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ORIGINAL

December 7, 1998

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

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RECORDS AND
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RE: Docket No. 980703-TP

Dear Mrs. Bayo:

Enclosed are an original and 15 copies of the Prehearing Statement of BellSouth Telecommunications, Inc. Please file these documents in the captioned docket.

ACK _____ 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 on the parties shown on the attached Certificate of Service.

AFA _____

APP _____

CAF _____

CMU

CTR _____

EAG _____

LEG 2

LIN 3 Enclosures

OPC _____

RCH _____

SEC 1

WAS _____

OTH _____

Sincerely,

Mary K. Keyer
Mary K. Keyer

cc: All Parties of Record
A. M. Lombardo
N. B. White
W. J. Ellenberg (w/o enclosures)

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14
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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Easy Cellular, Inc.)
 against BellSouth Telecommunications,) Docket No.: 980703-TP
 Inc., Regarding Discount Rates)
)
) Filed: December 7, 1998

**PREHEARING STATEMENT OF
BELLSOUTH TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth"), in compliance with the Order Establishing Procedure (Order No. PSC-98-1389-PCO-TP), issued October 15, 1998, hereby submits its Prehearing Statement for Docket No. 980703-TP.

A. Witnesses

BellSouth proposes to call the following witness to offer testimony on the issue in this docket:

<u>Witness</u>	<u>Issue(s)</u>
Jim Maziarz (Direct and Rebuttal)	All

BellSouth reserves the right to call additional witnesses, witnesses to respond to Commission inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Prehearing Officer at the prehearing conference to be held on January 4, 1999.

B. Exhibits

Jim Maziarz	JM-1	Resale Agreement – March 3, 1997
	JM-2	Resale Agreement – February 20, 1998
	JM-3	Past Due Amounts owed by Easy Cellular as of June 22, 1998

DOCUMENT NUMBER-DATE

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FPSB-RECORDS/REPORTING

BellSouth reserves the right to file exhibits to any additional testimony that may be filed under the circumstances identified in Section "A" above. BellSouth also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

C. Statement of Basic Position

Easy Cellular's March 3, 1997, Resale Agreement did not require discounting nonrecurring charges from March - September 1997. If the Commission finds a discount was applicable, the discount amounts of 18% and 12% in the Resale Agreement are the appropriate amounts. Easy Cellular received the appropriate discounts on its recurring services from March 1997, as provided for in its Resale Agreement. As of November 12, 1998, Easy Cellular was past due on \$271,530.39 owed to BellSouth for services provided to Easy Cellular pursuant to its Resale Agreements with BellSouth.

D. BellSouth's Position on the Issues

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?

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

Issue 1(b): What action, if any, should the Commission take?

Position: The March 3, 1997, Resale Agreement between Easy Cellular and BellSouth did not provide for nonrecurring charges to be discounted. At the

time the Agreement was entered into between the parties, BellSouth did not consider nonrecurring charges as telecommunications services and did not provide discounts for nonrecurring charges.

The Commission's Order No. PSC-96-1579-FOF-TP dated December 31, 1996, upon which Easy Cellular relies for its claim that it was entitled to a discount on nonrecurring charges, is not yet a final and nonappealable order. AT&T, a party to that docket, has appealed the Commission's Order. Additionally, that Order applied solely to the parties in that case, AT&T and MCImetro.

Even if the Order were final and nonappealable and even if the Order were applicable to other parties, the Resale Agreement between BellSouth and Easy Cellular states that the provisions of a Commission order entered after the Resale Agreement was entered into would be deemed to be offered to Easy Cellular and Easy Cellular could accept such terms as allowed under Section XVI.C of the Resale Agreement. Easy Cellular, however, never accepted any term of any other Order, or Resale Agreement for that matter, and did not indicate to BellSouth its interest in receiving such other terms until February 1998. At that time, the parties entered into negotiations and agreed to a new Resale Agreement dated February 20, 1998, which provided for the discounting of nonrecurring charges at 21.83% for residential and 16.81% for business services.

If the Commission should find that nonrecurring charges were subject to a discount under the terms of the parties' Resale Agreement dated March 3, 1997,

the applicable discounts for nonrecurring charges from March 1997 until September 1997 would have been those discounts provided for in the Resale Agreement. Those discounts were 18% for residential and 12% for business services. Easy Cellular would not be entitled to the higher discounts on nonrecurring charges for the time period in question under its March 3, 1997, Resale Agreement, for the reasons stated above. Based on the foregoing, the Commission should not take any action with respect to Issue 1.

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 percent for residential and 16.81 percent for business services) from March 1997, rather than the discount rates provided for in the Agreement (18 percent for residential and 12 percent for business services)?

Issue 2(a): What action, if any, should the Commission take?

Position: The Resale Agreement between Easy Cellular and BellSouth dated March 3, 1997, specifically provides for discount rates of 18% for residential and 12% for business services. It is these rates which should apply to recurring charges (and nonrecurring charges should the Commission find in Easy Cellular's favor on Issue 1). The parties agreed to these rates and did not renegotiate the rates until February 1998, when Easy Cellular signed a new resale agreement and the 21.83% for residential and 16.81% for business service discounts were agreed upon. At no time between March 3, 1997, when the original Resale Agreement was signed, and February 20, 1998, when the new Resale Agreement was signed, did Easy Cellular indicate to BellSouth its

interest or desire in renegotiating the rates in the original Resale Agreement. In addition to the fact that Commission Order No. PSC-96-1579-FOF-TP, upon which Easy Cellular relies for its position that it is entitled to the 21.83% and 16.81% discount rates, applies only to AT&T and MCI, the Order is not final and appealable, and Easy Cellular did not accept any of the terms or provisions of that Order as would have been required under Section XVI.C of the Resale Agreement, if applicable.

Due to a billing error in September 1997, Easy Cellular did, in fact, receive the higher discount rates on both its recurring and nonrecurring charges until the date of its new Resale Agreement, February 20, 1998, at which time Easy Cellular began receiving the higher discounts pursuant to its new Resale Agreement. BellSouth did not request Easy Cellular or any other customer who received the higher discounts in error, to pay back any of the amounts they received for these higher discounts. Based on the foregoing, the Commission should not take any action with respect to Issue 2.

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?

Issue 3(a): If so, what action should the Commission take?

Position: Easy Cellular owes BellSouth \$271,530.39 for services provided to Easy Cellular by BellSouth pursuant to the parties' Resale Agreements dated March 3, 1997, and February 20, 1998, and for which Easy Cellular has not paid BellSouth. The Commission should enter an order ordering Easy Cellular to

comply with the parties' Resale Agreements and pay for these services for which it has not paid.

E. Stipulations

BellSouth is aware of no stipulations.

F. Pending Motions

There are no pending motions at this time.

G. Other Requirements

BellSouth knows of no requirement set forth in any prehearing order with which it cannot comply.

Respectfully submitted this 7th day of December, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.

 (MKK)

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CERTIFICATE OF SERVICE

DOCKET NO. 980703-TP

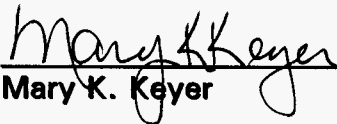
I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 7th day of December, 1998 to the following:

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Mary K. Keyer