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July 10, 1997

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

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

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response in Opposition to Telenet's Emergency Motion for Stay and Request for Oral Argument, which we ask that you file in the captioned matter.

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

Sincerely,

*Nancy B. White* (ck)  
Nancy B. White

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_ *Sumari*
- CTR \_\_\_\_\_ Enclosures
- EAG \_\_\_\_\_ /v
- LEG 1
- LIN \_\_\_\_\_
- OPD \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

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

RECEIVED & FILED  
*[Signature]*  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

_____ )	
In re: )	
TELENET OF SOUTH FLORIDA, INC. )	Docket No. 970730-TP
Petition for Relief Under 47 U.S.C. §252(i) )	
To Opt In to Interconnection Agreement with )	
BELLSOUTH TELECOMMUNICATIONS, INC. )	Filed: July 10, 1997
_____ )	

**BELLSOUTH TELECOMMUNICATION, INC.'S  
RESPONSE IN OPPOSITION TO TELENET'S  
EMERGENCY MOTION FOR STAY AND  
REQUEST FOR ORAL ARGUMENT**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, hereby files its Response in Opposition to Telenet of South Florida, Inc.'s ("Telenet") Emergency Motion for Stay of Order No. PSC-97-0462-FOF-TP ("Order") issued on April 23, 1997 in the above captioned proceeding. In support of its Response, BellSouth states the following:

1. This is Telenet's umpteenth bite at the same apple. Telenet has previously requested and been denied a stay of the Order by this Commission. In this latest gasp, Telenet has offered nothing new to this Commission to justify a stay. Indeed, Telenet is merely demonstrating its absolute refusal to abide by an

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order of this Commission. BellSouth has been more than patient in attempting to work with Telenet, all to no avail.

2. Telenet's second request for a stay is an even more belabored attempt to characterize the facts of this case in a manner which would fit within those circumstances which permit a stay under the rules of the Florida Public Service Commission ("Commission"). Telenet is trying to fit a square peg into a round hole. Telenet argues that if BellSouth terminates service prior to a determination of Telenet's 252(i) Petition, the Commission will be deprived of jurisdiction because Telenet will be out of business. This is absurd. As has been stated time and time again, there are various ways Telenet can continue in business, none of which violate Florida law, Telenet simply refuses to accept that it can no longer blithely ignore the requirements of the Order and the law.

3. Telenet requests that the Commission exercise its discretion and grant a stay pursuant to Rule 25-22.061(2), Florida Administrative Code. The Commission should decline Telenet's request as Telenet has failed to demonstrate that a stay is appropriate under the factors set forth in Rule 25-22.061(2).

4. Rule 25-22.061(2), Florida Administrative Code, specifically lists three factors the Commission may consider in determining whether to grant a stay. The Rule also makes it clear that the Commission may consider additional

factors. In other words, the list is not exhaustive or exclusive. Once again, Telenet is requesting that the Commission allow Telenet to continue to violate Florida law. This, the Commission cannot do.

5. In analyzing the factors listed in Rule 25-22.061(2) , Florida Administrative Code, it becomes abundantly clear that Telenet has met none of them. The first factor to be satisfied is a showing by Telenet that they will suffer irreparable harm if a stay is not granted. BellSouth had given written notice that Telenet's service would be disconnected on June 13, 1997 based on the Commission's determination in the Order. This date was extended to June 24, 1997 in order to allow for a decision on Telenet's first motion for stay. This date has now been extended again to July 18, 1997. Telenet argues that Bellsouth is attempting to destroy Telenet as an alternative provider. There is no foundation for this allegation. It is inconceivable that Telenet could be harmed by being required to obey Florida law and cease the carriage of toll calls without payment of access charges. As the Commission noted in Order No. 22022 issued on October 9, 1989, in Docket 860723-TP, harm cannot occur by being required to stop carrying traffic a party was never entitled to carry. In this case, Telenet is carrying traffic in a manner that violates Florida law. Indeed, Telenet is performing as an interexchange carrier (and an uncertificated one at that), not as an alternative local exchange company. Customers do not receive dial tone from

Telenet; they connect with Telenet through an access code in order to complete a toll call. (Order at pp. 3-4).

6. Telenet next argues that a stay will not cause substantial harm nor be contrary to the public interest. Again, this allegation is without foundation. BellSouth will be harmed because it will not receive access charges to which it is legally entitled. The public will be harmed because a violation of Florida law will proceed to go unchecked.

7. In addition, Telenet argues that a stay will facilitate resolution of the parties' dispute in a reasonable fashion. BellSouth has already offered such a resolution. Telenet has many options under which it can continue to provide service. Telenet has declined all of those options. Instead, Telenet continues to pretend that the Commission's Order does not exist. BellSouth has agreed to enter into agreements with Telenet so long as the terms of the Order are met and obeyed. Telenet, on the other hand, refuses to agree that it is bound by the Order.

8. Finally, Telenet argues that it will likely prevail on its 252(i) Petition. Telenet, however, offers no arguments to support this allegation. BellSouth has already demonstrated in its response to Telenet's 252(i) Petition that Telenet cannot escape the requirements of the Order merely by entering into an ATT - like interconnection agreement. In other words, Telenet cannot legitimize its

current method of operation by signing an interconnection agreement. The Order is applicable to Telenet; Telenet cannot pretend the Order does not exist.

9. For the reasons stated above, the Commission should not grant a stay of the Order pending disposition of the 252(i) Petition. However, if a stay is granted, it must be conditioned on the posting of a bond or other adequate security.

10. Rule 25-22.061(1)(a), Florida Administrative Code, requires that the stay be conditioned upon the posting of a bond or other adequate security. See also, In Re: Application for a rate increase for North Ft. Myers Division in Lee County by Florida Cities Water Company - Lee County Division, 96 F.P.S.C. 11:296, 297 (1996) . Telenet fails completely to even mention this requirement.

11. With regard to oral argument, BellSouth notes that Rule 25-22.0376(5), Florida Administrative Code, provides that oral argument "may be granted at the discretion of the Commission." Although BellSouth believes that oral argument is not necessary in this instance, BellSouth will be prepared to do so if the Commission so desires.

WHEREFORE, for the foregoing reasons, BellSouth respectfully requests that the Commission deny Telenet's Motion for Stay.

Respectfully submitted this 10th day of July, 1997.

BELLSOUTH TELECOMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE  
DOCKET NO. 970730-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 10th day of July, 1997 to the following:

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