

HOPPING GREEN SAMS & SMITH
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS

ORIGINAL

JAMES S. ALVES
BRIAN H. BIBEAU
KATHLEEN BLIZZARD
ELIZABETH C. BOWMAN
RICHARD S. BRIGHTMAN
PETER C. CUNNINGHAM
RALPH A. DeMEO
THOMAS M. DiROSE
WILLIAM H. GREEN
WADE L. HOPPING
FRANK E. MATTHEWS
RICHARD D. MELSON
ANGELA R. MORRISON
GARY V. PERKO
MICHAEL P. PETROVICH
DAVID L. POWELL
WILLIAM D. PRESTON
CAROLYN S. RAEPPEL
DOUGLAS S. ROBERTS
GARY P. SAMS
ROBERT P. SMITH
CHERYL G. STUART

123 SOUTH CALHOUN STREET
POST OFFICE BOX 6526
TALLAHASSEE, FLORIDA 32314
(850) 222-7500
FAX (850) 224-8551
FAX (850) 425-3415

KEVIN B. COVINGTON
RANDOLPH M. GIDDINGS
KIMBERLY A. GRIPPA
GARY K. HUNTER, JR.
JONATHAN T. JOHNSON
ROBERT A. MANNING
W. STEVE BYRES
T. KEITH WETHERELL, II
OF COUNSEL
W. ROBERT FOXES

Writer's Direct Dial No.
(904) 425-2313

November 17, 1997

Ms. Blanca S. Bayó
Director, Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

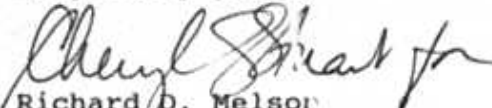
Re: Docket No. 971056-TX

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Telecommunications Corporation in the above docket are the original and 15 copies of MCI's Protest of Proposed Agency Action.

By copy of this letter this document has been provided to the parties on the attached service list.

Very truly yours,


Richard D. Melsor

ACK _____
AFA 1 RDM/clp
APP _____ Enclosures
cc: Service List
CAF _____
CMU _____
CTD _____
EIS _____
LH 1
EIS 5
CTD _____
RDM _____
SCL 1
WAS _____
OTH Org Don

ORIGINAL

DOCUMENT NUMBER-DATE
11784 NOV 17 97
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate)
to provide alternative local)
exchange telecommunications)
service by BellSouth BSE, Inc.)

Docket No. 97-056-TX
Filed: November 17, 1997

MCI'S PROTEST OF PROPOSED AGENCY ACTION

MCI Telecommunications Corporation (MCIT) and MCImetro Access Transmission Services, Inc. (MCIm) (collectively MCI) hereby protest Order No. PSC-97-1347-FOF-WS (Order) in which the Commission proposes to grant an alternative local exchange telecommunications certificate to BellSouth BSE, Inc. (BSE), a wholly owned subsidiary of BellSouth BSE Holdings, Inc., which is a wholly owned subsidiary of BellSouth Telecommunications, Inc. (BellSouth or BST). In support of its protest, MCI states:

BACKGROUND

1. MCI's official address for its Southeast regulatory operations is:

MCI Telecommunications Corporation
MCImetro Access Transmission Services, Inc.
780 Johnson Ferry Road, Suite 700
Atlanta, GA 30342

2. The names of MCI's representatives in this proceeding are:

Richard D. Melson
Hopping Green Sams
& Smith, P.A.
Post Office Box 6526
Tallahassee, FL 32314

Thomas K. Bond
MCI Telecommunications
Corporation
780 Johnson Ferry Road
Suite 700
Atlanta, GA 30342

3. MCI is certificated by this Commission as an interexchange carrier (IXC), alternative local exchange company

(ALEC), alternative access vendor (AAV), and pay telephone service provider (PATS). MCIT provides interexchange service throughout the state of Florida. MCIm is certificated by this Commission as an ALEC and an AAV. MCIm is currently providing local exchange telecommunications service to business customers in several Florida markets and is conducting resale tests of BellSouth's service to both residential and business customers in Florida.

4. MCI protests the grant of an ALEC certificate to BSE on the grounds that the certificate embodied in the Order does not contain sufficient limitations on the scope of authority granted to BSE, particularly with respect to BSE operating as an ALEC in the service territory currently served by BellSouth in its capacity as an incumbent local exchange company (ILEC), and therefore would allow BellSouth to circumvent provisions of the Telecommunications Act of 1996, including the resale requirements.

GROUND FOR PROTEST

5. The Telecommunications Act of 1996 (the Act) was passed to end the historic regime in which incumbent local exchange companies (such as BellSouth) monopolized the facilities and services through which consumers place and receive all local and long distance calls. In its place the Act mandates a new competitive structure. To that end, the 1996 Act requires incumbents to provide new entrants into local telecommunications markets with access to the incumbents' telephone networks and services on rates, terms, and conditions that are just, reasonable and non-discriminatory. These requirements are specifically

intended to open monopoly local telephone markets to effective competition as quickly as possible.

6. To put an end to the historic monopoly regime in the local telephone market, the 1996 Act sets forth the terms on which incumbent monopoly local telephone companies, such as BellSouth, must resell those telecommunications services that it provides to retail subscribers who are not telecommunications carriers to new entrants in the local telephone market, such as MCI. The Act also provides the formula for calculating the charges for the resale of telecommunications services by the incumbent monopoly telephone company to the new entrant. The manner in which the 1996 Act calculates these charges links retail and wholesale prices and thereby prevents price squeezes.

7. Allowing BSE to operate as an ALEC in BellSouth's incumbent monopoly service area without being subject to BellSouth's ILEC obligations allows BellSouth to circumvent the requirements of the Act, including the resale pricing regulations of the Act, and subjects MCI to unfair competition. The linkage between retail and wholesale pricing as envisioned by the Act would be broken and consumers would be denied the benefits which competition should bring. Further, competition would be impeded and MCI would be harmed by being denied competitive access to the Florida local telephone market as mandated by the Act.

8. The Act "provide[s] for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all

telecommunications markets to competition." H.R. Conf. Rep. No. 104-458, 104th Cong., 2nd Sess. 113 (1996). Congress, however, recognized that local competition could not develop unless new entrants were afforded access to the bottleneck local exchange facilities that incumbent monopolies had constructed over decades with funds obtained from captive ratepayers. Because no new entrant could realistically compete in all markets through the exclusive use of its own facilities, and because Congress recognized that shared use of bottleneck facilities was sometimes more efficient than duplication of those facilities, the Act's scheme for facilitating local competition consists largely of a set of affirmative obligations on incumbent local carriers to make their facilities and services available for purchase or lease by new entrants.

9. One such means of entry that is particularly relevant to the underlying claims is a requirement imposed on ILECs to permit competing carriers to purchase at wholesale rates the ILECs' existing retail telecommunications services. Resale has been an integral part of the thriving competition in the long distance markets for more than a decade. It is important in opening up local monopolies to competition because it involves the lowest initial costs and associated risks for potential competitors. The imposition of this duty on BellSouth enables new entrants to offer competing local telephone service by giving new entrants the right to purchase at wholesale rates the service that BellSouth provides over its local network facilities, then resell those services to the new entrant's own customers.

10. Congress understood that ILECs would retain strong incentives to obstruct their prospective competitors' efforts to enter the local market. In particular, Congress recognized that allowing ILECs to dictate the rates, terms, and conditions upon which their prospective competitors may access the ILECs' bottleneck facilities would stifle competition just as surely as statutory or regulatory restrictions on entry. Therefore, the Act contains a number of provisions specifically designed to prevent incumbents from acting on their built-in incentives to price new entrants out of the market by charging unreasonable rates or imposing unreasonable restrictions and discriminatory conditions for interconnection, network elements, resale of incumbent services, and other statutorily mandated forms of competitive access.

11. The 1996 Act reflects Congress's recognition that competition in the local telephone market would take years to develop (and in some areas might not develop at all) if local entry required each new entrant to replicate the local services infrastructure network. Accordingly, Section 251(b) of the Act imposes various duties on all LECs including, among other things, permitting resale of their services. Section 251(c) of the Act imposes additional duties on incumbent LECs which are defined under the Act as those LECs that, on the date the 1996 Act was enacted, provided telephone exchange service and were deemed under certain regulations of the Federal Communications Commission (FCC) to be members of the exchange carrier association. 47 U.S.C. Sec. 251(h). BellSouth is an ILEC within the meaning of the Act.

12. Among the additional duties imposed by the Act, ILECs have the duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers . . ." Section 251(c)(4). The Act further prohibits ILECs from imposing any unreasonable or discriminatory conditions on the resale of such services. Sec. 251(c)(4)(B). Section 252(d)(3) of the Act, in turn, mandates that the wholesale rates charged under Section 251(c)(4) be based on retail rates less "the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier" in providing the services at wholesale rather than retail. In order to ensure that this important obligation continues to apply to local monopolists notwithstanding any subsequent corporate restructuring, Congress provided that this obligation and the other obligations of an ILEC would continue to apply to an ILEC's "successor or assign." Sec. 251(h)(1)(B)(ii).

13. Since the wholesale rate is based on a discount off of the monopoly's retail price, new entrants using resale cannot exert competitive pressure on the wholesale rate. Indeed, if the incumbent monopoly raises its retail rate, the wholesale rate will necessarily increase proportionally. If BSE is allowed to resale BellSouth's services in BellSouth's territory, ALECs relying on resale still will not be able to influence the wholesale rate, but the wholesale rate will not be linked to BSE's retail rate. Thus, ALECs will be subject to price squeezes and unfair competition. To merely break even, a new entrant must charge enough to cover both

BellSouth's wholesale charges plus the new entrant's own operating expenses. If BSE charges only enough to cover these costs, ALECs will not be able to earn a profit competing against BSE even if they are just as efficient or even more efficient. BSE can keep competitors out of the resale market by selling at a price that merely covers its costs, while BellSouth continues to make profits off of both its retail and wholesale services.

14. If BSE is allowed to resale BellSouth's services in BellSouth's territory, not only would competitors be effectively locked out of the resale market, but the majority of consumers would be prevented from benefiting from any lower prices that competition does bring. Under the statutory scheme created by the Act, as BellSouth lowers its retail rate in response to competitive pressures, such as competition from ALECs using their own facilities or unbundled network elements, all customers in the service category benefit from lowered rates. Having a BellSouth ALEC, however, would relieve BellSouth of any incentive to ever lower rates. Any members of a service category who are likely to move to competing carriers, for example, high-end residential customers, could be targeted by BSE, while BellSouth's retail rates for the remaining customers stay the same or even increase.

SUBSTANTIAL INTERESTS OF MCI

15. The substantial interests of MCI are affected by any Commission action granting BST or its affiliates a certificate as an alternative local exchange provider that allows BellSouth to circumvent the requirements of the Act. The Act represents Congress' attempt to carefully balance a number of competing

interests. One of the major thrusts of the Act is that a new entrant, such as MCI, has a right to buy BellSouth's retail services at a wholesale discount so that it can compete against BellSouth. MCI is harmed by being denied this right to effectively compete by means of resale and is harmed by any action which allows BellSouth to circumvent its obligations to MCI under the federal act. MCI is harmed by being subject to competition from a BellSouth affiliate which is not required to comply with the obligations of an ILEC, including the obligation to resale its retail services, when the affiliate is serving in the service territory of BellSouth.

KNOWN ISSUES OF MATERIAL FACT

16. MCI assumes that BSE will dispute MCI's assertion that allowing BSE to operate as an ALEC in the service territory of incumbent BellSouth would allow BellSouth to circumvent its obligations as an ILEC under the Act. MCI assumes that BSE will dispute MCI's assertion that allowing BSE to operate as an ALEC in the service territory of incumbent BellSouth would subject MCI to unfair competition. MCI assumes that BSE will dispute the anti-competitive effects of price squeezes.

STATUTES AUTHORIZING RELIEF

17. MCI is entitled to relief under Chapter 120 and Chapter 364, Florida Statutes, Chapter 25-22, Florida Administrative Code, and the Telecommunications Act of 1996.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by U.S. Mail this 17th day of November, 1997.

BellSouth BSE, Inc.
Patricia Cowart
2727 Paces Ferry Road
Suite 1100
Atlanta, GA 30339

Martha Brown
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Suite 370
Tallahassee, FL 32399

Kim Peña
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Suite 370
Tallahassee, FL 32399



Attorney