

ORIGINAL

1 Access One Communications, Inc.)

2 Complainant,)

Docket No. 990108-TP

3 vs.)

4 BellSouth Telecommunications, Inc.,)

Dated: May 14, 1999

5 Respondent,)

6 _____)

7

8

DIRECT TESTIMONY OF KEN BARITZ

9

ON BEHALF OF ACCESS ONE COMMUNICATIONS, INC.

10 **Q: Please state your name and business address.**

11 A: My name is Ken Baritz. My business address is 34327 N.W. 55th Street, Fort
12 Lauderdale, Florida 33309.
13

14

15 **Q: What is your relationship to Access One Communications, Inc. ("Access One")?**

16 A: I am Chairman of the Board and C.E.O. of Access One, and I have held this position
17 since September, 1997.
18

19

20 **Q: What type of business is Access One?**

21 A: Access One is an "Alternate Local Exchange Telecommunications Company" as
22 defined in Florida Statutes § 364.02(1).
23

24

25 **Q: Can you identify the agreements between Access One and Bell South that are
involved in this proceeding?**

A: Yes. On or about April 29, 1997, BellSouth and The Other Phone Company, Inc.

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FPSC-RECORDS/REPORTING

1 entered into an Agreement Regarding The Sale of BellSouth's Telecommunications Services
2 to The Other Phone Company, Inc. For The Purposes of Resale (the "Resale Agreement").
3 A copy of the Resale Agreement is attached hereto as Exhibit KB-1. In addition, on or about
4 July 10, 1998, BellSouth and The Other Phone Company, Inc. executed an Amendment to
5 Resale Agreement Between BellSouth Telecommunications, Inc. And The Other Phone
6 Company, Inc. Dated April 29, 1997 (the "Amendment"). A copy of the Amendment is
7 attached hereto as Exhibit KB-2. The Resale Agreement and the Amendment are
8 collectively referred to as the "Access One Agreement".

9

10 **Q: What is the connection between Access One and The Other Phone Company,**
11 **Inc.?**

12 A: Access One is the successor by merger to The Other Phone Company, Inc.

13

14 **Q: When did the merger occur?**

15 A: September, 1997.

16

17 **NOTE: For purposes of clarity we have organized Mr. Baritz's direct testimony to**
18 **correspond to the Tentative List of Issues attached as Appendix A to the Order**
19 **Establishing Procedure issued in this case, dated April 30, 1999.**

20

21

Issue #1

22 **Pursuant to the Resale Agreement between Access One Communications,**
23 **Inc. and BellSouth Telecommunications, Inc. and Sections 251 and 252 of**
24 **the Telecommunications Act of 1996, was Access One entitled to adopt a**
25 **provision from the Interconnection Agreement between BellSouth and the**

1 Telephone Company of Central Florida ("TCCF")?

2

3 Q: Could you please identify the provision of the Access One Agreement that you
4 believe entitled Access One to adopt the provision from the Interconnection Agreement
5 between BellSouth and TCCF?

6 A: Yes. Paragraph XVI B of the Access One Agreement provides:

7 "In the event that BellSouth, either before or after the effective date
8 of this Agreement, enters into an agreement with any other
9 telecommunications carrier (an "Other Resale Agreement") which
10 provides for the provision within the State of Florida of any
11 arrangements covered by this Agreement upon rates, terms or
12 conditions that differ in material respect from the rates, terms and
13 conditions for such arrangements set forth in this Agreement ("Other
14 Terms"), BellSouth shall be deemed thereby to have offered such
15 other Resale Agreement to [Access One] in its entirety. In the event
16 that [Access One] accepts such offer, such Other Terms shall be
17 effective between BellSouth and [Access One] as of the date on
18 which [Access One] accepts such offer."

19

20 Q: Can you please identify the agreement and the provision of that agreement that
21 you claim you were entitled to adopt pursuant to the provision of the Access One
22 Agreement that you just described?

23 A: The agreement was the Resale Agreement Between Telephone Company of Central
24 Florida, Inc. and BellSouth Telecommunications, Inc. (the "TCCF Agreement"). A copy of
25 the page of the TCCF Agreement containing the TCCF Provision is attached as Exhibit KB-

1 3. The provision of the TCCF Agreement that Access One wanted to have incorporated into
2 the Access One Agreement was Section III, General Provision H, which provides:

3 "The current telephone number of an end user may be retained by
4 the end user unless the end user has past due charges associated with the
5 BellSouth account for which payment arrangements have not been made.
6 The Company will not, however, make the end user's previous telephone
7 number available to Reseller **until the end user's outstanding balance**
8 **has been paid.** If Reseller requests service for an end user that has been
9 denied service or disconnected for non-payment by BellSouth, and the
10 end user still has an outstanding balance with the Company, the Company
11 will establish service for that end user through Reseller. Denied service
12 means that the service of an end user provided by a local exchange
13 telecommunications company, including BellSouth has been temporally
14 suspended for nonpayment and subject to complete disconnection.
15 Reseller is entitled to the same, conditions contained in this paragraph
16 ("TCCF Provision")."

17
18 **Q: When did you learn about the TCCF Provision?**

19 A: I first learned about the TCCF Provision in June, 1998 during a meeting with
20 Michael Wilburn, who is the head of Access One's account team at BellSouth. During my
21 meeting with Mr. Wilburn, I explained to him Access One's problems with bad debts, and he
22 suggested that I should speak with Access One's contract negotiators at BellSouth to arrange
23 for the implementation of the TCCF Provision.

24
25

1 **Q: Could you explain what you meant when you referred to Access One's bad debt**
2 **problem?**

3 A: Yes. One of the most frustrating problems that Access One was experiencing had to
4 do with customers who enrolled with Access One and then later elected to switch their local
5 telephone service back to BellSouth. At the time they switched their service from Access
6 One, a significant portion of these customers would leave their final bills unpaid.

7 Unfortunately, because the average customer balance was so small (averaging
8 \$135.00/customer), there was no practical way for Access One to attempt collection efforts.

9

10 **Q: Has this been a significant problem for Access One?**

11 A: Yes. It is extremely important. Since commencing operations, we've had 10,250
12 customers who have switched service from Access One leaving unpaid balances of

13 \$1,365,000.

14

15 **Q: Have you been able to collect any of these unpaid balances?**

16 A: No. As I stated earlier, on a per customer basis, the balances are so small that it is
17 cost prohibitive and impractical to attempt to collect them.

18

19 **Q: Did you follow Mr. Wilburn's suggestion and speak with Access One's contract**
20 **representative at BellSouth?**

21 A: Yes, but first I wanted to find out more about the TCCF Provision.

22

23 **Q: So what did you do?**

24 A: I went to TCCF.

25

1 **Q: How did this happen?**

2 A: Coincidentally, about the same time that I had my meeting with Mr. Wilburn, I
3 commenced discussions with Kip Ripper, who was the CEO of TCCF, about the possibility
4 of Access One acquiring TCCF. As a result of Mr. Wilburn's suggestion, I asked Mr. Ripper
5 about the TCCF Provision - - which he characterized as his "no bad debt clause" - and he
6 showed it to me.

7

8 **Q: Did you understand Mr. Ripper's characterization of the TCCF Provision?**

9 A: Absolutely. Under the TCCF Provision, a customer who wanted to switch its service
10 to BellSouth and retain its telephone number, would have to make suitable arrangements to
11 settle its account.

12

13 **Q: Why would this have been helpful?**

14 A: Because customers, particularly commercial customers that formed the majority of
15 Access One's customer base, place great value on their telephone numbers and won't want to
16 risk losing the number for a \$50 or \$100 unpaid bill.

17

18 **Q: Do you know if the TCCF Provision helped TCCF avoid the bad debt problem
19 that Access One experienced?**

20 A: Yes. In the course of our due diligence in connection with Access One's possible
21 purchase of TCCF, I reviewed TCCF's July, 1998 financial statement. According to the
22 financial statement, TCCF had almost \$0 in unpaid balances from its former customers as
23 compared to the \$1,365,000 dollars of unpaid customer balances that Access One has had.

24

25

1 **Q: Couldn't Access One's bad debt problem have been caused by an inferior**
2 **customer base?**

3 A: No. To the contrary, we are able to access each prospective new customer's payment
4 history with BellSouth, and will only allow a customer to enroll with us if his payment
5 record is clean.

6
7 **Q: Did Access One finalize a deal to purchase TCCF?**

8 A: No. We couldn't come to terms.

9
10 **Q: Returning to the Access One Agreement, what caused you to believe Access One**
11 **was entitled to the benefits of the TCCF Provision?**

12 A: According to the terms of Paragraph XVI B that I mentioned earlier, BellSouth was
13 deemed to have offered to Access One all of the terms of all other resale agreements - - such
14 as the TCCF Agreement - - that were entered into either before or after the Access One
15 Agreement.

16
17 **Q: So what did you do?**

18 A: Well, again based on Mr. Wilburn's suggestion, I called Page Miller, who was our
19 primary contract representative at BellSouth, and requested that BellSouth provide Access
20 One with the benefits of the TCCF Provision.

21
22 **Q: Did you confirm your request in writing?**

23 A: Yes. I confirmed the request to Scott Schaefer in a letter dated August 20, 1998, a
24 copy of which is attached as Exhibit KB-4.

25

1 **Q: Did BellSouth grant your request?**

2 A: No. BellSouth refused.

3

4 **Q: How did they communicate their refusal?**

5 A: I received a letter dated September 11, 1998 from Page Miller which stated in part:

6 "The Most Favored Nation provision of your contract requires your
7 company to determine if another agreement is more desirable and
8 to initiate the request to BellSouth to be moved to such other more
9 desirable agreement. All Resale and Interconnection agreements
10 and amendments executed between BellSouth and CLECs are filed
11 with the appropriate state regulatory bodies and are a matter of
12 public record. BellSouth has negotiated hundreds of CLEC
13 agreements and is not in a position to proactively highlight the
14 variances of each agreement for every CLEC. The Resale
15 Agreement between BellSouth and TCCF expired in May and is no
16 longer available for adoption.

17 I have attached a copy of this letter as Exhibit KB-5.

18

19 **Q: Since August when you made your request to BellSouth to incorporate the**
20 **TCCF Provision into the Access One Agreement, has your bad-debt problem with**
21 **customers who have elected to switch service continued?**

22 A: Yes. Since August, 1998 Access One has lost an additional 5742 customers who
23 have left unpaid balances totaling \$832,439

24

25

1 **Q: Did you try to resolve this dispute before filing the complaint in this**
2 **proceeding?**

3 A: Yes. I attempted to do so on numerous occasions. I even sent a draft of the
4 complaint to BellSouth before filing it with the Commission in the hope that we could avoid
5 this action.

6
7 **Q: What was BellSouth's response?**

8 A: They adamantly refused to change their position. If anything, as set forth in Page
9 Miller's February 3, 1999 letter to me, BellSouth took an even more extreme position by
10 claiming that even if we could have adopted the TCCF Provision, it would have only lasted
11 for the duration of the TCCF Agreement, not the Access One Agreement. A copy of this
12 letter is attached as Exhibit KB-6.

13

14 **Q: By the way, do you know who drafted the Access One Agreement?**

15 A: BellSouth did.

16

17 **Q: In its entirety?**

18 A: In its entirety.

19

20 **Q: So it was BellSouth who drafted the "Most Favored Nation" provision?**

21 A: Yes.

22

Issue # 2

23 **Pursuant to the Resale Agreement between Access One Communications,**
24 **Inc. and BellSouth Telecommunications, Inc. and Sections 251 and 252 of**
25 **the Telecommunications Act of 1996, did BellSouth initiate the solicitation**

1 of a customer who has switched service from BellSouth to Access One
2 within the first month that the customer switched to Access One? If so,
3 should BellSouth be allowed to continue to do so?

4

5 **Q: Can you explain the basis for your complaint against BellSouth on this issue?**

6 A: Yes. When a customer elects to enroll with Access One, BellSouth charges Access
7 One a one-month minimum fee regardless of whether or not the customer stays with Access
8 One for the entire month. In addition, BellSouth charges Access One a connection fee of
9 \$19.00 (minus Access One's resale discount) for each customer that enrolls. Although
10 Access One believes that BellSouth's one-month minimum requirement is unfair, we are
11 aware that the Commission has already ruled in a separate proceeding that BellSouth's one-
12 month minimum practice is permissible.

13 What we believe is not permissible or fair was BellSouth's program to solicit its
14 former customers who enrolled with Access One during the first month of service while the
15 one-month minimum was in effect.

16

17 **Q: Why did you find this objectionable?**

18 A: If Access One is required to pay for a full month's service plus a connection fee,
19 BellSouth should not be allowed to interfere with Access One's contractual relationship with
20 its customers during that month.

21

22 **Q: How did you discover that BellSouth was engaging in this practice?**

23 A: I learned of this practice from several sources. First, I was told about this by
24 customers who enrolled with Access One. Second, Access One received direct mail
25 marketing materials from BellSouth that were obviously intended for our customers,

1 soliciting them to return to BellSouth. Finally, BellSouth told me that they were engaging in
2 the practice and that it was common in the industry.

3

4 **Q: With respect to the second item you mentioned, your receipt of the direct mail**
5 **marketing materials, do you have any of them?**

6 A: Yes. Attached as Exhibit KB-7 is an example. It says on the first page in bold letters
7 "GOOD REASONS TO COME BACK TO BELLSOUTH" and continues on the next page
8 also in bold letters with the following statement, "HERE'S WHAT YOU GAVE UP AND
9 HERE'S WHAT YOU CAN GET BACK."

10

11 **Q: Did you raise your concerns with BellSouth about its marketing program?**

12 A: Yes I did, both orally and in my August 20, 1998 letter to Page Miller. See Exhibit
13 KB-4.

14

15 **Q: What was Ms. Miller's response?**

16 A: She apparently misunderstood my concerns about BellSouth's solicitation efforts - -
17 which she interpreted as a complaint that BellSouth was structuring its marketing efforts
18 specifically to Access One's customers rather than our actual complaint that they were
19 marketing our customers during our first month of service - - and so she stated in her
20 September 11, 1998 letter.

21 To address your concerns regarding BellSouth's winback efforts, please
22 understand that BellSouth is not specifically targeting [Access One]
23 customers. The individual BellSouth retail units do not receive or have
24 access to any information about a CLEC or its customers, including
25 information pertaining to which a carrier customer chooses when it leaves

1 BellSouth. Winback efforts, which are commonplace in the telephone
2 industry, are directed toward lost customers in general and are not specific
3 to customers who switch to a particular CLEC. (Emphasis added).

4 See Exhibit KB-5.

5

6 **Q: Do you know if BellSouth is continuing its "winback" program?**

7 A: No. I haven't received any more direct mail solicitations, and Ms. Miller informed
8 me in her February 3, 1999 letter that BellSouth had stopped the program. See KB-6.

9 However, at the same time I am aware that BellSouth proposed a tariff to the Commission,
10 which I understand was rejected, that would have allowed BellSouth the extraordinary
11 ability to market lost customers by offering them periods of free service if they came back to
12 BellSouth.

13

14 **Q: How has Access One been affected by BellSouth's winback program?**

15 A: Of the 7,010 customers that disenrolled from Access One through November 1998
16 1,845 switched within the first month of service.

17

18 **Q: Did these customers leave any unpaid balances at Access One?**

19 A: Yes. They left an aggregate unpaid balance of approximately \$205,000.

20

21 **Q: What was the total amount of connection fees that Access One was required to
22 pay BellSouth for these customers?**

23 A: Approximately \$20,000.

24 **Q: And, is that in addition to the unpaid balances for these customers?**

25 A: Yes.

Issue # 3

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Pursuant to the Resale Agreement between Access One Communications, Inc. and BellSouth Telecommunications, Inc. and Sections 251 and 252 of the Telecommunications Act of 1996, has BellSouth provided to Access One the required notification of customers' changes of local service providers?

Q: Could you please explain the basis of your complaint on this issue?

A: Yes. Pursuant to paragraph VI E of the Access One Agreement, when a customer of Access One elects to disenroll from Access One and either switch back to BellSouth or enroll with another provider, BellSouth is required to notify Access One that such a request has been processed.

Q: Why is this important?

A: Since all local telecommunications services are still "operationally" controlled by BellSouth, the only possible way Access One can learn that one of its customers has disenrolled is if BellSouth informs us.

Q: How long does BellSouth normally take to notify you that a customer has elected to disenroll from Access One?

A: That's the problem. For the most part it takes BellSouth over a week, if not longer, to notify Access One that a customer has switched, if they ever do. Sometimes, the only way we know that the switch occurred is when we receive the next month's bill from BellSouth, which indicates that the customer we thought was our customer is no longer our customer.

1 **Q: Can you be more specific about how long it takes BellSouth to notify you about**
2 **the deactivation of your customers?**

3 A: Yes. I have attached as Exhibit KB-8, a schedule that breaks down by five day periods
4 the time it took for Access One to receive notification from BellSouth that an Access One
5 customer had been deactivated during the period December 1, 1998 through April 4, 1999.

6

7 **Q: Was there a particular reason that you picked the December 1, 1998 through**
8 **April 4, 1999 time frame to do you analysis?**

9 A: No. We obviously could not review the entire period of our operation because it would
10 have been administratively and materially impossible - - since we would have to analyze every
11 customer that deactivated and manually correlate every notification letter that we received. At
12 the same time, we wanted to pick a large enough time frame to make the study meaningful.

13

14 **Q: Is the schedule representative of the entire period of Access One's operation?**

15 A: If anything the problem with the notifications was worse before December 1, 1998.

16

17 **Q: Looking at the schedule, there is a column titled "Never Received Notification**
18 **Letter." Please explain what this means.**

19 A: Just what it says. Of the 2,550 deactivations that occurred during the period covered
20 by the schedule, BellSouth only sent us notification letters for 1,261.

21

22 **Q: Putting aside the lack of timeliness of the notifications, were they at least**
23 **accurate?**

24 A: No. They rarely are. By way of example, of the 1261 notification letters that we
25 received during the period covered by the schedule, 93% of the letters contained incorrect

1 deactivation dates when compared to the deactivation dates reflected in the subsequent
2 BellSouth bills.

3

4 **Q: Well how do you know that it is the letters that are not correct and not the bills?**

5 A: Frankly, we don't. However, since the bills determine how much money Access One
6 owes for these accounts, we have to assume that the bills are correct.

7

8 **Q: Why are the late and inaccurate notifications a problem?**

9 A: Because we are dependent on BellSouth to tell us when one of our customers leaves,
10 and because of the delays and inaccuracies of the notifications from BellSouth, we often find
11 ourselves sending bills to customers only to learn later that the customers had already
12 switched to another service. As a result, our bills to these customers are invariably wrong
13 and inflated, which in turn makes Access One appear overreaching and unprofessional.
14 Obviously, this also adds tremendously to our problem of collecting even the correct portion
15 of our bill.

16

17 **Q: Did you ever complain to BellSouth about the late and inaccurate notification
18 problem?**

19 A: Yes. On numerous occasions.

20

21 **Q: What was their response?**

22 A: BellSouth acknowledged the problem and kept promising to fix it. Unfortunately
23 BellSouth failed to make good on its promises.

24

25

1 **Q: Do you have any correspondence reflecting these communications?**

2 A: Yes. In both the September 11, 1998 and February 3, 1999 letters from Page Miller
3 which I referred to earlier, Exhibits KB-5 and 6, BellSouth acknowledges the problem as
4 well as its attempts to correct it. Unfortunately, BellSouth's attempts have not been
5 successful.

6 **Issue # 4**

7 **Pursuant to the Resale Agreement between Access One Communications,**
8 **Inc. and BellSouth Telecommunications, Inc. and Sections 251 and 252 of**
9 **the Telecommunications Act of 1996, what relief, if any, is Access One**
10 **entitled?**

11
12 **Q: In addition to the losses that Access One suffered as a result of BellSouth's**
13 **actions that you testified about earlier, has Access One suffered any further injury as a**
14 **result of BellSouth's actions?**

15 A: Yes. Like most receivable-based businesses, Access One's cash flow comes in the
16 form of loans secured by our accounts receivable. Because of the extent of Access One's
17 customer bad debts - - which constitute approximately 6% of our total receivables - - our
18 receivables lender reduced its advance rate from 98% of our monthly receivables to 84% of
19 the receivables.

20

21 **Q: When did this occur?**

22 A: August, 1998.

23

24 **Q: What did this have to do with BellSouth?**

25 A: As I stated earlier, a significant percentage of the customers who disenrolled from

1 Access One did so during the first month of service when BellSouth was operating its
2 winback program. Virtually, all of those customers left without paying any portion of their
3 bills to Access One, notwithstanding our obligation to pay BellSouth under its one-month
4 minimum policy.

5 In addition, as a result of BellSouth's late and inaccurate notification of customer
6 deactivations, we unintentionally sent out incorrect bills to individuals or companies who,
7 unbeknownst to us, either had already disenrolled and therefore were no longer our
8 customers, or who had terminated service during the billing cycle. This, had the dual effect
9 of (i) artificially inflating our invoices, which directly added to our bad debt ratio, and (ii)
10 alienating our former customers, which only increased the likelihood that they would not
11 pay even the correct portion of their final bill.

12 Finally, BellSouth refused to implement the TCCF Provision, which we were entitled
13 to under the Most Favored Nation Clause of the Resale Agreement, and which would have
14 effectively eliminated our bad debt problem.

15

16 **Q: How has RFC's reduction of its advance rate affected Access One?**

17 A: The reduction in the lending rate has translated into a reduction in our monthly cash
18 flow of approximately \$100,000. This, in turn, has directly impacted Access One's ability to
19 grow and add customers. Since we commenced operations, Access One has been able to
20 attract 3,000 BellSouth customer lines to switch to Access One for each \$100,000 of excess
21 cash flow. As a result, if you look at the nine month period since RFC reduced its advance
22 rate, it has cost us approximately 27,000 new customer lines.

23

24 **Q: Are you suggesting that the only limitation on Access One's ability to grow is its**
25 **availability of cash flow?**

1 A: Effectively, yes. You have to remember that BellSouth still controls over 95% of the
2 local telecommunications market, and that Access One can offer customers exactly the same
3 quality telephone service at a discounted price. Accordingly, based on our experience, the
4 only limitation on our ability to grow is the money it takes to reach prospective new
5 customers. That is why cash flow is so important to us, and why it is so easy to correlate
6 additional cash flow with the addition of new customers.

7

8 **Q: Base on this explanation, how has RFC's reduction of its advance rate impacted**
9 **Access One's bottom line?**

10 A: It has cost Access One at least \$1,107,000, and that is probably conservative.

11

12 **Q: How did you arrive at this figure?**

13 A: The computation is fairly straightforward. Because of the nature of our operations,
14 and the relative stability of our overhead, we easily would have been able to add the 25 –
15 30,000 new customer lines without significantly increasing our marginal operating expenses.
16 Based on the discount we receive from BellSouth under the Resale Agreement
17 (approximately 17%), and the average discount that we offer customers to switch to Access
18 One (approximately 10%), we realize approximately a 5% profit for each new customer line
19 we add to our base. If we then factor a conservative average life expectancy of 1 ½ years for
20 each new account, and an equally conservative monthly charge of \$50.00 per line, this
21 means that each customer line that we could not add because of the reduction in the lending
22 rate cost us \$45.00 during the life of the account, or approximately \$41.00 in present value
23 dollars. Multiplying this latter figure by the 27,000 potential new customer lines that we
24 could not add because of the reduction in the lending rate gives you a total of \$1,107,000,
25 which again would have gone directly to our bottom line.

1 **Q: Why did you say that this figure is probably conservative?**

2 A: Because it is based on a static cash flow loss of \$100,000 per month, which
3 obviously understates the effect of the advance rate reduction.

4

5 **Q: Why is that?**

6 A: Because, if RFC had not been forced to reduce its advance rate due to our rate of bad
7 debt, our monthly cash flow would have increased incrementally as we added new
8 customers.

9

10 **Q: Does this conclude your testimony?**

11 A: Yes it does.

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EXHIBIT KB-1

Agreement Between BellSouth Telecommunications, Inc. and The Other Phone Company, Inc. Regarding The Sale of BST's Telecommunications Services to The Other Phone Company, Inc. For The Purposes of Resale

THIS AGREEMENT is by and between BellSouth Telecommunications, Inc., ("BellSouth or Company"), a Georgia corporation, and The Other Phone Company, Inc. ("Other Phone Company"), a Florida corporation, and shall be deemed effective as of April 29, 1997.

WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the state of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, Other Phone Company is or seeks to become an alternative local exchange telecommunications company authorized to provide telecommunications services in the state of Florida; and

WHEREAS, Other Phone Company desires to resell BellSouth's telecommunications services; and

WHEREAS, BellSouth has agreed to provide such services to Other Phone Company for resale purposes and pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual premises and promises contained herein, BellSouth and Other Phone Company do hereby agree as follows:

I. Term of the Agreement

A. The term of this Agreement shall be two years beginning April 29 and shall apply to all of BellSouth's serving territory as of January 1, 1997 in the state of Florida.

B. This Agreement shall be automatically renewed for two additional one year periods unless either party indicates its intent not to renew the Agreement. Notice of such intent must be provided, in writing, to the other party no later than 60 days prior to the end of the then-existing contract period. The terms of this Agreement shall remain in effect after the term of the existing agreement has expired and while a new agreement is being negotiated.

C. The rates pursuant by which Other Phone Company is to purchase services from BellSouth for resale shall be at a discount rate off of the retail rate for the telecommunications service. The discount rates shall be as set forth in Exhibit A, attached hereto and incorporated herein by this reference. Such discount shall reflect the costs avoided by BellSouth when selling a service for wholesale purposes.

II. Definition of Terms

A. **CUSTOMER OF RECORD** means the entity responsible for placing application for service; requesting additions, rearrangements, maintenance or discontinuance of service; payment in full of charges incurred such as non-recurring, monthly recurring, toll, directory assistance, etc.

B. **DEPOSIT** means assurance provided by a customer in the form of cash, surety bond or bank letter of credit to be held by the Company.

D. Other Phone Company will be the Company's single point of contact for all services purchased pursuant to this Agreement. The Company shall have no contact with the end user except to the extent provided for herein.

E. The Company will continue to bill the end user for any services that the end user specifies it wishes to receive directly from the Company.

F. The Company maintains the right to serve directly any end user within the service area of Other Phone Company. The Company will continue to directly market its own telecommunications products and services and in doing so may establish independent relationships with end users of Other Phone Company.

G. Neither Party shall interfere with the right of any person or entity to obtain service directly from the other Party.

H. Current telephone numbers may normally be retained by the end user. However, telephone numbers are the property of the Company and are assigned to the service furnished. Other Phone Company has no property right to the telephone number or any other call number designation associated with services furnished by the Company, and no right to the continuance of service through any particular central office. The Company reserves the right to change such numbers, or the central office designation associated with such numbers, or both, whenever the Company deems it necessary to do so in the conduct of its business.

I. The Company may provide any service or facility for which a charge is not established herein, as long as it is offered on the same terms to Other Phone Company.

J. Service is furnished subject to the condition that it will not be used for any unlawful purpose.

K. Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.

L. The Company can refuse service when it has grounds to believe that service will be used in violation of the law.

M. The Company accepts no responsibility to any person for any unlawful act committed by Other Phone Company or its end users as part of providing service to Other Phone Company for purposes of resale or otherwise.

N. The Company will cooperate fully with law enforcement agencies with subpoenas and court orders for assistance with the Company's customers. Law enforcement agency subpoenas and court orders regarding end users of Other Phone Company will be directed to Other Phone Company. The Company will bill Other Phone Company for implementing any requests by law enforcement agencies regarding Other Phone Company end users.

O. The characteristics and methods of operation of any circuits, facilities or equipment provided by any person or entity other than the Company shall not:

1. Interfere with or impair service over any facilities of the Company, its affiliates, or its connecting and connecting carriers involved in its service;

2. Cause damage to their plant;
3. Impair the privacy of any communications; or
4. Create hazards to any employees or the public.

P. Other Phone Company assumes the responsibility of notifying the Company regarding less than standard operations with respect to services provided by it.

Q. Facilities and/or equipment utilized by BellSouth to provide service to Other Phone Company remain the property of BellSouth.

R. White page directory listings will be provided in accordance with regulations set forth in Section A.6 of the General Subscriber Service Tariff and will be available for resale.

S. BellSouth will provide customer record information to the Other Phone Company provided the Other Phone Company has the appropriate Letter(s) of Authorization. BellSouth may provide customer record information via one of the following methods: US mail, fax, telephone or by electronic interface. BellSouth will provide customer record information via US mail, fax or telephone on an interim basis only.

Other Phone Company agrees to compensate BellSouth for all BellSouth incurred expenditures associated with providing such information to Other Phone Company. Other Phone Company will adopt and adhere to the BellSouth guidelines associated with each method of providing customer record information.

T. BellSouth's retail voice mail service shall be available for resale at rates, terms and conditions as mutually agreed to by the parties.

IV. BellSouth's Provision of Services to Other Phone Company

A. Other Phone Company agrees that its resale of BellSouth services shall be as follows:

1. The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions.

2. To the extent Other Phone Company is a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines, Other Phone Company shall not jointly market its interLATA services with the telecommunications services purchased from BellSouth pursuant to this Agreement in any of the states covered under this Agreement. For the purposes of this subsection, to jointly market means any advertisement, marketing effort, or billing in which the telecommunications services purchased from BellSouth for purposes of resale to customers and interLATA services offered by Other Phone Company are packaged, tied, bundled, discounted or offered together in any way to the end user. Such efforts include, but are not limited to, sales referrals, resale arrangements, sales agencies or billing agreements. This subsection shall be void and of no effect for a particular state covered under this Agreement as of February 8, 1999 or on the date BellSouth is authorized to offer interLATA services in that state, whichever is earlier.

3. Hotel and Hospital PBX service are the only telecommunications services available for resale to Hotel/Motel and Hospital end users, respectively. Similarly, Access Line Service for Customer Provided Coin Telephones is the only local service available for resale to Independent Payphone Provider (IPP) customers. Shared Tenant Service customers can only be sold those telecommunications services available in the Company's A23 Shared Tenant Service Tariff.

4. Other Phone Company is prohibited from furnishing both flat and measured rate service on the same business premises to the same subscribers (end users) as stated in A2 of the Company's Tariff except for backup service as indicated in the applicable state tariff Section A5.

5. If telephone service is established and it is subsequently determined that the class of service restriction has been violated, Other Phone Company will be notified and billing for that service will be immediately changed to the appropriate class of service. Service charges for changes between class of service, back billing, and interest as described in this subsection shall apply at the Company's sole discretion. Interest shall be at a rate as set forth in Section A2 of the General Subscriber Service Tariff and Section B2 of the Private Line Service Tariff for the applicable state, compounded daily for the number of days from the back billing date to and including the date that Other Phone Company actually makes the payment to the Company may be assessed.

6. The Company reserves the right to periodically audit services purchased by Other Phone Company to establish authenticity of use. Such audit shall not occur more than once in a calendar year. Other Phone Company shall make any and all records and data available to the Company or the Company's auditor's on a reasonable basis. The Company shall bear the cost of said audit.

B. Resold services can only be used in the same manner as specified in the Company's Tariff. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual end user of the Company in the appropriate section of the Company's Tariffs. Specific tariff features, e.g. a usage allowance per month, shall not be aggregated across multiple resold services. Resold services cannot be used to aggregate traffic from more than one end user customer except as specified in Section A23 of the Company's Tariff referring to Shared Tenant Service.

C. Other Phone Company may resell services only within the specific resale service area as defined in its certificate.

D. Telephone numbers transmitted via any resold service feature are intended solely for the use of the end user of the feature. Resale of this information is prohibited.

E. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. Other Phone Company is strictly prohibited from any use, including but not limited to sales, marketing or advertising, of any BellSouth name or trademark.

V. Maintenance of Services

A. Other Phone Company will adopt and adhere to the standards contained in the applicable BellSouth Work Center Interface Agreement regarding maintenance and installation of service.

B. Services resold under the Company's Tariffs and facilities and equipment provided by the Company shall be maintained by the Company.

C. Other Phone Company or its end users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by the Company, other than by connection or disconnection to any interface means used, except with the written consent of the Company.

D. Other Phone Company accepts responsibility to notify the Company of situations that arise that may result in a service problem.

E. Other Phone Company will be the Company's single point of contact for all repair calls on behalf of Other Phone Company's end users. The parties agree to provide one another with toll-free contact numbers for such purposes.

F. Other Phone Company will contact the appropriate repair centers in accordance with procedures established by the Company.

G. For all repair requests, Other Phone Company accepts responsibility for adhering to the Company's prescreening guidelines prior to referring the trouble to the Company.

H. The Company will bill Other Phone Company for handling troubles that are found not to be in the Company's network pursuant to its standard time and material charges. The standard time and material charges will be no more than what BellSouth charges to its retail customers for the same services.

I. The Company reserves the right to contact Other Phone Company's customers, if deemed necessary, for maintenance purposes.

VI. Establishment of Service

A. After receiving certification as a local exchange company from the appropriate regulatory agency, Other Phone Company will provide the appropriate Company service center the necessary documentation to enable the Company to establish a master account for Other Phone Company. Such documentation shall include the Application for Master Account, proof of authority to provide telecommunications services, an Operating Company Number ("OCN") assigned by the National Exchange Carriers Association ("NECA") and a tax exemption certificate, if applicable. When necessary deposit requirements are met, the Company will begin taking orders for the resale of service.

B. Service orders will be in a standard format designated by the Company.

X C. When notification is received from Other Phone Company that a current customer of the Company will subscribe to Other Phone Company's service, standard service order intervals for the appropriate class of service will apply.

(D) The Company will not require end user confirmation prior to establishing service for Other Phone Company's end user customer. Other Phone Company must, however, be able to demonstrate end user authorization upon request.

E. Other Phone Company will be the single point of contact with the Company for all subsequent ordering activity resulting in additions or changes to resold services except that the Company will accept a request directly from the end user for conversion of the end user's service from Other Phone Company to the Company or will accept a request from another OLEC for conversion of the end user's service from the Other Phone Company to the other LEC. The Company will notify Other Phone Company that such a request has been processed.

*Do not do so 51
of 12-9-*

* **F.** If the Company determines that an unauthorized change in local service to Other Phone Company has occurred, the Company will reestablish service with the appropriate local service provider and will assess Other Phone Company as the OLEC initiating the unauthorized change, an unauthorized change charge similar to that described in F.C.C. Tariff No. 1, Section 13.3.3. Appropriate nonrecurring charges, as set forth in Section A4. of the General Subscriber Service Tariff, will also be assessed to Other Phone Company

These charges can be adjusted if Other Phone Company provides satisfactory proof of authorization.

	Nonrecurring Charge
(a) each Residence or Business line	\$19.41

G. The Company will, in order to safeguard its interest, require Other Phone Company to make a deposit to be held by the Company as a guarantee of the payment of rates and charges, unless satisfactory credit has already been established. Any such deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service.

H. Such deposit may not exceed two months' estimated billing.

I. The fact that a deposit has been made in no way relieves Other Phone Company from complying with the Company's regulations as to advance payments and the prompt payment of bills on presentation nor does it constitute a waiver or modification of the regular practices of the Company providing for the discontinuance of service for non-payment of any sums due the Company.

J. The Company reserves the right to increase the deposit requirements when, in its sole judgment, the conditions justify such action.

K. In the event that Other Phone Company defaults on its account, service to Other Phone Company will be terminated and any deposits held will be applied to its account.

L. In the case of a cash deposit, interest at the rate of six percent per annum shall be paid to Other Phone Company during the continuance of the deposit. Interest on a deposit shall accrue annually and, if requested, shall be annually credited to Other Phone Company by the accrual date.

VII. Payment And Billing Arrangements

A. When the initial service is ordered by Other Phone Company, the Company will establish an accounts receivable master account for Other Phone Company.

B. The Company shall bill Other Phone Company on a current basis all applicable charges and credits.

C. Payment of all charges will be the responsibility of Other Phone Company. Other Phone Company shall make payment to the Company for all services billed. The Company is not responsible for payments not received by Other Phone Company from Other Phone Company's customer. The Company will not become involved in billing disputes that may arise between Other Phone Company and its customer. Payments made to the Company as payment on account will be credited to an accounts receivable master account and not to an end user's account.

D. The Company will render bills each month on established bill days for each of Other Phone Company's accounts.

E. The Company will bill Other Phone Company, in advance, charges for all services to be provided during the ensuing billing period except charges associated with service usage, which charges will be billed in arrears. Charges will be calculated on an individual end user account level, including, if applicable, any charges for usage or usage allowances. BellSouth will also bill all charges, including but not limited to 911 and E911 charges, telecommunications relay charges, and franchise fees, to Other Phone Company.

F. The payment will be due by the next bill date (i.e., same date in the following month as the bill date) and is payable in immediately available funds. Payment is considered to have been made when received by the Company.

If the payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday. If payment is not received by the payment due date, a late payment penalty, as set forth in I. following, shall apply.

G. Upon proof of tax exempt certification from Other Phone Company, the total amount billed to Other Phone Company will not include any taxes due from the end user. Other Phone Company will be solely responsible for the computation, tracking, reporting and payment of all federal, state and/or local jurisdiction taxes associated with the services resold to the end user.

H. As the customer of record, Other Phone Company will be responsible for, and remit to the Company, all charges applicable to its resold services for emergency services (E911 and 911) and Telecommunications Relay Service (TRS) as well as any other charges of a similar nature.

I. If any portion of the payment is received by the Company after the payment due date as set forth preceding, or if any portion of the payment is received by the Company in funds that are not immediately available to the Company, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor. The late factor shall be as set forth in Section A2 of the General Subscriber Service Tariff and Section B2 of the Private Line Service Tariff.

J. Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to, the Company. No additional charges are to be assessed to Other Phone Company.

K. The Company will not perform billing and collection services for Other Phone Company as a result of the execution of this Agreement. All requests for billing services should be referred to the appropriate entity or operational group within the Company.

L. Pursuant to 47 CFR Section 51.617, the Company will bill the charges shown below which are identical to the EUCL rates billed by BST to its end users.

	Monthly Rate
1. Residential	
(a) Each Individual Line or Trunk	\$3.50
2. Single Line Business	
(b) Each Individual Line or Trunk	\$3.50
3. Multi-line Business	
(c) Each Individual Line or Trunk	\$6.00

M. In general, the Company will not become involved in disputes between Other Phone Company and Other Phone Company's end user customers over resold services. If a dispute does arise that cannot be settled without the involvement of the Company, Other Phone Company shall contact the designated Service Center for resolution. The Company will make every effort to assist in the resolution of the dispute and will work with Other Phone Company to resolve the matter in as timely a manner as possible. Other Phone Company may be required to submit documentation to substantiate the claim.

VIII. Discontinuance of Service

A. The procedures for discontinuing service to an end user are as follows:

1. Where possible, the Company will deny service to Other Phone Company's end user on behalf of, and at the request of, Other Phone Company. Upon restoration of the end user's service, restoration charges will apply and will be the responsibility of Other Phone Company.
2. At the request of Other Phone Company, the Company will disconnect an Other Phone Company end user customer.
3. All requests by Other Phone Company for denial or disconnection of an end user for nonpayment must be in writing.
4. Other Phone Company will be made solely responsible for notifying the end user of the proposed disconnection of the service.
5. The Company will continue to process calls made to the Annoyance Call Center and will advise Other Phone Company when it is determined that annoyance calls are originated from one of their end user's locations. The Company shall be indemnified, defended and held harmless by Other Phone Company and/or the end user against any claim, loss or damage arising from providing this information to Other Phone Company. It is the responsibility of Other Phone Company to take the corrective action necessary with its customers who make annoying calls. Failure to do so will result in the Company's disconnecting the end user's service.

B. The procedures for discontinuing service to Other Phone Company are as follows:

1. The Company reserves the right to suspend or terminate service for nonpayment or in the event of prohibited, unlawful or improper use of the facilities or service, abuse of the facilities, or any other violation or noncompliance by Other Phone Company of the rules and regulations of the Company's Tariffs.

2. If payment of account is not received by the bill day in the month after the original bill day, the Company may provide written notice to Other Phone Company, that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifteenth day following the date of the notice. If the Company does not refuse additional applications for service on the date specified in the notice, and Other Phone Company's noncompliance continues, nothing contained herein shall preclude the Company's right to refuse additional applications for service without further notice.

3. If payment of account is not received, or arrangements made, by the bill day in the second consecutive month, the account will be considered in default and will be subject to denial or disconnection, or both.

4. If Other Phone Company fails to comply with the provisions of this Agreement, including any payments to be made by it on the dates and times herein specified, the Company may, on thirty days written notice to the person designated by Other Phone Company to receive notices of noncompliance, discontinue the provision of existing services to Other Phone Company at any time thereafter. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If the Company does not discontinue the provision of the services involved on the date specified in the thirty days notice, and Other Phone Company's noncompliance continues, nothing contained herein shall preclude the Company's right to discontinue the provision of the services to Other Phone Company without further notice.

5. If payment is not received or arrangements made for payment by the date given in the written notification, Other Phone Company's services will be discontinued. Upon discontinuance of service on a Other Phone Company's account, service to Other Phone Company's end users will be denied. The Company will also reestablish service at the request of the end user or Other Phone Company upon payment of the appropriate connection fee and subject to the Company's normal application procedures.

6. If within fifteen days after an end user's service has been denied no contact has been made in reference to restoring service, the end user's service will be disconnected.

IX. Liability

A. The liability of the Company for damages arising out of mistakes, omissions, interruptions, preemptions, delays errors or defects in transmission, or failures or defects in facilities furnished by the Company, occurring in the course of furnishing service or other facilities and not caused by the negligence of Other Phone Company, or of the Company in failing to maintain proper standards of maintenance and operation and to exercise reasonable supervision shall in no event exceed an amount equivalent to the proportionate charge to Other Phone Company for the period of service during which such mistake, omission,

interruption, preemption, delay, error or defect in transmission or defect or failure in facilities occur. The Company shall not be liable for damage arising out of mistakes, omission, interruptions, preemptions, delays, errors or defects in transmission or other injury, including but not limited to injuries to persons or property from voltages or currents transmitted over the service of the Company, (1) caused by customer-provided equipment (except where a contributing cause is the malfunctioning of a Company-provided connecting arrangement, in which event the liability of the Company shall not exceed an amount equal to a proportional amount of the Company billing for the period of service during which such mistake, omission, interruption, preemption, delay, error, defect in transmission or injury occurs), or (2) not prevented by customer-provided equipment but which would have been prevented had Company-provided equipment been used.

B. The Company shall be indemnified and saved harmless by Other Phone Company against any and all claims, actions, causes of action, damages, liabilities, or demands (including the costs, expenses and reasonable attorneys' fees, on account thereof) of whatever kind or nature that may be made by any third party as a result of the Company's furnishing of service to Other Phone Company.

C. The Company shall be indemnified, defended and held harmless by Other Phone Company and/or the end user against any claim, loss or damage arising from the use of services offered for resale involving:

1. Claims for libel, slander, invasion of privacy or infringement of copyright arising from Other Phone Company's or end user's own communications.
2. Claims for patent infringement arising from acts combining or using Company services in connection with facilities or equipment furnished by the end user or Other Phone Company.
3. All other claims arising out of an act or omission of Other Phone Company or its end user in the course of using services.

D. Other Phone Company accepts responsibility for providing access for maintenance purposes of any service resold under the provisions of this Tariff. The Company shall not be responsible for any failure on the part of Other Phone Company with respect to any end user of Other Phone Company.

X. Treatment of Proprietary and Confidential Information

A. Both parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data and like information (hereinafter collectively referred to as "Information"). Both parties agree that all information shall either be in writing or other tangible format and clearly marked with a confidential, private or proprietary legend, or, when the information is communicated orally, it shall also be communicated that the information is confidential, private or proprietary. The information will be returned to the owner within a reasonable time. Both parties agree that the information shall not be copied or reproduced in any form. Both parties agree to receive such information and not disclose such information. Both parties agree to protect the information received from distribution, disclosure or dissemination to anyone except employees of the parties with a need to know such information and which employees agree to be bound by the terms of this Section. Both parties will use the same standard of care to protect information received as they would use to protect their own confidential and proprietary information.

B. Notwithstanding the foregoing, both parties agree that there will be no obligation to protect any portion of the information that is either: 1) made publicly available by the owner of the information or lawfully disclosed by a nonparty to this Agreement; 2) lawfully obtained from any source other than the owner of the information; or 3) previously known to the receiving party without an obligation to keep it confidential.

XI. Resolution of Disputes

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.

XII. Limitation of Use

The parties agree that this Agreement shall not be proffered by either party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other party in that jurisdiction or for any other purpose.

XIII. Waivers

Any failure by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

XIV. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

XV. Arm's Length Negotiations

This Agreement was executed after arm's length negotiations between the undersigned parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all parties.

XVI. More Favorable Provisions

A. The parties agree that if ---

1. the Federal Communications Commission ("FCC") or the Commission finds that the terms of this Agreement are inconsistent in one or more material respects with any of its or their respective decisions, rules or regulations, or
2. the FCC or the Commission preempts the effect of this Agreement, then, in either case, upon such occurrence becoming final and no longer subject to administrative or judicial review, the parties shall immediately commence good faith negotiations to conform this Agreement to the requirements of any such decision, rule, regulation or preemption. The revised agreement shall have an effective

date that coincides with the effective date of the original FCC or Commission action giving rise to such negotiations. The parties agree that the rates, terms and conditions of any new agreement shall not be applied retroactively to any period prior to such effective date except to the extent that such retroactive effect is expressly required by such FCC or Commission decision, rule, regulation or preemption

B. In the event that BellSouth, either before or after the effective date of this Agreement, enters into an agreement with any other telecommunications carrier (an "Other Resale Agreement") which provides for the provision within the state of Florida of any of the arrangements covered by this Agreement upon rates, terms or conditions that differ in any material respect from the rates, terms and conditions for such arrangements set forth in this Agreement ("Other Terms"), BellSouth shall be deemed thereby to have offered such other Resale Agreement to Other Phone Company in its entirety. In the event that Other Phone Company accepts such offer, such Other Terms shall be effective between BellSouth and Other Phone Company as of the date on which Other Phone Company accepts such offer.

C. In the event that after the effective date of this Agreement the FCC or the Commission enters an order (a "Resale Order") requiring BellSouth to provide within the state of Florida any of the arrangements covered by this agreement upon Other Terms, then upon such Resale Order becoming final and not subject to further administrative or judicial review, BellSouth shall be deemed to have offered such arrangements to Other Phone Company upon such Other Terms, in their entirety, which Other Phone Company may only accept in their entirety, as provided in Section XVI.E. In the event that Other Phone Company accepts such offer, such Other Terms shall be effective between BellSouth and Other Phone Company as of the date on which Other Phone Company accepts such offer.

D. In the event that after the effective date of this Agreement BellSouth files and subsequently receives approval for one or more intrastate tariffs (each, a "Resale Tariff") offering to provide within the state of Florida any of the arrangements covered by this Agreement upon Other Terms, then upon such Resale Tariff becoming effective, BellSouth shall be deemed thereby to have offered such arrangements to Other Phone Company upon such Other Terms, which Other Phone Company may accept as provided in Section XVI.E. In the event that Other Phone Company accepts such offer, such Other Terms shall be effective between BellSouth and Other Phone Company as of the date on which Other Phone Company accepts such offer.

E. The terms of this Agreement, other than those affected by the Other Terms accepted by Other Phone Company, shall remain in full force and effect.

F. Corrective Payment. In the event that --

1. BellSouth and Other Phone Company revise this Agreement pursuant to Section XVI A, or
2. Other Phone Company accepts a deemed offer of an Other Resale Agreement or Other Terms, then BellSouth or Other Phone Company, as applicable, shall make a corrective payment to the other party to correct for the difference between the rates set forth herein and the rates in such revised agreement or Other Terms for substantially similar services for the period from the effective date of such revised agreement or Other Terms until the date that the parties execute such revised agreement or Other Phone Company accepts such Other Terms, plus simple interest at a rate equal to the thirty (30) day commercial paper rate for high-grade, unsecured notes sold through dealers by major corporations in multiples of \$1,000.00 as regularly published in *The Wall Street Journal*.

XVII. Notices

A. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.
OLEC Account Team
3535 Colonnade Parkway
Room E4E1
Birmingham, Alabama 35243

The Other Phone Company
John Murray, III
The Other Phone Company, Inc
3427 NW 55th Street
Ft Lauderdale, Florida 33309

or at such other address as the intended recipient previously shall have designated by written notice to the other party.

B. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

XVIII. Amendments

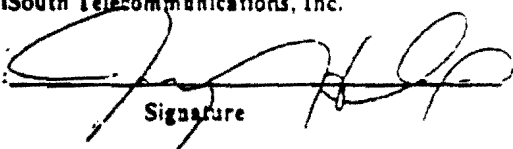
This Agreement may be amended at any time upon written agreement of both parties.

XIX. Entire Agreement

This Agreement sets forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them, and neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby

BellSouth Telecommunications, Inc.

BY:



Signature

NAME: Jerry D. Hendrix

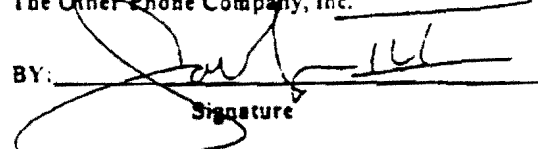
Printed Name

TITLE: Director

DATE: 4/29/97

The Other Phone Company, Inc.

BY:



Signature

NAME: John Murray, III

Printed Name

TITLE: President

DATE: 4/28/97

EXHIBIT KB-2

KB-2

AMENDMENT TO
RESALE AGREEMENT BETWEEN
BELLSOUTH TELECOMMUNICATIONS, INC.
AND THE OTHER PHONE COMPANY, INC.
DATED APRIL 29, 1997

Pursuant to this Agreement (the "Amendment"), BellSouth Telecommunications, Inc. ("BellSouth or Company") and The Other Phone Company, Inc. ("Reseller") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Resale Agreement between the Parties dated April 29, 1997. ("Agreement").

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BellSouth and Dakota hereby covenant and agree as follows:

- 1. The Parties hereby agree that Section VII.L. the Resale Agreement is deleted in its entirety and replaced with a new Section VII.L. as follows.

"Pursuant to 47 CFR Section 51.617, the Company will bill Reseller end user common line charges identical to the end user common line charges the Company bills its end users."

- 2. The Parties agree that all of the other provisions of the Resale Agreement, dated April 29, 1997 shall remain in full force and effect.

- 3. The Parties further agree that either or both of the Parties is authorized to submit this Amendment to the appropriate Commission or other regulatory body having jurisdiction over the subject matter of this Amendment, for approval subject to Section 252(e) of the federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

Jerry D. Hendrix
 BELLSOUTH TELECOMMUNICATIONS,
 INC.
 By: [Signature]
 DATE: 7/9/98

THE OTHER PHONE COMPANY, INC.
 By: [Signature]
 DATE: 7/10/98

EXHIBIT KB-3

D. Reseller will be the Company's single point of contact for all services purchased pursuant to this Agreement. The Company shall have no contact with the end user except to the extent provided for herein.

E. The Company will continue to bill the end user for any services that the end user specifies it wishes to receive directly from the Company.

F. The Company maintains the right to serve directly any end user within the service area of Reseller. The Company will continue to directly market its own telecommunications products and services and in doing so may establish independent relationships with end users of Reseller.

G. Reseller shall not interfere with the right of any person or entity to obtain service directly from the Company.

*

H. The current telephone number of an end user may be retained by the end user unless the end user has past due charges associated with the BellSouth account for which payment arrangements have not been made. The Company will not, however, make the end user's previous telephone number available to Reseller until the end user's outstanding balance has been paid. If Reseller requests service for an end user that has been denied service or disconnected for non-payment by BellSouth, and the end user still has an outstanding balance with the Company, the Company will establish service for that end user through Reseller. Denied service means that the service of an end user provided by a local exchange telecommunications company, including BellSouth has been temporarily suspended for nonpayment and subject to complete disconnection. Reseller is entitled to the same conditions contained in this paragraph.

I. Telephone numbers are the property of the Company and are assigned to the service furnished. Reseller has no property right to the telephone number or any other call number designation associated with services furnished by the Company, and no right to the continuance of service through any particular central office. The Company reserves the right to change such numbers, or the central office designation associated with such numbers, or both, whenever the Company deems it necessary to do so in the conduct of its business.

J. The Company may provide any service or facility for which a charge is not established herein, as long as it is offered on the same terms to Reseller.

K. Service is furnished subject to the condition that it will not be used for any unlawful purpose.

L. Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.

M. The Company can refuse service when it has grounds to believe that service will be in violation of the law.

N. The Company accepts no responsibility to any person for any unlawful act committed by Reseller or its end users as part of providing service to Reseller for purposes of resale or otherwise.

EXHIBIT KB-4



KB-4

August 20, 1998

Mr. Scott Schaefer
BellSouth Interconnection
675 West Peachtree Street, N.E.
Atlanta, GA 30375

Dear Mr. Schaefer,

The Other Phone Company (OPC) has been operating as a CLEC since January 1997. Today, I believe OPC is the largest non-facilities based CLEC operating within BellSouth having activated upwards of 20,000 access lines. From day one we've attempted to maintain a good working relationship with BellSouth. We've always maintained that BellSouth has been fair and even handed with its relations with all its CLEC's, though at times difficult to deal with. Because of the following events I'm beginning to believe in a more ominous position by BellSouth.

One of the cornerstones of the contract entered into between OPC and BellSouth was the most favored nation clause pursuant to section XVI paragraph B which states:

In the event that BellSouth, either before or after the effective date of this Agreement, enters into an agreement with any other telecommunications carrier (an "Other Resale Agreement") which provides for the provision within the state of Florida of any of the arrangements covered by this Agreement upon rates, terms or conditions that differ in any material respect from the rates, terms and conditions for such arrangements set forth in this Agreement ("Other Terms"), BellSouth shall be deemed thereby to have offered such other Resale Agreement to Other Phone Company in its entirety. In the event that Other Phone Company accepts such offer, such Other Terms shall be effective between BellSouth and Other Phone Company as of the date on which Other Phone Company accepts such offer.

Recently it came to my attention (acknowledged by numerous BellSouth employees) that BellSouth had in fact entered into a Resale Agreement with The Telephone Company of Central Florida (TCCF) and possibly with others that was literally identical to the Agreement with OPC except for one significant difference. Under terms of the TCCF contract BellSouth agreed not to accept customers of TCCF to switch back to BellSouth while the customers maintained an unpaid credit balance at TCCF. Pursuant to the terms of our contract we should have been offered the same terms. Let me explain how favorable a clause like this would have been to OPC and conversely how damaging BellSouth's failure to honor its contract with OPC has been.

Since beginning operations OPC has activated approximately 20,000 access lines. Every line that has been switched is backed by either a signed LOA or a tape validation approved by the Public Service Commission. Although BellSouth denies that they use the information given to them by OPC to go after and win back the OPC customer, clearly a campaign targeted directly at the OPC customer kicks in immediately upon being notified by OPC of the customers desire to



switch off of BellSouth. As of 8/11/98 4,867 lines from OPC have been switched back to BellSouth.

Of those customers that switch back to BellSouth, OPC was left holding \$525,000 of unpaid balances. In general our bad debt from our overall base since operations began has run at a 6% rate. Yet for those customers who have left OPC to go back to BellSouth with an outstanding balance our chance to collect is almost zero. Not only would our customers balances been paid off if BellSouth had honored its contract with OPC, (pursuant to favored nation clause) but BellSouth actually aggravated the situation by soliciting our customers to switch back to BellSouth, thereby creating the uncollectable unpaid balance.

Moreover, OPC was damaged by the actions of BellSouth due to the fact that it cost OPC \$42,750 to switch the above mentioned access lines. In addition, OPC was charged by BellSouth \$121,680 for one month minimums related to these access lines. Finally, it cost OPC \$48,672 to acquire the above mentioned access lines.

Therefore the total minimum damages to OPC from BellSouth failure to honor its Contract with OPC; (specifically the favored nation clause) amounts to:

BAD DEBT =	\$526,120
SWITCHING FEE=	\$42,750
ONE MONTH MINIMUM =	\$121,680
ACQUISITION COSTS =	\$48,672
TOTAL	\$739,222

In addition to the above damages, OPC and its shareholders have suffered from the reduction of OPC value due to the actions of BellSouth.

Further aggravating the situation and once again in conflict with our Agreement with BellSouth, (section VI, paragraph E) when BellSouth switches a customer back to BellSouth they are supposed to notify OPC...they do not! This action creates the following problems for OPC:

- Customer continues to receive bill from OPC (we're unaware they left) making us look unprofessional and allows customer to think something shady is going on, making collections of their unpaid debt more difficult.
- OPC's receivable lender finances OPC based on its Billing and Collections records. Once again because OPC was unaware a sizeable number of its accounts had switched back to BellSouth, OPC billing records were too high and correspondingly our collections look too low. This caused our Receivable lender to lower the amount of financing to OPC on its billable records from 98% to 88%. Thereby restricting our ability to grow.
- OPC never had the same chance, as did BellSouth to address customer concern and possibly win back customer. Does this sound like a level playing field?



I'm also somewhat astonished that BellSouth has created a situation wherein they participate in double billing. As an example, if customer A joins OPC on January 1st, OPC is charged for a one month minimum. As I have already stated, BellSouth then solicits our customer to switch back to BellSouth. Lets assume BellSouth is successful and customer switches back on Jan 7. The reality is, the customer is now charged from the 7th to the end of the month and OPC has also been charged through the end of the month. Can this be described in any other manner than double billing? Since operations began at OPC, 1,352 accounts actually switched back within 30 days of activation on OPC, costing OPC \$121,680. At the very least OPC should be charged for only the time it had the customer, no more, no less. Please note OPC has already paid BellSouth a switching fee for each account. To come full circle,

- BellSouth uses information it attains from OPC (that no else has,) to win back customers.
- BellSouth charges OPC a switching fee
- BellSouth charges OPC a one month minimum
- If BellSouth is successful then they double bill for services rendered.
- BellSouth does not notify OPC of switch back, this causes numerous problems for OPC.
- Does BellSouth have a signed LOA or taped verification to switch customer back?
- BellSouth's failure to honor favored nation clause in contract creates large uncollectable for OPC.

When I brought my concerns to numerous BellSouth employees the responses have been as follows:

- First... BellSouth no longer offers the (TCCF) clause so therefore OPC can not have it. I'm not looking for it going forward, I expect it to be valid only for the same contractual period it was valid or others.
- Second... The clause was an operational nightmare and discontinued. Once again, for however long it was contractually valid for TCCF (or others) pursuant to our "favored nation" clause, it should have been valid for OPC.
- Finally... Since OPC didn't ask for it...we lost it! OPC doesn't know who BellSouth is negotiating with. Moreover, we're certainly not privy to the details. From our own experience, there is very little negotiating with BellSouth, basically the contract for the most part is take it or leave it. Furthermore, I need not remind you that BellSouth drafted the contract, if there is any ambiguity as to whose responsibility it was to offer the TCCF clause to OPC, decisions typically are biased against the party that drafted the contract.

In conclusion, though I don't claim to be an attorney, it seems rather clear to me that BellSouth has used its monopoly position to:



- interfere with the existing contracts between OPC and its customer
- restraint of trade
- anti-competitive
- double billing
- Not honoring its own contract with OPC.

Though it is not my intention or desire, I will not hesitate to get the Public Service Commission to intervene. I've written this letter to avoid that course of action. I believe OPC will continue to be a large customer of BellSouth. I need someone to address our concerns and take responsibility for our damages!

Sincerely,

A handwritten signature in black ink that reads "Ken Baritz".

Ken Baritz
Chairman, CEO

Cc: Page Miller

EXHIBIT KB-5

KB-5



BellSouth Interconnection Services
34591 BellSouth Center
675 West Peachtree Street, N E
Atlanta, Georgia 30375

September 11, 1998

Mr. Ken Baritz
Chairman, CEO
The Other Phone Company
3427 NW 55th Street
Fort Lauderdale, FL 33309

Dear Mr. Baritz:

This letter is in response to your August 20, 1998 letters addressed to Scott Schaefer and me in which you expressed concerns related to BellSouth's contractual obligations, win back efforts, minimum monthly billing charge, and disconnect notification procedures. I also understand that you recently discussed these items directly with Marc Cathey and Mike Wilburn of the sales organization.

The Most Favored Nation provision of your contract requires your company to determine if another agreement is more desirable and to initiate the request to BellSouth to be moved to such other more desirable agreement. All Resale and Interconnection agreements and amendments executed between BellSouth and the CLECs are filed with the appropriate state regulatory bodies and are a matter of public record. BellSouth has negotiated hundreds of CLEC agreements and is not in a position to proactively highlight the variances of each agreement for every CLEC. The Resale Agreement between BellSouth and TCCF expired in May and is no longer available for adoption.

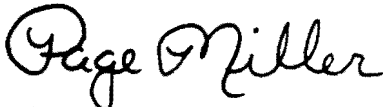
To address your concerns regarding BellSouth's winback efforts, please understand that BellSouth is not specifically targeting OPC customers. The individual BellSouth retail units do not receive or have access to any information about a CLEC or its customers, including information pertaining to which carrier a customer chooses when it leaves BellSouth. Winback efforts, which are commonplace in the telephone industry, are directed toward lost customers in general and are not specific to customers who switch to a particular CLEC.

With regard to the minimum one-month fee, BellSouth charges this fee in accordance with section A2.3.8 of the BellSouth General Subscriber Services Tariff. This issue was recently addressed in a proceeding before the Florida Public Service Commission where the Commission found that BellSouth's application of the tariffed charges was appropriate (see Order No. PSC-98-1001-FOF-TP, July 22, 1998)

BellSouth has a process in place to notify CLECs when end-users have switched their service back to BellSouth or to another carrier. An internal systems problem was recently identified that has prevented some loss notifications from being generated when business customers switch back to BellSouth. BellSouth is working to resolve this problem and apologizes if OPC has not received timely notification of all end-user disconnects. I have asked your account manager, Tom Bolding, to follow up with our Operations department to ensure this matter is addressed and to also explore other alternatives to provide this information in a timely manner.

I hope this letter helps clarify BellSouth's position on the issues raised in your letter. We value your business and hope to maintain a strong working relationship. Please call me at 404-927-1377 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Page Miller".

Page Miller
Manager - Interconnection Services Pricing

cc: Joe Baker
Marc Cathey
Tom Bolding

EXHIBIT KB-6

BellSouth Interconnection Services

675 West Peachtree Street
Room 34891
Atlanta, Georgia 30375

Page Miller
(404) 927-1377
Fax: (404) 927-8324

February 3, 1999

Mr. Ken Baritz
Chairman, CEO
Access One Communications
3427 NW 55th Street
Fort Lauderdale, FL 33309

Dear Mr. Baritz:

This is in response to your letter dated December 22, 1998. I will also address the additional issues raised in the memos you sent via e-mail dated January 11th and January 12th. I appreciate the patience you demonstrated while I researched your concerns.

BellSouth's position on many of the concerns you have raised was originally conveyed in the September 11, 1998 response to your August 20, 1998 letter addressed to Scott Schaefer and me. BellSouth's position regarding the Most Favored Nation (MFN) provision of your contract has not changed. The MFN language authorizes Access One to adopt other agreements in their entirety that it deems to be "more desirable", however, any agreement you may choose to adopt must be in an active status. When an agreement is adopted, you also acquire the termination date of the adopted agreement. The Resale Agreement between BellSouth and TCCF has not been available for adoption since May 28, 1998, the date of the expiration of that agreement.

Your complaint also alleges that BellSouth does not allow end-users with unpaid balances to retain their telephone number when switching to Access One. The e-mail you sent on January 11th clarifies that you are referring to customers who are in a denied or disconnect state rather than customers who have an outstanding balance. Although for a short time after the passage of the Act, BellSouth's policy was not to transfer telephone numbers that were in a denied/disconnect state, our policy changed very early to allow customers to retain telephone numbers regardless of the status of the account. The TCCF agreement was the only agreement to include this language. Efforts have been made to educate all service representatives as to policy, and BellSouth apologizes for any instances where that policy has not been followed. As a result of your complaint, correspondence is being sent to all BellSouth Service Representatives to reiterate this policy.

Regarding the minimum one-month fee, you acknowledged in the January 12th memo that BellSouth charges the minimum one-month fee to all customers in accordance with our tariff. Your contention is that Access One has purchased the customer for a 30-day period and therefore, BellSouth should not approach the customer with "winback" efforts during that time. It is my understanding that, at this time, BellSouth does not proactively contact end-users that have switched to another carrier. A generic letter is generated merely acknowledging the customer's departure, but BellSouth does not contact lost customers by phone. The BellSouth business office does receive a substantial number of calls from customers who

request to be switched back to BellSouth within 30 days of choosing another carrier. At that point, a BellSouth representative does ask the customer to provide a reason as to why they desire to be switched back to BellSouth. Of course, responding to such a customer request is entirely appropriate.

I understand you are also disputing the unauthorized switching fees that BellSouth has charged Access One, and you feel there is a parity issue in that BellSouth is not required to provide the same proof of authorization that the CLEC is required to provide. Apparently, numerous complaints had been received by the BellSouth business office from customers who claimed to have been switched to Access One without authorization. Several customers claimed Access One misrepresented their service, claiming that Access One was replacing BellSouth in their local coverage area. Recordings of the marketing calls were requested in order to research the unauthorized claims. It has been determined that many of the marketing calls made by Access One appear to have resulted in legitimate conversions. As a result, an adjustment will be issued to Access One in the amount of \$19,205.94. There is no parity issue regarding the requirement to provide proof of authorization since BellSouth has to perform all the functions required to convert service to or from a CLEC.

A BellSouth Local Carrier Service Center (LCSC) Staff Manager examined the examples you provided of disconnect notification errors and found that almost every occurrence took place prior to implementation of a system enhancement that corrected a problem which prevented some loss notifications from being identified. BellSouth is making every effort to provide timely and accurate notification of disconnects, and we apologize for any inconvenience you may have experienced prior to the identification and resolution of an internal system problem. If you have examples of loss notification errors in the future, please provide them to your Account Manager for investigation.

Finally, your complaint indicates that BellSouth offers its end-users repair options that are not offered to Access One end-users. Specifically, Access One claims BellSouth allows its customers to schedule morning or afternoon repair visits, and does not offer Access One customers a choice. I spoke with a manager in our repair center and was told that although as with BellSouth's end users, a particular time of day cannot be specified, CLECs can request an AM or PM dispatch for repairs. Access One representatives must request an AM or PM dispatch when creating the trouble ticket. We would appreciate any examples you can provide where an Access One representative made such a request and a BellSouth repair representative may have failed to follow this procedure.

I hope this letter clarifies BellSouth's position on the issues you have presented. BellSouth believes it is in full compliance with the terms and conditions of the Resale agreement between our companies. Please contact me at (404) 927-1377 if you have any questions.

Sincerely,



Page Miller
Manager - Interconnection Services/Pricing

EXHIBIT KB-7

KB-7

Go
reas
to come
BellSouth

Here's what you gave up and here's what you can get back

1. **BellSouth 25¢ Unlimited Call.** Local toll calls on hundreds of the most popular calling routes*, such as those between Miami and Fort Lauderdale or Jacksonville and St. Augustine, are just 25¢ a call no matter when or how long you talk. Other companies charge by the minute, but if you switch back to BellSouth you pay only 25¢ per call.

*And on those
local toll calls
not on the
25¢ Unlimited
Call routes:*

2. **Get Instant Savings on Nights and Weekends.** Every local toll call you make Monday through Friday between 6 p.m. and 7 a.m. or anytime Saturday and Sunday is 40¢ off.
3. **Pay Only for the Time You Talk.** Your current carrier might be charging by rounding up to the next minute. Not BellSouth... after the first 30 seconds, we bill by the 1/10 of a minute, so a four minute and six second call is billed at four minutes and six seconds, not five minutes. That can quickly add up to real savings.

So come back to BellSouth - because we're always coming up with new reasons why you should make us your local toll carrier.

It couldn't be easier to switch your local toll service back to BellSouth. Simply call 1-800-596-3319 today, or return the BellSouth Service Authorization Request attached.

* Check the "Local Calling" section in your phone book for all 25¢ routes in your area.

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Nobody knows a neighbor like a neighbor.™

EXHIBIT KB-8

**DEACTIVATION NOTIFICATIONS
FOR PERIOD 12/01/98 - 04/04/99**

<u>Receipt of Deactivation Letter</u>	<u>Deactivations</u>	<u>%</u>
0 - 5 Days	357	14%
6 - 10 Days	657	26%
11 - 14 Days	93	4%
16 - 20 Days	64	2%
Over 20 Days	90	34%
Never Received Notification Letter	1289	51%
TOTAL	2550	100%