

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
certificate to provide pay
telephone service by Florida
Billsouth Telephone Company.

DOCKET NO. 980918-TC
ORDER NO. PSC-99-0475-PHO-TC
ISSUED: March 8, 1999

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on Friday, March 5, 1999, in Tallahassee, Florida, before Commissioner Julia L. Johnson, as Prehearing Officer.

APPEARANCES:

MR. JAVIER PELLETIER, 12791 S.W. 8th Terrace, Miami, FL 33184-2242.

On behalf of FLORIDA BILLSOUTH TELEPHONE COMPANY.

MICHAEL P. GOGGIN, ESQUIRE, 150 West Flagler Street, Suite 1910, Miami, Florida 33130.

On behalf of BELLSOUTH TELECOMMUNICATIONS, INC.

CLINTINA B. WATTS, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On July 21, 1998, Florida Billsouth Telephone Company (Florida Billsouth), filed an application to provide pay telephone services in Florida. Florida Billsouth received authorization from the Secretary of State to conduct business as a registered corporation in the state on June 29, 1998. On July 29, 1998, the Commission

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received a courtesy copy of correspondence from BellSouth Telecommunications, Inc. (BellSouth) to Florida Billsouth. In the correspondence, BellSouth asserted that Florida Billsouth's name was "confusingly similar" to its registered trade name and demanded that Florida Billsouth discontinue using the similar name. BellSouth stated that by copy of the letter to the Commission, BellSouth was requesting that the application be denied. This item was scheduled to be presented before the Commission on the December 1, 1998, Agenda Conference.

On the Agenda Conference of December 1, 1998, the Commission decided on its own motion to set this item for hearing. Accordingly, this matter is currently set for an administrative hearing on March 17, 1999. By Order No. PSC-98-1751-PCO-TC, issued on December 22, 1998, BellSouth's Petition to Intervene in this proceeding was granted.

III. 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, 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's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall 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. If a party fails to file a post-hearing statement, 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 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

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.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Javier Pelletier	Florida Bill South	All ¹
Sandra J. Evans	BellSouth	All

VII. BASIC POSITIONS

FLORIDA

BILLSOUTH: Florida BillSouth Telephone Company believes that the name "Florida BillSouth Telephone Company" is not against the public interest, of BellSouth.

The name is not confusingly or similar to "BellSouth."

BELLSOUTH:

BellSouth believes that the name "BillSouth" is against the public interest. The name is confusingly similar to BellSouth's trademarked name and likely to mislead the public. This Commission should not grant a certificate to the company using the name "BillSouth".

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. Staff takes no position at this time.

¹Florida Billsouth Telephone Company also listed "The Public of Dade County" as a witness in its prehearing statement. However, there is no prefiled testimony from customers in Dade County, and pursuant to the Order Establishing Procedure each party must prefile, in writing, all testimony it intends to sponsor. Thus, Florida Billsouth may not sponsor any witnesses from the "public of Dade County".

VIII. ISSUES AND POSITIONS

ISSUE 1: Should the Commission grant a pay telephone certificate to Florida Billsouth Telephone Company?

POSITIONS

FLORIDA

BILLSOUTH: Yes.

BELLSOUTH: No.

STAFF: Staff takes no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
	<u>Direct</u>		
Sandra J. Evans	BellSouth	_____ (SE-1)	November 12, 1998 clipping from <u>Palm Beach Post</u>
		_____ (SE-2)	December 9, 1998 Interview with WAMI-TV

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

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

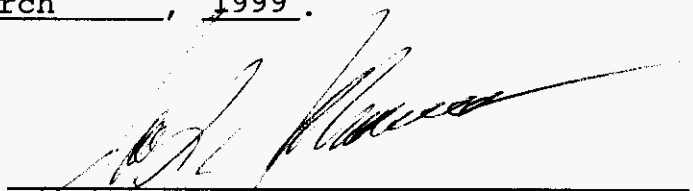
XII. RULINGS

Each party will be allowed to present opening statements no longer than five minutes in length.

It is therefore,

ORDERED by Commissioner Julia L. Johnson, 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 Julia L. Johnson, as Prehearing Officer, this 8th day of March, 1999.



JULIA L. JOHNSON
Commissioner and Prehearing Officer

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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. 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.