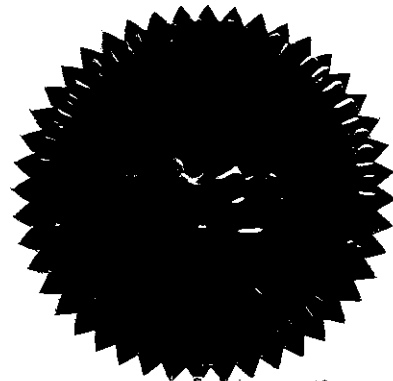


BEFORE THE  
 FLORIDA PUBLIC SERVICE COMMISSION

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 In the Matter of : DOCKET NO. 961346-TP  
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 Petition for Arbitration of :  
 :  
 Dispute with BellSouth :  
 :  
 Telecommunications, Inc., :  
 :  
 Regarding Call Forwarding, by :  
 :  
 Telenet of South Florida, Inc.:  
 -----



PROCEEDINGS: HEARING

BEFORE: COMMISSIONER DIANE K. KIESLING  
 COMMISSIONER JOE GARCIA

DATE: Wednesday, February 12, 1997

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center  
 Room 152  
 4075 Esplanade Way  
 Tallahassee, Florida

REPORTED BY: ROWENA NASH  
 H. RUTHE POTAMI, CSR, RPR  
 Official Commission Reporters

DOCUMENT NUMBER - DATE  
 01636 FEB 14 5  
 FPSC-RECORDS/REPORTING

1 **APPEARANCES:**

2                   **DOUGLAS G. BONNER**, Swidler & Berlin,  
3 Chartered, 3000 K Street, N. W., Suite 300,  
4 Washington, D. C. 20007, appearing on behalf of  
5 **Telenet of South Florida, Inc.**

6                   **PHILLIP J. CARVER** and **NANCY B. WHITE**, c/o  
7 Nancy H. Sims, 150 South Monroe Street, Suite 400,  
8 Tallahassee, Florida, appearing on behalf of **BellSouth**  
9 **Telecommunications, Inc.**

10                   **CHARLIE PELLEGRINI**, Florida Public Service  
11 Commission, Division of Legal Services, 2540 Shumard  
12 Oak Boulevard, Tallahassee, Florida 32399-0870,  
13 appearing on behalf of the Commission Staff.

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## I N D E X

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**P R O C E E D I N G S**

(Hearing convened at 9:35 a.m.)

**COMMISSIONER KIESLING:** Call the hearing to order. Counsel, would you please read the notice?

**MR. PELLEGRINI:** Yes, Commissioner.

Pursuant to notice dated January 15, 1997, this time and place have been set for a hearing in Docket 961346-TP, in re petition for arbitration of dispute with BellSouth Telecommunications regarding call forwarding by Telenet of South Florida.

**COMMISSIONER KIESLING:** And I'll take appearances.

**MS. WHITE:** Nancy White for BellSouth Telecommunications, 675 West Peachtree Street, Atlanta, Georgia 30375.

**MR. CARVER:** Phillip Carver also representing BellSouth, 150 West Flagler Street, Suite 1910, Miami, Florida 33130.

**MR. BONNER:** And representing Telenet of South Florida, Inc., the petitioner, Douglas Bonner of Swidler & Berlin, 3000 K Street N.W., Suite 300, Washington, D.C. 20007.

**MR. PELLEGRINI:** Charles Pellegrini representing Commission Staff, 2450 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

1           **COMMISSIONER KIESLING:** And are there any  
2 preliminary matters that we need to take up?

3           **MR. PELLEGRINI:** Yes, Commissioner, there  
4 are some preliminary matters. The first of these is  
5 Telenet's February 7th requests to modify its position  
6 statement on Issue 1 to include a reference to  
7 Section 364.161(1) in Line 3; and Staff would  
8 recommend that Telenet's request be granted, absent an  
9 objection from a BellSouth.

10           **MR. CARVER:** We have no objection.

11           **COMMISSIONER KIESLING:** All right; that  
12 modification is made.

13           **MR. PELLEGRINI:** The second preliminary  
14 matter is BellSouth's January 23rd, 1997 motion to  
15 strike. BellSouth has moved to strike portions of  
16 Witness Kupinsky's direct testimony and Staff  
17 recommends that the challenged testimony be stricken  
18 for the reasons set forth in Staff's February 10  
19 memorandum to this panel.

20           In that motion, BellSouth also moves to  
21 preclude Telenet Witnesses Demers and Jordan from  
22 testifying in this proceeding. The prehearing officer  
23 so ruled at the prehearing conference on January 24th;  
24 therefore. Staff believes that to that extent,  
25 BellSouth's motion is moot.

1           **COMMISSIONER KIESLING:** Well, it's not moot,  
2 it's been granted.

3           **MR. PELLEGRINI:** In effect, yes. It was  
4 granted, really, prior to the filing of the motion at  
5 the prehearing conference.

6           **COMMISSIONER KIESLING:** Maybe you need to  
7 explain that. I don't know how something could be  
8 granted and be moot at the same time.

9           **MR. PELLEGRINI:** Well, let me back up. The  
10 motion was filed on January 23rd. The ruling was made  
11 on January 24th, so you're right.

12           **COMMISSIONER KIESLING:** Okay. I think I  
13 need to hear some argument on the motion to strike  
14 since I have not had a chance to do much research on  
15 it. So which one of you is going to do the argument?  
16 Mr. Carver?

17           **MR. CARVER:** Yes, ma'am, I will.

18           **COMMISSIONER KIESLING:** You've got five  
19 minutes.

20           **MR. CARVER:** Actually, I don't think I'll  
21 need that long because the thrust of our argument is  
22 basically captured in the Staff recommendation, but  
23 I'll cover it in broad strokes, which is this: What  
24 we have here is essentially a single issue case, and  
25 the only issue that has been identified and the only

1 one that should be properly addressed by the testimony  
2 is the issue of whether BellSouth may offer call  
3 forwarding with the subject restriction, and that is  
4 the restriction that it can't be used for the  
5 systematic bypass of toll.

6           The arbitration petition by Telenet, the  
7 thrust of it is really a challenge to that  
8 restriction. Virtually the entire petition addresses  
9 that. There was almost, in passing toward the end of  
10 the petition, a little bit of language about unbundled  
11 elements; but, again, that really didn't seem to be  
12 tied in in any significant way to the relief they were  
13 seeking.

14           At the issue identification conference all  
15 of the parties agreed that there would only be one  
16 issue, and that would be the tariff restriction and  
17 that we would all address ourselves to that. In fact  
18 at that time Staff specifically raised the fact that  
19 there was a little bit of unbundling language in the  
20 petition, and they asked Telenet whether they wanted  
21 that to be an issue or whether they were seeking some  
22 sort of relief on that basis; and Telenet specifically  
23 said that they were not. So as a result of that, and  
24 by agreement of all the parties, we've had one issue  
25 in this case.

1           Shortly after that, however, Telenet filed  
2 testimony, and there is about a page and a half of  
3 this testimony that goes into issues of unbundling.  
4 Specifically, in the direct testimony of Mr. Kupinsky,  
5 he says that BellSouth should be required to take the  
6 call forwarding service, to unbundle it into its  
7 component parts, to reprice it, to do a variety of  
8 things that are not really encompassed in a strict  
9 sense within the petition; certainly not part of the  
10 issue that's been identified.

11           In this particular case, there hasn't been  
12 any sort of unbundling request at all, either prior to  
13 the case or during the case. So essentially what we  
14 have here is just surplusage. It's not relevant to  
15 the single issue, and to the extent it sort of drags  
16 in irrelevant references to the Telecommunications Act  
17 and reference to unbundling and repricing, it really  
18 clouds the single issue in the case.

19           So for that reason, we've asked that it be  
20 stricken. And specifically -- most of this is on Page  
21 13. There is a question that begins there, and there  
22 is an answer that takes all of that page and concludes  
23 at the top of Page 14, and also there is a  
24 one-sentence reference to the same thing that begins  
25 at the bottom of Page 11 and ends at the top of Page



1 12. And, again, it's not relevant to the issue.  
2 Telenet has agreed to this issue, all parties  
3 participated in framing it, and it should be stricken  
4 for that reason.

5 COMMISSIONER KIESLING: All right.  
6 Response?

7 MR. BONNER: Thank you, Commissioner  
8 Kiesling. It's not true that Telenet withdrew its  
9 claim for unbundling insofar as the framing of the  
10 issue for this arbitration was concerned. Unbundling  
11 and resale are two of the -- our key theories for  
12 prevailing in this proceeding and for our argument  
13 that this tariff restriction is illegal under both  
14 federal and Florida State law.

15 I would point out that we attempted in  
16 Mr. Kupinsky's deposition testimony last week to  
17 remove some of the issues for this Commission's  
18 decision by indicating and conceding that pricing of  
19 unbundled elements is not at issue and not to be  
20 decided in this proceeding, that Telenet is not  
21 requesting that cost based unbundled element pricing  
22 be decided by this Commission for call forwarding.

23 However, that is not to say that Telenet's  
24 position is that the call forwarding services and  
25 multipath call forwarding should not be unbundled.

1 And, in fact, this Commission has already determined  
2 in its January 23, 1997 order, which has not been  
3 referred to yet in argument, that in fact Telenet's  
4 petition is -- can be construed as seeking unbundling  
5 of call forwarding, or in the alternative, resale of  
6 the call forwarding service.

7           So this has already been decided by the  
8 Commission in its January 23 order, and I believe that  
9 Staff counsel's recommendation stands in stark  
10 contrast to the Commission's order when it says Staff  
11 is unaware that Telenet has made an appropriate  
12 request of BellSouth to unbundle its call forwarding  
13 service.

14           In fact, this Commission has already  
15 concluded in denying BellSouth's motion to dismiss  
16 that Telenet has alleged an unbundling request in its  
17 petition. I suggest, respectfully suggest, that the  
18 Commission do the following in light of this: Since  
19 Mr. Kupinsky indicated in deposition last week that  
20 Telenet is not requesting that this Commission decide  
21 unbundled pricing of call forwarding service, that the  
22 Commission and Telenet agrees to this, grant  
23 BellSouth's motion to strike Page 11, Line 18 to Page  
24 12, Line 1, which is the sentence in question dealing  
25 with pricing of unbundling, and also grant BellSouth's

1 motion to strike the portion on page -- the portion on  
2 Page 13 of Mr. Kupinsky's direct testimony, solely  
3 Line 9 of Page 13, which deals with the pricing of  
4 unbundled elements; and that will be consistent with  
5 Mr. Kupinsky's and Telenet's position as stated in  
6 deposition testimony last week and will be consistent  
7 with this Commission's order denying BellSouth's  
8 motion to dismiss on January 23. That's all I have.

9 MR. CARVER: May I respond briefly? First  
10 of all, I have to take issue with counsel's  
11 characterization of the motion to dismiss. I think it  
12 was denied simply for the reason that it was ruled  
13 that the petition stated a cause of action.

14 I don't think it in any way expanded the  
15 issues beyond what they otherwise would be. I agree  
16 that Mr. Kupinsky did say in his deposition that  
17 pricing is not an issue in this case. My point is  
18 simply that since he has agreed to that and since it  
19 hasn't been identified as an issue, there should not  
20 be testimony that makes reference to price. And I  
21 also disagree with counsel's statement that only Line  
22 9 relates to this, because I think the entire portion  
23 of what we've requested to strike relates to the  
24 pricing issue.

25 And if I may, I'd just like to read a

1 sentence or two from the end of that beginning on  
2 Line 15, because I think that makes a point. It  
3 stated there: "In order for Telenet to efficiently  
4 offer Telenet services to end users, BellSouth should  
5 unbundle and separately price and offer these elements  
6 such that Telenet will be able to lease and  
7 interconnect whichever of these unbundled elements  
8 Telenet requires, and to combine the BellSouth  
9 elements with facilities and services that Telenet may  
10 provide itself in the future."

11           Again, price is central to that sentence,  
12 and I believe that price is central to the portions  
13 that we've requested to be stricken.

14           MR. BONNER: May I add one final thing,  
15 Commissioner Kiesling? I didn't mention it. Excuse  
16 me. But since also the Commission has granted our  
17 request to modify the prehearing order, the statute  
18 that is now incorporated in our position reflects our  
19 position that unbundling of call forwarding must be  
20 provided pursuant to Florida Statutes. So to be  
21 consistent, I think, with Telenet's position, this is  
22 critical testimony that should be considered.

23           COMMISSIONER KIESLING: All right.  
24 Mr. Pellegrini, what do you have to offer me on this?

25           MR. PELLEGRINI: Well, to begin with, I

1 would say this: That in denying BellSouth's motion to  
2 dismiss, all that the Commission found was that with  
3 all allegations considered in a light most favorable  
4 to the petitioner, that the petitioner, indeed, had  
5 state a cause of action for which relief was available  
6 from this Commission, and that was the extent of the  
7 finding and the ruling.

8           In this case, in the case of this motion to  
9 strike, Staff believes that the issue truly is as  
10 narrow as its statement suggests, and that is whether  
11 or not the tariff restriction in question, whether  
12 BellSouth can lawfully impose that restriction on the  
13 sale of call forwarding services to Telenet.

14           That was reaffirmed, in my understanding, by  
15 Mr. Kupinsky at his deposition last week. Therefore,  
16 the testimony that has been challenged, Staff believes  
17 is irrelevant to that issue; and, furthermore, there  
18 has been no unbundling request. There is no evidence  
19 that Telenet has made an unbundling request, as  
20 required by the Florida statute or by the federal Act.  
21 So for those two reasons, the relevancy reason and the  
22 failure to make a request for unbundling, it is  
23 Staff's position that BellSouth's motion should be  
24 granted.

25           **COMMISSIONER KIESLING:** All right. I just

1 have one question for you, Mr. Bonier. Bonner?

2 MR. BONNER: Yes, ma'am.

3 COMMISSIONER KIESLING: I'm looking at the  
4 petition that you filed, and in your demand for relief  
5 you make no mention of unbundling as being any form of  
6 the relief that you're seeking. Can you tell me where  
7 you initially made the request that that be an  
8 included issue?

9 MR. BONNER: Yes, if you give me a moment.

10 (Pause)

11 COMMISSIONER KIESLING: I'm looking at  
12 page --

13 MR. BONNER: Paragraph 3 on Page 2 is one  
14 portion of our petition which requests unbundling.

15 COMMISSIONER KIESLING: Wait a minute. Wait  
16 a minute. That's under the heading "Statements of  
17 Interest and Negotiating History." I'm looking at the  
18 "Demand for Relief." I mean, you can include --

19 MR. BONNER: I'll take it --

20 COMMISSIONER KIESLING: Page 10.

21 MR. BONNER: I won't contradict you if the  
22 Demand for Relief doesn't reflect -- doesn't ask for  
23 unbundling, but our position is that we have, in fact,  
24 requested unbundling; and, also, the final clause says  
25 "grant Telenet such other relief as the Commission may

1 deem necessary or appropriate."

2           I would -- that, in conjunction with  
3 paragraph 1, states "enter an order granting Telenet's  
4 request that BellSouth provide all necessary call  
5 forwarding services and equipment to Telenet." I  
6 don't read that language as excluding or -- as  
7 excluding an unbundling request from it.

8           It doesn't -- the Demand for Relief does not  
9 refer to resale or unbundling. I don't think that  
10 that precludes an interpretation that we have made an  
11 unbundling request of BellSouth, and the testimony --  
12 I would respectfully disagree with BellSouth's  
13 position and Staff counsel's position that there has  
14 been no unbundling request made.

15           There was plenty of testimony concerning  
16 negotiations that took place, repeated negotiations in  
17 the summer of 1996, that can be construed as an  
18 unbundling request on behalf of Telenet, or for the  
19 resale of unbundling services.

20           But I will grant you, Commissioner, you're  
21 correct, there is no unbundling request referred to in  
22 the Demand for Relief, but I would submit that the  
23 fact that it's not there in the Demand for Relief does  
24 not preclude you from considering the petition as an  
25 unbundling request, because unbundling is referred to

1 elsewhere in the petition.

2           **COMMISSIONER KIESLING:** Oh. While it's not  
3 the deciding factor, I think that what you ask for in  
4 relief is part of noticed pleading, and that's the  
5 case that people are responding to, and I'm going to  
6 grant the motion to strike. Anything else?

7           **MR. PELLEGRINI:** Yes. There's one  
8 additional matter at this time, Commissioner Kiesling.  
9 I've distributed a list of documents for official  
10 recognition to the parties and to the panel, and I  
11 would at this time ask that the documents listed be  
12 officially recognized.

13           **COMMISSIONER KIESLING:** Is there any  
14 objection?

15           **MR. BONNER:** I'm sorry. I didn't hear what  
16 Mr. Pellegrini just said.

17           **COMMISSIONER KIESLING:** He's requesting  
18 official recognition of the documents listed on  
19 their --

20           **MR. BONNER:** No objection.

21           **MR. CARVER:** No objection.

22           **COMMISSIONER KIESLING:** All right. Official  
23 recognition is granted to the two FCC orders on there  
24 and the five PSC orders and rules, and I will make  
25 that Exhibit 1 so that we have that list as part of



1 the record, and I'll grant it. I mean, I'll admit it.

2 (Exhibit 1 marked for identification and  
3 received in evidence.)

4 MR. PELLEGRINI: I have no further  
5 preliminary matters, Commissioner Kiesling.

6 COMMISSIONER KIESLING: All right.  
7 Mr. Carver or Ms. White, any preliminary matters you  
8 need to bring up?

9 MS. WHITE: No, ma'am. Thank you.

10 COMMISSIONER KIESLING: And, Mr. Bonner, any  
11 for you?

12 MR. BONNER: We may have a motion concerning  
13 the prefiled testimony of Mr. Scheye. Shall we  
14 reserve that until the time the testimony is up for  
15 admission?

16 COMMISSIONER KIESLING: Yes.

17 MR. BONNER: Okay.

18 COMMISSIONER KIESLING: All right. Are we  
19 ready to begin with witnesses?

20 MR. PELLEGRINI: Yes, we are.

21 COMMISSIONER KIESLING: Then you may call  
22 your first witness.

23 MR. BONNER: Telenet calls Mr. Mitchell  
24 Kupinsky to the stand.

25 COMMISSIONER KIESLING: And I think we have

1 only a couple of witnesses, so are they all present  
2 and I'll swear you in at the same time? Your  
3 witnesses are also present? Why don't I have all of  
4 the witnesses that are going to testify stand and  
5 raise your right hand.

6 (Witnesses collectively sworn.)

7

- - - - -

8

**MITCHELL A. KUPINSKY**

9 was called as a witness on behalf of Telenet and,  
10 having been duly sworn, testified as follows:

11

**DIRECT EXAMINATION**

12

**BY MR. BONNER:**

13

**Q** Please state your full name for the record,

14

sir.

15

**A** Mitchell A. Kupinsky.

16

**Q** And tell us where you're employed, please?

17

**A** I'm vice-president of Telenet of South

18

Florida, 10422 Taft Street, Pembroke Pines, Florida

19

33026.

20

**Q** Mr. Kupinsky, did you cause to be prepared

21

under your supervision and direction direct testimony

22

in this proceeding dated January 8th, 1997?

23

**A** Yes.

24

**Q** And did that testimony also consist of

25

attached exhibits marked Exhibits MAK-1 through

1 MAK-12?

2 A Yes.

3 MR. BONNER: May I approach the witness,  
4 Commissioners?

5 COMMISSIONER KIESLING: Yes, except I'm  
6 trying to find those exhibits.

7 MR. CARVER: If I may, I don't believe those  
8 exhibits were attached to the prefiled testimony. In  
9 fact, they were provided to us for the first time  
10 after the prehearing. We've reviewed them. But I  
11 don't think they were prefiled.

12 COMMISSIONER KIESLING: My records don't  
13 show that they were attached to the prefiled, so what  
14 is the basis on you putting them in at this time?

15 MR. BONNER: The exhibits?

16 COMMISSIONER KIESLING: Yes. If you didn't  
17 prefile them --

18 MR. BONNER: Our position is that I think we  
19 did prefile them with the Commission, and we did -- on  
20 notice from BellSouth, that they were not attached to  
21 the prefiled testimony.

22 COMMISSIONER KIESLING: You need to go to a  
23 mike. I'm sorry. My copy doesn't reflect that they  
24 were filed with it.

25 MR. PELLEGRINI: They were filed one or two

1 days later. The exhibits were not prefiled with the  
2 direct testimony.

3           **MR. BONNER:** But that was cured by a  
4 subsequent filing a day or two later with the  
5 prefiled. We responded as soon as we heard from  
6 Commission Staff that -- I believe that with the  
7 filing of those exhibits, and certainly there's been  
8 no objection or motion pending to strike the exhibits  
9 as being improperly filed.

10           **COMMISSIONER KIESLING:** My only problem is I  
11 don't have them. I mean, I've never seen them. I'm  
12 trying to find where they were.

13           **MR. BONNER:** Well, Commissioner -- I  
14 apologize, Commissioner, but we did file them with the  
15 Commission, I think Mr. Pellegrini had indicated. And  
16 I have an extra copy here for both Commissioners.  
17 This was the subject of extensive deposition testimony  
18 last week.

19           **MR. PELLEGRINI:** They were filed,  
20 Commissioner, but they were late-filed on the 22nd of  
21 January. On the 30th of January, I'm sorry.

22           **COMMISSIONER KIESLING:** And prefiled  
23 testimony was filed on the 21st -- I mean, the  
24 prefiled direct was filed back on January 8th?

25           **MR. PELLEGRINI:** Yes.

1           **COMMISSIONER KIESLING:** And that was the  
2 testimony to which these exhibits were supposedly  
3 attached, the direct?

4           **MR. BONNER:** I don't know the exact date of  
5 the --

6           **COMMISSIONER KIESLING:** That's not what I'm  
7 asking.

8           **MR. BONNER:** Yes. That's correct, yeah.  
9 The initial direct testimony was filed -- yes.

10           **COMMISSIONER KIESLING:** On January 8th, and  
11 then these exhibits weren't filed until the 30th? Is  
12 that --

13           **MR. BONNER:** I don't know the date. I don't  
14 believe they were filed that late. I don't know the  
15 exact date when we submitted the exhibits, but I  
16 believe it was much earlier than that. I think it was  
17 within the next week after the 8th is my recollection.

18           **MR. PELLEGRINI:** The prefiled testimony,  
19 Commissioner Kiesling, was filed January 8th. The  
20 exhibits were late-filed on January 28th.

21           **COMMISSIONER KIESLING:** I mean, that's what  
22 my list of the docket filings shows also.

23           **MR. BONNER:** Assuming that it is the 28th, I  
24 don't see any -- certainly any prejudice here to  
25 BellSouth or to the Commission since this is -- these

1 exhibits have been fully inquired of the witness in  
2 deposition last week. He spent extensive -- several  
3 hours; I think he was in deposition for five hours  
4 responding to questions about these exhibits, so these  
5 are not surprise exhibits.

6 I apologize for any inconvenience the late  
7 filing may have caused, but there has been full  
8 inquiry into these exhibits; and I think they're quite  
9 important for the Commission --

10 **COMMISSIONER KIESLING:** I'm sure they are.  
11 All I want to know is why I've never seen them before.  
12 How were they filed? I mean, did you just mail a copy  
13 to Mr. Pellegrini or --

14 **MR. BONNER:** I did not handle the filing  
15 myself. It was a colleague, my colleague in my office  
16 that did. I have to rely on Mr. Pellegrini if he  
17 recalls, because I think he -- there was a discussion  
18 between him and Mr. Alberts in my office about this.

19 **MR. PELLEGRINI:** I called to the attention  
20 of Mr. Alberts that there was a problem with these.  
21 He filed them -- I'm not sure whether he mailed them  
22 directly to me and whether I took care of the filing  
23 with Records or whether he filed them directly --

24 **COMMISSIONER GARCIA:** I have them here filed  
25 January 21st, '97, and I do have them. We're talking

1 about -- what is it; 1 through 7 -- 1 through 13 or --

2 MR. BONNER: MAK-1 through 12.

3 COMMISSIONER GARCIA: No, that's what Staff  
4 just gave me. This is what I've got, the packet.

5 COMMISSIONER KIESLING: That's the  
6 prehearing statement.

7 COMMISSIONER GARCIA: Right, and it's filed  
8 as part of that in my file.

9 COMMISSIONER KIESLING: Okay. I'm just  
10 trying to find it so that I know that I'm looking at  
11 the same thing everyone else is looking at.

12 COMMISSIONER GARCIA: We're looking at "Via  
13 overnight, Charles Pellegrini, January 22nd, 1997,"  
14 and it's filed here with the Commission January --

15 COMMISSIONER KIESLING: There it is. Okay.  
16 Yes, I do now. I found it.

17 COMMISSIONER GARCIA: Okay.

18 COMMISSIONER KIESLING: Thank you.

19 MR. PELLEGRINI: Commissioner Kiesling, it  
20 would be my recommendation that the exhibits be  
21 recognized as being helpful to the panel.

22 COMMISSIONER KIESLING: I'm not trying to  
23 strike them. I was just trying to figure out what  
24 happened and why I hadn't seen them in preparing for  
25 this case. So you've got direct and then you have

1 Exhibits --

2 MR. BONNER: MAK-1 through MAK-12,  
3 Commissioner.

4 COMMISSIONER KIESLING: And do you want  
5 those individually numbered, or can they be a  
6 composite?

7 MR. BONNER: They can be a composite.

8 COMMISSIONER KIESLING: I'll mark the  
9 exhibits which were subsequently filed to the filing  
10 of the direct as Exhibit 2, composite Exhibit 2.

11 (Exhibit 2 marked for identification.)

12 MR. BONNER: And the direct testimony is  
13 Exhibit No. 1; is that correct?

14 COMMISSIONER KIESLING: No. The direct  
15 testimony is the direct testimony.

16 Q (By Mr. Bonner) I don't recall after that  
17 colloquy, Mr. Kupinsky, if you answered my questions.  
18 Was your testimony, direct testimony dated January  
19 8th, 1997, prepared under your supervision and  
20 direction?

21 A Yes.

22 MR. BONNER: I would now move for admission  
23 of Mr. Kupinsky's direct testimony of January 8, 1997,  
24 and Composite Exhibit 2.

25 COMMISSIONER KIESLING: Well, we admit the



1 exhibits after the witness is completely through so we  
2 do that at one time, and the way we usually handle  
3 prefiled testimony is that you would ask him if there  
4 are changes, additions or corrections and if he adopts  
5 this testimony --

6           **MR. BONNER:** Certainly. I forgot. My  
7 oversight. Excuse me. May I proceed with that?

8           **Q**        **(By Mr. Bonner)** Do you have any additions  
9 or corrections or modification of any kind to your  
10 direct testimony dated January 8, 1997, Mr. Kupinsky?

11          **A**        No.

12           **COMMISSIONER KIESLING:** And are you  
13 requesting that it be inserted in the record as though  
14 read?

15           **MR. BONNER:** Yes, I am. We would request  
16 that the direct testimony be admitted as if read,  
17 rather than having to proceed with direct examination.

18           **COMMISSIONER KIESLING:** It will be inserted  
19 in the record as though read.

20           **MR. BONNER:** Thank you, Commissioner.

21           **COMMISSIONER GARCIA:** Are we going to do  
22 rebuttal, also?

23           **MR. BONNER:** Yes.

24           **Q**        **(By Mr. Bonner)** Mr. Kupinsky, did you also  
25 prepare rebuttal testimony dated January 20, 1997 in

1 this proceeding?

2 A Yes, I did.

3 MR. BONNER: (Distributing documents.)

4 COMMISSIONER KIESLING: We have the prefiled  
5 testimony.

6 MR. BONNER: I brought an extra copy. You  
7 don't need it, then?

8 COMMISSIONER KIESLING: No. We have what  
9 was filed.

10 MR. BONNER: I was asked to bring extra  
11 copies for the Commissioners, so I brought extra  
12 copies.

13 COMMISSIONER KIESLING: Well, thank you.

14 MR. BONNER: Okay.

15 Q (By Mr. Bonner) Mr. Kupinsky, was this  
16 rebuttal testimony prepared under your supervision and  
17 direction?

18 A Yes, it was.

19 Q And do you have any changes or modifications  
20 to make to that testimony?

21 A No.

22 MR. BONNER: Commissioners, we would request  
23 that Mr. Kupinsky's rebuttal testimony dated January  
24 20, 1997 be admitted as if read.

25 COMMISSIONER KIESLING: It will be so

1 inserted.

2 MR. BONNER: Thank you.

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**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

28

In re: Resolution of Petition(s) to Establish Right )  
of Access of Telenet of South Florida, Inc. ) Docket No. 961346-TP  
to Call Forwarding Lines Offered by BellSouth )  
Telecommunications, Inc., and for Arbitration )

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**TESTIMONY OF  
MITCHELL A. KUPINSKY  
ON BEHALF OF  
TELENET OF SOUTH FLORIDA, INC.**

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January 8, 1997

**DIRECT TESTIMONY OF  
MITCHELL A. KUPINSKY  
ON BEHALF OF  
TELENET OF SOUTH FLORIDA, INC.**

29

1    **Q.    PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2    **A.**My name is Mitchell A. Kupinsky. My business address is Telenet of South Florida,  
3        Inc. ("Telenet"), 10422 Taft Street, Pembroke Pines, Florida 33026.

4    **Q.    WHAT IS YOUR POSITION WITH TELENET OF SOUTH FLORIDA, INC.?**

5    **A.**I am the Vice President and Chief Executive Officer.

6    **Q.    WHAT ARE YOUR RESPONSIBILITIES IN THAT POSITION?**

7    **A.**I am responsible for both the day-to-day operations and strategic direction of Telenet.  
8        In this capacity I am responsible for coordinating negotiations with the suppliers and  
9        local exchange carriers, including BellSouth Telecommunications, Inc.  
10       ("BellSouth"), that Telenet needs agreements with if it is to provide service to its  
11       customers.

12   **Q.    PLEASE DESCRIBE YOUR PREVIOUS PROFESSIONAL EXPERIENCE  
13        AND EDUCATIONAL BACKGROUND.**

14   **A.**I have a B.S. in General Business from New York University. I began work in the  
15       telecommunications industry in January 1988 as an apprentice with Martek Electric  
16       for commercial communications wiring projects throughout southern California,  
17       which gave me invaluable experience in the construction and maintenance of

1 telecommunications networks. I remained associated with Martek until December  
2 1992. From January 1993 until November 1995, I was employed at Park Granada  
3 Investments, as an associate, where I was responsible for conducting financial  
4 analyses on several potential investment properties, as well as selling and purchasing  
5 numerous such properties. I joined Telenet upon its founding in November 1995,  
6 where I have been since. During this time period, I have been involved in all aspects  
7 of starting up and running the business, including hiring personnel, marketing, sales,  
8 and technical operations.

9 **Q. PLEASE DESCRIBE THE OPERATIONS OF TELENET OF SOUTH**  
10 **FLORIDA, INC.**

11 **A.** Telenet of South Florida, Inc. is a telecommunications company with operations  
12 throughout the tri-county area of Dade, Broward and Palm Beach counties. Telenet  
13 was the among the first Florida Alternative Local Exchange Carriers (“ALECs”) to  
14 be certified by the Florida Public Service Commission (“Commission”).

15 Since May 1996, Telenet has offered local exchange services in competition  
16 with BellSouth. Telenet uses a computer voice mail network which provides all  
17 customers with access codes and enables them to use what are usually considered toll  
18 call lines for a flat fee within the existing service area. This is accomplished by

1           utilizing forwarding lines to create direct connections between each Telenet  
2           Interactive Voice Response (“IVR”) switching system, which route calls between  
3           each other. Long-distance links between IVRs are broken up by forwarding links  
4           into shorter cascaded local links. Telenet is currently offering service on the  
5           Southeast coast of Florida, between Broward, Palm Beach and Dade counties, from  
6           Homestead to Boynton (and prospectively to Jupiter).

7   **Q.   HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

8   **A.   No.**

9   **Q.   IS TELENET CURRENTLY CERTIFICATED TO PROVIDE SERVICE IN**  
10 **FLORIDA?**

11 **A.   Yes.** The Commission, in its Decision of April 17, 1996 in Docket No. 960043-TX,  
12 certified Telenet to operate as an Alternative Local Exchange Carrier in Florida.

13 **Q.   WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 **A.   I am testifying in support of Telenet’s Petition for Arbitration of rates, terms and**  
15 **conditions filed with the Commission pursuant to Florida Statutes section 364.161.**  
16 **Telenet’s attempts at negotiations with BellSouth have failed to yield acceptable**  
17 **arrangements. Telenet is therefore petitioning the Commission, in accordance with**  
18 **the above-referenced statute, for BellSouth to provide unbundled services, network**

1 features, functions or capabilities, and specifically the unbundled call forwarding  
2 services and supporting hardware. The Commission has framed this arbitration in  
3 terms of the question of whether BellSouth may sell its Call Forwarding service  
4 subject to the restrictions of its General Subscriber Service Tariff ("Tariff").

5 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

6 **A.** BellSouth's tariff restrictions on the use of call forwarding services are not beneficial  
7 to the public interest, unnecessary from an economic standpoint, are anticompetitive,  
8 and are impermissible under Florida or federal law. Moreover, BellSouth has an  
9 affirmative obligation to sell call forwarding services to ALECs under 47 U.S.C.  
10 sections 251 (c)(4)(B) and (b)(1).

11 Consistent with the passage of the Telecommunications Act of 1996 and  
12 Florida Statutes section 36, the Commission should remove all anticompetitive and  
13 unreasonable restrictions from BellSouth tariffs. Allowing BellSouth to maintain its  
14 monopoly for intraLATA telephone calls does not aid the development of  
15 competition or ensure universal service. BellSouth claims that restriction of the  
16 usage of Call Forwarding services by its customers, clearly aimed at resellers so as  
17 to preserve BellSouth's intraLATA toll revenues, should be disregarded unless and  
18 until it demonstrates that with respect to certain customers or areas -- when all



1 revenues from the customer are considered and costs are properly distributed between  
2 the various services -- BellSouth cannot recover its costs for furnishing Call  
3 Forwarding services. BellSouth Tariff section A13.9.1A.1.

4 The Commission should reject any attempt by BellSouth to use the tariffed  
5 restrictions on the use of Call Forwarding services as a means of preventing new  
6 entrants from competing for its lucrative intraLATA toll market.

7 **Q. AS A THRESHOLD MATTER, WHAT IS MEANT BY THE TERM "CALL**  
8 **FORWARDING SERVICES"?**

9 **A.** By "Call Forwarding" services, I refer to a variety of arrangements that BellSouth,  
10 and nearly every other incumbent LEC in the nation, offers to end-users, which allow  
11 for the routing of incoming calls to be sent to another telephone number and location  
12 by means of dialing an appropriate code. BellSouth offers such arrangements in its  
13 Tariff.

14 **Q. SPECIFICALLY, WHAT CALL FORWARDING SERVICES ARE**  
15 **REQUIRED FOR TELENET TO PROVIDE VIABLE COMPETITIVE**  
16 **LOCAL EXCHANGE SERVICE?**

17 **A.** Telenet requires "remote access to call forwarding." This type of call forwarding  
18 offers the "Multi path feature," which allows for a multi path call forwarding

1 customer such as Telenet to specify the number of calls that can be received and  
2 forwarded simultaneously to the forward-to-telephone number. In areas with older  
3 central offices, or 1-A's, a "Special Assembly" is required in order to obtain this  
4 multi path feature. Also needed are standard business lines with prestige service  
5 features such as "user transfer" and "3 way calling," and "T-1 lines" which Bell  
6 South markets as "Mega Link Channel Service" which also includes the installation  
7 Network Access Registers ("NARs"), which interface and connect with the various  
8 IVR switches.

9 **Q. WAS THERE AGREEMENT ON ANY OF THESE SERVICE ISSUES WITH**  
10 **BELLSOUTH?**

11 **A.** No. BellSouth and Telenet have been unable to reach a permanent agreement after  
12 BellSouth initially placed orders for Telenet. Throughout November and December  
13 of 1995, I personally placed orders for services including multi-path call forwarding  
14 offered by BellSouth, and we received them. This allowed Telenet to create its initial  
15 network in Dade and Broward counties. On June 4, 1996, William Demers was hired  
16 as General Manager for Telenet. Mr. Demers and I began negotiations with  
17 BellSouth representatives in July 1996 in order to obtain the connections and  
18 assemblies from BellSouth necessary for Telenet's operations to expand to Palm

1 Beach county, and to resolve outstanding problems with systems already installed.  
2 Among the services sought by Telenet throughout this period was a system known  
3 as "remote access to call forwarding," which has multipath features. BellSouth  
4 representatives assured Mr. Demers that BellSouth would be happy to provide  
5 Telenet with whatever BellSouth services were needed, in September, 1996. Mr.  
6 Demers and I had made it clear in July and August negotiations with BellSouth that  
7 Telenet would be seeking to use multi-path call forwarding, and as a result Telenet  
8 relied upon BellSouth's representations that it would provide all necessary services  
9 in going forward with establishing its operating plan and expanding its network.

10 Based on these meetings, my father, Marvin Kupinsky, Telenet's President  
11 and sole stockholder, made a substantial investment to purchase a network of these  
12 lines, and placed orders for "special assemblies" for business purposes which were  
13 obvious to the vendor, BellSouth. Moreover, through Telenet marketing efforts,  
14 approximately 100 customers had become Telenet customers, and are currently using  
15 the existing service. At least 250 additional customers have also made commitments  
16 to use Telenet's services once operations are fully extended to Palm Beach County.

17 Thus, since November 1995, and particularly from July, 1996 to date,  
18 numerous work orders have been processed by BellSouth for Telenet as its network

1 architecture was built and expanded. In late August and early September of 1996,  
2 testing done by Telenet revealed that a large percentage of the lines which Telenet  
3 had earlier purchased from BellSouth were not equipped with the multipath call  
4 forwarding features that had been ordered in conjunction with the lines and which  
5 BellSouth had originally agreed to provide.

6 On September 16, 1996, a meeting was held between Mr. Demers, Marvin  
7 Kupinsky, and myself, of Telenet, and O.G. "Doc" Moore and Tony Aniello,  
8 representing BellSouth. The purpose of this meeting was to arrange for the sale by  
9 BellSouth to Telenet of special assemblies and T-1 lines which would enable Telenet  
10 to expand its service offerings and service growing customer demand (including  
11 service to its 250 newer customers), and to allow Telenet to ascertain why the  
12 ordered multi-path call forwarding features had not been provided with the lines  
13 ordered in July and August. The assemblies and T-1 lines would allow call  
14 multiplexing as envisioned in Telenet's operational plan.

15 On September 17, 1996, the day after the September 16 meeting, BellSouth  
16 indicated for the first time, that in its view, Telenet's services were in violation of the  
17 BellSouth General Subscriber Service Tariff ("Tariff"), and that Telenet would have

1           to negotiate a Resale Agreement with BellSouth if it wished to continue to use multi-  
2           path call forwarding.

3                       On September 19, 1996, BellSouth stated by letter to Telenet that it would not  
4           authorize any new service for Telenet on behalf of BellSouth until Telenet initiated  
5           a request for a Resale Agreement. Telenet is not delinquent in payments to  
6           BellSouth for any services provided and BellSouth is not claiming that any payments  
7           are past due.

8                       Then, on October 10, 1996, Demers again spoke with Moore. Moore stated  
9           that BellSouth had decided that Telenet's operations, particularly the use of multi-  
10          path call forwarding, was a violation of Section A13.9.1A.1 of BellSouth's Tariff.  
11          Moore then stated that Telenet was on notice of this tariff violation and demanded  
12          that Telenet cease and desist use of multi-path call forwarding. By letter dated  
13          October 15, 1996, BellSouth advised Telenet that in the absence of "proof" that a  
14          violation of BellSouth's call forwarding tariff was not occurring, BellSouth would  
15          remove its provision of multi-path call forwarding services on November 21, 1996.

1    **Q.    YOU STATED ABOVE THAT THE COMMISSION SHOULD FACILITATE**  
2        **COMPETITION IN THE LOCAL EXCHANGE MARKET BY REQUIRING**  
3        **BELLSOUTH TO OFFER ITS CALL FORWARDING SERVICES AND<sup>N</sup>**  
4        **SUPPORTING HARDWARE ON AN UNBUNDLED BASIS. WHY IS THIS**  
5        **NECESSARY?**

6    **A.**    The importance of unbundling Call Forwarding services to the development of actual  
7        competition derives directly from BellSouth's continued control of significant  
8        monopoly elements. Unbundled (and equally available) call forwarding, without end-  
9        user restrictions, will provide access to an essential bottleneck facility controlled by  
10       BellSouth, and introduce much needed competition in the intraLATA market  
11       dominated by BellSouth.

12                BellSouth continues to have monopoly control over the longer lines of the  
13        intraLATA portion of the telecommunications network. Service between most  
14        BellSouth customers spread out over the tri-county area of Southeastern Florida, and  
15        in other portions of the state, is virtually the exclusive province of BellSouth. This  
16        monopoly results from the fact that this intraLATA network consists mostly of  
17        transmission facilities carrying large volumes of traffic, spread over wide geographic  
18        areas. The only economically efficient avenue for competitors is to utilize the

1 BellSouth intraLATA lines at cost-based rates. To construct ubiquitous competing  
2 transmission and switching facilities would be cost-prohibitive. The intraLATA  
3 network, therefore, is an essential bottleneck service for any potential provider of  
4 alternative local exchange service.

5 Given the benefits of its monopoly status, BellSouth has constructed  
6 intraLATA networks that provide access to every interexchange carrier and virtually  
7 all residential and business premises in its territory. In building these networks,  
8 BellSouth has had the singular advantage of favorable governmental franchises,  
9 access to rights-of-way, unique tax treatment, access to buildings on an unpaid basis,  
10 and protection against competition. Companies such as Telenet that now seek to  
11 compete in the provision of intraLATA service cannot possibly enjoy these  
12 advantages, and it would be both impossible and economically inefficient in most  
13 cases for them to seek to construct duplicate intraLATA lines and facilities.  
14 Replication of the existing intraLATA network (using either facilities similar to  
15 BellSouth's or alternative technologies such as wireless loops or cable television  
16 plant), to say nothing of employing leased private lines, would be cost-prohibitive;  
17 moreover, competitors cannot obtain public and private rights-of-way, franchises, or  
18 building access on the same terms as BellSouth enjoys.

1 **Q. WHAT SPECIFIC UNBUNDLED FEATURES, FUNCTIONS AND**  
2 **CAPABILITIES SHOULD BE MADE AVAILABLE?**

3 **A.** The portion of intraLATA service that Telenet seeks to provide Florida consumers  
4 with can be represented as being comprised of two key components: the lines, which  
5 provide the transmission path between customers in different counties, and the  
6 multiplexing systems, which allow the interface to the switch, and the capability to  
7 originate, forward and terminate calls as Telenet's network requires. Unbundling the  
8 Call Forwarding services consists of physically unbundling the line and routing  
9 switch elements, and pricing them individually on an economically viable basis.

10 Specifically, BellSouth should immediately unbundle and make available on  
11 a nondiscriminatory basis all of its Call Forwarding services, including two separate  
12 elements: the lines, both standard (prestige services) and T-1 (Mega Link Channel  
13 Services) plus the routing factors and hardware, or special assembly, that allow for  
14 multi path call forwarding.

15 In order for Telenet to efficiently offer telephone services to end users,  
16 BellSouth should unbundle and separately price and offer these elements such that  
17 Telenet will be able to lease and interconnect to whichever of these unbundled



1 elements Telenet requires and to combine the BellSouth-provided elements with  
2 facilities and services that Telenet may provide itself in the future.

3 **Q. PLEASE DESCRIBE THE PUBLIC INTEREST BENEFITS ASSOCIATED**  
4 **WITH TELENET'S PROPOSED OFFERING OF LOCAL SERVICES IN**  
5 **FLORIDA.**

6 **A.** As described above, a grant of Telenet's application will further the public interest  
7 by expanding the availability of alternative sources of local services in the state. The  
8 State of Florida has already recognized the overall benefits of competition in the  
9 local exchange market, given that communications services should be available from  
10 a variety of providers. It is my opinion that Telenet's service will provide Florida  
11 customers with new options for their local service needs. Telenet will offer high  
12 quality service by reselling the services of the incumbent local exchange carriers, and  
13 will provide its customers with innovative customer care and service. Moreover, the  
14 presence of Telenet in the market will provide an incentive for BellSouth to reduce  
15 its high intraLATA toll prices, offer more innovative services, and improve its  
16 quality of service, thereby benefitting all consumers in Florida. Thus, the public will  
17 benefit from Telenet's entry both directly, through the use of the high-quality,  
18 competitively priced and reliable local exchange services that will be offered, and

1 indirectly because the expanded presence of Telenet in this market will motivate  
2 BellSouth and others to be competitive. The recent experience of Florida and other  
3 states with the introduction of competition, and particularly resale competition, into  
4 other telecommunications markets, such as long distance, competitive access, and  
5 customer premises equipment has led to all of these public interest benefits in each  
6 of these markets. Telenet is eager to be among the first companies in this state to  
7 bring these public interest benefits to the market for local services. And because  
8 Telenet is currently a successful, rapidly growing provider of telecommunications  
9 services, it is my opinion that Telenet will indeed be able to bring those benefits to  
10 consumers in this state.

11 **Q. DOES THE RECENTLY ENACTED FLORIDA TELECOMMUNICATIONS**  
12 **LAW REQUIRE THE COMMISSION TO ESTABLISH ACCESS FOR**  
13 **ALTERNATIVE LOCAL EXCHANGE CARRIERS TO UNBUNDLED**  
14 **NETWORK ELEMENTS SUCH AS CALL FORWARDING SERVICES AT**  
15 **JUST RATES AND REASONABLE TERMS?**

16 **A.** While I am not a lawyer, my reading of the statute indicates that the Commission  
17 shall establish access to unbundled network elements, and that the wording which  
18 provides for “features, functions, and capabilities, including . . . systems and routing

1 processes" clearly includes the Call Forwarding services which Telenet seeks from  
2 BellSouth. Florida Statutes section 364.161(1). In establishing this right of access,  
3 I also note that the statute requires that BellSouth, as an incumbent LEC, may not  
4 impose any restrictions on the resale of those services and facilities except as this  
5 Commission may determine are reasonable. Florida Statutes section 364.161(2).  
6 Telenet's Petition is meant to bring BellSouth's unlawful tariff restriction to the  
7 Commission's attention, and to demonstrate that it is manifestly unreasonable and  
8 anticompetitive.

9 **Q. HAVE INCUMBENT LECS IN OTHER STATES SHOWN A WILLINGNESS**  
10 **TO ESTABLISH A FAIR METHOD OF MAKING CALL FORWARDING**  
11 **SERVICES AVAILABLE FOR RESALE TO NEW CARRIERS?**

12 **A.** No. To my knowledge, the incumbent LECs have fairly consistently attempted to  
13 use tariff restrictions as a means to deny alternate carriers access to network elements  
14 such as Call Forwarding. This prevents local exchange competition -- particularly  
15 residential service -- from being offered on an economically viable basis. When  
16 examined, it is clear that these restrictions are really designed to maintain the LECs'  
17 revenues at existing levels, shielding the LEC from any impact resulting from  
18 competition.

1    **Q.    DO YOU KNOW OF ANY SIMILAR LEGAL CHALLENGES TO THESE**  
2    **TYPES OF TARIFF RESTRICTIONS?**

3    **A.**    Yes. In Ohio, at least two companies have sought to employ similar services to  
4    compete with the intraLATA toll service dominated by the incumbent LECs that are  
5    entrenched in that state. Informed of tariff restrictions after they already were in  
6    operation, and facing disconnect orders, one of these companies (Ohio Direct  
7    Communications, Inc.) filed a complaint with the Ohio Public Utilities Commission  
8    against the relevant LECs, seeking similar relief as Telenet does, and on much the  
9    same grounds. This can be found in *In the Matter of the Complaint of Ohio Direct*  
10   *Communications, Inc. vs. Alltel Ohio, Inc. and The Western Reserve Telephone*  
11   *Company relative to the alleged proposed termination of service, because of*  
12   *inadequate notice, violation of policy of the state of Ohio, discrimination, undue*  
13   *regulation, and to prevent injury to the public*, Docket No. 95-819-TP-CSS. The  
14   other similarly situated alternative carrier, Ohio Toll Free, Inc., and the main  
15   incumbent LEC in that state, Ameritech-Ohio, Inc., have intervened in that case,  
16   taking opposite positions. The Ohio Commission has yet to render a decision in this  
17   docket.

1   **Q.   WHY WOULD UPHOLDING THE TARIFF RESTRICTION OF CALL**  
2           **FORWARDING SERVICES VIOLATE FLORIDA LAW AND THE**  
3           **TELECOMMUNICATIONS ACT OF 1996?**

4   **A.**   Clearly that approach would violate both the spirit and letter of the Florida statutes  
5           and the federal Telecommunications Act of 1996. If an alternate carrier is forced to  
6           offer its services at a loss, or is barred from acquiring necessary services from an  
7           incumbent LEC, it is clearly foreclosed from entry. The entry of new alternate  
8           carriers was explicitly envisioned by the Florida Legislature when it passed new  
9           telecommunications legislation. Moreover, the very section of the Statute which  
10          allows Telenet to seek arbitration before this Commission expressly forbids  
11          unreasonable restrictions on unbundled element resale by BellSouth, among others.  
12          The Commission's staff recently concluded that Telenet's petition states a cause of  
13          action for which relief may be sought from the Commission, and it recommended  
14          that the Commission deny BellSouth's motion to dismiss Telenet's petition.  
15          Memorandum to Director, Division of Records and Reporting, December 26, 1996.  
16          The tariff restriction BellSouth is relying on is certainly unreasonable and  
17          anticompetitive under existing law, and the Commission must reject it.

1 Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

2 A. Yes.

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

47

In re: Resolution of Petition(s) to Establish Right	)	
of Access of Telenet of South Florida, Inc.	)	Docket No. 961346-TP
to Call Forwarding Lines Offered by BellSouth	)	
Telecommunications, Inc., and for Arbitration	)	

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**REBUTTAL TESTIMONY OF  
MITCHELL A. KUPINSKY  
ON BEHALF OF  
TELENET OF SOUTH FLORIDA, INC.**

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January 20, 1997

**REBUTTAL TESTIMONY OF  
MITCHELL A. KUPINSKY  
ON BEHALF OF  
TELENET OF SOUTH FLORIDA, INC.**

4 8

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** My name is Mitchell A. Kupinsky. My business address is Telenet of South Florida,  
3 Inc. ("Telenet"), 10422 Taft Street, Pembroke Pines, Florida 33026.

4 **Q. ARE YOU THE SAME MITCHELL KUPINSKY WHO PREVIOUSLY**  
5 **FILED TESTIMONY IN THIS PROCEEDING?**

6 **A.** Yes.

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
8 **PROCEEDING?**

9 **A.** To respond on behalf of Telenet of South Florida, Inc. ("Telenet") to the direct  
10 testimony of Robert C. Scheye on behalf of BellSouth Telecommunications, Inc.  
11 ("BellSouth"), and to provide general rebuttal on the issues presented in the  
12 pleadings and papers, and to testify in light of recent actions of BellSouth regarding  
13 the subject matters of this proceeding.

14 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

15 **A.** Mr. Scheye mischaracterizes certain aspects of Telenet's technical operations.  
16 Because BellSouth's actions are to the detriment of properly licensed resellers, the  
17 ultimate effect will be to harm the interests of small and medium-sized Florida



1 consumers. BellSouth's tariff restrictions are contrary to more than twenty years of  
2 federal communications policy and economic logic, and only serve to delay the need  
3 for BellSouth to adjust its prices to reflect forward-looking costs. BellSouth's  
4 approach to call forwarding resale is manifestly anti-competitive, and its contentions  
5 that Telenet's use of call forwarding services constitutes either avoidance of  
6 terminating access charges or a risk of network traffic congestion are without merit.  
7 Moreover, BellSouth's actions with regard to its agreement with Telenet since the  
8 commencement of this proceeding demonstrate an unwillingness to act in good faith.

9 **Q. DOES MR. SCHEYE CORRECTLY CHARACTERIZE TELENET'S**  
10 **OPERATIONS AND SERVICE?**

11 **A.** No. Mr. Scheye's direct testimony at 5-6 discusses Telenet's operations, and  
12 although he is correct on certain points, he is simply wrong on others. First, in  
13 discussing Telenet's IVR locations, he implies that the services provided by  
14 Telenet to its customers is what BellSouth would consider "long distance calls".  
15 In fact, I would estimate that about 90% of the calls that Telenet completes are  
16 actually what BellSouth classifies as "local extended calls." Therefore Mr. Scheye's  
17 illustrative example of a West Palm Beach-Miami call, which would in fact be a long  
18 distance call, is somewhat misleading. Second, contrary to Mr. Scheye's assertion,

1 not every Telenet location subscribes to BellSouth's Call Forwarding features.  
2 Scheye Direct at 5, lines 13-14. Telenet IVR stations Nos. 1, 3 and 5 do not currently  
3 employ Call Forwarding services.

4 **Q. WHAT ABOUT BELL SOUTH'S EXPLANATION ABOUT THE HISTORY**  
5 **OF INTRALATA TOLL AND LOCAL SERVICE PRICING?**

6 **A.** Mr. Scheye insists that "there are rules in place today, long adopted by [the Florida  
7 Public Service] Commission, that establish pricing relationships between local and  
8 toll service." Scheye Direct at 13, lines 2-4. Now that limited competition in one  
9 segment of the market has arrived, BellSouth is returning to this Commission to ask  
10 for additional relief - to be protected *from* competition. Because the low-margin Call  
11 Forwarding category of services is "cannibalizing" BellSouth's sales of high-margin  
12 usage-rated intraLATA services, BellSouth's approach is simply to attempt to  
13 eliminate its low-margin product from the resale marketplace, or to threaten its  
14 eventual removal entirely. Scheye Direct at 10, lines 24-25. This will be to the  
15 detriment of resellers and many small and medium-sized Florida consumers.

16 **Q. WHY WILL THIS HURT CONSUMERS?**

17 **A.** Because it will limit the useful role resellers play in the marketplace of making  
18 telecommunications carriers more cost effective, and by passing on those efficiencies

1 in the form of lower prices to consumers. Although Mr. Scheye ascribes negative  
2 intentions to resellers, they have a very basic and positive role in our economy:

3 Channel intermediaries (e.g., wholesalers and retailers) essentially solve the  
4 problem of the discrepancy between the various assortment of goods and  
5 services required by industrial and household consumers and assortments  
6 available directly from individual producers. In other words, manufacturers  
7 usually produce a large quantity of a limited number of products, whereas  
8 consumers purchase only a few items of a large number of diverse products.  
9 Middlemen reduce this discrepancy of assortment, thereby enabling  
10 consumers to avoid dealing directly with individual manufacturers in order  
11 to satisfy their needs. *Marketing Channels*, Louis Stern and Adel I. El-  
12 Ansary, Prentice Hall, 1992 at 108.

13 Resellers typically take large "bulk" products, and the discounted prices normally  
14 associated with them, and repackage them into smaller, more manageable pieces for  
15 small customers. A portion of the bulk discount is then passed through to the small  
16 consumer who, because of her minimal telecommunications needs, would not  
17 normally benefit from bulk discounts offer to larger telecommunication purchasers  
18 who are able to command such discounts. For an individual consumer to attempt to  
19 create and sustain a similar technical by-pass of toll charges using call forwarding  
20 services for communications from West Palm Beach to Miami (to use Mr. Scheye's  
21 own example) would require an outlay of approximately \$300 per month, by my  
22 estimate based on my dealings with BellSouth and my understanding of the  
23 technology that would be required. Such an approach would not be technically

1 efficient or practical, and is not a feasible alternative. Telenet's services allow the  
2 smaller consumer to share in the benefits afforded larger purchasers.

3 **Q. WHAT HAS BEEN THE FCC'S POSITION CONCERNING RESALE AND**  
4 **ARBITRAGE OF TELECOMMUNICATIONS SERVICES?**

5 **A.** The role of reseller or broker has long been recognized by the FCC:

6 We have repeatedly stated that the primary justification for a tariff rate  
7 must be the cost of providing the service; brokerage is a tool which will  
8 assist in the effectuation of this policy. If the tariff offerings are truly cost  
9 related, there will be little if any economic incentive for such brokerage.

10 *Memorandum Opinion and Order, Regulatory Policies Concerning Resale and Shared Use;*  
11 ¶14; 62 F.C.C. 2d 588, at 596. (January 5, 1977).

12 Incumbent LEC concerns, including those of BellSouth's predecessor before  
13 divestiture, were again addressed by the FCC in 1980:

14 *For many years, certain carriers, such as the American Telephone and Telegraph*  
15 *Company ("AT&T"), have limited resale and sharing of their services through*  
16 *restrictions in their tariffs on file with this Commission. In 1974, however, we*  
17 *began to question whether these restrictions have operated to segment markets and*  
18 *sustain price discriminations. In other words, we were concerned that resale and*  
19 *sharing restrictions prevented normal economic activities such as arbitrage,*  
20 *[footnote omitted] which could help insure that rates are cost-based. Our theory*  
21 *may be plainly stated: by purchasing discounted bulk public switched network*  
22 *services such as WATS, and reselling them to smaller users as substitutes for MTS,*  
23 *arbitraders would create pressure on the underlying carrier to set rates for the*  
24 *discounted service which fully recover the costs of providing that service. In*  
25 *addition, we were cognizant of unmet demand for communication services,*  
26 *complaints from user groups denied service under tariff restrictions preventing*  
27 *resale or sharing, and the possible anti-competitive effect of such provisions in*  
28 *limiting entry and artificially segmenting markets.*

29 *Memorandum Opinion and Order, Regulatory Policies Concerning Resale and Shared Use,*  
30 ¶2, 83 F.C.C. 2d 167, at 168-9. (October 21, 1980) (emphasis added).

1           The language used by the FCC in that case rings true today:

2                           [W]e find substantial evidence in the record that a number of public and private  
3                           benefits may be anticipated to flow from resale and sharing of domestic public  
4                           switched network services. The comments of potential resellers and sharers  
5                           persuade us that the elimination of these restrictions will have a number of salutary  
6                           public interest effects, including the fostering of innovation and the introduction of  
7                           new technology, especially new ancillary devices, and the spreading of peak-period  
8                           usage. Also, resale and sharing can be expected to promote better management of  
9                           communications networks, a reduction in wasted communications capacity, and the  
10                          growth of customer networks for particular applications. We foresee the  
11                          development of competition in the provision of telecommunications services, new  
12                          entry into telecommunications markets, and stimulation of demand. **Moreover,**  
13                          **lower rates for small to medium domestic public switched network consumers**  
14                          **should result. We also anticipate a movement on the part of carriers toward**  
15                          **cost-based rates, an important regulatory goal, as the prospect of arbitrage**  
16                          **actually arises.** We will elaborate on these benefits in the course of our  
17                          discussion; we mention them briefly here to emphasize that the *Hush-a-Phone* test  
18                          [*i.e.*, that the common carrier's practice is just and reasonable under 47 U.S.C.  
19                          §201(b)], in our opinion, is clearly met.

20                          *Id.*, ¶9, at 172 (emphasis added).

21           Accordingly, the FCC found restrictions against resale to be discriminatory, and as  
22           such, unreasonable, unjust, and unlawful under section 202(a) of the  
23           Communications Act of 1934.<sup>1</sup> in ¶12. *Id.*, at 173. *See also* ¶¶ 15 and 18. *Id.*, at  
24           174-5 (approving reseller arbitrage to alleviate unjust price discrimination).

25                          Similarly, BellSouth's tariff restriction preventing the resale of call  
26                          forwarding service by resellers such as Telenet has the effect of freezing  
27                          monopolistic, high margin, non-cost-based intraLATA toll rates to the detriment of

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<sup>1</sup> Section 202(a) remains intact in the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

1 competition and Florida consumers. Mr. Scheye's accusation that Telenet is  
2 "[g]aming the process" (Scheye Direct at 8, line 17) therefore altogether misses the  
3 point. In fact, Mr. Scheye effectively admits that BellSouth's intraLATA rates are  
4 not cost-based, and therefore invite lawful rate arbitrage: "[i]f the unrestricted use of  
5 Call Forwarding were permitted, and particularly as a means of bypassing toll  
6 charges, BellSouth would need to modify the price significantly to recognize that it  
7 had become a toll or access substitute..." Scheye Direct at 10, lines 21-24. Indeed,  
8 BellSouth might actually face the prospect of having to modify its intraLATA prices  
9 to reflect forward-looking costs. Mr. Scheye invokes the phrase "tariff arbitrage" as  
10 if it were a dirty word or some unlawful misuse of the telecommunications network.  
11 In fact it is a method of introducing much-needed competition in a market that has  
12 been the exclusive preserve of BellSouth, to the detriment of consumers. It therefore  
13 makes good public policy, as the FCC has repeatedly recognized.

14 **Q. WHAT ABOUT THE TOLL AND ACCESS SERVICE IMPACTS**  
15 **DESCRIBED BY MR. SCHEYE ON P. 10?**

16 **A.** As long as these services are overpriced, customers will seek alternatives. With the  
17 advent of facilities-based and non-facilities-based competition, some customers will  
18 bypass BellSouth for local exchange service as well as toll and switched access. This  
19 is exactly the form of competition that Congress contemplated when it enacted the

1           Telecommunications Act of 1996, and which the Florida Legislature intended when  
2           it passed sweeping telecommunications legislation even earlier in 1995. This is just  
3           one aspect of the new competitive world that BellSouth must accept. While  
4           BellSouth would presumably love to return to the days when its monopoly could set  
5           prices, terms and restrictions for its service without fear of competition, that era is  
6           past.

7   **Q.   WHY DO BELLSOUTH'S EFFORTS TO MAINTAIN ITS TARIFF**  
8   **RESTRICTION AS IS REFLECT AN ANTI-COMPETITIVE STANCE?**

9   **A.**   It is anti-competitive because it locks up a potential customer base and forces new  
10          competitors to compete by building their own network -- a goal that takes a great deal  
11          of time and money -- or resell higher priced services. BellSouth is the only  
12          incumbent LEC in Telenet's service area, contrary to Mr. Scheye's inference.  
13          Scheye Direct at 12, lines 11-14. For example, state commissions in Colorado,  
14          Washington, Minnesota, South Dakota, Iowa, Wyoming and Montana have  
15          recognized the role resellers play and have rejected US West's attempt to  
16          "grandfather" and withdraw the Centrex-type<sup>2</sup> family of services (such as call  
17          forwarding and user transfer) from resale as anti-competitive and discriminatory, and

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<sup>2</sup>       Although BellSouth employs the trade terms "Custom Calling" and "Prestige" to market call forwarding and user transfer services respectively, other incumbent LECs use the term "Centrex" to describe these types of custom features.

1 a violation of the mandatory resale provisions of the Telecommunications Act of  
2 1996.

3 **Q. DO YOU AGREE WITH BELLSOUTH'S CLAIM THAT TELENET IS**  
4 **VIOLATING SECTION 364.16(3) OF THE FLORIDA STATUTES BY**  
5 **DELIVERING TRAFFIC WHICH AVOIDS TERMINATING ACCESS**  
6 **CHARGES?**

7 A. No. Telenet is not an access provider for interexchange carriers ("IXCs"), nor a local  
8 exchange carrier to which the terms of Florida Statute §364.16(3)(a) apply.  
9 BellSouth is providing service in all instances. Telenet is merely enhancing the local  
10 exchange services already provided by BellSouth for Florida consumers. Since there  
11 is no IXC involved, there is no question of terminating access charges being  
12 bypassed, as Mr. Scheye insists. Scheye Direct at 11-12.

13 **Q. HOW YOU RESPOND TO MR. SCHEYE'S ASSERTION THAT THE USE**  
14 **OF CALL FORWARDING SERVICES REPRESENTS A CONGESTION**  
15 **RISK?**

16 A. Mr. Scheye's assertion is that Telenet's use of "Call Forwarding to transfer calls from  
17 one central office to another to complete a toll call will generate additional traffic  
18 over facilities that were not engineered for *such inordinate use.*" Scheye Direct at  
19 10, lines 5-8 (emphasis added). This is a false alarm by BellSouth. It has no factual



1 basis in the actual traffic carried to date by Telenet or upon any available or reliable  
2 traffic projections. This argument is clearly speculative because no authoritative  
3 traffic study has been cited by BellSouth to date, and to my knowledge no study is  
4 available that accurately estimates the impact of Telenet's service requirements upon  
5 the system.

6 **Q. WHAT INTERIM AGREEMENT WAS REACHED BETWEEN BELL SOUTH**  
7 **AND TELENET PENDING THE RESOLUTION OF THIS PETITION FOR**  
8 **ARBITRATION BEFORE THE COMMISSION?**

9 **A.** On November 27, 1996, BellSouth agreed to postpone termination of Telenet's call  
10 forwarding services, and to continue to promptly provide Telenet with all connection  
11 and service arrangements already ordered by November 15, 1996 or as set forth in  
12 BellSouth's letter dated November 21, 1996, for one hundred and twenty (120) days  
13 from the filing of Telenet's Petition to the Commission in Docket No. 961346-TP,  
14 subject to Telenet's agreement not to pursue a temporary injunction hearing in  
15 Florida Circuit Court. This period was later extended to April 1, 1997 in accordance  
16 with the announced schedule of this docket and its projected closing date.

17 For its part, Telenet agreed to abide by the deposit, installation and monthly  
18 charges for BellSouth services were quoted to Telenet by letter from BellSouth dated  
19 November 21, 1996. Telenet further agreed that it would not provide service to any

1 new customers before April 1, 1997 who would utilize call forwarding, though  
2 customers who have requested service prior to November 15, 1996 are considered  
3 existing customers.

4 **Q. HAS BELLSOUTH LIVED UP TO THE INTERIM AGREEMENT SINCE IT**  
5 **WAS ENTERED ON NOVEMBER 27, 1996?**

6 **A.** Telenet entered into the agreement with the clear understanding that BellSouth would  
7 promptly fill outstanding orders for connections and services. However, BellSouth  
8 has not acted in good faith to implement the interim settlement agreement.

9 Since the agreement was formalized on November 27, 1996, BellSouth has  
10 delayed providing agreed-upon services to Telenet, and has failed to comply with  
11 BellSouth's obligations under the interim agreement. BellSouth's account executive  
12 has alternately asserted legal arguments (the issue to be decided here by the Florida  
13 Public Service Commission), technical caveats not previously raised when Telenet  
14 first ordered the services in July, or even ignorance of Telenet's existing service  
15 arrangements as reasons for not promptly fulfilling the service orders previously  
16 arranged or discussed in BellSouth's letter of November 21, 1996. In particular this  
17 includes the three special assemblies specifically discussed in various conference  
18 calls with the Commission legal staff and in the November 21 settlement letter.

1 Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?

2 A. Yes.

1           **COMMISSIONER GARCIA:** I'll make a correction  
2 just out of curiosity, because it bothered me. I  
3 never find spelling mistakes, because I usually  
4 misspell myself. Page 3 -- I'm sorry -- Page 11, Line  
5 3. Instead of "and," it's "amd," so I guess we have  
6 to change that to an "N". It's just something that  
7 struck me.

8           **COMMISSIONER KIESLING:** Where is this?

9           **COMMISSIONER GARCIA:** Of his direct --

10          **COMMISSIONER KIESLING:** Oh, his direct.

11          **COMMISSIONER GARCIA:** I'm sorry. Page 11,  
12 and I'm sure there's more of them. I'm sorry. It  
13 just bothered me for some reason, because every time I  
14 opened to read this -- it's just a misspelling.

15          **MR. BONNER:** There's a typo on "and".

16          **COMMISSIONER GARCIA:** Right.

17          **MR. BONNER:** No further -- the witness is  
18 available for cross-examination. We have no further  
19 exhibits to offer at this time.

20          **COMMISSIONER KIESLING:** And you do not wish  
21 to have the witness present a short summary?

22          **MR. BONNER:** Yes, we would -- Mr. Kupinsky  
23 would like to prepare a -- present a short summary of  
24 his testimony, if that's possible at this time.

25          **COMMISSIONER KIESLING:** Well, yes; our rules

1 provide for a short summary, like five minutes, of  
2 witnesses' testimony.

3           **MR. BONNER:** Thank you for the reminder.  
4 Okay. You're on the timer. And Mr. Kupinsky is  
5 prepared to present a short summary of Telenet's  
6 position. Thank you, Commissioner.

7           **WITNESS KUPINSKY:** Telenet was certified by  
8 this Commission as an ALEC in April of 1996, and  
9 November of 1995 it began purchasing lines from  
10 BellSouth as well as spending substantial moneys in  
11 building its network to provide local calls to south  
12 Florida consumers.

13           Telenet feels that BellSouth's tariff  
14 restriction is unreasonable because it is  
15 anticompetitive and discriminatory towards ALECs and  
16 resellers. We feel that the restriction is an  
17 artificial barrier to entry, and this is to the  
18 detriment of the south Florida consumers, as BellSouth  
19 is able to keep charging its monopolistic rates.

20           We feel that Telenet's rates are much more  
21 reflective of cost-based. A simple example of this is  
22 if, for example, Telenet were to purchase from  
23 BellSouth at wholesale rates, say at a 20% discount,  
24 its intraLATA toll call from Miami to Palm Beach,  
25 which BellSouth charges 21 cents, the discount

1 would -- at cost we -- if we sold it at 16 cents per  
2 minute, would be substantially higher than the rates  
3 we currently charge, which are 10 cents flat rate per  
4 call.

5           Based on the 1996 Telecommunications Act, as  
6 well as Florida Statutes, we feel that Telenet is --  
7 excuse me -- BellSouth is obligated to resell the call  
8 forwarding service without restriction. We feel that  
9 based on these -- the Telecommunications Act, as well  
10 as the Florida statutes, that the Commission should  
11 find these restrictions unreasonable and remove them  
12 from the tariff.

13           We feel that if this is done, this will  
14 definitely benefit the Florida consumers as  
15 competition will increase, causing prices to be driven  
16 lower. And I feel that this was a -- at the spirit of  
17 the new laws that were passed to aid in competition  
18 and to give the consumers a choice and a lower price.

19           In addition, Telenet and BellSouth had  
20 entered into an interim agreement, and we feel that  
21 BellSouth has not acted in good faith as a -- they  
22 have not completed special assemblies, as they said  
23 they would, which will allow Telenet to complete its  
24 network.

25           That's basically the summary of my

1 testimony.

2           **COMMISSIONER KIESLING:** All right. He's  
3 available for cross?

4           **MR. BONNER:** Yes, Mr. Kupinsky is available  
5 for cross examination.

6           **COMMISSIONER KIESLING:** Mr. Carver?

7           **COMMISSISONER GARCIA:** Mr. Carver, can I ask  
8 him a question before you get started, just for my own  
9 edification?

10           Mr. Kupinsky, could you tell me -- I read  
11 through your testimony, but I'd like you to tell me  
12 exactly what it is your company does; because when you  
13 read both testimonies, you get a different slant on  
14 what you were doing, and I understand that, but I'd  
15 like you to tell me what it is your company provides.

16           **WITNESS KUPINSKY:** Sure. We provide local  
17 phone service between Broward, Dade and Palm Beach  
18 Counties. A key part of our network is the call  
19 forwarding feature offered by BellSouth.

20           I'll just bring you through a typical call.  
21 We provide our Telenet customers with a --

22           **COMMISSIONER GARCIA:** Is that what you're  
23 advertising, though? In other words, is that the  
24 service you're advertising that you, Telenet, provide  
25 cheaper service between Dade, Broward and Palm Beach,

1 or are you offering your local -- you're offering  
2 service as a local exchange, and among the services is  
3 flat rate calls between --

4 WITNESS KUPINSKY: The only --

5 COMMISSIONER GARCIA: -- those three  
6 counties, or is that the only service --

7 WITNESS KUPINSKY: The only service we  
8 provide.

9 COMMISSIONER GARCIA: Okay.

10 WITNESS KUPINSKY: Would you like me to take  
11 you through a typical call so you can --

12 COMMISSIONER GARCIA: No. I think you did  
13 that in your testimony at one point, and that part was  
14 self-explanatory. I just wanted to make sure that was  
15 precisely what you did. Sorry, Mr. Carver.

16 CROSS EXAMINATION

17 BY MR. CARVER:

18 Q Good morning, Mr. Kupinsky.

19 A Good morning, Mr. Carver.

20 Q As you know, my name is Phil Carver, and I  
21 represent BellSouth, and I have a few questions for  
22 you about your testimony. Let me ask you, first of  
23 all, you buy business lines from BellSouth; is that  
24 correct?

25 A That's correct.



1 Q And you also purchase call forwarding from  
2 BellSouth; correct?

3 A Correct.

4 Q And you purchase both the business lines and  
5 the call forwarding from BellSouth's tariff; is that  
6 correct?

7 A Correct.

8 Q And basically you take the business lines  
9 and the call forwarding and you put them together to  
10 create the service that you sell to your customers; is  
11 that right?

12 A We use the business lines along with the  
13 call forwarding lines in conjunction our IVRs to  
14 provide the service.

15 Q And the service you provide allows your  
16 customers to call from one BellSouth local calling  
17 area to another BellSouth local calling area; correct?

18 A Correct.

19 Q And you charge your customers a flat rate of  
20 10 cents per call; is that right?

21 A That's correct.

22 Q Who provides dial tone to the customers that  
23 you serve?

24 A BellSouth.

25 Q And who provides access to directory

1 assistance to those customers?

2 A BellSouth.

3 Q And who provides access to 911 services?

4 A BellSouth.

5 Q Would you agree that basically your business  
6 is designed allow customers to make calls while  
7 avoiding toll charges that would normally apply to  
8 these calls?

9 A If they placed a call through BellSouth  
10 bypassing Telenet, they would pay the BellSouth tolls.

11 Q Is that a yes?

12 A Yes.

13 Q Thank you. Mr. Kupinsky, I'd like to ask  
14 you to refer to your Exhibit MAK-1. And I have some  
15 extra copies of that here if anyone needs one.

16 A Okay.

17 Q Mr. Kupinsky, who prepared this diagram?

18 A A consultant of Telenet's.

19 Q And what's the consultant's name?

20 A Jason Donahue.

21 Q Is the hand lettering on the diagram, is  
22 that yours?

23 A On the side it is, yes, I believe so.

24 Q And you're familiar with this exhibit, are  
25 you not?

1           A     Yes, I am.

2           Q     Does the exhibit accurately reflect  
3 Telenet's service area?

4           A     It does, except for the Belle Glade calling  
5 area is not part of our local calling area.

6           Q     So the Belle Glade calling area would not be  
7 part of it, but otherwise this is where you provide  
8 service?

9           A     Yes, this is Telenet's local calling area.

10          Q     And, as I understand it, what you allow is  
11 any customer in any of these identified calling areas  
12 to call numbers in any other calling area; is that  
13 correct?

14          A     Correct.

15          Q     And every call that Telenet carries crosses  
16 a BellSouth local exchange boundary, correct?

17          A     I wouldn't say every call, but the great  
18 majority, yes.

19          Q     Well, do you have customers who -- let's  
20 say, for example, would call you and say, I'm in  
21 Hollywood Beach and I want to call someone else in  
22 Hollywood Beach and pay you a dime to make that call?

23          A     Sometimes they do do that.

24          Q     Is that what your service --

25          A     Or --

1 Q -- is designed --

2 A Or for example calling Miami to north Dade,  
3 they may place through our system, which is a local  
4 call still to them under BellSouth.

5 Q Okay. Now, many, if not all, of the calls  
6 that customers would place through your service are  
7 calls that, if made through BellSouth, would be either  
8 an ECS call or a toll call, correct?

9 A If made though BellSouth, correct.

10 Q And if these calls were made through an IXC,  
11 say, for example, AT&T or MCI, then they would be toll  
12 calls, would they not?

13 A I don't know.

14 Q So, for example, if a customer in Homestead,  
15 which is the southernmost part of Dade County, called  
16 someone in the northern part of Palm Beach County and  
17 used AT&T as their carrier, you don't know whether or  
18 not that would be a long distance call?

19 A That would be a long distance call.

20 Q And that would be the case regardless of  
21 whether their carrier was AT&T or MCI, Sprint, LDDS or  
22 whoever else, right?

23 A Except if they used Telenet, as far as I  
24 know.

25 Q Now, if a customer of BellSouth's local

1 exchange service used, for example, AT&T to make an  
2 intraLATA toll call, AT&T would pay access charges to  
3 BellSouth; isn't that correct?

4 A I believe so.

5 Q Now, Telenet, however, does not pay any  
6 access charges to BellSouth, does it?

7 A No, it doesn't.

8 Q And you don't think that Telenet should have  
9 to pay access charges, do you?

10 A No, I don't.

11 Q And that's the case even though every IXC  
12 that carries traffic along these same routes pays  
13 access charges; isn't that true?

14 MR. BONNER: Objection; calls for  
15 speculation. There's been no predicate laid that this  
16 witness knows what other IXCs pay.

17 MR. CARVER: Well, I think I asked him about  
18 three questions ago whether other carries paid access  
19 charges, and he said they did.

20 MR. BONNER: I believe it was just AT&T, as  
21 I recall.

22 COMMISSIONER KIESLING: Well, I only  
23 remember AT&T, also, so if you would like to include  
24 the others, that's fine; otherwise, limit it to AT&T.

25 Q (By Mr. Carver) Do you know if

1 interexchange carriers other than AT&T pay access  
2 charges when their customers place calls from, for  
3 example, Dade County to Palm Beach County?

4 A Those IXCs that have interconnection  
5 arrangements with BellSouth I believe do pay access  
6 charges.

7 Q So it's your understanding that if they  
8 don't have an interconnection agreement, that they  
9 don't pay access charges?

10 A That's my understanding.

11 Q Okay. Would it be fair to say that Telenet  
12 is an intraLATA toll provider?

13 A No.

14 Q It would not be?

15 A No.

16 Q Do you recall giving your deposition last  
17 week?

18 A I remember giving my deposition.

19 Q And I'm going to read to you what purports  
20 to be a question and your answer on Page 34 of that  
21 deposition, being on Line 16 and continuing through  
22 Line 21. The question was by Mr. Pellegrini, and I  
23 think your attorney objected to the form of the  
24 question, so I'll read the objection also.

25 COMMISISONER GARCIA: What page are you on,

1 Mr. Carver?

2 MR. CARVER: I'm sorry. Page 34 of the  
3 deposition.

4 WITNESS KUPINSKY: I don't have a copy in  
5 front of me of the deposition.

6 Q (By Mr. Carver) Well, let me do this. If  
7 you don't mind, I'll read you the question and answer,  
8 and then if you're not sure if that's your testimony,  
9 I've got a complete copy of the depo and I'll bring it  
10 over to you.

11 MR. PELLEGRINI: Excuse me, Mr. Carver.  
12 That's part of the Staff's exhibit. You do have it.

13 WITNESS KUPINSKY: No, I don't.

14 MR. BONNER: We have a copy here.

15 WITNESS KUPINSKY: Thank you.

16 Q (By Mr. Carver) And this is a question by  
17 Mr. Pellegrini. Question: "Would it be fair, then,  
18 to say that Telenet is an intraLATA toll provider?"  
19 And at this point Mr. Bonner objects to the form of  
20 the question, and then you answer. "An intraLATA toll  
21 provider, sure. We provide calls within the LATA."

22 Is that the testimony that you gave last  
23 week?

24 A Yes. If it says it here, I believe it to be  
25 true. Yeah, I probably said this.

1           Q     Now, even though you are an intraLATA toll  
2 provider, you don't consider Telenet to be functioning  
3 as an interexchange carrier, do you?

4           A     No.

5           Q     Did you ever consider trying to obtain an  
6 interexchange certificate?

7           A     When we applied for our ALEC, we did ask  
8 Commission Staff what they felt appropriate, what  
9 license or certification we required, and at that time  
10 they told us that an ALEC would be the appropriate  
11 license, not an IXC.

12          Q     So the Staff told that you did not need to  
13 be an IXC to carry traffic from Dade County to Palm  
14 Beach County?

15          A     According to my attorney at the time, that's  
16 what they said, yes.

17          Q     So you personally are not aware of the  
18 conversation?

19          A     I was not involved in the conversation. I  
20 was made aware of it through a letter where he had  
21 told me what went on during the conversation.

22          Q     So your attorney then told you that Staff  
23 said that you didn't need to be an IXC, but you  
24 personally don't know?

25          A     Again, I was not involved in the



1 conversation. I wasn't on the phone with the  
2 Commission.

3 Q Do you know if -- well, whoever talked to  
4 Staff, do you know if they informed Staff that Telenet  
5 would be carrying traffic all the way from Homestead  
6 in the south part of Dade County to Jupiter in the  
7 north part of Palm Beach County, and then, of course,  
8 you would cross exchange boundaries in the process?

9 MR. BONNER: Objection. The witness has  
10 already testified he didn't participate in that  
11 conversation, so he could not possibly answer that  
12 question based on his own personal knowledge.

13 MR. CARVER: Well, the problem is that the  
14 witness is giving hearsay testimony and talking about  
15 what Staff told them. So I guess I'm doing a cross  
16 and asking him for further hearsay to clarify the  
17 hearsay statement he's already made.

18 And I think it would be appropriate to do  
19 one of two things. One would be to allow me to ask  
20 him this question or, alternatively, to strike the  
21 prior hearsay as to what Staff said to someone else,  
22 and I think we can go either way; but it seems to me  
23 like if he's going to make statements on the basis of  
24 hearsay, then I should be able to follow up.

25 COMMISSIONER KIESLING: Which way do you

1 want it, Mr. Bonner? I can strike it, or he can cross  
2 on it.

3 MR. BONNER: I prefer the latter.

4 COMMISSIONER KIESLING: All right. You can  
5 cross on hearsay on hearsay for the value that it may  
6 have to this record.

7 Q (By Mr. Carver) Mr. Kupinsky, let me ask  
8 you, if you know, if the Staff person who was  
9 contacted by some representative of Telenet, do you  
10 know if that Staff person was informed that you  
11 planned to carry traffic from south Dade County to  
12 north Palm Beach County, and that in the process you  
13 would be crossing exchange boundaries?

14 A At that time we were only providing --  
15 planned on providing service up to Fort Lauderdale  
16 from Dade, so only Dade and part of Broward County.  
17 But, yeah, he was -- he told him exactly what we were  
18 doing and that we would be crossing the exchange  
19 boundaries.

20 Q Now, you may have answered this question  
21 already, but let me ask you, do you know of any other  
22 carrier in the state of Florida who provides the type  
23 of service that Telenet is providing?

24 A In the state of Florida I'm not aware of any  
25 others.

1           Q     Now, is it your position that Telenet is  
2 offering local service?

3           A     Yes.

4           Q     And if I understand your position correctly,  
5 you believe that what you are offering is local  
6 service because Telenet chooses to offer local service  
7 throughout this entire three-county area. In other  
8 words, it's your prerogative to define it as local,  
9 and that makes it local. Is that fair?

10          A     It's fair to say that, yes, we designated  
11 this as our local calling area, and all calls placed  
12 within this area are a local Telenet call.

13          Q     And you believe that's the case even though  
14 you're using BellSouth's services to create your  
15 service and even though traffic carried by BellSouth  
16 throughout the same area would be long distance  
17 services; is that correct?

18          A     Could you repeat the question, please?

19          Q     You believe that if you define this as local  
20 service, it's local service, right?

21          A     Right.

22          Q     And you believe that's the case even though  
23 you're reselling BellSouth services, one; and, two, if  
24 BellSouth services were purchased by customers  
25 directly, then these would be toll calls. So in other

1 words, you believe it's still local notwithstanding  
2 these two facts?

3 A Yes.

4 Q Let me ask you, let's assume that Telenet  
5 decided to expand, and you decided that you wanted to  
6 buy business lines and call forwarding lines from  
7 every LEC in the state of Florida, so that the entire  
8 state would become one big Telenet calling area. In  
9 your view, would this statewide service offered by  
10 Telenet be local?

11 MR. BONNER: I'm going to object to this  
12 question. There's been no indication whatsoever in  
13 this record that Telenet has any plans to offer  
14 anything other than intraLATA southeast Florida LATA  
15 service. So this hypothetical really goes far beyond  
16 the boundaries of the issues in this proceeding.

17 COMMISSIONER KIESLING: Overruled.

18 Q (By Mr. Carver) Would you like to hear the  
19 question again, Mr. Kupinsky?

20 A Please.

21 Q Let's assume that Telenet decided to expand  
22 its service area, that instead of just offering  
23 service in the three-county area in south Florida, you  
24 decided that you wanted to offer service statewide; so  
25 you go out hypothetically and buy business lines and

1 call forwarding service from every local exchange  
2 company in Florida and bridge them together so that  
3 the entire state becomes one Telenet calling area.

4 In your view, would this statewide offering  
5 by Telenet be local service?

6 A If we designated that entire area to be our  
7 local calling area, then it would be providing local  
8 service.

9 Q And in your view, it would be permissible  
10 for Telenet to do this?

11 MR. BONNER: Objection; calls for a legal  
12 opinion from the witness.

13 COMMISSIONER KIESLING: I think the witness  
14 can answer from his lay perspective whether he thinks  
15 that that would be permissible.

16 WITNESS KUPINSKY: I think it would be  
17 permissible for me to designate that as my local  
18 calling area as an ALEC.

19 Q (By Mr. Carver) And you still wouldn't be  
20 an interexchange carrier, right?

21 A No.

22 Q What if Telenet wanted to go even further?  
23 Could you buy services from BellSouth in multiple  
24 states and make, say, Florida, Georgia and the  
25 Carolinas one big local calling area?

1           A     No.

2           Q     You couldn't? Why is that?

3           A     My ALEC certificate is only good in the  
4 state of Florida.

5           Q     So you believe that your ability to  
6 reconfigure services, local services, is bounded only  
7 by the limits of your ALEC certificate; is that  
8 correct?

9           A     Correct.

10          Q     Have you considered any of the other ways  
11 that Telenet could carry traffic over these routes  
12 without using call forwarding?

13          A     Yes.

14          Q     What have you considered?

15          A     We could purchase intraLATA calls, toll  
16 calls, from BellSouth at a discount rate. We could  
17 build our own infrastructure, pull our own copper and  
18 provide service that way. But this was part of our  
19 business plan. This is the way we chose to operate in  
20 this area.

21          Q     Did you check to see if it was financially  
22 feasible for you to buy BellSouth toll service and  
23 resell it?

24          A     We looked into it and we thought that by  
25 doing this, as I mentioned in my opening statement,

1 that then we wouldn't be providing real savings to the  
2 customer. If we're purchasing them at a, say, a 20%  
3 discount, if we sold them then at our cost, our  
4 customer's phone bill may be cut from \$100 to \$95.00  
5 and -- or we may have to entice them into coming with  
6 our service by offering them frequent flier miles or  
7 some other incentive, because our cost would basically  
8 be -- the prices would basically be the same as  
9 BellSouth's.

10 Q And you priced that out at discounted toll  
11 rates?

12 A At discounted toll rates.

13 Q Did you look at the possibility of reselling  
14 BellSouth's WATS service?

15 A No.

16 Q Did you look -- well, I guess my next  
17 question probably is answered by that one. I assume  
18 you didn't look at selling WATS Saver service from  
19 BellSouth, did you?

20 A No.

21 Q Did you look at the possibility about  
22 purchasing ECS service from BellSouth and reselling  
23 that?

24 A I think that I said that we would -- we  
25 could have purchased at wholesale rates.

1 Q So your prior answer covered ECS also?

2 A Yeah.

3 Q Did you consider the possibility of buying  
4 service from other interexchange carriers and  
5 reselling that?

6 A Yes; same services that we would have --  
7 from BellSouth.

8 Q And you could provide service to your  
9 customers in any of these ways, couldn't you?

10 A We could.

11 Q Let me ask you a little bit about the  
12 background of the case, Mr. Kupinsky. Of the lines  
13 that are currently being used by Telenet -- well, let  
14 me ask it this way: When did you first begin to order  
15 lines that are now being used by Telenet?

16 A In November of 1995.

17 Q And these lines were ordered in your name  
18 rather than in the name of Telenet, correct?

19 A I think in November of '95 they were  
20 actually in my father's name. I ordered the lines,  
21 but they were in my father's name.

22 Q And did there come a time when you began to  
23 order lines in your name?

24 A Yes.

25 Q And you also ordered lines in the name of



1 Granada Investments, didn't you?

2       **A**     I believe it was Park Granada Investments.  
3 We ordered one -- at one occasion.

4       **Q**     Park Granada Investments? And you ordered  
5 these lines by calling up the business office and  
6 speaking to a service representative, correct?

7       **A**     Correct.

8       **Q**     Why did you order the service in names other  
9 than the name of Telenet?

10       **A**     When we initially ordered lines, Telenet  
11 wasn't formed as a corporation. My father, being the  
12 owner of the company, I thought it appropriate to be  
13 in his name. And, also, they went into his name -- he  
14 had an established credit with Pack Bell and  
15 BellSouth, had a reciprocating agreement with  
16 BellSouth where they didn't require a deposit based on  
17 his credit with Pacific Bell.

18       **Q**     So you basically did it for credit reasons?

19       **A**     Yes.

20       **Q**     Now, these various accounts were transferred  
21 to the account of Telenet at your request in October  
22 of 1996; isn't that correct?

23       **A**     We requested the transfer in September of  
24 1996. The documents may not have been formalized  
25 until October.

1           Q     Well -- and I can show you this, if it would  
2 help refresh your recollection. But I have a letter  
3 from Kim Mockford (phonetic) of our customer service  
4 center to Ruth Jordan at Telenet, and it reflects that  
5 the transfer occurred on October 14th, '96.

6                     If you were to look at that, would that help  
7 refresh your recollection?

8           MR. BONNER: Excuse me. Has that document  
9 been produced in this proceeding before, Mr. Carver?  
10 I don't believe you've listed any exhibits or produced  
11 that document to Telenet in this proceeding. I would  
12 object to you using it in this hearing.

13           MR. CARVER: This is cross examination, and  
14 I don't believe that there is a requirement in the  
15 prehearing order that exhibits used in cross exam be  
16 prefiled or preidentified.

17           COMMISSIONER KIESLING: That is correct; and  
18 I'll overrule your objection.

19           WITNESS KUPINSKY: On September 17th, the  
20 day after our meeting with Doc Moore, my father and  
21 myself went to the BellSouth offices, signed the  
22 transfer agreements, made copies and then returned the  
23 originals to Doc Moore. I think what happened, we  
24 didn't fill in or type in our name, so he had to do  
25 that. So I don't think the actual date is still

1 October, but we did at the September 16th meeting  
2 discuss the transfer, and then on September 17th did,  
3 in fact, sign the transfer contracts.

4 Q (By Mr. Carver) So do you know if the  
5 transfer occurred on October 14th, '96?

6 A If that's the date. I believe that that may  
7 be the date on that. I was on my honeymoon, actually,  
8 on that date.

9 Q Okay. When was the first time that services  
10 were ordered from BellSouth in the name of Telenet?

11 A It would have to be after October, according  
12 to that document you have.

13 Q October of '96?

14 A I don't know the specific date.

15 Q But you said October, so --

16 A I would just say based on the fact that  
17 that's when all our accounts were transferred into  
18 Telenet's name, and that's -- after that date would be  
19 when --

20 Q And that date would be October of '96,  
21 correct? All I'm trying to get to is, you said  
22 October, and I want to make sure you're referring to  
23 October of --

24 A 1996, correct.

25 Q Thank you. When did Telenet first begin to

1 serve customers?

2 A In May of 1996.

3 Q But you began to order the lines that  
4 Telenet was using, I believe you said in November of  
5 '95; is that correct?

6 A Correct, to -- we weren't providing service,  
7 we were testing our system to make sure it was capable  
8 of doing what we hoped it would do.

9 Q So during the six-month period, you weren't  
10 serving any customers at all, and you were only using  
11 these lines for testing?

12 A Correct.

13 Q When was your certificate to be an ALEC  
14 approved?

15 A In April of 1996.

16 Q And you are presently serving customers,  
17 aren't you?

18 A Yes.

19 Q So Telenet has been serving customers  
20 continuously for nine months, is that correct? Or  
21 thereabouts?

22 A Not continuously. We had switched our  
23 systems in for a time that we weren't providing  
24 service.

25 Q But at least most of the time during that

1 nine-month period you have been providing service to  
2 customers?

3 MR. BONNER: Objection. It's not clear to  
4 me as to what nine-month period is being referred to.

5 MR. CARVER: I can clarify that. I'm  
6 talking about the nine-month period beginning when  
7 they started to serve customers in May of '96 and now.  
8 Basically May through February, it's nine months  
9 through my count.

10 Q (By Mr. Carver) And my question is have  
11 you been serving customers at least most of that  
12 nine-month period?

13 A Yes.

14 Q And during that time Telenet and BellSouth  
15 have not had a resale agreement, have they?

16 A No.

17 Q And during that time there has not been a  
18 formal interconnection agreement, has there?

19 A No.

20 Q Instead, you've been buying services from  
21 BellSouth's tariff; is that correct?

22 A Correct.

23 Q And at some point you decided not to pursue  
24 a resale agreement with BellSouth because you were  
25 satisfied to pay the tariff price, isn't that correct?

1           **A**     BellSouth had offered the call forwarding  
2 feature at a price I was willing to pay, so I paid it.

3           **Q**     And that was the only reason why you did not  
4 pursue the resale agreement, correct?

5           **A**     Correct.

6           **Q**     And you didn't tell anyone at BellSouth that  
7 you were using these lines to offer service to  
8 customers to avoid BellSouth toll charges until August  
9 1996, did you?

10          **A**     No.

11          **Q**     No, you didn't?

12          **A**     No, I did not tell BellSouth  
13 representatives --

14                   **COMMISSIONER GARCIA:** Mr. Carver, could I  
15 interrupt for a second?

16                   Could you tell me the sequence of events  
17 just so that I have a better understanding of it?  
18 Were you just purchasing these specific features in  
19 these different areas, or was this a full package that  
20 you showed up and bought from BellSouth? Just so that  
21 I have a better understanding of how that  
22 transaction --

23                   **WITNESS KUPINSKY:** We purchased the call  
24 forwarding feature as well as standard business lines  
25 with other features, such as user transfer and hunting

1 groups, at our various locations. There was times  
2 when, in discussion during the Order, we did mention  
3 what the lines were going to be used for as far as  
4 doing multiple forwards, that we needed a multipath  
5 feature, but I did not tell them that our customers  
6 would be using them to avoid BellSouth toll charges.

7 MR. CARVER: That's all I have. Thank you,  
8 Mr. Kupinsky.

9 WITNESS KUPINSKY: You're welcome.

10 COMMISSIONER KIESLING: Staff.

11 CROSS EXAMINATION

12 BY MR. PELLEGRINI:

13 Q Good morning, Mr. Kupinsky.

14 A Good morning, Mr. Pellegrini.

15 Q Let me begin by asking you this. Are you  
16 aware of the various interconnection resale agreements  
17 that BellSouth has with other carriers?

18 A I'm aware that they have them. I don't know  
19 the details of them.

20 Q Then, in your opinion, what would constitute  
21 a negotiation, a resale or interconnection  
22 negotiation, under the Federal Act?

23 A What would constitute an interconnection  
24 negotiation?

25 Q Yes, under the Federal Act.

1           **MR. BONNER:** Again, I think this calls for a  
2 legal opinion from a lay witness, and I would object  
3 for the record.

4           **COMMISSIONER KIESLING:** It's noted, but it's  
5 overruled.

6           **WITNESS KUPINSKY:** I don't know what the  
7 Federal Act requires as far as interconnection  
8 agreements.

9           **Q**        **(By Mr. Pellegrini)** Under Florida Statute,  
10 what would your understanding be of what would  
11 constitute a negotiation for resale or  
12 interconnection?

13           **MR. BONNER:** Objection. This also calls for  
14 a legal opinion from a lay witness.

15           **COMMISSIONER GARCIA:** Mr. Pellegrini, for my  
16 own understanding, could you tell me where you are  
17 heading with the questioning on this?

18           **MR. PELLEGRINI:** Well, these questions,  
19 essentially they are going to the establishment of  
20 whether there was a negotiation for interconnection or  
21 resale or not.

22           **COMMISSIONER KIESLING:** And I'm overruling  
23 your objection. He asked him what his understanding  
24 is, and I don't think he's asking for a legal  
25 conclusion.



1                   WITNESS KUPINSKY: I'm not familiar enough  
2 with the Florida Statute to give my understanding of  
3 what would constitute a resale agreement or  
4 interconnection agreement.

5           Q           (By Mr. Pellegrini) Then if I were to ask  
6 you whether -- if Telenet opened a negotiation with  
7 BellSouth for resale or interconnection, I suspect  
8 your answer would be that you don't know?

9           A           According to the statutes, I don't know if  
10 it would constitute what they define as a resale  
11 agreement.

12          Q           Without that qualification of "according to  
13 the statutes," do you believe that Telenet opened a  
14 negotiation for resale or interconnection with  
15 BellSouth?

16          A           I believe after they requested we do so, we  
17 did try to pursue that.

18          Q           When you say "after they requested that you  
19 do so," I believe that occurred in October of 1996; is  
20 that correct?

21          A           I think it was actually September after our  
22 meeting with Doc Moore. He had sent us a letter  
23 stating that we should pursue a resale agreement, and  
24 he gave us the name of someone to contact.

25          Q           And that would have been a resale agreement

1 for the purchase of call forwarding services, correct?

2 A Correct.

3 Q Turn to Page 3, Mr. Kupinsky, of your direct  
4 testimony.

5 A Okay.

6 Q Are you there?

7 A Yes.

8 Q You state there that Telenet uses a computer  
9 voice-mail network which provides all customers with  
10 access codes enabling them to use what I usually  
11 consider toll call lines for a flat fee within the  
12 existing service area, correct?

13 A Correct.

14 Q In your deposition, if you recall, you  
15 stated that in order for a customer to avoid paying  
16 toll charges, the customer first dials a local number  
17 to get into Telenet's computer where they enter their  
18 access code and the telephone number they wish to  
19 call. And at this point the computer looks in its  
20 routing table; calls the forwarding line, which  
21 eventually takes it to the end computer, which then  
22 places the call out, which is a local call. Does that  
23 accurately describe the service that Telenet provides?

24 A Yes.

25 Q Then is it fair to say that Telenet is

1 routing the originating call from one local flat rate  
2 area to another local flat rate area until it reaches  
3 a point where it can deliver the call to its  
4 destination and avoid incurring toll charges or ECS  
5 charges?

6       **A**     BellSouth's flat rate areas, yes.

7               **COMMISSIONER KIESLING:** Our rules require  
8 that you answer yes or no, and then you can give your  
9 explanation. And the court reporter cannot record  
10 when you are nodding your head yes. So if you would  
11 verbally answer the yes or no, it would be helpful.

12       **A**     Yes.

13       **Q**     (By Mr. Pellegrini) Would you consider  
14 that in providing this service that Telenet is  
15 bypassing toll charges?

16       **A**     Telenet is not bypassing toll -- no, Telenet  
17 is not bypassing toll charges.

18       **Q**     Let me ask the question a bit differently.  
19 Would you consider that by providing this service  
20 Telenet is enabling its customers to bypass toll  
21 charges?

22       **A**     No. We are allowing them to place a local  
23 call through the Telenet network as opposed through  
24 BellSouth where, if it was placed through BellSouth,  
25 they would incur toll charges.

1           Q     I want to ask you a few questions with  
2 reference to MAK-13, which was Deposition Exhibit  
3 No. 1, which you will find at the end of Volume 1 of  
4 your deposition transcript.

5           A     MAK-13.

6           COMMISSIONER GARCIA: Give me a page,  
7 Charlie?

8           MR. PELLEGRINI: I'm sorry, I should have  
9 begun this examination by asking the panel to  
10 recognize a composite exhibit consisting of the  
11 February 6, 1997 deposition transcript of  
12 Mr. Kupinsky, Deposition Exhibits 1 through 2, and  
13 Late-Filed Deposition Exhibit 3. There is no  
14 Late-Filed Deposition Exhibit 4.

15           COMMISSIONER KIESLING: All right. The  
16 February 6, 1997 deposition transcript, together with  
17 Deposition Exhibits 1 and 2 and Late-Filed Deposition  
18 Exhibits 3 and -- there is no 4?

19           MR. PELLEGRINI: There is no 4.

20           COMMISSIONER KIESLING: -- 3, will be marked  
21 as Composite Exhibit 3.

22           (Exhibit 3 marked for identification.)

23           COMMISSIONER GARCIA: And you are now on,  
24 what? Page 118?

25           MR. PELLEGRINI: Page 118, Commissioner,

1 yes.

2 Q (By Mr. Pellegrini) Are you there,  
3 Mr. Kupinsky?

4 A Yes. This is the diagram I drew at the  
5 deposition.

6 Q That is correct.

7 A Correct.

8 Q I don't want to take you through that  
9 diagram necessarily, but with reference to that  
10 diagram, would you tell me what Telenet's customer  
11 pays Telenet for making a call from Miami to Pompano?

12 A 10 cents.

13 Q And do you know what Telenet's customer  
14 would pay BellSouth for making that same call on  
15 BellSouth's network?

16 A I believe it would be 10 cents for the first  
17 minute and 6 cents each additional minute.

18 Q That would be the ECS rate, correct?

19 A That would be the rate they'd pay with  
20 BellSouth.

21 Q And what would Telenet pay BellSouth for  
22 this call?

23 A For the call itself, they wouldn't pay  
24 anything per call. We pay monthly fees for the lines  
25 and the features we have on the lines.

1           **COMMISSIONER GARCIA:** While Charlie is  
2 looking for the question, explain the chart for me.  
3 Is it a repetition of some of the other stuff I've  
4 seen, or could you tell me what the abbreviations are?

5           **WITNESS KUPINSKY:** I was diagraming a  
6 typical call where I would begin at the bottom of the  
7 page, say a customer is in Miami.

8           **COMMISSIONER GARCIA:** Okay.

9           **WITNESS KUPINSKY:** A customer would call a  
10 local number in Miami which would get them into our  
11 IVR. In Miami they would enter their access code,  
12 they would then enter the phone number they wish to  
13 reach, which in this example is in Pompano. IVR-5  
14 would place the customer on hold, look up in the  
15 routing table which appropriate forwarding line it  
16 needed to dial to get to the Pompano IVR. It would  
17 call that number, which would be in North Dade. That  
18 North Dade number would call a number in Hollywood,  
19 that Hollywood number would call a number in Fort  
20 Lauderdale. Then Fort Lauderdale would call into  
21 IVR-3, connecting the two IVRs, and then placing the  
22 call out.

23           **COMMISSIONER GARCIA:** And how long does that  
24 take?

25           **WITNESS KUPINSKY:** It takes about 10 to 15

1 seconds.

2 COMMISSIONER GARCIA: Sorry, Charlie.

3 Q (By Mr. Pellegrini) Mr. Kupinsky, I'm  
4 going to refer you to Florida Statute 364.161. Do you  
5 have the statutes with you?

6 A No. My attorney probably does.

7 Q I have a copy of the statute volume here.

8 A (Witness tendered statute.) Thank you.

9 Q I'm referring your attention to 364.161. I  
10 believe you are familiar with this statute, are you  
11 not?

12 A I'm familiar with it.

13 Q Would you agree as a layman, that a LEC is  
14 required by statute, by virtue of this statute, to  
15 resell all of its services or facilities?

16 A Yes.

17 Q Again, based on this particular statute,  
18 would you believe it to be reasonable for BellSouth to  
19 resell its call forwarding service to Telenet either  
20 within an ECS calling area or outside of an ECS  
21 calling area for the purpose of avoiding toll charges?

22 A I think that it's reasonable based on the  
23 fact that the call forwarding we feature, we request,  
24 is an essential element to our network. And based on  
25 this statute as the LEC, they are obligated to

1 unbundle and sell to the ALECs whatever features they  
2 require in order to put their networks together.

3 Q All right. Then let me refer you to  
4 364.16(3)(A).

5 A (3)(A).

6 Q Are you with me?

7 A Yes.

8 Q Okay. That provision states that no local  
9 exchange telecommunications company or ALEC shall  
10 knowingly deliver traffic for which terminating access  
11 service charges would otherwise apply through a local  
12 interconnection arrangement without paying the  
13 appropriate charges for such terminating access  
14 service; is that correct?

15 A Correct.

16 Q Again, as a layman, do you believe that the  
17 service which Telenet is providing is in violation of  
18 this provision?

19 A No.

20 Q Can you explain?

21 A The call never leaves the BellSouth network.  
22 It originates and terminates on BellSouth lines. The  
23 connection is never lost to reconnect or interconnect.

24 Q Then I believe what you've said is that it's  
25 BellSouth that terminates the call and not Telenet?



1           **A**     Correct. The call never leaves the  
2 BellSouth lines.

3           **Q**     Would that be the case with any ALEC and  
4 having an interconnection agreement?

5           **A**     I don't know.

6           **Q**     With BellSouth?

7           **A**     I don't know. I don't think so, though. I  
8 think that most other ALECs, the call is placed on  
9 their network and then connects into the BellSouth  
10 network or the other way around.

11          **Q**     Wouldn't you agree, by virtue of the  
12 purchase of the B-1 lines, that Telenet has an  
13 interconnection arrangement with BellSouth?

14                   **MR. BONNER:** Objection. It calls for a  
15 legal opinion from the witness as to what constitutes  
16 a local interconnection arrangement under the  
17 statutory language.

18                   **COMMISSIONER GARCIA:** Let me ask you the  
19 question so I can clarify. If you were a bus company  
20 and you had bought this service, I don't think you  
21 would have an interconnection agreement, would you?

22                   **WITNESS KUPINSKY:** No.

23                   **COMMISSIONER GARCIA:** I'm sorry, Charlie.

24           **Q**     **(By Mr. Pellegrini)** But Telenet as a  
25 certificated ALEC, by virtue of the purchase of B-1

1 lines from BellSouth, in your opinion as a layman,  
2 does that not constitute an interconnection  
3 arrangement?

4       **A**     Again, I'm not familiar enough with the  
5 statute to say what the statute would define as an  
6 interconnection arrangement. As I understand it, I  
7 don't think we have an arrangement with BellSouth, an  
8 interconnection arrangement.

9       **Q**     Let me try the question a little bit  
10 differently. Would you agree that Telenet has  
11 interconnected in some way its network with the  
12 network of BellSouth in order to provide the service  
13 to Telenet's customers?

14       **A**     Yes. We require the call forwarding feature  
15 as well as the lines that we purchase to provide the  
16 service that we provide.

17       **Q**     So at least to that extent, there is an  
18 interconnection of the two systems; is that correct?

19       **A**     Yes.

20       **Q**     You've said that BellSouth and not Telenet  
21 terminates these calls. Do you consider termination  
22 of these calls to be an essential requirement of  
23 interconnection?

24       **A**     Not terminating. I feel the fact that the  
25 call never leaves the BellSouth network is the fact

1 why we don't have to pay the access charges. With the  
2 understanding that they originate and terminate,  
3 that's how it was -- exemplifying the fact that it  
4 doesn't ever leave their network --

5 COMMISSIONER KIESLING: Let me --

6 A -- or their lines.

7 COMMISSIONER KIESLING: I'm sorry, I didn't  
8 mean to interrupt. Let me ask a question just so I  
9 understand. Telenet owns the IVRs?

10 WITNESS KUPINSKY: Correct.

11 COMMISSIONER KIESLING: And that that's the  
12 only component of your network that you own?

13 WITNESS KUPINSKY: Correct.

14 COMMISSIONER KIESLING: And you don't  
15 consider that when the call goes from BellSouth lines  
16 into your IVR and then back out that that is a break  
17 in BellSouth's service?

18 WITNESS KUPINSKY: No, because when it's in  
19 the IVR, it's still on the BellSouth line. We are not  
20 putting it through one of our lines.

21 COMMISSIONER KIESLING: But you own the  
22 switch?

23 WITNESS KUPINSKY: Right, we own the IVR.

24 COMMISSIONER KIESLING: Okay. Thank you.

25 COMMISSIONER GARCIA: I would assume you are

1 making the distinction that if it were a switch, then  
2 it would be your line. Because I see how you  
3 distinguished when she said "switch," you said "IVR."  
4 Is that a distinction you are trying to make or no?

5 WITNESS KUPINSKY: No.

6 COMMISSIONER GARCIA: Okay.

7 Q (By Mr. Pellegrini) Now, Mr. Kupinsky,  
8 would you turn please to your deposition testimony,  
9 Page 64.

10 A Sure. Okay.

11 Q Well, actually, turn to 63 with the  
12 question, "So is it your understanding that only IXCs  
13 must pay terminating access charges?"

14 Your answer there is "Only IXCs."

15 And then on Page 64 you say, "When they are  
16 terminating a call, that would be considered an  
17 interexchange connection," correct?

18 A That's what I said.

19 Q Does Telenet currently terminate calls?

20 A Telenet routes the call, the call is  
21 terminated by BellSouth.

22 Q At the bottom of that page, you go on to say  
23 that if an ALEC was terminating a call in that same  
24 manner, yes, they would, according to this statute, be  
25 subject to the same terminating access fees; is that

1 correct?

2           **A**     That's what I said, yes.

3           **COMMISSIONER GARCIA:** I'm sorry, explain  
4 that to me a little bit more. I don't get your answer  
5 there. In other words, if you were an IXC -- if you  
6 were doing the same thing you're doing, if an IXC were  
7 doing what you do, then they would be liable to access  
8 charges?

9           **WITNESS KUPINSKY:** No. I was referring to  
10 the statute when I was saying an IXC.

11           **COMMISSIONER GARCIA:** Right.

12           **WITNESS KUPINSKY:** Not specifically to what  
13 we were doing, just according to the statute.

14           **COMMISSIONER GARCIA:** Okay. And the  
15 distinction you are making between an IXC and yourself  
16 at that point is?

17           **WITNESS KUPINSKY:** At that point I was  
18 mistaken. I hadn't read the statute before they had  
19 questioned me on it, that only IXCs were subject to  
20 the terminating access fees.

21           **COMMISSIONER GARCIA:** So you are not  
22 agreeing with what you said here?

23           **WITNESS KUPINSKY:** I'm agreeing that -- he  
24 had me read the statute. In there it says both IXCs  
25 and ALECs. So then he was getting to the fact, okay,

1 I'm an ALEC, and if -- then I acknowledged yes, the  
2 statute says that ALECs, if they are terminating a  
3 call, so -- must pay the access fees.

4 Q (By Mr. Pellegrini) Well, what I'm trying  
5 to get to, Mr. Kupinsky, is what you mean -- or what  
6 you meant there in your deposition testimony by  
7 terminating a call in the same manner as an IXC.

8 A Could you say that again, please?

9 Q At Page 64 at the bottom where you say, "If  
10 an ALEC were terminating a call in that same manner,"  
11 what did you mean by "in that same manner"?

12 A I think I was referring to the statute, the  
13 364.16(3)(A).

14 Q Can you be more specific? What do you mean  
15 by reference to that?

16 A It says -- the question on Line 6, "Says  
17 that no local exchange or telecommunications company  
18 or alternative local exchange telecommunications  
19 company shall knowingly deliver traffic?"

20 "Correct."

21 COMMISSIONER KIESLING: When you are  
22 reading, could you go a little slower so the court  
23 reporter can get it? And talk more into the mike.

24 WITNESS KUPINSKY: Yeah, sorry.

25 COMMISSIONER KIESLING: I didn't follow most

1 of that, but I'm sure she did.

2           **WITNESS KUPINSKY:** I could repeat it, if  
3 you'd like.

4           **COMMISSIONER KIESLING:** No, I think the  
5 court reporter got it.

6           **WITNESS KUPINSKY:** And also referring to the  
7 question starting at Line 17, "You responded to my  
8 question a moment ago which was is it your  
9 understanding that only IXCs must pay terminating  
10 access charges and your answer, I believe, was yes."

11           So then I was referring to that yes. If an  
12 ALEC were terminating the calls, they would be subject  
13 to the access fees the same as an IXC is. That's what  
14 I believe I was referring to in my answer beginning on  
15 Line 23.

16           **Q**       **(By Mr. Pellegrini)** The point, I think, is  
17 this, Mr. Kupinsky. The statute, I think you would  
18 agree, does not require that a carrier terminate calls  
19 in order to be liable for access charges. Would you  
20 agree with that?

21           **MR. BONNER:** Objection, the statute speaks  
22 for itself.

23           **COMMISSIONER KIESLING:** I'd agree with that,  
24 too.

25           You can ask him if that's his understanding,

1 but if you are asking him if those words are in the  
2 statute, then the statute speaks for itself.

3 WITNESS KUPINSKY: I agree with that.

4 COMMISSIONER KIESLING: Well, I appreciate  
5 that.

6 Q (By Mr. Pellegrini) I'll put the question  
7 this way. Do you understand that in order to incur a  
8 liability for access charges, a carrier must terminate  
9 a call?

10 A No, that's not what the statute says.

11 Q Let's leave that for a moment, Mr. Kupinsky.  
12 Move, if you would, to Page 73 of your deposition  
13 transcript.

14 A Okay.

15 Q Near the bottom of that page, your response  
16 to the final question, what you state there is that if  
17 you had your own infrastructure and you did not have  
18 BellSouth at all and calls were going across  
19 BellSouth's exchanges, then you would not have to pay  
20 interconnection fees to BellSouth. Is that a fair  
21 representation of what you say there?

22 A Yes. And I was also referring to the  
23 question of bypassing toll charges, meaning that if I  
24 had my own network with my own infrastructure and I  
25 designated my calling area as I have here, then that



1 would be a local calling area and there certainly  
2 wouldn't be any dispute about it.

3 Q But, of course, that's not how your network  
4 is configured at the present time; is that correct?

5 A No. We require the call forwarding, as well  
6 as other elements from BellSouth, in order to put our  
7 network together.

8 Q And you are using BellSouth's network  
9 facilities to move the call from one local calling  
10 area to another; isn't that correct?

11 A Correct.

12 Q Then let me come back one more time to this  
13 question. In view of that, tell me why do you believe  
14 that Telenet should not pay BellSouth access charges  
15 based on the actual configuration of Telenet service?

16 MR. BONNER: Objection. Asked and answered.  
17 I believe he's already addressed this previously as to  
18 why Telenet believes it is not responsible for access  
19 charges.

20 WITNESS KUPINSKY: And I would give the same  
21 answer as I did before.

22 COMMISSIONER KIESLING: He wants to answer  
23 it so, so much for your objection.

24 You started answering.

25 MR. BONNER: I caution you to wait until

1 there's a ruling on my objection.

2 COMMISSIONER KIESLING: Don't counsel your  
3 witness right now.

4 WITNESS KUPINSKY: I would give the same  
5 answer.

6 Q (By Mr. Pellegrini) That answer is what?

7 A That I don't believe that Telenet should pay  
8 the access charges because the call never leaves  
9 BellSouth.

10 Q Let me refer your attention now to Page 54  
11 of your deposition transcript. And a few final  
12 questions.

13 Here you state, do you not, that an ALEC's  
14 local calling --

15 COMMISSIONER KIESLING: What line? What  
16 line, Mr. Pellegrini?

17 MR. PELLEGRINI: From Lines 4 through 25.

18 COMMISSIONER KIESLING: Thank you.

19 Q (By Mr. Pellegrini) There you state  
20 basically that an ALECs local calling area is not  
21 necessarily the same as the LEC's local calling area  
22 and that the ALEC has full statewide authority, is  
23 that --

24 A On Page 54?

25 MR. PELLEGRINI: Yeah.

1           **WITNESS KUPINSKY:** Line 4?

2           **MR. BONNER:** Objection. I think counsel is  
3 asking the witness about a deposition that's admitted  
4 into evidence without objection and asking him to  
5 paraphrase a full page of his deposition transcript.  
6 I don't think that is a fair question.

7           **Q**       **(By Mr. Pellegrini)** Would you take a  
8 moment to review your testimony at Page 54?

9           **COMMISSIONER KIESLING:** Mr. Pellegrini, why  
10 don't you just ask him a question instead of having  
11 him paraphrase what's already in the record. If you  
12 have a question that needs clarifying, then ask it.

13          **Q**       **(By Mr. Pellegrini)** Let me bring you  
14 through to the bottom of that page where you say, "I  
15 remember reading that in the Commission Order."

16          **A**       Right.

17          **Q**       Do you recall which Commission Order you  
18 were referring to there?

19          **A**       I couldn't give you the number. I'm sure my  
20 attorney --

21          **MR. BONNER:** I can provide the witness with  
22 the Order I think he was referring to.

23          **MR. PELLEGRINI:** If would you, please.

24                   (Witness tendered document.)

25          **WITNESS KUPINSKY:** Thank you. Order

1 No. PSC-96-1231-FOF-TP issued October 1, 1996.

2 Q Would you repeat the number, please?

3 A Order No. PSC-96-1231-FOF-TP. The Docket  
4 No. is 950985-TP. It was issued on October 1, 1996.

5 MR. BONNER: It's styled for the record:  
6 Order on Motions for Reconsideration; In Re:  
7 Resolution of Petitions to Establish Nondiscriminatory  
8 Rates, Terms and Conditions for Interconnection  
9 Involving Local Exchange Companies and Alternative  
10 Local Exchange Companies Pursuant to Section 364.162  
11 Florida Statutes.

12 Q (By Mr. Pellegrini) And I believe,  
13 Mr. Kupinsky, that you made reference to that  
14 Commission Order in support of your understanding  
15 that -- or your belief that as long as a Telenet  
16 customer is calling within Telenet's local calling  
17 area, it is a local call for the Telenet customer  
18 regardless of whether it's a toll call in BellSouth's  
19 territory. Is that a fair statement?

20 A Yes.

21 MR. PELLEGRINI: That concludes our  
22 questions. Thank you, Mr. Kupinsky.

23 WITNESS KUPINSKY: You're welcome.

24 COMMISSIONER KIESLING: Any redirect?

25 MR. BONNER: Yes. Thank you, Commissioner.

## REDIRECT EXAMINATION

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BY MR. BONNER:

Q To your knowledge, Mr. Kupinsky, has -- at any time during Telenet's operations in providing local services, has it entered into an interconnection arrangement as referred to in that statute that Mr. Pellegrini just showed you?

A No.

Q At any time has BellSouth asked Telenet to enter into any interconnection arrangement with BellSouth?

A No.

Q Has BellSouth approached Telenet to ask Telenet to enter into an interconnection agreement under the Telecommunications Act of 1996?

A No.

Q Did BellSouth request at some point in time that Telenet enter into a resale agreement with BellSouth?

A Yes.

Q And when was the first time that BellSouth asked Telenet to enter into a resale agreement?

A I believe it was in September of 1996. I think in the letter dated September 19. I may be wrong on the date, but I think that was the date.

1 Q Referring to, if you would -- to Exhibit  
2 MAK-4 in Composite Exhibit 2.

3 A Yeah, that's the letter dated September 19.

4 Q Is that what you were referring to as the  
5 first mention of any request for a resale agreement to  
6 Telenet from BellSouth?

7 A Yes.

8 COMMISSIONER GARCIA: What brings about this  
9 letter from BellSouth?

10 WITNESS KUPINSKY: This letter came after  
11 our meeting with Doc Moore, meeting between me,  
12 myself, and my father. Bill Demers of Telenet,  
13 Doc Moore of BellSouth and Tony Aniello of BellSouth.

14 COMMISSIONER GARCIA: And the purpose of  
15 that meeting was for? This is when you transferred  
16 the names of the company?

17 WITNESS KUPINSKY: That was one of the  
18 issues we discussed as well as we were not getting  
19 some of the features we had ordered from BellSouth, so  
20 that was covered, as well as planning on billing the  
21 rest of the Telenet network.

22 COMMISSIONER GARCIA: Thank you, Mr. Bonner.

23 MR. BONNER: Thank you, Commissioner.

24 Q (By Mr. Bonner) Now, if would you turn,  
25 please, Mr. Kupinsky, to MAK-9. Do you recognize this

1 document?

2           A     Yes.

3           Q     And can you briefly describe it for the  
4 Commission?

5           A     It's a cover letter and then a brief  
6 chronology of the timetable of orders placed by  
7 Telenet with BellSouth.

8           Q     And does this summary provide names of  
9 persons contacted, as well as phone numbers in several  
10 instances?

11          A     In, yes, several instances it does.

12          Q     And who placed these orders on behalf of  
13 Telenet?

14          A     I did.

15          Q     Okay. Can you tell us if at any time during  
16 any of these contacts that you, yourself, made with  
17 BellSouth beginning in November 1995 and continuing  
18 through August 1996 whether BellSouth, or any of the  
19 BellSouth representatives listed here, requested that  
20 Telenet enter into an interconnection arrangement, a  
21 resale agreement or an interconnection agreement with  
22 BellSouth?

23          A     No, they did not.

24          Q     And to your mind, and to your understanding,  
25 was there any confusion along the line as to whom

1 BellSouth was providing services to that were ordered  
2 as reflected in MAK-9?

3 COMMISSIONER KIESLING: Wait a minute. I  
4 need a clarification. Was there any confusion in the  
5 mind of people from BellSouth, is that your question?

6 MR. BONNER: I'm asking his understanding,  
7 if he knows, whether or not there was any confusion on  
8 the part of BellSouth as to whom and what entity they  
9 were providing service.

10 MR. CARVER: And I'm going to object to the  
11 extent he's requesting him to speculate as to the  
12 state of mind of someone at BellSouth.

13 COMMISSIONER KIESLING: I will sustain that.  
14 You can ask him if anyone at BellSouth  
15 expressed any concern, but I don't think he's  
16 clairvoyant.

17 MR. BONNER: Very well.

18 Q (By Mr. Bonner) Did anyone at BellSouth,  
19 any of the people with whom you spoke as confirmed in  
20 MAK-9, ever express any confusion or misunderstanding  
21 as to what entity or entities they were providing  
22 services to?

23 A No.

24 Q Were all these services provided to Telenet,  
25 or principals of Telenet, at the same address?



1           A     Yes, they were all at the same billing  
2 address.

3           Q     Which is what?

4           A     24241 Park Granada, Calabasas, California  
5 91302.

6           Q     Did anyone at BellSouth with whom you placed  
7 these orders say or express a problem with your  
8 ordering them in different names?

9           A     No. And all the lines were paid for on  
10 Telenet checks from the Telenet bank account.

11          Q     Over what period of time were those payments  
12 made on the Telenet bank account?

13          A     From the time we established the bank  
14 account after we were a corporation, so it would be  
15 the beginning of 1996. The original orders, Telenet  
16 wasn't formed as an corporation yet, so they were paid  
17 for, I believe, on a personal check from my father.

18          Q     If I could refer you to Page 34, again of  
19 your deposition of which you were questioned, I  
20 believe, by Mr. Pellegrini.

21          A     Okay.

22          Q     And your answer on Lines 20 and 21 in  
23 response to his question, did you mean by that answer  
24 that Telenet is providing intraLATA toll service?

25          A     No. I meant that we were providing calls

1 within the LATA, like I said.

2 Q And in response to Mr. Carver's hypothetical  
3 where he asked you if hypothetically Telenet were to  
4 designate the entire state of Florida as its local  
5 calling area, were you suggesting by your response to  
6 that question that Telenet could do that without  
7 Commission approval? Or would it require Commission  
8 approval or be in accordance with Commission rules and  
9 regulations?

10 A We'd definitely want to be in accordance  
11 with Commission rules and regulations.

12 Q Has Telenet attempted to scrupulously adhere  
13 to all Commission requirements in providing service  
14 within the state of Florida?

15 A Yes.

16 Q Have you ever been advised that your ALEC  
17 certification was insufficient for the service you  
18 were providing within the state of Florida?

19 A No.

20 COMMISSIONER GARCIA: Let me ask something.  
21 Has Southern Bell ever asked you for your ALECs  
22 certification when they were providing you service?

23 WITNESS KUPINSKY: They asked for it after  
24 our -- the September 16th meeting with Doc Moore, and  
25 we submitted to them --

1           **COMMISSIONER GARCIA:** But before then they  
2 were just treating you like any other business  
3 customer that would be purchasing these services?

4           **WITNESS KUPINSKY:** They had never asked for  
5 the ALEC before then, right.

6           **COMMISSIONER GARCIA:** Okay.

7           **Q**       **(By Mr. Bonner)** You were asked by  
8 Mr. Carver why not resell certain existing BellSouth  
9 services at a retail discount. Do you know if Telenet  
10 would require an IXC certificate to resell ECS service  
11 within the state of Florida?

12          **A**       I believe so. I'm not an attorney.

13          **COMMISSIONER KIESLING:** I'm sorry, I can't  
14 understand you.

15          **WITNESS KUPINSKY:** I believe so. Again, I'm  
16 not an attorney. I'm not familiar with all the laws.

17          **Q**       **(By Mr. Bonner)** Do you have an opinion  
18 whether or not the resale of ECS and WATS-saver  
19 service from BellSouth at a Commission-approved retail  
20 discount would provide comparable cost savings to your  
21 Florida customers?

22          **A**       I know that it wouldn't.

23          **Q**       Could you explain your answer?

24          **A**       Again, I explained before that if we were to  
25 purchase the WATS saver and the ECS at the discount

1 rates, and then provide them to customers at our cost,  
2 they would still be paying a substantially higher -- I  
3 believe an example I used from 21 cents to 20%  
4 discount would go down to 16 cents per minute, as  
5 opposed -- and we charge 10 cents per call flat rate,  
6 no minute-to minute charges. And that's, I believe, a  
7 substantial savings.

8 Q When was the first time that Telenet was  
9 advised by BellSouth that in BellSouth's view  
10 Telenet's business operations were in violation of the  
11 toll bypass restriction in BellSouth's call forwarding  
12 tariff?

13 A In September of 1996.

14 Q If I can refer you to another exhibit. I'll  
15 pick that up in a moment.

16 If you could please refer to MAK-8 in  
17 Composite Exhibit 2.

18 A Okay.

19 Q Do you recognize this letter?

20 A Yes, I do.

21 Q And is this a formal letter from BellSouth  
22 notifying Telenet of what is in BellSouth's view a  
23 tariff violation?

24 A Yes.

25 Q And you mentioned September 1996. Did you

1 receive any prior notice before this letter of an  
2 alleged violation of the call forwarding tariff by  
3 BellSouth?

4       **A**     This was the first written notice.

5       **Q**     Did you receive verbal notice before this  
6 letter?

7       **A**     Yes, Doc Moore had told us over the phone  
8 that they believed that we were in violation of their  
9 tariff. And prior to receiving this letter, he had  
10 informed us that this letter was coming.

11       **Q**     Can you explain why Doc Moore, after the  
12 September 16, 1996 meeting, sent a letter dated  
13 September 19, 1996, requesting a resale agreement,  
14 which is the exhibit you identified before, the letter  
15 of September 19?

16       **A**     Why he sent that to us?

17       **Q**     Yes, if he was aware of the tariff  
18 violation.

19       **A**     I don't know that what he did -- I assume so  
20 that we could enter into a resale agreement and be  
21 able to continue to conduct business with BellSouth.

22       **Q**     In your view, if a resale agreement had been  
23 concluded, would Telenet be permitted by BellSouth to  
24 continue its current application of call forwarding?

25       **A**     No.

1           **MR. BONNER:** No further questions. Thank  
2 you.

3           **COMMISSIONER KIESLING:** All right. You are  
4 excused.

5           (Witness Kupinsky excused.)

6                                 - - - - -

7           **WITNESS KUPINSKY:** Thank you.

8           **COMMISSIONER KIESLING:** Exhibits? Are you  
9 moving yours in?

10           **MR. BONNER:** I'm moving in the exhibits  
11 which have been identified as Composite Exhibit 2,  
12 Commissioner Kiesling.

13           **MR. CARVER:** No objection.

14           **COMMISSIONER KIESLING:** Without objection,  
15 Composite 2 is admitted.

16           (Exhibit 2 received in evidence.)

17           **MR. PELLEGRINI:** Staff would move Exhibits 1  
18 and 3, Composite Exhibit 3.

19           **COMMISSIONER KIESLING:** 1 was already  
20 admitted.

21           **MR. PELLEGRINI:** Just Composite Exhibit 3 at  
22 this point.

23           **COMMISSIONER KIESLING:** Any objection to 3?

24           **MR. CARVER:** No objection.

25           **COMMISSIONER KIESLING:** Then Composite

1 Exhibit 3 is also admitted.

2 Why don't we take a 10-minute break and come  
3 back and take up the testimony of Mr. Scheye.

4 (Exhibit 3 received in evidence.)

5 (Brief recess.)

6 - - - - -

7 MS. WHITE: We call Mr. Robert Scheye.

8 ROBERT C. SCHEYE

9 was called as a witness on behalf of BellSouth and,  
10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. WHITE:

13 Q Would you please state your name and  
14 business address for the record?

15 A Robert C. Scheye, 675 West Peachtree Street,  
16 Atlanta, Georgia.

17 Q Did you cause to be prefiled in this docket  
18 direct testimony consisting of 13 pages?

19 A Yes, I did.

20 Q Do you have any changes to that testimony?

21 A I do not.

22 Q If I were to ask you the same questions as  
23 contained in your direct testimony, would your answers  
24 be the same?

25 A Yes, they would.

1           **MS. WHITE:** Commissioner Kiesling, I would  
2 like to have the direct testimony of Mr. Scheye  
3 inserted in the record as if read from the stand.

4           **COMMISSIONER KIESLING:** And you had  
5 something you want to say before I insert it?

6           **MR. BONNER:** Yes, Commissioner Kiesling.  
7 Thank you. It was made quite clear in the deposition  
8 of Mr. Scheye taken last Friday, February 7, that  
9 nearly all of his understanding of the facts of this  
10 relationship between Telenet and BellSouth is  
11 predicated on hearsay or multiple hearsay from one  
12 other BellSouth fellow who, for whatever reason, has  
13 chosen not to testify in this proceeding.

14           He has no personal knowledge whatsoever of  
15 the facts in this proceeding and repeatedly speculates  
16 as to the nature of what transpired historically  
17 between Telenet and BellSouth, and on that basis --  
18 and I would specifically cite to the deposition, Pages  
19 60 and 133, Lines 13 to 14 as examples where -- and  
20 also Pages 71 to 72 of the deposition transcript in 9  
21 to 10 where it indicates he did not communicate with  
22 any of the BellSouth employees who dealt with Telenet  
23 between November 1995 and August 1996; that there is  
24 no factual predicate for Mr. Scheye's opinions in this  
25 proceeding, and we would move to strike his direct



1 testimony.

2           **COMMISSIONER KIESLING:** It's overruled. And  
3 the direct testimony is inserted in the record as  
4 though read.

5           **MS. WHITE:** Thank you.

6           **Q**        **(By Ms. White)** Mr. Scheye, did you cause  
7 to be filed rebuttal testimony in this docket  
8 consisting of 14 pages?

9           **A**        Yes, I did.

10          **Q**        Do you have any changes in that testimony?

11          **A**        No, I do not.

12          **Q**        If I asked you the same questions that are  
13 contained in your rebuttal testimony, would your  
14 answers be the same?

15          **A**        Yes, they would be.

16               **MS. WHITE:** Commissioner Kiesling, I would  
17 ask that Mr. Scheye's rebuttal testimony consisting of  
18 14 pages be inserted in the record as if read from the  
19 stand.

20               **MR. BONNER:** And, Commissioner Kiesling, I  
21 would renew my motion to strike for the same reasons I  
22 mentioned earlier as to the direct testimony.

23               **COMMISSIONER KIESLING:** All right. And I  
24 will overrule them again and insert the rebuttal  
25 testimony into the record as though read.

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**BELLSOUTH TELECOMMUNICATIONS, INC.**

**TESTIMONY OF ROBERT C. SCHEYE**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**DOCKET NO. 961346-TP**

**JANUARY 15, 1997**

Q. Please state your name, address and position with BellSouth Telecommunications, Inc. ( hereinafter referred to as “BellSouth” or “The Company”).

A. My name is Robert C. Scheye and I am employed by BellSouth as a Senior Director in Strategic Management. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. Please give a brief description of your background and experience.

A. I began my telecommunications company career in 1967 with the Chesapeake and Potomac Telephone Company (C&P) after graduating from Loyola College with a Bachelor of Science in Economics. After several regulatory positions in C&P, I went to AT&T in 1979, where I was responsible for the Federal Communications Commission (“FCC”) Docket dealing with competition in the long distance market. In 1982, with the announcement of divestiture, our organization became responsible for implementing the Modification of Final Judgment (MFJ) requirements related to nondiscriminatory access charges. In

1 1984, our organization became part of the divested regional companies' staff  
2 organization which became known as Bell Communications Research, Inc.  
3 (Bellcore). I joined BellSouth in 1987 as a Division Manager responsible for  
4 jurisdictional separations and other FCC related matters. In 1993, I moved to  
5 the BellSouth Strategic Management organization where I have been  
6 responsible for various issues including local exchange interconnection,  
7 unbundling and resale.

8

9 Q. What is the purpose of your testimony?

10

11 A. The purpose of my testimony is to respond to issues raised by Telenet of South  
12 Florida, Inc. (Telenet) in its request for arbitration by this Commission. Telenet  
13 has requested to resell Custom Calling Services, specifically the Call  
14 Forwarding Features, to avoid the payment of toll charges which violates the  
15 nature of the service and the rules and regulations of the service and, as such,  
16 Telenet's request should be denied by the Commission. BellSouth believes that  
17 Telenet's current use of the Custom Calling Services purchased under the  
18 General Subscriber Service Tariff (GSST) is in violation of the rules and  
19 regulations of the service.

20

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

22

23 A. No. The resale of a retail service can only be conducted after a negotiated or  
24 negotiated/arbitrated agreement has been reached and approved under the terms  
25 of Section 364.162, Florida Statutes or under the provisions of the

1 Telecommunications Act of 1996. No such agreement has been reached or  
2 arbitrated, therefore precluding Telenet from reselling service at this time.

3

4 Q. Why has BellSouth not been able to reach a negotiated agreement with Telenet?

5

6 A. Telenet has requested to resell Custom Calling Service, in particular, the Call  
7 Forwarding features associated with Custom Calling Service, such as Call  
8 Forwarding Variable, Call Forwarding Variable Multipath and Remote Access-  
9 Call Forwarding Variable. The resale of these services, as such, is not the issue.  
10 However, Telenet's apparent intentions are to use these services as a means to  
11 bypass long distance charges. This is contrary to the definition of the Call  
12 Forwarding service and violates the very nature and purpose of the service.

13

14 Q. Please describe the Call Forwarding Services.

15

16 A. Section A13.9.1. A.1. of the Tariff defines Call Forwarding as "... an  
17 arrangement for transferring incoming calls to another *local* service telephone  
18 number by dialing a code and the number of the service to which calls are to be  
19 transferred. In addition, calls may be transferred to a long distance message  
20 telecommunications point subject to availability of necessary facilities in the  
21 central office from which the calls are to be transferred." When such calls are  
22 transferred to a number in another local exchange area, toll rates are charged to  
23 the end user transferring the call. The same definition in the tariff continues:  
24 "Call Forwarding shall not be used to extend calls on a planned and continuing  
25 basis to intentionally avoid the payment in whole or in part, of message toll

1 charges that would regularly be applicable between the station originating the  
2 call and the station to which the call is transferred." This definition and tariff  
3 condition state quite clearly the proper usage of the Call Forwarding features.

4

5 Q. Please explain the intended use of the Call Forwarding services.

6

7 A. Call Forwarding features are auxiliary features/services offered in addition to  
8 basic telephone service. Call Forward Variable provides an arrangement for  
9 transferring incoming calls to another local service telephone number. The user  
10 activates and deactivates the feature by dialing a code and the telephone number  
11 of the service to which calls are to be transferred. The intended use of Call  
12 Forwarding Variable is to allow subscribers to re-direct their incoming calls  
13 while temporarily away from the location where they normally receive them.  
14 For example, if you were expecting an important call at home but were  
15 obligated for dinner at a friend's, before you leave home you could code your  
16 phone to forward calls from your line to your friend's line.

17

18 The Remote Access enhancement to the Call Forwarding Variable feature is  
19 intended to allow subscribers to activate/deactivate the feature from a remote  
20 location. So if you forgot to code the Call Forwarding feature before you left  
21 home, you could use the Remote Access feature to code the Call Forwarding  
22 from your friend's telephone after your arrival.

23

24 Call Forwarding Variable Multipath provides the capability to specify the  
25 number of calling paths that can be forwarded simultaneously. Businesses are

1 the most common users of this feature -- mainly in conjunction with Memory  
2 Call or Telephone Answering Services.

3

4 Q. How is Telenet misusing these Call Forwarding features?

5

6 A. Telenet is using the Call Forwarding features to forward calls from one local  
7 calling area to another to avoid paying toll charges. Telenet has locations  
8 throughout the SouthEast Florida LATA. Each location is chosen so that it is  
9 within the local calling area or the extended local calling area of the forwarding  
10 location, but includes unique areas that are local from one location but would be  
11 toll from another. This arrangement allows calls to be passed from one location  
12 to another that would otherwise require a toll call without incurring a toll  
13 charge. At each location, Telenet subscribes to one or more of BellSouth's Call  
14 Forwarding features. Local calls may then be call forwarded along paths that  
15 terminate in what have been established by this Commission as long distance  
16 points. In other words, a call is terminated in a location that is outside the local  
17 calling areas of the originating location and therefore is a long distance call. To  
18 further illustrate, the following is an example of the flow-through of a Telenet  
19 customer's long distance call originating in West Palm Beach and terminating  
20 in Miami:

21

22 1. A local call is originated in West Palm Beach by the customer dialing a  
23 local Telenet business line.

24 2. The Telenet equipment answers the call and asks the end user to enter a  
25 Telenet authorization code.

- 1 3. The end user dials the desired telephone number in Miami.
- 2 4. The Telenet equipment compares the number dialed with their routing  
3 tables to determine the appropriate forwarding number.
- 4 5. The call is forwarded to another local business line equipped with Call  
5 Forwarding Multipath, for example, in Boynton Beach.
- 6 6. The call continues to be forwarded as above from location to location  
7 (Delray Beach, Boca Raton, etc.) until a Telenet location is reached within  
8 the local calling area of the called destination in Miami where it is then  
9 processed to the called party.

10

11 In other words, contrary to its definition, Telenet is using the Call Forwarding  
12 features as an arrangement to transfer calls originating from one local calling  
13 area to another local calling area *for the express purpose of avoiding payment of*  
14 *toll charges* between the station originating the call and the station terminating  
15 the call. Telenet's misuse of the service should not be permitted.

16

17 Q. How is BellSouth's position consistent with the Commission's findings in the  
18 arbitration cases regarding resale issues?

19

20 A. The Commission determined that resale restrictions other than those specifically  
21 identified in its Order should not be imposed. BellSouth contends that the  
22 limitation of the use of Call Forwarding is not a resale restriction but rather  
23 defines the nature of the service. This definition and tariff limitation define the  
24 proper usage of the service in all instances, whether sold as a retail service or as  
25 a resold service. This limitation is a reasonable and nondiscriminatory

1 condition that applies to all competitors or users of the service, including  
2 BellSouth.

3

4 IntraLATA toll is designed to provide for the provision of a non-local call  
5 between two points within a Florida LATA. For an intraLATA call BellSouth  
6 will either receive toll or access for the call. If an interLATA call is made by a  
7 BellSouth end user, BellSouth bills access charges to the interexchange carrier  
8 carrying the call. Telenet, in its use of Call Forwarding features is attempting to  
9 circumvent the appropriate tariffs and charges established for long distance  
10 calls.

11

12 It is clear from the tariff that the intended purpose of the Call Forwarding is to  
13 ensure that appropriate rates are applied when calls are transferred outside the  
14 local calling area. The tariff specifically prohibits any systematic use of the  
15 service to avoid the payment of toll charges. Telenet's use is more than a  
16 violation of a particular tariff term and condition, it is essentially an attempt to  
17 displace one service through the misuse of another service.

18

19 It is Telenet's intended purpose to place end to end calls that are toll in nature  
20 through the use of Call Forwarding capabilities. If BellSouth's tariffs were  
21 ambiguous or unclear, there may be an issue; however, the tariffs are quite  
22 clear. What Telenet is intending is a direct violation of BellSouth's tariff  
23 through the misuse of the service.

24

25



1 Q. In light of the Commission's decision concerning resale, does BellSouth believe  
2 the Commission can deny Telenet's request?

3

4 A. Yes. First, BellSouth does not believe that this issue is comparable to the terms  
5 and conditions issues raised in the AT&T and MCI arbitration proceedings.

6 The Telenet issue goes directly to the nature of the service being offered.

7 However, even if the Commission were to find that the service limitation was a  
8 resale restriction, the Commission can still determine that it is a reasonable and  
9 nondiscriminatory limitation and that Telenet cannot use Call Forwarding in the  
10 manner they have requested. Both the Telecom Act and FCC Orders refer to  
11 the state commission's authority to impose just and reasonable limitations on  
12 resale. What Telenet is attempting to do is neither just nor reasonable; it is just  
13 the opposite.

14

15 BellSouth has offerings available for resale for intraLATA toll calling. Telenet  
16 is attempting to avoid use of those services through the misuse of another i.e.,  
17 Call Forwarding. Gaming the process, which appears to be what Telenet is  
18 attempting to do, is not reasonable and should not be permitted. There should  
19 be no doubt that both the Act and the FCC Order envisioned that the state  
20 commissions were fully entitled to prevent activities such as those envisioned  
21 here.

22

23 Q. Please describe the statutory and FCC Order references that provide the  
24 Commission with the authority to retain reasonable restrictions and terms and  
25 conditions on the resale of services?

1

2 A. The Florida statute expressly provides that the Commission may determine the  
3 reasonableness of any limitations on the resale of a retail service. Section  
4 364.161(2) of Florida Statutes states: "other than ensuring that the resale is of  
5 the same class of service, no local exchange telecommunications company may  
6 impose any restrictions on the resale of its services or facilities except those the  
7 commission may determine are reasonable."

8

9 Further, the Telecommunications Act of 1996 (the Act) specifically permits the  
10 Commission to apply reasonable and nondiscriminatory restrictions on the  
11 resale of BellSouth's retail services. Section 251(c)(4)(B) of the Act states that  
12 the local exchange company is "not to prohibit, and not to impose unreasonable  
13 or discriminatory conditions or limitations on, the resale of such  
14 telecommunication service, except that a State commission may, consistent with  
15 the regulations prescribed by the Commission under this section, prohibit a  
16 reseller that obtains at wholesale rates a telecommunications service that is  
17 available at retail only to a category of subscribers from offering such service to  
18 a different category of customers."

19

20 The FCC, in its Order issued on August 8, 1996 specifically approved various  
21 resale restrictions. Neither the Florida statute, the Act nor the FCC's Order  
22 preclude the local exchange company from imposing conditions and limitations  
23 on its services but rather prohibit only unreasonable or discriminatory  
24 conditions on the resale of such services.

25

1 Q. Are the limitations on the Call Forwarding service reasonable and  
2 nondiscriminatory?

3

4 A. Yes. The tariff limitation promotes more efficient use of the network. Call  
5 Forwarding was not designed as a toll service. Using Call Forwarding to  
6 transfer calls from one central office to another to complete a toll call will  
7 generate additional traffic over facilities that were not engineered for such  
8 inordinate use.

9

10 Second, the price of the Call Forwarding service is clearly affected by the terms  
11 and conditions found in the tariff just as the terms and conditions affect the  
12 price of other tariffed services. A cross-class example illustrates this  
13 relationship even though BellSouth realizes that the Commission retained the  
14 restriction which prevents residential service from being resold to business  
15 customers. The highest single line basic residential rate is \$10.65 while the  
16 business rate is many times higher. The price is directly affected by the terms  
17 and conditions of the service. Without restrictions, the price of many tariffed  
18 services would be higher. Further, elimination of the terms and conditions may  
19 affect the general availability of the service. Certainly, elimination of the Call  
20 Forwarding restriction would erase distinctions between toll and local service  
21 and create tariff arbitrage. If the unrestricted use of Call Forwarding were  
22 permitted, and particularly as a means of bypassing toll charges, BellSouth  
23 would need to modify the price significantly to recognize that it had become a  
24 toll and access substitute or even reconsider whether or not this service should  
25 continue to be offered.

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The terms and conditions currently contained in the Call Forwarding tariff were approved by this Commission. Such terms and conditions would not have been approved if this Commission found them to be unreasonable or discriminatory. Terms and conditions which determine the application of the tariff should be presumed reasonable for purposes of resale and should be applied to all end user customers of the tariffed service unless the Commission determines that a particular term or condition is unreasonable or discriminatory

The service limitation is not discriminatory to resellers or to a reseller's end users because BellSouth's own end users cannot use Call Forwarding to bypass toll charges. This limitation is applied to anyone who uses the service. The limitation is reasonable and nondiscriminatory to both BellSouth customers and to a reseller's customers. In fact, to apply the restriction to BellSouth customers, but not to other end user customers, would be discriminatory.

Q. Are there other provisions in the Florida statute which support retaining the limitations on this service?

A. Yes. Section 364.16(3) of the Florida statutes prohibits a "local exchange company or an alternative local exchange company from knowingly delivering traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service." The unrestricted resale of Call Forwarding service by Telenet would also result in the delivery of traffic for

1 which terminating access service charges would otherwise apply. The Florida  
2 statute clearly did not intend for interconnection or resale arrangements to be a  
3 conduit for the bypass of access charges.

4  
5 Q. Telenet alleges that its unrestricted use of the Call Forwarding Service is  
6 required to compete in the intraLATA market? Is this true?

7  
8 A. No. Telenet only wants to use Call Forwarding as a means to bypass toll  
9 charges. Telenet has multiple ways it can compete for the toll market. Telenet  
10 can use its own facilities or use its facilities in combination with BellSouth  
11 unbundled elements to provide intraLATA long distance service. Telenet can  
12 also resell intraLATA service provided by other long distance companies or  
13 local companies or resell long distance services purchased from BellSouth at the  
14 avoided discount rate.

15  
16 Q. Telenet proposes that removal of the Tariff restrictions will advance the public  
17 interest for Florida telecommunications subscribers and "create a more robust  
18 and permanent form of local exchange competition". Do you agree?

19  
20 A. No. BellSouth supports full and open competition in the local exchange and  
21 long distance markets and believes that competition in the industry will benefit  
22 all Florida customers. Rules are being rewritten by this Commission and the  
23 Federal Communications Commission to develop a fair and even playing field  
24 for the telecommunications industry as a whole. However, the intent of  
25 legislation has not been to provide Telenet with the authority to misuse facilities

1 and set up an arbitrage situation such as they have and resell BellSouth's local  
2 service as toll service. Further, there are rules in place today, long adopted by  
3 this Commission, that establish pricing relationships between local and toll  
4 service. Allowing Telenet (and eventually others) to misuse Call Forwarding as  
5 a means to bypass toll service or access charges will undermine this process.

6

7 Q. Please summarize your testimony.

8

9 A. BellSouth provides Call Forwarding for local service usage as defined in its  
10 General Subscriber Service Tariff. The tariff specifically prohibits any  
11 systematic use of the service as a means to bypass toll calls and applies equally  
12 to all BellSouth end users of the service. Telenet's current use of the call  
13 forwarding features is in direct violation of the Tariff. BellSouth submits,  
14 therefore, that Telenet's complaint is without merit and proposes to discontinue  
15 Telenet's current subscription to these features and to limit any further  
16 subscription for their intended use. BellSouth further requests that the  
17 Commission determine that the current terms and conditions included in the  
18 tariff are reasonable and nondiscriminatory and, therefore, that Telenet's request  
19 for unrestricted resale of this service should be rejected.

20

21 Q. Does this conclude your testimony?

22

23 A. Yes.

24

25

1                   BELLSOUTH TELECOMMUNICATIONS, INC.  
2                   REBUTTAL TESTIMONY OF ROBERT SCHEYE  
3                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4                   DOCKET NO. 961346-TP  
5                   JANUARY 27, 1997  
6  
7

8    Q.    Please state your name, address and position with BellSouth  
9           telecommunications, inc. ("BellSouth" or "the company").  
10

11   A.    My name is Robert C. Scheye and I am employed by BellSouth, as a  
12           Senior Director in Strategic Management. My address is 675 West  
13           Peachtree Street, Atlanta, Georgia 30375.  
14

15   Q.    Have you filed direct testimony in this docket?  
16

17   A.    Yes. I filed direct testimony on behalf of BellSouth on January 15, 1997  
18           .

19   Q.    What is the purpose of your rebuttal testimony?  
20

21   A.    The purpose of my testimony is to rebut the position of Telenet Of South  
22           Florida, Inc. (Telenet) that the toll bypass prohibition in the Call Forwarding  
23           tariff should be removed and not applied to Telenet. I rebut specific  
24           allegations raised in the direct testimony of Mitchell Kupinsky. Additionally,  
25           I clarify the difference between a tariff obligation imposed upon customers

1 who purchase a service and restrictions on resale. Finally, BellSouth  
2 requests that the Commission affirm the toll bypass prohibition in the tariff  
3 as reasonable and nondiscriminatory and also confirm BellSouth's  
4 authority to discontinue Call Forwarding service for its continued misuse.  
5

6 Q. What is Telenet requesting and claiming in its testimony?  
7

8 A. Basically, at the heart of this issue, is that Telenet wants to use BellSouth's  
9 Call Forwarding service to provide intraLATA toll service to its customers.  
10 The current General Subscriber Service Tariff as referenced in Section  
11 A13.9.A.1 prohibits the use of Call Forwarding to bypass toll charges.  
12 Telenet wants to use the service in precisely this manner. Mr. Kupinsky  
13 claims that the toll bypass prohibition in the tariff is unreasonable and  
14 discriminatory. He further claims that this tariff prohibition is not  
15 permissible under the Florida Statute and is inconsistent with the  
16 Telecommunications Act of 1996 ("the Act") because it is an anti-  
17 competitive resale restriction. He alleges that unrestricted use of Call  
18 Forwarding is required for Telenet to compete in the local and toll markets.  
19 Finally, he claims that he has attempted to negotiate an agreement with  
20 BellSouth as an alternate local exchange company (ALEC) and that  
21 BellSouth is attempting to thwart competition by retaining the toll bypass  
22 prohibition.  
23

24 Q. What is BellSouth's response?  
25



1 A. These allegations are totally without merit. Mr. Kupinsky has attempted to  
2 confuse the issues by mixing various concepts -- tariff obligations with  
3 resale restrictions and toll competition with local competition. The  
4 Commission should not be misled through the guise of Telenet's petition  
5 and testimony or through these arbitration proceedings that this is a local  
6 competition issue. It is not. Rather, the fundamental issue being  
7 questioned today is whether the service definition and obligations in  
8 BellSouth's tariff apply to the purchasers of the tariffed service. The  
9 specific question is whether BellSouth may sell its Call Forwarding service  
10 subject to the restriction (the toll bypass prohibition) in its GSST.

11  
12 The answer is absolutely yes. To do anything otherwise would undermine  
13 the entire underlying principles of the tariff process under which a service  
14 is offered, priced and purchased. I will further explain BellSouth's position  
15 by addressing each of Mr. Kupinsky's allegations.

16  
17 Q. Mr. Kupinsky alleges that the toll bypass prohibition in the tariff is  
18 unreasonable, discriminatory and anti-competitive. What is your  
19 response?

20  
21 A. The toll bypass prohibition is none of the above. The tariff requirement is  
22 reasonable because it reflects the nature of the service being offered and  
23 essentially defines the service offering. The dispute is over the  
24 fundamental use of the service and how one service (call forwarding)  
25 relates to another service (intraLATA toll or access).

1 The Commission and the Florida Statutes have established a clear policy  
2 direction for the pricing of local service with a required flat rate option and  
3 for maintaining basic residential service at affordable rates. Local calling  
4 areas have been established through tariffs and Commission proceedings  
5 to delineate local calling areas and to meet community of interest needs.  
6 As this Commission well knows, these local calling areas vary in size,  
7 number of access lines and geographic boundaries. Definitions of services  
8 in BellSouth's tariffs have been established to identify these calling areas,  
9 to define the geographic area for which the flat rate is to be applied and to  
10 distinguish between local, toll and access services. Prices have been  
11 established to recognize these distinctions and reflect Commission policies  
12 for these services. Descriptions of services can include the use to be  
13 made of these services and have been included in the tariffs. The Call  
14 Forwarding service includes a description to clearly indicate that the  
15 service was not to be used to bypass toll charges. This description and  
16 requirement was deemed reasonable when the tariff was approved.

17  
18 Further, the toll bypass prohibition is reasonable because Call Forwarding  
19 was not designed as a toll service. Using Call Forwarding to transfer calls  
20 from one central office to another to complete a toll call is not an efficient  
21 use of the network. The prohibition is not discriminatory nor is it anti-  
22 competitive. Call Forwarding is a Custom Calling Feature which can be  
23 used by resellers to enhance their own offerings of local exchange service.  
24 BellSouth's end users and resellers who purchase the tariffed service are  
25 subject to the service capabilities. Further, it cannot be anti-competitive

1 because there are multiple alternative options for resellers to use for  
2 developing competitive services.

3  
4 Q. Does the toll bypass prohibition in the call forwarding tariff violate the  
5 Florida Statute and intent of the Telecom act as alleged by Mr. Kupinsky?

6  
7 A. No. Mr. Kupinsky is attempting to mislead this Commission to believe that  
8 the toll bypass prohibition is a resale restriction, and as such, resellers are  
9 not subject to the tariff obligation. The toll bypass prohibition is not a  
10 resale restriction. Neither does the fact that the purchaser is a competitor  
11 mean that the tariff requirements are no longer applicable.

12  
13 The Florida Statute provides the Commission with the authority to review  
14 and evaluate the reasonableness of BellSouth's tariffs. The tariff  
15 description for Call Forwarding defines the nature of the service.

16 BellSouth is attempting to enforce the tariff. Mr. Kupinsky's request is  
17 actually a complaint on the reasonableness of the tariff not a complaint on  
18 his ability to resell BellSouth's service. He has raised the apparitions of  
19 resale restriction and local competition only as a means to circumvent the  
20 tariff and provide toll service without paying toll and/or access charges.

21  
22 Q. Please explain your contention.

23  
24 A. The most appropriate explanation is a description of Telenet's or rather Mr.  
25 Kupinsky's own request for service from BellSouth. As Mr. Kupinsky states

1 in his testimony, he personally placed orders for a number of services and  
2 features, some of which were Call Forwarding services. In fact, he set up  
3 nine different accounts in the personal names of himself, his father and  
4 Granada Investments. These accounts were each billed separately with a  
5 billing address to Calabasas, California. Mr. Kupinsky placed orders at  
6 different times, for different services at different locations.

7  
8 These initial service orders were placed by Mr. Kupinsky through the  
9 normal business office and "pool" of BellSouth Service Representatives  
10 whose normal job is to randomly receive and process BellSouth service  
11 requests from all South Florida business customers. Therefore, Mr.  
12 Kupinsky's orders were handled in the same manner as requests from  
13 other business customers for retail services. In other words, BellSouth's  
14 initial involvement was establishing accounts for Mr. Kupinsky, not Telenet,  
15 as a business customer and not as an alternate local exchange company.

16  
17 As the complexity and volume of the orders increased, a special assembly  
18 was requested and Mr. Kupinsky's accounts were turned over to an  
19 Account Executive to service the customer's needs. It was not until these  
20 multiple accounts for the various locations were consolidated that  
21 BellSouth determined the Call Forwarding services purchased through  
22 these accounts were being used as means to bypass toll charges.  
23 Similarly, after discussions and meeting with Mr. Kupinsky, BellSouth  
24 became aware that these accounts were associated with Telenet and were  
25 informed that Telenet was a certified alternate local exchange company.

1  
2 Once BellSouth became aware of Telenet's misuse of the Call Forwarding  
3 services, representatives of Telenet were informed that their use of Call  
4 Forwarding was in violation of the tariff and that continued misuse of the  
5 service would result in termination of the Call Forwarding services.  
6 Additionally, Mr. Kupinsky and other Telenet representatives, as an  
7 alternate local exchange company, were asked to contact the appropriate  
8 BellSouth representatives to negotiate an interconnection or resale  
9 agreement. Telenet declined to do this but rather insisted on our  
10 processing orders as requested and using the service as a toll service.  
11 Telenet filed an injunction with the Court to prevent BellSouth from  
12 discontinuing the service and filed the petition with the Commission to  
13 arbitrate the disputed issue. BellSouth, Telenet and the Commission staff  
14 met and agreed to a compromise that BellSouth would continue to provide  
15 Telenet service, but no new orders would be processed until these  
16 proceedings were resolved.

17  
18 Q. Please explain your contention that the toll bypass prohibition is not a  
19 resale restriction.

20  
21 A. As stated previously, this requirement defines the nature of the service that  
22 is being purchased by BellSouth's customers, both end users and  
23 resellers. Second, Telenet is not actually reselling Call Forwarding Service  
24 to its end users. In other words, Telenet's end users are not utilizing Call  
25 Forwarding service to forward incoming calls to their telephone number to

1 another number. Rather, Telenet has purchased Call Forwarding services  
2 for its own business purposes to forward incoming calls to their local  
3 numbers associated with service purchased from BellSouth from location  
4 to location to complete a call that would otherwise be a toll call. In doing  
5 so, Telenet is avoiding the payment of toll or applicable access charges.  
6 Telenet is then providing their customers toll service because, despite the  
7 number of call forwarding devices employed, the end to end  
8 communication is toll. As such, the certification from this Commission for  
9 this type of service should be that of an interexchange carrier.  
10 Nevertheless, Telenet is the customer who is reselling and clearly misusing  
11 Call Forwarding service.

12  
13 Q. In light of the FCC's Order concerning resale limitations, is BellSouth's  
14 position consistent with this Order?

15  
16 A. Yes. While the FCC did not directly address the issue in this proceeding,  
17 there are similarities with the Order. For example, the FCC in its Order  
18 stated that the use of volume discounts could not be used to restrict the  
19 resale of services. Specifically, the FCC ruled that a reseller's end users  
20 did not have to meet the volume threshold in an incumbent's tariff in order  
21 to subscribe to the service. However, the purchaser of the service, the  
22 reseller, has to meet the threshold requirement. In other words, the  
23 reseller qualifies for the price if its usage volume meets the various volume  
24 requirements as outlined by the tariff. The FCC specified that the reseller  
25 could not get the price without meeting the requirements. The threshold

1 requirement for volume service is not a service restriction but defines the  
2 terms and price under which the purchaser is leasing the service.

3 Similarly, the toll bypass prohibition defines the Call Forwarding service as  
4 a local service and what is being purchased.

5  
6 Q. If the Commission did consider the toll bypass prohibition in the tariff as a  
7 resale restriction, would this prohibition be in violation of the Florida Statute  
8 or the intent of the act?

9  
10 A. No. Even if the Commission were to define the toll service prohibition as a  
11 resale restriction, the Commission could still determine that it is reasonable  
12 and nondiscriminatory. As described in my direct testimony, the Florida  
13 Statute and the FCC Order provide the Commission with the authority to  
14 place reasonable and nondiscriminatory restrictions on the resale of  
15 service. The toll bypass prohibition is clearly reasonable and  
16 nondiscriminatory as has already been discussed.

17  
18 On the other hand, Telenet's proposed resolution for this issue in my  
19 opinion violates the Florida Statute. Telenet is asking for the Commission  
20 to resolve its "resale or interconnection" dispute by removing the toll  
21 bypass prohibition so that Telenet can use the service to provide toll  
22 service. Section 364.16(3) of the Florida Statutes prohibits a "local  
23 exchange company or an alternate local exchange company from  
24 knowingly delivering traffic, for which terminating access service charges  
25 would otherwise apply, through a local interconnection arrangement

1 without paying the appropriate charges for such terminating access  
2 service." Use of Call Forwarding as a toll service could result in the bypass  
3 of access charges. The Florida Statute clearly did not intend for  
4 interconnection or resale agreements or arbitrated decisions to be used as  
5 a means to bypass access charges.

6  
7 A. Telenet claims that unrestricted use of Call Forwarding is needed to  
8 compete in the intraLATA market. What is BellSouth's response?

9  
10 A. Call Forwarding service is not required to compete for intraLATA toll nor is  
11 it an appropriate means to use to provide toll service. Telenet would like  
12 you to think that the toll bypass prohibition on Call Forwarding service  
13 forces them to build their own facilities to compete for toll service. That is  
14 not true. Telenet has multiple options to compete in the toll market.  
15 Telenet today can use any of BST's intraLATA toll services on a resale  
16 basis and/or they can resell a comparable service provided by AT&T, MCI,  
17 LDDS, Sprint, etc. to compete. Additionally, Telenet can provide its own  
18 facilities to complete toll calls. There is no shortage of services available  
19 for Telenet's use nor is there any shortage of toll competition which has  
20 accelerated with the implementation of 1+ intraLATA presubscription.  
21 Telenet can offer toll service in a wide variety of ways without the use of  
22 Call Forwarding.

23



1 Q. Telenet alleges on page 5 of its testimony that the toll bypass prohibition is  
2 clearly aimed at resellers so as to preserve intraLATA toll revenues. What  
3 is BellSouth's response?  
4

5 A. As stated in my direct testimony, the service requirement on Call  
6 Forwarding is applicable to all customers of this service. All subscribers  
7 who purchase this service from BellSouth are prohibited from utilizing the  
8 service to bypass toll charges. Mr. Kupinsky or Telenet is a customer  
9 using Call Forwarding.  
10

11 Q. Mr. Kupinsky alleges on page 16 that incumbent local exchange carriers  
12 have been attempting to deny access to network elements such as Call  
13 Forwarding which prevents local exchange competition from being offered  
14 on an economically viable basis. What is your response?  
15

16 A. Absolutely not. BellSouth offers its retail services, including its Call  
17 Forwarding services, for resale. Consistent with the Florida Statutes and  
18 the Telecommunications Act of 1996, BellSouth has entered into  
19 negotiations with and reached agreements with forty facility-based carriers  
20 or resellers in the region. The Commission has reviewed and approved  
21 many of these agreements which include provisions for the resale of its  
22 services. BellSouth does not oppose the resale of Call Forwarding service  
23 to Telenet. Once BellSouth and Telenet reach a negotiated agreement,  
24 Telenet can purchase local exchange service and Call Forwarding service  
25 at the resale discount price and resell such service in direct competition

1 with BellSouth for local service. However, use of Call Forwarding in the  
2 manner that Telenet is currently using it does not introduce efficient  
3 competition, rather it just accentuates and accelerates tariff arbitrage and  
4 undermines the terms under which a service is purchased.

5  
6 Q. Mr. Kupinsky alleges that Telenet has attempted to negotiate an  
7 agreement with BellSouth. What is your response?

8  
9 A. Mr. Kupinsky has placed orders with our business office and marketing  
10 representatives have worked with him on these requests. As stated  
11 previously, BellSouth did not know that Mr. Kupinsky was acting on the  
12 behalf of an alternate local exchange company when he placed his initial  
13 orders. Mr. Kupinsky nor Telenet had requested to negotiate a resale or  
14 an interconnection agreement with BellSouth as envisioned by the Florida  
15 Statute. As soon as BellSouth became aware that Telenet was an ALEC,  
16 Telenet was informed that the appropriate course would be to negotiate a  
17 resale or interconnection agreement like all other prospective ALECs. To  
18 my knowledge, no such request has been made by Telenet.

19  
20 Q. Are there any other issues that need to be addressed?

21  
22 A. Yes. Telenet has raised the Call Forwarding service as a request for  
23 unbundled service in its petition. Telenet's petition and testimony is the  
24 first mention that any unbundling issue may be involved. Telenet has not  
25 previously made an unbundling request of BellSouth nor has unbundling

1        been an issue in discussions with Mr. Kupinsky or Telenet about their  
2        accounts. As a result, BellSouth has requested that this portion of  
3        Telenet's testimony be struck as it is not an appropriate issue in this  
4        proceeding for arbitration. Additionally, in the Issue Identification  
5        conference, Telenet was specifically asked by the Staff about whether  
6        unbundling was to be included in this proceeding. Telenet said no.  
7        Consequently, the sole issue raised for arbitration was whether or not  
8        BellSouth could sell its Call Forwarding service subject to the requirements  
9        of Section A13.9.A.1 in its tariff. This is the only issue that has been  
10       identified as an appropriate issue for arbitration.

11  
12    Q.    What is BellSouth recommending that the Commission do to resolve this  
13        arbitration request?

14  
15    A.    BellSouth recommends that the Commission find that the toll bypass  
16        prohibition in the tariff for its Call Forwarding services is reasonable and  
17        nondiscriminatory to purchasers of this service and that this service  
18        definition should be retained. Further, the Commission should determine  
19        that BellSouth must enforce the provisions of its tariff and that Call  
20        Forwarding service to Telenet would be discontinued if Call Forwarding  
21        service is used as a means to bypass toll charges. Further, in the event  
22        that the Commission views the tariff requirement as one that limits resale,  
23        the Commission should find that such resale limitation is just and  
24        reasonable.

25

1 Q. Does this conclude your testimony?

2

3 A. Yes.

4

5

6

7

8

9

10

11

12

13

1           Q        (By Ms. White) Mr. Scheye, do you have a  
2 summary of your testimony?

3           A        Yes, I do.

4           Q        Would you please give that?

5           A        Good morning, and I'll be brief. I believe  
6 we just have a couple issues here. It appears that  
7 Telenet is providing intraLATA toll services in  
8 competition with BellSouth, which is clearly allowed  
9 in the state of Florida and which BellSouth has no  
10 objection. We have several carriers who compete with  
11 us.

12                    At issue, however, is the means by which the  
13 service is being provided or conducted. On the one  
14 hand, Telenet is reselling BellSouth services. It is  
15 doing that, in essence, in violation of our tariffs,  
16 because the resale provisions are not included in our  
17 tariff, and anyone wanting to resell must have a  
18 negotiated agreement with us. Currently -- and we  
19 have 40 such agreements, so they're not difficult to  
20 come by.

21                    Secondly, the service in question, call  
22 forwarding, as specified in BellSouth's tariff is not  
23 allowing it to be used to essentially bypass toll  
24 services. It also appears that the use being made of  
25 the service by Telenet would violate the fundamental

1 predicate upon which call forwarding is provided as a  
2 local service, if you will.

3           In addition, and somewhat compounding the  
4 dilemma we face, is that Statute 364 essentially  
5 discusses that carriers who provide service in the  
6 state of Florida cannot effectively use local  
7 interconnection devices to bypass toll terminating  
8 access, et cetera. Again, it would appear that the  
9 configuration that Telenet has put together in fact  
10 violates that statute, as well.

11           So while BellSouth has no objection to toll  
12 competitors in the state of Florida, and that's not  
13 the issue here, we would like, one, that if they  
14 resell our services, that that be done legally; two,  
15 that to the extent that they resell our services, they  
16 use the services in accordance with what they're  
17 intended; and, three, that the provisions comply with  
18 the statutes here in the state of Florida. Thank you  
19 very much.

20           **MS. WHITE:** Mr. Scheye is available for  
21 cross examination.

22           **MR. BONNER:** Thank you.

23

24

25

## 1 CROSS EXAMINATION

2 BY MR. BONNER:

3 Q Thank you. Does the tariff for call  
4 forwarding -- first of all, good after -- good  
5 morning. We're not quite afternoon. How are you,  
6 sir?

7 A How are you?

8 Q Good. Thank you. Does the call forwarding  
9 tariff you just referenced in your summary,  
10 Mr. Scheye, specify for what specific purposes call  
11 forwarding is to be used by BellSouth's customers?

12 A Yes, sir, it does.

13 Q And what does it say?

14 A It basically says -- and I'll paraphrase. I  
15 believe it's -- just for reference, it's  
16 Section 813-9.1 of BellSouth's general exchange  
17 tariff; that call forwarding is used to forward local  
18 calls, and to the extent that it is used to forward  
19 toll calls, toll rates would apply; and in addition,  
20 it cannot be used as a device to bypass toll services  
21 in the use of that call forwarding service. And,  
22 again, I'm paraphrasing the tariff.

23 Q Is it not true, though, that Telenet has, in  
24 essence, been forwarding local call to local call to  
25 local call in the network configuration that has been

1 marked MAK-1?

2           A     It is my understanding that that's the  
3 configuration.  However, in every other definitional  
4 situation that BellSouth has ever been involved with  
5 in this Commission and federal commission, et cetera,  
6 the determination of a call is the end-to-end nature  
7 of it, from point 1 to the ultimate end point; and, in  
8 fact, if that's what -- if you look at the  
9 configuration that Telenet provides, they're either  
10 providing what we call ECS, which is a form of toll or  
11 normal intraLATA toll; so, in fact, they are providing  
12 toll service.

13           Q     But the -- you would concede that Telenet is  
14 not charging intraLATA toll charges consistent with --  
15 in any way consistent with BellSouth's toll charges,  
16 is it?  Isn't it charging 10 cents flat rate for each  
17 call carried?

18           A     Yes, sir, I agree with you.  They're  
19 charging a rate different than our rate; that's  
20 correct.

21           Q     And are all of these calls, in fact, being  
22 carried on BellSouth's lines exclusively?

23           A     They're being carried, as I understand,  
24 again, the configuration provided by Telenet, via  
25 BellSouth lines interconnected with what I believe



1 Mr. Kupinsky referred to as an IVR arrangement, so --  
2 and, again, as an analogy to that, if that call was  
3 used solely on BellSouth's network, it would probably  
4 connect in a matter of a split second, or subsecond, I  
5 should say.

6           Earlier I heard today that the call from  
7 point A to point B would take 10 to 15 seconds now.  
8 There's a lot of interconnecting going on in that  
9 equipment to cause that call to add essentially 15  
10 seconds to the call duration just to complete. So our  
11 network clearly would not take anywhere near that long  
12 to get from point A to point B.

13           Q     And obviously that delay in calling is  
14 something the customer would see; is that correct?

15           A     I would certainly assume so.

16           Q     Now, the typical resale of intraLATA toll  
17 would not involve the reseller's provision of  
18 facilities such as the IVRs that are being used by  
19 Telenet; is that correct?

20           A     Would -- and I'm not sure I understand your  
21 question, so let me -- if I answer it incorrectly,  
22 it's not -- it's because I don't understand it.

23           A     A reseller of BellSouth's intraLATA services  
24 could use its own facilities, could use an IVR if it  
25 wanted to, certainly.

1 Q Well, the typical reseller, does it not take  
2 the service and resell it without providing any of its  
3 own facilities?

4 A There are two types of intraLATA or  
5 interLATA toll resellers. One is called a switchless  
6 reseller, which typically has no equipment of their  
7 own, other than billing systems, marketing; and then  
8 there's resellers who also have switches or comparable  
9 devices. So all that tells us is there's a variety of  
10 different ways to resell intraLATA, or interLATA, for  
11 that matter, toll type services.

12 Q Now, if Telenet was, in fact, reselling  
13 BellSouth's intraLATA toll at a wholesale discount, it  
14 could not afford to stay in business and charge 10  
15 cents per call flat rate, could it?

16 A Sir, I'm not privy to the financial books of  
17 Telenet, so I don't -- I can't answer your question.

18 Q Well, you do agree that from your  
19 understanding of what the existing inter -- well, do  
20 you have an understanding of what some of the  
21 intraLATA toll rates on a permit -- permanent basis in  
22 the southeastern Florida LATA --

23 A Yes, sir, I do.

24 Q And, for example, Miami to West Palm Beach  
25 would be -- what is it; 21 cents per minute?

1           A     I think that's -- I'd agree to accept that,  
2 in the neighborhood.

3           Q     Okay. And assuming Telenet were to get that  
4 intraLATA toll service at a resale discount of 18%,  
5 there would be a rather significant discrepancy  
6 between that rate it would be paying BellSouth for  
7 resale and the 10 cents per minute rate it's charging  
8 its customers; isn't that true?

9           A     It would seem, if nothing else is involved  
10 there, I would agree with you; there's a big  
11 discrepancy there.

12          Q     It's your view, is it not, Mr. Scheye -- I  
13 think you've expressed in your prior testimony -- that  
14 Telenet is -- essentially what they're doing here is  
15 arbitraging a tariffed service?

16          A     I believe that's one of the things that  
17 they're doing. That's not the -- that's one of the  
18 problems we have. As I mentioned, the more  
19 fundamental problems are they're reselling our  
20 services without a resale agreement, in violation of  
21 our tariff. They're using the service itself, call  
22 forwarding, in violation of the intent and meaning of  
23 the service. And probably equally importantly, they  
24 appear to be violating the statutes here in the state  
25 of Florida.

1           **COMMISSIONER GARCIA:** Mr. Scheye, let me ask  
2 you a question, if you'll allow me for a second.

3           If I went to you and -- to a representative  
4 of your company and I bought a series of call  
5 forwarding lines, what usage -- you have more  
6 experience with working with the network -- what usage  
7 would I have for one company buying a series of call  
8 forwarding lines the way that this company did?

9           **WITNESS SCHEYE:** Typically, well, typically  
10 you would not buy it in the configuration that this  
11 company has. What you might do is, let's say you have  
12 a location in Miami and you have another location in  
13 Fort Lauderdale, and just to pick -- let's say,  
14 assuming you're a plumbing business, and you live in  
15 Hollywood, Florida, and you may decide in the evening  
16 when you close up to call forward your lines from both  
17 your Holly -- your Fort Lauderdale and your Miami  
18 plumbing locations to your home so people calling you  
19 late at night can reach you. That would be a standard  
20 use of a call forwarding device from two different  
21 locations that you may have to some focal point, or  
22 some central point.

23           In some cases you would pay local rates for  
24 that if you call forwarded on a local basis. You  
25 could pay ECS rates if you call forwarded to an ECS

1 location, or you would pay toll rates, intraLATA toll,  
2 if you forwarded to -- on a intraLATA toll basis.

3           **COMMISSIONER GARCIA:** And let's say that  
4 I -- let's stay with the same plumbing company. Let's  
5 say that I'm a plumbing company and I've got an office  
6 in north Dade and one in Coral Gables and one in Fort  
7 Lauderdale, and I configured it -- I configured your  
8 call forwarding in such a way that I would receive all  
9 my calls through that call forwarding so that -- only  
10 calls that I received.

11           In other words, I wouldn't be connected into  
12 someone else, I would be connecting them through my  
13 phones at my offices, and they'd all end up being in  
14 Coral Gables. Would that be allowable under the call  
15 forwarding tariff that you have?

16           **WITNESS SCHEYE:** No, sir, it would not be.  
17 The provision that says you can't use it to bypass  
18 toll would come into play there and, therefore, you  
19 wouldn't be a resale violator, so to speak, because  
20 you weren't reselling in your example, but you would  
21 be up against the specific provision of call  
22 forwarding in that case.

23           **COMMISSIONER GARCIA:** Okay. Thank you.

24           **Q**       **(By Mr. Bonner)** Mr. Scheye, do you know of  
25 any nonreseller customers of BellSouth's call

1 forwarding service who have attempted to use  
2 BellSouth's call forwarding to avoid intraLATA toll  
3 charges?

4       A     No, sir, I haven't. I don't know.

5       Q     Can you imagine any nonreseller customers  
6 configuring a similar network as Telenet has  
7 configured to provide service to its customers using  
8 call forwarding?

9       A     No, sir, and sort of the -- in the example I  
10 gave to Commissioner Garcia, I don't think that's a  
11 typical configuration at all.

12       Q     You would agree it's revolutionary, in fact?

13       A     No; I would agree it's in violation of our  
14 tariffs and the statutes in the state of Florida.

15       Q     I know it's your position. Isn't it true  
16 that the FCC has concluded that -- getting back to the  
17 arbitrage issue, isn't true that the FCC's concluded  
18 that lower prices and the movement of carriers to cost  
19 based rates should result from arbitrage?

20       A     Sir, the reference you're making to the FCC  
21 in the arbitrage opportunity is an FCC finding that  
22 said resale would generally bring rates closer to  
23 cost. And I don't believe we are in any dispute with  
24 you or Telenet or this Commission about all our  
25 services will be made available for resale. That's

1 not the issue here.

2           We've already indicated that, and we've been  
3 through several negotiated agreements that allow all  
4 our services to be resold. We've also had several  
5 arbitrations in front of this Commission in generic  
6 proceedings on that issue. So we're not here to  
7 debate whether resale is good or bad. We accept  
8 resale of our intraLATA services as being part of  
9 what's happening in this new world.

10           Q     And you're familiar with the  
11 Telecommunications act of 1996 in your extensive  
12 interconnection proceedings over the past year, are  
13 you not --

14           A     Yes.

15           Q     -- Mr. Scheye?

16           A     Yes, sir, I am.

17           Q     And does not the Telecommunications Act  
18 under Section 251-C-4 state that incumbent local  
19 exchange carriers have a duty not to prohibit and not  
20 to impose unreasonable or discriminatory conditions or  
21 limitations on the resale of its telecommunication  
22 services subject to resale?

23           A     Yeah, you're quoting directly from the Act,  
24 and I accept that's what the Act says. At the same  
25 time, both this Commission has the authority and the

1 discretion to apply reasonable and nondiscriminatory  
2 provisions not only under the Telecom Act of 1996, but  
3 under the authority of Statute 364 as well.

4 Q And this toll bypass restriction is a  
5 restriction on the ability of resellers or competitors  
6 of BellSouth to use call forwarding service to provide  
7 that service to their customers; isn't that correct?

8 A No, sir, I wouldn't define it as a  
9 restriction. It is part and parcel to the nature of  
10 the call forwarding service. Call forwarding has  
11 never been intended to be a toll bypass vehicle. It  
12 was priced, provisioned to be a local service, as we  
13 discussed earlier.

14 If it was intended to be a bypass vehicle  
15 for toll or access or both, it would be a whole  
16 different service and probably priced quite  
17 differently and have different terms and conditions  
18 associated with it.

19 Q Well, BellSouth's call forwarding tariff was  
20 filed well before the passage of the  
21 Telecommunications Act of 1996, was it not?

22 A Certainly, yes, sir.

23 Q Are you stating, then, that that tariff  
24 isn't compliant -- full compliance with the  
25 Telecommunications Act of 1996, and specifically the



1 duty not to prohibit or to impose unreasonable or  
2 discriminatory conditions or limitations on the resale  
3 of call forwarding?

4 A No, sir. I'm saying, one, that certainly  
5 the service and the tariff is fully compliant with any  
6 provisions of the Act. Two, all I'm saying is that  
7 what the Act, as you quoted it, certainly does allow  
8 just and reasonable restrictions if, in fact, one  
9 wanted to consider this a restriction.

10 Q And in your view, it's a just and reasonable  
11 restriction for any use of this call forwarding that  
12 would bypass intraLATA toll to be a reasonable  
13 restriction?

14 A No, sir. I don't believe -- first of all, I  
15 don't believe we're talking about a restriction, but  
16 maybe we're in semantics.

17 What I'm saying is, and I tried to say  
18 earlier and I'll try to say it differently this time,  
19 the nature of call forwarding service has a provision  
20 in it very clearly stated that it is not to be used as  
21 a toll bypass alternative. That provision happens to  
22 be totally compliant and in agreement with Statute 364  
23 in the state of Florida, which also indicates a  
24 similar, obviously more generic statement as well.  
25 Those two are in perfect sync with each other. They're

1 perfectly consistent.

2           Whether you want to call the toll bypass  
3 term a restriction or part of the service, I don't  
4 know that it's definitive or one way or the other  
5 going to make a big difference. If it is a, quote,  
6 restriction, to use your term, then all I'm suggesting  
7 is that this Commission, under both the Telecom Act  
8 and the state law, has clear authority to allow that  
9 as being a just and reasonable limitation, if you want  
10 to call it that.

11           Q       However, this Commission has not yet  
12 specifically addressed whether or not BellSouth's toll  
13 bypass restriction -- I realize that's my terminology  
14 and not yours -- hasn't made that determination when  
15 it reviewed the BellSouth tariff for approval to  
16 determine if it might be anticompetitive under the  
17 Telecommunications Act of 1996 and Chapter 364 of the  
18 Florida Statutes. Has that --

19           A       No, sir, they haven't; because as you  
20 mentioned, the tariff was filed prior to either of  
21 those occurring, so it's been in service long before  
22 that. This has been the first situation where anybody  
23 has attempted to use the service in violation of our  
24 tariffs and the statute.

25           Q       Now, there's been some mention as to why

1 Telenet did not pursue an interconnection or resale  
2 agreement, and is it correct that your understanding  
3 is that it was not until the September 1996 letter of  
4 Mr. Doc Moore to Telenet that BellSouth requested a  
5 resale agreement?

6 A Yes, sir, that's correct. That is correct.

7 Q Now, is it also your understanding that even  
8 if Telenet had engaged in extensive negotiations for a  
9 resale agreement following that September 1996 letter,  
10 that BellSouth would have consented to allow Telenet  
11 to use the call forwarding services under its existing  
12 application?

13 A My guess would have to be -- since we did  
14 not enter those negotiations, but if I had to presume  
15 what would have happened, I would guess we would have  
16 said, one, that violates the tariff; and, two, even  
17 more importantly, even if I change the tariff it  
18 violates the statutes here in the state of Florida.  
19 So I can't agree to it, being a representative of  
20 BellSouth.

21 Q So Telenet has not entered into a resale  
22 agreement with BellSouth nor an interconnection  
23 agreement with BellSouth; is that correct?

24 A They have interconnection with BellSouth  
25 without a formalized written agreement by the nature

1 of the service they provide, sir.

2 Q But that's not an interconnection agreement  
3 as contemplated under the Telecommunications Act of  
4 1996, is it?

5 A It is not as contemplated under the Act. It  
6 is as contemplated under 364, which is really what is  
7 at issue here.

8 MR. BONNER: I would move to strike the  
9 nonresponsive answer, and also is a legal opinion this  
10 witness is not qualified to give.

11 COMMISSIONER KIESLING: Overruled.

12 Q (By Mr. Bonner) You're referring to the  
13 telecommunication arrangement language in 364.163(A),  
14 Mr. Scheye?

15 A I'll accept that subject to -- I believe  
16 that's the correct section, sir.

17 Q Do you have any authoritative decision of  
18 this Commission or by any Florida court interpreting  
19 or defining what a local interconnection arrangement  
20 constitutes under 364.163(A)?

21 A No, sir. To my understanding, there's --  
22 that particular provision has never been contested by  
23 anyone to this point.

24 Q Yet it was BellSouth that insisted that  
25 Telenet negotiate a resale agreement for a

1 continuation of service on September 19, 1996; is that  
2 correct?

3       A     That is correct, sir; and let me clarify a  
4 couple points again. We have two separable issues  
5 here. One is, irrespective of 364 for a moment and  
6 irrespective of BellSouth's call forwarding tariff and  
7 its provisions, putting both of those aside, Telenet  
8 is still a reseller of BellSouth services.

9             That is in violation of our basic premise of  
10 our tariff which says you cannot resell. Therefore,  
11 for any service to be resold, there must be a resale  
12 agreement. This particular scenario or situation is  
13 compounded by those other two aspects. So the resale  
14 agreement would have been to provide some BellSouth  
15 service in accordance with the statutes and the  
16 tariffs on a resale basis. That's what the other 40  
17 some agreements we have do. They resell BellSouth  
18 service.

19       Q     Is it true or not true that BellSouth has  
20 not amended its tariffs to conform to the  
21 Telecommunications Act of 1996 and Florida  
22 Statutes 364 which makes resale to all  
23 telecommunications services mandatory?

24       A     You're correct, sir. We have not amended  
25 our tariffs. All resale is currently operational in

1 the state of Florida under negotiated agreements  
2 and/or negotiated and arbitrated agreements, which is  
3 also done in accordance with the Telecom Act.

4 Q Why has not BellSouth amended its tariffs to  
5 conform to existing law?

6 A For one thing, this Commission has not -- we  
7 have not had a generic proceeding on the specifics of  
8 resale. What we've had is arbitration cases where  
9 resale discounts and terms and conditions were  
10 addressed.

11 We are required by those orders to come back  
12 to this Commission with agreements between us and the  
13 individual parties, which could be AT&T or MCI; and  
14 that's the process that we continue to use in the  
15 state of Florida.

16 Q Do you agree that Telenet theoretically can  
17 determine its own local calling area if it provides  
18 local service?

19 A Yes, sir. If it provided local service, it  
20 can certainly, as far as BellSouth is concerned,  
21 determine its own local calling area. That would be  
22 between it and the Commission. But it does not  
23 provide local service.

24 Q And then also, in theory, Telenet could  
25 determine a local calling area that does not equate

1 with BellSouth's local calling areas or they might be  
2 larger than multiple local calling areas in the  
3 BellSouth LATA; is that correct?

4       A       Yes, sir. In your hypothetical, if Telenet  
5 was a provider of local exchange service, it could  
6 certainly define its local calling area.

7               COMMISSIONER GARCIA: Even if it was buying  
8 all the components from your company?

9               WITNESS SCHEYE: No, sir. At that point --  
10 and let's use live cases. Maybe it's a little easier.

11               We have several parties in the state of  
12 Florida who resell BellSouth services to provide local  
13 exchange service. In other words, you get your dial  
14 tone even though it's -- the facility is provided by  
15 BellSouth. You interact for your repair visits and  
16 what have you with the reseller.

17               That reseller -- the service is configured  
18 so that the local calling area is identical to  
19 BellSouth's. Now, the reseller can certainly say, I'm  
20 going to charge you something differently than what  
21 BellSouth charges you, if they chose to do that. But  
22 they are fully reselling our service totally in  
23 accordance with our tariffs and the rules of the State  
24 of Florida. In doing that, they have then priced it  
25 differently. But they're basically reselling 1-FR or

1 1-FB type services in the state of Florida.

2 Q (By Mr. Bonner) Was that response directed  
3 towards what Telenet is doing, or in response to  
4 Commissioner Garcia's last question about a competitor  
5 reselling all of BellSouth's facilities?

6 A I'm hopeful it was responsive to  
7 Commissioner Garcia. That's what it was attempting to  
8 be.

9 Q And just for clarification, Telenet is  
10 providing some of its own facilities into the mix of  
11 the service it's providing its customers; is that  
12 correct, the IVRs in question?

13 A Yes. Now, let me -- yes, certainly Telenet  
14 is using their IVRs. We've -- I think they indicated  
15 that to us. They are not providing local exchange  
16 service, and their tariffs indicate that.

17 MR. BONNER: Well, the tariffs speak for  
18 themselves, and I would ask the Commissioner to please  
19 direct the witness just to respond to the question.  
20 He's volunteering a lot more information than I'm  
21 asking here.

22 COMMISSIONER KIESLING: Well, that's his  
23 prerogative. He can explain his answers in whatever  
24 way he thinks he needs to to fully explain his  
25 response.



1 MR. BONNER: Thank you, Commissioner.

2 Q (By Mr. Bonner) The BellSouth -- excuse  
3 me -- the Telenet price list says that Telenet is not  
4 providing basic local service; is that correct,  
5 Mr. Scheye?

6 A That is correct, sir.

7 Q It doesn't say it's providing -- does the  
8 Telenet tariff indicate that it's providing intraLATA  
9 toll service?

10 A No, sir, it doesn't. It says it's providing  
11 some service at 10 cents a message. In BellSouth's  
12 view and in the opinion of people -- the experience  
13 that I have, at least, we have basic local exchange  
14 service and we have toll service, and we have  
15 intraLATA toll and interLATA toll. I don't know what  
16 nonbasic local exchange service is as compared to  
17 basic local exchange service.

18 Q Does the Telenet tariff say "basic local  
19 exchange service," Mr. Scheye?

20 A Yes, sir, it does.

21 Q Is that term defined in the tariff?

22 A Not to my understanding, sir.

23 Q Are you aware of Mr. Kupinsky's testimony in  
24 which he testified that his interpretation of basic  
25 local service is providing dial tone to customers?

1           A     And Telenet does not provide -- I'm not  
2 aware specifically of that statement of Mr. Kupinsky.  
3 I --

4           Q     Thank you. That's all I asked you, yes or  
5 no.

6           A     And -- can I complete my answer?

7           Q     Yes.

8           A     Thank you. Basic local exchange service or  
9 nonbasic local exchange service, I assume, indicates  
10 the provision of dial tone service. That's always  
11 been the fundamental definition of franchises and  
12 everything else that we all operate under and probably  
13 have for the last hundred years or thereabouts.

14          Q     And it's your understanding that the tariff  
15 actually says the Company does not provide basic local  
16 exchange service in those words?

17          A     I believe that may be a paraphrase, but I  
18 believe that's what it says.

19          Q     Is it your view that ALECs have local  
20 calling areas in Florida that generally map  
21 BellSouth's local calling areas?

22          A     Yes, sir.

23          Q     And is it also your opinion that there are  
24 no disputes between ALECs in Florida and BellSouth of  
25 any kind on the correlation of their respective local

1 calling areas?

2           **A**     I am not aware of any disputes. I can only  
3 indicate my experience with several facility based  
4 carriers who are operational here in the state of  
5 Florida.

6                   We spend a lot of time discussing local  
7 calling area comparisons, use of NNX codes. We have  
8 agreements, both negotiated and arbitrated, that  
9 indicate how that's going to be dealt with, and to my  
10 knowledge, we've never had a conflict on that.

11           **Q**     Have you ever seen this Commission's order,  
12 referred to in Mr. Kupinsky's earlier examination,  
13 issued on October 1, 1996 in Docket No. 950985-TP?

14           **A**     I'm not sure, sir. I'd have to look at it  
15 to see if that's one I've seen or not.

16           **Q**     I'll be happy to hand you a copy.

17                   **MR. BONNER:** May I approach?

18                   **COMMISSIONER KIESLING:** Yes.

19 **BY MR. BONNER:**

20           **Q**     **(By Mr. Bonner)** (Handing documents to  
21 witness.)

22           **A**     Oh; this is the 985 order. Yes, sir.

23           **Q**     You have seen that order? If I could refer  
24 you to a portion of that order.

25           **A**     Let me just try to answer your question. I

1 have seen orders in 985. I can't recall whether I've  
2 seen this specific one or not.

3 Q Are you aware that this Commission in that  
4 order stated on Page 23 that the LECs' local calling  
5 areas are well-known because they are published in the  
6 telephone directory; however, the ALECs' local calling  
7 area may or may not be the same as the LECs' local  
8 calling area?

9 A That wouldn't surprise me, sir.

10 Q In addition the, ALEC has statewide  
11 authority though a call that is local to the ALEC  
12 customer may be a toll call for a LEC customer?

13 A Yes; and, again, this is all reference to a  
14 local exchange service provider.

15 Q And also the ALEC does not have control over  
16 the assignment of NXX codes; isn't that correct?

17 A Yes, sir, BellSouth via -- or Bellcore via  
18 BellSouth provides NNX codes.

19 Q And that's significant because the  
20 assignment of NXX codes has an important impact on the  
21 mapping of local calling areas, does it not?

22 A No, sir, it really doesn't. In all the  
23 agreements and discussions we've had with facility  
24 based carriers here in the state of Florida, we have  
25 indicated to them, and our agreements actually

1 indicate, that we will provide them adequate NNX codes  
2 to meet whatever their requirements are to map or not  
3 map local calling areas. So NNX codes are no more of  
4 an issue with them as they are with us.

5 Q Does this order refresh your recollection,  
6 Mr. Scheye, that there may, in fact, be an ongoing  
7 issue between ALECs in the state of Florida and  
8 BellSouth concerning their respective local calling  
9 areas?

10 A No, sir. If you could reference me to a  
11 particular item or page, I'll be happy to look at  
12 that.

13 MR. BONNER: That's all right. I would ask  
14 the Commission to take official recognition of this  
15 order in Docket No. 950985-TP, which is Order  
16 No. PSC-96-1231-FOF-TP.

17 COMMISSIONER KIESLING: Could you give me  
18 the number again, please?

19 MR. BONNER: Oh, sure. The order number is  
20 PC -- PSC-99-1231-FOF-TP.

21 COMMISSIONER KIESLING: And any objection?

22 MS. WHITE: No objection.

23 MR. PELLEGRINI: No objection.

24 COMMISSIONER KIESLING: All right. Official  
25 recognition is granted of that order.

1           MR. BONNER: Thank you. No further cross  
2 examination.

3           COMMISSIONER KIESLING: All right. Staff?

4                           CROSS EXAMINATION

5 BY MR. PELLEGRINI:

6           Q     Good afternoon, Mr. Scheye.

7           A     Good afternoon, sir.

8           Q     In response to one of Mr. Bonner's  
9 questions, you indicated that by virtue of BellSouth's  
10 tariff, a carrier is not permitted to resell  
11 BellSouth's services without a resale agreement; is  
12 that correct?

13          A     Yes, sir.

14          Q     Is there an express, affirmative provision  
15 in BellSouth's tariff that provides for that?

16          A     Yes, sir, I believe there is that says --  
17 and I can't refer you to the precise page, but I'd  
18 have to find it, that indicates services are not  
19 available for resale; and that's precisely why we've  
20 gone through the agreement process.

21          Q     If Telenet were to enter into a resale  
22 agreement with BellSouth, would this -- the tariff  
23 restriction that's presently in question, still apply,  
24 in your opinion?

25          A     Yes, sir, it would.

1           Q     Can you imagine a circumstance in which it  
2 would not in which BellSouth's position would be that  
3 the restriction need not apply?

4           A     The only scenario I can picture is one  
5 whereby we have restructured the service and maybe  
6 call it "call forwarding A service" or something  
7 different, that accommodates or recognizes toll  
8 services and/or access charges to be compliant with  
9 364 of the Act, or of the state requirements. So we  
10 could -- we would have to devise another service, I  
11 believe, to accommodate that, sir.

12                   COMMISSIONER GARCIA: Excuse me for a  
13 second, Charlie. Let's say Mr. Kupinsky wanted to  
14 conduct the business that he's conducting now. What  
15 options would the Company have for him?

16                   WITNESS SCHEYE: What BellSouth would have  
17 available to him would be he could resell ECS, he  
18 could resell intraLATA toll, he could resell BellSouth  
19 intraLATA WATS or WATS Saver services, and none of  
20 those would require him to have, quote, his own  
21 facilities.

22                   Each of those, or all of those would be made  
23 available to him at a resale discount, just like it  
24 would be to any other reseller in the state of  
25 Florida.

1           In addition, since there are many other  
2 carriers providing toll type services in the state of  
3 Florida, he could avail himself of those services as  
4 well.

5           Q       (By Mr. Pellegrini) Mr. Scheye,  
6 recognizing that this Commission must make a  
7 determination as to whether this is a reasonable and  
8 nondiscriminatory restriction, would you agree with me  
9 that it is BellSouth's burden to demonstrate why the  
10 restriction is both reasonable and nondiscriminatory?

11          A       Yes, sir.

12          Q       And can you explain for me why you think  
13 this tariff restriction is reasonable and  
14 nondiscriminatory?

15          A       I guess, first of all, let me say I don't  
16 know that I portray it as a restriction, but let's  
17 assume that we call it that for today's discussion;  
18 because I believe it's part and parcel of the service.

19                 When BellSouth provides a service such as  
20 call forwarding, and it was clear from the nature of  
21 the provision we're talking about that it was  
22 envisioned that one could sort of hop around local  
23 exchanges, if you will, that's why the provision is in  
24 there that says you can't do that basically; and the  
25 reason for that is twofold.



1           One is, had that been envisioned, presumably  
2 the service would have had to have been priced  
3 differently. It would have had to have been priced in  
4 recognition that it was bypassing toll, and probably  
5 some sort of usage element or something would have  
6 been added to it. Now, all this is going on certainly  
7 prior to the time that 364 came into existence.

8           Secondly, the nature of the calling that  
9 would have occurred, and as Mr. Kupinsky's diagram is  
10 displayed for us, is not the typical use of our  
11 network. A toll call from point A to point B is  
12 intended to route in an efficient manner from your  
13 central office through our tandem network, or a toll  
14 network, to the terminating end.

15           What you've seen in the examples today is a  
16 call going from switch to switch to switch to switch  
17 type arrangement, all local switches, never getting  
18 out on our toll network. So it's not using the  
19 network in the way the network was designed and  
20 intended, so we would have had to have tried to take  
21 that into account as well.

22           So we have two problems with that basic  
23 situation; one, the pricing, which is fundamental,  
24 and, two, the impact on our network. And while it's  
25 not so much just the impact on what happens to the

1 BellSouth network, it's what happens to every other  
2 customer who is operating out of those same central  
3 offices where all of a sudden the services might get  
4 impacted because of this unusual or nonintended use.  
5 So for both perspectives, we believe the provision is  
6 certainly valid and reasonable.

7           Secondly, it is nondiscriminatory in the  
8 sense that we don't allow our end users to do it  
9 either. Commissioner Garcia's example he asked me  
10 earlier, he said could he have done it if he was the  
11 plumbing company, and I said no, because you're in  
12 violation of the tariff.

13           So, one, we think it's reasonable from both  
14 the technical perspective and the pricing perspective,  
15 and it clearly is nondiscriminatory because we are  
16 doing the same thing to our end users as well; so  
17 we're in no way curtailing competition.

18           Q     Can you imagine that this Commission might  
19 determine that this restriction is both reasonable and  
20 nondiscriminatory as applied to residential  
21 customers -- or retail customers, I mean -- but that  
22 it might be -- the Commission might find it  
23 unreasonable and discriminatory as applied to  
24 wholesale customers?

25           A     I don't believe so, sir, because I think,

1 again, we run right into 364 that seems to have  
2 envisioned such a provision. So I think any way we  
3 turn, whether it's the tariff or the statute, we have  
4 an issue here; and both of them are sort of reflecting  
5 the same situation, and that is, one does not use  
6 these basic services to bypass access or toll type  
7 services.

8           So even if it was reasonable from a tariff  
9 perspective, I think we have a problem with 364 to  
10 face.

11           **MR. PELLEGRINI:** Thank you, Mr. Scheye.  
12 That concludes our questions.

13           **COMMISSIONER KIESLING:** Any redirect?

14           **MS. WHITE:** Yes, I have just a few  
15 questions.

16                           **REDIRECT EXAMINATION**

17 **BY MS. WHITE:**

18           **Q** Mr. Scheye, what are the elements that make  
19 up local exchange service?

20           **A** Basically typical local exchange service has  
21 a line and a switch. On the switch you get dial tone.  
22 You have a seven-digit telephone number. You get a  
23 listing in the white pages. You have the availability  
24 of 911 service. You have the ability to presubscribe  
25 to your long distance carrier of choice. You've got

1 the capabilities of dialing an operator, and all those  
2 types of things.

3 Q To your knowledge, does Telenet provide any  
4 of those elements?

5 A They do not.

6 Q Now, can you tell me, in answer to some  
7 questions by Mr. Pellegrini you talked about the  
8 multiple switching that a call would go through on the  
9 Telenet -- using Telenet.

10 A Yes.

11 Q What's the impact on the quality of service  
12 of that multiple switching?

13 A What happens is we use our end office or  
14 local switches in a way of which they're not intended.  
15 It became obvious to me earlier today when I heard  
16 that there was a delay of 10 or 15 seconds going on,  
17 that our network was going to be sort of suspended in  
18 animation, four or five switches were, for a very long  
19 period of time before a call completed. All of that  
20 will have a potentially very detrimental effect on the  
21 quality of service we can provide in those switches to  
22 other end users.

23 Q Mr. Pellegrini also asked you about whether  
24 the language in the tariff about bypassing toll, the  
25 language in the call forwarding tariff about bypassing

1 toll would be more reasonable -- or would be  
2 reasonable for retail type customers and unreasonable  
3 for resellers. Do you recall that --

4 A Yes.

5 Q -- as one of his last questions?

6 A Yes.

7 Q Can you tell me, do you believe that a  
8 distinction should be made between retail and resale  
9 customers?

10 A I do not.

11 Q And why is that?

12 A Well, we believe the tariff terms and  
13 conditions are reasonable. They should be applicable  
14 in all cases. And one of the analogies that's been  
15 used in several of our arbitration cases -- by the  
16 other side, I should say -- is the Home Depot example.  
17 And they said, when you go into Home Depot and you buy  
18 two-by-fours, they don't ask you if you're a  
19 wholesaler or a retailer. And I said, that's  
20 precisely the point that we're trying to make. When  
21 you come in and buy from our tariff, we don't want to  
22 change the terms, conditions, and ask you if you're a  
23 wholesaler versus a retailer. The provisions of the  
24 tariff should apply regardless.

25 Q Does the efficient use of the network that

1 you talked about earlier apply whether the person  
2 buying the call forwarding is a retail or resale  
3 customer?

4 A It certain does apply in both cases. The  
5 situation would probably be worse with a wholesale  
6 environment, because you would expect a higher volume.

7 Q What about the pricing issues you talked  
8 about? Would those be the same for a retail customer  
9 and a reseller customer?

10 A Again, they would be the same. Again, I  
11 think they would be exacerbated in the case of a  
12 resale customer.

13 MS. WHITE: Thank you. That's all I have.

14 MR. PELLEGRINI: Commissioner Kiesling, I  
15 neglected to ask that Exhibit RCS-1 be marked for  
16 identification. I'd like to do that at this moment.

17 COMMISSIONER GARCIA: That's Mr. Scheye's  
18 deposition?

19 MR. PELLEGRINI: That's correct.

20 COMMISSIONER KIESLING: All right. That's  
21 the deposition transcript including Exhibits 1 and 2  
22 and the tariff sections.

23 COMMISSIONER KIESLING: I'll mark it as  
24 Composite Exhibit 4.

25 MR. PELLEGRINI: That would be 5, I think.

1           **COMMISSIONER KIESLING:** 4.

2           **MR. PELLEGRINI:** All right. I had the -- 4.

3           **COMMISSIONER KIESLING:** 4. All right. Is  
4 this witness excused?

5                   (Exhibit 4 marked for identification.)

6           **MR. BONNER:** I wonder if I could ask a  
7 couple of questions that were raised in the subsequent  
8 examination, a couple of questions of additional  
9 recross for clarification purposes.

10           **COMMISSIONER KIESLING:** Ordinarily we don't  
11 do recross. Are they very limited?

12           **MR. BONNER:** They are limited. It was just  
13 to the question about network efficiency and one  
14 additional question concerning resale, discriminatory  
15 resale. These were raised in Mr. Pellegrini's  
16 questioning.

17           **COMMISSIONER KIESLING:** I recognize that's  
18 where they were raised. I'll permit you two  
19 questions.

20           **MR. BONNER:** Thank you.

21                   **RE CROSS EXAMINATION**

22           **BY MR. BONNER:**

23           **Q** Mr. Scheye, you're not testifying that  
24 Telenet's demand for BellSouth call forwarding will be  
25 technically infeasible or will exceed BellSouth's

1 network capability either today or at any time in the  
2 future, are you?

3 A No, sir.

4 Q And you had testified, I believe, that call  
5 forwarding in this manner is not intended for resale.  
6 Isn't it true that a number of products, such as  
7 CENTREX services and WATS were not originally intended  
8 for resale either by the incumbent LEC, but were  
9 subsequently made available by regulatory authority  
10 order?

11 A No, sir, not in the state of Florida they're  
12 not.

13 MR. BONNER: No further questions.

14 COMMISSIONER KIESLING: Did you have any  
15 redirect on those?

16 MS. WHITE: No. Thank you, Commissioner  
17 Kiesling, and I would like the witness to be excused  
18 if that's all right.

19 COMMISSIONER KIESLING: Yes, I had already  
20 excused him, but I guess he got called back, so you're  
21 excused again.

22 (Witness Scheye excused.)

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24 MR. BONNER: And I want to thank you,  
25 Commissioner, for allowing me the recross. I



1 appreciate that that's not typically allowed.

2 COMMISSIONER KIESLING: Exhibits?

3 MR. PELLEGRINI: Staff would move Composite  
4 Exhibit 4.

5 COMMISSIONER KIESLING: Without objection, 4  
6 is admitted.

7 (Exhibit 4 received in evidence.)

8 COMMISSIONER KIESLING: Anything further?

9 MR. PELLEGRINI: Commissioner Kiesling, I'd  
10 like to announce some scheduling information.

11 Transcripts will be due on February 19. Briefs will  
12 be due on March 5. Staff's recommendation will be  
13 filed on March 20, and this matter will be held at  
14 regular agenda conference on April 1.

15 COMMISSIONER KIESLING: All right. Any  
16 questions about those schedules? All right. Then  
17 with that, this hearing is concluded.

18 (Thereupon, the hearing concluded at  
19 12:25 p.m.)

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1 STATE OF FLORIDA)  
: CERTIFICATE OF REPORTERS  
2 COUNTY OF LEON )

3 We, ROWENA NASH, and H. RUTHE POTAMI, CSR,  
4 RPR, Official Commission Reporters,

5 DO HEREBY CERTIFY that the Hearing in Docket  
6 No. 961346-TP was heard by the Florida Public Service  
7 Commission at the time and place herein stated; it is  
8 further

9 CERTIFIED that we stenographically reported  
10 the said proceedings; that the same has been  
11 transcribed under our direct supervision; and that  
12 this transcript, consisting of 185 pages, constitutes  
13 a true transcription of our notes of said proceedings  
14 and the insertion of the prescribed prefiled testimony  
15 of the witness.

16 DATED this 14th day of February, 1997.

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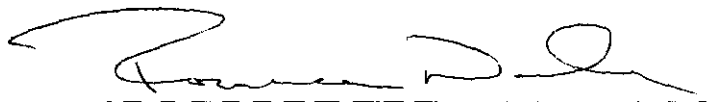
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