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RECORDS AND  
REPORTING

March 2, 1999

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. 981052-TP

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence, which we served today. Please file them 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,

Mary K. Keyer (MK)

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 2 \_\_\_\_\_
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- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Enclosures

cc: All parties of record  
M. M. Criser, III  
N. B. White  
William J. Ellenberg II (w/o enclosures)

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF TELEPHONE COMPANY OF )  
 CENTRAL FLORIDA (TCCF) FOR ARBITRATION ) Docket No: 981052-TP  
 OF RESALE AGREEMENT WITH BELLSOUTH )  
 TELECOMMUNICATIONS, INC., PURSUANT )  
 TO THE TELECOMMUNICATIONS ACT OF 1996) Filed: March 2, 1999  
 \_\_\_\_\_)

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**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
 BRIEF OF THE EVIDENCE**

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## STATEMENT OF THE CASE

On February 8, 1996, the Telecommunications Act of 1996 (“the Act”) became law. The Act required resale negotiations between incumbent local exchange carriers and new entrants. On July 1, 1996, BellSouth Telecommunications, Inc. (“BellSouth”) and Telephone Company of Central Florida (“TCCF”) filed a request for approval of a resale agreement under the Act. On October 8, 1996, the Florida Public Service Commission (“PSC” or “Commission”) approved the Agreement in Order No. PSC-96-1251-FOF-TP. The Commission found the Agreement complied with the Act. The Agreement governs the relationship between BellSouth and TCCF regarding resale pursuant to the Act.

On August 20, 1998, TCCF filed a petition with the Commission as a result of TCCF and BellSouth being unable to reach agreement on all issues that were being negotiated between them for the renewal of the parties’ resale agreement. By Order No. PSC-98-1490-PCO-TP, issued November 9, 1998, the Commission separated the issues into one issue for enforcement of the parties’ current resale agreement (“Complaint Issue”) and two issues for arbitration of the renewal of the resale agreement (“Arbitration Issues”). The matter was set for hearing on January 22, 1999.

Pursuant to the Commission’s Order, the hearing on the Complaint and Arbitration Issues was held on January 22, 1999, and concluded on February 9, 1999. BellSouth submitted the direct testimony of Jerry Hendrix and the rebuttal testimony of Susan Arrington and Marc Cathey on the Complaint Issue.

BellSouth submitted the direct and rebuttal testimony of Susan Arrington and Daonne Caldwell, and the rebuttal testimony of Marc Cathey and Ron Pate on the Arbitration Issues. The hearing produced four volumes of transcript consisting of 540 pages and 26 exhibits.

This Brief of Evidence is submitted in accordance with the post-hearing procedures of Rule 25-22.056, Florida Administrative Code. A summary of BellSouth's position on each of the issues to be resolved in this docket is delineated in the following pages and marked with an asterisk.

### **STATEMENT OF BASIC POSITION**

BellSouth and TCCF entered into a resale agreement on May 28, 1996, which was approved by the Commission on October 8, 1996 ("Resale Agreement" or "Agreement"). TCCF was one of the first resellers to enter into a resale agreement with BellSouth under the provisions of the Act. Ripper, Tr., p. 17; Welch, Tr. pp. 101-102. TCCF's Resale Agreement with BellSouth provided that TCCF may resell the "tariffed local exchange, including Centrex type services available under Section A12 of the Florida tariff. . . ." Exh. 11 (JDH-1, p. 2), Sec. III.A (emphases added). That same provision specifically stated, "Notwithstanding the foregoing," grandfathered services are "not available for purchase." Id. (emphases added). ESSX® Service was grandfathered effective May 30, 1996, and pursuant to the clear and unambiguous language of the Agreement was no longer available for resale. Hendrix, Tr. pp. 192-193.

TCCF claims in its petition that BellSouth did not provision ESSX® Service in accordance with BellSouth's obligations under the parties' Resale Agreement

entered into on May 28, 1996. This is the Complaint Issue regarding ESSX® Service. TCCF further claims in its petition that ESSX® Service should be made available for resale to new customers by TCCF under its new resale agreement with BellSouth. This is the Arbitration Issue regarding ESSX® Service.

The parties' Agreement, BellSouth's lawfully filed and approved tariff, and the law, as explained more thoroughly herein, preclude BellSouth from making ESSX® Service available to TCCF for resale to new customers. The parties' Agreement obligated BellSouth to provide "Centrex type services" that were "available under Section A12 of the Florida tariff." As of May 30, 1996, ESSX® Service, a Centrex type service, was not "available under Section A12 of the Florida tariff," and BellSouth should not have allowed TCCF to resell it as such to new customers. The fact that BellSouth improperly allowed such resale does not, and cannot under the law, constitute a waiver of the tariff provisions. Additionally, the nonstandard arrangement requested by TCCF was never "available under Section A12 of the Florida tariff," therefore, BellSouth had no obligation under its Resale Agreement to provide it.

The second Arbitration Issue relates to OSS rates. TCCF in its petition disputes the rates BellSouth proposed during negotiations of the resale agreement for the development and ongoing use of the electronic interfaces that BellSouth has developed solely for the ALECs to obtain access to BellSouth's operational support systems ("OSS"). These rates (collectively referred to as "OSS rates") include both an electronic rate for orders processed electronically and a manual rate for orders processed manually. For the reasons stated herein,

BellSouth should be allowed to recover its costs and to charge the OSS rates proposed.

BellSouth complied with its May 28, 1996 Agreement with TCCF to provide ESSX® Service, which became a grandfathered service May 30, 1996. The Agreement and tariff specifically preclude the resale of grandfathered services. ESSX® Service is no longer a service available for resale to new customers and should not be made available to TCCF under its new resale agreement. Moreover, TCCF settled all claims against BellSouth prior to March 14, 1997, and accepted another adjustment in October 1997 for outstanding operational issues prior to that time.

BellSouth is entitled to recover its costs of providing OSS for ALECs' use. The charges and rates should be based on BellSouth's cost studies submitted for electronic interface and manual processing of ALEC orders. The parties should negotiate appropriate language.

### **STATEMENT OF POSITION ON THE ISSUES**

**Complaint Issue 1:** Has BST provided TCCF with ESSX® Service in compliance with the parties' resale agreement for periods of time not covered by settlements and adjustments made regarding ESSX? If not, what action, if any, should the Commission take?

**\*\*Position:** Yes. Tariffed services, except grandfathered services, were available for resale under the Resale Agreement. ESSX® Service was grandfathered May 30, 1996, and was unavailable to new customers under BellSouth's tariff. TCCF's requested nonstandard arrangement was not a tariffed service. BellSouth complied with the Agreement after the dates of the settlements and adjustments.

Because the overall purpose of the 1996 Act is to open telecommunications markets to competition, some BellSouth telecommunications

services are available for resale at wholesale rates as a result of the obligations imposed upon BellSouth under Section 251 of the Act. 47 U. S. C. § 251(c)(4). BellSouth has a duty as the incumbent local exchange carrier (“ILEC”) to “offer for resale at wholesale rates any telecommunications service that the carrier provides at retail<sup>1</sup> to subscribers who are not telecommunications carriers.” 47 U.S.C. § 251(c)(4)(A) (emphasis added).

BellSouth has 302 resale agreements in the state of Florida under which it is making its telecommunications services available for resale. BellSouth has worked in good faith to fulfill its obligations under each and every one of its resale agreements, including the Agreement with TCCF. The sole Complaint Issue to be determined by the Commission with regard to TCCF’s Resale Agreement is whether BellSouth provided TCCF with ESSX® Service “in compliance with the parties’ resale agreement for periods of time not covered by settlements and adjustments made regarding ESSX.” For the reasons stated herein, the answer is clearly yes.

TCCF’s claims to the contrary fail for three reasons: (1) the clear and unambiguous language of the Agreement itself only obligates BellSouth to provide Centrex type services available under its A12 tariff and specifically precludes the resale of grandfathered services; (2) the “filed rate” or “filed tariff” doctrine precludes the parties from violating a tariff even if done so intentionally; and (3) the evidence shows BellSouth did provide TCCF with ESSX® Service

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<sup>1</sup> This portion of the Act is relevant to this case because BellSouth has no obligation under the Act to make services available for resale to ALECs that are not available to its own customers at retail. Effective May 30, 1996, ESSX® Service was clearly not available to new customers and was, therefore, not a service provided by BellSouth “at retail.”



“available under Section A12 of the Florida tariff” in compliance with the Resale Agreement for periods of time not covered by settlements and adjustments made for ESSX®.

**A. BellSouth Had No Obligation to Provide ESSX® Service to TCCF for Resale after May 29, 1996, under the Clear and Unambiguous Language of the Resale Agreement.**

The May 28, 1996, Resale Agreement between BellSouth and TCCF provided for the resale of “tariffed local exchange, including Centrex type services available under Section A12 of the Florida tariff.” Hendrix, Tr. pp. 191-192, Tr. Exh. 11 (JDH-1, p. 2). The Agreement specifies “Centrex type services,” not ESSX® Service. Ripper, Tr. p. 17. The Agreement further specifies that “[n]otwithstanding the foregoing, the following are not available for purchase: Grandfathered services . . . .” Hendrix, Tr. p. 192, Tr. Exh. 11 (JDH-1, p. 2). ESSX® Service, a Centrex-type service, was obsoleted May 30, 1996, thereby becoming a grandfathered service at that time. Id. MultiServ® Service, another Centrex-type service, replaced ESSX® Service and was available to TCCF pursuant to the parties’ Agreement, but TCCF chose not to utilize MultiServ® Service. Hendrix, Tr. p. 193; Ripper, Tr. pp. 25-26; Koller, Tr. p. 72.

TCCF was aware that ESSX® Service was being grandfathered when it entered into the Resale Agreement with BellSouth. Ripper, Tr. pp. 35-36, 53. In fact, it was clear from Mr. Ripper’s testimony that he was trying to “beat the system” by rushing to sign the agreement two days before ESSX® Service was grandfathered. Id. at 35, 53.

Pursuant to the plain language of the parties' Resale Agreement and BellSouth's tariff, however, ESSX® Service was not, and should not have been, available to TCCF for resale to new customers after May 29, 1996. The Resale Agreement provided that TCCF "may resell the tariffed local exchange, including **Centrex type services available under Section A12** of the Florida tariff." Tr. Exh. 11 (JDH-1, p.2) (emphases added). This language clearly and unambiguously precludes TCCF's claims in three separate and distinct ways.

First, Section III.A clearly states that TCCF may resell "tariffed" services. Once ESSX® Service became obsoleted effective May 30, 1996, it was no longer a "tariffed" service available for resale under the parties' Agreement.

Second, the Agreement provided TCCF may resell "Centrex type services." It does not specify ESSX® Service. Moreover, for a Centrex type service to be available to TCCF for resale it had to be "available under Section A12 of the Florida tariff." ESSX® Service, although a Centrex type service, was not "available under Section A12 of the Florida tariff" after May 29, 1996. The Centrex type service available under Section A12 from that date forward was MultiServ® Service, which BellSouth indisputably made available to TCCF during the term of its Agreement. Ripper, Tr. pp. 25-26.

Third, the language of Section III.A clearly and specifically states that "[n]otwithstanding the foregoing," "[g]randfathered services" were "not available for purchase." There is no dispute that ESSX® Service was "grandfathered" effective May 30, 1996. Ripper, Tr. pp. 35-36, 335. TCCF was aware at the time it entered into the Resale Agreement that ESSX® Service was being

“grandfathered” and that MultiServ® Service was the Centrex type service replacing ESSX® Service. Ripper, Tr. p. 35, 335-336. Mr. Ripper, President of TCCF, testified that MultiServ® and ESSX® Service are the same product except that ESSX® Service is unbundled. Ripper, Tr. pp. 24-25. He further admitted that “MultiServ could be utilized in place of the existing ESSX arrangement.” Ripper, Tr. p. 25.

There is nothing in the Agreement that requires BellSouth to make ESSX® Service available for resale throughout the parties’ Agreement. The Agreement only specifies “Centrex type services available under Section A12 of the Florida tariff.” Once ESSX® Service became grandfathered it was no longer available to TCCF for new customers or to any new customers of BellSouth at retail. Hendrix, Tr. pp. 193-195. Existing ESSX® Service customers of both TCCF and BellSouth were able to continue with their ESSX® Service but no new customers were allowed to be sold the service either through retail or resale. Id. TCCF should be no exception.

Under Florida law, where the language of the contract is clear and unambiguous, the terms of the contract are conclusive. Lyng v. Bugbee Distributing Co., 182 So. 801 (Fla. 1938). The court cannot entertain evidence contrary to its plain meaning. Sheen v. Lyon, 485 So.2d 422, 424 (Fla. 1986). As the court in Lyng stated:

“The intention of the parties to a contract is to be deduced from the language employed by them. The terms of the contract, when unambiguous, are conclusive, in the absence of averment and proof of mistake, the question being, not what intention

existed in the minds of the parties, but what intention is expressed by the language used.” [citation omitted]

182 So. 2d at 802. Regardless of the apparent intent of the parties at the time they entered the agreement, such intent cannot prevail over the actual terms of the agreement. Acceleration Nat’l Serv. Corp. v. Brickell Fin. Servs. Motor Club, Inc., 541 So.2d 738, 739 (Fla. App. 1989). It is a basic principle of contract interpretation under Florida law that a limited or specific provision will prevail over one that is more broadly inclusive. Raines v. Palm Beach Leisureville Community Assoc., 317 So. 2d 814 (Fla. App. Dist. 4, 1975)(specific clause in contract takes precedence over general clause.) *reversed on other grounds* 413 So. 2d 30. The language in the Agreement specifically stated Centrex type services available for resale were those “available under Section A12 of the Florida tariff,” and that grandfathered services were “not available for purchase.” There were no provisions specifying ESSX® Service was available or had to be available, although TCCF claims the Agreement “specifically provides for the resale of ESSX.” Ripper, Tr. p. 324. The specific provisions of the Agreement provide otherwise and, thus, prevail over TCCF’s claims generally that BellSouth was required to make ESSX® Service available for resale under the Agreement. There is simply no language, general or specific, which requires BellSouth to make such service available.

TCCF also claims the Telecommunications Act “requires BellSouth to offer ESSX for resale.” Ripper, Tr., p. 22 (emphasis in original). On the contrary, as indicated above, the Act requires an ILEC to make available for resale those services that are available “at retail.” 47 U.S.C. § 251(c)(4)(A). It does not

require BellSouth to offer for resale a service that has been grandfathered and is no longer available at retail. In fact, both the FCC and this Commission have found that grandfathered services are available for resale to grandfathered customers and are not available to new customers. Arrington, Tr. pp. 382-384. Neither the Act, the FCC, this Commission, nor the Agreement require BellSouth to allow TCCF to resell ESSX® Service after it was grandfathered effective May 30, 1996.

BellSouth had no obligation to provide ESSX® Service for resale to TCCF after May 29, 1996, under the plain and unambiguous language of the parties' Resale Agreement. Based on the evidence and the clear language of the parties' Agreement, BellSouth did provision ESSX® Service in compliance with the Resale Agreement for periods of time not covered by settlements and adjustments made regarding ESSX® Service, therefore, no action is necessary from the Commission.

**B. The "Filed Tariff Doctrine" Precludes Parties from Waiving Provisions of a Lawfully Filed and Approved Tariff.**

TCCF argues that even if BellSouth is correct that the Agreement prohibits the resale of ESSX® Service, "BellSouth's conduct over the last two years evidences that it has waived any right to assert such a position in this case." Ripper, Tr. p. 325. TCCF claims that because it was allowed to resell ESSX® Service under Section III.A of the Resale Agreement and because BellSouth knew of TCCF's plans to resell ESSX® Service at the time TCCF entered into its Agreement with BellSouth, TCCF should be allowed to offer ESSX® Service for resale. Ripper, Tr. p. 324. TCCF further alleges that the 73-month term

arrangement for ESSX® Service entered into by TCCF and BellSouth on May 29, 1996, “is significant because by tariff it qualifies . . . TCCF for charges at that tariff rate.” Ripper, Tr., p. 19 (emphases added). The tariff actually provided otherwise.

BellSouth's tariff making ESSX® Service obsolete effective May 30, 1996, was a lawfully filed and approved tariff. Hendrix, Tr. p. 193, Tr. Exh. 11 (JDH-2). As a matter of law, once BellSouth's tariff obsoleting ESSX® Service was approved by the Florida Public Service Commission, the tariff itself became the contract between BellSouth and TCCF. See MCI Telecomm. Corp. v. The Best Tel. Co., Inc., 898 F. Supp. 868 (S.D. Fla. 1994); MCI Telecomm. Corp. v. O'Brien Mktg., Inc., et al., 913 F. Supp. 1536, 1540 (S.D. Fla. 1995) (Tariffs filed with the FCC pursuant to the Communications Act “conclusively and exclusively control the rights and liabilities between a carrier and its customer.” This is the “filed rate doctrine.”); Accord, MCI Telecomm. v. Happy The Glass Man, 974 F. Supp. 1016 (E.D. Ky. 1997).

The principle of the filed-rate doctrine is supported by Florida statutes that specify the manner by which tariffs are to be filed and modified, and that prohibit any deviations from them. Fla. Stat. §§ 364.04-364.05. See also Fla. Stat. §364.08 (“telecommunications company may not charge, demand, collect or receive for any service rendered or to be rendered any compensation other than the charge applicable to such service as specified in its schedule on file and in effect at that time.”); Fla. Stat. § 364.10 (“telecommunications company may not

make or give any undue or unreasonable preference or advantage to any person or locality . . . in any respect whatsoever.”).

The tariff must contain the rates to be charged and the classifications, practices, and regulations affecting such rates. Indeed, Fla. Stat. § 364.08 mandates that only those rates and terms and conditions of service set forth in an approved tariff may be charged. American Tel. & Tel. Co. v. Central Office Tel., 524 U.S. 214, 141 L.Ed.2d 222, 118 S.Ct. 1956 (1998). The purpose of the tariff filing requirement is to prevent discrimination in price (and related terms and conditions), to stabilize rates and to ensure that expenditures by a common carrier will not be recouped improperly from the consuming public. See MCI Telecomm. Corp. v. AT&T Co., 512 U.S. 218, 230 (1994); Maislin Ind. U.S., Inc. v. Primary Steel, Inc., 497 U.S. 116, 126 (1990). The filed-tariff doctrine is not limited to rates. American Tel. & Tel. Co., 141 L.Ed.2d at 233-234.

The record is undisputed that BellSouth and TCCF were aware that the services available for resale were those available under BellSouth’s tariffs, and that the terms and conditions of the tariffs would ultimately control the relationship between them. Ripper, Tr. p. 32-33. TCCF cannot claim that BellSouth grandfathered its ESSX® Service in an attempt to prevent TCCF from reselling it since TCCF was aware ESSX® Service was being grandfathered before it entered into the Resale Agreement with BellSouth. Ripper, Tr. pp. 35-36. Once ESSX® Service was grandfathered pursuant to a lawfully filed and approved tariff, both parties had to abide by the tariff and could not agree to terms contrary to those in the tariff. This is the filed-rate doctrine, under which

neither BellSouth nor TCCF can circumvent the terms and conditions set forth in BellSouth's tariff. See American Tel. & Tel. Co., 141 L.Ed. at 234.

Section 364.04 of the Florida Statutes requires every telecommunications company to file a schedule of their charges, as well as the privileges or facilities granted and rules or regulations affecting such charges. This schedule is known as a tariff. American Tel. & Tel. Co., *supra*; and Pay Phone Concepts, Inc. v. MCI Telecomm. Corp., 904 F. Supp. 1202, 1207 (D. Kan. 1995), *citing Richman Bros. Records, Inc. v. U.S. Sprint Comm. Co.*, 953 F.2d 1431, 1435 (3d Cir. 1991), *cert. denied*, 505 U.S. 1230, 112 S.Ct. 3056 (1992). Valid tariffs filed with the Commission "conclusively and exclusively control the rights and liabilities between a carrier and its customer." MCI Telecomm. Corp. v. Graham, 7 F.3d 477, 479 (6th Cir. 1993). The filed tariff exclusively describes the legal relationship between the customer and carrier and its terms "are conclusive as to the rights of the parties." Atchison, T. & S.F. Ry. v. Robinson, 233 U.S. 173, 180 (1914).

Therefore, the filed tariff doctrine not only operates as a strict rule against use of any parole evidence or alleged side agreements, thereby preventing easily manufactured claims against common carriers which are obliged to provide service in accordance with their tariffs and have no freedom to contract privately, it pre-empts state law contract claims. *Id.* at 180-181; American Tel. & Tel. Co., *supra*.

The tariff at issue in this docket is BellSouth's Section A112, which provides that ESSX® Service is obsoleted effective May 30, 1996. Arrington, Tr.



p. 241, Tr. Exh. 15 (SMA-2). Under the filed-tariff doctrine, TCCF could not resale ESSX® Service and BellSouth could not agree to allow TCCF to resale ESSX® Service to new customers after May 29, 1996. American Tel. & Tel. Co., 141 L.2d at 223 (“even if a carrier intentionally misrepresents its rates and a customer relies on the misrepresentation, the carrier cannot be held to the promised rate if it conflicts with the published tariff.”) (citation omitted). The tariff filed with and approved by this Commission exclusively defines the rights and obligations of the parties and it explicitly prohibits the sale or resell of ESSX® Service except to grandfathered customers. Therefore, based on the tariff and the filed-tariff doctrine, BellSouth was not obligated to provide ESSX® Service to TCCF for resale to new customers after May 29, 1996.

**C. BellSouth Did Provide TCCF with ESSX® Service in Compliance with the Resale Agreement for Periods of Time not Covered by Settlements and Adjustments.**

Should the Commission decide BellSouth had an obligation to provide ESSX® Service to TCCF for resale under the Agreement, which BellSouth denies, the Commission should find BellSouth met that obligation. BellSouth’s obligation, if any, to provide ESSX® Service under the Agreement applied only to ESSX® Service as was “available under Section A12 of the Florida tariff.” This service is what BellSouth referred to during the hearing as “standard” ESSX® Service. Cathey, Tr. pp. 444-445. TCCF witness Ken Koller also testified that “all the features and everything in the A12 tariff consisted of or made a standard ESSX system.” Koller, Tr. p. 90.

BellSouth admits there were problems initially with provisioning the standard ESSX® Service. Cathey, Tr. p. 437. TCCF was compensated for these problems, however, and on April 25, 1997, signed a confidential full release and settlement agreement releasing BellSouth from “any and all claims” it had or may have had through March 14, 1997. Cathey, Tr. p. 457; Ripper, Tr. pp. 46-47; Tr. Exh. 5. A second adjustment was agreed to between Mr. Ripper and Mr. Cathey on or about October 7, 1997, to further compensate TCCF for problems incurred in provisioning ESSX® Service. Ripper, Tr. p. 61; Cathey, Tr. p. 428<sup>2</sup>

Furthermore, there is evidence that BellSouth was able to provision ESSX® Service as described in its tariff. Cathey, Tr. p. 423, 436 (TCCF was able to resell ESSX, did resell ESSX, and ordered ESSX up until November 1998). TCCF’s own testimony reflected that BellSouth was able to provision ESSX® Service pursuant to its tariff. Ripper, Tr. p. 19 (TCCF has several hundred ESSX® Service customers)<sup>3</sup>; Koller, Tr. p. 77 (“move of local 1FB accounts could be accomplished”); Koller, Tr. p. 93 (“TCCF has been selling ESSX services pursuant to BellSouth’s tariff”); Welch, Tr. p. 165 (as result of

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<sup>2</sup> Many of the problems testified to by TCCF occurred prior to March 14, 1997, and October 7, 1997, and cannot be considered in the Commission’s determination of the Complaint Issue since TCCF released BellSouth from all claims prior to March 14, 1997, and was compensated for other problems up to October 7, 1997. Koller, Tr. pp. 73-77 (totality of testimony concerned events and complaints prior to March 14, 1997); Tr. Exh. 5; Ripper, Tr. p. 59.

<sup>3</sup> When asked in his deposition “how many customers [TCCF] ha[s] today that are ESSX customers,” Mr. Ripper testified TCCF had “approximately 3,000 lines, which probably would account for several hundred customers.” (Tr. Exh. 4, p. 18) In the hearing, Mr. Ripper changed his story and testified in his summary that TCCF had “activate[d] 150 lines.” Tr. p. 30. Although Mr. Ripper would not admit it, Ms. Welch admitted that TCCF lost approximately 20% of its customers as a result of TCCF’s dispute with its long distance carrier in June 1998. Welch, Tr. p. 165.

TCCF's dispute with its long distance carrier in June 1998, several of TCCF's customers with "dedicated" services were out for two to three weeks). Based on the Agreement and the evidence, BellSouth did provision ESSX® Service in compliance with the Agreement for periods of time not covered by settlements and adjustments made for ESSX® Service.

As for the nonstandard arrangement, discussed herein, BellSouth had no obligation under its Resale Agreement to provision ESSX® Service in the unique arrangement requested by TCCF. Whatever obligation BellSouth had to provision the nonstandard arrangement arose from a special arrangement outside the Resale Agreement. Cathey, Tr. p. 445; Hendrix, Tr. pp. 196-197. Under the nonstandard arrangement, although TCCF requested ESSX® Service, the service was to be interconnected in a nonstandard arrangement using direct access via T1 transport to Wiltel's point of presence. Cathey, Tr. p. 421. This was not a standard serving arrangement for BellSouth. Id. TCCF's plan was to disguise ESSX® Service dial tone as business (1FB) service to TCCF end users using assumed dial 9 and dedicated access to route interLATA calls. Id. A special software release was required to allow Automatic Number Identification (ANI) to be passed from the common block to a carrier interface in all 5ESS offices, which was not a standard software release for the 5ESS switch and had to be submitted as a Business Opportunity Request (BOR) similar to a special assembly. Cathey, Tr. pp. 421-422; Koller, Tr. pp. 79-80. There was also a dual dial tone problem in the 5ESS offices that required a BOR. Cathey, Tr. p. 422; Koller, Tr. p. 79.

TCCF was attempting to use ESSX® Service in an “extremely unique” arrangement as compared to what BellSouth did with ESSX® Service in the retail setting. Cathey, Tr. p. 432. TCCF wanted to use the ESSX® Service software capability and disguise dial tone and sell it to individual business customers resulting in multiple business interests on one ESSX® Service product. Id. This utilization required TCCF to maintain the autonomy of those business lines in order to do billing and collections when long distance occurred. Id.

TCCF repeatedly referred to a letter dated May 31, 1996, from Charlotte Webb of BellSouth regarding the arrangement for which TCCF planned to use ESSX® Service.<sup>4</sup> Ripper, Tr. pp. 18-19; Tr. Exh. 3. Marc Cathey, Assistant Vice-President - Sales, testified that BellSouth could have provisioned the arrangement as drawn in that letter, but the “problem was, because [TCCF] was using that service in order to provide local dial tone to a variety of different businesses that needed their own accountability of call detail records, the information that was being passed between [TCCF’s] ESSX Service and Wiltel did not carry the necessary information in order to do billing and settlements with [TCCF’s] long distance provider.” Cathey, Tr. pp. 433-434. Although BellSouth could have provided the design Mr. Ripper worked on with Ms. Webb, that service would not have given TCCF the necessary information to have settled the individual business accounts to whom TCCF had sold service. Id. at 434. Therefore, BellSouth worked with TCCF to provide a solution that would

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<sup>4</sup> The design in Ms. Webb’s letter was the result of a collaborative effort on the part of Mr. Ripper and Ms. Webb and all Ms. Webb’s letter did was relay a drawing depicting her vision of what Mr. Ripper had told her. Ripper, Tr. p. 338.

accomplish what TCCF needed to serve its end users. Id. This arrangement was approved by TCCF through the BOR process. Id. at 445. The arrangement TCCF requested regarding ESSX® Service was not described in the tariff. Id. at 435-436; Koller, Tr. p. 91 (if it does not include everything in the tariff, “then it’s not a standard application, because anything in the tariff that’s not a special assembly is a standard application.”) (emphasis added). Mr. Koller admitted that the Primary Rate ISDN (“PRI”) arrangement required for TCCF’s request is “not included in the standard tariff.” Koller, Tr. p. 93. Regardless of whether it is referred to as a nonstandard arrangement or something else, the bottom line is that this unique arrangement requested by TCCF for ESSX® Service was not “included in the standard tariff,” and was, therefore, not required to be provided under the terms of the parties’ Resale Agreement.

As Mr. Cathey explained, in a wholesale environment it is BellSouth’s responsibility as a supplier to provide services as they are “described in the tariff.” Id. at 435. It is then TCCF’s responsibility as the local exchange carrier to integrate that particular service offering with other suppliers with whom it does business. Id. This would include integration with its billing supplier to make sure the appropriate bills could be rendered to TCCF’s end users. Id. BellSouth had no obligation under its Resale Agreement with TCCF to provision the nonstandard arrangement requested by TCCF. Cathey, Tr. p. 444. BellSouth’s obligation regarding the nonstandard arrangement arose only through the BOR process, which is not at issue in this case. Id. at 445.

It should be further noted that the only time periods in question regarding the provisioning of ESSX® Service are those periods not covered by “settlements and adjustments made regarding ESSX.” (Prehearing Order, p. 8, Complaint Issue 1) (emphasis added). In addition to the Confidential Full Release and Settlement Agreement (Tr. Exh. 5) which clearly resolved any claims TCCF may have had against BellSouth prior to March 14, 1997, BellSouth and TCCF reached another agreement to resolve “outstanding operational issues” as of October 7, 1997. Cathey, Tr. pp. 428, 457, 469; Tr. Exh.22; Ripper, Tr. p. 61. Although the parties did not enter a formalized settlement agreement, Mr. Ripper agreed with Mr. Cathey to resolve outstanding operational issues up to that point in exchange for a \$250,000 adjustment for the upgrading of several central offices to attain the nonstandard arrangement TCCF requested.<sup>5</sup> Cathey, Tr. pp. 446-447; Ripper, Tr. pp. 47-48, 339-341. This adjustment was made regarding further problems incurred in provisioning ESSX® Service. Cathey, Tr. p. 448. Although Mr. Ripper played “dumb” in his deposition and claimed the letter was sent to his son, he finally admitted he had had conversations with Mr. Cathey in which they agreed to resolve all outstanding operational issues at that time and that he had received Mr. Cathey’s letter confirming that conversation. Ripper, Tr. p. 49; Tr. 6 (KEK-23); Tr. Exh. 22. The letter dated October 7, 1997, from Cathey to Ripper and Mr. Ripper’s October 10, 1997, letter in response confirms this

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<sup>5</sup> When asked if the upgrades were the responsibility of TCCF or BellSouth, Mr. Ripper responded, “They’re not responsible – no, they’re not responsible at all. They have an obligation if they have a tariffed product to upgrade their own central offices.” Ripper, Tr. p. 62. The problem with this position is two-fold: first, ESSX® Service was no longer a tariffed product available for resale, and second, the nonstandard arrangement was never a tariffed product. Cathey, Tr. pp. 435-436; Koller, Tr. p. 91.

agreement. Tr. Exh. 4. Although TCCF's counsel pointed out that Mr. Ripper in his response took exception to some of the items in Mr. Cathey's letter, it was undisputed that Mr. Ripper did not take exception to Mr. Cathey's statement confirming the parties' agreement to resolve their outstanding issues at that point. Cathey, Tr. p. 468. Further evidence of TCCF's acceptance of this agreement, was TCCF's acceptance of the adjustment made by BellSouth in not charging TCCF for the upgrades to the central offices to accomplish TCCF's nonstandard arrangement.<sup>6</sup> BellSouth had no obligation under its Resale Agreement to provide the nonstandard arrangement required by TCCF, but did provision standard ESSX® service.

**Arbitration Issue 1:** Should BST be permitted to recover from TCCF its nonrecurring and recurring costs of providing OSS for use by ALECs?

- A. If so, how should the charges for such use be determined?
- B. What language and rates regarding OSS should be included?

**\*\*Position:** Yes. BellSouth has complied with the Telecommunications Act in developing nondiscriminatory electronic interfaces for access by ALECS to BellSouth's operational support systems ("OSS") and is entitled to recover its costs, both manual and electronic.

**\*\*Arbitration Issue 1A:** The charges for the ALECs' use of such systems should be based on BellSouth's cost studies submitted in this docket.

**\*\*Arbitration Issue 1B:** The appropriate OSS rates to be included in the parties' new resale agreement should be a charge of \$6.78 per Local Service Request ("LSR") for mechanized orders and a charge of \$20.08 per LSR for manual orders. The parties should negotiate the language to be included in their agreement.

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<sup>6</sup> Although TCCF claims it was not responsible for those charges, it is undisputed that the upgrades were not part of offering standard ESSX® Service under the tariff and, therefore, TCCF was responsible for the upgrades if it wanted them. Cathey, Tr. p. 435.

A. **BellSouth Is Entitled under the Law to Recover Its OSS Costs.**

Pursuant to the Act, BellSouth must make available to alternative local exchange carriers (“ALECs”) “nondiscriminatory access” to unbundled network elements (“UNEs”). 47 U.S.C. § 251(c)(3). The Federal Communications Commission (“FCC”) has held that the ILECs’ operational support systems (“OSS”) are unbundled network elements. FCC First Report & Order, Docket 96-98, FCC 96-325 (rel. 8/8/96), ¶ 516. This Commission in Order No. PSC-98-0604-FOF-TP, issued April 29, 1998, acknowledged that both the FCC and the Eighth Circuit have indicated that OSSs are considered UNEs. Order No. PSC-98-0604-FOF-TP, p. 163. Based on the Act and subsequent orders, BellSouth has a duty to make available to resellers nondiscriminatory access to its OSS and is entitled to recover its just and reasonable costs for providing such access. 47 U.S.C. § 251(c)(3).

TCCF claims BellSouth should not be entitled to recover its costs for developing the systems necessary to provide ALECs with access to BellSouth’s OSS because the Act requires BellSouth to develop such systems, therefore the development costs are BellSouth’s responsibility. Welch, Tr. p. 105, 111. TCCF also cited this Commission’s Order No. PSC-96-1579-FOF-TP, issued December 31, 1996 (“12/13/96 Order”), for the proposition that the parties are to pay their own developmental costs for OSS. Welch, Tr. p. 350. TCCF’s reliance on that Order fails for several reasons. On April 29, 1998, the Commission in Order No. PSC-98-0604-FOF-TP, “recognize[d] that OSS costs, manual and electronic, may be recoverable costs incurred by BellSouth” and “strongly encourage[d] the



parties to negotiate in good faith to establish rates for OSS functions.” Order No. PSC-98-0604-FOF-TP (“4/29/98 Order”), p.165.<sup>7</sup>

The 12/31/96 Order was entered into less than one year after the Act passed and before the parties really knew what was going to be involved in providing these systems. In fact, the Commission acknowledged in its 12/31/96 Order that the “costs of implementing these electronic interfaces ha[d] not been completely identified.” Order No. PSC-96-1579-FOF-TP, p. 85. These costs have now been “completely identified” and provided to this Commission in this docket in BellSouth’s cost studies. Caldwell, Tr. pp. 285-286, Tr. Exh. 17. TCCF presented no evidence to refute these cost studies.

BellSouth has provided TCCF with nondiscriminatory access to its OSS in compliance with the Act and is entitled to recover its costs as submitted by BellSouth in its cost studies.

**B. BellSouth Has Provided TCCF with Nondiscriminatory Access to BellSouth’s OSS.**

TCCF claims BellSouth has not provided it with nondiscriminatory access to BellSouth’s OSS and, therefore, BellSouth is not entitled to charge OSS rates to TCCF. Welch, Tr. p. 110. TCCF’s claims are based on its limited personal experience with TAFI and LENS and the fact that BellSouth did not choose to use its own systems for processing reseller orders. Welch, Tr. 115, 346.

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<sup>7</sup> As information, six states in BellSouth’s region have approved final OSS rates—Alabama Docket No. 26029, Order dated 8/25/98, revised 10/15/98; Georgia Docket 7061-U, Order issued 12/16/97, Document No. 23373; Kentucky Docket 96-431/98-482, Order issued 7/14/97; Louisiana Docket U-22022/U-22093, LPSC Order U-22022/U-22093-A; Mississippi Docket 97-AD-S44, Order issued 8/25/98; South Carolina Docket 97-394-C, Order No. 98-493 issued 6/30/98 and Order No. 98-723 issued 9/18/98. This issue is pending in North Carolina and Tennessee.

1. **BellSouth Is not Required to Provide TCCF with Equal Access to Its OSS.**

Contrary to TCCF's claims, BellSouth is not required to provide TCCF with equal access to its OSS.<sup>8</sup> Welch, Tr. p. 119-120, 347. The FCC has held that equal access is not necessary, but that access to functions in "substantially the same time and manner that an incumbent LEC does for itself" is required by the Act. FCC First Report and Order, FCC 96-325, (rel. 8/8/96), ¶ 518. This Commission has likewise held that "BellSouth does not need to provide the exact same interfaces that it uses." Order No. PSC-98-1467-FOF-TP, issued October 28, 1998, p. 14. Furthermore, as pointed out by BellSouth witness Ron Pate, BellSouth's systems are not built to industry standards, and would not support all types of ALEC resale orders. Pate, Tr. pp. 488-489. If ALECs were to use BellSouth's same system, they would have to implement three different interfaces. Pate, Tr. at 488.

2. **Nondiscriminatory Access Does not Mean No Manual Processing.**

Nondiscriminatory access does not require that all information and functions be electronic and involve no manual handling, as TCCF argues. Pate, Tr. p. 479; Welch, Tr. p. 349. Nondiscriminatory access may involve manual processes for ALEC orders for complex services where substantially the same manual handling of such orders occurs for BellSouth retail customers. Pate, Tr.

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<sup>8</sup> Even if BellSouth were to provide TCCF with OSS that TCCF agreed were equal to those provided by BellSouth to its retail operations, TCCF is still not willing to pay for those systems "unless mandated by the Commission." Welch, Tr. p. 164.

p. 479. See Tr. Exh. 24 (RMP-1 and RMP-2). TCCF's complaints about the manual processing of orders for complex services is perplexing given that only .016 % of TCCF's orders are for complex services. Welch, Tr. pp. at 36, 112-113.

Because complex services are specialized and complicated and provide a relatively low volume of orders they are less suitable for mechanization. Pate, Tr. p. 480. If an ALEC, such as TCCF, wanted to pursue the mechanization of complex orders, the ALEC could fund the development costs through a bona fide request, propose changes to the Electronic Interface Change Control Process ("EICCP"), of which TCCF is a registered member, or submit changes through the Ordering and Billing Forum. Pate, Tr. p. 483-484.

If TCCF is primarily using the manual process of placing orders, it is because TCCF has made this decision, not BellSouth. The systems are there – TCCF just chooses not to use them.

3. **TCCF's Complaints that BellSouth's Interfaces Do not Provide ALECs with Nondiscriminatory Access to BellSouth's OSS Have No Reliability or Merit.**

For pre-ordering functions, BellSouth provides access through its Local Exchange Negotiation System ("LENS"), Electronic Data Interchange ("EDI"), and the Telecommunications Access Gateway ("TAG"). Pate, Tr. pp. 474-475. Pre-ordering functions include service address validation, telephone number selection, service and feature availability, due date information, and customer record information. Tr. pp. 481-482. TCCF began using LENS for preordering

functions in February 1998. Welch, Tr. p. 142. Ms. Welch testified TCCF is having no problems with LENS for preordering purposes. Welch, Tr. p. 143.

For ordering and provisioning functions, BellSouth provides electronic access through TAG, EDI and some limited capabilities through LENS, although LENS is not one of BellSouth's nondiscriminatory ordering systems. TAG and EDI, BellSouth's nondiscriminatory ordering systems, both handle orders with more than six lines and orders for "adds, moves or changes," while LENS does not, unless the orders with more than six lines are "switch as is."<sup>9</sup> Pate, Tr. p. 478.

TAG, EDI and LENS provide mechanized order generation for 30 resale services and four complex services. Pate, Tr. p. 479, 486. ALECS may also use TAG, EDI or LENS to place a resale order for any complex service with any number of lines if the end-user is simply "switching-as-is" from another carrier. Other than these two situations, complex services must be ordered manually and are "handled in substantially the same manner for both ALEC and BellSouth retail customers." Pate, Tr. p. 479, Tr. Exh. 24 (RMP-1 and RMP-2).

TCCF claims "EDI does not provide for order flow through," yet admits TCCF has never used EDI for ordering or preordering! Welch, Tr. p. 157. TCCF tried LENS for ordering when it was first introduced in 1997, and then later for a two-week period. Welch, Tr. p. 144-145. Further, Ms. Welch's testimony of her attempts to use LENS for ordering purposes for an order with more than six lines and to restore a disconnected service as a "switch as is" indicate that Ms. Welch

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<sup>9</sup> This function will be upgraded in 1999. Pate, Tr. p. 487.

does not fully understand the OSS systems and their functions. Welch, Tr. pp. 367-368; Pate, Tr. pp. 478, 486. Ms. Welch's limited anecdotal testimony is not sufficient to support a conclusion that BellSouth does not provide nondiscriminatory access to its OSS. Welch, Tr. p. 364.

For repair and maintenance functions, BellSouth provides electronic access through the Trouble Analysis Facilitation Interface ("TAFI"), the same system used by BellSouth's representatives for repair and maintenance functions. Pate, Tr. pp. 475-476, 497. TAFI enables trouble reports to be cleared remotely by the person handling the initial customer contact. Pate, Tr. p. 476. It is an interactive system that prompts the repair attendant with questions and instructions while automatically interacting with other internal systems as appropriate. Pate, Tr. pp. 476-477. ALECs have direct access to their end-user customers' maintenance histories. Pate, Tr. p. 477. No distinction is made in priority between tickets related to ALEC customers versus tickets related to BellSouth retail customers. Pate, Tr. p. 477.

TCCF's complaints of TAFI are not reliable because of TCCF's very limited use of the system. Ms. Welch testified that TCCF began first using TAFI "off and on for a period of a month or a month and a half" when it was introduced and then again "off and on over the past year, year and a half." Welch, Tr. p. 147-149. Ms. Welch claimed in her direct testimony that one of the problems she had with TAFI was that it does not provide for "order flow through," but then admitted on cross examination that order flow through has nothing to do with TAFI. Welch, Tr. p. 147. TCCF's difficulties with using TAFI may be

compounded by TCCF's minimal experience with the system based on the fact that TCCF has only 15-20 trouble reports each week. Welch, Tr. p. 151.

BellSouth does not believe that TCCF's limited experience with TAFI is sufficient to conclude that TAFI does not work as intended, especially in light of the fact that TAFI is the identical interface used by BellSouth on its retail side. Pate, Tr. p. 476.

Additionally, the training levels of TCCF's employees who utilize the OSS cannot be ignored. Although BellSouth provides training on all its systems, Pate, Tr. p. 501-502, TCCF did not fully avail itself of these opportunities. In 1996, TCCF had three people responsible for preordering and ordering functions, one of whom also handled maintenance and repair. Welch, Tr. p. 132-133. Only one of those attended formal training at BellSouth and she left a year later. Welch, Tr. pp. 134-135. In 1997, TCCF had three people responsible for ordering functions, one of whom attended formal training by BellSouth. Welch, Tr. p. 136, 138. Of the five to six individuals who handled repair issues in 1997, only one of those attended formal training by BellSouth. Id. at 138-139. In 1998, one of the two individuals responsible for ordering functions had attended formal training in 1997, while the person who handled maintenance and repair in 1998 had not attended formal training by BellSouth. Id. at 140-141. BellSouth did visit TCCF's site in 1998 or latter 1997, to "sit with every provisioning and every customer service rep one on one and train them on LENS." Welch, Tr. p. 143.

While TCCF complains BellSouth has not provided it with nondiscriminatory access to BellSouth's OSS, the evidence was to the contrary.

BellSouth has provided TCCF with access to LENS, EDI, TAFI, and now TAG,<sup>10</sup> and is entitled to recover its costs.

C. **BellSouth's OSS Rates Should Be Based on Its Cost Studies.**

BellSouth submitted detailed cost studies reflecting its costs of providing TCCF with access to BellSouth's OSS. Caldwell, Tr. p. 279-280, Tr. Exh. 17 (DDC-1 and DDC-2); Arrington, Tr. p. 375. BellSouth's cost studies are based on the cost study methodology and cost model accepted by this Commission in Order No. PSC-98-0604-TP dated April 29, 1998. Caldwell, Tr. p. 280-281. They include the Commission-ordered cost of money, depreciation lives, tax factors, and shared and common factors. Caldwell, Tr. p. 281. The costs included both development and implementation costs, as well as ongoing processing costs. Caldwell, Tr. p. 285. These costs were unrefuted by TCCF.

The electronic rate of \$6.78 per local service request ("LSR") proposed by BellSouth includes \$2.46 for development and implementation of the interfaces being provided to the ALECs, and \$4.32 for ongoing processing costs for ALEC orders that fall out and must be handled manually. Arrington, Tr. p. 239; Caldwell, Tr. p. 279. Contrary to TCCF's claims, Welch, Tr. p. 356, these are not fallouts resulting from BellSouth's errors. Caldwell, Tr. pp. 304-305.

TCCF's concerns about the recovery of the development costs was that the recovery appeared to be "perpetual." Welch, Tr. p. 116. This concern should have been alleviated by Ms. Caldwell's testimony in which she testified that BellSouth used a three-year recovery period and is going to monitor the recovery

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<sup>10</sup> TCCF states that it intends to deploy TAG by the spring of 1999. Welch, Tr. pp. 157-158.

of its costs and make adjustments as necessary. Caldwell, Tr. pp. 291, 302. Although every ALEC may not use every system, there are efficiencies in the costs gained by studying all the systems together for cost purposes. Caldwell, Tr. p. 300. For example, the cost of someone overseeing the overall OSS project is included for all systems, whereas if you considered each system individually, then there would be an individual responsibility cost associated with each system. *Id.* These efficiencies result in lower more efficient costs as opposed to higher costs from studying each OSS system individually. *Id.* at 300, 313.

The manual OSS rate of \$20.08 reflects the costs of the labor required by BellSouth's Local Service Center ("LCSC") to handle and process ALEC orders submitted manually.<sup>11</sup> Caldwell, Tr. p. 288; Arrington, Tr. p. 378. The rate applies whether the ALEC is submitting a manual order by choice or whether it is submitting a manual order because it is an order for a complex service for which BellSouth has no electronic interface available through which the order can be processed. Arrington, Tr. pp. 239, 378-379.

TCCF described the manual charge proposed by BellSouth as a "penalty" in light of the fact that not all orders can be placed electronically.<sup>12</sup> Welch, Tr. pp. 352-356. This claim is without merit. As stated above, nondiscriminatory access

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<sup>11</sup> TCCF claims it has been paying processing fees since it signed its Resale Agreement in May 1996. Welch, Tr. p. 127. The charges to which Ms. Welch was referring are not "processing fees" associated with TCCF's orders but are tariffed charges applicable to all customers who order the tariffed service for which the charges apply, resale and retail alike. Arrington, Tr. p. 377.

<sup>12</sup> TCCF's response to its claim that the manual charge is a "penalty" is to include proposed language in the new agreement that provides for a "penalty of \$25 . . . imposed upon BellSouth for each order submitted manually, due to the lack of OSS." Welch, Tr. pp. 351-352. In addition to the Commission not having the authority to impose such a "penalty," this is a preposterous suggestion.



means BellSouth must provide access in substantially the “same time and manner” as it does for itself. Ron Pate testified that BellSouth does just that. Orders for complex services cannot be processed electronically for neither the ALECs nor BellSouth. Tr. p. 479. BellSouth processes its ALEC orders for complex services in substantially the same time and manner as it processes orders for complex services on its retail side. Tr. p. 479, Tr. Exh. 24 (RMP-1 and RMP-2). In manually processing these orders, BellSouth incurs costs identified in its cost studies and is entitled to recover those costs.

Another of TCCF’s criticisms of the manual charge was that no currently operational OSS provides an automated means for the processing of adds, moves and changes. Welch, Tr. p. 116. This is simply not true. Both EDI and TAG provide such access. Pate, Tr. p. 478. TCCF has never utilized EDI, but has testified it intends to use TAG. Welch, Tr. p. 117.

TCCF did not challenge the accuracy of BellSouth’s cost studies or the methodologies used therein. Welch, Tr. p. 353-354.<sup>13</sup> Nevertheless, TCCF made general, conclusory statements that BellSouth should not be allowed to recover these costs, although they are legitimate costs incurred by BellSouth and are recoverable.

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<sup>13</sup> TCCF did not analyze BellSouth’s cost studies or propose any of its own, but made clear its position that TCCF does not believe it should pay OSS charges regardless of whether BellSouth incurs legitimate costs in developing and providing access to its OSS. Welch, Tr. p. 353 (“TCCF believes that no charges are appropriate for OSS development or for processing fees, . . . ; thus, the cost information is irrelevant.”)

D. **The Parties Should Negotiate the Appropriate Language Regarding OSS Rates upon Receipt of the Commission's Order in This Case.**

During the negotiations of the parties' new resale agreement, BellSouth proposed manual and electronic OSS rates to recover its costs of developing, implementing and maintaining operational interfaces, and to recover on-going processing costs. Arrington, Tr. pp. 237-238, 375. BellSouth proposed language to be used in Florida by removing the proposed chart outlining the rates and substituting language that stated that rates established in Docket Nos. 960757-TP and 960846-TP will be applied to TCCF under the same terms and conditions as the parties in those dockets. Arrington, Tr. p. 376; Welch, Tr. p. 106. TCCF accepted this language for all nine states. Id. Because this was Florida-specific language, BellSouth proposed alternate language appropriate for all nine states that included a chart for OSS rates and a provision for true-up of the rates based on OSS rates ordered by state regulatory agencies. Welch, Tr. pp. 106-107. TCCF proposed language excluding the chart and stating rates set by Commission rulings within the various states would be applied to TCCF in accordance with the rulings. Welch, Tr. p. 108. BellSouth responded with alternate language allowing for interim rates with a provision for true-up. Arrington, Tr. p. 377, Tr. Exh. 21 (SMA-3). TCCF's final response was to propose no OSS rates, electronic or manual, until BellSouth has made available to TCCF an automated means of processing adds, moves, changes, trouble tickets via electronic interface. Welch, Tr. p. 108. BellSouth responded again

with its previous true-up language which was not acceptable to TCCF. Welch, Tr. p. 109, Exh. 8 (AKW-10).

TCCF's main objection to BellSouth's proposed OSS rates seems to be related to the development costs and the manual rate. Welch, Tr. pp. 105, 110. However, TCCF claims it should not have to pay any OSS rates, electronic or manual, because BellSouth has not made available to TCCF nondiscriminatory access to BellSouth's OSS. Welch, Tr. p. 115, 347. Once the Commission rules on whether BellSouth's proposed OSS rates are appropriate and what the rates should be, the parties should then negotiate the appropriate language consistent with the Commission's Order. There is no reason for this Commission to dictate contract language for the parties once the Commission rules on the substantive issues herein.

Should the Commission decide to order language in the parties' agreement, BellSouth proposes the following:

All costs incurred by BellSouth to develop and implement operational interfaces shall be recovered from Resellers who utilize these services. The applicable rates for the Operational Support Systems (OSS) are set forth in Exhibit A of this Agreement. Such rates include charges for developmental and implementation, as well as for mechanized and manual processing. Such rates will apply as of the effective date of this Agreement.

Arrington, Tr. p. 239.

**Arbitration Issue 2:** Should ESSX® Service be made available for resale in the new resale agreement?

**\*\*Position:** No. ESSX® Service is a grandfathered service under a lawfully filed and approved tariff of this Commission and is not available for resale.

For the reasons set forth supra in response to the Complaint Issue, ESSX® Service should not be made available for resale in the new resale agreement.

### **CONCLUSION**

Based on the foregoing, the Commission should find that BellSouth provisioned ESSX® Service in compliance with the parties' Resale Agreement for periods of time not covered by settlements and adjustments made regarding ESSX® Service and should take no further action. BellSouth incurs legitimate unrefuted costs in developing and implementing its electronic interfaces to provide ALECs with access to BellSouth's OSS, as well as manual processing costs, and should be allowed to recover those costs in compliance with § 251 of the Telecommunications Act. The Commission should approve the \$6.78 electronic and \$20.08 manual OSS rates submitted in this proceeding and supported by BellSouth's cost studies. Finally, the Commission should direct the parties to negotiate the appropriate OSS language in their new resale agreement consistent with this Commission's order issued herein.

Respectfully submitted this 2nd day of March, 1999.

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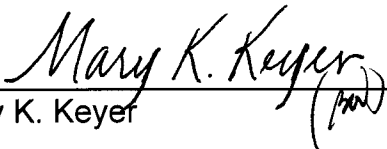
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**CERTIFICATE OF SERVICE**  
**Docket No. 981052-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 2nd day of March, 1999, to the following:

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