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Legal Department

MARY K. KEYER
General Attorney

99 MAY 17 PM 4: 35

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0729

RECORDS AND
REPORTING

May 17, 1999

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

RE: Docket No. 990108-TP

Dear Mrs. Bayo:

Enclosed are an original and 15 copies of BellSouth Telecommunications, Inc.'s Direct Testimony of Susan Arrington and W. Keith Milner. Please file these documents in the captioned docket.

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 on the parties shown on the attached Certificate of Service.

Sincerely,

Mary K. Keyer

AFA	_____	Enclosures
APP	_____	
CAF	_____	
CMO	<u>3</u>	All Parties of Record
CTR	_____	M. M. Criser, III
EAG	_____	N. B. White
LEG	<u>2</u>	W. J. Ellenberg (w/o enclosures)
MAS	<u>3 tags</u>	
ORC	_____	
PTX	_____	
SEC	<u>1</u>	
WAV	_____	
OTH	_____	

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**CERTIFICATE OF SERVICE
Docket No. 990108-TP**

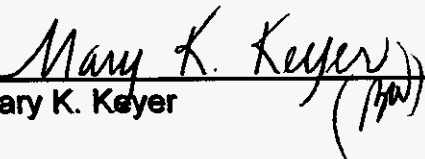
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 17th day of May, 1999 to the following:

Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Access One Communications
3427 N. W. 55th Street
Ft. Lauderdale, FL 33309-6308
Tel. (954) 714-0000
Fax. (954) 739-2476

Everett Boyd
Ervin Law Firm
Post Office Drawer 1170
Tallahassee, FL 32302
Tel. (850) 224-9135
FAX. (850) 224-9135
Atty. for Access One



Mary K. Keyer

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 TESTIMONY OF SUSAN ARRINGTON
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 990108-TP
5 MAY 17, 1999
6

7 Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND
8 ADDRESS.

9
10 A. My name is Susan Arrington. I am employed by BellSouth
11 Telecommunications, Inc. as a Manager in Interconnection Services -
12 Pricing. My business address is 675 West Peachtree Street, Atlanta,
13 Georgia 30375.

14
15 Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

16
17 A. I graduated from the University of Georgia, Athens, Georgia, in 1986,
18 with a Bachelor of Arts Degree. In September 1986, I received a
19 Certificate from The National Center for Paralegal Training, Atlanta,
20 Georgia. I began employment with Southern Bell in 1988, in the
21 Southern Bell Legal Department. In August 1996, I joined the
22 Interconnection Services – Pricing organization handling Alternative
23 Local Exchange Carrier (“ALEC”) negotiations and resale issues.

24
25 Q. HAVE YOU TESTIFIED PREVIOUSLY?

1 A. Yes. I have testified before the Florida and Alabama Public Service
2 Commissions.

3

4 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

5

6 A. The purpose of my testimony is to address the contractual elements of
7 Issues 1, 2 and 3 of this proceeding. Specifically, I will explain why
8 Access One is not entitled to adopt the requested provision from the
9 expired Resale Agreement between BellSouth and Telephone
10 Company of Central Florida (TCCF).

11

12 ISSUE 1

13 Q. PURSUANT TO THE RESALE AGREEMENT BETWEEN BELLSOUTH
14 AND ACCESS ONE, WAS ACCESS ONE ENTITLED TO ADOPT A
15 PROVISION FROM THE INTERCONNECTION AGREEMENT
16 BETWEEN BELLSOUTH AND TCCF?

17

18 A. No. Access One's Resale Agreement does not permit Access One to
19 adopt a provision of another ALEC agreement, but allows Access One
20 to adopt another agreement in its entirety. Section XVI of the Access
21 One Resale Agreement is the Most Favorable Provisions clause.
22 Paragraph B of this clause states, "In the event that BellSouth, either
23 before or after the effective date of this Agreement, enters into an
24 agreement with any other telecommunications carrier (an "Other
25 Resale Agreement") which provides for the provision within the state of

1 Florida of any of the arrangements covered by this Agreement upon
2 rates, terms or conditions that differ in any material respect from the
3 rates, terms and conditions for such arrangements set forth in this
4 Agreement ("Other Terms"), BellSouth shall be deemed thereby to
5 have offered such other Resale Agreement to Other Phone Company
6 in its entirety. In the event that Other Phone Company accepts such
7 offer, such Other Terms shall be effective between BellSouth and Other
8 Phone Company as of the date on which Other Phone Company
9 accepts such offer." (Emphasis added) Therefore, Access One is
10 entitled to adopt another ALEC's agreement in its entirety for the
11 remaining term of that agreement.

12
13 Additionally, at the time Access One requested a specific provision
14 from the TCCF Agreement, the TCCF Agreement had expired and was
15 no longer available for adoption. The TCCF Agreement, which was a
16 Resale Agreement not an Interconnection Agreement as it states in the
17 defined issue statement, expired on May 28, 1998. Access One
18 requested the TCCF provision on August 20, 1998, three months after
19 TCCF's Agreement expired.

20
21 Q. HAS BELLSOUTH ALLOWED AN ALEC TO ADOPT AN AGREEMENT
22 THAT HAS EXPIRED OR A SPECIFIC PROVISION OF ANY
23 AGREEMENT THAT HAS EXPIRED?
24
25

1 A. No. BellSouth has never allowed an ALEC to adopt a provision from
2 an expired agreement nor has it allowed an ALEC to adopt an
3 agreement that has expired for several reasons. First, the negotiation
4 process would be severely impeded if provisions were allowed to
5 remain active indefinitely. The terms and conditions negotiated in an
6 agreement are agreed to by the parties for a specific period of time
7 (i.e., the term of the agreement). The parties agree to operate under
8 the provisions included in that agreement for that period of time with
9 the understanding that at the end of the term of the agreement, the
10 parties will have the opportunity to renegotiate any or all of the
11 provisions. An important aspect of the renegotiations process is the fact
12 that the parties have the option to construct a new agreement, which
13 may or may not contain provisions from the original agreement, once
14 the term of the original agreement has expired. If ALECs were
15 permitted to adopt provisions from an expired agreement, no party
16 would be willing to agree to new provisions knowing that the provisions
17 would remain "alive" and available for an indefinite period of time.

18
19 Secondly, it is only fair and reasonable that unless the parties agree
20 otherwise and renegotiate a certain provision into the new agreement,
21 a provision contained in an agreement that has expired will only survive
22 during the term of that agreement. To allow ALECs to adopt provisions
23 from expired agreements will allow dead language to be revived over
24 and over again and to live on and on long after the original agreement
25 in which the provision was negotiated has expired.

1 Q. HAS THIS ISSUE BEEN ADDRESSED BY THE FCC OR ANY OTHER
2 COMMISSION?

3

4 A. Yes. The FCC promulgated 47 C.F.R. § 51.809(c), which states,
5 "Individual interconnection, services, or network element arrangements
6 shall remain available for use by telecommunications carriers pursuant
7 to this section for a reasonable period of time after the approved
8 agreement is available for public inspection under Section 252 (f) of the
9 Act. The Supreme Court upheld this rule in its recent decision in AT&T
10 vs. Iowa Utilities Board, in which it stated that Rule 47 CFR §
11 512.809(b) "limits the amount of time during which negotiated
12 agreements are open to requests" under Section 252(i) of the Act.

13

14 The Virginia State Corporation Commission addressed this issue in
15 Case No. PUC980173. In an Order dated April 2, 1999, the
16 Commission denied Global NAPs South's (GNAPs) petition to adopt an
17 agreement that had been entered into in 1996 and was due to expire in
18 1999. The Commission stated that it believed "that GNAPs' request
19 was made beyond a reasonable time within which BA-VA should be
20 required to permit a carrier to opt into an approved agreement." The
21 Commission also considered the review and approval process involved
22 in arbitration proceedings relative to the remaining term of the
23 agreement GNAPs requested to adopt. If GNAPs were permitted to
24 adopt the requested agreement, there would be a thirty-day period from
25 the time GNAPs adopted the agreement until the agreement could be

1 terminated pursuant to the contract terms. In light of this time period,
2 the Commission found "it is not practical to require such a short
3 contract term in light of the remaining time available under the MFS
4 Agreement, particularly including the time necessary for filing and
5 Commission approval of an agreement."
6

7 The Florida Public Service Commission has also addressed this issue
8 in its Comments on Notice of Proposed Rulemaking to the FCC in CC
9 Docket No. 96-98 and CC Docket No. 96-68 dated April 9, 1999. This
10 Commission stated that it "believes that the ability of a CLEC to use
11 conditions or rates from a pre-existing contract should expire at the
12 same time the original contract terminates." To find otherwise, the
13 Commission stated in its comments would "significantly reduce [s]
14 competitors' incentives to negotiate an agreement. A competitive
15 carrier can minimize its expense by selecting portions of other
16 agreements without having to concede on any other issues. ILECs will
17 have little incentive to negotiate agreements since other CLECs would
18 likely cannibalize any new agreement."
19

20 ISSUE 2

21 Q. DOES ACCESS ONE'S RESALE AGREEMENT INCLUDE A
22 PROVISION REGARDING THE SOLICITATION OF A CUSTOMER
23 WHO HAS SWITCHED SERVICE FROM BELL SOUTH TO ACCESS
24 ONE WITHIN THE FIRST MONTH THAT THE CUSTOMER
25 SWITCHED TO ACCESS ONE?

1 A. No. There is no language in the Access One resale agreement
2 regarding the solicitation of customers who have switched their service
3 from BellSouth to Access One. However, as Witness Milner states in
4 his Direct Testimony, BellSouth does not initiate the solicitation of
5 customers who switch their local service from BellSouth.

6

7 ISSUE 3

8 Q. DOES ACCESS ONE'S RESALE AGREEMENT PROVIDE SPECIFIC
9 INTERVALS FOR NOTIFICATION OF CUSTOMERS' CHANGES OF
10 LOCAL SERVICE PROVIDERS?

11

12 A. No. Access One's Agreement does not specify notification intervals.
13 Section VI.E of the Agreement simply states "The Company will notify
14 Other Phone Company that such a request has been processed."

15

16 Q. WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?

17

18 A. Yes. BellSouth had no obligation under Access One's Agreement to
19 allow Access One to adopt a provision from the TCCF Agreement in
20 piecemeal fashion. Furthermore, at the time Access One requested
21 the provision from the TCCF Agreement, the TCCF Agreement had
22 already expired thus, the agreement itself, much less the specific
23 provision requested by TCCF, was not available for adoption by any
24 ALEC.

25

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2

3 A. Yes.

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