

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 971056-TX  
ORDER NO. PSC-98-0577-PHO-TX  
ISSUED: April 24, 1998

Pursuant to Notice, a Prehearing Conference was held on April 13, 1998, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

Gary Early, Esquire, Akerman, Senterfitt & Edison, P.A.,  
216 South Monroe Street, Suite 200, Tallahassee, Florida  
32301.  
On behalf of BellSouth BSE, Inc.

John R. Ellis, Esquire, Rutledge, Ecenia, Underwood,  
Purnell & Hoffman, P.A., P.O. Box 551, Tallahassee, FL  
32302.  
On behalf of Teleport Communications Group Inc. and TCG  
South Florida.

Joseph A. McGlothlin, Esquire, McWhirter, Reeves,  
McGlothlin, Davidson, Rief & Bakas, 117 South Gadsden  
Street, Tallahassee, Florida 32301.  
On behalf of Florida Competitive Carriers Association.

Mark Logan, Esquire, Bryant Miller & Olive, P.A., 201  
South Monroe Street, Tallahassee, Florida 32301.  
On behalf of AT&T Communications of the Southern States,  
Inc.

Richard D. Melson, Esquire, Hopping Green Sams & Smith,  
P.A., P.O. Box 6526, Tallahassee, Florida 32314.  
On behalf of MCI Telecommunications Corporation and  
MCImetro Access Transmission Services, Inc.

Thomas K. Bond, Esquire, 780 Johnson Ferry Road, Suite  
700, Atlanta, Georgia 30342.  
On behalf of MCI Telecommunications Corporation and  
MCImetro Access Transmission Services, Inc.

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Martha Carter Brown, Esquire, and Catherine Bedell,  
Esquire, Florida Public Service Commission, 2540 Shumard  
Oak Boulevard, Tallahassee, Florida 32399-0850.  
On behalf of the Commission Staff.

### PREHEARING ORDER

#### I. CASE BACKGROUND

On October 27, 1997, the Commission issued Proposed Agency Action Order No. PSC-97-1347-FOF-TX granting an alternative local exchange telecommunications certificate to BellSouth BSE, Inc. (BellSouth BSE). On November 17, 1997, Florida Competitive Carriers Association (FCCA), MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (Collectively, MCI), filed timely protests of the Order, raising specific issues with respect to BellSouth BSE's provision of alternative local exchange in BellSouth Telecommunications, Inc.'s service territory. AT&T Communications of the Southern States, Inc. (AT&T), Time Warner Axs of Florida, L.P. (Time Warner), Teleport Communications Group, Inc., and TCG South Florida (collectively, TCG) have intervened in this proceeding. Accordingly, this matter is currently set for an administrative hearing.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff (staff) up to and during the prehearing conference, unless modified by the Commission. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and the rules of this Commission.

#### II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality

has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information.

Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting confidential files.

#### Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

### III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits

appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>ISSUE NO.</u>
<u>DIRECT</u>		
Robert C. Scheye	BSE	All Issues
Joseph Gillan	FCCA/AT&T/MCI	All Issues
<u>REBUTTAL</u>		
Robert C. Scheye	BSE	All Issues

V. BASIC POSITIONS

BELLSOUTH BSE:

BSE's basic position is that it has established, and it is undisputed, that BSE has appropriate managerial expertise, financial qualifications and technical abilities to be certified to provide local exchange service in the state of Florida as an alternative local exchange service provider. Therefore, under Section 364.337(1), Fla. Stat., the Commission should issue a certificate for the entire geographic area proposed to be served. Section 364.337(1), Fla. Stat. specifically states that the grant of certificates not be affected by the application of any criteria other than that specifically enumerated in that subsection. Therefore, the other issues raised by the petitioners and intervenors are irrelevant to this proceeding.

FCCA/AT&T/MCI:

FCCA, AT&T, and MCI did not object to the granting of a certificate to BellSouth BSE to operate as an ALEC in areas in which BellSouth is not the incumbent local exchange company (ILEC). However, with respect to BellSouth's ILEC service area, BellSouth BSE is a sham entrant, because BellSouth BSE is simply BellSouth in a different form. The Commission should recognize that BellSouth BSE has not filed an "application to enter" the market. Instead, BellSouth is attempting to re-enter the market in a way that would avoid regulatory requirements imposed on the ILEC by the Telecommunications Act of 1996 and Chapter 364, Florida Statutes. The Commission should not countenance the attempt to achieve back-door deregulation. BellSouth BSE's application for authority to provide ALEC service in BellSouth's ILEC service area should be denied.

TCG:

TCG is certificated by the Commission as an alternative local exchange company ("ALEC"). TCG provides local exchange service, including facilities-based local exchange service, in territory served by BellSouth Telecommunications, Inc. ("BellSouth") in Florida, pursuant to TCG's Interconnection Agreement with BellSouth approved by the Commission's Order No PSC-96-1313-FOF-TP. TCG opposes the granting of an ALEC certificate to BellSouth BSE, Inc. ("BSE") for the geographic territory currently served by BellSouth as the incumbent LEC.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

ISSUE 1: In light of the provisions of the Telecommunications Act of 1996 and Chapter 364, Florida Statutes, should the Commission grant BellSouth BSE a certificate to provide

alternative local exchange service pursuant to Sections 364.335 and 364.337, Florida statutes, in the territory served by BellSouth Telecommunications, as the incumbent LEC?

POSITIONS:

BELLSOUTH BSE:

Yes. The Florida Legislature has established explicit and specific standards by which the Commission is to grant certificates of authority in Section 364.337(1), Fla. Stat.

FCCA/AT&T/MCI:

No. BellSouth BSE is simply BellSouth in another form. BellSouth BSE's application to provide ALEC service in BellSouth's ILEC territory is simply an effort to "re-enter" the market in a manner designed to escape regulatory requirements, such as the requirement that the ILEC's services be offered to competitors at wholesale, subject to a prescribed whole discount applicable to ILECs.

TCG:

No. Certification of BSE as an ALEC serves only to defeat the common statutory goal of increasing competition for the provision of local exchange service

STAFF:

No position at this time.

**ISSUE 2:** In light of the provisions of the Telecommunications Act of 1996 and Chapter 364, Florida Statutes, if the Commission grants BellSouth BSE a certificate to provide alternative local exchange service in the territory served by BellSouth Telecommunications, Inc. as the incumbent LEC, what conditions or modifications, if any, should the Commission impose?

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POSITIONS:

BELLSOUTH BSE:

The Commission should impose no conditions on BSE that it has not imposed on all other ALECs operating in the state of Florida.

FCCA/AT&T/MCI:

The Commission should not grant the certificate to BSE, the ALEC, without first requiring BellSouth BSE to abide by all terms and conditions imposed on BellSouth, the ILEC, by the Telecommunications Act of 1996 and Chapter 364, Florida Statutes. If BellSouth BSE's purpose in applying for the certificate is to be able to package certain products and follow certain customers who change or add locations, as BellSouth BSE contends, these requirements would serve no impediment to BellSouth BSE's claimed business purposes.

TCG:

If the Commission certifies BSE as an ALEC in territory served by BellSouth, the Commission should impose appropriate conditions on both BSE and BellSouth to expose and deter potential abuses which are unique to a BellSouth-affiliated ALEC, including cross-subsidization, predatory pricing, and unfair competition in the provision of unbundled network elements. In particular, the Commission should impose upon BSE the same obligation of interconnection, resale, and provision of unbundled network elements as are imposed upon BellSouth by Chapter 364, Florida Statutes, and the Telecommunications Act of 1996.

STAFF:

No position at this time.



VII. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NUMBER</u>	<u>DESCRIPTION</u>
Robert C. Scheye	BellSouth BSE	RCS-1	List of certificated ALECs affiliated with ILECs
Robert C. Scheye	BellSouth BSE	RCS-2	Map of ALECS affiliated with ILECs
Robert C. Scheye	BellSouth BSE	RCS-3	Updated list of certificated ALECs affiliated with ILECs
Robert C. Scheye	BellSouth BSE	RCS-4	Updated map of ALECS affiliated with ILECs
Robert C. Scheye	BellSouth BSE	RCS-5	Georgia PSC Order granting ALEC certificate to BSE
Robert C. Scheye	BellSouth BSE	RCS-6	South Carolina PSC Order granting ALEC certificate to BSE Map of ALECS affiliated with ILECs
Robert C. Scheye	BellSouth BSE	RCS-7	Alabama PSC Order granting ALEC certificate to BSE

Parties and Staff reserve the right to identify exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

None at this time.

IX. PENDING MOTIONS

None at this time.

X. RULINGS

The parties may present brief opening statements of five minutes each to the Commission at the commencement of the hearing.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 24th day of April, 1998

  
J. Terry Deason, Commissioner  
and Prehearing Officer

( S E A L )

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply.

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This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.