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RECORDS AND
REPORTING

July 23, 1999

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. 990108-TP (Access One)

Dear Ms. Bayó:

Enclosed please find an original and fifteen copies of BellSouth Telecommunications, Inc.'s Prehearing Statement, which we ask that you file in the above-referenced 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.

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FPSC-BUREAU OF RECORDS

Sincerely,

Michael P. Goggin
Michael P. Goggin (20)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

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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 23rd day of July, 1999 to the following:

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

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Attys. for Access One**



Michael P. Goggin

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Access One Communications, Inc.,)
)
Complainant,) Docket No. 990108-TP
)
vs.)
)
BellSouth Telecommunications, Inc.,)
Respondent.)
_____) Filed: July 23, 1999

PREHEARING STATEMENT OF BELLSOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth"), in compliance with the Order Establishing Procedure (Order No. PSC-99-0869-PCO-TP), issued on April 30, 1999, and Order Modifying Procedural Schedule (Order No. PSC-99-1276-PCO-TP), issued on July 2, 1999, hereby submits its Prehearing Statement for Docket No. 990108-TP.

A. Witnesses

BellSouth proposes to call the following witness to offer testimony on the issues in this docket:

| <u>Witness</u> | <u>Issue(s)</u> |
|---------------------------------------|------------------------|
| Susan Arrington (Direct and Rebuttal) | 1,2,3 |
| W. Keith Milner (Direct and Rebuttal) | 2,3 |
| Michael Wilburn (Rebuttal) | 1 |

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BellSouth reserves the right to call additional witnesses, witnesses to respond to Commission inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Prehearing Officer at the prehearing conference to be held on June 16, 1999. BellSouth has listed the witnesses for whom BellSouth believes testimony will be filed, but reserves the right to supplement that list if necessary.

B. Exhibits

| | |
|-----------------|---|
| Susan Arrington | Amendment to the Resale Agreement between the Other Phone Company and BellSouth, dated April 29, 1997 |
| W. Keith Milner | None at this time. |
| Michael Wilburn | None at this time. |

BellSouth reserves the right to file exhibits to any testimony that may be filed under the circumstances identified in Section "A" above. BellSouth also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

C. Statement of Basic Position

Access One's petition should be denied. Access One's claim that it was entitled to adopt a single provision from an expired resale agreement between BellSouth and TCCF is contrary to the terms of the Resale Agreement between Access One and BellSouth (the "Agreement"). Pursuant to the "Most Favored Nation" language in the Agreement, Access One was entitled to adopt an alternative agreement only in its entirety. Accordingly, Access One was not entitled to adopt only a single provision from the TCCF agreement, nor was it entitled to accept the entire TCCF agreement, which, by its own terms, had expired before Access One ever requested to adopt it.

Access One's claims that BellSouth improperly solicited its customers also fails. The contract expressly permits BellSouth to market its products and services at any time to any end user, including Access One's customers. Accordingly, although BellSouth has not solicited Access One's customers to switch to BellSouth's local exchange service, it is clearly permitted under the Agreement.

Finally, BellSouth has complied with its obligation under the Agreement to notify Access One when an Access One end user switches to another local exchange provider. It has done so in two ways--via a bill to Access One that provides detail on an end user account level, and via a Change of Carrier Notification Letter. Access One

has never maintained that it does not receive notification via the bill, and, although BellSouth received some reports that its Change of Carrier letters were not always received, it has implemented safeguards to ensure that all such letters are sent. Based on Access One's silence in response to BellSouth's inquiries, BellSouth must assume that Access One has been receiving such letters without incident since at least February 1999. Access One's claims on this issue must also be dismissed.

Finally, even if Access One were able to prevail on any issue that it has raised in this matter, its demand for damages must be dismissed. The Commission lacks the authority to award damages. Accordingly, any relief to which Access One were able to prove itself entitled must be limited to nonmonetary, injunctive remedies.

D. BellSouth's Position on the Issues

Issue 1: Pursuant to the Resale Agreement between Access One Communications, Inc. and BellSouth Telecommunications, Inc. and Sections 251 and 252 of the Telecommunications Act of 1996, was Access One entitled to adopt a provision from the Interconnection Agreement between BellSouth and the Telephone Company of Central Florida?

Position: Access One's claim, that BellSouth has breached the "Most Favored Nation" (or "MFN") provision in the Agreement must be denied. First, this

claim is contrary to the plain language of the MFN provision. Second, the TCCF agreement had expired prior to the time Access One expressed its desire to adopt any provision from it. Accordingly, BellSouth did not breach the Agreement by refusing to agree to amend it to include the provision Access One desired. Moreover, the Agreement has been approved by this Commission as consistent with the Telecommunications Act. Accordingly, BellSouth, by acting in conformity with the Agreement, has acted in conformity with Sections 251 and 252 of that Act. Access One requested that it be entitled to amend its Agreement to add only one term from an expired agreement between BellSouth and TCCF. The MFN provision in the Agreement, however, clearly states that if Access One desires to adopt a term or terms from an agreement between BellSouth and another carrier, Access One must adopt the other agreement in its entirety. The MFN provision states as follows:

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 of Florida of any arrangements covered by this Agreement upon rates, terms or conditions that differ in 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 [Access One] in its entirety.*** In the event that [Access One] accepts ***such offer***, such Other Terms shall be effective between

BellSouth and [Access One] as of the date on which [Access One] accepts such offer. (emphasis added).

As the highlighted terms make clear, under the MFN clause, BellSouth is deemed to have offered, and Access One is entitled to accept an Other Resale Agreement only in its entirety. Accordingly, Access One could not, consistent with the Agreement, adopt only a single term from the TCCF agreement.

Second, the TCCF agreement that included the provision Access One wished to adopt had expired prior to the time Access One requested to adopt it. The TCCF agreement expired in May 1998 and Access One did not request to adopt that agreement until August 1998. Accordingly, the TCCF agreement that Access One desired was not available to be adopted pursuant to the MFN clause in the Agreement.

Lastly, BellSouth's refusal to permit Access One to adopt the expired TCCF agreement did not violate the Telecommunications Act. Access One freely consented to the Agreement. The Agreement was approved by the Commission as consistent with the Act and BellSouth acted in conformity with the Agreement. Accordingly, the Act was not violated.

Issue 2: Pursuant to the Resale Agreement between Access One Communications, Inc. and BellSouth Telecommunications, Inc. and Sections 251 and 252 of the Telecommunications Act of 1996, did BellSouth initiate the solicitation of a customer who has switched service from BellSouth to Access One within the first month that the customer switched to Access One? If so, should BellSouth be allowed to continue to do so?

Position: BellSouth did not initiate the solicitation of Access One customers to subscribe to BellSouth's local exchange service. The Commission need not decide this issue as it is worded, however, because the Agreement clearly permits BellSouth to compete with Access One at any time. Section III(F) of the Agreement reads as follows:

The Company [BellSouth] maintains the right to serve directly any end user within the service area of Other Phone Company [Access One]. 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 Other Phone Company.

Access One negotiated and freely consented to the Agreement, including Section III(F).

This section makes clear that BellSouth is free, at any time, to communicate directly with Access One customers for the purpose of selling local exchange service or any other BellSouth service or product. Accordingly, even if it could be shown that BellSouth had contacted Access One customers within the first thirty days after they became Access One customers, such solicitation would be clearly permitted under the

Agreement. Having expressly agreed that BellSouth should be free to compete in this manner, Access One should not now be heard to argue that to do so would violate some implied term it contends should be read into the Agreement.

Issue 3: Pursuant to the Resale Agreement between Access One Communications, Inc. and BellSouth Telecommunications, Inc. and Sections 251 and 252 of the Telecommunications Act of 1996, has BellSouth provided to Access One the required notification of customers' changes of local service providers?

Position: Yes. Section VI(E) of the Agreement provides, in part, that "The Company [BellSouth] will notify Other Phone Company [Access One] that such a request [to change an Access One customer to a different local exchange service provider] has been processed." BellSouth notifies Access One in two ways. First, BellSouth notifies Access One via its bill, which includes detail on an individual end user account level. When an Access One customer switches to another local exchange provider, the next bill to Access One indicates that fact by informing Access One that the bill is final as to that end user. Although this form of notification fully discharges BellSouth's obligation to notify Access One under Section VI(E), BellSouth also provides notification via a letter. On a daily basis, after all orders are completed, a file is generated electronically based on the Disconnect Reason Code. This file is sent to a third party vendor who generates a "Change of Carrier Notification Letter."

BellSouth received some reports in 1998 from other carriers that such letters were not always received. As noted in Mr. Milner's testimony, additional safeguards were instituted in late 1998 and early 1999. At present, Access One should be receiving a Change of Carrier Notification Letter for each Access One customer that changes local exchange service providers, in addition to the notification on its bill. BellSouth wrote to Access One in early February to confirm that additional safeguards had been implemented to ensure delivery of notification letters and to ask Access One to inform BellSouth if it encountered any further problems. To date, Access One has not informed BellSouth of any problems.

Accordingly, BellSouth has fulfilled its obligations to notify Access One of the fact that an Access One customer has switched to another provider of local exchange service.

Issue 4: Pursuant to the Resale Agreement between Access One Communications, Inc. and BellSouth Telecommunications, Inc. and Sections 251 and 252 of the Telecommunications Act of 1996, is BellSouth required to offer the same repair options to Access One customers that BellSouth offers to its own customers? If so, has BellSouth complied with the requirement?

Position: BellSouth and Access One have settled this issue.

Issue 5: Pursuant to the Resale Agreement between Access One Communications, Inc. and BellSouth Telecommunications, Inc. and Sections 251 and 252 of the Telecommunications Act of 1996, what relief, if any, is Access One entitled?

Position: None. BellSouth has not breached the Agreement, nor has it violated the Telecommunications Act. Accordingly, the Commission should rule in favor of BellSouth and dismiss Access One's Complaint. Even if it could be shown that BellSouth had breached the Agreement, and that Access One were harmed by such a breach, the Commission is without the statutory authority to award the damages Access One demands in this matter. Accordingly, even if Access One were to prevail on any issue in this matter, it would be entitled only to injunctive remedies, not monetary damages.

E. Stipulations

The parties have agreed to settle Issue 4.

I. Pending Motions

BellSouth is aware of no pending motions in this matter.

J. Other Requirements

None.

Respectfully submitted this 23rd day of July, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

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