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May 7, 1997

VIA FEDERAL EXPRESS

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

Re: Docket No. 961346-TP

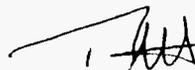
Dear Ms. Bayo:

Enclosed for filing are an original and fifteen (15) copies of a Motion for Reconsideration of Telenet of South Florida, Inc. in the above-captioned docket.

A copy of the Brief is also on the enclosed diskette formatted in WordPerfect 6.1 for Windows. Please date stamp the extra hard copy and return it in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Sincerely,



Ronald J. Jarvis

cc: All parties of record

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
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In re: _____)
)
TELENET OF SOUTH FLORIDA, INC.)
)
Petition for Arbitration of Dispute with)
BellSouth Telecommunications, Inc.)
regarding call forwarding)
_____)

Docket No. 961346-TP

**MOTION FOR RECONSIDERATION OF
TELENET OF SOUTH FLORIDA, INC.**

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Dated: May 7, 1997

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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

| | | |
|--|---|----------------------|
| In re: |) | |
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| TELENET OF SOUTH FLORIDA, INC., |) | |
| |) | |
| Petition for Arbitration of Dispute with |) | Docket No. 961346-TP |
| BellSouth Telecommunications, Inc. |) | |
| regarding call forwarding |) | |
| |) | |

**MOTION FOR RECONSIDERATION OF
TELENET OF SOUTH FLORIDA, INC.**

Telenet of South Florida, Inc. (“Telenet”), by its undersigned attorneys, pursuant to Rule 25-22.060, Florida Administrative Code, hereby files its Motion for Reconsideration of Commission Order No. PSC-97-0462-FOF-TP (“Order”) issued on April 23, 1997 in the above-captioned proceeding.

I. INTRODUCTION

Telenet seeks reconsideration of the Commission’s arbitration Order, pursuant to Section 364.161(1), Florida Statutes, resolving a dispute between Telenet and BellSouth. The parties’ dispute relates to whether BellSouth may continue to sell call forwarding to Telenet subject to the restrictions of section A13.9.1.A. of BellSouth’s General Subscriber Service Tariff, which provides:

Call forwarding shall not be used to extend calls on a planned and continuing basis to intentionally avoid the payment in whole or in part, of message toll charges that would regularly be applicable between the station originating the call and the station to which the call is transferred.

A motion for reconsideration is to bring to the Commission’s attention some material and relevant point of fact or law which was overlooked, or which it failed to consider when it rendered the order

in the first instance. *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So.2d 161 (Fla. Dist. Ct. App. 1981). Telenet submits that the Order should be reconsidered, because the Commission's Order overlooks or fails to consider the following material and relevant facts and points of law: (i) the issue of terminating access charges was not properly before the Commission, and therefore cannot legally serve as a basis for decision; (ii) Section 364.16(3)(a) of the Florida Statutes cannot legally serve as the basis for decision, since there was no Commission finding nor evidence of a "local interconnection arrangement" between Telenet and BellSouth, and therefore the condition precedent to the applicability of Section 364.16(3)(a) of the Florida Statutes does not exist; (iii) The Commission did not determine that the subject resale restriction in BellSouth's tariff is *reasonable* as required under Section 364.161(2) of the Florida Statutes and Section 251(c)(4)(B) of the Communications Act of 1934, as amended; and (iv) the Commission failed to consider an essential theory supporting Telenet's position concerning the required unbundling of the call forwarding element under Florida Statutes, Section 364.161(1).

II. ORAL ARGUMENT REQUESTED

Pursuant to Section 25-22.060(1)(f) of the FLORIDA ADMIN. CODE. ANN., Telenet respectfully requests oral argument of this Motion for Reconsideration.

III. ARGUMENT

A. The Issue of Terminating Access Charges was Not An Identified Issue for Determination by the Commission.

In the January 9, 1997 Order Establishing Procedure (Order No. PSC-97-0041) ("*Procedural Order*"), the Commission required each party (and Commission Staff) to file a prehearing statement, including, *inter alia*,

(d) *a statement of each question of fact* the petitioner or respondent considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;

(e) *a statement of each question of law* the petitioner or respondent considers at issue and the party's position on each such issue;

(f) *a statement of each policy question* the petitioner or respondent considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;

(g) *a statement of issues* that have been stipulated to by the parties.

Procedural Order at 3 (emphasis supplied). The Commission went on to state that:

“[a]ny issue not raised by a petitioner or respondent prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A petitioning or responding party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; due diligence was exercised to obtain facts touching on the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Procedural Order at 4 (emphasis supplied).^{1/}

Although BellSouth argued in its prefiled testimony that Telenet should be required to pay terminating access charges pursuant to Section 364.16(3)(a), Florida Statutes, neither BellSouth nor Commission Staff made any attempt whatsoever to designate the issue for hearing in the Commission Staff's issue identification Memorandum of January 2, 1997. According to the issue identification Memorandum, the sole issue to be arbitrated by the Commission was the following:

^{1/}This language is derived from Rule 25-22.038(4)(b)(2) of the FLORIDA ADMIN. CODE ANN. (1996).

May BellSouth Telecommunications, Inc. sell its Call Forwarding service subject to the restrictions of Section A13.9.1A.1 of BellSouth Telecommunications, Inc.'s General Subscriber Service Tariff?

January 2, 1997 Memorandum from Charles Pellegrini, Division of Legal Services, FPSC. The foregoing issue was also set forth as the only issue for arbitration in the Prehearing Statements of both BellSouth and the Commission Staff. In short, no party identified the issue of whether Telenet should be required to pay access charges to BellSouth, nor did any party identify Section 364.16(3)(a) as law applicable to the disposition of the matter before the Commission. Nor did BellSouth or Commission Staff raise the issue of access charges or Florida Statutes, Section 364.16(3)(a).

The Prehearing Order, issued in draft on January 24, 1997 and in final form on February 11, 1997, set forth only one issue, the issue previously identified in the Commission Staff's January 2, 1997 issue identification Memorandum.^{2/} As noted previously, the Prehearing Order, and the Florida Administrative Code rule on which it is based, state unequivocally that a party's failure to include an issue in the Prehearing Order constitutes a waiver of that issue, except for good cause shown (and the rules specify the manner in which good cause must be shown). *See* FLORIDA ADMIN. CODE. ANN. § 25-22.038(4)(b)(2). The record demonstrates that no party attempted to make a showing of good cause to add the issue of terminating access charges under Florida Statutes, § 364.16(3)(a) to the

^{2/}In its January 23, 1997 Motion to Strike, BellSouth, seeking to strike testimony from Telenet's witness on the subject of unbundling of network elements, stated: "*the sole issue* for consideration by this Commission concerns the limitations in BellSouth's tariff on the use of call forwarding and whether the limitations apply in this instance." BellSouth January 23, 1997 Motion to Strike at 3, ¶ 4 (emphasis supplied). BellSouth went on to state: "[t]his portion of the testimony of Mr. Kupinsky has absolutely no relevance to the 'resale restriction' issue that has been identified as the *sole, proper subject* of this docket." BellSouth January 23, 1997 Motion to Strike at 4, ¶ 6.

hearing; nor did the Commission make a finding that good cause existed to designate this additional issue for disposition. As such, the issue was waived, and was not properly before the Commission for decision.

It is apparent, however, from the language of the final Order in this proceeding, that the Commission's decision was heavily reliant upon whether Telenet should pay terminating intra-LATA access charges to BellSouth, based upon Telenet's use of BellSouth's network and the requirements of Florida Statute Section 364.16(3)(a). The Commission's consideration of this issue, never properly framed for determination in this proceeding, is misplaced, and is not in accordance with § 25-22.038(4)(b)(2) of Florida's administrative rules. Arguably, if the Commission had limited its inquiry to the issues properly designated for disposition, the outcome of the proceeding could have been entirely different. Accordingly, the Commission should reconsider its Order and limit the scope of a revised order to the issues properly before it for decision in the arbitration.

B. Even Assuming *Arguendo*, that Terminating Access Charges Were Properly Before the Commission, There Was no “Local Interconnection Arrangement” Between Telenet and BellSouth Pursuant to Which Telenet Could Be Responsible for Access Charges.

As noted above, the issue of whether Telenet, due to the configuration of its service offering, should be required to pay access charges to BellSouth is not an issue properly before the Commission for disposition, and cannot legally serve as the basis for decision in this proceeding. However, even assuming *arguendo* that the issue *were* properly before the Commission, it still cannot serve as the legal basis for the Commission's decision, because the relevant statute, Florida Statutes Section 364.16(3)(a), implicates the subject of access charges only where “traffic, for which terminating access charges would otherwise apply, [is delivered] *through a local interconnection*

arrangement.” Florida Statutes, § 364.16(3)(a) (emphasis supplied). As the irrefutable and more convincing evidence in the record discloses, Telenet did not have such a “local interconnection arrangement” with BellSouth, and in fact had no local interconnection arrangement.^{3/}

That Telenet did not have any “local interconnection arrangement” with BellSouth is more than evident from the record. In fact, in a sense it is the *absence* of any agreement with BellSouth that eventuated the very arbitration that is the subject of this proceeding. Testimony from BellSouth’s witness Robert C. Scheye underscores the fact that the parties had no agreement or “interconnection arrangement” whatsoever:

Q. Is Telenet authorized to resell local service from BellSouth at this time?

A. No. The resale of a retail service can only be conducted after a negotiated or negotiated/arbitrated agreement has been reached and approved *under the terms of Section 364.162, Florida Statutes* or under the provisions of the Telecommunications Act of 1996. *No such agreement has been reached or arbitrated*, therefore precluding Telenet from reselling service at this time.

January 15, 1997 Direct Testimony of Robert C. Scheye, BellSouth at 2-3. In his rebuttal testimony, Mr. Scheye reiterates his position that Telenet had not “requested to negotiate a resale or *an*

^{3/}To the contrary, BellSouth insisted that Telenet must enter into a resale agreement. On September 19, 1996, O.G. Moore of BellSouth sent a letter to Mitchell Kupinsky of Telenet, informing him as follows:

In reference to your FAX message today, I can not initiate any new service with you for Telenet of South Florida until we resolve the Resale Agreement situation. *You must initiate a request for a Resale Agreement as indicated above.* That is the first step you must take.

September 19, 1996 Letter from O.G. Moore, Senior Account Executive, BellSouth, to Mitchell Kupinsky of Telenet (Exhibit MAK-4) (emphasis supplied).

interconnection agreement with BellSouth as envisioned by the Florida Statute.” January 27, 1997

Rebuttal Testimony of Robert C. Scheye, BellSouth at 12 (emphasis supplied). He goes on to state:

As soon as BellSouth became aware that Telenet was an ALEC, Telenet was informed that the appropriate course would be to negotiate a resale or interconnection agreement like all other prospective ALECs. ***To my knowledge, no such request has been made by Telenet.***

Id.(emphasis supplied). When questioned by Commission Staff in his February 7, 1997 Deposition, Mr. Scheye insisted that Telenet did not have a resale agreement, or ***“any other type of agreement under either the Florida Statute or the Telecom Act of 1996,”*** because:

. . . a negotiated agreement has to be processed; it has to be signed by both parties. If parties do not agree, they would then come to arbitration in front of this Commission.

February 7, 1997 Deposition of Robert C. Scheye, BellSouth at 7-8.^{4/}

The record shows that Telenet is simply a customer of call forwarding services, not a discrete network operator seeking connection with BellSouth’s switched network. As Telenet’s witness Mitchell Kupinsky testified at the February 12, 1997 Hearing, although Telenet is receiving service from BellSouth, it has not been doing so pursuant to any sort of “local interconnection arrangement,” or any agreement of any kind. TR. at 85-86. Telenet has been and is receiving call forwarding services as a retail customer, and is no more “interconnecting” with BellSouth’s network than is the

^{4/}In the February 12, 1997 Hearing, Mr. Scheye attempted to backtrack from his firmly-stated conviction that no resale agreement or interconnection arrangement under federal or Florida law exists between the parties by claiming that, in spite of the fact that no interconnection agreement exists under federal law, an “interconnection arrangement” does exist for purposes of Section 364.16(3)(a), Florida Statutes. Hearing Transcript (“TR.”) at 163-164.

owner of a PBX system.^{5/} There is no legal precedent or logical basis for “deeming” such an agreement or arrangement to exist when it plainly did not exist. Accordingly, the Commission overlooked, or failed to consider, the fact that the statute cannot be applicable in the absence of an identifiable “local interconnection agreement.”

C. The Commission Overlooked the Lack of Any Finding That a “Local Interconnection Arrangement” Exists.

As noted above, a statutory prerequisite for the application of Florida Statutes, Section 364.16(3)(a) is the existence of a “local interconnection arrangement.” Not only (as BellSouth’s testimony corroborates) does the record lack any credible evidence that such an “arrangement” exists, but in addition, the Commission made no finding that there is such an interconnection arrangement. To do so, the Commission would have to base any such determination on record evidence. The Commission’s apparent reluctance to accept BellSouth’s invitation to concoct an “interconnection arrangement” from thin air when all of the record evidence supports the absence of any such arrangement is understandable. However, absent an explicit determination that such an arrangement exists, there is no legal basis for the application of the statute, and, even if the issue

^{5/}A PBX system also takes a call from BellSouth’s network, and switches or routes it internally, sometimes also connecting it with other BellSouth lines when calls are conferenced, etc. It is also not impossible that a PBX could connect two local calls by conferencing that would combine to bypass intra-LATA toll. The notion that the call goes “off-net” when it enters a PBX, and goes back “on-net” when it leaves a company’s premises, giving rise to terminating access charge liability, is clearly absurd. However, this situation is not logically different from the situation in which a BellSouth call enters a Telenet IVR and is routed on another BellSouth line. Simply by entering a switching device such as a PBX or an IVR, the call does not go “off-net” and then come back “on-net” on the other side of the device, unless the other side of the device is attached to a network that is distinct from BellSouth’s network. The Commission’s implicit conclusion that the mere imposition of a switching device connecting two BellSouth circuits constitutes “interconnection” is factually inaccurate, without authority, and requires reconsideration.

of terminating access charges were properly before the Commission for decision, the Commission's reliance on the statute is clearly erroneous and must be reconsidered.

D. The Commission Overlooked Any Finding That the Subject Resale Restriction in BellSouth's Tariff is "Reasonable."

In the Order, the Commission observes that it is appropriate for it to consider whether the BellSouth tariff provision in question is reasonable and non-discriminatory. Applicable federal and state laws prohibit imposition of unreasonable or discriminatory resale restrictions. *See* 47 U.S.C. § 251(c)(4)(B); Florida Statutes, § 364.161. The Commission's Order makes an explicit determination that the restriction is not discriminatory, because it applies equally to resellers and other customers who subscribe to call forwarding services. Order at 9. However, this finding is incomplete, and therefore inadequate as a matter of law. It is, after all, entirely possible for a tariff provision to apply equally and non-discriminatorily to all customers and resellers, and to be equally unreasonable for everyone. The lack of any determination in the Order as to the *reasonableness* of the tariff provision is conspicuous. The omission of a determination whether the tariff provision is reasonable requires reconsideration of the Order.

E. The Commission Overlooked its Own Ruling Prohibiting Use and User Restrictions on Resale of BellSouth's Service Offerings in the Recent AT&T Interconnection Order.

The Commission's recent *AT&T Interconnection Order*⁶¹ addressed many of the same concerns raised by Telenet in its Petition for Arbitration, in particular, whether use and user restrictions on resale of BellSouth's services are reasonable. In the *AT&T Interconnection Order*,

⁶¹*AT&T Communications of the Southern States, et al.*, Docket Nos. 960833-TP, 960846-TP and 960916-TP, Order No. PSC-96-1579-FOF-TP (December 31, 1996) ("AT&T Interconnection Order").

the Commission discussed the requirements of Section 251(c)(4)(A) of the Federal Communications Act of 1934, as amended, as well as the finding by the FCC in its First Report and Order in CC Docket No. 96-98 that resale restrictions, including those in LECs' tariffs, are presumptively unreasonable.²⁷ As the Commission notes, BellSouth's witness Robert C. Scheye (BellSouth's sole witness in this proceeding) attempted to argue in the AT&T Interconnection proceeding that the resale restrictions in BellSouth's tariff should be upheld (employing many of the same arguments raised by BellSouth against Telenet):

BellSouth asserts that any use or user restrictions in its relevant tariffs should apply. BellSouth's witness Scheye argues that a retail service is comprised of the stated rates, terms and conditions in the tariff. The rate for a particular offering varies based on the terms and conditions of the service. If the terms and conditions were different, the price would likely be different, or that particular retail service might not even be offered. *Witness Scheye asserts that terms and conditions are an integral part of the service.* Witness Scheye states that any use and user restrictions or terms and conditions found in the relevant tariff of the service being resold should apply.

* * * * *

Witness Scheye argues that the Act requires the resale of a service, not just the picking and choosing of various pieces. Thus, BellSouth argues that terms, conditions and use and user restrictions do not pose any unreasonable or discriminatory condition on AT&T, MCI or any other reseller. If AT&T or MCI wish to provide a service with different terms and conditions than BellSouth's offering, or with different or no use or user restrictions, either can do so by leasing unbundled features and combining them with its own capabilities to provide the service.

²⁷AT&T Interconnection Order at 57-58.

AT&T Interconnection Order at 57-58 (emphasis added). The Commission's summary of AT&T's refutation of BellSouth's position is also strikingly similar to Telenet's position in this arbitration proceeding:

When a new entrant is prohibited from making creative offerings because the ILEC has imposed restrictions on the resale of specific services, the development of competition will be impeded and customer benefits will be realized more slowly. Witness Sather [AT&T] further contends that this anticompetitive result is why the Act requires ILECs not to prohibit and not to impose unreasonable or discriminatory conditions on the resale of telecommunications services.

In addition, Witness Sather states that *BellSouth's proposed restrictions are unreasonable and discriminatory because they prohibit innovation, which impedes competition*. The witness argues that the restrictions are unreasonable because they require resellers to provide services to their customers in the exact same way that BellSouth provides these services to its customers. As such, Witness Sather contends that the use of resale restrictions by ILECs may be more appropriately termed *the abuse of resale restrictions*.

AT&T Interconnection Order at 58-59 (emphasis supplied).

After considering these divergent positions, the Commission concluded that, with certain very limited exceptions, no restrictions on resale of BellSouth's services should be allowed:

Thus, based on the evidence and arguments presented, *we find that no restrictions on the resale of services shall be allowed*, except for restrictions applicable to the resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from BellSouth.

AT&T Interconnection Order at 60 (emphasis supplied).

The Commission's determination in the *AT&T Interconnection Order* is equally applicable to the present case, in which Telenet seeks to resell call forwarding services not subject to BellSouth's resale restriction in section A13.9.1.A of its General Subscriber Service tariff. In issuing

its final Order in this proceeding, the Commission overlooked its determination prohibiting use and user restrictions on resale of BellSouth's service offerings in the AT&T Interconnection Order. If this precedent had been correctly applied, a very different outcome for this arbitration would have resulted. Accordingly, the Commission's Order must be reconsidered to conform to the Commission's *AT&T Interconnection Order*.

F The Commission Failed to Consider Telenet's Petition Requesting that BellSouth be Required to Unbundle Call Forwarding.

Not only did the Commission base its Order primarily on an inapplicable statute, but the Commission also overlooked an issue raised by Telenet that should have been considered in the ultimate disposition of the case. In its Petition for Arbitration, Telenet requested arbitration of a dispute with BellSouth concerning "prices, terms and conditions of feasible unbundling requests." Telenet Petition for Arbitration at 2. Telenet's object in bringing this proceeding before the Commission was to compel BellSouth to unbundle, pursuant to Florida Statutes, § 364.161(1), the multipath call forwarding feature.^{8/}

On December 5, 1996, BellSouth filed a motion to dismiss Telenet's Petition for Arbitration on the basis that no dispute concerning the "terms, conditions and prices of any feasible unbundling request" existed between the parties. Denying BellSouth's motion to dismiss, the Commission observed:

It appears in Telenet's petition for arbitration that *Telenet requested that BellSouth unbundle multi-path call forwarding* and that Telenet and BellSouth engaged in negotiations for at least 60 days. Further

^{8/}Telenet also raised the issue of whether BellSouth's tariffed restriction on resale of call forwarding was reasonable in accordance with Florida Statutes, § 364.161(2). Telenet Petition for Arbitration at 7.

it appears that Telenet had sufficient reason to conclude that continued negotiations would not be successful. *One could conclude that Telenet's argument that call forwarding is a network element that BellSouth is obligated to unbundle pursuant to Section 364.161(1), Florida Statutes, is reasonable.* Moreover, whether the application of Section A13.9.1.A.1 to Telenet's use of call forwarding is a reasonable restriction under Section 364.161(2), *Florida Statutes*, is appropriate for us to determine.

* * * * *

We find that Telenet's petition for arbitration appropriately states a cause of action for which relief may be sought from this Commission.

Order Denying Motion to Dismiss, Order No. PSC-97-0072-FOF-TP, Docket No. 961346-TP (January 23, 1997) at 3-4 (emphasis supplied). Accordingly, the Commission specifically determined that one of Telenet's claims in the arbitration related to the unbundling of the call forwarding network element, and that such claim stated a proper cause of action before the Commission.

The draft Prehearing Order was circulated on January 24, 1997, but it omitted any mention of Telenet's unbundling issue in Telenet's Position. Accordingly, by letter of February 7, 1997, Telenet requested that its Position in the draft Prehearing Order be revised to more completely represent its positions on both the unbundling and resale issues as set forth in its Petition for Arbitration. At the February 12, 1997 Hearing, the Commission granted Telenet's request to amend its summary position statement in the Prehearing Order. TR. at 5. However, notwithstanding Telenet's Petition for Arbitration, the Commission's findings in its prior order denying BellSouth's motion to dismiss, and Telenet's Position statement, all of which clearly establish an unbundling issue, the Commission subsequently granted BellSouth's motion to strike portions of Telenet's

testimony relating to unbundling over the objection of Telenet's counsel. TR. at 6-16. Further, the Commission failed to consider the unbundling issue in its final Order. The Commission's failure to take cognizance of the unbundling issue pursuant to Florida Statutes, § 364.161(1), in its final Order, despite Telenet's inclusion of the issue in its Petition for Arbitration and in a timely-filed request for modification of the Prehearing Order is clearly erroneous, and warrants reconsideration.

The Commission's handling of Telenet's issues and position stands in stark contrast with its apparent willingness to take a broad view of BellSouth's insertion of a "terminating access charge" issue under Florida Statutes, § 364.16(3)(a) -- an issue which was never designated for hearing, nor requested for inclusion by any party on a timely basis -- and base the outcome of this proceeding on it. This essential misapprehension of the scope of the identified issue is at the heart of the Commission's Order and requires reconsideration.

G. The Commission's Failure to Consider Telenet's Issue On Unbundling, and its Reliance on An Issue Never Designated for Hearing Is a Violation of Telenet's Due Process Rights.

Due process standards, which extend to every Commission proceeding, require at a minimum that a party's opportunity to be heard must be meaningful, full and fair, and not merely colorable or illusive. *Metropolitan Dade County v. Sokolowski*, 439 So.2d 932, 934 (Fla. 3rd DCA 1983); *Pelle v. Diners Club*, 287 So.2d 737, 738 (Fla. 3rd DCA 1974). The Commission's failure to even consider Telenet's petition for unbundling, despite the fact that it was fully pled in Telenet's Petition for Arbitration and included in Telenet's Position in the Prehearing Order, deprived Telenet of due process on this issue. Moreover, to the extent that the Commission's Order relied upon a defense not properly before it (i.e., BellSouth's enlivened entitlement to access charges) which had not been designated for hearing, this also deprived Telenet of due process, because Telenet was not

afforded the opportunity to adequately prepare this issue for hearing and to present opposing evidence. *Cf. Bendix Corp. v. FTC*, 450 F.2d 534 (6th Cir. 1971).

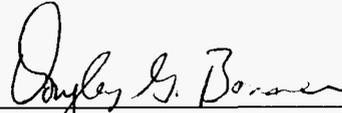
This deprivation of Telenet's due process rights is a separate and distinct basis for reconsideration of the Commission's Order.

IV. CONCLUSION

The Commission's Order overlooks or fails to consider several key elements necessary for its decision on the issue for determination. Further, the Commission's Order misapplies the issue for determination so as to effectively deny Telenet due process. First, the Commission fails to make an explicit determination whether the tariffed resale restriction is reasonable as required by applicable law and by the sole issue designated for arbitration. Second, the Commission overlooks its own precedent under the *AT&T Interconnection Order*, which prohibits all restrictions on the resale of BellSouth's service offerings, with only limited exceptions not relevant here. Third, the Commission overlooks and fails to consider one of the principal issues raised by Telenet in this proceeding, that of unbundling of network elements, while basing its decision in large part on another statutory provision that was never squarely identified as an issue, resulting in a denial of due process to Telenet. Fourth, the Commission's decision fails to recognize that the issue of terminating access charges was not properly before it for disposition. Finally, even if the access charge issue had been properly before the Commission, the Order overlooks that the access charge is inapplicable, because the essential prerequisite, the existence of a "local interconnection arrangement," does not exist. In fact, the Commission failed to find that such an "arrangement" exists.

For all the above reasons, Telenet respectfully requests that the Commission grant its Motion for Reconsideration.

Respectfully submitted,



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Attorneys for Telenet of South Florida, Inc.

Dated: May 7, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May 1997, copies of the foregoing MOTION FOR RECONSIDERATION OF TELENET OF SOUTH FLORIDA, INC.; Docket No. 961346-TP, were sent via Federal Express to the following parties:

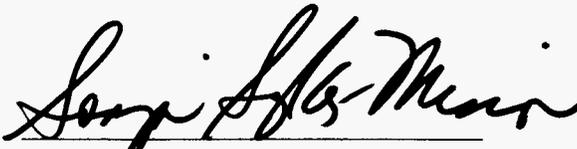
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