission may consider in determining whether to grant a stay. The Rule also makes it clear that the Commission may consider additional factors. In other words, the list is not exhaustive or exclusive. Telenet, however, cites Order No. PSC-96-1403-FOF-WS, issued on November 20, 1996 in the case of South Broward Utility for the proposition that a "proponent of a stay need not prove" each of the factors listed in the Rule "so long as the public is unharmed by a stay." Telenet Motion at pgs. 2-3. Nowhere in the cited Order is language that explicitly or implicitly holds that one factor alone is sufficient to justify a stay. Moreover, the South Broward Utility case consisted of a request for an amendment of a certificate to add additional territory. Here, the Commission is concerned with the violation by Telenet of Section 364.16(3)(a), Florida Statutes. Essentially, Telenet is requesting that the Commission allow Telenet to continue to violate Florida law. This, the Commission cannot do.

4. In analyzing the factors listed in Rule 25-22.061(2) , Florida Administrative Code, it becomes abundantly clear that Telenet has met none of them. The first factor to be satisfied is a showing by Telenet that they will suffer irreparable harm if a stay is not granted. BellSouth had given written notice that Telenet's service would be disconnected on June 13, 1997 based on the Commission's determination in the Order. This date has been extended to June 24, 1997 in order to allow for a decision on Telenet's motion. Telenet argues that Bellsouth is attempting to destroy Telenet as an alternative provider. There is no foundation for this allegation. It is inconceivable that Telenet could be harmed by being required to obey Florida law and cease the carriage of toll calls without payment of access charges. As the Commission noted in Order No. 22022 issued on October 9, 1989, in Docket 860723-TP, harm cannot occur by being required to stop carrying traffic a party was never entitled to carry. In this case, Telenet is carrying traffic in a manner that violates Florida law. Indeed, Telenet is performing as an interexchange carrier (and an uncertificated one at that), not as an alternative local exchange company. Customers do not receive dial tone from Telenet; they connect with Telenet through an access code in order to complete a toll call. (Order at pp. 3-4).

5. Telenet next argues that a stay will not cause substantial harm nor be contrary to the public interest. Again, this allegation is without foundation.

BellSouth will be harmed because it will not receive access charges to which it is legally entitled. The public will be harmed because a violation of Florida law will proceed to go unchecked.

6. In addition, Telenet argues that a stay will facilitate resolution of the parties' dispute in a reasonable fashion. BellSouth has already offered such a resolution. Telenet has many options under which it can continue to provide service. Telenet has declined all of those options. Instead, Telenet continues to pretend that the Commission's Order does not exist. BellSouth has agreed to enter into agreements with Telenet so long as the terms of the Order are met and obeyed. Telenet, on the other hand, refuses to agree that it is bound by the Order.

7. Telenet claims that BellSouth is threatening to terminate Telenet's service in order to drive Telenet out of business or compel Telenet to accept an agreement inferior to others to which BellSouth is a party. This is patently false. The Order was rendered on April 23, 1997. BellSouth originally gave Telenet until June 13, 1997 to comply with the terms of the Order. BellSouth was more than reasonable in allowing Telenet almost seven weeks to resolve the situation and comply with the Order. Telenet failed to do so.

8. Finally, Telenet argues that it will likely prevail on its Motion for Reconsideration. Telenet, however, offers no new arguments to support this

allegation. BellSouth has already demonstrated in its response to Telenet's Motion for Reconsideration the fact that Telenet has not met the standard for reconsideration and therefore incorporates its response herein. Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962),

9. For the reasons stated above, the Commission should not grant a stay of the Order pending disposition of the reconsideration. However, if a stay is granted, it must be conditioned on the posting of a bond or other adequate security.

10. Rule 25-22.061(1)(a), Florida Administrative Code, requires that the stay be conditioned upon the posting of a bond or other adequate security. See also, In Re: Application for a rate increase for North Ft. Myers Division in Lee County by Florida Cities Water Company - Lee County Division, 96 F.P.S.C. 11:296, 297 (1996) . Telenet fails completely to even mention this requirement.

WHEREFORE, for the foregoing reasons, BellSouth respectfully requests that the Commission deny Telenet's Motion for Stay.

Respectfully submitted this 18th day of June, 1997.

BELLSOUTH TELECOMMUNICATIONS, INC.

*Robert G. Beatty (RM)*

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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 U.S. Mail this 18<sup>th</sup> day of June, 1997 to the following:

Douglas G. Bonner  
Colin M. Alberts  
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Attys. for Telenet

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*Nancy B. White*  
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Nancy B. White (PW)