Legal Department

MICHAEL P. GOGGIN. General Attorney

BellSouth Telecommunications, Inc. 150 South Monroe Street Room 400 Tallahassee, Florida 32301 (305) 347-5561

ORIGINAL

May 10, 2000

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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. 992018-TP (Atlantic Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence, which we ask that you file 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 to the parties shown on the attached Certificate of Service.

Sincerel Michael P. Goggi

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All Parties of Record Marshall M. Criser III R. Douglas Lackey Nancy B. White

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DOCUMENT NUMBER-DATE 05815 MAY 108 FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE Docket No. 992018-TP (Atlantic Arbitration)

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

U.S. Mail this 10th day of May, 2000 on the following:

Lee Fordham, Staff Counsel Florida Public Service Commission Division of Legal Services 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 Tel. No. (850) 413-6199 Fax. No. (850) 413-6250

Jerry Stabler, President Atlantic Telecommunications Systems, Inc. 5849 Okeechobee Boulevard Suite 201 West Palm Beach, FL 33417-4352 Tel. No. (561) 471-1864 Fax. No. (561) 640-1720

John C. Dodge Cole, Raywid & Braverman, LLP 1919 Pennsylvania Avenue, N.W. Suite 200 Washington, DC 20006 Tel. No. (202) 659-9750 Fax. No. (202) 4<u>52-</u>0067

Michael P. Gogg

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:

Petition for Arbitration of a Resale Agreement Between BellSouth Telecommunications, Inc. and Atlantic Telecommunications Systems, Inc. Pursuant to the Telecommunications Act of 1996. Docket No. 992018-TP

Filed: May 10, 2000

BELLSOUTH TELECOMMUNICATIONS, INC. BRIEF OF LAW AND THE EVIDENCE

NANCY B. WHITE MICHAEL P. GOGGIN 150 West Flagler Street Suite 1910 Miami, Florida 33130 (305) 347-5558

R. DOUGLAS LACKEY E. EARL EDENFIELD JR. 675 West Peachtree Street Suite 4300 Atlanta, Georgia 30375 (404) 335-0747

ATTORNEYS FOR BELLSOUTH TELECOMMUNICATIONS, INC.

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STATEMENT OF THE CASE

On December 23, 1999, BellSouth Telecommunications, Inc. ("BellSouth") filed a Petition for Arbitration of Resale Agreement with Atlantic Telecommunications Systems, Inc. ("Atlantic"). The parties had been negotiating a new resale agreement, but one issue remained in dispute. Atlantic failed to appear for the Prehearing Conference in this matter on April 7, 2000, or for the Hearing on April 19, 2000. In view of its failure to appear at the Prehearing Conference, Atlantic waived all positions and issues raised in its prehearing statement. At the hearing, the prefiled testimony of BellSouth witness Beth Shiroishi was admitted into the record without objection. It represents the only evidence before the Commission in this matter.

STATEMENT OF BASIC POSITION

The issue in this docket represents a specific dispute between BellSouth and Atlantic as to what should be included in the Resale Agreement between the parties. The issue involves a matter not properly within the scope of the Telecommunications Act of 1996 (the "Act") and should not, therefore, be part of an arbitrated Resale Agreement. In the event that the Commission determines that the issue is within the scope of the Act, BellSouth believes that its position should be sustained because it is more consistent with the Act, and Atlantic has waived its position on the issue in this arbitration.

STATEMENT OF POSITION ON THE ISSUES

Issue 1: Under the Telecommunications Act of 1996, can Atlantic require BellSouth to include a provision in the Resale Agreement whereby BellSouth is precluded from offering service to consumers covered by an exclusive service arrangement with Atlantic?

**<u>Position</u>: No. This issue is clearly not appropriate for arbitration under §252 of the Act. Moreover, such an agreement would limit customer choice and would be inconsistent with the goals of the Act and Chapter 364, Florida Statutes.

Neither the Act nor Florida law addresses the issue of exclusive service arrangements. Thus, this issue is clearly not appropriate for arbitration under §252 of the Act. As a matter of policy, however, the Florida Public Service Commission should not allow any type of arrangement wherein a consumer's choice is limited. The practical effect of exclusive service arrangements is that a consumer, once committed, can be "held hostage" by the service provider, even in the face of poor service or non-competitive pricing. Clearly, exclusive service arrangements do not promote the goal of increased competition envisioned by the Act or Chapter 364, Florida Statutes.

In addition, by its failure to appear at the prehearing conference or the hearing in this matter, Atlantic has forfeited its position on the issue in this proceeding. Accordingly, there is no evidence in the record that would support a finding in Atlantic's favor.

CONCLUSION

For the foregoing reasons, the Commission should determine that BellSouth

cannot be required, under the Act to include a provision in its Resale Agreement with

Atlantic under which BellSouth is precluded from offering service to consumers covered

by an exclusive service arrangement with Atlantic.

Respectfully submitted this 10th day of May, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

NANCY B! WHITE

MICHAEL P. GOGGIN c/o Nancy Sims 150 South Monroe Street, #400 Tallahassee, Florida 32301 (305) 347-5558

R. DOUGLAS LACKEY

E. EARL EDENFIELD JR. 675 West Peachtree Street, #4300 Atlanta, Georgia 30375 (404) 335-0747