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ORIGINAL

June 7, 2000

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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 (Florida Telephone Arbitration)

Dear Ms. Bayó:

Enclosed are an original and 15 copies of the BellSouth Telecommunications, Inc.'s Post-Hearing Brief, which we ask that you file in the captioned matter.

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

Sincerely,

*E. Earl Edenfield, Jr.*  
E. Earl Edenfield, Jr.  
(2)

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**CERTIFICATE OF SERVICE  
DOCKET NO. 991947-TP**

**I HEREBY CERTIFY that a true and correct copy of the foregoing was served via**

**U.S. Mail this 7th day of June, 2000 on the following:**

**Beth Keating  
Staff Counsel  
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2540 Shumard Oak Boulevard  
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**Paul B. Joachim  
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*E. Earl Edenfield, Jr.*  
E. Earl Edenfield Jr.  
(2)

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

ORIGINAL

In re: )  
) Docket No. 991947-TP  
Petition for Arbitration of the Interconnection )  
Agreement Between BellSouth Telecommunications, )  
Inc. and Florida Telephone Services, LLC )  
Pursuant to the Telecommunications Act of 1996. )  
Filed: June 7, 2000  
\_\_\_\_\_ )

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**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
POST-HEARING BRIEF**

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## STATEMENT OF THE CASE

On December 17, 1999, BellSouth Telecommunications, Inc. ("BellSouth") filed a Petition for Arbitration of Resale Agreement with Florida Telephone Services, LLC ("FTS"). Prior to filing the Petition for Arbitration, the parties had successfully negotiated a new Resale Agreement on all but one issue. The remaining issue concerned the rates to be charged by BellSouth for FTS' access to and use of BellSouth's operations support systems ("OSS"). The Commission held a Pre-hearing Conference on April 26, 2000 and issued the Pre-Hearing Order on May 3, 2000. A hearing was conducted on May 17, 2000 at which the testimony of Alphonso Varner and Daonne Caldwell was presented on behalf of BellSouth and the testimony of Paul Joachim was presented on behalf of FTS.

## STATEMENT OF BASIC POSITION

The issue in this docket represents a specific dispute between BellSouth and FTS as to what should be included in the Interconnection Agreement between the parties. BellSouth's position is more consistent with the 1996 Act, the pertinent rulings of the FCC and the rules of this Commission. Therefore, the Commission should sustain BellSouth's position.

## STATEMENT OF POSITION ON THE ISSUE

**Issue 1: What are the appropriate rates to be charged by BellSouth for Florida Telephone Services' access to and use of the electronic and manual interfaces to BellSouth's OSS and functions?**

**\*\*Position:** The Commission should allow BellSouth to recover costs associated with developing, providing, and maintaining the electronic and manual interfaces to allow FTS to access BellSouth's OSS. BellSouth is proposing rates for electronic and manual access calculated consistent with the cost methodology previously adopted by the Commission.

Based on the evidence presented at the hearing, the Commission should allow BellSouth to recover the costs incurred by BellSouth in making electronic interfaces available for FTS to

access and utilize BellSouth's OSS. As previously noted by the Commission, "OSS cost, manual and electronic, may be recoverable costs incurred by BellSouth."<sup>1</sup> In fact, FTS acknowledges the fact that BellSouth incurs costs in making electronic interfaces available. (TR, at 65)

As the cost causer, it is both logical and equitable that FTS bear the costs associated with BellSouth providing the electronic interfaces. To date, no regulatory authority or commission has denied BellSouth the right to charge for an ALECs use of the electronic interfaces. In fact, AT&T appealed the Kentucky Public Service Commission's ruling to that effect, which resulted in the U.S. District Court confirming that ALECs should bear the cost of OSS development. [See, *AT&T Communications of the South Central States, Inc. v. BellSouth Telecommunications, Inc.*, 20 F. Supp. 2d 1097 (E.D. Ky. 1998)]. In that case, AT&T challenged the decision of the Kentucky Public Service Commission that required CLECs, but not BellSouth, to pay the cost of the electronic interfaces. In rejecting AT&T's challenge, the U.S. District Court held:

*The FCC regulations only state that ILECs must cooperate with competitors and make available access to the OSS, but FCC regulations do not state that access to an ILEC's OSS must be subsidized by the ILEC. ... Because the electronic interfaces will only benefit the CLECs, the ILECs, like BellSouth, should not have to subsidize them. BellSouth has satisfied the nondiscrimination prong by providing access to network elements that is substantially equivalent to the access provided for itself. AT&T is the cost causer, and it should be the one bearing all the cost; and there is absolutely nothing discriminatory about this concept.*

*Id.* at 1104 (emphasis added). The U.S. District Court's reasoning is equally applicable here.

The FCC also has a long-standing general policy that the cost-causer is responsible for the costs incurred. As noted by the FCC:

*Ordinarily the Commission follows cost causation principles, under which the purchaser of a service would be required to pay at least the incremental cost*

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<sup>1</sup> Order No. PSC-98-0604-FOF-TP issued on April 29, 1998 in Docket Nos. 960757-TP, 960833-TP and 960846-TP, at 165.

*incurred in providing that service.* With respect to number portability, Congress has directed that we depart from cost causation principles if necessary in order to adopt a ‘competitively neutral’ standard, because number portability is a network function that is required for a carrier to compete with the carrier that is already serving a customer. Depending on the technology used, to price number portability on a cost causative basis could defeat the purpose for which it was mandated. *We emphasize, however, that this statutory mandate constitutes a rare exception to the general principle, long recognized by the Commission, that the cost-causer should pay for the cost that he or she incurs.*

*First Report and Order*, ¶ 131. (emphasis added). In this case, there is no “statutory mandate” that would create an exception to the principle that the cost-causer should pay for the costs that he or she incurs. For the electronic interfaces developed solely for use by the ALECs, the ALECs caused those costs to be incurred. Accordingly, consistent with general principles of cost causation, ALECs, including FTS, should pay these OSS costs.

FTS contends that the Commission should not require FTS to pay OSS charges because such charges are “a highly profitable stream of revenue for BellSouth.” (TR, at 57.) What FTS apparently does not understand is that OSS charges are simply a cost-recovery mechanism used to reimburse BellSouth for the actual cost of providing ALECs with access to BellSouth’s OSS. The other basis for FTS’ objection is the “charges are directed towards FTS, which makes it unfair and uncompetitive...” (*Id.*) Again, FTS fails to consider the fact that the vast majority of ALECs have OSS charge provisions in their Resale/Interconnection Agreements and actually pay OSS charges to BellSouth. What FTS actually seeks in this proceeding is a competitive advantage over other resellers in Florida that are currently paying OSS charges consistent with the terms of their Resale Agreements with BellSouth. Such a result would be discriminatory as to other ALECs that are contractually obligated to pay OSS charges. The Commission should not grant FTS such an advantage over its competitors.

As to the amount of the OSS charges proposed by BellSouth, \$13.89 for manual orders and \$2.71 for electronic orders, BellSouth was the only party to present evidence on this issue. (TR, at 15 and 45-46.) It is also undisputed that the cost studies supporting the OSS charges are based the cost methodology previously accepted by the Commission. (TR, at 38-39 and 44-45.) Therefore, the Commission should accept the OSS charges proposed by BellSouth and direct that those charges be incorporated into the FTS/BellSouth Resale Agreement.

These OSS charges, however, should be incorporated on an interim basis, pending the resolution of a generic OSS pricing docket.<sup>2</sup> (TR, at 15, 21, 28 and 30.) The interim rates would then be subject to retroactive true-up based on the outcome of the generic OSS pricing docket. (TR, at 30-31.) The ramifications of not requiring interim rates for OSS in the Resale Agreement (or having an interim rate of \$0.00) will be devastating to BellSouth. As noted above, the vast majority of ALECs in Florida have provisions in their Resale/Interconnection Agreements requiring the payment of OSS charges consistent with those proposed by BellSouth in this proceeding. It is reasonable to assume that if the Commission approves a Resale Agreement with no OSS charge provision (or a \$0.00 amount) most, if not all, ALECs in Florida will seek to opt into such a Resale Agreement under §252(i) of the Telecommunications Act of 1996 and stop paying OSS charges. Such a result would clearly be unfair to BellSouth.

### CONCLUSION

BellSouth respectfully requests that the Commission find that BellSouth is entitled to recover OSS costs and direct that the FTS/BellSouth Resale Agreement include OSS rates of

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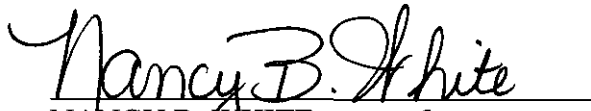
<sup>2</sup> From the questions asked by Staff during the hearing, BellSouth concludes that Staff considers Docket No. 981834-TP to be an open docket in which OSS pricing will be considered. While BellSouth was unaware of Staff's position prior to the hearing, BellSouth has no objection to final OSS rates being determined in that docket. Given



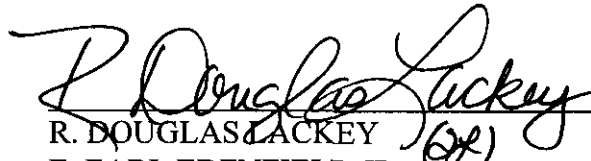
\$13.89 for manual orders and \$2.71 for electronic orders. Further, these rates should be implemented on an interim basis, subject to retroactive true-up consistent with rates to be set in the generic OSS pricing docket.

Respectfully submitted this 7th day of June 2000.

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the amount of money at issue in Florida, however, BellSouth respectfully requests that the Commission enter an Order Establishing Procedure for the OSS pricing issues.