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November 12, 1997

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

Re: Docket No. 970730-TP (Telenet - §252(l))

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response and Opposition to Telenet of South Florida, Inc.'s Motion to Accept Amended Request for Relief, which we ask that you file in the captioned matter.

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

Sincerely,

*Nancy B. White (KE)*

Nancy B. White

ACK \_\_\_\_\_  
AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
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SEC 1 \_\_\_\_\_  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

Enclosures

*M*

cc: All parties of record  
A. M. Lombardo  
R. G. Beatty  
William J. Ellenberg II

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FPSC-RECORDS/REPORTING

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Telenet of ) Docket No.: 970730-TP  
 South Florida, Inc. for relief )  
 under Section 252(i) of the )  
 Telecommunications Act of 1996 )  
 with respect to rates, terms and )  
 conditions for interconnection and )  
 related arrangement with )  
 BellSouth Telecommunications, )  
 Inc. )  
 \_\_\_\_\_ ) Filed: November 12, 1997

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
 RESPONSE AND OPPOSITION TO TELENET'S  
 MOTION TO ACCEPT AMENDED  
 REQUEST FOR RELIEF**

BellSouth Telecommunications, Inc., ("BellSouth"), hereby files, pursuant to Rule 25-22.037, Florida Administrative Code, its Response and Opposition to the Motion to Accept Telenet's Amended Request for Relief of Telenet of South Florida, Inc. ("Telenet"). In support thereof, BellSouth states the following:

1. On November 12, 1996, Telenet filed a Petition for Arbitration (Docket No. 961346-TP). The issue was (and still is) whether Telenet can resell remote call forwarding services in a way that violates § A.13.9.1.A.1 of BellSouth's General Subscribers Service Tariff. This section of the tariff provides as follows:

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

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2. The Commission resolved the matter by issuing on April 23, 1997 its Final Order on Arbitration (Order No. PSC-97-0462-FOF-TP). The Commission specifically found that BellSouth's tariff restriction is appropriate (Order, p. 12). The Commission stated that "[t]he record shows that Telenet is currently reselling BellSouth's call forwarding services in a way that avoids the payment of toll or access charges, which violates BellSouth's tariff" (Order, p. 2). (emphasis added). The Commission also confirmed that while an ALEC may configure its local calling area in any way it chooses, "Section 364.16(3)(a), Florida Statutes, nonetheless does not allow an ALEC to knowingly deliver traffic where terminating access charges would otherwise apply. Therefore, while an ALEC may have a different local calling area than an incumbent LEC, it is required by statute to pay the applicable access charges." (Order, p. 11).

3. By Order No. PSC-97-0861-FOF-TP, issued July 17, 1997, the Commission denied Telenet's motions for reconsideration and stay of Order No. PSC-97-0462-FOF-TP. On September 19, 1997, the Florida Supreme Court denied Telenet's Motion to Stay and on October 27, 1997, Telenet withdrew its appeal of Order No. PSC-97-0462-FOF-TP from the Florida Supreme Court. Although BellSouth attempted to negotiate an agreement with Telenet that would conform to the

Commissioner's Order, that attempt was unsuccessful and, on October 8, 1997, BellSouth disconnected Telenet's call forwarding.

4. On June 17, 1997, Telenet filed a Petition for Relief Under 47 U.S.C. § 252(i). (Docket No. 970730-TP). Essentially, Telenet is seeking to enter into an interconnection and resale agreement that circumvents Florida law and this Commission's Order upholding the resale restriction. BellSouth filed a response to Telenet's § 252 (i) Petition on September 2, 1997.

5. On November 5, 1997, Telenet filed its Motion to Accept an Amended Request for Relief. The amended request adds nothing of substance to Telenet's original Petition and, therefore, Telenet's Motion to Amend should be denied.

6. Telenet's Motion purports to set out "factual alternatives" under which it seeks the ability to circumvent the original order. Telenet's alternatives add nothing new to this case; the bottom line is still whether Telenet can avoid the Commission's ruling. In the Commission's Order denying BellSouth's Motion to Dismiss (Order No. PSC-97-0789-PCO-TP), the Commission found that the issue in Telenet's § 252(i) Petition differed from that arbitrated in Docket No. 961346-TP; "to wit, whether BellSouth could sell its call forwarding services to Telenet subject to a tariff restriction. (Order, p. 5). Telenet's requested amendments change the § 252(i) Petition so that it

falls squarely into the issue decided in Docket No. 961346-TP. This it should not be allowed to do.

7. The common thread throughout Telenet's proposed amendments is whether Telenet can "use . . . call forwarding in the same manner as Telenet previously utilized it. . . ." (Motion, p. 2). This issue has previously been decided in favor of BellSouth and against Telenet, yet Telenet simply ignores that fact. Telenet appears to believe that it should be allowed to continue to do business in precisely the way that it used to, purchasing remote call forwarding services and utilizing these services to carry calls across exchange boundaries in a way that violates the tariff restriction, the ruling of this Commission, and the Florida Statute. Telenet's contention that it should be allowed to do business in this manner has no more merit now than in the numerous previous instances that this position has been argued and rejected. It should, likewise, be rejected here.

8. Call forwarding service is not an unbundled network element. Moreover, Telenet cannot use call forwarding in a resale manner to avoid Florida law. This, the Commission has already determined. Moreover, Telenet's proposed issues assume that Telenet and BellSouth have a written interconnection agreement, an assumption that has absolutely no basis in fact.

9. For the reasons set forth above, Telenet's Motion should be summarily rejected. Telenet should not be allowed to continue its rebuff of (Order No. PSC-97-0462-FOF-TP).

WHEREFORE, BellSouth requests that entry of an Order rejecting Telenet's Motion to Accept Amended Request for Relief.

Respectfully submitted this 12th day of November, 1997.

BELLSOUTH TELECOMMUNICATIONS, INC.

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**CERTIFICATE OF SERVICE  
DOCKET NO. 970730-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 12th day of November, 1997 to the following:

Charlie Pellegrini  
Legal Counsel  
Florida Public Service  
Commission  
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Nancy B. White (re)  
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