

ORIGINAL
FILE COPY

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re:)
)
TELENET OF SOUTH FLORIDA, INC.)
)
Petition for Relief Under 47 U.S.C. § 252(i))
To Opt Into Interconnection Agreement with)
)
BELLSOUTH TELECOMMUNICATIONS, INC.)
)

Docket No. **970730-TP**

**REQUEST FOR ORAL ARGUMENT ON
EMERGENCY MOTION FOR STAY
TELENET OF SOUTH FLORIDA, INC.**

Pursuant to Rule 25-22.058 of the Florida Administrative Code, Telenet of South Florida, Inc. ("Telenet") hereby requests oral argument on its Emergency Motion for Stay ("Motion"). FLA. ADMIN. CODE. Rule 25-22.058. Oral argument will aid the Commission in evaluating the merits of Telenet's Motion. Resolution of Telenet's Motion requires an understanding of a previous proceeding before the Commission, Docket No. 961346-TP, as well as the interplay between Florida

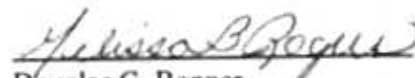
ACK 1
AFA law and the Federal Telecommunications Act of 1996.
APP 1
CAF _____
CIR _____
C _____
L 1
L 5
C _____
REC _____
SEC 1
WAS _____
OTH _____

RECEIVED & FILED
EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
06699-JUL-26
FILE RECORDS/REPORTING

Accordingly, Telenet requests that the Commission grant oral argument on its Motion.

Respectfully submitted,



Douglas G. Bonner

Melissa B. Rogers

SWIDLER & BERLIN, CHARTERED

3000 K Street, N.W., Ste. 300

Washington, D.C. 20007-5116

(202) 424-7500 (Voice)

(202) 424-7645 (Fax)

Dated: July 1, 1997

Attorneys for Telenet of South Florida, Inc.

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

In re:)

TELENET OF SOUTH FLORIDA, INC.)

Petition for Relief Under 47 U.S.C. § 252(i)
To Opt Into Interconnection Agreement with)

BELLSOUTH TELECOMMUNICATIONS, INC.)

Docket No. 970730-TP

EMERGENCY MOTION FOR STAY
TELENET OF SOUTH FLORIDA, INC.

Douglas G. Bonner
Melissa B. Rogers

SWIDLER & BERLIN, CHARTERED
3000 K Street, N.W., Ste. 300
Washington, D.C. 20007-5116
Phone: (202) 424-7500
Fax: (202) 424-7645

Attorneys for Teleaet of South Florida, Inc.

Dated: July 1, 1997

DOCUMENT NUMBER-DATE
06699 JUL-25
FPSC-REG/REG/REPORTING

TABLE OF CONTENTS

	Page
INTRODUCTION	2
FACTUAL BACKGROUND	3
ORAL ARGUMENT REQUESTED	4
ARGUMENT	4
I. THE COMMISSION MUST ENTER A STAY OF ITS PREVIOUS ORDER TO PRESERVE ITS JURISDICTION TO DETERMINE TELENET'S 252(i) RIGHTS	4
A. Standard for Granting Stay or Temporary Restraining Order	5
B. Telenet is Likely to Succeed On Its 252(i) Petition	6
C. Telenet Will Suffer Irreparable Harm If its Motion for Stay is Denied ..	7
D. The Threatened Injury to Telenet Far Outweighs Any Countervailing Harm to BellSouth	9
E. Public Interest Is Served By Staying the Order	9
F. Equities Favor Granting A Stay	10
CONCLUSION	11

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re:)

TELENET OF SOUTH FLORIDA, INC.)

Petition for Relief Under 47 U.S.C. § 252(i)
To Opt Into Interconnection Agreement with)

BELLSOUTH TELECOMMUNICATIONS, INC.)

Docket No. 970730-TP

**EMERGENCY MOTION FOR STAY
TELENET OF SOUTH FLORIDA, INC.**

Telenet of South Florida, Inc. ("Telenet"), by its undersigned attorneys, hereby files its Emergency Motion for Stay of Commission Order No. PSC-97-0462-FOF-TP (the "Order") issued on April 23, 1997 in Docket No. 961346-TP¹ pursuant to Sections 367.121(1)(g)&(j), Florida Statutes.² A stay is necessary because BellSouth Telecommunications, Inc. ("BellSouth") is threatening to terminate certain services to Telenet while Telenet's 252(i) Petition is pending.

¹ Copy of the Order attached as Exhibit A.

² Section 367.121(1)(g) & (j) provide:

"(1) In the exercise of its jurisdiction, the commission shall have power: . . . (g) [t]o exercise all judicial powers, issue all writs, and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements . . . (j) [t]o seek relief in circuit court including temporary and permanent injunctions, restraining orders, or any other appropriate order, because the Legislature finds that violations of commission orders or rules, in connection with the impairment of a utility's operations or service, constitute irreparable harm for which there is no adequate remedy at law."

A stay is necessary to preserve the *status quo* pending the Commission's determination of the parties' rights pursuant to Telenet's 252(i) Petition. *Petition for Relief Under § 252(i) of Telenet of South Florida, Inc.* (the "Petition"). A favorable ruling on its 252(i) Petition will give Telenet access to a nondiscriminatory interconnection agreement that will require BellSouth to provide Telenet interconnection, unbundled elements, and resold services, *inter alia*, on the same terms and conditions as given to AT&T in Florida. Termination of service will drive Telenet out of business and deprive the Commission of jurisdiction to determine the parties' rights pursuant to Section 252(i) of the Telecommunications Act of 1996 (the "1996 Act") by rendering moot Telenet's 252(i) Petition. *See* 47 U.S.C. §252(e)(1) & (i) (1997). Accordingly, Telenet requests an emergency stay of the Order pending determination of the Petition.

INTRODUCTION

BellSouth has unlawfully refused to offer Telenet the same terms and conditions as offered in its Interconnection Agreement with AT&T in Florida ("AT&T Agreement"). Moreover, BellSouth tried to force Telenet into accepting a modified agreement containing use and user restrictions on resale of BellSouth services, and other unacceptable terms and conditions by threatening to disconnect service unless Telenet agreed to accept the modified agreement. Letter of June 3, 1997 attached as Exhibit B. Telenet refused to accept the modified agreement and filed its Petition seeking an order requiring BellSouth to offer Telenet the AT&T Agreement pursuant to Sections 251 and 252 of the 1996 Act. Its Petition is pending before the Commission.

In the interim, the Commission on June 24, 1997, denied Telenet's Motion for Reconsideration of the Order.² The Order, issued in an unrelated proceeding, permits BellSouth to continue to sell call forwarding to Telenet subject to the restrictions of section A13.9.1.A. of BellSouth's General Subscriber Service Tariff, and requires Telenet to pay terminating access charges (for unspecified access elements and in an unspecified amount) for use of BellSouth's network. Based on that Order, BellSouth has notified Telenet that it will terminate service. Letter of May 23, 1997 attached as Exhibit C. Termination of service will result in cessation of all of Telenet's operations. Telenet will lose most, if not all, of its customers, and likely will go out of business.

A favorable ruling on Telenet's Petition would render the Order null and would require BellSouth to at least offer Telenet the AT&T Agreement thereby permitting Telenet to remain in business by potentially offering a variety of service options under such an agreement. Accordingly, Telenet requests that the Commission stay the effectiveness of the Order pending a determination of Telenet's 252(i) rights pursuant to the Petition.

FACTUAL BACKGROUND

Telenet is a certified alternative local exchange carrier in Florida. Affidavit of Mitchell Kupinsky ("Kupinsky Aff."), ¶ 2 attached as Exhibit D. It provides services to approximately 250 customers in the South Florida area. *Id.* Telenet's services provide an economical competitive alternative to callers for calls within the South Florida LATA. *Id.* Telenet provides service to its

² An order has not yet been issued by the Commission on this Motion for Reconsideration.

customers using call forwarding services purchased from BellSouth. *Id.*, at ¶ 7. The AT&T Agreement contains no restrictions that would prohibit Telenet from continuing to provide its services. Accordingly, if Telenet were permitted to opt-in to the AT&T Agreement, its services would continue undisrupted.

Unfortunately, BellSouth is threatening to terminate call forwarding services based on the Commission's Order. Termination of service is the ultimate and potentially fatal arrow in BellSouth's quiver. Termination of service would likely drive Telenet out of business by destroying Telenet's reputation and goodwill with its customers and depriving Telenet of its only source of revenue. Such a result is contrary to the strong pro-competitive policies embodied in the 1996 Act.

ORAL ARGUMENT REQUESTED

Oral argument has been requested pursuant to Rule 25-22.058 of the FLORIDA ADMIN. CODE, ANN.

ARGUMENT

- I. THE COMMISSION MUST ENTER A STAY OF ITS PREVIOUS ORDER TO PRESERVE ITS JURISDICTION TO DETERMINE TELENET'S 252(i) RIGHTS

A stay is necessary to preserve the Commission's jurisdiction to determine Telenet's rights pursuant to Section 252(i) of the 1996 Act. The 1996 confers jurisdiction to approve interconnection agreements to state commissions. 47 U.S.C. § 252(e)(1)(1997). It also provides that,

[a] local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved by this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

47 U.S.C. § 252(i) (1997). This provision gives Telenet the absolute right to "opt-in" to the AT&T agreement. BellSouth's failure to offer Telenet that Agreement violates the 1996 Act. However, if BellSouth is permitted to terminate service to Telenet pursuant to the Order, the Commission's determination of Telenet's rights under 252(i) will be rendered moot because Telenet will be driven out of business.

A. Standard for Granting Stay or Temporary Restraining Order

Sections 367.121(g) & (j) give the Commission power to issue stays or temporary injunctions to maintain the *status quo* pending final determination of the parties' rights.⁴ Cf. *Grant v. Robert Half Int'l, Inc.*, 597 So.2d 801, 801-02 (3rd DCA 1992)("[t]he purpose of a temporary injunction is not to resolve a dispute on the merits, but rather to preserve the status quo until the final hearing when full relief may be granted.")

⁴ Factors for temporary restraining order overlap with those for stay pending judicial review. Rule 25-22.061(2) of the Florida Administrative Code provides, in pertinent part:

... a party seeking to stay a final or non-final order of the Commission pending judicial review shall file a motion with the Commission, which shall have authority to grant, modify, or deny such relief. A stay pending review may be conditioned upon the posting of a good and sufficient bond or corporate undertaking, other conditions, or both. In determining whether to grant a stay, the Commission may, *among other things*, consider:

- (a) Whether the petitioner is likely to prevail on appeal;
- (b) Whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and
- (c) Whether the delay will cause substantial harm or be contrary to the public interest.

FLA. ADMIN. CODE Rule 25-22.061(2)(emphasis added).

A movant is entitled to a temporary restraining order when it shows:

- (1) a substantial likelihood of success on the merits;
- (2) a likelihood of irreparable injury and unavailability of an adequate remedy at law;
- (3) that the threatened injury to the movant outweighs possible harm to non-movant; and
- (4) that the granting of a temporary restraining order will not disserve the public interest.

Cordis Co. v. Prooslin, 482 So.2d 486, 489-90 (3rd DCA 1986); *U.S. 1 Office Co. v. Falls Home Furnishing, Inc.*, 655 So.2d 209, 210 (3rd DCA 1995).

Telenet is entitled to a stay pending determination of its rights under the 252(i) Petition because, as demonstrated below, it has shown all four elements necessary for a temporary restraining order or a stay pending judicial review.

B. Telenet Is Likely to Succeed On Its 252(i) Petition

Telenet is likely to prevail on its 252(i) Petition. This Commission has held that Section 252(i) requires local exchange carriers to provide any interconnection, service or network element to a requesting telecommunications carrier on the same terms and conditions provided in any approved agreement. See e.g., *In Re: Petitions by AT&T Communications of the Southern States, Inc.*, Docket No. 960847-TP, Order No. PSC-97-0064-FOF-TP (May 21, 1997).

On December 31, 1996, the Commission approved all relevant portions of the AT&T Agreement and ordered BellSouth and AT&T to execute the Agreement. See *In re: Petition by AT&T Communications of the Southern States, Inc.*, Docket No. 960833-TP, Order No. PSC-96-1579-FOF-TP (December 31, 1996). On May 27, 1997, the Commission found BellSouth and AT&T in violation of 47 U.S.C. § 252(b) by failing to execute the agreement as required. *In re: Petition by AT&T Communications of the Southern States, Inc.*, Docket No. 960833-TP, Order No.

PSC-97-0600-FOF-TP (May 27, 1997). The Commission ordered that the parties file an executed agreement by June 10, 1997, or face daily monetary penalties. On information and belief, on June 10, 1997, the signed AT&T Agreement was filed with the Commission by the parties. The Commission will shortly issue its order approving the agreement as signed. Pursuant to Section 252(i), Telenet wants services on the terms and conditions contained in that Agreement.

BellSouth's failure to offer Telenet services on a nondiscriminatory basis is in violation of 252(i). Telenet will prevail on its 252(i) Petition, but without a stay of the Commission's previous Order its victory will be hollow. *Kupinsky Aff.*, ¶ 12.

C. Telenet Will Suffer Irreparable Harm If Its Motion for Stay is Denied

BellSouth has given Telenet written notice that it will terminate service to Telenet based on the Commission's determination in the Order that BellSouth may enforce section A13.9.1.A. of its General Subscriber Service Tariff in the provision of call forwarding services presently provided to Telenet. Efforts by Telenet to avoid termination of service have been unsuccessful. This termination of service will cause immediate and irreparable harm to Telenet, a certificated alternative local exchange carrier currently providing service to customers in Florida, because it will cause a complete shutdown of Telenet's system, and disrupt service needed by Telenet's current customers, many of which are businesses that rely on such service for essential sales and other transactions. *Kupinsky Aff.*, ¶¶ 7-12. Unlike BellSouth, a dominant carrier with prodigious financial and legal resources, Telenet has relatively modest resources, and may not be able to survive the destructive effect on its business that this planned termination will cause. *Id.*, at 11. In these incipient stages of entry by local competitors, BellSouth unquestionably benefits by taking unreasonable and aggressive stances to thwart entry by competitors.

It is well-settled that significant loss of business constitutes irreparable harm sustaining a temporary restraining order. *U.S. 1 Office Co.*, 655 So.2d at 210; *Hanaina Enterprises, Inc. v. United States*, 806 F. Supp. 261, 263 (S.D. Fla. 1992) and cases cited therein; cf. *Zuckerman v. Professional Writers of Florida, Inc.*, 398 So.2d 870, 872 (4th DCA), *rev. denied*, 411 So.2d 385 (Fla. 1981)(temporary injunction issued requiring return of business records taken by former employee; irreparable injury demonstrated because lack of records impeded operation of business). In *Hanaina*, the court held that movant established irreparable harm by proving that 70-80% of its business would be lost absent a stay. 806 F. Supp. at 263. Telenet faces possible loss of all its business absent a stay, *a fortiori*, it has shown the irreparable injury necessary for a temporary restraining order.

Moreover, the damage done by the disconnection of its service will be irreversible, even if the termination of service is temporary. Telenet's reputation as a service provider, the goodwill developed with customers, and its credibility as an alternative provider of service in Florida are all at stake. Such factors cannot be quantified and satisfied with monetary damages.²

² Section 367.121(1)(j) also provides guidance. Pursuant to that Section, the Commission is empowered to obtain injunctions to enforce its own orders and rules based on a Legislative finding that violations "in connection with the impairment of a utility's operations or service, constitute irreparable harm for which there is no adequate remedy at law." Fla. Stat. Ann. § 367.121(1)(j). Without doubt, BellSouth's termination of service will impair Telenet's operations. Moreover, BellSouth is racing to terminate service prior to being ordered to offer the AT&T Agreement to Telenet -- an agreement that would permit Telenet to continue operating. If the Commission can obtain injunctions to enforce its orders, it should obtain injunctions or issue stays to preserve its own jurisdiction to decide this issue while the affected ALEC, Telenet, is still a viable entity.

D. The Threatened Injury to Telenet Far Outweighs Any Countervailing Harm to BellSouth.

Granting this Motion for Stay will preserve Telenet's viability until Telenet has full opportunity to both (i) exercise its rights for reconsideration and appeal without being put out of business by BellSouth in the interim; and (ii) negotiate an interconnection or other agreement with BellSouth that will allow Telenet to remain in business.

By contrast to the dire situation facing Telenet if a stay is not issued, BellSouth will not suffer any substantial or noticeable harm if the *status quo* is maintained. Telenet's 250 customers do not represent a significant portion of the intra-LATA toll users in Florida served by BellSouth (nor are they even a significant portion of the intra-LATA toll users in the Southeast Florida LATA where Telenet exclusively is providing service today) and BellSouth is being paid by Telenet for its services at tariffed rates. In reality, Telenet's operations have only an inconsequential impact upon BellSouth's rate of return.

E. Public Interest Is Served by Staying the Order

Failure to grant a stay will cause confusion and disruption among the public, namely Telenet's existing customers. See *e.g.*, *Wilson v. Sandstrom*, 317 So.2d 732, 736-37 (Fla. 1975), *cert. denied*, 423 U.S. 1053 (1976). At present, Telenet provides service to approximately 250 customers in Florida, offering them a competitive, low-cost alternative to BellSouth services. Members of the public in Florida that use Telenet's services not only achieve substantial cost savings, but have competitive service options for their calls. Continuing the *status quo* will avoid a permanent disruption of Telenet's existing customer relationships while the long term supplier relationship between Telenet and BellSouth is determined, either by reaching a negotiated

interconnection agreement, or by further proceedings before the Commission, or, if necessary, before the courts. Failure to maintain the *status quo* will cause substantial public harm: it will disrupt telephone services currently being used by Telenet's customers; it will force Telenet customers to lose a competitive alternative, to face substantially higher costs and be subject to substantially higher-priced services from BellSouth without meaningful alternatives.

F. Equities Favor Granting a Stay

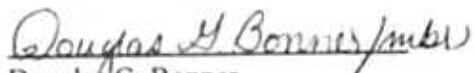
Rule 25-22.060(2) permits the Commission to consider factors other than those enumerated in determining whether to grant a stay. FLA. ADMIN. CODE, Rule 25-22.060 (2). In this case, the equities support the grant of a stay.

BellSouth initially offered Telenet the AT&T Agreement in April 1997. Under the guise of removing superfluous attachments, BellSouth substantially revised the agreement. When Telenet discovered the bait and switch, BellSouth responded by threatening to terminate Telenet's service. BellSouth should not be rewarded for such conduct. Any harm to BellSouth resulting from a stay pending resolution of Telenet's 252(i) Petition is of BellSouth's own making. BellSouth put itself in the current position by failing to negotiate in good faith and failing to offer Telenet the AT&T Agreement.

CONCLUSION

For the foregoing reasons, Telenet respectfully requests that the Commission grant its Emergency Motion for Stay pending a determination of Telenet's rights pursuant to its Petition.

Respectfully submitted,



Douglas G. Bonner
Melissa B. Rogers

SWIDLER & BERLIN, CHARTERED
3000 K Street, N.W., Ste. 300
Washington, D.C. 20007-5116
(202) 424-7500 (Voice)
(202) 424-7645 (Fax)

Dated: July 1, 1997

Attorneys for Telenet of South Florida, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 1997, copies of the foregoing EMERGENCY MOTION FOR STAY OF TELENET OF SOUTH FLORIDA, INC.; Docket No. 970730-TP, were sent via Federal Express to the following parties:

Ms. Blanca S. Bayo (0 + 15)
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

J. Phillip Carver
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301

Nancy H. Sims
Director, Regulatory Affairs
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301

Nancy White
BellSouth Telecommunications, Inc.
675 West Peachtree Street
Room 4300
Atlanta, Georgia 30375

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


Melissa B. Rogers

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for arbitration) DOCKET NO. 961346-TP
of dispute with BellSouth) ORDER NO. PSC-97-0462-POF-TP
Telecommunications, Inc.) ISSUED: April 23, 1997
regarding call forwarding, by)
Telenet of South Florida, Inc.)

The following Commissioners participated in the disposition of this matter:

JOE GARCIA
DIANE K. KIESLING

APPEARANCES:

Douglas G. Bonner, Esquire, and Colin M. Alberts, Esquire, Swidler & Berlin, Chartered, 3000 K. Street N.W., Suite 300, Washington, D.C. 20007-5116
On behalf of Telenet of South Florida, Inc.

J. Phillip Carver, Esquire, and Nancy B. White, Esquire, c/o Nancy H. Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301-1556
On behalf of BellSouth Telecommunications, Inc.

Charles J. Pellegrini, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

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 (GSST). Telenet alleges that the tariff provision is an anticompetitive restriction and that it has not been able to reach a resale agreement with BellSouth.

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 our decision.

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, we denied BellSouth's motion to dismiss. An evidentiary hearing was held on February 12, 1997.

At the issue identification meeting held in this proceeding on January 2, 1997, Telenet declined to add an issue regarding the unbundling and pricing of call forwarding services. Thereafter, the Prehearing Officer granted from the bench BellSouth's motion to strike portions of Telenet's testimony regarding the unbundling and pricing of its call forwarding services. BellSouth is required by Section 364.161 (1), Florida Statutes, and Section 251(c)(4) of the Telecommunications Act of 1996 (Act) to offer for resale, upon request, any features, functions or capabilities to the extent technically and economically feasible. The terms, conditions and price for a resold service are not, however, issues for us to arbitrate in this proceeding.

The issue before us is whether BellSouth may continue to sell its call forwarding services subject to the existing tariff restrictions. After reviewing the evidence of record, the arguments of the parties, and the recommendations of our staff, we set forth our decision below.

RESALE OF CALL FORWARDING

As previously stated, Telenet filed a petition for arbitration regarding the reasonableness of BellSouth's tariff restriction on the resale of its call forwarding services. The record shows that Telenet is currently reselling BellSouth's call forwarding services in a way that avoids the payment of toll or access charges, which violates BellSouth's tariff.

We first consider the business relationship between Telenet and BellSouth, and then the service that Telenet intends to provide based on BellSouth's call forwarding service. Next, we consider the tariff restriction that is in contention, followed by the parties' arguments concerning whether or not the tariff restriction is reasonable and nondiscriminatory. Finally, we consider 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 witness Kupinsky states that Telenet was certified by this Commission as an alternative local exchange company (ALEC) in April of 1996. He states that Telenet has offered local exchange services in the tri-county area of Dade, Broward and Palm Beach counties in competition with BellSouth since May 1996. He states further that Telenet began purchasing call forwarding features, as well as standard business lines with other features, in November of 1995. Witness Kupinsky states that the lines at first were purchased in names other than Telenet, since Telenet was not yet formed as a corporation. He states, moreover, that Telenet did not indicate to BellSouth customer representatives that Telenet's customers would be using the business lines or call forwarding services to avoid BellSouth's toll charges. BellSouth witness Scheye asserts there was no way for BellSouth's customer representatives to discern how Telenet intended to use the service, whether for resale or not.

According to witness Scheye, Telenet is reselling call forwarding features associated with custom calling service, such as call forwarding variable, call forwarding variable multipath and remote access call forwarding variable. Witness Scheye believes this is a misuse of BellSouth's call forwarding services and violates the nature and purpose of the services. Witness Scheye states that Telenet has not attempted to negotiate a resale agreement pursuant to the applicable law; therefore, he claims, Telenet is not authorized to resell any of BellSouth's retail services. He later asserts that the resale of call forwarding services is not at issue, but only Telenet's use of these services as a means to bypass long distance charges.

Telenet Service

According to Telenet witness Kupinsky, Telenet currently has approximately 239 customers, with about 100 prospective customers. He explains that, in the provision of Telenet's service, customers dial a local phone number that gives them access to Telenet's computer voice mail network. The customers then enter an access code and the telephone number they wish to reach. He states that 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. He states further that 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. He states that what would normally be a long distance or an extended calling service (ECS) call is broken into a series of local calls.

As witness Kupinsky further explains, 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. Witness Kupinsky states that this process takes about 10 to 15 seconds.

Upon consideration, we find that, 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. We also find that Telenet does not pay any access charges to BellSouth. In addition, we find 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.

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.

Witness Kupinsky states that call forwarding is a key element in the Telenet network, and that Telenet would not be able to compete without the use of call forwarding services. Witness Kupinsky contends that Telenet requires "remote access to call forwarding," which offers the multi path feature. He explains that remote access allows subscribers to activate or deactivate the feature from a remote location. He explains further that "call forwarding multipath" provides the capability to specify the number of calling paths that can be forwarded simultaneously.

BellSouth witness Scheye states that Telenet's use of "call forwarding multipath" violates GSST section A13.9.1.A.1. That part of the tariff provides:

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.

Witness Kupinsky asserts that the restriction in BellSouth's tariff on call forwarding services is anticompetitive and discriminatory towards ALECs and resellers. He 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. He 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 the current flat rate of 10 cents per call Telenet charges its customers. Thus, he contends that BellSouth's intraLATA network is an essential bottleneck facility for any provider of competitive local exchange service. Furthermore, he contends that call forwarding, without end-user restrictions, must be provided to introduce competition in the intraLATA market dominated by BellSouth.

The record shows that Telenet's intent is to offer prices to consumers that are less than those offered by its competitors. Moreover, the record shows that the rate available to Telenet through BellSouth's wholesale discount is 16 cents per minute, less than BellSouth's current intraLATA toll rate of 21 cents per minute. In addition, as discussed below, there are other alternatives available to Telenet to provide intraLATA toll services to consumers.

Witness Scheye states that BellSouth's limitation on the use of call forwarding is not a resale restriction. Rather, the limitation defines the nature of the service. He believes that the definition and the tariff limitation specify the proper usage of the service in all instances, whether sold as a retail service or as a resold service. He 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. Furthermore, he states that the tariff specifically prohibits any systematic use of the service to avoid the payment of toll charges. He states 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.

In its brief, Telenet argues that BellSouth's contention that the provision is not a restriction but definitional is disingenuous, and is an attempt by BellSouth to obscure clear-cut state and federal directives. BellSouth witness Scheye claims that even if we were to define the toll service prohibition as a resale restriction, we could still determine that it is reasonable and nondiscriminatory.

Section 364.161 (2), Florida Statutes, in pertinent 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 presumptively unreasonable. We have, however, authority to approve reasonable and nondiscriminatory restrictions on resale under Florida law and the Act.

Reasonableness and Discrimination

BellSouth witness Scheye states that the toll bypass prohibition is clearly reasonable and nondiscriminatory for several reasons. He asserts that the tariff limitation promotes more efficient use of the network. He 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. We note that witness Scheye admits that BellSouth has no studies or surveys that demonstrate that Telenet's resale of call forwarding to bypass intraLATA toll will adversely affect BellSouth's network. In addition, witness Scheye states that Telenet's demand for BellSouth's call forwarding service is not technically infeasible, and it will not exceed BellSouth's network capability.

Upon consideration, we find that if Telenet's volume grew or if other carriers used this same arrangement, this could ultimately lead to an inefficient use of BellSouth's network. We find further that there is insufficient evidence to determine if BellSouth's network would be adversely affected by Telenet's use of call forwarding to bypass toll.

BellSouth witness Scheye asserts that the price of 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. He 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, 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.

Witness Scheye states that local calling areas have been established through tariffs and Commission proceedings to delineate local calling areas and to meet community of interest needs. He contends that the definitions of services in BellSouth's tariffs have been established to identify these calling areas, and to distinguish between local, toll and access services. Thus, he states that BellSouth's prices have been established to recognize these distinctions and reflect Commission policies for these services.

In its brief, Telenet argues that it has long been recognized by the FCC that arbitrage practices promote lower consumer rates and improved services. Witness Kupinsky states that arbitrage is

a method of introducing much-needed competition in a market that has belonged exclusively to BellSouth.

We note that we have devoted much attention to the local calling areas of consumers in Florida. This is illustrated by the extensive Commission proceedings resulting in the implementation of extended area service (EAS) and ECS throughout Florida. In addition, Part IV of Chapter 25-4, Florida Administrative Code, Commission rules regarding the classification of telephone exchanges and EAS provide 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, in Docket No. 920188-TL, we stated that EAS was created to provide specific areas that had an established community of interest with another area some form of toll relief. Therefore, we agree with BellSouth that this Commission has set certain policies regarding the price distinction between local and toll services.

BellSouth witness Scheye also states that we approved the terms and conditions currently contained in the call forwarding tariff. He asserts that such terms and conditions would not have been approved if we found them to be unreasonable or discriminatory. Witness Scheye at first 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 we determine that a particular term or condition is unreasonable or discriminatory. He later concedes that the burden lies with BellSouth to demonstrate that its tariff restriction is reasonable and non-discriminatory.

In its brief, Telenet argues that we have 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, and the Act. Telenet also argues in its brief that BellSouth's argument that call forwarding may need to be repriced to account 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.

We agree with Telenet on both of these points. There have been many changes in the telecommunications industry since BellSouth's tariff was approved. When we approved BellSouth's tariff regarding call forwarding services, the approval was based on its appropriateness at that time. It is proper for us to examine 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.

Finally, witness Scheye states 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. He asserts that the limitation is nondiscriminatory as to both BellSouth's customers and to a 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. Upon consideration, we find that the restriction on BellSouth's call forwarding service is equally applicable to all end user customers and resellers. Thus, we find that the restriction is not discriminatory. We further find that the service limitations on BellSouth's call forwarding services shall be uniform across all carriers.

Access Charges

Witness Scheye states that the unrestricted resale of call forwarding by Telenet results in the delivery of traffic for which terminating access service charges would otherwise apply. 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.

As witness Kupinsky concedes, Telenet does not pay any access charges to BellSouth. He also concedes that if these calls were made through an interexchange carrier (IXC) such as AT&T, however, the calls would be toll, and AT&T would pay access charges to BellSouth. Witness Scheye asserts that the statute, in his opinion, does not permit an interconnection or resale arrangement to be used as a conduit for the bypass of access charges.

Based on the nature of the service that Telenet provides, witness Scheye states that BellSouth has an interconnection arrangement with Telenet, as contemplated by Chapter 364, Florida Statutes. Although there is no signed "interconnection agreement" between the two companies as envisioned by Section 364.161 or

364.162, Florida Statutes, witness Kupinsky agrees that the two companies are physically connected through BellSouth's business lines and call forwarding service and Telenet's IVR switching system. Witness Kupinsky asserts that Telenet is not receiving traffic from IXCs for which terminating access charges would apply; Telenet is merely enhancing the local exchange carrier (LEC) services already provided by BellSouth. Furthermore, since no IXC is involved, he asserts that bypass of terminating access charges is not at issue.

Witness Kupinsky states that Telenet is not violating section 364.16(3)(a), Florida Statutes, and does not owe BellSouth access charges because the calls Telenet handles never leave the BellSouth network. Although Telenet owns its IVRs, he states that the calls remain on the BellSouth line even when they are in the IVRs. We are not persuaded that the calls never leave the BellSouth network. The IVRs are the only network components that Telenet owns. We find that the IVRs are a crucial component in the provision of Telenet's service. We find further that 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. Upon consideration, we conclude that terminating access charges are applicable.

Local Calling Area

Telenet witness Kupinsky contends that Telenet's local calling area consists of the tri-county region of Dade, Broward and Palm Beach counties. He asserts that when a Telenet customer is using its system, the call is a local call because the customer is calling within Telenet's local calling area. However, he concedes, as noted above, that if that same customer were to use BellSouth's network, or make that same call through AT&T or MCI, it would be either an ECS or a toll call.

Witness Scheye states that intraLATA toll is designed to provide a non-local call between two points within a Florida LATA. He states that BellSouth will either receive toll or access for the intraLATA call. Further, he states that Telenet's use of its call forwarding services circumvents the appropriate tariffs and charges established for long distance calls. He asserts 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. He notes that Section 364.337 (2), Florida Statutes, in his opinion, requires that basic local telecommunications service provided by an ALEC include access to operator services, 911 services, and relay services for the hearing

impaired. He states that BellSouth is the company that provides these elements to Telenet's customers.

Although Telenet states in its price list that it does not provide basic local exchange service, witness Kupinsky asserts that Telenet provides local exchange service in competition with BellSouth. He further asserts that Telenet does not provide basic local service since it does not provide dial tone; instead, it provides intraLATA call switching for customers.

Witness Scheye states that since customers dial an access code to use Telenet's service, similar to dialing around for an IXC, it is actually providing service as an IXC, not as an ALEC. Witness Kupinsky agrees that Telenet is an intraLATA toll provider since it provides calls within the LATA. He contends, however, that Telenet does not function as an IXC since it has designated the entire three county area in which it operates as its local calling area. He contends further that since an ALEC has full statewide authority, the LEC's local calling area is not necessarily the same as the ALEC's. Furthermore, in its brief, Telenet argues that in Order No. PSC-96-1231-FOF-TP, issued October 1, 1996, we stated that the ALEC's local calling area may or may not be the same as the LEC's local calling area.

We agree that an ALEC has full statewide authority when it receives certification from this Commission, and that it has the authority to designate its local calling area in whatever way it chooses. Section 364.16 (3)(a), Florida Statutes, nonetheless, 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 witness Scheye also contends that the toll bypass restriction in its tariff is not discriminatory or anticompetitive because there are several options available to resellers to use for developing competitive services. He explains that these alternatives include the reselling of BellSouth's ECS service, the reselling of BellSouth's wide area telecommunications service (WATS), 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.

While Telenet witness Kupinsky states that Telenet did not consider every available alternative, he states that Telenet did consider alternatives such as the purchase of BellSouth's intraLATA toll service at the wholesale discount, and the building of its own infrastructure. He states that these alternatives are not a part of Telenet's business plan. In addition, he contends that these alternatives would not provide real savings to the customer because the customer prices would basically be the same as offered by BellSouth. Nonetheless, as we earlier noted, if Telenet were to purchase intraLATA toll service from BellSouth at a 20% discounted wholesale rate, it would cost Telenet 16 cents per minute. As we also have noted earlier, while Telenet asserts that this discounted rate is substantially higher than the flat rate of 10 cents per call it charges its customers, it is still less than BellSouth's current intraLATA toll rate of 21 cents per minute.

Conclusion

Upon consideration of the evidence in the record and in conformance with Chapter 364, Florida Statutes, and the Act, we find it appropriate for BellSouth to continue to sell its call forwarding services to Telenet subject to the restrictions of GSST section A13.9.1.A.1. We point out that we have always encouraged negotiations to promote competition. We encourage BellSouth and Telenet to continue their negotiations to arrive at an appropriate arrangement whereby Telenet may continue providing service to end users.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that BellSouth Telecommunications, Inc., may continue to sell its call forwarding services to Telenet of South Florida, Inc., subject to the restrictions of General Subscriber Service Tariff section A13.9.1.A.1. It is further

ORDERED that this docket shall be closed.

ORDER NO. PSC-97-0462-FOF-TP
DOCKET NO. 961346-TP
PAGE 13

By ORDER of the Florida Public Service Commission, this 23rd day of April, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: /s/ Kay Flynn
Chief, Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-413-6770.

(S E A L)

CJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).

BellSouth Telecommunications, Inc.
Room 14551 BellSouth Center
475 West Peachtree Street, N.E.
Atlanta, Georgia 30325

June 3, 1997

Mr. Ronald J. Jarvis
Swidler & Berlin Chartered
3000 K Street, N.W., Suite 300
Washington, DC 20007-5116

Re: Negotiations for Interconnection Agreement between Telenet of South Florida, Inc. and BellSouth Telecommunications, Inc.

Dear Mr. Jarvis:

This letter is in response to your letter dated May 30, 1997. This letter also states in writing BellSouth's position as stated in the May 30 conference call held between BellSouth and Swidler & Berlin representing Telenet of South Florida, Inc. (Telenet).

As we stated in the May 30 conference call, BellSouth will offer to Telenet the same interconnection agreement as agreed to between BellSouth and AT&T - Florida with the inclusion of the clause which will allow Telenet to provide services to its end users provided that Telenet's use of features and functions are not in violation of the tariff or of Florida law. The purpose for the inclusion of this clause is to comply with Order No. PSC-97-0462-FOF-TP issued by the Florida Public Service Commission on April 23, 1997 in which the Commission ordered "that BellSouth Telecommunications, Inc., may continue to sell its call forwarding services to Telenet of South Florida, Inc., subject to the restrictions of General Subscriber Service Tariff section A13.9.1.A.1." The AT&T agreement already includes a provision that states that both AT&T and BellSouth agree to abide by all applicable laws in connection with the implementation of the agreement. Telenet's assertions that the Commission's arbitration decision no longer applies to its operations is the foundation for BellSouth's conclusion that Telenet would not honor the general provision of the AT&T agreement that both parties will abide by the applicable law. Therefore, BellSouth has concluded that it must insist on specific language. The requirement imposed on both AT&T and Telenet (and, for that matter, BellSouth) to act lawfully is precisely the same.

With regards to your statement of "BellSouth's threat to terminate service to Telenet on June 13, 1997," BellSouth has not "threatened" Telenet, rather BellSouth has advised Telenet of its intent to remove the features in question from all telephone lines provided to Telenet effective June 13, 1997. This notice of disconnection was sent to Telenet of South Florida, Inc. on May 23, 1997 as a result of the Florida Commission Order No. PSC-97-0462-FOF-TP and as a result of Telenet not providing satisfactory proof that its use of BellSouth features was not in violation of the tariff.

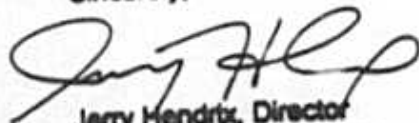
Page 2
June 3, 1997

In response to your statement in your letter of May 30, 1997 that "it [termination of service] was being used as unfair leverage to gain advantage in the course of interconnection negotiations with Telenet," BellSouth's decision to terminate the use of certain features was due to (1) Telenet's violation of Florida law with the use of features and (2) the Florida Public Service Commission's findings regarding this issue as stated in their Final Order. The decision to disconnect the features in question is in no way being used as leverage in the interconnection negotiations.

As we stated in the conference call on May 30, BellSouth is willing to assure that disconnection not take place if Telenet is willing to submit in writing that Telenet will not use BellSouth's features in violation of any tariff or Florida law. This written consent on the part of Telenet is in conformance with the April 23 Order stating that BellSouth "may continue to sell its call forwarding services to Telenet of South Florida, Inc., subject to the restrictions of General Subscriber Service Tariff section A13.9.1.A.1."

BellSouth is continuing interconnection negotiations with Telenet and is interested in reaching an agreement with Telenet.

Sincerely,



Jerry Hendrix, Director
Interconnection Services
BellSouth Telecommunications, Inc.

CC: Doug Bonner
Marvin Kupinsky
Mitchell Kupinsky
J. Phillip Carver
Mary Jo Peed
Nancy White

BellSouth Business Systems, Inc.
Suite 400
701 Northport Parkway
West Palm Beach, Florida 33407

561 940-8580
Fax 561 940-8888

Janet B. Craft
Vice President
and General Manager - FL

May 23, 1997

Mr. Marvin Kupinsky, President
Mr. Mitch Kupinsky, Vice President
Telenet of South Florida
10422 Taft Street
Pembroke Pines, FL 33026

Regarding: Notice of Disconnection of Call Forwarding and Call Transfer
Features

Gentlemen,

In a previous letter you received dated October 15, 1996, from O.G. "Doc" Moore, BellSouth Senior Account Executive, you were advised that your use of BellSouth Call Forwarding and Call Transfer Features was in violation of the Florida General Subscriber Service Tariff. At that time you were requested to provide satisfactory proof that your use of the features were not in violation of the tariff or the features in question would be removed from your telephone lines.

I have been advised that the situation was brought before the Florida Public Service Commission in Docket No. 961346-TP. On April 23, 1997, the Commission issued Order No. PSC-97-0462-FOF-TP. In this Order the Commission sustained the provisions of the tariff with which Telenet has not complied and also found that Telenet's current use of Call Forwarding violates Florida law. Therefore, you are hereby notified that all Call Forwarding and Call Transfer features will be removed from all telephone lines provided to Telenet of South Florida effective June 13, 1997.

If you have questions or require clarification of the above action, please contact Mr. Moore at 954-351-3982.

Sincerely,


Janet Craft

General Manager/Vice President Florida

cc: Nancy B. White
O. G. Moore

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re:)	
TELENET OF SOUTH FLORIDA, INC.)	
Petition for Relief Under 47 U.S.C. § 252(i) To Opt Into Interconnection Agreement with)	Docket No. 970730-TP
BELLSOUTH TELECOMMUNICATIONS, INC.)	

AFFIDAVIT OF MITCHELL A. KUPINSKY

Mitchell A. Kupinsky, being duly sworn, hereby states as follows:

1. I am the Executive Vice President and CEO of Telenet of South Florida, Inc. ("Telenet"), and I am directly involved in, and knowledgeable concerning, Telenet's operations and customer relationships. I make this Affidavit in support of Telenet's Emergency Motion for Stay.

2. Telenet is a certificated alternative local exchange carrier in the State of Florida, providing service to approximately 250 customers in the South Florida area. Telenet's services present an economical competitive alternative to callers for calls within the South Florida LATA that contains Palm Beach, Broward and Dade Counties.

3. On March 31, 1997, Telenet requested that BellSouth "unbundle its network features, functions, and capabilities, as well as access to signaling databases, systems and routing processes, including but not limited to those relating to Call Forwarding services, and offer them to Telenet." Telenet also requested that BellSouth "negotiate terms, conditions and prices of this unbundling."

4. On or about April 14, 1997, BellSouth offered its Interconnection Agreement with AT&T in Florida (the "AT&T Agreement") to Telenet. BellSouth later changed its offer and offered Telenet a revised agreement that includes a number of modifications and changed terms that were not contained in the AT&T Agreement, which are unacceptable to Telenet. Among other unacceptable revisions, Telenet objected to the insertion of any tariffed use and user restrictions on resale of BellSouth's retail services.

5. On May 23, 1997, BellSouth sent a letter to Telenet threatening to disconnect call forwarding and call transfer features on June 13, 1997. On June 3, 1997, BellSouth sent a follow-up letter again stating that it would disconnect those features on June 13, 1997, if Telenet refused to sign the revised agreement.

6. Although BellSouth has not terminated essential services to Telenet yet, I believe that BellSouth intends to do so in the near future.

7. Telenet's ability to provide service to its customers depends entirely on the use of call forwarding services purchased from BellSouth. In the event that BellSouth terminates provision of call forwarding services to Telenet as it threatens to do, all of Telenet's operations, and service to every customer will cease immediately. Without the ability to provide these services, Telenet has not business and no source of revenue.

8. Termination will irreparably injure Telenet's reputation, disrupt Telenet's relationship with its clients, and deprive Telenet of its only source of revenues. In short, such a termination will destroy Telenet's business.

9. Telenet's credibility as a competitive provider of telecommunications services will be destroyed. As a new player in a highly competitive market, Telenet's reputation and customer goodwill are important assets. Customer perception that Telenet's service is unreliable would cripple Telenet's ability to gain new customers.

10. Termination would also irreparably harm Telenet's relationship with its current customers. It will be virtually impossible for Telenet to regain customers whose services have been interrupted by any termination. Many, if not all of them will revert back to BellSouth as their local exchange carrier. It may be impossible to persuade them to return if and when Telenet reaches an interconnection agreement with BellSouth.

11. Even if Telenet prevails in its 252(i) Petition and reaches an interconnection agreement with BellSouth, the harm will occur the moment that termination occurs. A Telenet victory on its 252(i) Petition without a stay to maintain the status quo will be a hollow victory for Telenet because we will be out of business and unable to offer any services (for which an interconnection agreement is needed by Telenet) long before we have an opportunity to conclude a nondiscriminatory agreement with BellSouth.

12. There is no apparent reason why BellSouth cannot continue to provide service to Telenet pending conclusion of an appropriate interconnection agreement between the companies, as contemplated by the Commission in its arbitration order. Since Telenet has determined that it will "opt-in" to the AT&T Interconnection Agreement as offered by BellSouth in April, 1997, there is no need for extensive further interconnection negotiations, and no compelling need for a termination of Telenet's service by BellSouth.

13. Although failure to grant the stay would cause irreparable harm to Telenet and its customers, the delay of the Commission's arbitration order represented by the stay would not cause undue harm to BellSouth, nor would it cause any injury to the public. Granting the requested stay would allow Telenet the ability to preserve its operations while entering into a new relationship with

BellSouth this would be in the public interest, since it would foster additional intra-LATA competition, and it would avoid undue and unnecessary disruption to Telenet's customers.

Further the affiant saith naught.

Dated: June 30, 1997

[Handwritten Signature]

Mitchell A. Kupinsky

County of Broward)
) ss:
State of Florida)

On this 30 day of June came before me, a Notary Public in and for the State of Florida, Mitchell A. Kupinsky, well-known to me or having furnished sufficient evidence of his identity, and, being duly sworn, executed the foregoing "Affidavit of Mitchell A. Kupinsky" in my presence.

ALAN J. WYLIE
Notary Public, State of Florida
My Comm. expires Apr 6, 1998
No. CC362473 [SEAL]
Notary Public

[Handwritten Signature]
6/30/97

My Commission Expires: _____