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Legal Department

THOMAS B. ALEXANDER  
General Attorney

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BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0750

RECORDS AND  
REPORTING

December 17, 1999

Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: **Docket No.** 991947-TP

Dear Ms. Bayó:

Enclosed are an original and 15 copies of the Petition of BellSouth Telecommunications, Inc. for Section 252(b) Arbitration. Please file this document in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



Thomas B. Alexander 

Enclosures

cc: All parties of record  
M. M. Criser, III  
N. B. White  
R. D. Lackey

DOCUMENT NUMBER-DATE

~~15426~~ DEC 17 99

FPSC-RECORDS/REPORTING

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: )  
 )  
Petition for Arbitration of the Interconnection )  
Agreement Between BellSouth Telecommunications, )  
Inc. and Florida Telephone Services, LLC )  
Pursuant to the Telecommunications Act of 1996. )  
\_\_\_\_\_ )

Docket No. 991947-TP

**PETITION OF BELL SOUTH TELECOMMUNICATIONS, INC.  
FOR SECTION 252(b) ARBITRATION**

Pursuant to Section 252(b) of the Telecommunications Act of 1996 ("1996 Act"), BellSouth Telecommunications, Inc. ("BellSouth") files this Petition for Arbitration ("Petition") seeking resolution of certain issues arising between Florida Telephone Services, LLC ("Florida Telephone") and BellSouth in the negotiation of a Resale Agreement. BellSouth states as follows:

**A. STATEMENT OF FACTS**

1. BellSouth is a corporation organized and existing under the laws of the State of Georgia, maintaining its principal place of business at 675 West Peachtree Street, N.E., Atlanta, Georgia 30375. BellSouth is an incumbent local exchange carrier ("ILEC") as defined by 47 U.S.C. § 251(h).

2. On information and belief, Florida Telephone Services, LLC (formerly known as DigiCell Telecommunications) is a limited liability company ("LLC") organized and existing under the laws of the State of Florida, maintaining its principal place of business at 696 East Altamonte Drive, Suite 4, Altamonte Springs, Florida 32701. Upon information and belief, Florida Telephone is the ultimate successor in interest through a name change from DigiCell

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Telecommunications, a Florida corporation, which company originally entered into the existing Resale Agreement with BellSouth. Upon information and belief, Florida Telephone is certificated by the Florida Public Service Commission ("Commission") to provide Alternative Local Exchange Carrier ("ALEC") services. Additionally, upon information and belief, and pursuant to the aforementioned certificate, Florida Telephone provides resold telecommunications services to customers in the State of Florida.

3. Pursuant to the provisions of Section 251(c) the 1996 Act, BellSouth is required to offer (through negotiation or otherwise) for resale at wholesale rates any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers. *See* 47 U.S.C. § 251(c)(4). The terms of the resale agreement must comply with the provisions of Section 251(b) of the 1996 Act. *See* 47 U.S.C. § 251(b)(1).

4. Under the provisions of Section 252(d) of the 1996 Act, BellSouth must make available its retail services for resale at wholesale rates that are determined by the State Commission on the basis of the retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier. *See* 47 U.S.C. § 252(d)(3).

5. On or about September 16, 1997, BellSouth and Florida Telephone (formerly known as DigiCell Telecommunications) entered into an agreement to govern the resale of BellSouth's retail services by Florida Telephone (the "BellSouth/Florida Telephone Resale Agreement"). The Commission approved the BellSouth/Florida Telephone Resale Agreement on February 2, 1998, by Order No. PSC-98-0194-FOF-TP. The term of the BellSouth/Florida Telephone Resale Agreement was for two years, expiring on September 15, 1999. Pursuant to

the terms of the BellSouth/Florida Telephone Resale Agreement, the parties have agreed to continue service pursuant to its terms until such time as a new Resale Agreement is in effect.

6. In anticipation of the expiration of the BellSouth/Florida Telephone Resale Agreement and pursuant to the terms of that agreement, BellSouth provided to Florida Telephone a written request for negotiation of a new resale agreement on July 14, 1999. A copy of the July 14, letter is attached hereto as Exhibit "A". In this letter, BellSouth advised Florida Telephone that it was providing notice, pursuant to Section I of the BellSouth/Florida Telephone Resale Agreement and in compliance with Section 251(c)(1) of the 1996 Act, of BellSouth's request to commence good-faith negotiations toward a new agreement. BellSouth also included a copy of BellSouth's Standard Resale Agreement for Florida Telephone's review.

7. Florida Telephone did not provide any response to BellSouth's letter of July 14, 1999. Thus, on September 30, 1999, BellSouth sent a follow-up letter to Florida Telephone pointing out that over 60 days of the 135 days for negotiation prior to filing for arbitration had elapsed without any contact from Florida Telephone. BellSouth restated its desire to negotiate a new agreement and again requested Florida Telephone representatives to contact BellSouth. A copy of the September 30, letter is attached hereto as Exhibit "B".

8. On October 4, 1999, Florida Telephone finally contacted BellSouth by telephone regarding the proposed new resale agreement. Florida Telephone primarily voiced a concern over the proposed charges for the recovery of costs for ALECs' access to and use of the interfaces to BellSouth's operations support systems ("OSS"). On October 19, 1999, BellSouth sent yet another follow-up letter requesting Florida Telephone to advise BellSouth of any issues pertaining to the proposed new resale agreement in addition to the previously voiced concerns regarding charges for OSS. A copy of the October, 19 letter is attached hereto as Exhibit "C".

9. Since July 14, 1999, BellSouth has made good faith efforts to negotiate with Florida Telephone toward a new resale agreement. Unfortunately, these efforts have largely been one-sided as BellSouth has encountered difficulty in getting Florida Telephone to participate in the negotiation process. Consequently, the parties were not able to enter into a new resale agreement as a result of these negotiations.

10. Although the parties discussed a few issues and questions regarding the existing resale agreement that could affect the new agreement, Florida Telephone did not propose any contract language to BellSouth for discussion. In a good faith effort to bring the parties' negotiations to a resolution prior to the expiration of the arbitration window, BellSouth wrote another letter to Florida Telephone on December 2, 1999, providing a summary of the negotiations and suggesting a timeline for the remainder of the parties' time for negotiations. A copy of the December 2 letter is attached hereto as Exhibit "D". In this letter, BellSouth confirmed its understanding that the only unresolved contractual issue from the negotiations related to Florida Telephone's concerns over charges for Florida Telephone's access to BellSouth's operations support systems ("OSS"). BellSouth again enclosed two original standard Resale Agreements for Florida Telephone's review and signature. BellSouth also advised Florida Telephone that in the event that a newly signed agreement was not entered into prior to December 10, 1999, that BellSouth would have no choice but to seek arbitration before the various state commissions. As of this date the parties do not have a new negotiated resale agreement, thus, BellSouth seeks the assistance of the Florida Commission in reaching a new agreement with Florida Telephone.

## **B. JURISDICTION AND TIMING**

11. Pursuant to Section 252(b)(1) of the 1996 Act, which allows either party to the negotiation to request arbitration, this Commission is empowered to arbitrate any and all unresolved issues regarding Florida Telephone's purchase, at wholesale rates, of BellSouth's retail services. BellSouth's Petition is filed with the Commission between the 135<sup>th</sup> and 160<sup>th</sup> day from the date that the negotiations commenced and, thus, is timely. This Commission must resolve each issue set forth in this Petition not later than nine (9) months after the date on which Florida Telephone received the request for negotiation from BellSouth, which is April 14, 2000.

## **C. STANDARD OF REVIEW**

12. The Federal Communications Commission ("FCC") established the appropriate standard for arbitration under Sections 251 and 252 of the 1996 Act in its First Report and Order, *Implementation of the Local Competition provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 ("First and Report and Order"). Pursuant to the FCC's First Report and Order, this Commission must ensure that resolution of issues in an arbitration satisfy Section 251 of the 1996 Act, including regulations promulgated by the FCC.

## **D. ISSUES FOR ARBITRATION**

13. Pursuant to Section 252(b)(2) of the 1996 Act, the unresolved issue between Florida Telephone and BellSouth is provided below in the form of a matrix of the unresolved issues as understood by BellSouth and the respective position of the parties. The sole issue in dispute concerns the appropriate rates that Florida Telephone should pay for access to and use of the electronic and manual interfaces to BellSouth's OSS.

ISSUE DESCRIPTION	PETITIONER'S POSITION	RESPONDENT'S POSITION	FCC RULING
<p>What are the appropriate rates to be charged by BellSouth for ALECs' access to and use of the electronic and manual interfaces to BellSouth's OSS and functions?</p>	<p>The 1996 Act and the FCC's rules allow BellSouth to recover costs associated with developing, providing, and maintaining the electronic and manual interfaces to allow ALECs, such as Florida Telephone, to access BellSouth's OSS. Although this Commission has not decided the issue, eight state commissions in BellSouth's region have recognized BellSouth's right to recover such costs. BellSouth is proposing rates for electronic and manual access calculated consistent with the cost methodology previously adopted by the Commission.</p>	<p>Florida Telephone disagrees with the level of some of the OSS charges and with certain instances when the OSS charges should be applied to ALECs.</p>	<p>First Report and Order, CC Docket 96-98, ¶¶ 682 and 690 (Aug. 8, 1996)</p> <p>Third Report and Order, CC Docket 96-98, ¶¶ 425-426 (Nov. 5, 1999)</p>

### E. CONCLUSION

WHEREFORE, BellSouth respectfully requests that the Commission arbitrate the issue set forth in this Petition and enter an Order directing that BellSouth's position on the issue raised herein be incorporated into the Resale Agreement between Florida Telephone and BellSouth. Further, BellSouth requests such other, more general or specific relief as is just and proper under the circumstances.

Respectfully submitted this 17th day of December 1999.

*Nancy B. White*  
NANCY B. WHITE (SM)

MICHAEL P. GOGGIN  
Museum Tower  
150 West Flagler Street  
Suite 1910  
Miami, Florida 33130

*R. Douglas Lackey*  
R. DOUGLAS LACKEY (SM)  
THOMAS B. ALEXANDER  
General Attorneys  
Suite 4300, BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375  
(404) 335-0750

COUNSEL FOR BELL SOUTH  
TELECOMMUNICATIONS, INC.

189939



**BellSouth Interconnection Services**

675 West Peachtree Street, NE  
Room 34S91  
Atlanta, Georgia 30375

David W. Hitt  
(404) 927-7518  
Fax: (404) 529-7839

**Sent via FedEx**

July 14, 1999

Mr. Paul B. Joachim  
Florida Telephone Services  
696 E. Altamonte Drive  
Suite 4  
Altamonte Springs, FL 32701

***Re: Request that Florida Telephone Services engage in negotiations with BellSouth Telecommunications, Inc. pursuant to Section 251(c)(1) of the Telecommunications Act of 1996***

Dear Mr. Joachim:

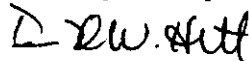
On September 16, 1997, BellSouth Telecommunications, Inc. ("BellSouth") and Florida Telephone Services ("Florida Telephone Services"), previously DigiCell Telecommunications, entered into an agreement for the provision of Resale in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee (the "Agreement"). The expiration date for that Agreement is September 15, 1999. Please be advised that this correspondence serves as notification that BellSouth chooses to negotiate a new Agreement rather than to extend the term of Florida Telephone Services's existing Agreement.

As such, pursuant to Section I of the Agreement and in compliance with Section 251(c)(1) of the Communications Act of 1934, as amended ("Act"), BellSouth is hereby requesting that Florida Telephone Services commence good-faith negotiations with BellSouth to enter into a new Agreement.

In an effort to move the negotiation process along, a copy of the BellSouth Standard Resale Agreement is herein provided for your review. Once you have had an opportunity to review the proposed agreement, please contact me with questions. If need be, we will begin scheduling meetings between the companies to address issues raised during your review.

BellSouth looks forward to working with Florida Telephone Services in reaching a mutually agreeable Resale Agreement. Should you have questions regarding this, please do not hesitate to call me.

Sincerely,



David W. Hitt  
Manager-Interconnection Services

**BellSouth Interconnection Services**

675 West Peachtree Street, NE  
Room 34S91  
Atlanta, Georgia 30375

David W. Hitt  
(404) 927-7518  
Fax: (404) 529-7839

**Sent via Fedex**

September 30, 1999

Mr. Paul B. Joachim  
Florida Telephone Services  
696 E. Altamonte Drive  
Suite 4  
Altamonte Springs, FL 32701

***Re: Follow-up to Request that Florida Telephone Services engage in negotiations with BellSouth Telecommunications, Inc.***

Dear Mr. Joachim:

On 7/14/99, BellSouth Telecommunications, Inc. ("BellSouth") sent *Florida Telephone Services* ("*Florida Telephone Services*") a letter requesting *Florida Telephone Services* to commence negotiations pursuant to Section 251(c)(1) of the Telecommunications Act of 1996 for the purpose of establishing a new Resale Agreement between the Parties. To aid in this process, a copy of BellSouth's current standard Agreement was provided for your review in that same mailing.

To date, I have received no response to my initial letter and the Parties are now over 60 days into our 135-day window for negotiations before entering the arbitration window. Your Resale Agreement expired on September 15, 1999. I am hopeful that BellSouth and Florida Telephone Services are able to work through any issues of concern during the negotiations period, and thus, proceed towards the execution of a new agreement.

Please contact me at your earliest convenience at the above phone number. BellSouth looks forward to working with *Florida Telephone Services* in reaching a mutually agreeable Resale Agreement.

Sincerely,



David W. Hitt  
Manager-Interconnection Services

cc: Mr. Jerry Hendrix  
Ms. Parkey Jordan

**BellSouth Interconnection Services**

675 West Peachtree Street, NE  
Room 34S91  
Atlanta, Georgia 30375

David W. Hitt  
(404) 927-7518  
Fax: (404) 529-7839

**Sent via US Certified Mail**

October 19, 1999

Mr. Paul B. Joachim  
Florida Telephone Services  
696 E. Altamonte Drive  
Suite 4  
Altamonte Springs, FL 32701

***Re: Follow-up to Request that Florida Telephone Services engage in negotiations with BellSouth Telecommunications, Inc.***

Dear Mr. Joachim:

BellSouth still waits to hear further from you regarding any issues pertaining to BellSouth's proposed resale standard agreement in addition to your aforementioned concerns with charges for Operational Support Systems ("OSS"). Given the strong difference of position on this matter, BellSouth request that the Parties negotiate the remainder of the agreement aside from OSS so that we can become better familiarized with any other outstanding issues in this negotiations from you vantage point.

I would request that such an issues list be provided to me by no later than mid-November. Should such an issues list not be provided, it will be noted in any state arbitration filing that BellSouth chooses to prepare.

As a recap on the OSS concern, while it is evident from past discussions that you disagree with the assessment of OSS charges, BellSouth has made an effort to be sensitive to the concerns of CLECs. It has offer to reduce rates for OSS charges on local service requests ("LSRs") submitted electronically twice - from \$10.80/LSR to \$7.45/LSR, and later to \$3.50/LSR.

Furthermore, pertaining to your concern regarding instances when you would prefer to submit an order electronically but are unable to at this time of BellSouth's development of its OSS interfaces, BellSouth is addressing this issue in two ways. It continues to develop its interfaces in order to receive a growing number of orders electronically. BellSouth has also provided a threshold plan that addresses your concern with financial relief for those CLECs that meet the minimum threshold of orders submitted electronically (the 1999 threshold is 70%). The balance of orders for that year would be billed at the lower electronic rate of \$3.50/LSR, rather than the manual rate of \$22.00/LSR. (This only applies for the regional plan.)

I appreciate your attention to providing me with insight regarding any other issues of concern in establishing a new resale agreement. BellSouth is committed to a negotiations process that is conducted in good faith in accordance with the Telecommunications Act, and we will gladly work with you towards establishing a mutually agreed upon contract.

Sincerely,



David W. Hitt  
Manager-Interconnection Services

**BellSouth Interconnection Services**

675 West Peachtree Street, NE  
Room 34S01  
Atlanta, Georgia 30375

David W. Hitt  
(404) 927-7518  
Fax: (404) 529-7839

Sent via Fedex

December 2, 1999

Mr. Paul B. Joachim  
Florida Telephone Services, LLC  
696 E. Altamonte Drive, Suite 4  
Altamonte Springs, FL 32701

**Re: Resolution of Negotiations between Florida Telephone Services and BellSouth Telecommunications, Inc.**

Dear Mr. Joachim:

In previous months, Florida Telephone Services raised concerns regarding charges for use of BellSouth's Operational Support Systems (OSS) to which BellSouth provided explanation of the purpose for and the manner in which these charges would be assessed pursuant to BellSouth's Resale Standard Agreement. Aside from the aforementioned, I have not heard of any other specific issues that Florida Telephone Services wishes addressed in these negotiations nor has Florida Telephone Services offered any proposed alternative language to any sections of the agreement. Per my letter to you, dated October 19, 1999, BellSouth requested that any additional issues that Florida Telephone Services wishes addressed in these negotiations be provided to BellSouth. BellSouth never heard further from your company.

At this date, the negotiations time frame has lapsed as the Parties have moved into their arbitration window as of November 26, 1999, pursuant to Section 252(b)(1) of the Telecommunications Act of 1996 ("the Act"). BellSouth is committed to a negotiations process that is conducted in good faith in accordance with the Act, and we will yet work towards establishing a mutually agreed upon contract. Towards that end, BellSouth needs to hear a decision from you upon receipt of this letter if Florida Telephone Services wishes to enter into a new Resale Agreement with BellSouth for the provisioning of local telecommunications services.

Enclosed are two originals of a Resale Agreement for execution between the Florida Telephone Services and BellSouth Telecommunications, Inc., customized based upon the BellSouth Resale Standard provided to you on July 14, 1999. If you are amenable to the enclosed agreement, please sign both contracts and return both to my attention. Upon receipt and signature by Jerry Hendrix, Senior Director of Interconnection Services, a copy of the fully executed agreement would be returned to you for your files. BellSouth thereafter would file the agreement with the appropriate Commission(s).

In the absence of a newly signed agreement by December 10, 1999, BellSouth will likely move forward with preparations for arbitration filings in all nine states in accordance with the required statutory time frames. BellSouth would list as its sole issue in those filings the OSS charges assessed by BellSouth to Florida Telephone Services for use of these systems.

If you have any questions in these matters, do not hesitate to contact me at (404) 927-7518.

Sincerely,



David W. Hitt  
Manager-Interconnection Services

cc: Ms. Parkey Jordan, Esq.

**CERTIFICATE OF SERVICE**  
**DOCKET NO. \_\_\_\_\_**

I HEREBY CERTIFY that a true and correct copy of the Petition of BellSouth  
Telecommunications, Inc. for Section 252(b) Arbitration was served via Federal Express  
this 17th day of December, 1999 to the following:

Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Paul B. Joachim  
Florida Telephone Services  
696 East Altamonte Drive  
Suite 4  
Altamonte Springs, FL 32701  
Phone No. 407-331-8622  
Fax No. 407-331-9427

  
Thomas B. Alexander (PM)