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January 20, 1997

**VIA OVERNIGHT DELIVERY**

Blanca S. Bayo  
Director, Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**Re: Docket No. 961346-TP**

Dear Ms. Bayo:

Enclosed please find an original and fifteen (15) copies of the Rebuttal Testimony of Mitchell A. Kupinsky on behalf of Telenet of South Florida, Inc. , and of the Prehearing Statement of Telenet of South Florida, Inc., in the above-captioned proceeding. Copies will be served to the parties shown on the attached Certificate of Service.

Please date-stamp the enclosed extra copy of these filings and return them in the self-addressed, stamped envelope.

Very truly yours,



Douglas G. Bonner  
Colin Alberts

Counsel for Telenet of South Florida, Inc.

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU Greer
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 2 Enclosures
- LIN 2 cc: Mitch Kupinsky (Telenet)
- CCD \_\_\_\_\_ Charlie Pellegrini (Commission)
- RCR \_\_\_\_\_ J. Phillip Carver (BellSouth)
- SEC 1 RECEIVED & FILED
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**CERTIFICATE OF SERVICE  
DOCKET NO. 961346-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by overnight delivery or facsimile this 20th day of January, 1997 to the following:

J. Phillip Carver  
BellSouth Telecommunications, Inc.  
Suite 1910  
150 West Flagler Street  
Miami, Florida 33130

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

A handwritten signature in black ink, appearing to read "Colin M. Alberts", is written over a horizontal line. The signature is stylized and cursive.

Colin M. Alberts

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**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

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

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

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January 20, 1997

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

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

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

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

6    A.    Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10           *Memorandum Opinion and Order, Regulatory Policies Concerning Resale and Shared Use;*

11           ¶14; 62 F.C.C. 2d 588, at 596. (January 5, 1977).

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

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

29           *Memorandum Opinion and Order, Regulatory Policies Concerning Resale and Shared Use,*

30           ¶2, 83 F.C.C. 2d 167, at 168-9. (October 21, 1980) (emphasis added).



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rebuttal Testimony of Mitchell A. Kupinsky  
Telenet of South Florida, Inc., Fla. PSC Docket No. 961346-TP  
January 21, 1997  
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1 Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?

2 A. Yes.