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July 27, 1999

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Ms. Blanca Bayo, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

990970-TP

Dear Ms. Bayo:

Enclosed for filing on behalf of the Association for Local Telecommunications Services, the Commercial Internet Exchange Association, the Competitive Telecommunications Association, ACSI Local Services, Inc. d/b/a e.spire Communications, Inc., the Florida Competitive Carriers Association, the Florida Internet Service Providers Association, and the Telecommunications Resellers Association are an original and fifteen copies of the Complaint and Petition for Expedited Relief.

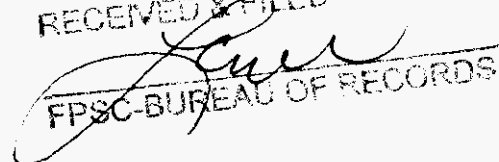
Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,


Norman H. Horton, Jr.

NHH/amb
Enclosure
cc: Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against promotional practices) Docket No.
of BellSouth Telecommunications, Inc.) Filed: July 27, 1999
_____)

COMPLAINT AND PETITION FOR EXPEDITED RELIEF

Comes now the Association for Local Telecommunications Services, ("ALTS"), the Commercial Internet Exchange Association ("CIX"), the Competitive Telecommunications Association ("CompTel"), ACSI Local Services, Inc. d/b/a e.spire Communications, Inc., on behalf of its affiliates ("e.spire"), the Florida Competitive Carriers Association ("FCCA"), the Florida Internet Service Providers Association ("FISPA"), and the Telecommunications Resellers Association ("TRA") (collectively, "Joint Petitioners"), pursuant to Rule 28-106.201, Florida Administrative Code, and herewith requests the Commission to enter an order directing BellSouth to cease offering promotions which are in contravention of Chapter 364, Florida Statutes, and as basis therefore would show:

INTRODUCTION

1. ALTS, whose address is 888 17th Street, NW, Washington, DC 20006, is the leading national industry association whose mission is to promote facilities-based local telecommunications competition. The organization was created in 1987 and represents companies that build, own, and operate competitive local networks. Among ALTS's member companies are several companies which provide telecommunications services in the State of Florida.

2. CIX, whose address is 1041 Sterling Road, Suite 104A, Herndon, VA 20170, is a non-profit, 501(c) 6, trade association of Public Data Internetwork service providers promoting and encouraging development of the public data communications internetworking services industry in

both national and international markets.

3. CompTel, whose address is 1900 M Street, NW, Washington, DC 20036, is the principal industry association representing U.S. and international competitive telecommunications carriers and their suppliers. CompTel's 350 members include large national and international companies as well as scores of smaller regional carriers. Among CompTel's member companies are several which provide telecommunications services in the State of Florida.

4. e.spire, whose address is 133 National Business Parkway, Suite 200, Annapolis Junction, MD 20701, is a certificated alternative local exchange company ("ALEC") providing services to customers in Florida.

5. FCCA, whose address is P.O. Box 10967, Tallahassee, FL 32302, is an industry association which represents the interests of competitive telecommunications carriers in the state of Florida.

6. FISPA, whose address is 1045 E. Atlantic Ave., Delray Beach, FL 33483, is an industry association which represents the interests of competing Internet service providers in the State of Florida.

7. TRA, whose address is 4312 92nd Avenue, NW, Gig Harbor, WA 98335, is a national telecommunications industry association which promotes the provision of competitive telecommunications services through resale representing more than 700 entities engaged in, or providing products and services in support of, the provision of competitive local, interexchange, and wireless, telecommunications services, primarily on a resold basis. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry, and to protect and further the interest of entities engaged in the

resale of telecommunications services.

8. BellSouth Telecommunications, Inc. and its affiliates ("BellSouth") is the incumbent local exchange carrier ("LEC") providing telecommunications and other services to customers within its designated service areas throughout the State.

9. Copies of notices, pleadings and documents in this proceeding should be provided to:

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10. With this petition, Joint Petitioners request that the Commission investigate certain practices now being engaged in by BellSouth as an abuse of BellSouth's Commission-regulated monopoly, *e.g.*, that BellSouth is leveraging its market power in the local exchange

telecommunications service market in order to derive a competitive advantage in the local exchange market and in the emerging competitive market for Internet services. Joint Petitioners also request that the Commission direct BellSouth immediately to cease offering promotions which provide rebates or other non-tariffed discounts on local exchange telecommunications service to customers in contravention of sections 364.08 and 364.09, Florida Statutes. Joint Petitioners further request that the Commission investigate BellSouth's practice of combining non-tariffed services with tariffed offerings as a means to provide discriminatorily low or preferential rates to attractive high-end users of local exchange services. Joint Petitioners request that the Commission require that, in the future, such promotions of BellSouth and other incumbent local exchange carriers be publicly filed consistent with existing tariff and promotions rules. Joint Petitioners finally request that the Commission establish such additional rules and policies as it deems necessary and appropriate to ensure that BellSouth's regulated, tariffed services are not offered in a manner that discriminates unreasonably between classes of local exchange service customers, or provides BellSouth with an unfair competitive advantage in establishing a foothold in the market for Internet services, DSL and other broadband services, or other markets.¹

FACTUAL BACKGROUND

11. On or about April 1, 1999, BellSouth, through itself, its parent and/or an affiliate, began offering promotions for its BellSouth.net Internet access service. Under these promotions, BellSouth offers reduced prices for unlimited Internet access and DSL service only to those

¹ While this complaint focuses on monopoly leveraging, other antitrust theories, including, e.g., cross-subsidization, predatory pricing, and attempt to monopolize, may also be applicable to BellSouth's conduct.

residential and business subscribers who subscribe to certain high-end BellSouth local exchange service customers offerings. Special prices are available to residential and business customers but only if they purchase the BellSouth.net Internet service on a bundled basis with tariffed BellSouth local exchange telecommunications service offerings.

12. BellSouth describes its BellSouth.net service as a "full-featured Internet access service from BellSouth that offers subscribers a variety of on-line connections, communications features and information, all in one convenient package."² This service normally is offered to consumers at a price of \$19.95 per month for unlimited access. BellSouth.net service charges can be billed to a BellSouth local telephone bill. The BellSouth.net service is the same or similar to Internet access offered by many other businesses, including, for example, e.spire and other members of the Florida Internet Service Providers Association, the primary distinction being the relationship to BellSouth.

13. During the period between April 1, 1999 and June 30, 1999, BellSouth.net offered unlimited Internet access for \$12.95 per month to residential and business customers *if and only if* the customers subscribe to the BellSouth Complete Choice® or Business Choice® bill plan option, tariffed Bell services. Following expiration of that promotional offering, BellSouth has been offering residential consumers unlimited Internet access service for \$15.00 per month, provided that those consumers also subscribe to the Complete Choice® bill plan. The economic effect on consumers of purchasing BellSouth's Internet service on a bundled basis with its local exchange service, is that customers will receive an effective \$5.00 per month discount on their business or

² FAQ (Frequently Asked Questions), reprinted off BellSouth.net Worldwide Web site, attached hereto as Attachment 1.

residential local exchange telephone service. Those customers who had signed up for BellSouth's Internet service between April 1, 1999 and June 30, 1999 receive an effective \$7.00 discount below the tariff rate for their business or residential local exchange service.

14. BellSouth.net also offers a high speed Asynchronous Digital Subscriber Loop ("ADSL") access which it calls Fast Access™. This ADSL service is available only in select markets. The standard rate for Fast Access™ is \$59.95 per month for unlimited access. However, when customers purchase regulated tariffed BellSouth Complete Choice® (a residential service) or Business Choice® local calling services, Fast Access™ service is available for just \$50.00 per month.³ Thus, customers who elect to bundle BellSouth's Fast Access™ service with the tariffed Complete Choice® plan from BellSouth receive a \$10.00 per month discount or rebate on their residential local exchange service.

15. BellSouth public statements demonstrate unequivocally that BellSouth's stated intent in offering these bundled packages which include effective discounts on local exchange service prices is to grow BellSouth's burgeoning Internet business. For example, in a news release issued by BellSouth entitled "BellSouth 'Industry First' Sets Pace for Internet Access Packaging," BellSouth boasted as follows:

"This combination of Internet and telecommunications services positions BellSouth as a leader in offering customers one stop for the most advanced communications services available," according to Ray Smets, president of BellSouth.net, Inc. "This package of services is an important part of a comprehensive mass market Internet strategy designed to double BellSouth's Internet subscriber base by the end of 1999."⁴

³ From April 1, 1999 through June 30, 1999, the discounted rate was \$49.95 month.

⁴ News Release, "BellSouth 'Industry First' Sets Pace for Internet Access Packaging," attached hereto as Attachment 2.

It is difficult to imagine a more express statement of corporate intent to bundle a competitive unregulated service with a regulated monopoly service for the purpose of expanding a company's market share of the competitive service than the above explanation by BellSouth of its decision to bundle and discount its Internet/residential local exchange service package.

ARGUMENT

A. BellSouth's Bundling of Regulated Local Exchange Service With Competitive Internet Service is a Classic Case of Monopoly Leveraging

16. BellSouth's bundling of its monopoly local exchange services with its competitive Internet and broadband ADSL services constitutes a classic case of leveraging of monopoly power by a carrier in order to gain an advantage in a competitive market. By bundling regulated local exchange telecommunications services and Internet access, BellSouth is leveraging its local exchange service monopoly into the market for Internet and DSL services, impeding the development of local exchange telecommunications service competition as well as competition in the emerging Internet service market, and unreasonably discriminating between different classes of local exchange service customers.

17. The Commission has jurisdiction over monopoly leveraging, price discrimination, predatory pricing, and other anticompetitive behavior. Specifically, Section 364.3381, Florida Statutes, provides that "[t]he Commission shall have continuing jurisdiction over cross-subsidization, predatory pricing, or other similar anticompetitive behavior and may investigate, upon complaint or on its own motion, allegations of such practices."⁵ The subject conduct of BellSouth, including the bundling of monopoly local exchange services with competitive Internet services, is

⁵ Section 364.3381(3), Florida Statutes (emphasis added).

precisely the type of anticompetitive behavior by a dominant regulated carrier that the legislature has proscribed and empowered the Commission to investigate in Section 364.3381.

18. BellSouth continues to enjoy a monopoly position in the residential and business local exchange service market in its service areas throughout Florida. In all of its geographic markets, BellSouth retains at least 95% of the business market and 99% of the residential market. BellSouth enjoys this monopoly position as a result of its historical government franchise which, until 1995, made it unlawful in Florida for other providers to offer local exchange telecommunications service in competition with BellSouth within its franchised service area. While new entrants are beginning to make modest inroads in certain discrete and limited market segments, the vast majority of the Florida residential and business customers continue to receive local exchange service from BellSouth. BellSouth's retained market domination is especially pronounced in the residential services market. e.spire serves business customers using its own facilities in Jacksonville, and recently has begun to offer such service in portions of South Florida. In the remainder of BellSouth's Florida service areas, e.spire does not offer local exchange service. Few, if any, residential customers anywhere in BellSouth's franchise area in Florida are able to receive local exchange service from any other provider, and Joint Petitioners are not aware of any bundled offerings of this kind in the residential market to rival BellSouth's obligations offering.

19. Unlike BellSouth.net, most ISPs in Florida do not have an affiliation with a local exchange service provider. Unlike BellSouth.net, these other ISPs offer their Internet services as stand-alone products. These providers are not able to compete effectively with BellSouth bundled offerings which leverage the BellSouth local exchange telecommunications service monopoly by offering discounts on Internet service or ADSL to customers that also purchase the monopoly

Complete Choice® or Business Choice® local exchange service package. DSL providers such as COVAD, ACI, and Northpoint offer DSL service but – particularly without line sharing – cannot bundle such DSL service with ubiquitous local exchange service as only BellSouth can.⁶

20. Even the few ALECs who do offer local exchange service and Internet access and/or DSL service in limited areas within BellSouth's Florida service territory are at a severe competitive disadvantage to BellSouth when they try to compete with these bundled offerings. These providers – including e.spire and others – must attempt to sell Internet access and DSL, in most cases, to customers which they cannot reach with ALEC local services. For example, e.spire offers Internet access through its subsidiary, Cybergate. Throughout its Florida markets, Cybergate does not have a residential local service offering which it could bundle with its Internet access service. Even in those few markets where e.spire provides local service, the e.spire service is available only to business customers and the service area is severely restricted. In short, no other company is able to compete with the ubiquitous local coverage of BellSouth within its service area in Florida. Cybergate has already lost significant numbers of Internet access customers to customers switching to BellSouth bundled Internet access and local exchange service offerings.

21. Other state commissions have been confronted with similar arrangements whereby incumbent local exchange carriers, in a manner similar to BellSouth in Florida, have sought to

⁶ Line Sharing is an arrangement in which two different service providers utilize the same transport facility to provide different services, with one provider using certain frequencies to transport voice and the other provider using different frequencies to transport high speed data (e.g., to provide Internet service). The FCC has invited comment on a line sharing proposal. See Deployment of Wireline Services Offering Advanced Telecommunications Capability (*First Report and Order and Further Notice of Proposed Rulemaking*), 1999 LEXIS 1327 (1999). To date, no action has been taken on that proposal.

leverage their local exchange service monopolies to capture market share in non-regulated competitive markets. Generally, state commissions have found such arrangements to be unlawful. For example, in 1997, Ameritech attempted to bundle its cable television services with its local exchange telephone services through a promotion called AmeriChecks. Under that program, customers who purchased cable television service from Ameritech New Media -- Ameritech's cable television affiliate -- received checks for specified amounts (usually \$60 or \$120). Those checks could then be used to pay for other Ameritech services, including local exchange telephone service. Several state commissions disallowed the AmeriChecks program since it resulted in those consumers purchasing cable television service from Ameritech also receiving local exchange telephone service at rates below the tariffed rates and at rates which were insufficient to recover Ameritech's Total Service Long Run Incremental Cost, as required by state law. See In the Matter of the Complaint of the Ohio Cable Telecommunications Association, Complainant v. Ameritech, Respondent, Case No. 97-654-TP-CSS, Public Utilities Commission of Ohio, July 17, 1997, 1997 Ohio PUC LEXIS 539, Order on Rehearing, July 31, 1997, 1997 Ohio PUC LEXIS 579, *aff'd*, Ameritech Ohio v. Public Utilities Commission of Ohio, 86 Ohio St. 3d 78 (1999). As the Ohio Supreme Court noted in affirming the Ohio Commission's disallowance of the AmeriChecks program:

Ameritech separated its customers into two classes, with the class of Americast [Ameritech's cable television service] subscribers in effect gaining the exclusive benefit of a price break on their telephone service. This activity constitutes an "undue or unreasonable preference" prohibited by R.C. 4905.35.⁷

See also In the Matter of the Michigan Cable Telecommunications Association, et al. against Ameritech Michigan, Case No. U-11412, Michigan Public Service Commission, December 19,

⁷ Ameritech Ohio v. Public Utilities Commission of Ohio, *supra*, slip opinion at 5.

1997, 1997 Mich PSC LEXIS 359, 183 P.U.R. 4th 72. As the Michigan PSC noted in finding the bundling of cable service and telephone service unlawful under Michigan law, “[t]he opportunity for customers to use AmeriChecks as a discount or offset against the tariff rates cemented the ties creating a combination of regulated and unregulated services.” *Id.*⁸

22. Just as the Michigan and Ohio commissions (and the Ohio Supreme Court) wisely concluded that the bundled offering of competitive cable service with monopoly local exchange telephone service constituted an abuse of market power, resulted in below tariff rates, and impeded competition, so too should this Commission find with respect to BellSouth’s comparable bundling of Internet service and DSL service with local exchange telephone service.

23. The Commission should not underestimate the near-term effectiveness for incumbent local exchange companies of such anticompetitive leveraging. For example, BellSouth estimates that, by its combined offering of local exchange service and Internet service, it will double its 450,000 Internet access customers region wide by the end of 1999.⁹ The Joint Petitioners implore the Commission to exercise its authority to bring an immediate halt to these bundled offerings which have been in place since April 1 of this year.

24. Critically, the Joint Petitioners are not asking the Commission to prohibit BellSouth

⁸ The Illinois Commerce Commission denied a similar complaint filed against the AmeriChecks program in Illinois, based upon the Complainant’s failure to demonstrate that specific cost allocation rules had been violated by Ameritech. The Illinois Commission denied the complaint notwithstanding its stated concern that the AmeriChecks program had “many negative policy implications.” Cable Television and Communications Association of Illinois v. Illinois Bell Telephone Company et al, 97-0344, Illinois Commerce Commission, 1999 Ill. PUC LEXIS 369, May 19, 1999

⁹ See BellSouth News Release entitled “BellSouth ‘Industry First’ Sets Pace for Internet Access Pricing, attached hereto as Attachment 2 (“BellSouth.net Internet service has more than 450,000 customers in 47 markets across the Southeast.”).

from competing fairly for Internet access or ADSL customers. It is the leveraging of its local monopoly to which the Joint Petitioners object. Accordingly, if BellSouth chooses to offer Internet access for \$12.95 per month or \$15.00 per month, or if it wishes to offer ADSL service for \$50.00 per month on an unbundled, nondiscriminatory basis, it should be allowed to do so. The Joint Petitioners would like to bring to an immediate halt, however, the offering of these attractive discounts only to those BellSouth local exchange customers who elect to purchase bundled packages of Internet access and/or ADSL service with BellSouth local exchange service.

25. The Commission has the authority and the responsibility to consider this complaint by virtue of its continuing jurisdiction to oversee and promote competition and ensuring that incumbent LECs do not engage in anticompetitive acts or practices. Sections 364.01, 364.051, and 354.381, Florida Statutes. In this regard, petitioners note that Section 364.01(c), Florida Statutes, specifically empowers the Commission to “protect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation.” Regulatory intervention by the Commission to preclude BellSouth from continuing to abuse its retained monopoly power to leverage its position in other markets is consistent with the letter and the spirit of Section 364.01(c).

26. Joint Petitioners note that Section 364.051(6)(a)(2), Florida Statutes, permits local exchange carriers, including BellSouth, to respond to competitive offerings of “nonbasic” services by, *inter alia*, packaging nonbasic services together with basic services. However, BellSouth’s bundling of high-end local exchange service with Internet service does not fall within the scope of permissible activities under Section 364.051(6)(a)(2). First, Internet service is not a nonbasic service within the statutory definition of “nonbasic service.” Section 364.02(8), Florida Statutes, defines

“Nonbasic Service” as “any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement described in § 364.16, or a network access service described in § 364.163” (emphasis added). Internet service as sold by BellSouth is considered to be an information service, not a telecommunications service.”¹⁰ Moreover, even if the Commission were to deem Section 364.051(6)(b)(2) to be applicable, any right of a local exchange carrier to bundle local exchange services with other services (whether or not those other services are nonbasic services) is limited by the final sentence of that subsection which provides as follows: “However, the local exchange telecommunications company shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers.” As described throughout this petition, BellSouth’s bundling of local exchange service and Internet service and the resulting discount in the price paid for local exchange service by consumers of the bundled offering constitutes an anticompetitive practice and discriminates against those similarly situated local exchange customers who do not purchase Internet service from BellSouth.

B. BellSouth’s Bundling of Internet Service With Its Offering Constitutes An Unlawful Rebate In Violation of Sections 364.08 And 364.09, Florida Statutes

27. These discounts below standard tariff rates for local exchange services available only

¹⁰Information Service is defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996, as follows:

. . . the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, or utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. (47 U.S.C. § 153(20).

to consumers purchasing the premium local offerings constitute *de facto* rebates to certain of BellSouth's local exchange service customers, *i.e.*, those local exchange customers who choose also to purchase Internet service and/or ADSL service from BellSouth, rather than from other providers of those services. Rebates have long been prohibited for public utilities in general and for telecommunications providers in particular, and are specifically prohibited in Florida. Sections 364.08 and 364.09, Florida Statutes, provide as follows:

364.08 Unlawful to charge other than schedule rates or charges; free service or reduced rates prohibited.

(1) A telecommunications company may not charge, demand, collect, or receive for any service rendered or to be rendered any compensation other than the charge applicable to such service as specified in its schedule on file and in effect at that time. A telecommunications company **may not refund or remit, directly or indirectly, any portion of the rate or charge so specified** or extend to any person any advantage of contract or agreement or the benefit of any rule or regulation or any privilege or facility not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service (emphasis added).

(2) A telecommunications company subject to this chapter **may not, directly or indirectly, give any free or reduced service** between points with this state. However, it shall be lawful for the commission to authorize employee concessions if in the public interest (emphasis added).

364.09 Giving rebate or special rate prohibited.

A telecommunications company **may not, directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect or receive from any person a greater or lesser compensation for any service rendered or to be rendered with respect to communication by telephone** or in connection therewith, except as authorized in this chapter, than it charges, demands, collects, or receives from any other person for doing a like and contemporaneous service with respect to communication by telephone under the same or substantially the same circumstance and conditions (emphasis added).

28. The unquestionable economic impact of BellSouth's bundling of its local

exchange services with ADSL and Internet services is that those consumers who purchase the bundled package enjoy the benefit of significant reductions in the amounts they pay each month to BellSouth for local exchange service. By receiving discounts on their monthly telephone bills for no reason other than that consumers have elected to purchase a bundled package of premium local exchange telephone service combined with Internet or ADSL service, those consumers are receiving telecommunications service at a reduced price between points within the state in patent violation of Section 364.08(2), Florida Statutes. Interestingly, the discounts are also only available to purchasers of BellSouth premium local services; the rebate therefore also discriminates as between what is offered to low-end local customers and premium local customers. Those same consumers also are paying to BellSouth a “lesser compensation” than that paid by other consumers who obtain the same “like and contemporaneous service” under the same or substantially similar circumstances, in clear violation of Section 364.09, Florida Statutes. Significantly, in Ameritech Ohio v. Public Utilities Commission of Ohio, *supra*, the Ohio Commission and later the Ohio Supreme Court had to apply a statute nearly identical to Section 364.09, Florida Statutes. Ohio Revised Code Section 4905.33 provides that

[n]o public utility shall directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person, firm, or corporation a greater or lesser compensation for any services rendered, or to be rendered, * * * than it charges, demands, collects, or receives from any other person, firm or corporation for doing a like and contemporaneous service under substantially the same circumstances and conditions.¹¹

Applying that statute, the Ohio Supreme Court concluded that, by accepting Americhecks

¹¹ Ohio R.C. 4905.33, as quoted at Ameritech Ohio v. Public Utilities Commission of Ohio, *supra*, slip opinion at 3-4.

from those of its customers who were also New Media customers, Ameritech thus indirectly received less compensation from those customers for their telephone service, violation R.C. 4905.33, and that such “intrafamilial means,” although indirect, resulted in the Ameritech receiving less compensation from certain customers for their telephone service, in violation of R.C. 4905.33.¹² Application of the same reasoning to a virtually identical statute leads to the conclusion that BellSouth’s offering of discounted residential local exchange telephone service to customers of its Internet service constitutes a violation of Section 364.09, Florida Statutes.

C. BellSouth’s Bundling of Discounted Local Exchange Service With Internet and ADSL Services Violates Section 254(k) of the Communications Act

29. In addition to violating applicable provisions of Florida Statutes as described above, BellSouth’s bundling of discounted local exchange service with its Internet and ADSL services violates Section 254(k) of the Communications Act of 1934,¹³ an important provision of the Communications Act added to that Act by the Telecommunications Act of 1996.¹⁴ Section 254(k) states as follows:

SUBSIDY OF COMPETITIVE SERVICES PROHIBITED. - A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The [Federal Communications] Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

30. By no standard can BellSouth’s local exchange services, either business or

¹² Ameritech Ohio v. Public Utilities Commission of Ohio, *supra*, slip opinion at 5.

¹³ 47 U.S.C. § 254(k).

¹⁴ Pub. L. 104-104, 110 Stat. 56 (1996).

residential service, but especially residential service, be considered to be competitive in the State of Florida. As noted above, BellSouth continues to hold in excess of ninety-five percent market share throughout its franchised local service area of the State. By providing effective discounts only on premium local exchange service to induce local exchange service customers to purchase those premium services and to induce the purchase of competitive services, including Internet service, from BellSouth, BellSouth is subsidizing the provision of those competitive services with its local exchange services, in clear violation of Section 254(k) of the Communications Act.

REQUEST FOR RELIEF

WHEREFORE, Joint Petitioners request that the Commission:

(1) Declare that BellSouth's offering of local exchange service to consumers at reduced prices below those set forth in its tariff, when that service is purchased in combination with Internet and ADSL services constitutes unlawful monopoly leveraging in violation of applicable sections of Florida Statutes.

(2) direct BellSouth to cease immediately the specific promotions because they provide illegal rebates to BellSouth customers;

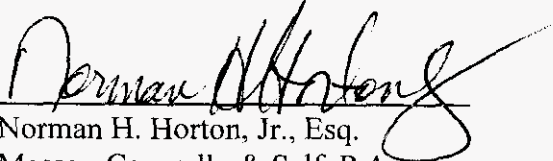
(3) issue an order directing BellSouth to show cause why the company should not be fined for violating Sections 364.08, 364.09, and 364.381, Florida Statutes;

(4) investigate whether BellSouth's combination of offerings and rewards is an anticompetitive offering under Chapter 364, Florida Statutes;

(5) require BellSouth to file tariffs for any service offering that leverages or otherwise relates to regulated services; and

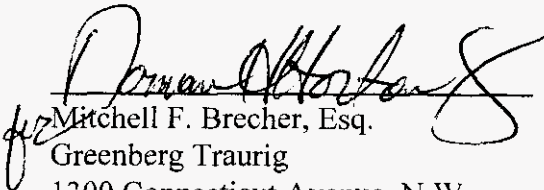
(6) grant such additional relief as it deems appropriate.

Respectfully submitted



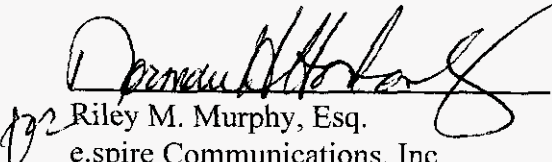
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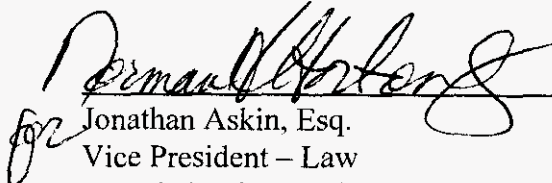


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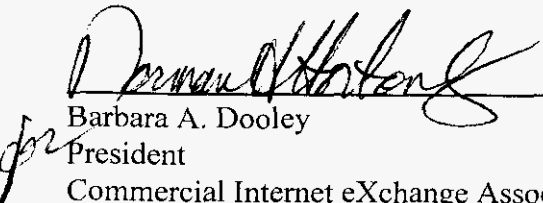
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and the Florida Association of Internet
Service Providers*



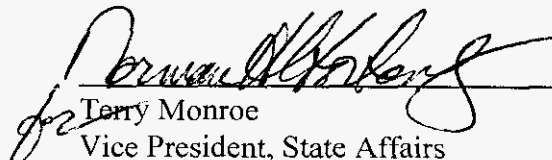
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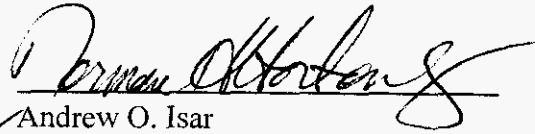


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(202) 296-6650



Florida Competitive Carriers Association
(FCCA)

for c/o Vicki Gordon Kaufman
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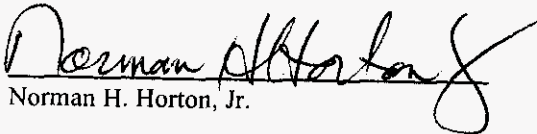
for Andrew O. Isar
Director - State Affairs
Telecommunications Resellers Association
4312 92nd Avenue NW
Gig Harbor, WA 98335
(253)265-3910

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery (*) to the following parties of record this 27th day of July, 1999:

Nancy B. White*
c/o Nancy H. Sims
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Norman H. Horton, Jr.