

LAW OFFICES  
**MESSER, CAPARELLO & SELF**  
A PROFESSIONAL ASSOCIATION

215 SOUTH MONROE STREET, SUITE 701  
POST OFFICE BOX 1876  
TALLAHASSEE, FLORIDA 32302-1876  
TELEPHONE: (850) 222-0720  
TELECOPIERS: (850) 224-4359; (850) 425-1942

**ORIGINAL**

RECEIVED-EPSC

20 DEC -7 PM 3:08

RECORDS AND  
REPORTING

December 7, 1998

**BY HAND DELIVERY**

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

Re: Docket No. 980703-TP

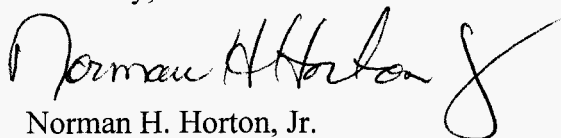
Dear Ms. Bayo:

Enclosed for filing in the above captioned docket on behalf of Easy Cellular, Inc. are an original and fifteen copies of the Prehearing Statement. Also enclosed is a 3 1/2" diskette with the document on it in WordPerfect 6.1 format.

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.

ACK \_\_\_\_\_  
F A \_\_\_\_\_  
F D \_\_\_\_\_  
C F \_\_\_\_\_  
(N) \_\_\_\_\_  
NHH/amb  
Enclosures  
C R \_\_\_\_\_ cc: Glenn Richards, Esq.  
E A \_\_\_\_\_ Parties of Record  
LEG 2 \_\_\_\_\_  
LIN 3 \_\_\_\_\_  
C \_\_\_\_\_  
R \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

13766 DEC-7 98

EPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Easy Cellular, Inc. )
d/b/a Telcom Plus against BellSouth )
Telecommunications, Inc. for alleged )
violations of the Telecommunications )
Act of 1996 and Chapter 364 of the )
Florida Statutes )
\_\_\_\_\_)

Docket No. 980703-TP
Filed: December 7, 1998

PREHEARING STATEMENT OF EASY CELLULAR, INC.

Easy Cellular, Inc. d/b/a Telcom Plus (hereinafter "Easy Cellular"), through undersigned counsel, submits this prehearing statement.

A. APPEARANCES

Norman H. Horton, Jr., Esq.
Floyd R. Self, Esq.
Messer, Caparello & Self, P.A.
Post Office Box 1876
Tallahassee, FL 32302-1876

Glenn S. Richards, Esq.
Jaqualin Friend Peterson, Esq.
Fisher Wayland Cooper Leader & Zaragoza, L.L.P.
2001 Pennsylvania Avenue, NW, Suite 400
Washington, DC 20006-1851

On behalf of Easy Cellular

B. WITNESSES

Witness

Issues

Richard Pollara
(Direct and Rebuttal)

1, 1a, 1b, 2, 2a, 3, and 3a

C. EXHIBITS

Easy Cellular has not prefiled any exhibits, but reserves the right to introduce exhibits, if necessary, as may be required by cross examination, later filed testimony, completion of discovery, or new issues identified at the prehearing conference.

## **D. BASIC POSITION**

Easy Cellular was entitled to wholesale discounts on nonrecurring charges, and for residential and business services, from BellSouth based upon the Resale Agreement dated March 3, 1997. Easy Cellular did not receive those discounts to which it was entitled from March until September, 1997, and was charged rates higher than those other companies received from BellSouth during the applicable period. The Commission should retroactively apply such discounts, and thereby enforce the contractual agreement between the parties, by requiring BellSouth to credit the difference between what Easy Cellular was charged and what it should have been charged using the more favorable rates.

## **E. ISSUES AND POSITIONS**

**ISSUE 1: Based on the terms of the Resale Agreement dated March 3, 1997, between the parties, were nonrecurring charges from March 1997 until September 1997, subject to wholesale discounts?**

Easy Cellular's Position: Yes.

**ISSUE 1a: If so, what wholesale discounts were applicable to the nonrecurring charges from March 1997 until September 1997?**

Easy Cellular's Position: The wholesale discount rates established in Order No. PSC-96-1579-FOF-TP, which are 21.83% for residential and 16.81% for business telecommunications services.

**ISSUE 1b: What action, if any, should the Commission take?**

Easy Cellular's Position: The Commission should affirm Easy Cellular's position that BellSouth had an obligation to apply the wholesale discount rate to Easy Cellular's nonrecurring

charges from March until September 1997. Furthermore, the Commission should order BellSouth to credit Easy Cellular the amount that it has been overcharged, plus all late fees.

**ISSUE 2: Based on the terms of the Resale Agreement dated March 3, 1997, between BellSouth and Easy Cellular, was Easy Cellular entitled to the wholesale discount rates established in Order No. PSC-96-1579-FOF-TP (21.83% for residential and 16.81% for business services) from March 1997, rather than the discount rates provided for in the Agreement (18% for residential and 12% for business services)?**

Easy Cellular's Position: Yes.

**ISSUE 2a: What action, if any should the Commission take?**

Easy Cellular's Position: The Commission should affirm Easy Cellular's position that BellSouth had an obligation to provide Easy Cellular with the residential wholesale discount of 21.83% from March until November 1997, rather than the discount rates provided for in the Agreement. Furthermore, the Commission should order BellSouth to credit Easy Cellular the amount that it has been overcharged, plus all late fees.

**ISSUE 3: Does Easy Cellular owe BellSouth for services provided to Easy Cellular by BellSouth pursuant to the parties' Resale Agreement dated March 3, 1997, and for which Easy Cellular has not paid BellSouth?**

Easy Cellular's Position: There are outstanding disputes between the companies that make it difficult for Easy Cellular to determine, at this time, the monies owed, if any, to BellSouth for the provision of services from the period of March 1997 through and including November 1997.

**ISSUE 3a: If so, what action should the Commission take?**

Easy Cellular's Position: If the Commission determines that Easy Cellular owes BellSouth for the provision of services from the period of March 1997 through and including

November 1997, the Commission should limit any award of damages in BellSouth's favor to the date of the filing of BellSouth's counterclaim in this matter.

**F. PENDING MOTIONS**

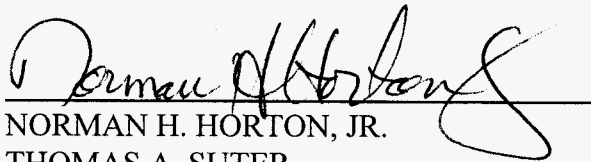
There are no pending motions but Easy Cellular has filed a Notice of Intent to Object to BellSouth's First Set of Interrogatories and First Request for Production of Document.

**G. REQUIREMENTS THAT CANNOT BE COMPLIED WITH**

All requirements of the procedural orders can be met by Easy Cellular.

Dated this 7th day of December, 1998.

Respectfully submitted,



NORMAN H. HORTON, JR.  
THOMAS A. SUTER  
Messer, Caparello & Self, P.A.  
Post Office Box 1876  
Tallahassee, FL 32302-1876  
(850) 222-0720

and

GLENN S. RICHARDS, ESQ.  
JAQUALIN FRIEND PETERSON, ESQ.  
Fisher Wayland Cooper Leader & Zaragoza, L.L.P.  
2001 Pennsylvania Avenue, NW, Suite 400  
Washington, DC 20006-1851  
(202)775-5678

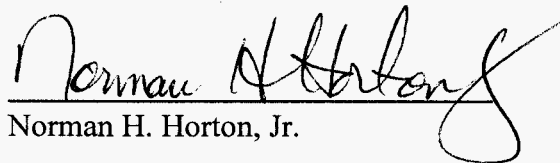
ATTORNEYS FOR EASY CELLULAR, INC.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Easy Cellular, Inc.'s Prehearing Statement in Docket No. 980703-TP has been furnished by Hand Delivery (\*) and/or U.S. Mail to the following parties of record this 7th day of December, 1998:

Beth Keating, Esq.\*  
Division of Legal Services  
Room 370, Gunter Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Mary K. Keyer, Esq.  
c/o Ms. Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301

  
Norman H. Horton, Jr.