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Re: Docket No. **941281-TL** - Groveland EAS

Dear Mrs. Bayó:

Enclosed please find an original and fifteen copies of Brief of BellSouth Telecommunications, Inc.'s, 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.

Sincerely,

J. Phillip Carver (BT)
J. Phillip Carver

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Enclosures

cc: All Parties of Record
R. G. Beatty
A. M. Lombardo
William J. Ellenberg II

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Subscribers) Docket No. 941281-TL
of the Groveland Exchange for)
Extended Area Service (EAS))
to the Orlando, Winter Garden,)
and Windermere Exchanges.)
_) Filed: August 29, 1996

**BRIEF OF
BELLSOUTH TELECOMMUNICATIONS, INC.**

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STATEMENT OF THE CASE

This proceeding began on November 11, 1994, when the subscribers of the Groveland exchange filed a petition with the Florida Public Service Commission (the "Commission") requesting Extended Area Service ("EAS") to the Orlando exchange. Groveland is in the Gainesville local access and transport area ("LATA") and is served by Sprint/United Telephone Company ("United"). Orlando is in the Orlando LATA and is served by BellSouth Telecommunications, Inc. ("BellSouth").¹

On January 17, 1995, the Commission ordered BellSouth and United to conduct traffic studies on the proposed EAS routes. (Order Requiring Traffic Study, Order No. PSC-95-0080-PCO-TL). In response, United provided traffic data. BellSouth, however, by motion dated March 10, 1995, sought relief from the Commission's order on the basis that the Groveland-Orlando route is an interLATA route, and BellSouth no longer has access to the information necessary to perform the study. The Commission granted BellSouth's motion by order dated May 11, 1995, and relieved BellSouth of the requirement to file traffic data.

On July 11, 1995, the Commission entered an order in which it found as follows: "The routes in this docket did not meet the requirements set forth in

¹ The Groveland subscribers included the Windermere and Winter Garden exchanges in their petition to avoid "leapfrogging." However, the Groveland-Windermere and Groveland-Winter Garden routes are exclusively within the territory served by United.

the rule for flat rate, two-way non-optional EAS. However, the Groveland/Orlando route met the M/A/M requirement but fell short on the distribution requirement."² (Order Setting Matter for Hearing, Order No. PSC-95-0875-FOF-TL, p.2). The Commission then set the matter for hearing to determine what other community of interest factors should be considered in the decision of whether to implement EAS or other toll relief. (Order No. PSC-95-0875-FOF-TL, p.2).

A public hearing was held on April 18, 1996. BellSouth pre-filed the direct testimony of Joseph Stanley and presented that testimony at the hearing. In his testimony, Mr. Stanley alerted the Commission to the fact that the Groveland-Orlando route is an interLATA route; that BellSouth would be required to obtain a waiver to carry traffic along that route; and that BellSouth has been able to obtain waivers in the past only for non-optional, flat rate EAS routes. Transcript p. 113.

On August 8, 1996, the Commission issued an order requiring the parties to brief the following issues:

1. Does the Act prohibit BellSouth from originating EAS or ECS traffic from the routes in question?

² Where the petitioning exchange contains less than half the number of access lines of the exchange to which EAS is sought (as is the case in the Groveland-Orlando route), the community of interest qualification requires three or more messages per access line per month (M/A/M), and fifty percent of the subscribers in the smaller exchange must make two or more calls per month to the larger exchange. Rule 25-4.060(3)(a), Florida Administrative Code.

2. Does the Act allow BellSouth to terminate EAS or ECS traffic from the Groveland exchange?
3. Can BellSouth's IXC affiliate carry EAS or ECS traffic without violating Sections 364.08, 364.09, and/or 364.10, Florida Statutes, or the Telecommunications Act of 1996?
4. Can the Commission require BellSouth's ALEC affiliate to carry EAS or ECS traffic?
5. How can EAS or ECS be implemented without violating either the Act or Chapter 364, Florida Statutes?

(Order Requiring Parties to File Legal Briefs, Order No. PSC-96-1033-PCO-TL.)

This brief is submitted in compliance with the Commission's August 8 order and Rule 25-22.056, Fla. Admin. Code. The statement of each issue identified in this matter is followed immediately by a summary of BellSouth's position on that issue and a discussion of the basis for that position. Each summary of BellSouth's position is marked by an asterisk.

STATEMENT OF BASIC POSITION

Issue No. 1: Does the Act prohibit BellSouth from originating EAS or ECS traffic from the routes in question?

***Position:** Yes. The Telecommunications Act of 1996 prohibits BellSouth from originating interLATA traffic until the requirements of Section 271 of the Act are satisfied. Once those requirements are met, and BellSouth obtains approval to originate interLATA traffic, it may only originate that traffic through a separate affiliate.

The Telecommunications Act of 1996 (the "Act") is dispositive on the issue of whether BellSouth can originate EAS or ECS traffic on the Groveland-Orlando route. The Groveland-Orlando route is an interLATA route. For BellSouth to originate EAS or ECS traffic along this route, BellSouth must originate interLATA service. Pursuant to the Modified Final Judgment in United States v. Western Electric, Case No. 82-0192 (D.D.C.), BellSouth has historically been prohibited from originating interLATA traffic, absent a waiver from Judge Greene. Today, however, the Act governs when and how BellSouth, or any other Bell operating company ("BOC"), can provide interLATA service.

The requirements of the competitive checklist must be satisfied before BellSouth can originate interLATA traffic. Section 271 requires BOCs to obtain approval from the Federal Communications Committee ("FCC") to provide in-region interLATA service. 47 U.S.C. §271(b)(2). The FCC, after consultation with the state commission and the United States Attorney General, 47 U.S.C.

§271(d)(2), can only approve the BOC's application if it finds, inter alia, that the BOC has satisfied the following requirements. First, the BOC must enter into a binding agreement with a facilities-based provider to provide access and interconnection to the BOC's network facilities.³ 47 U.S.C. §271(d)(3)(A). Second, the BOC must implement the fourteen-point competitive checklist found in §271(c)(2)(B).

The FCC cannot forbear from applying the requirements of section 271. "The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist" 47 U.S.C. §271(d)(4).

Once the FCC grants BellSouth authority to provide interLATA service, BellSouth can only originate interLATA traffic through a separate affiliate. 47 U.S.C. §272. This affiliate must operate independently of BellSouth; it must maintain separate books, records and accounts; it must have separate officers, directors and employees; and its transactions with BellSouth must be on an arm's length basis. Therefore, even after the requirements of the competitive checklist have been satisfied, BellSouth, in its capacity as a local exchange company ("LEC"), will still be unable to originate EAS or ECS traffic on the Groveland-Orlando route, absent an order of the FCC approving a modification of the LATA boundary.

³ Alternatively, the FCC can find that no facilities-based competitor has requested access and interconnection within a designated time period. 47 U.S.C. §271(c)(1)(B) and (d)(3)(A).

There is, however, one other possible way for BellSouth to carry EAS or ECS traffic over this route. The FCC can approve a LATA boundary established or modified by a BOC. 47 U.S.C. §153(43)(B). For example, the FCC might approve moving the Groveland exchange into the Orlando LATA. The result would be to convert the route into an intraLATA route, thus enabling BellSouth to originate traffic along that route. At the same time, Groveland would no longer be in the Gainesville LATA, which has the potential to affect these subscribers in other ways.

Issue No. 2: Does the Act allow BellSouth to terminate EAS or ECS traffic from the Groveland exchange?

***Position:** Yes. The Act allows BellSouth to terminate interLATA traffic. It is unclear whether BellSouth would be required to apply its terminating excess rates when terminating EAS or ECS traffic originated by United in Groveland.

The Act does not affect BellSouth's ability to terminate interLATA traffic. "Nothing in this section prohibits a Bell operating company or any of its affiliates from providing termination for interLATA services" 47 U.S.C. §271(b)(4). When terminating that traffic, however, BellSouth cannot "make any unjust or unreasonable discrimination in charges" 47 U.S.C. §202(a).

Unless BellSouth charges terminating access rates to the LEC originating the interLATA EAS or ECS call, BellSouth might face an argument that it is unjustly discriminating in the application of its access charges. An

interexchange carrier ("IXC") can compete on an EAS or ECS route. In Re: Comprehensive review of the revenue requirements and rate stabilization plan of Southern Bell Telephone and Telegraph Company, Docket No. 92060-TL, Order No. PSC-95-1391-FOF-TL, issued November 8, 1995, (the "Rate Reduction Order"), at p. 21; see also, In Re: Request by Broward Board of County Commissioners for extended area service between Fort Lauderdale, Hollywood, North Dade and Miami, Docket No. 911034-TL, Order No. PSC-94-0572-FOF-TL, issued May 16, 1994, 94 FPSC 5:148, at 5:150. If BellSouth were to terminate an interLATA ECS call originated by another LEC, and not charge that LEC for terminating access, but then charge an IXC for terminating a call along the same route, the IXC might protest that BellSouth was unreasonably discriminating in its application of access charges.

At the same time, the Commission has historically ordered EAS even though customers who receive the service are treated differently than those who do not. As discussed more fully in issue No. 3, this does not constitute undue discrimination under Florida law. Whether this same conclusion could sustain charging a LEC carrying EAS traffic a different terminating access rate than the rate charged to IXCs is less than clear.

Issue No. 3: Can BellSouth's IXC affiliate carry EAS or ECS traffic without violating Sections 364.08, 364.09, and/or 364.10, Florida Statutes, or the Telecommunications Act of 1996?

***Position:** Yes. Sections 364.08, .09 and .10, are not violated by the carriage of traffic on a Commission approved EAS or ECS route, irrespective of whether BellSouth or its IXC affiliate carries the traffic. However, although the IXC affiliate can compete for the traffic, only BellSouth is required to carry it as the carrier of last resort.

The thrust of sections 364.08 and 364.09, Florida Statutes, is that subscribers in substantially the same circumstances should be treated substantially the same. Section 364.08 provides that a telecommunications company may not charge less than the rates specified in its schedule; may not refund or remit rates when such refund is not "uniformly extended to all persons under like circumstances for like or substantially like services;" and may not give free or reduced service. (See Appendix for the complete text of section 364.08.) Section 364.09 provides that a telecommunications company may not -- by giving a special rate or rebate or otherwise -- charge different amounts to customers who are receiving a like service under the same or substantially the same circumstances. (See Appendix for the complete text of section 364.09.)

When the Commission approves an EAS or ECS route, similarly situated people are treated similarly. The Commission can order EAS if it finds that the conditions for approval set forth in Rule 25-4.058, F.A.C., have been met.

With respect to ECS routes, although there are no Commission rules governing these routes, the Commission has developed standards it applies when analyzing the propriety of an ECS route. See, e.g., Rate Reduction Order, pp. 12-13. These conditions and standards apply equally to any community seeking EAS or ECS. For example, where one person resides in a community with EAS to a particular city and a second person resides in a nearby community that requests EAS to that same city, these two persons are similarly situated for purposes of sections 364.08 and 364.09 if the second person's community meets the conditions for approval of EAS set forth in Rule 25-4.058, F.A.C. If not, then the two persons are not similarly situated, because one resides in a community that qualifies for EAS while the other does not. Therefore, allowing EAS to one person but not another is not a violation of sections 364.08 or 364.09.

This same rationale applies to section 364.10, Fla. Stat. This section provides that a telecommunications company may not give any undue or unreasonable preference or advantage to any person or locality. (See Appendix for the complete text of section 364.10.) The focus is on the words "undue" and "unreasonable." Where the Commission has applied its standards and determined that EAS or ECS is appropriate, the person residing in the community who has EAS or ECS has an advantage over the person who does not have EAS or ECS, but that advantage is neither undue or unreasonable.

Once the Commission approves an EAS or ECS route, a rational basis exists for the distinction between customers who receive EAS or ECS and those who do not. Accordingly, sections 364.08, 364.09, and 364.10 are not violated regardless of whether BellSouth or its IXC carries the traffic over a commission approved route. Moreover, for routes developed after the effective date of the new Florida legislation, BellSouth and its IXC affiliate can carry the traffic without violating sections 364.08, 364.09, and 364.10 as long as subscribers in the same circumstances are treated substantially the same.

Although BellSouth's IXC affiliate can carry EAS or ECS traffic, only BellSouth, in its capacity as a local exchange company, has carrier of last resort obligations with respect to that traffic. The Savings Clause of the newly revised Chapter 364 provides that where, as in this docket, an application for EAS or ECS was pending on March 1, 1995, the subsequently approved route "shall be considered basic services." Section 364.385(2), Fla. Stat., A local exchange company, as the carrier of last resort, is required to offer basic local service to persons requesting it in the company's service territory. §364.025(1), Fla. Stat. Therefore, to the extent a subject exchange qualifies for an EAS route, this basic service is offered by the LEC to all customers in the exchange.

IXCs do not have a carrier of last resort obligation. BellSouth's IXC affiliate, by definition, will not be a local exchange company. Therefore, while

the IXC affiliate can elect to carry traffic on an EAS or ECS route, it cannot be required to do so, nor can it be required to carry traffic under an EAS or ECS pricing structure.

Finally, there does not appear to be any prohibition in the Act against BellSouth's IXC affiliate carrying EAS or ECS traffic.

Issue No. 4: Can the Commission require BellSouth's ALEC affiliate to carry EAS or ECS traffic?

***Position:** No. Nothing in Chapter 364 authorizes the Commission to require an ALEC to serve a particular customer or group of customers. There is no authority to treat a BellSouth ALEC affiliate different than other ALECs.

There are two critical assumptions in this issue. First, the question assumes BellSouth will form a separate affiliate to act as an Alternative Local Exchange Company ("ALEC"). The current holder of the ALEC certificate is BellSouth, not a separate affiliate of BellSouth. Nothing in Chapter 364, Fla. Stat., or the Rules Governing Telecommunications Service Provided by Alternative Local Exchange Companies, Rules 25-24.800-.835, F.A.C., requires BellSouth to form a separate affiliate to apply for, or hold, an ALEC certificate. The issue also assumes that BellSouth, in its capacity as an ALEC, will compete for basic local service in BellSouth's franchise territory. Obviously, BellSouth has provided local service in its own territory for decades. The ALEC certificate now allows BellSouth to compete for local service outside its franchised

territory.

Even if BellSouth were to form a separate affiliate, and that affiliate were to provide local service in BellSouth's franchised territory, the Commission could not require the affiliate to carry EAS and ECS traffic. Until January 1, 2000, BellSouth has carrier of last resort obligations in its franchised territory. Section 364.025(1), Fla. Stat. After that date, any ALEC could, if it chooses, seek to be carrier of last resort in a particular location. Section 364.025(5), Fla. Stat. However, there is nothing in Chapter 364 that authorizes the Commission to require an ALEC, including BellSouth's ALEC, to be the carrier of last resort. The Commission's regulatory oversight of an ALEC is restricted to those matters set forth in Chapter 364. The statutory framework for regulation of ALECs neither expressly, nor implicitly, vests in the Commission the ability to compel an ALEC to carry EAS or ECS traffic. The Commission's limited regulatory power over an ALEC is not expanded where the ALEC is an affiliate of BellSouth.

Issue No. 5: How can EAS or ECS be implemented without violating either the Act or Chapter 364, Florida Statutes?

***Position: BellSouth cannot implement interLATA EAS or ECS without violating the Act unless the FCC were to approve a LATA boundary modification.**

Where an EAS or ECS route does not cross a LATA boundary, BellSouth can carry the traffic, as it has in the past, without violating either the Act or Chapter 364. The problem arises where a LATA boundary is implicated. While nothing in Chapter 364 prevents BellSouth from providing interLATA EAS or ECS, the Act prohibits BellSouth from originating that traffic. BellSouth can terminate the traffic, but the FCC might require BellSouth to charge its terminating access rate to the LEC that originates the traffic. BellSouth, in its capacity as a LEC, is thus constrained by the Act from participating in the implementation of two-way interLATA EAS or ECS traffic. The only way BellSouth could conceivably originate traffic along a route that is currently interLATA would be if the FCC approved a modification to the LATA boundary that brought the entire route within the LATA.

CONCLUSION

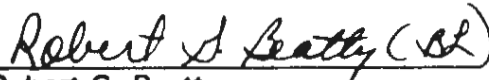
The Act prevents BellSouth from originating interLATA EAS and ECS traffic, although BellSouth could terminate EAS or ECS traffic. Once the requirements of §271 have been satisfied, BellSouth's IXC affiliate could carry

interLATA traffic along an EAS or ECS route, without being in violation of the price discrimination provisions of sections 364.08,.09 and .10, Fla. Stat. However, the IXC does not have carrier of last resort obligations with respect to that traffic and thus cannot be required to carry it. The same is true for BellSouth's ALEC affiliate, assuming BellSouth were to form a separate subsidiary to act as an ALEC.

In sum, absent a waiver of the LATA boundary, BellSouth cannot carry interLATA EAS or ECS traffic on the route at issue.

Respectfully submitted this 29th day of August, 1996.

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APPENDIX

Section 364.08

(1) A telecommunications company may not charge, demand, collect, or receive for any service rendered or to be rendered any compensation other than the charge applicable to such service as specified in its schedule on file and in effect at that time. A telecommunications company may not refund or remit directly or indirectly, any portion of the rate or charge so specified or extend to any person any advantage of contract or agreement or the benefit of any rule or regulation or any privilege or facility not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service.

(2) A telecommunications company subject to this chapter may not, directly or indirectly, give any free or reduced service between points within this state. However, it shall be lawful for the commission to authorize employee concessions if in the public interest.

Section 364.09

A telecommunications company may not, directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered with respect to communication by telephone or in connection therewith, except as authorized in this chapter, than it charges, demands, collects, or receives from any other person for doing a like and contemporaneous service with respect to communication by telephone under the same or substantially the same circumstances and conditions.

Section 364.10

(1) A telecommunications company may not make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(2) The prohibitions of subsection (1) notwithstanding, a telecommunications company serving as carrier of last resort shall provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in a commission-approved tariff and a preferential rate to eligible facilitates as provided for in part II.

**CERTIFICATE OF SERVICE
DOCKET NO. 941281-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 29th day of August, 1996 to the following:

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