

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration
concerning complaint of The
Other Phone Company, Inc. d/b/a
Access One Communications
against BellSouth
Telecommunications, Inc.
regarding breach of resale
agreement.

DOCKET NO. 990108-TP
ORDER NO. PSC-99-1565-PHO-TP
ISSUED: August 6, 1999

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on July 30, 1999, in Tallahassee, Florida, before Commissioner Julia L. Johnson, as Prehearing Officer.

APPEARANCES:

Robert W. Turken, Esquire, and Sean Cleary, Esquire,
Stroock Law Firm, 200 S. Biscayne Blvd., 33rd Floor,
Miami, FL 33131-2385
On behalf of The Other Phone Company, Inc. d/b/a Access
One Communications.

Philip Carver, Esquire, 675 West Peachtree Street,
Atlanta, Georgia 30375
On behalf of BellSouth Telecommunications, Inc.

William P. Cox, Esquire, and Donna Clemons, Esquire,
Florida Public Service Commission, 2540 Shumard Oak
Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

09400 AUG-6 99

FPS-C-RECORDS/REPORTING

II. CASE BACKGROUND

On January 29, 1999, The Other Phone Company, Inc. d/b/a Access One Communications (Access One) filed a complaint with this Commission against BellSouth Telecommunications, Inc. (BellSouth). By its Complaint, Access One alleges breach of the Resale Agreement entered into between the parties on April 29, 1997, and violations of Sections 251 and 252 of the Telecommunications Act of 1996. On February 18, 1999, BellSouth filed its Answer to the Complaint. This matter has been set for an administrative hearing on August 11, 1999.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or

if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a

party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES*

Ken Baritz (Direct and Rebuttal)	Access One	1,2, and 3
Kevin Griffo (Rebuttal)	Access One	2
Susan Arrington (Direct and Rebuttal)	BellSouth	1,2, and 3
W. Keith Milner (Direct and Rebuttal)	BellSouth	2 and 3
Michael Wilburn (Rebuttal)	BellSouth	1

*** Direct and Rebuttal
testimony will be
combined for purposes
of the hearing.**

VII. BASIC POSITIONS

ACCESS ONE:

Pursuant to the Most Favored Nations Clause of the Access One Agreement, Access One was entitled to adopt the TCCF Provision. Access One made repeated requests to BellSouth to adopt the TCCF Provision, and BellSouth refused. BellSouth's excuses for having denied Access One's requests -- that the TCCF Agreement had expired and that Access One was also required to adopt the expiration date of the TCCF Agreement -- are contradicted by (i) the language of the Most Favored Nations Clause, (ii) the language of the TCCF Agreement, and (iii) both Access One and BellSouth's interpretations of the Most Favored Nations Clause. By refusing Access One's requests to adopt the TCCF Provision, BellSouth has breached the Access One Agreement.

BellSouth also breached the Access One Agreement and its obligations of good faith and fair dealing by actively marketing and soliciting customers who had elected to enroll

with Access One during their first month of service. According to its tariff, BellSouth is allowed to charge Access One a one-month minimum fee for each new customer that enrolls with Access One regardless of whether that customer stays with Access One for the entire month. After charging Access One a fee for each customer, however, BellSouth engaged in a program to market and solicit those same customers to return to BellSouth during the month that Access One had already paid for. This inequitable policy allowed BellSouth to benefit twice from the same customers and deprived Access One of its contractual bargain.

BellSouth also breached the Access One Agreement by failing to provide Access One with adequate notice of customers' changes of local service providers. In the majority of deactivations, BellSouth did not provide Access One with any notification. When BellSouth did provide notifications, the notifications were often untimely and almost never accurate. BellSouth's failure to provide the required notifications has compromised Access One's ability to properly and accurately bill its customers to the detriment of both Access One and its customers.

BELLSOUTH:

Access One's petition should be denied. Access One's claim that it was entitled to adopt a single provision from an expired resale agreement between BellSouth and TCCF is contrary to the terms of the Resale Agreement between Access One and BellSouth (the "Agreement"). Pursuant to the "Most Favored Nation" language in the Agreement, Access One was entitled to adopt an alternative agreement only in its entirety. Accordingly, Access One was not entitled to adopt only a single provision from the TCCF agreement, nor was it entitled to accept the entire TCCF agreement, which, by its own terms, had expired before Access One ever requested to adopt it.

Access One's claims that BellSouth improperly solicited its customers also fails. The contract expressly permits BellSouth to market its products and services at any time to any end user, including Access One's customers. Accordingly, although BellSouth has not solicited Access One's customers to switch to BellSouth's local exchange service, it is clearly permitted under the Agreement.

Finally, BellSouth has complied with its obligation under the Agreement to notify Access One when an Access One end user switches to another local exchange provider. It has done so in two ways--via a bill to Access One that provides detail on an end user account level, and via a Change of Carrier Notification Letter. Access One has never maintained that it does not receive notification via the bill, and, although BellSouth received some reports that its Change of Carrier letters were not always received, it has implemented safeguards to ensure that all such letters are sent. Based on Access One's silence in response to BellSouth's inquiries, BellSouth must assume that Access One has been receiving such letters without incident since at least February 1999. Access One's claims on this issue must also be dismissed.

Finally, even if Access One were able to prevail on any issue that it has raised in this matter, its demand for damages must be dismissed. The Commission lacks the authority to award damages. Accordingly, any relief to which Access One were able to prove itself entitled must be limited to nonmonetary, injunctive remedies.

STAFF:

Staff takes no basic position at this time. Staff's basic position and positions on the issues are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: 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, was Access One entitled to adopt a provision from the Interconnection Agreement between BellSouth and the Telephone Company of Central Florida?

POSITIONS

ACCESS ONE:

Yes. Pursuant to the Most Favored Nations Clause (Section XVI B) of the Access One Agreement, Access One was entitled to request and adopt the TCCF Provision. The Most Favored Nations Clause provides that BellSouth was deemed to have offered Access One all of the terms of all other resale agreements, including the TCCF Agreement, that were entered into either before or after the Access One Agreement; and that Access One, at its sole discretion, could accept any of the "Other Terms" of the other resale agreements. Access One made numerous requests to BellSouth that it be allowed to adopt the TCCF Provision. Despite Access One's requests, BellSouth refused to allow Access One to implement the TCCF Provision.

Neither of BellSouth's purported reasons for denying Access One's requests to adopt the TCCF Provision is valid. First, BellSouth's argument that the TCCF Agreement had expired at the time that Access One made its request (on August 20, 1998) is belied by, among other things, Section 1 B of the TCCF Agreement, which provides:

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.

Even if BellSouth was somehow correct that Access One's right to adopt the TCCF Provision ended when the TCCF Agreement was no longer in force and effect, the fact is that the TCCF Agreement, including the TCCF Provision, was in effect long after Access One made its request to adopt the TCCF Provision. The irony is that the TCCF Agreement has actually remained in force and effect past the expiration date of the Access One Agreement which by its terms was April 29, 1999.

Second, BellSouth's contention, that even if Access One was entitled to adopt the TCCF Provision, it would have been required to adopt the expiration date of the TCCF Agreement, is contradicted by the express terms of the Most Favored Nations Clause and the fact that it applied to other resale agreements executed both before **and** after

the Access One Agreement. This is particularly true given (i) the materially different language used in Section XVI C of the Access One Agreement, which immediately follows the Most Favored Nations Clause, and (ii) BellSouth's modifications to the Most Favored Nations Clause which it incorporated into subsequently executed Resale Agreements. Unlike the Most Favored Nations Clause at issue in these proceedings, these other provisions do impose the requirement that the reseller adopt all of the terms of the requested agreement.

Finally, BellSouth and Access One by their own conduct confirmed the plain meaning of the Most Favored Nations Clause. In December 1998, pursuant to the Most Favored Nations Clause, Access One sought to replace Section VII of the Access One Agreement with Section VII of BellSouth's then Standard Resale Agreement. BellSouth, as it was required to do, acceded to Access One's request and amended the Access One Agreement accordingly, **without** requiring Access One to adopt the other terms of the new agreement.

BELLSOUTH:

Access One's claim, that BellSouth has breached the "Most Favored Nation" (or "MFN") provision in the Agreement must be denied. First, this claim is contrary to the plain language of the MFN provision. Second, the TCCF agreement had expired prior to the time Access One expressed its desire to adopt any provision from it. Accordingly, BellSouth did not breach the Agreement by refusing to agree to amend it to include the provision Access One desired. Moreover, the Agreement has been approved by this Commission as consistent with the Telecommunications Act. Accordingly, BellSouth, by acting in conformity with the Agreement, has acted in conformity with Sections 251 and 252 of that Act. Access One requested that it be entitled to amend its Agreement to add only one term from an expired agreement between BellSouth and TCCF. The MFN provision in the Agreement, however, clearly states that if Access One desires to adopt a term or terms from an agreement between BellSouth and another carrier, Access One must adopt the other agreement in its entirety. The MFN provision states as follows:

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 arrangements covered by this Agreement upon rates, terms or conditions that differ in 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 [Access One] in its entirety.** In the event that [Access One] accepts **such offer**, such Other Terms shall be effective between BellSouth and [Access One] as of the date on which [Access One] accepts such offer. (emphasis added).

As the highlighted terms make clear, under the MFN clause, BellSouth is deemed to have offered, and Access One is entitled to accept an Other Resale Agreement only in its entirety. Accordingly, Access One could not, consistent with the Agreement, adopt only a single term from the TCCF agreement.

Second, the TCCF agreement that included the provision Access One wished to adopt had expired prior to the time Access One requested to adopt it. The TCCF agreement expired in May 1998 and Access One did not request to adopt that agreement until August 1998. Accordingly, the TCCF agreement that Access One desired was not available to be adopted pursuant to the MFN clause in the Agreement.

Lastly, BellSouth's refusal to permit Access One to adopt the expired TCCF agreement did not violate the Telecommunications Act. Access One freely consented to the Agreement. The Agreement was approved by the Commission as consistent with the Act and BellSouth acted in conformity with the Agreement. Accordingly, the Act was not violated.

STAFF:

Staff takes no position at this time.

ISSUE 2: 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, did BellSouth initiate the solicitation of a customer who has switched service from BellSouth to Access One within the first month that the customer switched to Access One? If so, should BellSouth be allowed to continue to do so?

POSITIONS

ACCESS ONE:

Yes; No. Pursuant to its "winback" program, once BellSouth learned that a customer had elected to switch to Access One or another ALEC, it embarked on a solicitation program to "win the customer back." Access One learned about BellSouth's solicitation of its customers from several sources. First, Access One's own customers informed Access One of BellSouth's solicitation efforts. In addition, Access One inadvertently received BellSouth's direct mail "winback" brochures that were intended for Access One's customers. Finally, BellSouth itself acknowledged that it solicited customers of Access One during their first month of service with Access One, although it advised Access One, and stated of record in this action, that it no longer engages in this practice.

BellSouth's contention that the marketing materials it sent to Access One's customers were only designed to win back local toll service customers who switched their local toll service from BellSouth ignores the operation and effect of BellSouth's solicitations efforts. The customers who switch their local long distance service to Access One are the same customers who also switch their local telephone service to Access One. Thus, the customers who receive the solicitations are Access One's local telephone services customers -- the very customers who Access One is required to pay a one-month minimum for, and who BellSouth claims it does not solicit. To make matters worse, if a customer receives the solicitation and attempts to call BellSouth to switch only the customer's "local toll services" back to BellSouth as advertised, BellSouth will advise the customer that the customer must also switch his/her local telephone service at the same time. This is because only the customer's current local exchange company has the

operational capability to change the customer's local toll carrier.

To the extent that BellSouth is continuing its "winback" efforts, it should not be permitted to do so. As noted previously, BellSouth requires Access One to pay a one-month minimum fee for each new customer who enrolls with Access One, regardless of whether the customer stays with Access One for the entire month. In addition, BellSouth charges Access One a connection fee of \$19.00 (minus Access One's resale discount) for each customer line that enrolls. Pursuant to Paragraphs 3C and 3D of the Access One Agreement, Access One is deemed to be BellSouth's customer of record for "all services purchased from BellSouth," and BellSouth "shall have no contract with the end user except to the extent provided for herein."

Access One acknowledges that Paragraph 3F of the Access One Agreement allows BellSouth to market its products and services, and to "establish independent relationships with end users of [Access One]." However, this paragraph cannot be construed to permit BellSouth to interfere with Access One's contractual relationship with its customers, at least for the first thirty days of that relationship.

When a customer leaves BellSouth to become a customer of Access One or another CLEC, only BellSouth and the CLEC have knowledge of the customer's switch in service. BellSouth's targeted marketing of its former customers is unfair and demonstrates BellSouth's attempt to perpetuate its monopoly because only BellSouth has exclusive control and knowledge of customers who have elected to change their local telephone service; thus BellSouth has the exclusive opportunity to persuade those customers to return to BellSouth. BellSouth's activities, if allowed, would render Access One's rights under the Access One Agreement, illusory and meaningless. Moreover, BellSouth would be granted two opportunities to benefit from the same customers: first, when Access One pays the one-month minimum and connection fee, and again when the customer returns to BellSouth during the first month as a result of BellSouth's targeted solicitations. In sum, BellSouth's program of soliciting its former customers during the first month of service with Access One violates the fair competition and "level playing field" requirements of the Telecommunications Act of 1996.

Mr. Baritz will address these specific points.

BELLSOUTH:

BellSouth did not initiate the solicitation of Access One customers to subscribe to BellSouth's local exchange service. The Commission need not decide this issue as it is worded, however, because the Agreement clearly permits BellSouth to compete with Access One at any time. Section III(F) of the Agreement reads as follows:

The Company [BellSouth] maintains the right to serve directly any end user within the service area of Other Phone Company [Access One]. 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.

Access One negotiated and freely consented to the Agreement, including Section III(F). This section makes clear that BellSouth is free, at any time, to communicate directly with Access One customers for the purpose of selling local exchange service or any other BellSouth service or product. Accordingly, even if it could be shown that BellSouth had contacted Access One customers within the first thirty days after they became Access One customers, such solicitation would be clearly permitted under the Agreement. Having expressly agreed that BellSouth should be free to compete in this manner, Access One should not now be heard to argue that to do so would violate some implied term it contends should be read into the Agreement.

STAFF:

Staff takes no position at this time.

ISSUE 3: 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?

POSITIONS

ACCESS ONE:

No. As Mr. Baritz discusses in detail in his direct and rebuttal testimony, during the term of the Access One Agreement, BellSouth provided Access One with deactivation notifications less than 50% of the time. Of the notifications that BellSouth did send to Access One, most were untimely and over 90% were inaccurate. Although Access One repeatedly complained to BellSouth about these problems for over a year, and although BellSouth consistently acknowledged the problems and assured Access One they were being rectified, there has been no noticeable change in the quantity or quality of BellSouth's notifications.

BELLSOUTH:

Yes. Section VI(E) of the Agreement provides, in part, that "The Company [BellSouth] will notify Other Phone Company [Access One] that such a request [to change an Access One customer to a different local exchange service provider] has been processed." BellSouth notifies Access One in two ways. First, BellSouth notifies Access One via its bill, which includes detail on an individual end user account level. When an Access One customer switches to another local exchange provider, the next bill to Access One indicates that fact by informing Access One that the bill is final as to that end user. Although this form of notification fully discharges BellSouth's obligation to notify Access One under Section VI(E), BellSouth also provides notification via a letter. On a daily basis, after all orders are completed, a file is generated electronically based on the Disconnect Reason Code. This file is sent to a third party vendor who generates a "Change of Carrier Notification Letter."

BellSouth received some reports in 1998 from other carriers that such letters were not always received. As noted in Mr. Milner's testimony, additional safeguards were instituted in late 1998 and early 1999. At present, Access One should be receiving a Change of Carrier Notification Letter for each Access One customer that changes local exchange service providers, in addition to the notification on its bill. BellSouth wrote to Access One in early February to confirm that additional safeguards had been implemented to ensure delivery

of notification letters and to ask Access One to inform BellSouth if it encountered any further problems. To date, Access One has not informed BellSouth of any problems.

Accordingly, BellSouth has fulfilled its obligations to notify Access One of the fact that an Access One customer has switched to another provider of local exchange service.

STAFF:

Staff takes no position at this time.

ISSUE 4: 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, is BellSouth required to offer the same repair options to Access One customers that BellSouth offers to its own customers? If so, has BellSouth complied with the requirement?

POSITIONS

This issue has been resolved by stipulation of the parties. See Attachment A.

ISSUE 5: 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, what relief, if any, is Access One entitled?

POSITIONS

ACCESS ONE:

The primary relief that Access One is seeking in this action, and to which it is entitled under the terms of the Access One Agreement, is money damages stemming from BellSouth's breaches of the Access One Agreement. However, Access One acknowledges that (I) the Commission's adjudicatory authority does not extend to an award of money damages, and (ii) the amount of

damages, if any, to which Access One is entitled, will have to be determined in a subsequent judicial proceeding.

Accordingly, pursuant to the Access One Agreement and Florida Statutes § 364.162, Access One requests that the Commission award it declaratory relief determining that BellSouth has breached and failed to comply with its obligations under the Access One Agreement for the reasons set forth above in response to Issues 1, 2 and 3.

BELLSOUTH:

None. BellSouth has not breached the Agreement, nor has it violated the Telecommunications Act. Accordingly, the Commission should rule in favor of BellSouth and dismiss Access One's Complaint. Even if it could be shown that BellSouth had breached the Agreement, and that Access One were harmed by such a breach, the Commission is without the statutory authority to award the damages Access One demands in this matter. Accordingly, even if Access One were to prevail on any issue in this matter, it would be entitled only to injunctive remedies, not monetary damages.

STAFF:

Staff takes no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Ken Baritz	Access One	_____ (KB-1)	Agreement Between BellSouth Telecommunications and The Other Phone Company, Inc. Regarding the Sale of BellSouth's Telecommunications Services to The Other Phone Company, Inc. for the Purposes of Resale.
		_____ (KB-2)	Amendment to Resale Agreement Between BellSouth Telecommunications, Inc. and The Other Phone Company, Inc. Dated April 29, 1997
		_____ (KB-3)	The TCCF Provision
		_____ (KB-4)	Letter from Ken Baritz to Scott Schaefer, dated August 20, 1998.

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Ken Baritz	Access One	_____ (KB-5)	Letter from Page Miller to Ken Baritz dated September 11, 1998.
		_____ (KB-6)	Letter from Page Miller to Ken Baritz, dated February 3, 1999.
		_____ (KB-7)	Example of BellSouth's direct marketing materials.
		_____ (KB-8)	Schedule of BellSouth's Deactivation Notifications for Period 12/01/98 - 04/04/99

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Ken Baritz (Rebuttal Exhibit)	Access One	<hr/> (KB-9)	Agreement Between BellSouth Telecommunica- tions, Inc. and The Telephone Company of Central Florida Regarding the Sale of BellSouth's Telecommunica- tions Services to Reseller for the Purposes of Resale.
Ken Baritz (Additional Exhibits)		<hr/> (KB-10)	Letter from Page Miller to Ken Baritz dated July 6, 1998.

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Ken Baritz (Additional Exhibits)	Access One	<hr/> (KB-11)	Agreement Between Bell South Telecommunica- tions, Inc. and Reseller, Inc. Regarding the Sale of Bell South Telecommunica- tions Services to Reseller, Inc. for the Purposes of Resale (the "Bell South Standard Resale Agreement").

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Discovery Exhibits Produced by BellSouth	Access One	<hr/> (BS-1)	BellSouth's response to Access One's First Request for Production of Documents.
		<hr/> (BS-2)	Table prepared by BellSouth w h i c h identifies all R e s a l e Agreements entered into by BellSouth that contain provisions similar to the T C C F Provision, except that the benefits under the provision are unilateral to BellSouth.

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Discovery Exhibits Produced by BellSouth	Access One	_____ (BS-3)	BellSouth's response to Access One's Second Request for Production of Documents.
		_____ (BS-4)	Table prepared by BellSouth and produced in response to Access One's Second Request for Production w h i c h identifies all R e s a l e Agreements entered into by BellSouth that contain a Most Favored Nations Clause substantially similar to the c l a u s e contained in the Access One Agreement.

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Discovery Exhibits Produced by BellSouth	Access One	_____ (BS-5)	Table prepared by Bellsouth and produced in response to Access One's Second Request for Production w h i c h identifies all R e s a l e Agreements entered into by BellSouth that contain a m o d i f i e d version of the Most Favored Nations Clause contained in the Access One Agreement.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Discovery Exhibits Produced by BellSouth	Access One	_____ (BS-6)	Table prepared by BellSouth and produced in response to Access One's Second Request for Production w h i c h identifies all R e s a l e Agreements entered into by BellSouth that contain a f u r t h e r m o d i f i e d version of the Most Favored Nations Clause contained in the Access One Agreement
Kevin Griffio	Access One	_____ (KG-1)	Letter from Mary Keyer to Robert Turken, dated April 28, 1999.
Susan Arrington	BellSouth	_____ (SA-1)	Amendment to the Resale Agreement between the Other Phone Company and BellSouth, dated April 29, 1997

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. STIPULATION

The parties have agreed to a stipulation on Issue 4 of this proceeding. See Attachment A. Issue 4 concerns the question of whether BellSouth offers the same repair scheduling options to Access One customers that it offers to its own retail customers. As a part of the stipulation, BellSouth represents and confirms that it offers all alternative local exchange carrier (ALEC) customers the same repair scheduling options that it offers its own retail customers and will continue to do so. Accordingly, the parties believe that the issue has been resolved, and there is no need for the Commission to address the issue in this proceeding.

XI. RULINGS

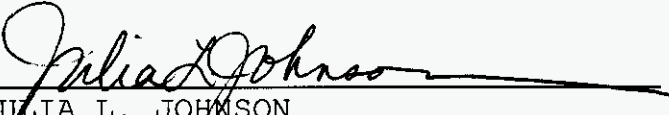
- A. The Prehearing Officer hereby grants Access One's Motion to Supplement the Rebuttal Testimony of Ken Baritz with Attached Supplement and Exhibit KB-1, filed June 23, 1999.
- B. The Prehearing Officer hereby grants BellSouth's request to combine direct and rebuttal testimony for purposes of the hearing.

It is therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 6th day of August, 1999.


JULIA L. JOHNSON
Commissioner and Prehearing Officer

(S E A L)

WPC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

ATTACHMENT A

BEFORE THE PUBLIC SERVICE COMMISSION


Access One Communications, Inc.)	
)	
Complainant,)	Docket No. 990108-TP
)	
vs.)	
)	
BellSouth Telecommunications, Inc.,)	Dated: August 3, 1999
)	
Respondent,)	
)	

STIPULATION

Access One Communications, Inc. ("Access One") and BellSouth Telecommunications, Inc. ("BellSouth") have agreed to resolve Issue 4 in this matter. Issue 4 concerned the question of whether BellSouth offers the same repair scheduling options to Access One customers that it offers to its own retail customers. BellSouth represents and confirms that it offers all ALEC customers the same repair scheduling options that it offers its own retail customers and will continue to do so. Based on this representation, the parties believe that there is no need for the Commission to address this issue and request that the Commission delete this issue from the list of issues to be decided in this matter.

Respectfully submitted this 3rd day of August, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.



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