

AKERMAN, SENTERFITT & EIDSON, P.A.
ATTORNEYS AT LAW

210 SOUTH MONROE STREET, SUITE 200
POST OFFICE BOX 10555
TALLAHASSEE, FLORIDA 32302-2555
(850) 222-3471
TELECOPY (850) 222-8628

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RECORDS AND
REPORTING

E. GARY EARLY

July 2, 1998

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

RE: PSC Docket No. 971056-TX

Dear Ms. Bayo:

On behalf of BellSouth BSE, Inc. enclosed for filing in the above referenced docket are the original and fifteen (15) copies of BellSouth BSE, Inc.'s Response to Correction by FCCA, AT&T and MCI to BellSouth BSE, Inc.'s "Request for Confidential Treatment" and Request for Determination that Certain Pages of Supplemental Exhibit are not Confidential with regard to the above referenced docket. Also enclosed is a diskette containing the same in Wordperfect 6.1.

If you have any questions please call me at (850) 222-3471. Thank you.

Sincerely,



E. Gary Early

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FPSC-BUREAU OF RECORDS

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EGE/mcd
enclosure(s)
cc: All parties of record

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FPSC-RECORDS/REPORTING

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: July 2, 1998

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

BellSouth BSE, Inc. (BSE) hereby files this response to the "Correction by FCCA, AT&T, and MCI to BSE's 'Request for Confidential Treatment' and Request for Determination that Certain Pages of Supplement Exhibit are not Confidential" filed with the Public Service Commission on June 29, 1998, and TCG's "Joinder in Request for Determination that Certain Pages of Supplemental Exhibit are not Confidential," also filed on June 29, 1998, and states:

I. Response to "Correction to 'Request for Confidential Treatment'"

In their motions, Petitioners and Intervenors quote BSE's Request for Confidential Treatment which indicated BSE's belief that pages of the confidential marketing report at issue here were filed by Petitioners and Intervenors pursuant to a request for confidentiality. Since briefs in this matter were filed simultaneously on June 15, 1998, BSE could only presume in drafting its request for confidential treatment that Petitioners and Intervenors would comply with the Protective Agreement entered between the parties. The Protective Agreement, executed by each of the parties with access to the confidential report, set forth with specificity the procedures that the parties agreed to follow if they intended to offer portions of the confidential information in evidence or in the record. The Protective Agreement provides, in pertinent part, that

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Following a review of the confidential information, any signatory to this Protective Agreement who desires to use any portion of the confidential information as evidence in this proceeding shall notify BSE and the other signatories hereto as expeditiously as possible, but no later than five (5) days prior to the date Briefs are due to be filed in this Proceeding. Notification shall consist of the party providing a copy of those pages of the Confidential Information to be used and an identification of the issue to which the pages pertain. Thereafter, the party shall file the identified pages of the Confidential Information as a confidential document utilizing the rules of the PSC for protecting confidentiality.

The rules of the PSC regarding confidentiality are contained in Rule 25-22.006, F.A.C. Since the Protective Agreement did not contain any limitation of the confidential filing rules, BSE naturally assumed that the filing of the identified pages "utilizing the rules of the PSC for protecting confidentiality" would include utilization of the procedures for requesting for confidential classification contained in Rule 25-22.006(4), F.A.C. In keeping with the adage regarding what happens when one assumes, Petitioners and Intervenors now assert that they never intended to comply with that particular subsection of the rule of the PSC for protecting confidentiality. BSE disagrees that Petitioners and Intervenors have the right to pick and choose among the rule provisions for the protection of confidentiality, utilizing those that they want and disregarding those that they don't. However, even though BSE, was not the "utility or other person" who chose to file the material for which confidential treatment is requested, it did have the foresight to request confidentiality. Therefore, the Petitioners' and Intervenors' initial failure and now disavowal of their obligation to protect the confidentiality of the documents is of lesser consequence, and the Commission should rule on the "correction" as it sees fit.

II. The Confidential Information Identified in the Protective Agreement Should Be Afforded Confidential Treatment by the PSC

Petitioners and Intervenors correctly paraphrase Rule 25-22.006(4)(c), F.A.C., that the burden of proof "shall be on the utility or other person to show that the material in question contains bona fide proprietary confidential business information." Due to BSE's belief that the entities filing the confidential information would, as required by the Protective Agreement, comply with "the rules of the PSC for protecting confidentiality," BSE did not specifically set forth that the claim of confidentiality was filed pursuant to Section 364.183(1), Fla. Stat. and Rule 25-22.006(3)(d), F.A.C., which provide that "proprietary confidential business information" is exempt from the law requiring disclosure of public records. The confidential marketing report is "proprietary confidential business information" as that term is defined in Section 364.183(3), Fla. Stat. "Proprietary confidential business information" includes but is not limited to:

- (a) Trade secrets
- (b) Internal auditing controls and reports of internal auditors
- (c) Securities measures, systems or procedures
- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms.
- (e) Information relating to competitive interest, the disclosure of which would impair the competitive business of the provider of information
- (f) Employee personnel information unrelated to compensation, duties, qualifications or responsibilities

BSE's confidential marketing report contains the consultant's analysis of options regarding the association and relationship with vendors, the means by which customers could be solicited from various competitors, an analysis of the regulatory environment within which BSE will operate and the options available for the operation of its business in light of that regulatory environment, marketing and service offering options and other information that, if placed into the hands of its

direct competitors would provide its competitors with its overall business options, disclosure of which would impair the competitive business of BSE.

Based on the foregoing, the confidential information filed with the PSC by Petitioners and Intervenors should be afforded confidential status "utilizing the rules of the PSC for protecting confidentiality."

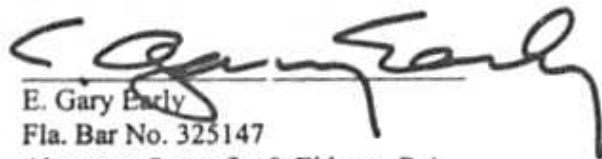
III. Pages 1 and 2 of Petitioners and Intervenors Exhibit are Confidential

Petitioners and Intervenors argue that the first two pages of their exhibit should not be classified as confidential. It remains difficult to reconcile the fact that Petitioners and Intervenors agreed to "file the identified pages of the confidential information as a confidential document utilizing the rules of the PSC for protecting confidentiality" and to take other steps to ensure that the material does not become public with their current position that the material should be public. Nonetheless, the material meets the definition of proprietary confidential business information as set forth in Section 364.183, Fla. Stat. Those pages, as the Commission will recall, were not prepared by BSE but rather were prepared by an independent contractor to analyze various options, scenarios and outcomes, both real and hypothetical, in order to allow BSE to have information with which it can develop its business plan for competition with Petitioners and Intervenors. The pages that Petitioners and Intervenors now assert should be public involve Andersen Consulting's analysis of an FCC ruling and an 8th Circuit Court of Appeal opinion and the implications on competition arising from that analysis, an analysis which may or may not be representative of BSE's analysis of those rulings and opinions. Those pages are part of the larger whole of several thousand pages of confidential marketing information that will ultimately be used or discarded by BSE in the development of its marketing strategy. This type of information, developed for BSE was never

intended to be provided to its direct competitors, directly pertains to BSE's competitive interests and should be kept as confidential in this proceeding.

WHEREFORE, for the reasons set forth herein and as set forth in the Briefs and other pleadings filed in this proceeding, BellSouth BSE, Inc. maintains that the confidential marketing report is a) irrelevant to an analysis of whether BSE has the financial, technical and managerial capability to operate as an ALEC pursuant to Section 364.337(1), Fla. Stat. and b) not responsive to FCCA's request for production of documents and therefore should not be admitted as evidence in this proceeding. However, if the prehearing officer determines that the information is admissible as evidence at this stage of the proceeding, despite the closure of the record and the absence of authority for a posthearing reopening of the record, BellSouth BSE, Inc. requests that the prehearing officer maintain the confidentiality of the information pursuant to Section 364.183, Fla. Stat. and Rule 25-22.006, F.A.C.

Respectfully Submitted,



E. Gary Early
Fla. Bar No. 325147
Akerman, Senterfitt & Eidson, P.A.
216 South Monroe Street, Suite 200
Tallahassee, FL 32301

Mark Herron
Florida Bar No. 199737
MARK HERRON, P.A.
216 South Monroe Street, Suite 200A
Tallahassee, Florida 32301
Attorneys for BellSouth BSE, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following parties by U.S. Mail this 2nd day of July, 1998:

Martha Carter Brown
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 390-M
Tallahassee, FL 32399-0850
Counsel for the Public Service Commission

Marsha Rule
AT&T
101 North Monroe Street
Suite 700
Tallahassee, FL 32301
Counsel for AT&T Communications
of the Southern States, Inc.

Richard D. Melson
Hopping Green Sams & Smith
Post Office Box 6526
Tallahassee, FL 32314
Counsel for MCI Telecommunications Corp.

Robert G. Beatty and Nancy B. White
c/o Nancy H. Sims
150 S. Monroe Street, Suite 400
Tallahassee, FL 32301
Counsel for BellSouth Telecommunications, Inc.

Kenneth A. Hoffman
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302
Counsel for Teleport Communications Group, Inc.

Pete Dunbar, Esquire
Barbara D. Auger, Esquire
Pennington, Moore, Wilkinson
& Dunbar, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, FL 32301
Counsel for Time Warner AxS of Florida, L.P.

Joseph A. McGlothlin
Vicki Gordon Kaufman
117 S. Gadsden Street
Tallahassee, FL 32301
Counsel for Florida Competitive Carriers Association

By U.S. Mail to:

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

Michael McRae, Esq.
Teleport Communications Group, Inc.
2 Lafayette Centre
1133 Twenty First Street, N.W.
Suite 400
Washington, D.C. 20036

Carolyn Marek
Time Warner Communications
Post Office Box 210706
Nashville, TN 37221


MARK HERON
E. GARY EARLY