

ORIGINAL  
Legal Department

MARY K. KEYER  
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June 22, 1998

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. 980703-TP (Easy Cellular Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of the Answer and Counterclaim of BellSouth Telecommunications, Inc., which we ask that you file in the above-captioned matters.

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.

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU Lombardo
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1
- LIN 5
- QPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

RECEIVED & FILED

FPSC-BUT L&AS OF RECORDS

Sincerely,

*Mary K. Keyer*  
Mary K. Keyer (Bow)

MKK

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

DOCUMENT NUMBER-DATE  
06610 JUN 22 98  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Easy Cellular, Inc. ) Docket No.: 980703-TP  
against BellSouth Telecommunications, )  
Inc., Regarding Discount Rates )  
 )  
 )  
 )  
 ) Filed: June 22, 1998

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**ANSWER AND COUNTERCLAIM OF  
BELLSOUTH TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc., ("BellSouth"), hereby files its Answer, pursuant to Rule 1.110, Florida Rules of Civil Procedure and Rules 25-22.037 and 25-22.0375, Florida Administrative Code, to the Complaint of Easy Cellular, Inc., as well as its Counterclaim against Easy Cellular.

**FIRST DEFENSE**

Easy Cellular's claim is barred by the doctrines of waiver, estoppel and laches.

**SECOND DEFENSE**

1. Upon information and belief, BellSouth admits the allegations in Paragraph 1 of the Complaint.
2. BellSouth admits the allegations in Paragraph 2 of the Complaint.
3. The allegations in Paragraph 3 of the Complaint do not state allegations of fact to which BellSouth need respond.
4. BellSouth admits the Commission has jurisdiction over this dispute as alleged in Paragraph 4 of the Complaint.
5. BellSouth admits the Florida Public Service Commission issued Order No. PSC-96-1579-FOF-TP (December 31 Order) in Docket Nos. 960846-TP, 960916-P, as

alleged in Paragraph 5 of the Complaint, and avers that the terms of such Order speak for themselves. BellSouth specifically denies that such Order is applicable or relevant to Easy Cellular, which was not a party to the arbitration in which the Order was issued.

6. BellSouth admits it filed a petition for reconsideration of the December 31 Order and that the PSC ruled on that motion on March 19, 1997, avers that the terms of that Order speak for themselves, and denies the remaining allegations in Paragraph 6 of the Complaint. BellSouth specifically denies the December 31 Order and March 19, 1997, Order are applicable or relevant to Easy Cellular.

7. BellSouth admits BellSouth and Easy Cellular entered into a Resale Agreement on March 3, 1997, ("Agreement"), that the terms of the Agreement and the December 31 Order speak for themselves, and denies the remaining allegations in Paragraph 7 of the Complaint.

8. BellSouth admits the allegations in Paragraph 8 of the Complaint.

9. BellSouth admits it applied the rates agreed to between the parties in their Resale Agreement, specifically denies the Agreement and December 31 Order required BellSouth to apply the wholesale discount to nonrecurring charges, and denies the remaining allegations in Paragraph 9 of the Complaint.

10. BellSouth admits it charged Easy Cellular rates pursuant to its Agreement with Easy Cellular entered into on March 3, 1997, specifically denies the December 31

Order required BellSouth to provide Easy Cellular with a 21.83% residential and a 16.81% business wholesale discount, and denies the remaining allegations in Paragraph 10 of the Complaint.

11. BellSouth admits the authenticity of Attachments 2 and 3, state they speak for themselves, and denies the remaining allegations in Paragraph 11 of the Complaint, specifically the allegations that BellSouth overcharged Easy Cellular.

12. BellSouth denies the allegations in Paragraph 12 of the Complaint, specifically the allegations that BellSouth overcharged Easy Cellular and that Easy Cellular is entitled to a refund or credit from BellSouth.

13. BellSouth denies Easy Cellular is entitled to any relief and states that the remaining allegations in Paragraph 13 of the Complaint do not state facts to which BellSouth need respond.

14. BellSouth states § 251(c)(4)(a) of the 1996 Act and the December 31 Order speak for themselves and denies the remaining allegations in Paragraph 14 of the Complaint, specifically that BellSouth was obligated to apply the wholesale discount to nonrecurring charges.

15. BellSouth states the 1996 Act, December 31 Order, and Resale Agreement speak for themselves, and specifically denies the 1996 Act, December 31 Order, or the Resale Agreement between the parties mandated a wholesale discount

rate for nonrecurring charges to Easy Cellular from March 1997 to September 1997, as alleged in Paragraph 15 of the Complaint.

16. BellSouth states the April 2 letter referred to in Paragraph 16 of the Complaint speaks for itself.

17. BellSouth denies the allegations in Paragraph 17 of the Complaint.

18. BellSouth states § 251(c) of the 1996 Act and the December 31 Order and PSC Ruling on March 17, 1997, speak for themselves, and denies the remaining allegations in Paragraph 18 of the Complaint, specifically that it was obligated to provide a discount on nonrecurring charges to Easy Cellular on March 3, 1997, when the Agreement between the parties was signed.

19. BellSouth states the April 2 letter speaks for itself and denies the remaining allegations in Paragraph 19 of the Complaint.

20. BellSouth states § 251(c)(4) of the Communications Act, and §§ 364.09 and 364.14 of the Florida Statutes speak for themselves, and denies the remaining allegations in Paragraph 20 of the Complaint.

21. BellSouth states it applied whatever rates were agreed to by resale carriers in their resale agreements with BellSouth between March and September 1997, and denies the remaining allegations in Paragraph 21 of the Complaint.

22. BellSouth denies the allegations in Paragraph 22 of the Complaint.

23. In answer to the allegations in Paragraph 23 of the Complaint, BellSouth states the December 31 Order, the Resale Agreement between the parties, and the April 2 letter speak for themselves, and specifically denies the December 31 Order was applicable or relevant to Easy Cellular.

24. BellSouth states the December 31 Order speaks for itself, specifically denies the December 31 Order mandated more favorable discount rates for Easy Cellular, and denies the remaining allegations in Paragraph 24 of the Complaint.

25. BellSouth states the PSC Orders referred to in Paragraph 25 of the Complaint speak for themselves, admits BellSouth has a duty to comply with applicable PSC Orders, and denies the December 31 Order applied to Easy Cellular.

26. BellSouth states § 251(c)(4) of the Communications Act and §§ 364.09 and 364.14 of the Florida Statutes speak for themselves and denies the remaining allegations in Paragraph 26 of the Complaint.

27. BellSouth admits it entered into resale agreements with resellers after March 3, 1997, including a new agreement with Easy Cellular, and denies the remaining allegations in Paragraph 27 of the Complaint.

28. The allegations in Paragraph 28 do not state allegations of fact to which BellSouth need respond and BellSouth specifically denies it discriminated against Easy Cellular.

29. BellSouth states that any Orders issued by the PSC regarding discounts speak for themselves and denies the remaining allegations in Paragraph 29 of the Complaint.

30. BellSouth denies the allegations in Paragraph 30 of the Complaint.

31. BellSouth denies Easy Cellular is entitled to the relief it seeks.

32. BellSouth denies any and all allegations not specifically admitted herein.

WHEREFORE, having fully answered, BellSouth respectfully requests the Complaint of Easy Cellular, Inc., be dismissed.

### **COUNTERCLAIM**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files this counterclaim against Easy Cellular, Inc. ("Easy Cellular") for Easy Cellular's breach of its obligation to fulfill its duties under the Telecommunications Act of 1996 ("Act"), the Resale Agreement ("Agreement") between BellSouth and Easy Cellular dated March 3, 1997, and the Order of the Florida Public Service Commission ("Commission") dated June 12, 1997, approving the Agreement, and as grounds therefor states as follows:

#### **I. PRELIMINARY STATEMENT**

1. BellSouth brings this action to seek an interpretation and proper implementation of the parties' Resale Agreement dated March 3, 1997, and the PSC Order dated June 12, 1997, approving the Agreement. The terms and conditions of the

Agreement, including, but not limited to Section VII. Payment And Billing Arrangements and Section VIII. Discontinuance of Service, were negotiated and agreed to by the parties and approved by the PSC by Order dated June 12, 1997. BellSouth has complied with the terms of the Agreement, but Easy Cellular has wrongfully and without legal justification refused and continues to refuse to pay BellSouth for the services provided to Easy Cellular by BellSouth under the parties' Resale Agreement.

2. BellSouth respectfully requests the Commission to (1) find Easy Cellular owes BellSouth the monies proven to be past due under the Agreement, and (2) provide such other relief as may be appropriate.

## II. JURISDICTION

3. The Commission has the jurisdiction to hear this counterclaim pursuant to Section XI. Resolution of Disputes of the Resale Agreement which provides:

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.

## III. THE PARTIES

4. BellSouth is a Georgia corporation with its principal place of business in Atlanta, Georgia. BellSouth is a wholly-owned subsidiary of BellSouth Corporation and



provides local exchange and exchange access services in nine (9) southeastern states, including Florida.

5. Upon information and belief, Easy Cellular is a Nevada corporation with its principal place of business at 8625 West Sahara Avenue, Las Vegas, Nevada 89117, and is authorized to provide local exchange telephone service in Florida.

#### IV. ALLEGATIONS

6. BellSouth and Easy Cellular entered into a Resale Agreement on March 3, 1997, in which BellSouth agreed to provide Easy Cellular with BellSouth's services for resale to the public pursuant to the terms and conditions set forth in the Resale Agreement.

7. The Agreement between the parties provides for a 18% discount of the retail rate for residential telecommunications services and a 12% discount off the retail rate for business telecommunications services. There is no discount rate provided for or agreed to by the parties in their Agreement for nonrecurring charges.

8. The Florida PSC issued its Order on June 12, 1997, approving the Resale Agreement between BellSouth and Easy Cellular.

9. The Agreement in Section VII provides for certain payment and billing arrangements agreed to by the parties. BellSouth has provided services to Easy Cellular for resale as required under the Agreement, thereby fulfilling all of its

obligations under the Agreement. Easy Cellular has not paid BellSouth for these services, in spite of BellSouth's numerous demands for payment to Easy Cellular.

10. Easy Cellular has failed to meet its payment obligations under Section VII. Payment and Billing Arrangements of the Agreement and as of June 18, 1998, was past due on its obligations to BellSouth under the terms and conditions of the Resale Agreement in the amount of \$139,606.02.

11. Although BellSouth has met its obligations under the Resale Agreement, Easy Cellular has refused, and continues to refuse, to pay BellSouth the amounts owed pursuant to the parties' Agreement.

12. Although Easy Cellular has in its Complaint against BellSouth contested certain rates charged by BellSouth for certain services, Easy Cellular does not dispute the remaining amount owed to BellSouth as stated herein.

WHEREFORE, BellSouth requests the Commission enter an order finding that under the interpretation and proper implementation of the Resale Agreement between BellSouth and Easy Cellular, Easy Cellular owes BellSouth the past due amounts as determined from the evidence, together with the applicable late penalty fee provided for in Sections VII.F and VII.I of the Agreement from the time the payments have been past due under the Agreement to the time of the Commission's Order.

Respectfully submitted this 22nd day of June 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.

*Robert G. Beatty* (P/W)

ROBERT G. BEATTY

NANCY B. WHITE

c/o Nancy H. Sims

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124258

**CERTIFICATE OF SERVICE  
DOCKET NO. 980703-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served  
by U.S. Mail this 22nd day of June, 1998 to the following:

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Mary K. Keyer