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September 2, 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. 970730-TP (Telenet - §252(i))**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Answer and Response to Petition for Relief Under 47 U.S.C. §252(i) 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*  
(PW)

Nancy B. White

Enclosures  
M

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

RECEIVED & FILED

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CERTIFICATE OF SERVICE  
DOCKET NO. 970730-TP

I HEREBY CERTIFY that a true and correct copy of the  
foregoing was served by U.S. Mail this 2nd day of September, 1997  
to the following:

Charlie Pellegrini  
Legal Counsel  
Florida Public Service  
Commission  
2540 Shumard Oak Blvd.  
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*Nancy B. White*  
Nancy B. White (Bw)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Telenet of	)	Docket No.: 970730-TP
South Florida, Inc. for relief	)	
under Section 252(l) of the	)	
Telecommunications Act of 1996	)	
with respect to rates, terms and	)	
conditions for interconnection and	)	
related arrangement with	)	
BellSouth Telecommunications,	)	
Inc.	)	
_____	)	Filed: September 2, 1997

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
ANSWER AND RESPONSE TO PETITION FOR  
RELIEF UNDER 47 U.S.C. §252(l)  
OF TELENET OF SOUTH FLORIDA, INC.**

BellSouth Telecommunications, Inc., ("BellSouth"), hereby files its Answer and Response, pursuant to Rule 1.110, Florida Rules of Civil Procedure and Rules 25-22.037 and 25-22.0375, Florida Administrative Code, to the Petition for Relief ("Petition") Under 47 U.S.C. §252(l) of the Telecommunications Act of 1996 ("Act") filed by Telenet of South Florida, Inc. ("Telenet"). BellSouth states the following:

**General Response**

1. As to the allegations of Paragraph 1 of the Petition, BellSouth is without sufficient information or knowledge of the allegations concerning Telenet and, therefore, they are deemed to be denied.
2. As to the allegations of Paragraph 2 of the Petition, BellSouth denies that Telenet provides intraLATA telecommunications services. Telenet is reselling

BellSouth's call forwarding services in violation of BellSouth's tariff and Order No. PSC-97-0462-FOF-TP of this Commission.

3. As to the allegations of Paragraph 3 of the Petition, BellSouth denies that it is a monopoly provider of local exchange service within Florida. BellSouth admits the remaining factual allegations of Paragraph 3 of the Petition.

4. As to the allegations of Paragraph 4 of the Petition, BellSouth admits these allegations.

5. As to the allegations of Paragraph 5 of the Petition, BellSouth admits that the quote from the act is accurately set forth.

6. As to the allegations of Paragraph 6 of the Petition, BellSouth admits that the allegations appear to be accurately set forth from Exhibit 1.

7. As to the allegations of Paragraph 7 of the Petition, BellSouth admits that the allegations appear to be accurately set forth from Exhibit 2.

8. As to the allegations of Paragraph 8 of the Petition, BellSouth denies these allegations.

9. As to the allegations of Paragraph 9 of the Petition, BellSouth denies these allegations and states that the agreement forwarded to Telenet incorporated the terms of the Commission's arbitration between Telenet and BellSouth.

10. As to the allegations of Paragraph 10 of the Petition, BellSouth denies these allegations and states that the agreement forwarded to Telenet incorporated the terms of the Commission's arbitration between Telenet and BellSouth.

11. As to the allegations of Paragraph 11 of the Petition, BellSouth denies the allegations of Paragraph 11.

12. As to the allegations of Paragraph 12 of the Petition, BellSouth admits that the description of Exhibit 4 appears to be accurate, but denies the remaining allegations.

13. As to the allegations of Paragraph 13 of the Petition, BellSouth admits that the description of Exhibit 5 appears to be accurate with the exception of the work "threatening".

14. As to the allegations of Paragraph 14 of the Petition, BellSouth admits that the description of Exhibit 6 appears to be accurate, but denies the remaining allegations.

15. As to the allegations of Paragraph 15 of the Petition, BellSouth states that Exhibit 7 speaks for itself.

16. As to the allegations of Paragraph 16 of the Petition, BellSouth states that Exhibit 8 speaks for itself.

17. As to the allegations of Paragraph 17 of the Petition, BellSouth admits these allegations. Moreover, BellSouth states that the Florida Supreme Court has issued a temporary stay in this matter.

18. As to the allegations of Paragraph 18 of the Petition, BellSouth denies the allegations and states that Telenet must abide by Florida law and by the orders of this Commission.

19. As to the allegations of Paragraph 19 of the Petition, BellSouth admits that Telenet must comply with the orders of this Commission.

20. As to the allegations of Paragraph 20 of the Petition, BellSouth denies the self-serving statements contained therein.

21. As to the allegations of Paragraph 21 of the Petition, BellSouth denies these allegations.

22. The remainder of the Petition constitutes Telenet's request for relief and does not require a response.

#### Specific Response

23. On November 12, 1996, Telenet of South Florida, Inc. ("Telenet") filed a Petition for Arbitration. The issue was (and still is) whether Telenet can resell remote

call forwarding services in a way that violates § A13.9.1.A.1 of BellSouth's General Subscribers Service Tariff. This section of the tariff provides as follows:

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 of which the call is transferred.

24. The Commission resolved the matter by issuing on April 23, 1997 its Final Order on Arbitration (Order No. PSC-97-0462-FOF-TP). The Commission specifically found that BellSouth's tariff restriction is appropriate (Order, p.12). The Commission stated that "[t]he 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" (Order, p. 2) (emphasis added). The Commission also confirmed that while an ALEC may configure its local calling area in any 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." (Order, p. 11).

25. Immediately after the conclusion of the hearing, BellSouth undertook to negotiate with Telenet a resale agreement that would incorporate the decision of the Commission in the arbitration. Telenet, however, has taken the rather novel approach

of refusing to enter into an agreement that incorporates the terms of the Commission's arbitration between it and BellSouth. Instead, Telenet wishes to enter into an interconnection and resale agreement having precisely the same terms as the agreement between BellSouth and AT&T. BellSouth has agreed to this request, with one exception. BellSouth has insisted on the inclusion of a provision that would require Telenet to represent that it would utilize the agreement in a way that is consistent with Florida law and this Commission's Order upholding the resale restriction. Telenet has, as stated in its Petition, refused to enter into any agreement that would require it to abide by this Commission's Order and by the subject Florida Statutes.

26. Telenet's Petition is simply Telenet's latest attempt to avoid the ruling of this Commission despite the fact that its prior attempts to do so have been repeatedly rebuffed. This time, however, Telenet has taken the novel approach of arguing that it is entitled under the Act to avoid the Commission's ruling in the arbitration between it and BellSouth by opting, instead, to receive the terms of the pre-existing AT&T agreement. Telenet states that this agreement does not have the subject restriction. Thus, Telenet appears to believe that, if it utilizes this agreement, it can continue to do business in precisely the way that it does now, purchasing remote call forwarding services and utilizing these services to carry calls across exchange boundaries in a way that violates



the tariff restriction, the ruling of this Commission, and the Florida Statute. Telenet's contention that it should be allowed to do business in this manner has no more merit now than in the numerous previous instances that this position has been argued and rejected. It should, likewise, be reflected here.

27. Telenet's Petition make the same old argument in a new way, by invoking the provisions of Section 252(l) of the Act. This provision states as follows:

(l) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS -- a local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under 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.

Telenet reasons that because the restriction of the use of call forwarding service so as not to violate Florida law was not explicitly included in the AT&T agreement, Telenet may opt to take this agreement, and, thereby, avoid the decision of this Commission that specifically applied to Telenet. This theory is wrong, first of all, because BellSouth is, in effect, offering this service to Telenet on precisely the same terms as AT&T. The agreement between BellSouth and AT&T provides that the agreement between those parties must be implemented in a way that comports with applicable law. Thus, the use that Telenet wishes to make of call forwarding services is prevented by the AT&T


agreement. Telenet appears to hold the inexplicable belief, however, that it may sign an agreement with this language and, nevertheless, use call forwarding to avoid the payment of access charges, i.e., use it in a way that violates Florida law. At least in part for this reason, BellSouth insisted on the insertion of the above-referenced language, so that the agreement between the parties would reflect the matters specifically considered by the Commission and ruled upon in the arbitration.


28. Telenet is also, and more fundamentally, wrong because its interpretation of Section 252(l), if accepted, would lead to a truly perverse result. Telenet contends that it may avoid the Commission's ruling entirely by opting for the AT&T agreement, an agreement in which resale of this type was not, in any way, an issue. 252(1) is, however, simply not applicable. This section provides that if the service is offered to one interconnector, then it must be offered to another on the same terms. Telenet's bizarre rendering of this section, however, is quite different, and can be paraphrased as follows: "If the Commission specifically determines in the context of an arbitration that a restriction is reasonable, then a party may avoid the Commission's ruling (and the restriction) by choosing an earlier agreement in which the issue was never considered." It is obvious that Section 272(l) was not intended to be used in this manner. If there were the case, then a party would be able to get away with virtually any practice in the

use (or misuse) of a resale or interconnection agreement by pointing to some earlier agreement in which the prohibited practice was never at issue, and in which it was, therefore, not considered. Again, Telenet should not be allowed to misuse 252(l) to reach this result.

Respectfully submitted this 2nd day of September, 1997.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
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