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May 29, 1998

Via Federal Express

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

ORIGINAL

Re: Complaint of Easy Cellular, Inc. (d/b/a Telcom Plus) vs.
BellSouth Telecommunications, Inc.

980703-TP

Dear Ms. Bayó:

Filed herewith on behalf of Easy Cellular, Inc. are an original and fifteen (15) copies of Easy Cellular, Inc.'s complaint against BellSouth Telecommunications, Inc.

Please date-stamp the enclosed extra copy of this filing and return it to the undersigned in the enclosed self-addressed, stamped envelope. Please refer all questions and correspondence regarding this filing directly to the undersigned.

Sincerely,



Glenn S. Richards
Counsel for Easy Cellular, Inc.

DOCUMENT NUMBER-DATE

05891 JUN-1 88

FPSC-RECORDS/REPORTING

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Complaint of Easy Cellular, Inc.)
against BellSouth Telecommunications, Inc.)
)
)

Docket No. 980703-TP

Filed: June 1, 1998

**COMPLAINT OF EASY CELLULAR, INC. AGAINST
BELLSOUTH TELECOMMUNICATIONS, INC.**

Easy Cellular, Inc. d/b/a TelCom Plus ("Easy Cellular") hereby brings this Complaint against BellSouth Telecommunications, Inc. ("BellSouth") for BellSouth's violations of the Telecommunications Act of 1996, 47 U.S.C. § 151 et seq. (the "1996 Act"), and Chapter 364 of the Florida Statutes.

PARTIES

1. Easy Cellular is a Nevada corporation with its principal place of business at 8625 West Sahara Ave., Las Vegas, Nevada 89117. Easy Cellular has a Certificate of Authority issued by the Commission that authorizes Easy Cellular to provide local exchange service in Florida.^{1/}

^{1/} Certificate No. 4769; see Application for Certificate to Provide Alternative Local Exchange Telecommunications Service by Easy Cellular, Inc., *Notice of Proposed Agency Action, Order Granting Certificates to Provide Alternative Local Exchange Telecommunications Service*, Docket No. 961105-TX, Order No. PSC-96-1537-FOF-TX (issued Dec. 17, 1996); see also Request for Name Change on Alternative Local Exchange Telecommunications Certificate No. 4769 and Interexchange Telecommunications Certificate No. 4773 from Easy Cellular, Inc. to Easy Cellular, Inc. d/b/a Telecom Plus, *Order Acknowledging Name Change*, Docket No. 971183-TP, Order No. PSC-97-1202-FOF-TP (issued Oct. 3, 1997); Request for Name Change on Alternative Local Exchange Telecommunications Certificate No. 4769 and Interexchange Telecommunications Certificate No. 4773 from Easy Cellular, Inc. to Easy Cellular, Inc. d/b/a Telecom Plus, *Amendatory Order*, Docket No. 971183-TP, Order No. PSC-97-1202A-FOF-TP (issued April 22, 1998).

DOCUMENT NUMBER-DATE

05891 JUN-1 88

FPSC-RECORDS/REPORTING

2. BellSouth is a Georgia corporation with its principal place of business at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth is an incumbent local exchange carrier as defined by Section 251(h) of the Federal Act.

3. The names and addresses of the persons to whom copies of all correspondence, notices, orders, and other documents in this proceeding should be sent are as follows:

Norman H. Horton, Jr.
Messer, Caparello & Self, P.A.
215 S. Monroe St., Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876

Glenn S. Richards
Fisher Wayland Cooper Leader
& Zaragoza L.L.P.
2001 Pennsylvania Ave., NW, Suite 400
Washington, D.C. 20006-1851

JURISDICTION AND STATUTES AUTHORIZING RELIEF

4. The Commission has jurisdiction with respect to the claims asserted in this Complaint under the 1996 Act, 47 U.S.C. §§ 251, 252; Chapters 120 and 364, Florida Statutes; Chapter 25-22, Florida Administrative Code; the Commission's Order dated June 12, 1997 approving the Agreement;^{2/} and the Agreement itself.^{3/}

BACKGROUND AND STATEMENT OF SUBSTANTIAL INTERESTS

5. On December 31, 1996, the Florida Public Service Commission ("PSC") adopted an order (the "December 31 Order") in an arbitration proceeding establishing that BellSouth must provide

^{2/} Request for Approval of Resale Agreement Negotiated Between BellSouth Telecommunications, Inc. and Easy Cellular, Inc., pursuant to Sections 251 and 252 of the Telecommunications Act of 1996, *Final Order Approving Resale Agreement*, Docket No. 970303-TP, Order No. PSC-97-0697-FOF-TP (issued June 12, 1997).

^{3/} *See Iowa Utils. Bd. v. Federal Communications Comm'n*, 120 F.3d 753, 804 (8th Cir. 1997) ("state commissions retain the primary authority to enforce the substantive terms of the agreements made pursuant to sections 251 and 252").

resellers with a wholesale discount on nonrecurring charges.^{4/} In this order, the PSC also established that the appropriate wholesale discount for BellSouth's residential services is 21.83% and for its business services is 16.81%.

6. On January 15, 1997, BellSouth filed a petition for reconsideration of the December 31 Order. BellSouth made no request to stay the Order pending reconsideration, thus, pursuant to Rule 25-22.060, the provisions of the Order were effective. On March 19, 1997, the PSC ruled on BellSouth's petition for reconsideration and upheld its previous ruling regarding the appropriate wholesale discounts to apply to BellSouth's services and that BellSouth offer nonrecurring charges for resale at a wholesale discount.

7. On March 3, 1997, while BellSouth's reconsideration of the December 31 Order was pending, Easy Cellular and BellSouth entered into a resale agreement. This agreement did not contain any specific reference to nonrecurring charges. Rather, the agreement broadly stated that Easy Cellular could purchase for resale all of BellSouth's services at a discount rate off of the retail rate for such services.^{5/} Only a handful of services were specifically not available for resale from BellSouth, but the list of nonavailable services did not include or refer to nonrecurring charges.^{6/} Further, despite the PSC's order establishing a 21.83% residential wholesale discount

^{4/} Petitions of AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Services, Inc., American Communications Services, Inc., and American Communications Services of Jacksonville, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996, Final Order on Arbitration, Docket Nos. 960833-TP, 960846-TP, 960916-TP, Order No. PSC-96-1579-FOF-TP (issued Dec. 31, 1996).

^{5/} Resale Agreement, Section I.C (see Attachment 1).

^{6/} Those services not available for resale were: "Grandfathered services; promotional and trial retail service offerings; lifeline and linkup services; contract service arrangements;
(continued...)

and a 16.81% business wholesale discount, BellSouth offered Easy Cellular an 18% residential wholesale discount and a 12% business wholesale discount.

8. On March 11, 1997, pursuant to Section 252(e) of the 1996 Act, Easy Cellular and BellSouth submitted their resale agreement to the PSC for approval. On June 12, 1997, the PSC issued an order approving this agreement.^{7/}

9. Despite the terms of the agreement and the December 31 Order requiring BellSouth to apply the wholesale discount to nonrecurring charges, from March 1997 until September 1997, BellSouth charged Easy Cellular tariffed retail rates for nonrecurring charges. BellSouth did not apply wholesale discounts to these nonrecurring charges. Easy Cellular estimates that it was overcharged in the amount of \$57,283.20 due to BellSouth's refusal to apply a wholesale discount to nonrecurring charges.

10. In addition, despite the terms of the December 31 Order, BellSouth did not provide Easy Cellular with a 21.83% residential and a 16.81% business wholesale discount. BellSouth never offered or even notified Easy Cellular of the Commission approved wholesale discount. Easy Cellular estimates that it was overcharged by BellSouth in the amount of \$42,909.33 through BellSouth's failure to offer to Easy Cellular the higher wholesale discounts offered to other resellers.

^{6/} (...continued)
installment billing options; 911 and E911 services; interconnection services for mobile service providers; legislatively or administratively mandated specialized discounts (e.g., education institution discount) and discounted services to meet competitive situation." Resale Agreement, Sections I.C, III.A (see Attachment 1).

^{7/} Request for Approval of Resale Agreement Negotiated Between BellSouth Telecommunications, Inc. and Easy Cellular, Inc., pursuant to Sections 251 and 252 of the Telecommunications Act of 1996, *Final Order Approving Resale Agreement*, Docket No. 970303-TP, Order No. PSC-97-0697-FOF-TP (issued June 12, 1997).

11. On March 12, 1998, Easy Cellular wrote to Mr. Jerry Hendrix, BellSouth's Director of Interconnection Services-Pricing, in an effort to resolve this matter without Commission intervention and to request a refund of the amount BellSouth had overcharged Easy Cellular.^{8/} On April 2, 1998, BellSouth responded to this letter and refused to refund the amount it had overcharged Easy Cellular.^{9/}

12. Through this Complaint, Easy Cellular requests that the PSC order BellSouth to refund or credit Easy Cellular in the amount of \$100,192.53 plus interest. This figure represents the amount BellSouth has overcharged Easy Cellular by (1) not applying the wholesale discount rate to nonrecurring charges from March 1997 until September 1997, as required by the PSC in its December 31 Order, and (2) not providing Easy Cellular with the PSC-mandated residential wholesale discount of 21.83% and the business wholesale discount of 16.81%. By providing similarly situated carriers with more favorable resale terms and conditions, BellSouth has acted in an unreasonably discriminatory fashion in violation of both Section 251(c) of the 1996 Act and Sections 364.09 and 364.14 of the Florida Statutes.

DISPUTED ISSUES OF MATERIAL FACT

13. The paragraphs below state the ultimate facts that entitle Easy Cellular to relief. Based on BellSouth's April 2nd letter, Easy Cellular expects that BellSouth will dispute many of these facts.

NONRECURRING CHARGES

14. Section 251(c)(4)(a) of the 1996 Act requires all incumbent local exchange carriers ("ILECs"), including BellSouth, "to offer for resale at wholesale prices any telecommunications

^{8/} See Attachment 2.

^{9/} See Attachment 3.

service that the carrier provides at retail to subscribers who are not telecommunications carriers.”

In its December 31 Order, the PSC clarified that BellSouth must make nonrecurring charges available for resale at a wholesale discount:

[W]e find that no restrictions on the resale of services shall be allowed, except for restrictions applicable to the resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from BellSouth.^{10/}

Finally, pursuant to the terms of the resale agreement between BellSouth and Easy Cellular, BellSouth obligated itself to apply the wholesale discount to nonrecurring charges.^{11/}

15. Despite the clear mandates of the 1996 Act, the PSC’s December 31 Order, and the resale agreement between BellSouth and Easy Cellular, BellSouth failed to apply any wholesale discount to nonrecurring charges billed to Easy Cellular during the period of March 1997 to September 1997.

16. Based on its April 2nd letter, BellSouth contends that because BellSouth and Easy Cellular entered into their resale agreement while BellSouth’s petition for reconsideration of the PSC’s December 31 Order was pending, the agreement did not contemplate that nonrecurring charges would be made available at a wholesale discount. BellSouth contends that Easy Cellular should have availed itself of Section XVI.C of the resale agreement,^{12/} which provides:

^{10/} December 31 Order, section III.D.

^{11/} Resale Agreement, Sections I.C, III.A (see Attachment 1).

^{12/} Throughout this Complaint, Easy Cellular assumes that the December 31 Order constitutes a “Resale Order” pursuant to Section XVI.C of the resale agreement because it established the wholesale discount rates by which BellSouth must offer residential and business services for resale.

C. In the event that after the effective date of this Agreement the FCC or the Commission enters an order (a "Resale Order") requiring BellSouth to provide within the state(s) of Florida any of the arrangements covered by this agreement upon Other Terms, then upon such Resale Order becoming final and not subject to further administrative or judicial review, BellSouth shall be deemed to have offered such arrangements to Reseller upon such Other Terms, in their entirety, which Reseller may only accept in their entirety, as provided in Section VXI.E. In the event that the Reseller accepts such offer within sixty (60) days after the date on which such Resale Order becomes final and not subject to further administrative or judicial review, such Other Terms shall be effective between BellSouth and Reseller as of the effective date of such Resale Order. In the event that Reseller accepts such offer more than sixty (60) days after the date on which such Resale Order becomes final and not subject to further administrative or judicial review, such Other Terms shall be effective between BellSouth and Reseller as of the date on which Reseller accepts such offer.

17. Section XVI.C is inapplicable to the present dispute. The PSC requirement that BellSouth apply the wholesale discount to nonrecurring charges was in effect prior to the signing of the agreement. At the time Easy Cellular and Bell South entered into their resale agreement on March 3, 1997, the PSC had already established that BellSouth must apply the wholesale discount to nonrecurring charges. Accordingly, Easy Cellular believes that BellSouth had to apply the wholesale discount to nonrecurring charges when it entered into the resale agreement.

18. Further, pursuant to Section 251(c) of the 1996 Act, the test for whether a particular service is available for resale at a wholesale discount is not whether the ILEC "offers" the service for resale as provided in Section XVI.C, but whether the service is a "telecommunications service." In its December 31 Order, the PSC clarified that BellSouth must make nonrecurring charges available for resale at a wholesale discount. The PSC confirmed this conclusion on March 17, 1997, when ruling on BellSouth's petition for reconsideration. Accordingly, once the PSC ruled that BellSouth must make nonrecurring charges available for resale at a wholesale discount, BellSouth was obligated to provide a discount to all resellers. The application of the wholesale discount to nonrecurring charges was not a specifically negotiated term; nonrecurring

charges are not specified in the agreement. Thus, the PSC's December 31 and March 17 Orders were clarifications of existing law, not "offers" by BellSouth of more favorable resale terms which Easy Cellular was required to affirmatively accept.

19. In its April 2 letter, BellSouth asserts that "Easy Cellular had the option of approaching BellSouth to conform the Agreement to reflect any FCC or Commission ordered rulings as provided in its Agreement." This interpretation of Section XVI.C would effectively require alternative local exchange carriers ("ALECs"), such as Easy Cellular, who enter into resale agreements with BellSouth to request that BellSouth comply with FCC and PSC orders regarding BellSouth's resale obligations. To the contrary, Easy Cellular asserts that BellSouth has a duty to ensure that its resale agreements comply with existing law.

20. BellSouth's failure to apply the wholesale discount to nonrecurring charges billed to Easy Cellular also violates the anti-discrimination provisions of both the Communications Act and Florida law. Section 251(c)(4) of the Communications Act provides that ILECs cannot impose unreasonable or discriminatory conditions on the resale of telecommunications services. Further, Section 364.09 of the Florida Statutes provides that "a telecommunications company may not, directly or indirectly, . . . charge . . . any person a greater or lesser compensation for any service rendered or to be rendered with respect to communication by telephone . . . than it charges, demands, collects, or receives from any other person for doing a like and contemporaneous service" Section 364.14 of the Florida Statutes contains similar anti-discrimination provisions.

21. Easy Cellular believes that during the period of March 1997 to September 1997, BellSouth applied the wholesale discount to nonrecurring charges billed to other resale carriers. BellSouth's failure to apply this wholesale discount equally to Easy Cellular violates the anti-

discrimination provisions of both the 1996 Act and Florida law.

22. Based on the foregoing, the PSC should order BellSouth to refund or credit Easy Cellular the amount of \$57,283.20 plus interest, the amount BellSouth overcharged Easy Cellular during the period of March 1997 to September 1997 by not applying the wholesale discount to nonrecurring charges billed to Easy Cellular.

WHOLESALE DISCOUNT RATES

23. In its December 31 Order, the PSC determined that BellSouth should provide a wholesale discount of 21.83 percent for residential services and 16.81 percent for business services.

Despite the PSC's December 31 Order, BellSouth did not offer or provide Easy Cellular with the PSC-mandated wholesale discount when BellSouth and Easy Cellular entered into their resale agreement on March 3, 1997. In its April 2 letter, BellSouth contends that it was under no obligation to offer Easy Cellular the PSC-mandated discount. Further, once the PSC ruled on BellSouth's petition for reconsideration and maintained the wholesale discount, BellSouth believes that Easy Cellular was required to ask for the more favorable discount terms.

24. Again, BellSouth's claim that Easy Cellular had an obligation to "accept" BellSouth's "offer" of the more favorable discount rates mandated by the December 31 Order is without merit. In its December 31 Order, the PSC established the discount rate to apply to the resale of BellSouth's residential and business services, holding:

We find these discounts to be appropriate. They comply with the intent of the Act that wholesale rates exclude those portions of retail costs "that will be avoided" by BellSouth. They are based on the actual retail costs that BellSouth can reasonably avoid in the provision of wholesale service.^{13/}

^{13/} December 31 Order, section III.C.

25. Easy Cellular is not required to enforce PSC Orders in its dealings with BellSouth. The PSC's finding that the appropriate residential wholesale discount is 21.83% cannot be selectively applied by BellSouth. Rather, BellSouth has a duty to comply with PSC Orders and to ensure that its resale agreements reflect the appropriate discounts as determined by the PSC.

26. BellSouth's failure to apply the 21.83% residential and 16.81% business wholesale discount to Easy Cellular's resale of BellSouth's services also violates the anti-discrimination provisions of both the Communications Act and Florida law. Section 251(c)(4) of the Communications Act provides that ILECs cannot impose unreasonable or discriminatory conditions on the resale of telecommunications services. Further, Section 364.09 of the Florida Statutes provides that "a telecommunications company may not, directly or indirectly, . . . charge . . . any person a greater or lesser compensation for any service rendered or to be rendered with respect to communication by telephone . . . than it charges, demands, collects, or receives from any other person for doing a like and contemporaneous service . . ." Section 364.14 of the Florida Statutes contains similar anti-discrimination provisions.

27. Subsequent to the signing of the resale agreement between BellSouth and Easy Cellular on March 3, 1997, BellSouth entered into resale agreements with other resellers which provided for 21.83% residential and 16.81% business wholesale discounts. BellSouth's failure to apply these higher wholesale discounts to Easy Cellular's purchase of BellSouth's services, while giving these discounts to similarly situated carriers violates the anti-discrimination provisions of both the 1996 Act and Florida law.

28. By analogy, if BellSouth reduces a rate in one of its PSC tariffs or the PSC requires that BellSouth reduce one of its tariffed rates, consumers are not required to "accept" this "offer" of a rate reduction. Rather, to avoid discrimination, all consumers automatically benefit from the rate

reduction:

29. Further, the wholesale discounts mandated by the PSC reflect the retail rates less costs avoided by BellSouth by offering services at wholesale. These percentages do not vary based upon who is purchasing the services. Accordingly, BellSouth would be unjustly enriched if it was permitted to offer a 18% residential discount to Easy Cellular but a 21.83% discount to other carriers.

30. Based on the foregoing, the PSC should order BellSouth to refund or credit Easy Cellular in the amount of \$42,909.33 plus interest, the amount BellSouth overcharged Easy Cellular through BellSouth's failure to offer to Easy Cellular the higher discounts offered to similarly situated carriers.

PRAYER FOR RELIEF

WHEREFORE, Easy Cellular requests that a hearing be held and a ruling made on Easy Cellular's claims and that the PSC award the following relief:

(a) An order requiring BellSouth to refund or credit Easy Cellular in the amount of \$57,283.20 plus interest, the amount BellSouth overcharged Easy Cellular during the period of March 1997 to September 1997 by not applying the wholesale discount to nonrecurring charges billed to Easy Cellular; and

(b) An order requiring BellSouth to refund or credit Easy Cellular in the amount of \$42,909.33 plus interest, the amount BellSouth overcharged Easy Cellular by not providing it with the more favorable discounts offered to similarly situated carriers.

RESPECTFULLY SUBMITTED this 1st day of June, 1998.

By:



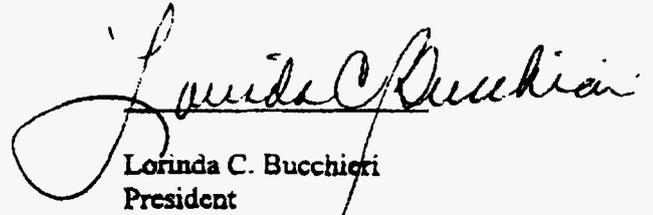
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Counsel for Easy Cellular, Inc.

VERIFICATION

I, Lorinda C. Bucchieri, President of Easy Cellular, Inc., am authorized to make this verification and I have reviewed the foregoing "Complaint of Easy Cellular, Inc. Against BellSouth Telecommunications, Inc." and the facts set forth above are true and correct to the best of my knowledge, information, and belief.


Lorinda C. Bucchieri
President
Easy Cellular, Inc.

Dated: 5/12/98

Attachment 1

**Resale Agreement Between Easy Cellular, Inc. and BellSouth Telecommunications, Inc.
Dated March 3, 1997**

SECRET PROGRAM FROM BST 100 BY 100 TO 9 10010900010

Agreement Between BellSouth Telecommunications, Inc. and Easy Cellular, Inc. Regarding The Sale of BST's Telecommunications Services to Reseller For The Purposes of Resale

THIS AGREEMENT is by and between **BellSouth Telecommunications, Inc.**, ("BellSouth or Company"), a Georgia corporation, and **Easy Cellular, Inc.** ("Reseller"), a Nevada corporation, and shall be deemed effective as of March 3, 1997

WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the state of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, Reseller is an alternative local exchange telecommunications company authorized to provide telecommunications services in the state of Florida; and

WHEREAS, Reseller desires to resell BellSouth's telecommunications services; and

WHEREAS, BellSouth has agreed to provide such services to Reseller for resale purposes and pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the mutual premises and promises contained herein, BellSouth and Reseller do hereby agree as follows:

I. Term of the Agreement

A. The term of this Agreement shall be two years beginning March 3, 1997 and shall apply to all of BellSouth's serving territory as of January 1, 1996, in the state(s) of Florida.

B. This Agreement shall be automatically renewed for two additional one year periods unless either party indicates its intent not to renew the Agreement. Notice of such intent must be provided, in writing, to the other party no later than 60 days prior to the end of the then-existing contract period. The terms of this Agreement shall remain in effect after the term of the existing agreement has expired and while a new agreement is being negotiated.

C. The rates pursuant by which Reseller is to purchase services from BellSouth for resale shall be at a discount rate off of the retail rate for the telecommunications service. The discount rates shall be as set forth in Exhibit A, attached hereto and incorporated herein by this reference. Such discount shall reflect the costs avoided by BellSouth when selling a service for wholesale purposes.

II. Definition of Terms

A. **CUSTOMER OF RECORD** means the entity responsible for placing application for service; requesting additions, rearrangements, maintenance or discontinuance of service; payment in full of charges incurred such as toll, directory assistance, etc.

B. **DEPOSIT** means assurance provided by a customer in the form of cash, surety bond or bank letter of credit to be held by the Company.

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- C. **END USER** means the ultimate user of the telecommunications services.
- D. **END USER CUSTOMER LOCATION** means the physical location of the premises where an end user makes use of the telecommunications services.
- E. **NEW SERVICES** means functions, features or capabilities that are not currently offered by BellSouth. This includes packaging of existing services or combining a new function, feature or capability with an existing service.
- F. **OTHER LOCAL EXCHANGE COMPANY (OLEC)** means a telephone company certificated by the public service commissions of the Company's franchised area to provide local exchange service within the Company's franchised area.
- G. **RESALE** means an activity wherein a certificated OLEC, such as Reseller subscribes to the telecommunications services of the Company and then reoffers those telecommunications services to the public (with or without "adding value")
- H. **RESALE SERVICE AREA** means the area, as defined in a public service commission approved certificate of operation, within which an OLEC, such as Reseller, may offer resold local exchange telecommunications service.

III. General Provisions

- A. Reseller may resell the tariffed local exchange and toll telecommunications services of BellSouth subject to the terms, and conditions specifically set forth herein. Notwithstanding the foregoing, the following are not available for purchase: Grandfathered services; promotional and trial retail service offerings; lifeline and linkup services; contract service arrangements; installment billing options; 911 and E911 services; interconnection services for mobile service providers; legislatively or administratively mandated specialized discounts (e.g., education institution discount) and discounted services to meet competitive situation.
- B. The provision of services by the Company to Reseller does not constitute a joint undertaking for the furnishing of any service.
- C. Reseller will be the customer of record for all services purchased from BellSouth. Except as specified herein, the Company will take orders from, bill and expect payment from Reseller for all services.
- D. Reseller will be the Company's single point of contact for all services purchased pursuant to this Agreement. The Company shall have no contact with the end user except to the extent provided for herein.
- E. The Company will continue to bill the end user for any services that the end user specifies it wishes to receive directly from the Company.
- F. The Company maintains the right to serve directly any end user within the service area of Reseller. The Company will continue to directly market its own telecommunications products and services and in doing so may establish independent relationships with end users of Reseller.

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G. Reseller shall not interfere with the right of any person or entity to obtain service directly from the Company. Company shall not interfere with the right of any person or entity to obtain service from Reseller.

H. The current telephone number of an end user may be retained by the end user. If Reseller requests service for an end user that has been denied service or disconnected for non-payment by BellSouth, and the end user still has an outstanding balance with the Company, the Company will establish service for that end user through Reseller. Denied service means that the service of an end user provided by a local exchange telecommunications company, including BellSouth, has been temporarily suspended for nonpayment and subject to complete disconnection.

I. Telephone numbers are assigned to the service furnished. Reseller has no property right to the telephone number or any other call number designation associated with services furnished by the Company, and no right to the continuance of service through a particular central office. Subject to applicable federal and state law, rule or regulation or state commission order, the Company reserves the right to change such numbers, or the central office designation associated with such numbers, or both, whenever the Company deems it necessary to do so in the conduct of its business. Notwithstanding the foregoing, Reseller does not waive its right to local number portability for local resale in accordance with the requirements of the Act.

J. The Company may provide any service or facility for which a charge is not established herein, as long as it is offered on the same terms to Reseller.

K. Service is furnished subject to the condition that it will not be used for any unlawful purpose.

L. Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.

M. The Company can refuse service when it has reasonable grounds to believe that service will be used in violation of the law.

N. The Company accepts no responsibility to any person for any unlawful act committed by Reseller or its end users as part of providing service to Reseller for purposes of resale or otherwise.

O. The Company will cooperate fully with law enforcement agencies with subpoenas and court orders for assistance with the Company's customers. Law enforcement agency subpoenas and court orders regarding end users of Reseller will be directed to Reseller. The Company will bill Reseller for implementing any requests by law enforcement agencies regarding Reseller end users.

P. The characteristics and methods of operation of any circuits, facilities or equipment provided by other than the Company shall not:

1. Interfere with or impair service over any facilities of the Company, its affiliates, or its connecting and concurring carriers involved in its service;
2. Cause damage to their plant;
3. Impair the privacy of any communications; or

4. Create hazards to any employees or the public.

Q. Reseller assumes the responsibility of notifying the Company regarding less than standard operations with respect to services provided by Reseller.

R. Facilities and/or equipment utilized by BellSouth to provide service to Reseller remain the property of BellSouth.

S. White page directory listings will be provided in accordance with regulations set forth in Section A6 of the General Subscriber Service Tariff and will be available for resale.

IV. BellSouth's Provision of Services to Reseller

A. Reseller agrees that its resale of BellSouth services shall be as follows:

1. The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions.

2. To the extent Reseller is a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines, Reseller shall not jointly market its interLATA services with the telecommunications services purchased from BellSouth pursuant to this Agreement in any of the states covered under this Agreement. For the purposes of this subsection, to jointly market means any advertisement, marketing effort or billing in which the telecommunications services purchased from BellSouth for purposes of resale to customers and interLATA services offered by Reseller are packaged, tied, bundled, discounted or offered together in any way to the end user. Such efforts include, but are not limited to, sales referrals, resale arrangements, sales agencies or billing agreements. This subsection shall be void and of no effect for a particular state covered under this Agreement as of February 8, 1999 or on the date BellSouth is authorized to offer interLATA services in that state, whichever is earlier.

3. Hotel and Hospital PBX service are the only telecommunications services available for resale to Hotel/Motel and Hospital end users, respectively. Similarly, Access Line Service for Customer Provided Coin Telephones is the only local service available for resale to COCOTS customers. Shared Tenant Service customers can only be sold those telecommunications services available in the Company's A23 Shared Tenant Service Tariff.

4. Reseller is prohibited from furnishing both flat and measured rate service on the same business premises to the same subscribers (end users) as stated in A2 of the Company's Tariff except for backup service as indicated in the applicable state tariff Section A3.

5. If telephone service is established and it is subsequently determined that the class of service restriction has been violated, Reseller will be notified and billing for that service will be immediately changed to the appropriate class of service. Service charges for changes between class of service, back billing, and interest as described in this subsection shall apply at the Company's sole discretion. Interest at the rate of 0.000590 per day, compounded daily for the number of days from the back billing date to and including the date that Reseller actually makes the payment to the Company may be assessed.

6. The Company reserves the right to periodically audit services purchased by Reseller to establish authenticity of use. Such audit shall not occur more than once in a calendar year. Reseller shall make any and all records and data available to the Company or the Company's auditor's on a reasonable basis. The Company shall bear the cost of said audit.

B. Resold services can only be used in the same manner as specified in the Company's Tariff. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual end user of the Company in the appropriate section of the Company's Tariffs. Specific tariff features, e.g. a usage allowance per month, shall not be aggregated across multiple resold services. Resold services cannot be used to aggregate traffic from more than one end user customer except as specified in Section A23. of the Company's Tariff referring to Shared Tenant Service.

C. Reseller may resell services only within the specific resale service area as defined in its certificate.

D. Telephone numbers transmitted via any resold service feature are intended solely for the use of the end user of the feature. Resale of this information is prohibited.

E. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. Reseller is strictly prohibited from any use, including but not limited to sales, marketing or advertising, of any BellSouth name or trademark.

V. Maintenance of Services

A. Services resold under the Company's Tariffs and facilities and equipment provided by the Company shall be maintained by the Company.

B. Reseller or its end users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by the Company, other than by connection or disconnection to any interface means used, except with the written consent of the Company.

C. Reseller accepts responsibility to notify the Company of situations that arise that may result in a service problem.

D. Reseller will be the Company's single point of contact for all repair calls on behalf of Reseller's end users.

E. Reseller will contact the appropriate repair centers in accordance with procedures established by the Company.

F. For all repair requests, Reseller accepts responsibility for adhering to the Company's prescreening guidelines prior to referring the trouble to the Company.

G. The Company will bill Reseller for handling troubles that are found not to be in the Company's network pursuant to its standard time and material charges. The standard time and material charges will be no more than what BellSouth charges to its retail customers for the same services.

H. The Company reserves the right to contact Reseller's customers, if deemed necessary, for maintenance purposes.

VI. Establishment of Service

A. After receiving certification as a local exchange company from the appropriate regulatory agency, Reseller will provide the appropriate Company service center the necessary documentation to enable the Company to establish a master account for Reseller. Such documentation shall include the Application for Master Account, proof of authority to provide telecommunications services, an Operating Company Number ("OCN") assigned by the National Exchange Carriers Association ("NECA") and a tax exemption certificate, if applicable. When necessary deposit requirements are met, the Company will begin taking orders for the resale of service.

B. Service orders will be in a standard format designated by the Company.

C. When notification is received from Reseller that a current customer of the Company will subscribe to Reseller's service, standard service order intervals for the appropriate class of service will apply.

D. The Company will not require end user confirmation prior to establishing service for Reseller's end user customer. Reseller must, however, be able to demonstrate end user authorization upon request.

E. Reseller will be the single point of contact with the Company for all subsequent ordering activity resulting in additions or changes to resold services except that the Company will accept a request directly from the end user for conversion of the end user's service from Reseller to the Company or will accept a request from another OLEC for conversion of the end user's service from the Reseller to the other LEC. The Company will notify Reseller that such a request has been processed.

F. If the Company determines that an unauthorized change in local service to Reseller has occurred, the Company will reestablish service with the appropriate local service provider and will assess Reseller as the OLEC initiating the unauthorized change, the unauthorized change charge described in F.C.C. Tariff No. 1, Section 13.3.3. Appropriate nonrecurring charges, as set forth in Section A4. of the General Subscriber Service Tariff, will also be assessed to Reseller.

These charges can be adjusted if Reseller provides satisfactory proof of authorization.

	Nonrecurring Charge
(a) each Residence or Business line	\$19.41

G. The Company will, in order to safeguard its interest, require Reseller to make a deposit to be held by the Company as a guarantee of the payment of rates and charges, unless satisfactory credit has already been established. Any such deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service. Such deposit will be held in an interest bearing account.

H. Such deposit may not exceed two months' estimated billing.

I. The fact that a deposit has been made in no way relieves Reseller from complying with the Company's regulations as to advance payments and the prompt payment of bills on presentation nor does it

constitute a waiver or modification of the regular practices of the Company providing for the discontinuance of service for non-payment of any sums due the Company.

J. The Company reserves the right to increase the deposit requirements when, in its sole judgment, the conditions justify such action.

K. In the event that Reseller defaults on its account, service to Reseller will be terminated and any deposits held will be applied to its account.

L. In the case of a cash deposit, interest at the rate of six percent per annum shall be paid to Reseller during the continuance of the deposit. Interest on a deposit shall accrue annually and, if requested, shall be annually credited to Reseller by the accrual date.

VII. Payment And Billing Arrangements

A. When the initial service is ordered by Reseller, the Company will establish an accounts receivable master account for Reseller.

B. The Company shall bill Reseller on a current basis all applicable charges and credits.

C. Payment of all charges will be the responsibility of Reseller. Reseller shall make payment to the Company for all services billed. The Company is not responsible for payments not received by Reseller from Reseller's customer. The Company will not become involved in billing disputes that may arise between Reseller and its customer. Payments made to the Company as payment on account will be credited to an accounts receivable master account and not to an end user's account.

D. The Company will render bills each month on established bill days for each of Reseller's accounts.

E. The Company will bill Reseller, in advance, charges for all services to be provided during the ensuing billing period except charges associated with service usage, which charges will be billed in arrears. Charges will be calculated on an individual end user account level, including, if applicable, any charges for usage or usage allowances. BellSouth will also bill all charges, including but not limited to 911 and E911 charges, telecommunications relay charges, and franchise fees, on an individual end user account level.

F. The payment will be due by the next bill date (i.e., same date in the following month as the bill date) and is payable in immediately available funds. Payment is considered to have been made when received by the Company.

If the payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday. If payment is not received by the payment due date, a late payment penalty, as set forth in I. following, shall apply.

G. Upon proof of tax exempt certification from Reseller, the total amount billed to Reseller will not include any taxes due from the end user. Reseller will be solely responsible for the computation, tracking, reporting and payment of all federal, state and/or local jurisdiction taxes associated with the services resold to the end user.

H. As the customer of record, Reseller will be responsible for, and remit to the Company, all charges applicable to its resold services for emergency services (E911 and 911) and Telecommunications Relay Service (TRS) as well as any other charges of a similar nature. Company will pay all such charges on behalf of Reseller directly to the responsible regulatory agency. Except where otherwise provided by law, Reseller shall be indemnified and saved harmless by Company against any and all claims, actions, causes of action, damages, liabilities or demands (including reasonable attorney's fees) that may be made by any third party as a result of the Company paying such charges on behalf of Reseller.

I. If any portion of the payment is received by the Company after the payment due date as set forth preceding, or if any portion of the payment is received by the Company in funds that are not immediately available to the Company, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor. The late factor shall be the lessor of:

1. The highest interest rate (in decimal value) which may be levied by law for commercial transaction, compounded daily for the number of days from the payment due date to and including the date that Reseller actually makes the payment to the Company, or
2. 0.000590 per day, compounded daily for the number of days from the payment due date to and including the date that Reseller actually makes the payment to the Company.

J. Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to, the Company. No additional charges are to be assessed to Reseller.

K. The Company will not perform billing and collection services for Reseller as a result of the execution of this Agreement. All requests for billing services should be referred to the appropriate entity or operational group within the Company.

L. Pursuant to 47 CFR Section 51.617, the Company will bill the charges shown below which are identical to the EUCL rates billed by BST to its end users.

	Monthly Rate
1. Residential	
(a) Each Individual Line or Trunk	\$3.50
2. Single Line Business	
(b) Each Individual Line or Trunk	\$3.50
3. Multi-line Business	
(c) Each Individual Line or Trunk	\$6.00

M. The Company will not become involved in disputes between Reseller and Reseller's end user customers over resold services. If a dispute does arise that cannot be settled without the involvement of the Company, Reseller shall contact the designated Service Center for resolution. The Company will make

every effort to assist in the resolution of the dispute and will work with Reseller to resolve the matter in as timely a manner as possible. Reseller may be required to submit documentation to substantiate the claim.

VIII. Discontinuance of Service

A. The procedures for discontinuing service to an end user are as follows:

1. Where possible, the Company will deny service to Reseller's end user on behalf of, and at the request of, Reseller. Upon restoration of the end user's service, restoral charges will apply and will be the responsibility of Reseller.
2. At the request of Reseller, the Company will disconnect a Reseller end user customer.
3. All requests by Reseller for denial or disconnection of an end user for nonpayment must be in writing.
4. Reseller will be made solely responsible for notifying the end user of the proposed disconnection of the service.
5. The Company will continue to process calls made to the Annoyance Call Center and will advise Reseller when it is determined that annoyance calls are originated from one of their end user's locations. The Company shall be indemnified, defended and held harmless by Reseller and/or the end user against any claim, loss or damage arising from providing this information to Reseller. It is the responsibility of Reseller to take the corrective action necessary with its customers who make annoying calls. Failure to do so will result in the Company's disconnecting the end user's service.

B. The procedures for discontinuing service to Reseller are as follows:

1. The Company reserves the right to suspend or terminate service for nonpayment or in the event of prohibited, unlawful or improper use of the facilities or service, abuse of the facilities, or any other violation or noncompliance by Reseller of the rules and regulations of the Company's Tariffs.
2. If payment of account is not received by the bill day in the month after the original bill day, the Company may provide written notice to Reseller, that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifteenth day following the date of the notice. If the Company does not refuse additional applications for service on the date specified in the notice, and Reseller's noncompliance continues, nothing contained herein shall preclude the Company's right to refuse additional applications for service without further notice.
3. If payment of account is not received, or arrangements made, by the bill day in the second consecutive month, the account will be considered in default and will be subject to denial or disconnection, or both.
4. If Reseller fails to comply with the provisions of this Agreement, including any payments to be made by it on the dates and times herein specified, the Company may, on thirty days written notice to the person designated by Reseller to receive notices of noncompliance, discontinue the provision

of existing services to Reseller at any time thereafter. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If the Company does not discontinue the provision of the services involved on the date specified in the thirty days notice, and Reseller's noncompliance continues, nothing contained herein shall preclude the Company's right to discontinue the provision of the services to Reseller without further notice.

5. If payment is not received or arrangements made for payment by the date given in the written notification, Reseller's services will be discontinued. Upon discontinuance of service on a Reseller's account, service to Reseller's end users will be denied. The Company will also reestablish service at the request of the end user or Reseller upon payment of the appropriate connection fee and subject to the Company's normal application procedures.

6. If within fifteen days after an end user's service has been denied no contact has been made in reference to restoring service, the end user's service will be disconnected.

7. Irrespective of the above, BellSouth will not exercise its rights under items 2-6 above due to nonpayment of amounts in dispute until such time that BellSouth finds that the dispute has been resolved.

IX. Liability

A. The liability of the Company for damages arising out of mistakes, omissions, interruptions, preemptions, delays errors or defects in transmission, or failures or defects in facilities furnished by the Company, occurring in the course of furnishing service or other facilities and not caused by the negligence of Reseller or willful misconduct of the Company, or of the Company in failing to maintain proper standards of maintenance and operation and to exercise reasonable supervision shall in no event exceed an amount equivalent to the proportionate charge to Reseller for the period of service during which such mistake, omission, interruption, preemption, delay, error or defect in transmission or defect or failure in facilities occur. The Company shall not be liable for damage arising out of mistakes, omission, interruptions, preemptions, delays, errors or defects in transmission or other injury, including but not limited to injuries to persons or property from voltages or currents transmitted over the service of the Company, (1) caused by customer-provided equipment (except where a contributing cause is the malfunctioning of a Company-provided connecting arrangement, in which event the liability of the Company shall not exceed an amount equal to a proportional amount of the Company billing for the period of service during which such mistake, omission, interruption, preemption, delay, error, defect in transmission or injury occurs), or (2) not prevented by customer-provided equipment but which would have been prevented had Company-provided equipment been used.

B. The Company shall be indemnified and saved harmless by Reseller against any and all claims, actions, causes of action, damages, liabilities, or demands (including the costs, expenses and reasonable attorneys' fees, on account thereof) of whatever kind or nature that may be made by any third party as a result of the Company's furnishing of service to Reseller, unless such claim is made based on the gross negligence or willful misconduct of the Company.

C. The Company shall be indemnified, defended and held harmless by Reseller and/or the end user against any claim, loss or damage arising from the use of services offered for resale involving:

1. Claims for libel, slander, invasion of privacy or infringement of copyright arising from Reseller's or end user's own communications.

2. Claims for patent infringement arising from acts combining or using Company services in connection with facilities or equipment furnished by the end user or Reseller.

3. All other claims arising out of an act or omission of Reseller or its end user in the course of using services.

D. Reseller accepts responsibility for providing access for maintenance purposes of any service resold under the provisions of this Tariff. The Company shall not be responsible for any failure on the part of Reseller with respect to any end user of Reseller.

X. Treatment of Proprietary and Confidential Information

A. Both parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data and like information (hereinafter collectively referred to as "Information"). Both parties agree that all Information shall either be in writing or other tangible format and clearly marked with a confidential, private or proprietary legend, or, when the Information is communicated orally, it shall also be communicated that the Information is confidential, private or proprietary. The Information will be returned to the owner within a reasonable time. Both parties agree that the Information shall not be copied or reproduced in any form. Both parties agree to receive such Information and not disclose such Information. Both parties agree to protect the Information received from distribution, disclosure or dissemination to anyone except employees of the parties with a need to know such Information and which employees agree to be bound by the terms of this Section. Both parties will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information.

B. Notwithstanding the foregoing, both parties agree that there will be no obligation to protect any portion of the Information that is either: 1) made publicly available by the owner of the Information or lawfully disclosed by a nonparty to this Agreement; 2) lawfully obtained from any source other than the owner of the Information; or 3) previously known to the receiving party without an obligation to keep it confidential.

XI. Resolution of Disputes

Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will petition the applicable state Public Service Commission for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by that Public Service Commission concerning this Agreement.

XII. Limitation of Use

The parties agree that this Agreement shall not be proffered by either party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other party in that jurisdiction or for any other purpose.

XIII. Waivers

Any failure by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

XIV. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

XV. Arm's Length Negotiations

This Agreement was executed after arm's length negotiations between the undersigned parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all parties.

XVI. More Favorable Provisions

A. The parties agree that if --

1. the Federal Communications Commission ("FCC") or the Commission finds that the terms of this Agreement are inconsistent in one or more material respects with any of its or their respective decisions, rules or regulations, or

2. the FCC or the Commission preempts the effect of this Agreement, then, in either case, upon such occurrence becoming final and no longer subject to administrative or judicial review, the parties shall immediately commence good faith negotiations to conform this Agreement to the requirements of any such decision, rule, regulation or preemption. The revised agreement shall have an effective date that coincides with the effective date of the original FCC or Commission action giving rise to such negotiations. The parties agree that the rates, terms and conditions of any new agreement shall not be applied retroactively to any period prior to such effective date except to the extent that such retroactive effect is expressly required by such FCC or Commission decision, rule, regulation or preemption.

B. In the event that BellSouth, either before or after the effective date of this Agreement, enters into an agreement with any other telecommunications carrier (an "Other Resale Agreement") which provides for the provision within the state(s) of Florida of any of the arrangements covered by this Agreement upon rates, terms or conditions that differ in any material respect from the rates, terms and conditions for such arrangements set forth in this Agreement ("Other Terms"), BellSouth shall be deemed thereby to have offered such other Resale Agreement to Reseller in its entirety. In the event that Reseller accepts such offer within sixty (60) days after the Commission approves such Other Resale Agreement pursuant to 47 U.S.C. § 252, or within thirty (30) days after Reseller acquires actual knowledge of an Other Resale Agreement not requiring the approval of the Commission pursuant to 47 U.S.C. § 252, as the case may be, such Other Terms shall be effective between BellSouth and Reseller as of the effective date of such Other Resale Agreement. In the event that Reseller accepts such offer more than sixty (60) days after the Commission approves such Other Resale Agreement pursuant to 47 U.S.C. § 252, or more than thirty (30) days after acquiring actual knowledge of an Other Resale Agreement not requiring the approval of the Commission pursuant to 47 U.S.C. § 252, as the case may be, such Other Terms shall be effective between BellSouth and Reseller as of the date on which Reseller accepts such offer.

C. In the event that after the effective date of this Agreement the FCC or the Commission enters an order (a "Resale Order") requiring BellSouth to provide within the state(s) of Florida any of the arrangements covered by this agreement upon Other Terms, then upon such Resale Order becoming final and not subject to further administrative or judicial review, BellSouth shall be deemed to have offered such arrangements to Reseller upon such Other Terms, in their entirety, which Reseller may only accept in their entirety, as provided in Section XVI.E. In the event that Reseller accepts such offer within sixty (60) days after the date on which such Resale Order becomes final and not subject to further administrative or judicial review, such Other Terms shall be effective between BellSouth and Reseller as of the effective date of such Resale Order. In the event that Reseller accepts such offer more than sixty (60) days after the date on which such Resale Order becomes final and not subject to further administrative or judicial review, such Other Terms shall be effective between BellSouth and Reseller as of the date on which Reseller accepts such offer.

D. In the event that after the effective date of this Agreement BellSouth files and subsequently receives approval for one or more intrastate tariffs (each, a "Resale Tariff") offering to provide within the state(s) of Florida any of the arrangements covered by this Agreement upon Other Terms, then upon such Resale Tariff becoming effective, BellSouth shall be deemed thereby to have offered such arrangements to Reseller upon such Other Terms, which Reseller may accept as provided in Section XVI.E. In the event that Reseller accepts such offer within sixty (60) days after the date on which such Resale Tariff becomes effective, such Other Terms shall be effective between BellSouth and Reseller as of the effective date of such Resale Tariff. In the event that Reseller accepts such offer more than sixty (60) days after the date on which such Resale Tariff becomes effective, such Other Terms shall be effective between BellSouth and Reseller as of the date on which Reseller accepts such offer.

E. The terms of this Agreement, other than those affected by the Other Terms accepted by Reseller, shall remain in full force and effect.

F. **Corrective Payment.** In the event that --

1. BellSouth and Reseller revise this Agreement pursuant to Section XVI.A. or
2. Reseller accepts a deemed offer of an Other Resale Agreement or Other Terms, then BellSouth or Reseller, as applicable, shall make a corrective payment to the other party to correct for the difference between the rates set forth herein and the rates in such revised agreement or Other Terms for substantially similar services for the period from the effective date of such revised agreement or Other Terms until the date that the parties execute such revised agreement or Reseller accepts such Other Terms, plus simple interest at a rate equal to the thirty (30) day commercial paper rate for high-grade, unsecured notes sold through dealers by major corporations in multiples of \$1,000.00 as regularly published in *The Wall Street Journal*.

XVII. Notices

A. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.
OLEC Account Team
3535 Colonnade Parkway, Room E4E1
Birmingham, Alabama 35243

Easy Cellular, Inc.
Richard Pollara, President
8625 West Sahara Ave.
Las Vegas, Nevada 89117

or at such other address as the intended recipient previously shall have designated by written notice to the other party.

B. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

XVIII. Amendments

This Agreement may be amended at any time upon written agreement of both parties.

XIX. Entire Agreement

This Agreement sets forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them, and neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby.

BellSouth Telecommunications, Inc.

Easy Cellular, Inc.

BY: 
Signature

BY: 
Signature

NAME: Jerry D. Hendric
Printed Name

NAME: Richard Pollara
Printed Name

TITLE: Director

TITLE: President

EXHIBIT "A"

APPLICABLE DISCOUNTS

The telecommunications services available for purchase by Reseller for the purposes of resale to Reseller end users shall be available at the following discount off of the retail rate.

<u>STATE</u>	<u>RESIDENCE</u>	DISCOUNT	<u>BUSINESS</u>
ALABAMA	10%		10%
FLORIDA	18%		12%
GEORGIA	20.3%		17.3%
KENTUCKY	10%		8%
LOUISIANA	11%		10%
MISSISSIPPI	9%		8%
NORTH CAROLINA	12%		9%
SOUTH CAROLINA	10%		9%
TENNESSEE	11%		9%

Attachment 2

**Letter from Easy Cellular, Inc. to Mr. Jerry Hendrix, BellSouth's Director of
Interconnection Services-Pricing
Dated March 12, 1998**

FISHER WAYLAND COOPER LEADER & ZARAGOZA L.L.P.
2001 PENNSYLVANIA AVENUE, N.W.
SUITE 400

WASHINGTON, D.C. 20006-1851
TELEPHONE (202) 659-3494

GLENN S. RICHARDS
(202) 775-5678

FACSIMILE
(202) 296-6518

INTERNET
grichards@fwciz.com

WEBSITE
<http://www.fwciz.com>

March 12, 1998

Via Federal Express and Facsimile

Jerry Hendrix
BellSouth Telecommunications, Inc.
CLEC Account Team
3535 Colonnade Parkway
Room E4E1
Birmingham, AL 35243

Re: **Bell South's Resale Policies**

Dear Mr. Hendrix:

On behalf of our client, Easy Cellular, Inc. ("Easy Cellular"),^{1/} we hereby request that BellSouth Telecommunications, Inc. ("BellSouth") refund or credit Easy Cellular \$100,192.53, the amount BellSouth has overbilled Easy Cellular by (1) giving Easy Cellular a lower resale discount percentage than was established by the Florida Public Service Commission ("PSC") in a December 1996 Order and (2) by charging Easy Cellular retail rates for nonrecurring charges, contrary to the same December 1996 PSC order requiring Bell South to apply a resale discount to nonrecurring charges.

As you are well aware, on December 31, 1996, the Florida Public Service Commission ("PSC") adopted an order in an arbitration proceeding between Bell South and AT&T, MCI, American Communications Services, Inc., and American Communications Services of Jacksonville, Inc.^{2/} In this order, the PSC established a 21.83% residential resale discount and a

^{1/} Easy Cellular, Inc. has changed its name to Easy Phone, Inc. since the signing of its initial resale agreement with BellSouth. A revised resale agreement was signed on February 20, 1998.

^{2/} In Re Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Services, Inc., American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection
(continued...)

Mr. Hendrix
March 12, 1998
Page 2

16.81% business resale discount for BellSouth's services. This order also established that BellSouth must offer nonrecurring charges at a resale discount.^{2/}

Despite this order, BellSouth and Easy Cellular entered into a resale agreement on March 3, 1997 providing for a residential resale discount of 18% and a business resale discount of 12%. Further, BellSouth, for the first seven months of the agreement, charged Easy Cellular retail rates for nonrecurring charges.

BellSouth's policy of offering certain carriers higher resale discounts and discounts on nonrecurring charges that were not offered to similarly situated carriers, such as Easy Cellular, is a clear violation of the antidiscrimination provisions of the Telecommunications Act of 1996.^{3/} To remedy this discrimination, Easy Cellular requests that BellSouth refund or credit Easy Cellular in the amount of \$42,909.33, the amount Easy Cellular has been overcharged through BellSouth's application of an 18% residential resale discount rather than a 21.83% residential resale discount. Further, Easy Cellular requests that BellSouth refund or credit Easy Cellular the amount of \$57,283.20, the amount it has been overcharged by BellSouth not applying the resale discount to nonrecurring charges.

Please contact the undersigned if you have any questions.

Sincerely,



Glenn S. Richards

Counsel for Easy Cellular, Inc.

^{2/} (...continued)
and resale under the Telecommunications Act of 1996. *Final Order on Arbitration*, Order No. PSC-96-1579-FOF-TP (issued December 31, 1996).

^{3/} *Id.* On reconsideration, neither the resale discount level nor application of the discount to nonrecurring charges was modified. In Re Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Services, Inc., American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996. *Final Order on Motions for Reconsideration and Amending Order No. PSC-96-1579-FOF-TP*, Order No. PSC-97-0298-FOF-TP (issued March 19, 1997).

^{4/} 47 U.S.C. § 251(c).

Attachment 3

**Letter from Mr. Jerry Hendrix, BellSouth's Director of Interconnection Services-Pricing to
Easy Cellular, Inc.**

Dated April 2, 1998



BellSouth Telecommunications, Inc.
Room 34S91 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

April 2, 1998

Via Federal Express and Facsimile

Mr. Glenn Richards
Fisher, Wayland, Cooper, Leader, and Zaragoza, LLP
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006 1851

Dear Mr. Richards:

This is in response to your letter dated March 12, 1998, on behalf of your client, Easy Cellular, Inc. ("Easy Cellular"), regarding BellSouth's Resale Policies.

As I explained in our previous phone conversations, BellSouth Telecommunications, Inc. ("BellSouth") has not unfairly billed Easy Cellular¹ for wholesale discount rates or nonrecurring charges as provided in the BellSouth/Easy Cellular Resale Agreement dated March 3, 1997, and expiring February 19, 1998.² In fact, the only error that has occurred was when BellSouth inadvertently discounted Easy Cellular's nonrecurring charges from approximately September 1997 through February 1998.

The Resale Agreement allowed Easy Cellular to resell BellSouth's telecommunication services in the state of Florida at an 18% discount for residential customers and a 12% discount for business customers. In addition, the agreement reflected BellSouth's position that nonrecurring charges would not be subject to a wholesale discount.

¹ Easy Cellular, Inc. has changed its name to Easy Phone, Inc. since the signing of its initial resale agreement with BellSouth.

² A new standard resale agreement was signed on February 20, 1998 to address name change and include new rates and discounting of nonrecurring charges.

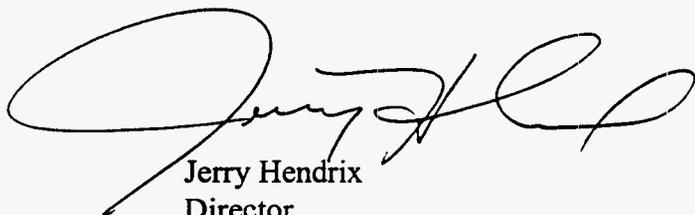
In your letter dated March 12, 1998, you reference the MCI/AT&T/BellSouth arbitration proceedings in Florida and the December 31, 1996 Order by the Florida Public Service Commission ("PSC"). It is true that this Order mandated an increase in the residential resale discount rate to 21.83% and the business resale discount rate to 16.81% for the state of Florida. Furthermore, it is also true that the Florida PSC ordered the discounting of nonrecurring charges as a result of the arbitration proceedings. However, the December 31, 1996 Order was not a final, unappealable order. On January 9, 1997 BellSouth filed a motion for reconsideration of the December 31, 1996 Florida PSC decision. Of particular concern to BellSouth was the Florida PSC's decision on services excluded from resale. With resale requirements still open for argument, BellSouth's resale policies did not change. On March 19, 1997, BellSouth's appeal for reconsideration of the December 31, 1996 order was denied, and BellSouth took action to revise its Resale Standard Agreement to reflect the Florida PSC's Final Order.

Although Easy Cellular entered into a Resale Agreement with BellSouth sixteen days prior to the Florida PSC's unappealable, final order under conditions different than those eventually ordered. Easy Cellular had the option of approaching BellSouth to conform the Agreement to reflect any FCC or Commission ordered rulings as provided in its Agreement. It did not do so.

Once again, BellSouth has not unfairly billed Easy Cellular for wholesale rates and nonrecurring charges associated with resold residential and business telecommunications services. BellSouth has, however, honored the terms and conditions of the Resale Agreement between Easy Cellular and BellSouth.

Should you have further questions regarding these issues, please call me on (404) 927-7503.

Sincerely,



Jerry Hendrix

Director

BellSouth Interconnection Services - Pricing

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by Federal Express this 29th day of May, 1998.

Via Federal Express

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Glenn S. Richards