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Robert W. Turken, Esq.
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January 27, 1999

VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo
Director of Division of Records and Reports
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Access One Communications, Inc. v. BellSouth Telecommunications, Inc.

Dear Ms. Bayo:

Pursuant to the directions I received from Ms. Linda Williams, I have enclosed an original and seven copies of Access One Communications, Inc.'s complaint against BellSouth Telecommunications, Inc.

I have also enclosed an extra copy of the complaint which I would appreciate if you could file-stamp with the designated case number and return to me in the pre-stamped envelope.

Thank you for your attention to this matter.

Sincerely,



Robert W. Turken

CTR RWT:gm

EAG Encl.

cc: Ms. Nancy H. Sims (w/encl.)

Regulatory Director
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301-1556

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ACCESS ONE COMMUNICATIONS, INC., §
 Complainant, §
 vs. §
 BELLSOUTH TELECOMMUNICATIONS, §
 INC., §
 Respondent. §

DOCKET NO. 990108-TP

COMPLAINT

Claimant, Access One Communications, Inc. ("Access One"), files this complaint against respondent, BellSouth Telecommunications, Inc. ("BellSouth"), and alleges:

JURISDICTION AND PARTIES

1. This is an action for breach of a Resale Agreement entered into between the parties pursuant to 47 U.S.C. § 252(3) and Florida Statutes §§ 364.161 and 162, and for violations of Sections 251 and 252 of the Federal Telecommunications Act of 1996. The Commission has jurisdiction to hear this matter pursuant to Florida Statutes § 364.162.

2. Access One is a New Jersey corporation and is an "Alternate Local Exchange Telecommunications Company" as defined in Florida Statutes § 364.02(1). It is the successor by merger to The Other Phone Company, Inc. ("OPC").

3. BellSouth is a Georgia corporation and is a "Local Exchange Telecommunications Company" as defined in Florida Statutes § 364.02(6).

GENERAL ALLEGATIONS

4. On or about April 29, 1997, Access One and BellSouth entered into an Agreement Between BellSouth Telecommunications, Inc. and The Other Phone Company, Inc. Regarding The Sale of BST's Telecommunications Services to The Other Phone Company, Inc. For The Purposes of Resale (the "Resale Agreement"). A copy of the Resale Agreement is attached hereto as Exhibit A.

5. On or about July 10, 1998, Access One and BellSouth executed an Amendment to Resale Agreement Between BellSouth Telecommunications, Inc. And The Other Phone Company, Inc. Dated April 29, 1997 (the "Amendment"). A copy of the Amendment is attached hereto as Exhibit B. The Resale Agreement and the Amendment are collectively referred to as the "Access One Agreement".

6. Access One is currently one of the largest resellers of local telecommunications services in the State of Florida. Since commencing operations, Access One has enrolled approximately 15,000 customers with approximately 30,000 access lines throughout the State. Yet, despite its growth, Access One has been able to maintain an impressively high level of customer satisfaction and a correspondingly low level of customer complaints.

7. Access One has been able to achieve and maintain its rate of growth and level of customer satisfaction by complying with the terms of the Access One Agreement and by providing its customers with competitive rates and quality service. These are

the very goals which the Florida Legislature and the United States Congress hoped to attain by opening the local telecommunications market to competition and by "leveling the playing field" to ensure that new telecommunications companies had a fair chance to compete with established LECs such as BellSouth.

8. BellSouth, by contrast, has repeatedly and intentionally used its extraordinary market power to violate the specific provisions of the Access One Agreement and to frustrate Access One's efforts to compete on fair terms. The specific actions of BellSouth that give rise to this complaint are set forth below.

Violation of "Most Favored Nation" Clause

9. Paragraph XVI B of the Access One Agreement provides:

In the event that BellSouth, either before or after the effective date of this Agreement, enters into an agreement with any other telecommunications carrier (an "Other Resale Agreement") which provides for the provision within the State of Florida of any arrangements covered by this Agreement upon rates, terms or conditions that differ in material respect from the rates, terms and conditions for such arrangements set forth in this Agreement ("Other Terms"), BellSouth shall be deemed thereby to have offered such other Resale Agreement to [Access One] in its entirety. In the event that [Access One] accepts such offer, such Other Terms shall be effective between BellSouth and [Access One] as of the date on which [Access One] accepts such offer.

10. This provision derives from the requirements of Section 252(i) of the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(i), which provides:

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.

11. In August, 1998, BellSouth advised Access One for the first time of a material provision of an agreement that BellSouth had previously entered into with Telephone Company of Central Florida (the "TCCF Agreement") that was not included in the Access One Agreement.

12. Under the provisions of the TCCF Agreement in question (the "TCCF Provision"), BellSouth agreed that it would not permit a TCCF customer who had an unpaid balance with TCCF to switch back to BellSouth while retaining his or her existing telephone number. This benefit was identical to the protection that BellSouth afforded to itself, and was critical to encourage switching customers to first satisfy their existing bills. Indeed, this provision required BellSouth to affirmatively inform delinquent customers of TCCF who had switched back to BellSouth that they had to satisfy their balances with TCCF if they wanted to retain their existing telephone numbers.

13. The impact of this provision -- and the impact of its unavailability to Access One -- is demonstrated by comparing the

amount of Access One and TCCF's respective unpaid customer balances. Although Access One performs a full credit check on all customers who wish to enroll with Access One, it has incurred in excess of \$1,000,000 in unpaid balances solely from those customers who switched back to BellSouth. By contrast, TCCF has almost zero unpaid balances from its former customers.

14. Accordingly, as soon as Access One became aware of the TCCF Provision, it immediately requested the same benefits from BellSouth.

15. Despite its obligation under the Most Favored Nation clause of the Access One Agreement, BellSouth has refused to comply with Access One's request.

16. BellSouth acknowledges the existence of the TCCF Provision and the fact that the TCCF Agreement was in effect when BellSouth and Access One entered into the Access One Agreement. BellSouth also admits that the Most Favored Nation clause of the Access One Agreement provided Access One with the right to request the benefits of the TCCF Provision. However, BellSouth maintains that Access One "lost" the right to claim the benefits of the provision because it failed to make its request until after the TCCF Agreement was scheduled to expire.

17. BellSouth's refusal to allow Access One the benefits of the TCCF Provision constitutes a direct violation of the Most Favored Nation clause of the Agreement.

18. Not only is BellSouth's "interpretation" of the Most Favored Nation clause inherently inconsistent and illogical, it

is contrary to the specific language of the clause. By the express terms of the Most Favored Nation section, BellSouth was deemed to have made an offer to Access One of all of the terms of the TCCF Agreement, including the TCCF Provision. Access One could accept this "offer" at any time during the life of the Access One Agreement. Once accepted, the provision would apply for the entire term of the Access One Agreement.

19. Moreover, even assuming that the expiration of the TCCF Agreement could somehow have impacted Access One's rights under the Most Favored Nation clause, the TCCF Agreement did not expire (if it ever has) until after Access One made its request for benefits of the TCCF Provision.

20. BellSouth's refusal to accord Access One the benefits of the TCCF Provision is also directly violative of § 251(i) of the Telecommunications Act of 1996, and the fair competition requirements of §§ 251 and 252 of the Act. This is particularly true considering that BellSouth reserves for itself the benefits of the TCCF provision without making them available to Access One and other ALECs.

21. BellSouth extends this inequity by allowing customers of Access One and other ALECs to switch back to BellSouth even though the customers may be in a denied or disconnected status, yet will not allow customers of BellSouth in a similar status to switch to Access One or other ALECs.

**BellSouth's One-Month Minimum Requirement
and Its Violation of the Access One Agreement
and The Telecommunications Act.**

22. BellSouth interprets the Access One Agreement and Section A.2.3.8 of the BellSouth General Subscriber Services Tariff to allow it to charge Access One a one-month minimum whenever a customer switches to Access One.

23. Access One believes this practice discriminates against Access One particularly in respect of customers who switch back to BellSouth within the first month of Access One service.

24. Nevertheless, Access One acknowledges and accepts the Commission's July 22, 1998 ruling in Order No. PSC-98-1001-FOF-TP, Docket No. 980119-TP, where, in the context of a similar resale agreement, the Commission determined that BellSouth was not required to modify its one-month minimum practice.

25. However, BellSouth has improperly taken advantage of the one-month minimum practice by implementing and executing its "winback" program, which is designed to solicit customers to switch back to BellSouth.

26. Pursuant to its "winback" program, once BellSouth is advised that a customer has elected to switch to Access One or another ALEC, it immediately solicits the customer in a marketing campaign designed to "win the customer back."

27. And, since BellSouth controls all customer switching, it is able to add these former customers to its marketing data base immediately after the customer has enrolled with another carrier. Other carriers such as Access One, by contrast, do not

have access to this information and thus are discriminated against in their marketing efforts.

28. BellSouth has achieved notable success in its "winback" program. Indeed, BellSouth has been able to solicit in excess of 1,350 former customers of Access One alone to return to BellSouth during the first month after the customers initially elected to switch.

29. Moreover, because of the combination of the one-month minimum requirement and the "winback" program, BellSouth is able to realize double revenue for each customer who leaves and returns during the first month; BellSouth is paid once by Access One under the one-month minimum requirement, and again by the customer who switches back.

30. This double billing practice has netted BellSouth in excess of \$125,000 at Access One's expense.

31. BellSouth's execution of its "winback" program constitutes an express violation of the Access One Agreement and an affront to the fair competition and "level playing field" requirements of the Telecommunications Act of 1996.

32. If, as BellSouth claims, it is entitled to a one-month minimum, regardless of the actual amount of time that the customer elects to stay with Access One, then, by definition, BellSouth should be precluded from soliciting the customer during this period. Moreover, BellSouth should not be entitled to the overwhelming competitive advantage that it has over other carriers as a result of its exclusive control and knowledge of

customers who have elected to change their local telephone service.

33. Access One has no objection to any proper, non-discriminatory marketing efforts that BellSouth may employ. However, consistent with its own interpretation of the Access One Agreement, BellSouth cannot bind Access One to the purchase of a customer line for an entire initial month, and at the same time attempt to solicit the customer during that month.

34. BellSouth's marketing department should not have access to information about customers who switch their local telephone service that is not available to other carriers.

**BellSouth's Improper, Untimely Notifications
of Customer Switchbacks**

35. BellSouth has maintained before the Commission that it provides the required Preferred Interexchange Carrier (PIC) Adds/Disconnects Reports to its ALEC customers within 7 days (including mailing time) after a change occurs.

36. The Commission has determined that this time frame is acceptable. See Order No. PSC-98-1001-FOF-TP, Docket No. 980119-TP, issued July 22, 1998.

37. At least insofar as Access One is concerned, BellSouth's representations to the Commission regarding the timing of its PIC Reports are not accurate; they are not even close.

38. Indeed, in numerous instances BellSouth has not sent the required switchback notices until several weeks after customers notified BellSouth, and in some instances BellSouth never sent the required switchback notices. Access One only discovered that the customers had switched back to BellSouth when they complained after receiving their bills.

39. In addition, BellSouth's PIC Reports regularly (approaching almost 50%) contain errors.

40. The delays and errors in the PIC Reports have caused material damage to Access One's operations.

41. Among other things, Access One often cannot properly render a final bill because it does not know when the customer actually terminated his or her service.

42. Moreover, because of the delay in the transmission of the Reports, many of Access One's bills are incorrect, which makes Access One appear unprofessional and hampers its own winback efforts.

43. Finally, the delays and inaccuracies in the PIC Reports, and their resulting impact on Access One's bills, have caused Access One's collection rates to be artificially reduced. This, in turn, has compromised Access One's relationships with its working capital lenders and has restricted Access One's ability to grow.

BellSouth's Improper Repair Services

44. Pursuant to the express terms of the Access One Agreement, Sections 251 and 252 of the Telecommunications Act of 1996, and Florida Statutes § 364.161, BellSouth is required to provide the same class and quality of service to Access One's customers as it does for its own customers.

45. This includes, specifically, repair services, for which BellSouth retains sole responsibility.

46. Yet, despite its obligation to provide equal services, BellSouth offers repair options to its own customers that it does not offer Access One customers.

47. For example, BellSouth regularly allows its customers to schedule morning or afternoon repair appointments. By contrast, Access One customers can only schedule appointments for a given day, without any ability to narrow the time even to morning or afternoon.

48. This discriminatory practice not only creates an unnecessary and unfair hardship for Access One customers, it also highlights BellSouth's central operating philosophy of frustrating any meaningful competition.

COUNT I

(Breach of Contract)

49. Access One repeats the allegations in paragraphs 1 through 48 of this complaint.

50. BellSouth's practices as alleged above constitute direct violations and breaches of the Access One Agreement.

51. Access One has suffered actual damages in excess of \$1,700,000 as a result of BellSouth's breaches of the Access One Agreement. In addition, Access One has suffered consequential damages in excess \$10,000,000 as a result of BellSouth's breaches of the Access One Agreement.

WHEREFORE, Access One respectfully requests that the Commission order BellSouth to pay Access One damages in the amount the Commission deems appropriate and to require BellSouth to comply with the terms of the Access One Agreement. Access One also requests that the Commission order BellSouth to pay the costs incurred by Access One in prosecuting this action.

COUNT II

(Violation of the Federal Telecommunications Act of 1996)

52. Access One repeats the allegations in paragraphs 1 through 48 of this complaint.

53. BellSouth's practices as alleged above constitute direct violations of the fair competition requirements of Sections 251 and 252 of the Telecommunications Act of 1996.

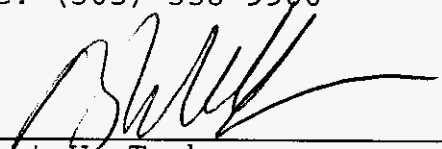
WHEREFORE, Access One respectfully requests that the Commission order BellSouth to immediately cease its discriminatory and anticompetitive practices and comply with the "level playing field" requirements of the Telecommunications Act of 1996. Access One also requests that the Commission order BellSouth to pay the costs incurred by Access One in prosecuting this action.

DATED: January 27, 1999

Respectfully submitted,

STROOCK & STROOCK & LAVAN LLP
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200 South Biscayne Boulevard
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By: _____


Robert W. Turken
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30052126.03

**Agreement Between BellSouth Telecommunications, Inc. and The Other Phone Company, Inc.
Regarding The Sale of BST's Telecommunications Services to The Other Phone Company, Inc.
For The Purposes of Resale**

THIS AGREEMENT is by and between BellSouth Telecommunications, Inc., ("BellSouth or Company"), a Georgia corporation, and The Other Phone Company, Inc. ("Other Phone Company"), a Florida corporation, and shall be deemed effective as of April 29, 1997.

WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the state of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, Other Phone Company is or seeks to become an alternative local exchange telecommunications company authorized to provide telecommunications services in the state of Florida; and

WHEREAS, Other Phone Company desires to resell BellSouth's telecommunications services; and

WHEREAS, BellSouth has agreed to provide such services to Other Phone Company for resale purposes and pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the mutual premises and promises contained herein, BellSouth and Other Phone Company do hereby agree as follows:

I. Term of the Agreement

A. The term of this Agreement shall be two years beginning April 29 and shall apply to all of BellSouth's serving territory as of January 1, 1997 in the state of Florida.

B. This Agreement shall be automatically renewed for two additional one year periods unless either party indicates its intent not to renew the Agreement. Notice of such intent must be provided, in writing, to the other party no later than 60 days prior to the end of the then-existing contract period. The terms of this Agreement shall remain in effect after the term of the existing agreement has expired and while a new agreement is being negotiated.

C. The rates pursuant by which Other Phone Company is to purchase services from BellSouth for resale shall be at a discount rate off of the retail rate for the telecommunications service. The discount rates shall be as set forth in Exhibit A, attached hereto and incorporated herein by this reference. Such discount shall reflect the costs avoided by BellSouth when selling a service for wholesale purposes.

II. Definition of Terms

A. **CUSTOMER OF RECORD** means the entity responsible for placing application for service; requesting additions, rearrangements, maintenance or discontinuance of service; payment in full of charges incurred such as non-recurring, monthly recurring, toll, directory assistance, etc.

B. **DEPOSIT** means assurance provided by a customer in the form of cash, surety bond or bank letter of credit to be held by the Company.

- C. END USER means the ultimate user of the telecommunications services.
- D. END USER CUSTOMER LOCATION means the physical location of the premises where an end user makes use of the telecommunications services.
- E. NEW SERVICES means functions, features or capabilities that are not currently offered by BellSouth. This includes packaging of existing services or combining a new function, feature or capability with an existing service.
- F. OTHER LOCAL EXCHANGE COMPANY (OLEC) means a telephone company certificated by the public service commissions of the Company's franchised area to provide local exchange service within the Company's franchised area.
- G. RESALE means an activity wherein a certificated OLEC, such as Other Phone Company subscribes to the telecommunications services of the Company and then reoffers those telecommunications services to the public (with or without "adding value").
- H. RESALE SERVICE AREA means the area, as defined in a public service commission approved certificate of operation, within which an OLEC, such as Other Phone Company, may offer resold local exchange telecommunications service.

III. General Provisions

A. Other Phone Company may resell the tariffed local exchange and toll telecommunications services of BellSouth contained in the General Subscriber Service Tariff and Private Line Service Tariff subject to the terms, and conditions specifically set forth herein. Notwithstanding the foregoing, the exclusions and limitations on services available for resale will be as set forth in Exhibit B, attached hereto and incorporated herein by this reference.

BellSouth shall make available telecommunications services for resale at the rates set forth in Exhibit A to this agreement and subject to the exclusions and limitations set forth in Exhibit B to this agreement. It does not however waive its rights to appeal or otherwise challenge any decision regarding resale that resulted in the discount rates contained in Exhibit A or the exclusions and limitations contained in Exhibit B. BellSouth reserves the right to pursue any and all legal and/or equitable remedies, including appeals of any decisions. If such appeals or challenges result in changes in the discount rates or exclusions and limitations, the parties agree that appropriate modifications to this Agreement will be made promptly to make its terms consistent with the outcome of the appeal.

See A: F642 →

B. The provision of services by the Company to Other Phone Company does not constitute a joint undertaking for the furnishing of any service.

C. Other Phone Company will be the customer of record for all services purchased from BellSouth. Except as specified herein, the Company will take orders from, bill and expect payment from Other Phone Company for all services.

- D. Other Phone Company will be the Company's single point of contact for all services purchased pursuant to this Agreement. The Company shall have no contact with the end user except to the extent provided for herein.
- E. The Company will continue to bill the end user for any services that the end user specifies it wishes to receive directly from the Company.
- F. The Company maintains the right to serve directly any end user within the service area of Other Phone Company. The Company will continue to directly market its own telecommunications products and services and in doing so may establish independent relationships with end users of Other Phone Company.
- G. Neither Party shall interfere with the right of any person or entity to obtain service directly from the other Party.
- H. Current telephone numbers may normally be retained by the end user. However, telephone numbers are the property of the Company and are assigned to the service furnished. Other Phone Company has no property right to the telephone number or any other call number designation associated with services furnished by the Company, and no right to the continuance of service through any particular central office. The Company reserves the right to change such numbers, or the central office designation associated with such numbers, or both, whenever the Company deems it necessary to do so in the conduct of its business.
- I. The Company may provide any service or facility for which a charge is not established herein, as long as it is offered on the same terms to Other Phone Company.
- J. Service is furnished subject to the condition that it will not be used for any unlawful purpose.
- K. Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.
- L. The Company can refuse service when it has grounds to believe that service will be used in violation of the law.
- M. The Company accepts no responsibility to any person for any unlawful act committed by Other Phone Company or its end users as part of providing service to Other Phone Company for purposes of resale or otherwise.
- N. The Company will cooperate fully with law enforcement agencies with subpoenas and court orders for assistance with the Company's customers. Law enforcement agency subpoenas and court orders regarding end users of Other Phone Company will be directed to Other Phone Company. The Company will bill Other Phone Company for implementing any requests by law enforcement agencies regarding Other Phone Company end users.
- O. The characteristics and methods of operation of any circuits, facilities or equipment provided by any person or entity other than the Company shall not:
1. Interfere with or impair service over any facilities of the Company, its affiliates, or its connecting and concurring carriers involved in its service;

2. Cause damage to their plant;
3. Impair the privacy of any communications; or
4. Create hazards to any employees or the public.

P. Other Phone Company assumes the responsibility of notifying the Company regarding less than standard operations with respect to services provided by it.

Q. Facilities and/or equipment utilized by BellSouth to provide service to Other Phone Company remain the property of BellSouth.

R. White page directory listings will be provided in accordance with regulations set forth in Section A.6 of the General Subscriber Service Tariff and will be available for resale.

S. BellSouth will provide customer record information to the Other Phone Company provided the Other Phone Company has the appropriate Letter(s) of Authorization. BellSouth may provide customer record information via one of the following methods: US mail, fax, telephone or by electronic interface. BellSouth will provide customer record information via US mail, fax or telephone on an interim basis only.

Other Phone Company agrees to compensate BellSouth for all BellSouth incurred expenditures associated with providing such information to Other Phone Company. Other Phone Company will adopt and adhere to the BellSouth guidelines associated with each method of providing customer record information.

T. BellSouth's retail voice mail service shall be available for resale at rates, terms and conditions as mutually agreed to by the parties.

IV. BellSouth's Provision of Services to Other Phone Company

A. Other Phone Company agrees that its resale of BellSouth services shall be as follows:

1. The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions.

2. To the extent Other Phone Company is a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines, Other Phone Company shall not jointly market its interLATA services with the telecommunications services purchased from BellSouth pursuant to this Agreement in any of the states covered under this Agreement. For the purposes of this subsection, to jointly market means any advertisement, marketing effort or billing in which the telecommunications services purchased from BellSouth for purposes of resale to customers and interLATA services offered by Other Phone Company are packaged, tied, bundled, discounted or offered together in any way to the end user. Such efforts include, but are not limited to, sales referrals, resale arrangements, sales agencies or billing agreements. This subsection shall be void and of no effect for a particular state covered under this Agreement as of February 8, 1999 or on the date BellSouth is authorized to offer interLATA services in that state, whichever is earlier.

3. Hotel and Hospital PBX service are the only telecommunications services available for resale to Hotel/Motel and Hospital end users, respectively. Similarly, Access Line Service for Customer Provided Coin Telephones is the only local service available for resale to Independent Payphone Provider (IPP) customers. Shared Tenant Service customers can only be sold those telecommunications services available in the Company's A23 Shared Tenant Service Tariff.

4. Other Phone Company is prohibited from furnishing both flat and measured rate service on the same business premises to the same subscribers (end users) as stated in A2 of the Company's Tariff except for backup service as indicated in the applicable state tariff Section A3.

5. If telephone service is established and it is subsequently determined that the class of service restriction has been violated, Other Phone Company will be notified and billing for that service will be immediately changed to the appropriate class of service. Service charges for changes between class of service, back billing, and interest as described in this subsection shall apply at the Company's sole discretion. Interest shall be at a rate as set forth in Section A2 of the General Subscriber Service Tariff and Section B2 of the Private Line Service Tariff for the applicable state, compounded daily for the number of days from the back billing date to and including the date that Other Phone Company actually makes the payment to the Company may be assessed.

6. The Company reserves the right to periodically audit services purchased by Other Phone Company to establish authenticity of use. Such audit shall not occur more than once in a calendar year. Other Phone Company shall make any and all records and data available to the Company or the Company's auditor's on a reasonable basis. The Company shall bear the cost of said audit.

B. Resold services can only be used in the same manner as specified in the Company's Tariff. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual end user of the Company in the appropriate section of the Company's Tariffs. Specific tariff features, e.g. a usage allowance per month, shall not be aggregated across multiple resold services. Resold services cannot be used to aggregate traffic from more than one end user customer except as specified in Section A23. of the Company's Tariff referring to Shared Tenant Service.

C. Other Phone Company may resell services only within the specific resale service area as defined in its certificate.

D. Telephone numbers transmitted via any resold service feature are intended solely for the use of the end user of the feature. Resale of this information is prohibited.

E. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. Other Phone Company is strictly prohibited from any use, including but not limited to sales, marketing or advertising, of any BellSouth name or trademark.

V. Maintenance of Services

A. Other Phone Company will adopt and adhere to the standards contained in the applicable BellSouth Work Center Interface Agreement regarding maintenance and installation of service.

B. Services resold under the Company's Tariffs and facilities and equipment provided by the Company shall be maintained by the Company.

C. Other Phone Company or its end users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by the Company, other than by connection or disconnection to any interface means used, except with the written consent of the Company.

D. Other Phone Company accepts responsibility to notify the Company of situations that arise that may result in a service problem.

E. Other Phone Company will be the Company's single point of contact for all repair calls on behalf of Other Phone Company's end users. The parties agree to provide one another with toll-free contact numbers for such purposes.

F. Other Phone Company will contact the appropriate repair centers in accordance with procedures established by the Company.

G. For all repair requests, Other Phone Company accepts responsibility for adhering to the Company's prescreening guidelines prior to referring the trouble to the Company.

H. The Company will bill Other Phone Company for handling troubles that are found not to be in the Company's network pursuant to its standard time and material charges. The standard time and material charges will be no more than what BellSouth charges to its retail customers for the same services.

I. The Company reserves the right to contact Other Phone Company's customers, if deemed necessary, for maintenance purposes.

VI. Establishment of Service

A. After receiving certification as a local exchange company from the appropriate regulatory agency, Other Phone Company will provide the appropriate Company service center the necessary documentation to enable the Company to establish a master account for Other Phone Company. Such documentation shall include the Application for Master Account, proof of authority to provide telecommunications services, an Operating Company Number ("OCN") assigned by the National Exchange Carriers Association ("NECA") and a tax exemption certificate, if applicable. When necessary deposit requirements are met, the Company will begin taking orders for the resale of service.

B. Service orders will be in a standard format designated by the Company.

X C. When notification is received from Other Phone Company that a current customer of the Company will subscribe to Other Phone Company's service, standard service order intervals for the appropriate class of service will apply.

(D) The Company will not require end user confirmation prior to establishing service for Other Phone Company's end user customer. Other Phone Company must, however, be able to demonstrate end user authorization upon request.

E. Other Phone Company will be the single point of contact with the Company for all subsequent ordering activity resulting in additions or changes to resold services except that the Company will accept a request directly from the end user for conversion of the end user's service from Other Phone Company to the Company or will accept a request from another OLEC for conversion of the end user's service from the Other Phone Company to the other LEC. The Company will notify Other Phone Company that such a request has been processed.

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* **F.** If the Company determines that an unauthorized change in local service to Other Phone Company has occurred, the Company will reestablish service with the appropriate local service provider and will assess Other Phone Company as the OLEC initiating the unauthorized change, an unauthorized change charge similar to that described in F.C.C. Tariff No. 1, Section 13.3.3. Appropriate nonrecurring charges, as set forth in Section A4. of the General Subscriber Service Tariff, will also be assessed to Other Phone Company.

These charges can be adjusted if Other Phone Company provides satisfactory proof of authorization.

	Nonrecurring Charge
(a) each Residence or Business line	\$19.41

G. The Company will, in order to safeguard its interest, require Other Phone Company to make a deposit to be held by the Company as a guarantee of the payment of rates and charges, unless satisfactory credit has already been established. Any such deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service.

H. Such deposit may not exceed two months' estimated billing.

I. The fact that a deposit has been made in no way relieves Other Phone Company from complying with the Company's regulations as to advance payments and the prompt payment of bills on presentation nor does it constitute a waiver or modification of the regular practices of the Company providing for the discontinuance of service for non-payment of any sums due the Company.

J. The Company reserves the right to increase the deposit requirements when, in its sole judgment, the conditions justify such action

K. In the event that Other Phone Company defaults on its account, service to Other Phone Company will be terminated and any deposits held will be applied to its account.

L. In the case of a cash deposit, interest at the rate of six percent per annum shall be paid to Other Phone Company during the continuance of the deposit. Interest on a deposit shall accrue annually and, if requested, shall be annually credited to Other Phone Company by the accrual date.

VII. Payment And Billing Arrangements

A. When the initial service is ordered by Other Phone Company, the Company will establish an accounts receivable master account for Other Phone Company.

B. The Company shall bill Other Phone Company on a current basis all applicable charges and credits.

C. Payment of all charges will be the responsibility of Other Phone Company. Other Phone Company shall make payment to the Company for all services billed. The Company is not responsible for payments not received by Other Phone Company from Other Phone Company's customer. The Company will not become involved in billing disputes that may arise between Other Phone Company and its customer. Payments made to the Company as payment on account will be credited to an accounts receivable master account and not to an end user's account.

D. The Company will render bills each month on established bill days for each of Other Phone Company's accounts.

E. The Company will bill Other Phone Company, in advance, charges for all services to be provided during the ensuing billing period except charges associated with service usage, which charges will be billed in arrears. Charges will be calculated on an individual end user account level, including, if applicable, any charges for usage or usage allowances. BellSouth will also bill all charges, including but not limited to 911 and E911 charges, telecommunications relay charges, and franchise fees, to Other Phone Company.

F. The payment will be due by the next bill date (i.e., same date in the following month as the bill date) and is payable in immediately available funds. Payment is considered to have been made when received by the Company.

If the payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday. If payment is not received by the payment due date, a late payment penalty, as set forth in I. following, shall apply.

G. Upon proof of tax exempt certification from Other Phone Company, the total amount billed to Other Phone Company will not include any taxes due from the end user. Other Phone Company will be solely responsible for the computation, tracking, reporting and payment of all federal, state and/or local jurisdiction taxes associated with the services resold to the end user.

H. As the customer of record, Other Phone Company will be responsible for, and remit to the Company, all charges applicable to its resold services for emergency services (E911 and 911) and Telecommunications Relay Service (TRS) as well as any other charges of a similar nature.

I. If any portion of the payment is received by the Company after the payment due date as set forth preceding, or if any portion of the payment is received by the Company in funds that are not immediately available to the Company, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor. The late factor shall be as set forth in Section A2 of the General Subscriber Service Tariff and Section B2 of the Private Line Service Tariff.

J. Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to, the Company. No additional charges are to be assessed to Other Phone Company.

K. The Company will not perform billing and collection services for Other Phone Company as a result of the execution of this Agreement. All requests for billing services should be referred to the appropriate entity or operational group within the Company.

L. Pursuant to 47 CFR Section 51.617, the Company will bill the charges shown below which are identical to the EUCL rates billed by BST to its end users.

	Monthly Rate
1. Residential	
(a) Each Individual Line or Trunk	\$3.50
2. Single Line Business	
(b) Each Individual Line or Trunk	\$3.50
3. Multi-line Business	
(c) Each Individual Line or Trunk	\$6.00

M. In general, the Company will not become involved in disputes between Other Phone Company and Other Phone Company's end user customers over resold services. If a dispute does arise that cannot be settled without the involvement of the Company, Other Phone Company shall contact the designated Service Center for resolution. The Company will make every effort to assist in the resolution of the dispute and will work with Other Phone Company to resolve the matter in as timely a manner as possible. Other Phone Company may be required to submit documentation to substantiate the claim.

VIII. Discontinuance of Service

A. The procedures for discontinuing service to an end user are as follows:

1. Where possible, the Company will deny service to Other Phone Company's end user on behalf of, and at the request of, Other Phone Company. Upon restoration of the end user's service, restoral charges will apply and will be the responsibility of Other Phone Company.
2. At the request of Other Phone Company, the Company will disconnect an Other Phone Company end user customer.
3. All requests by Other Phone Company for denial or disconnection of an end user for nonpayment must be in writing.
4. Other Phone Company will be made solely responsible for notifying the end user of the proposed disconnection of the service.
5. The Company will continue to process calls made to the Annoyance Call Center and will advise Other Phone Company when it is determined that annoyance calls are originated from one of their end user's locations. The Company shall be indemnified, defended and held harmless by Other Phone Company and/or the end user against any claim, loss or damage arising from providing this information to Other Phone Company. It is the responsibility of Other Phone Company to take the corrective action necessary with its customers who make annoying calls. Failure to do so will result in the Company's disconnecting the end user's service.

B. The procedures for discontinuing service to Other Phone Company are as follows:

1. The Company reserves the right to suspend or terminate service for nonpayment or in the event of prohibited, unlawful or improper use of the facilities or service, abuse of the facilities, or any other violation or noncompliance by Other Phone Company of the rules and regulations of the Company's Tariffs.

2. If payment of account is not received by the bill day in the month after the original bill day, the Company may provide written notice to Other Phone Company, that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifteenth day following the date of the notice. If the Company does not refuse additional applications for service on the date specified in the notice, and Other Phone Company's noncompliance continues, nothing contained herein shall preclude the Company's right to refuse additional applications for service without further notice.

3. If payment of account is not received, or arrangements made, by the bill day in the second consecutive month, the account will be considered in default and will be subject to denial or disconnection, or both.

4. If Other Phone Company fails to comply with the provisions of this Agreement, including any payments to be made by it on the dates and times herein specified, the Company may, on thirty days written notice to the person designated by Other Phone Company to receive notices of noncompliance, discontinue the provision of existing services to Other Phone Company at any time thereafter. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If the Company does not discontinue the provision of the services involved on the date specified in the thirty days notice, and Other Phone Company's noncompliance continues, nothing contained herein shall preclude the Company's right to discontinue the provision of the services to Other Phone Company without further notice.

5. If payment is not received or arrangements made for payment by the date given in the written notification, Other Phone Company's services will be discontinued. Upon discontinuance of service on a Other Phone Company's account, service to Other Phone Company's end users will be denied. The Company will also reestablish service at the request of the end user or Other Phone Company upon payment of the appropriate connection fee and subject to the Company's normal application procedures.

6. If within fifteen days after an end user's service has been denied no contact has been made in reference to restoring service, the end user's service will be disconnected.

IX. Liability

A. The liability of the Company for damages arising out of mistakes, omissions, interruptions, preemptions, delays errors or defects in transmission, or failures or defects in facilities furnished by the Company, occurring in the course of furnishing service or other facilities and not caused by the negligence of Other Phone Company, or of the Company in failing to maintain proper standards of maintenance and operation and to exercise reasonable supervision shall in no event exceed an amount equivalent to the proportionate charge to Other Phone Company for the period of service during which such mistake, omission,

interruption, preemption, delay, error or defect in transmission or defect or failure in facilities occur. The Company shall not be liable for damage arising out of mistakes, omission, interruptions, preemptions, delays, errors or defects in transmission or other injury, including but not limited to injuries to persons or property from voltages or currents transmitted over the service of the Company, (1) caused by customer-provided equipment (except where a contributing cause is the malfunctioning of a Company-provided connecting arrangement, in which event the liability of the Company shall not exceed an amount equal to a proportional amount of the Company billing for the period of service during which such mistake, omission, interruption, preemption, delay, error, defect in transmission or injury occurs), or (2) not prevented by customer-provided equipment but which would have been prevented had Company-provided equipment been used.

B. The Company shall be indemnified and saved harmless by Other Phone Company against any and all claims, actions, causes of action, damages, liabilities, or demands (including the costs, expenses and reasonable attorneys' fees, on account thereof) of whatever kind or nature that may be made by any third party as a result of the Company's furnishing of service to Other Phone Company.

C. The Company shall be indemnified, defended and held harmless by Other Phone Company and/or the end user against any claim, loss or damage arising from the use of services offered for resale involving:

1. Claims for libel, slander, invasion of privacy or infringement of copyright arising from Other Phone Company's or end user's own communications.
2. Claims for patent infringement arising from acts combining or using Company services in connection with facilities or equipment furnished by the end user or Other Phone Company.
3. All other claims arising out of an act or omission of Other Phone Company or its end user in the course of using services.

D. Other Phone Company accepts responsibility for providing access for maintenance purposes of any service resold under the provisions of this Tariff. The Company shall not be responsible for any failure on the part of Other Phone Company with respect to any end user of Other Phone Company.

X. Treatment of Proprietary and Confidential Information

A. Both parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data and like information (hereinafter collectively referred to as "Information"). Both parties agree that all Information shall either be in writing or other tangible format and clearly marked with a confidential, private or proprietary legend, or, when the Information is communicated orally, it shall also be communicated that the Information is confidential, private or proprietary. The Information will be returned to the owner within a reasonable time. Both parties agree that the Information shall not be copied or reproduced in any form. Both parties agree to receive such Information and not disclose such Information. Both parties agree to protect the Information received from distribution, disclosure or dissemination to anyone except employees of the parties with a need to know such Information and which employees agree to be bound by the terms of this Section. Both parties will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information.

B. Notwithstanding the foregoing, both parties agree that there will be no obligation to protect any portion of the information that is either: 1) made publicly available by the owner of the information; or lawfully disclosed by a nonparty to this Agreement; 2) lawfully obtained from any source other than the owner of the information; or 3) previously known to the receiving party without an obligation to keep it confidential.

XI. Resolution of Disputes

Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will petition the applicable state Public Service Commission for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by that Public Service Commission concerning this Agreement.

XII. Limitation of Use

The parties agree that this Agreement shall not be proffered by either party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other party in that jurisdiction or for any other purpose.

XIII. Waivers

Any failure by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

XIV. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

XV. Arm's Length Negotiations

This Agreement was executed after arm's length negotiations between the undersigned parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all parties.

XVI. More Favorable Provisions

A. The parties agree that if ---

1. the Federal Communications Commission ("FCC") or the Commission finds that the terms of this Agreement are inconsistent in one or more material respects with any of its or their respective decisions, rules or regulations, or
2. the FCC or the Commission preempts the effect of this Agreement, then, in either case, upon such occurrence becoming final and no longer subject to administrative or judicial review, the parties shall immediately commence good faith negotiations to conform this Agreement to the requirements of any such decision, rule, regulation or preemption. The revised agreement shall have an effective

date that coincides with the effective date of the original FCC or Commission action giving rise to such negotiations. The parties agree that the rates, terms and conditions of any new agreement shall not be applied retroactively to any period prior to such effective date except to the extent that such retroactive effect is expressly required by such FCC or Commission decision, rule, regulation or preemption.

B. In the event that BellSouth, either before or after the effective date of this Agreement, enters into an agreement with any other telecommunications carrier (an "Other Resale Agreement") which provides for the provision within the state of Florida of any of the arrangements covered by this Agreement upon rates, terms or conditions that differ in any material respect from the rates, terms and conditions for such arrangements set forth in this Agreement ("Other Terms"), BellSouth shall be deemed thereby to have offered such other Resale Agreement to Other Phone Company in its entirety. In the event that Other Phone Company accepts such offer, such Other Terms shall be effective between BellSouth and Other Phone Company as of the date on which Other Phone Company accepts such offer.

C. In the event that after the effective date of this Agreement the FCC or the Commission enters an order (a "Resale Order") requiring BellSouth to provide within the state of Florida any of the arrangements covered by this agreement upon Other Terms, then upon such Resale Order becoming final and not subject to further administrative or judicial review, BellSouth shall be deemed to have offered such arrangements to Other Phone Company upon such Other Terms, in their entirety, which Other Phone Company may only accept in their entirety, as provided in Section XVI.E. In the event that Other Phone Company accepts such offer, such Other Terms shall be effective between BellSouth and Other Phone Company as of the date on which Other Phone Company accepts such offer.

D. In the event that after the effective date of this Agreement BellSouth files and subsequently receives approval for one or more intrastate tariffs (each, a "Resale Tariff") offering to provide within the state of Florida any of the arrangements covered by this Agreement upon Other Terms, then upon such Resale Tariff becoming effective, BellSouth shall be deemed thereby to have offered such arrangements to Other Phone Company upon such Other Terms, which Other Phone Company may accept as provided in Section XVI.E. In the event that Other Phone Company accepts such offer, such Other Terms shall be effective between BellSouth and Other Phone Company as of the date on which Other Phone Company accepts such offer.

E. The terms of this Agreement, other than those affected by the Other Terms accepted by Other Phone Company, shall remain in full force and effect.

F. **Corrective Payment.** In the event that --

1. BellSouth and Other Phone Company revise this Agreement pursuant to Section XVI.A, or
2. Other Phone Company accepts a deemed offer of an Other Resale Agreement or Other Terms, then BellSouth or Other Phone Company, as applicable, shall make a corrective payment to the other party to correct for the difference between the rates set forth herein and the rates in such revised agreement or Other Terms for substantially similar services for the period from the effective date of such revised agreement or Other Terms until the date that the parties execute such revised agreement or Other Phone Company accepts such Other Terms, plus simple interest at a rate equal to the thirty (30) day commercial paper rate for high-grade, unsecured notes sold through dealers by major corporations in multiples of \$1,000.00 as regularly published in *The Wall Street Journal*.

XVII. Notices

A. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.
OLEC Account Team
3535 Colonnade Parkway
Room E4E
Birmingham, Alabama 35243

The Other Phone Company
John Murray, III
The Other Phone Company, Inc
3427 NW 55th Street
Ft. Lauderdale, Florida 33309

or at such other address as the intended recipient previously shall have designated by written notice to the other party,

B. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

XVIII. Amendments

This Agreement may be amended at any time upon written agreement of both parties.

XIX. Entire Agreement

This Agreement sets forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them, and neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby.

BellSouth Telecommunications, Inc.

BY: _____

Signature

NAME: Jerry D. Hendrix

Printed Name

TITLE: Director

DATE: 4/29/97

The Other Phone Company, Inc.

BY: _____

Signature

NAME: John Murray, III

Printed Name

TITLE: President

DATE: 4/28/97

AMENDMENT TO
RESALE AGREEMENT BETWEEN
BELLSOUTH TELECOMMUNICATIONS, INC.
AND THE OTHER PHONE COMPANY, INC.
DATED APRIL 29, 1997

Pursuant to this Agreement (the "Amendment"), BellSouth Telecommunications, Inc. ("BellSouth or Company") and The Other Phone Company, Inc. ("Reseller") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Resale Agreement between the Parties dated April 29, 1997. ("Agreement").

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BellSouth and Dakota hereby covenant and agree as follows:

1. The Parties hereby agree that Section VII.L. the Resale Agreement is deleted in its entirety and replaced with a new Section VII.L. as follows.

"Pursuant to 47 CFR Section 51.617, the Company will bill Reseller end user common line charges identical to the end user common line charges the Company bills its end users."

2. The Parties agree that all of the other provisions of the Resale Agreement, dated April 29, 1997 shall remain in full force and effect.

3. The Parties further agree that either or both of the Parties is authorized to submit this Amendment to the appropriate Commission or other regulatory body having jurisdiction over the subject matter of this Amendment, for approval subject to Section 252(e) of the federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

Jerry D. Hendrix
BELLSOUTH TELECOMMUNICATIONS,
INC.
By: [Signature]
DATE: 7/9/98

THE OTHER PHONE COMPANY, INC.
By: [Signature]
DATE: 7/10/98