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Legal Department

E. EARL EDENFIELD, Jr.  
General Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0763

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RECORDS AND  
REPORTING

March 3, 2000

Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

992018-TP

**Re: Petition for Arbitration Section 252(b) of a Resale Agreement Between BellSouth Telecommunications, Inc. and Atlantic Telecommunications Systems, Inc.**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of Direct Testimony of Elizabeth R. A. Shiroishi. We ask that you file all of these items in the captioned docket.

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

Sincerely,

*E. Earl Edenfield, Jr.*  
E. Earl Edenfield, Jr.

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMJ \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- MAS 5 \_\_\_\_\_
- OPC \_\_\_\_\_
- RRR \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- WAW \_\_\_\_\_
- OTH \_\_\_\_\_

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

02880 MAR-38

FPSC-RECORDS/REPORTING


**CERTIFICATE OF SERVICE**  
**Petition for Arbitration of a Resale Agreement Between BellSouth**  
**Telecommunications, Inc. and Atlantic Telecommunications Systems, Inc.**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
U.S. Mail and this 3rd day of March, 2000 to the following:

Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Tel. No. (850) 413-6199

Jerry Stabler, President  
Atlantic Telecommunications Systems, Inc.  
5849 Okeechobee Boulevard  
Suite 201  
West Palm Beach, FL 33417-4352

John C. Dodge  
Cole, Raywid & Braverman, LLP  
1919 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, DC 20006

  
E. Earl Edenfield, Jr. (ps)

1 BELL SOUTH TELECOMMUNICATIONS, INC.  
2 DIRECT TESTIMONY OF BETH SHIROISHI  
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4 DOCKET NO. 992018-TP  
5 March 3, 2000  
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELL SOUTH  
8 TELECOMMUNICATIONS, INC. ("BELL SOUTH") AND YOUR  
9 BUSINESS ADDRESS.

10

11 A. My name is Elizabeth R. A. Shiroishi. I am employed by BellSouth  
12 Telecommunications, Inc., ("BellSouth") as Manager – Interconnection  
13 Services Pricing. My business address is 675 West Peachtree Street, Atlanta,  
14 Georgia 30375.

15

16 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND  
17 AND EXPERIENCE.

18

19 A. I graduated from Agnes Scott College in Decatur, Georgia, in 1997, with a  
20 Bachelor of Arts Degree. I began employment with BellSouth in 1998 in the  
21 Interconnection Services Pricing Organization as a pricing analyst. I then  
22 moved to a position in product management, and now work with  
23 Interconnection Agreements as a negotiator.

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Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to present BellSouth's position on the unresolved issue in the negotiations between BellSouth and Atlantic Telecommunications Systems, Inc. ("Atlantic").

*Issue 1: Under the Telecommunications Act of 1996, can Atlantic require BellSouth to include a provision in the Resale Agreement whereby BellSouth is precluded from offering service to consumers covered by an exclusive service arrangement with Atlantic?*

Q. IS THIS ISSUE APPROPRIATE AS AN ISSUE FOR ARBITRATION?

A. No. Limitation on a telecommunication carrier's ability to sell and market services is not appropriate as an issue for arbitration, and contractual language regarding this issue should not be imposed by this Commission. Neither the Telecommunications Act of 1996 ("1996 Act"), the FCC Rules nor Florida law address the issue of exclusive service arrangements. Clearly, there is no requirement under Section 251 that such arrangements be addressed in a Resale Agreement. Therefore, this issue is not appropriate for § 252 arbitration under the 1996 Act.

Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

1 A. BellSouth's position is that it is not appropriate to include specific language  
2 regarding exclusive service arrangements in the Resale Agreement. In a  
3 competitive environment, consumers should have choices as to service  
4 providers, as well as types and pricing of services. Simply put, Atlantic seeks  
5 to have the Commission erect a barrier around Atlantic's customers to protect  
6 these customers from competition from BellSouth. BellSouth asserts that the  
7 Commission should not limit BellSouth or any telecommunications provider  
8 from marketing its products and services.

9  
10 Q. WHAT IS ATLANTIC'S POSITION ON THIS ISSUE?

11  
12 A. It is unclear exactly what Atlantic's position is from the language it has  
13 requested for the Resale Agreement. Since Atlantic did not file a Response to  
14 BellSouth's Petition in this arbitration, no additional insight has been provided.  
15 However, as a practical matter, Atlantic's reference to "an exclusive  
16 arrangement with end users within that Party's service area" may likely be in  
17 the context of a multitenant environment.

18  
19 Q. IS THE FCC EXPECTED TO ADDRESS THE ISSUE OF EXCLUSIVE  
20 SERVICE ARRANGEMENTS IN A MULTITENANT ENVIRONMENT?

21  
22 A. Yes. The FCC's Order 99-141 issued a Third Further Notice of Proposed Rule  
23 Making in CC Docket No. 96-98 (rel. July 7, 1999) (Competitive Networks  
24 Notice). The FCC explained its focus as follows:

25

1            *This item initiates a rulemaking proceeding to consider certain actions*  
2            *to facilitate the development of competitive telecommunications*  
3            *networks, and commences an inquiry into certain other issues related*  
4            *to this goal. In particular, we consider actions to help ensure that*  
5            *competitive providers will have reasonable and nondiscriminatory*  
6            *access to rights-of-way, buildings, rooftops, and facilities in multiple*  
7            *tenant environments. (Order 99-141, ¶ 1)*

8

9            Further, at ¶ 31, the FCC discusses the need to address exclusive service  
10           *arrangements in a multiple tenant environment:*

11           *In several proceedings before the Commission, a number of parties*  
12           *have argued that both building owners and incumbent LECs have*  
13           *obstructed competing telecommunications carriers from obtaining*  
14           *access on reasonable and nondiscriminatory terms to necessary*  
15           *facilities located within multiple unit premises. ... At the same time, we*  
16           *are aware that competitive telecommunications carriers have*  
17           *successfully negotiated building access agreements in many instances,*  
18           *and we recognize that building owners may have an incentive to offer*  
19           *high quality telecommunications services and choices of providers in*  
20           *order to attract tenants. On the other hand, long-term tenant leases*  
21           *and high relocation costs may prevent the market from effectively*  
22           *conveying tenants' preferences to building owners. We request parties,*  
23           *including competing carriers, building owners, incumbent LECs, and*  
24           *customers to provide additional evidence of their experiences*

25

1                    *regarding the provision of telecommunications services in multiple*  
2                    *tenant environments.*

3  
4                    The FCC has recognized the need to examine exclusive service arrangements  
5                    in a competitive environment, and will do so in the above-mentioned  
6                    proceeding. Therefore, it is not appropriate at the present time to include  
7                    language in an interconnection resale agreement which may be contrary to  
8                    future FCC rules.

9

10

11 Q.            HAS THIS COMMISSION ADDRESSED THE ISSUE OF EXCLUSIVE  
12                    SERVICE AGREEMENTS?

13

14 A.            Yes. As an outcome of Special Project No. 980000B-SP, this Commission  
15                    issued a report in February 1999 entitled "Access by Telecommunications  
16                    Companies to Customers in Multitenant Environments". That report states, on  
17                    page (i),

18                    *"A multitenant environment (MTE) in which a landlord or building*  
19                    *owner controls access to the telecommunications equipment area or*  
20                    *other related facilities in a structure appears to be a situation where*  
21                    *limitations to competition may exist."*

22                    Further, on page (iv), the report states,

23                    *"Exclusionary contracts between telecommunications companies and*  
24                    *landlords are anticompetitive and should be against public policy.*

25

1                    *Therefore, the Commission recommends that exclusionary contracts*  
2                    *should be prohibited.”*

3

4 Q.    WHAT IS BELLSOUTH’S POSITION WITH REGARD TO  
5        EXCLUSIONARY CONTRACTS IN MULTITENANT ENVIRONMENTS?

6

7 A.    BellSouth’s position is that carriers should not be prevented from marketing  
8        their services to occupants of multitenant properties. BellSouth believes that,  
9        in the long run, the most desirable properties will be those which permit  
10       tenants to obtain service from any carrier offering service to the property.  
11       Owners of such properties may tout their non-exclusionary leases and, perhaps,  
12       go a step further and offer their own branded service in concert, or in  
13       competition, with one or more carriers. Preferred carriers who offer the best  
14       mix of price, features and service will succeed by adding value to a property.  
15       Limiting a consumer’s choices of carriers is not in the spirit of competition,  
16       and is not in the public interest.

17

18       In addition to the need for consumers to have a choice of carriers, in particular,  
19       BellSouth as a Carrier of Last Resort (“COLR”) should not be prevented from  
20       serving end users in its territory. COLRs, including BellSouth, do not have the  
21       freedom to pick and choose those subscribers or properties which they desire  
22       to serve, whereas other carriers have such an option. Thus, within its  
23       franchised service territory, BellSouth is literally the “last resort” for  
24       subscribers who are bypassed by other carriers. Until such time as BellSouth  
25       is no longer obligated to serve all end users in its franchised territory, and until



1           such time as BellSouth is totally free from rate regulation and service indices  
2           imposed by the Commission, all subscribers should have the right to subscribe  
3           to those services which have been designated by Florida legislation as being in  
4           the best interest of the citizens of the state.

5

6   ***Issue 2: In the event of an unauthorized change in local service (i.e., slamming) by***  
7   ***Atlantic, is BellSouth allowed to recover from Atlantic the costs BellSouth incurs in***  
8   ***returning the slammed customer to the appropriate local service provider? If so,***  
9   ***should the obligation be reciprocal?***

10

11 Q.    WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

12

13 A.    It is BellSouth's understanding that this issue has been resolved by the parties.  
14        However, BellSouth reserves the right to file testimony on this issue, should it  
15        be further disputed.

16

17 Q.    DOES THIS CONCLUDE YOUR TESTIMONY?

18

19 A.    Yes.

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