



Public Service Commission

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DATE: FEBRUARY 10, 1997

TO: COMMISSIONER JOE GARCIA
COMMISSIONER DIANE K. KIESLING

FROM: CHARLES J. PELLEGRINI, STAFF COUNSEL *CP mcb*
DIVISION OF LEGAL SERVICES

RE: DOCKET NO. 961346-TP - PETITION FOR ARBITRATION OF DISPUTE WITH BELL SOUTH TELECOMMUNICATIONS, INC. REGARDING CALL FORWARDING, BY TELENET OF SOUTH FLORIDA, INC.

On January 23, 1997, BellSouth filed a motion to strike portions of the prefiled direct testimony of Telenet witness Mitchell A. Kupinsky, as well as portions of Telenet's prehearing statement. On January 28, 1997, Telenet timely filed its opposition to the motion.¹ Staff recommends that the Panel rule on this motion as a preliminary matter at the hearing on February 12, 1997.

In its motion, BellSouth has requested that Mr. Kupinsky's testimony at page 11, line 18 through page 12, line 1 and at page 13, line 1 through page 14, line 2 be stricken. In that testimony, BellSouth alleges that Mr. Kupinsky raises the issue of unbundling call forwarding services and pricing unbundled elements on the basis of costs. BellSouth contends that Telenet has never requested unbundling and that the issue of unbundling is not within the scope of the issue to be determined in this proceeding, *i.e.*, whether BellSouth may sell call forwarding services to Telenet subject to the restriction in its tariff.

ACK _____ Telenet argues that, in agreeing to the statement of the issue
 AFA _____ in this proceeding, it understood the statement to admit the
 APP _____ "broadest possible" inquiry into the dispute. According to
 CAF _____ Telenet, such an inquiry would not preclude any theory or evidence
 CMU _____ tending to prove the unreasonableness of the tariff restriction.
 CTR _____ Telenet contends that BellSouth does not sell call forwarding
 EAG _____ services in an unbundled, cost-based manner and that that is
 LEG _____ evidence of the unreasonableness of the tariff restriction.
 LIN _____ Telenet urges that the testimony of Mr. Kupinsky that BellSouth
 OPR _____ would have stricken is germane.

RCH _____
 SEC _____
 WAS _____
 QTR _____

¹At the Prehearing Conference, January 24, 1997, the Prehearing Officer ruled that Telenet would have until January 29, 1997, to file a response to BellSouth's motion.

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In deposition testimony on February 6, 1997, Mr. Kupinsky asserted that pricing of BellSouth's call forwarding services is not an issue in this proceeding. Mr. Kupinsky stated that the purpose of Telenet's petition for arbitration of its dispute with BellSouth is simply to obtain the Commission's determination whether BellSouth may continue to impose the tariff restriction set out at section A13.19.1.A.1 of its General Subscriber Services Tariff on the sale of call forwarding services to Telenet. Telenet has represented that it seeks to resell BellSouth's call forwarding services without the tariff restriction, enabling it to offer its customers access to toll lines in Telenet's service territory for a flat fee.

In the challenged testimony, Mr. Kupinsky asserts that BellSouth should be required to unbundle and make available on a nondiscriminatory basis all of its call forwarding services necessary for provisioning multipath call forwarding. Mr. Kupinsky further asserts that BellSouth should separately price the unbundled elements on an "economically viable basis" and offer them in a manner that will allow Telenet to combine them with its own facilities. The challenged testimony of Mr. Kupinsky addresses unbundling and pricing of unbundled elements and, as such, staff believes that it is not relevant to the determination the Commission must make in this proceeding. Moreover, both the Telecommunications Act of 1996 and Section 364.161, Florida Statutes, provide that local exchange telecommunications companies shall unbundle network elements upon the request of other telecommunications carriers. Staff is unaware that Telenet has made an appropriate request of BellSouth to unbundle its call forwarding service.

In addition, BellSouth has moved to strike the portions of Telenet's prehearing statement that identified two additional witnesses, William Demers and Ruth Jordan, who did not prefile testimony as required by Order No. PSC-97-0041-PCO-TP, and, for that reason, to preclude them from testifying at all in this proceeding. At the Prehearing Conference, the Prehearing Officer so ruled. In its opposition, Telenet argues that BellSouth's motion in this respect is moot.

Therefore, staff recommends that BellSouth's motion to strike the prefiled direct testimony of Mr. Kupinsky at page 11, line 18 through page 12, line 1 and at page 13, line 1 through page 14, line 2 be granted. Staff recommends that BellSouth's motion as to Telenet's prehearing statement and the exclusion of Mr. Demers and Ms. Jordan be considered moot.

CJP/clp
cc: Division of Communications (Greer, Sirianni)
Douglas Bonner
Nancy Sims