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ORIGINAL

June 29, 1998

VIA HAND DELIVERY

Ms. Blanca Bayó
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED-FPSC
59 JUN 29 PM 4:42
RECORDS AND
REPORTING

Re: Docket No. 971056-TX - In re: Application for certificate to provide alternative local exchange telecommunications service by BellSouth BSE, Inc.

Dear Ms. Bayó:

Enclosed are the original and 15 copies of FCCA, AT&T, and MCI's Correction to BSE's "Request for Confidential Treatment" and Request for Determination That Certain Pages of Supplemental Exhibit Are Not Confidential to be filed in the above docket.

I have enclosed an extra copy of the above document for you to stamp and return to me. Please contact me if you have any questions. Thank you for your assistance.

RECEIVED & FILED
[Signature]
FPSC-BUREAU OF RECORDS

Sincerely,

[Signature]
Joseph A. McGlothlin

- ACK
- AFA *Progs*
- APP _____
- CAF _____
- CMU *JSL/EB*
- CTR _____
- EAG _____
- LEG *1*
- LIN *5*
- OPC _____
- RCH _____
- SEC *1*
- WAS _____
- OTH _____

JAM/jg
Enclosures

DOCUMENT NUMBER-DATE

06841 JUN 29 98

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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

Docket No. 971056-TX

Filed: June 29, 1998

**CORRECTION BY FCCA, AT&T, AND MCI
TO BSE'S "REQUEST FOR CONFIDENTIAL TREATMENT"
AND
REQUEST FOR DETERMINATION THAT
CERTAIN PAGES OF SUPPLEMENTAL EXHIBIT ARE NOT CONFIDENTIAL**

The Florida Competitive Carriers Association ("FCCA"), AT&T Communications of the Southern States, Inc. ("AT&T"), MCI Telecommunications Corporation ("MCIT") and MCImetro Access Transmission Services, Inc. ("MCI") (hereafter "MCI") hereby submit this Correction to BSE's "Request for Confidential Treatment," filed on June 15, 1998. In addition, FCCA, AT&T, and MCI assert that pages 1 and 2 of the exhibit attached to their Renewed Motion to Supplement the Record should not be given confidential status. In support, FCCA, AT&T, and MCI show as follows:

I. **Correction to "Request for Confidential Treatment."**

In a pleading filed June 15, 1998, BellSouth BSE, Inc. ("BSE") referred to the exhibit appended to the Renewed Motion to Supplement the Evidentiary Record filed that date by FCCA, AT&T, and MCI, and stated:

Those pages excised from the report by Petitioners and intervenors have, pursuant to a separate Protective Agreement entered between the parties, been filed pursuant to a Request for Confidentiality by counsel for Petitioners and intervenors.

(emphasis supplied).

DOCUMENT NUMBER-DATE

06841 JUN 29 1998

FPSC-RECORDS/REPORTING

This statement is in error. Confidentiality has been asserted by BSE, but was not requested by FCCA, AT&T, or MCI. In the Protective Agreement entered between the parties, FCCA, AT&T, and MCI were careful to preserve their right to dispute the confidentiality of the materials that were provided to them as a partial resolution of the discovery dispute involving the Andersen study. At page 1, the Protective Agreement provides:

Participation in this Protective Agreement by parties other than BellSouth BSE, Inc. ("BSE") shall not be construed as an admission that the Confidential Information in fact contains confidential, proprietary business information. This Protective Agreement is not intended to preclude the PSC from exercising its authority to rule on the confidentiality or admissibility of the Confidential Information.

While FCCA, AT&T, and MCI coordinated with BSE to file the excerpts from the Andersen study in confidential versions pending a ruling by the Commission on BSE's assertion that the materials are confidential, as contemplated by the Protective Agreement, they do not "request confidentiality" for the materials, and in fact assert - as they are entitled to under the Protective Agreement -- that two pages of the exhibit attached to the Renewed Motion in fact do not warrant confidential treatment.

II. BSE's Request Should Be Treated As a Notice of Intent to Seek Confidential Treatment.

The Commission has stated frequently that the burden is on the company possessing the information to demonstrate that it warrants confidential treatment. Rule 25-22.006, F.A.C., requires the burden to be met by supplying justification that makes reasoned analysis by the Commission possible. The rule provides that a

company can temporarily protect information through a short form Notice of Intent, which then provides a time frame adequate for the preparation of the detailed rationale by the entity seeking confidentiality. The rule states that any party may respond to a request for confidentiality within 14 days. While section 25-22.006(8) addresses use of confidential information in post-hearing briefs, that section does not presume the confidentiality of such information; the burden and related procedures of the earlier sections apply. Preliminarily, FCCA, AT&T, and MCI point out that, while BSE's June 15 pleading is captioned as a "Request for Confidential Treatment," the one-page document does not contain the justification contemplated by the Commission's rule on confidentiality. Accordingly, it should be allowed to serve only as the preliminary notice of intent contemplated by the rule, with the detailed justification to follow. FCCA, AT&T, and MCI reserve the right to respond to any additional justification that BSE may submit.

III. Request for a Determination That Pages 1 and 2 of the Exhibit Should Not Be Maintained as Confidential.

The exhibit attached to the Renewed Motion to Supplement the Evidentiary Record consists of 29 pages which were excerpted from the Andersen study. Without conceding that the balance of the exhibit consists of confidential material, FCCA, AT&T, and MCI do not intend to challenge the confidential treatment of pages 3-29. However, FCCA, AT&T, and MCI assert that pages 1 and 2 do not meet the criteria governing classification of otherwise public documents as confidential.

A review of pages 1 and 2 establishes that they do not contain the type of information that is typically the subject of requests for confidentiality. Pages 1 and

2 do not contain any cost data, business statistics, dollar amounts of expenditures, survey results, proprietary technical configurations, assessments of competitors, or customer-specific information. FCCA, AT&T, and MCI do not dispute the need to treat true "marketing strategies" with care, but assert that pages 1 and 2 do not legitimately qualify as such. Nor could the information on pages 1 and 2 be used by competitors to BSE's disadvantage, except to the extent the Commission decides the pages support the contentions of FCCA, AT&T, and MCI in the challenges they have raised to BSE's desire to provide ALEC services in BellSouth's ILEC service area in this docket. FCCA, AT&T, and MCI submit that such an effect does not constitute grounds for confidentiality.

In their Renewed Motion and in their Joint Brief, FCCA, AT&T, and MCI asserted that certain pages of the exhibit attached to the Renewed Motion to Supplement the Evidentiary Record support their contention that BellSouth would regard BST as a vehicle with which to attempt to avoid requirements of the Telecommunications Act of 1996. (See Motion, p. 6.) Throughout this proceeding, BSE has denied such an intent. Pages 1 and 2 are among the portions of the exhibit to which FCCA, AT&T, and MCI referred in their Motion and Brief. If the Commission agrees with their assessment of the pages, then those pages should be no more confidential than BSE's public statements to the contrary during the proceeding in the above docket.

WHEREFORE, FCCA, AT&T, and MCI request the Commission to determine that pages 1 and 2 of the exhibit attached to the Renewed Motion to Supplement the Evidentiary Record do not warrant confidential status.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail or hand delivery(*) this 29th day of June, 1998, to the following:

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