

MCWHIRTER REEVES

ATTORNEYS AT LAW

ORIGINAL

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:

TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

RECEIVED-FPSC

99 MAY 31 PM 4:46

RECORDS AND REPORTING

May 6, 1999

VIA HAND DELIVERY

Blanca S. Bayo, Director
Florida Public Service Commission
Division of Records & Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0850

RECEIVED-FPSC

99 MAY 31 PM 4:46

RECORDS AND REPORTING

Re: Docket No. 980253-TX

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and seven copies of the Florida Competitive Carriers Association's Rebuttal Comments in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

VGK/pr
Enclosures

RECEIVED & FILED

FPSC BUREAU OF RECORDS

- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- MAS _____
- OPC _____
- RRR _____
- SEC _____
- WAW _____
- OTH _____

MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

DOCUMENT NUMBER - DATE

05798 MAY-6 99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Rules 25-4.300,)
F.A.C., Scope and Definitions,)
25-4.301, F.A.C., Applicability)
of Fresh Look, and 25-4.302, F.A.C.,)
Termination of LEC Contracts.)
_____)

Docket No. 980253-TX

Filed May 6, 1999

**THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S
REBUTTAL COMMENTS ON PROPOSED FRESH LOOK RULE**

Pursuant to Order No. PSC-99-0547-PCO-TX, the Florida Competitive Carriers Association (FCCA)¹ files the following rebuttal comments in regard to the Commission's proposed Fresh Look rule.

1. In its responsive comments and testimony, BellSouth Telecommunications, Inc. (BellSouth)² makes one procedural point and one argument on the merits. Both arguments should be rejected.

2. Procedurally, BellSouth suggests several times that no "evidence" has been submitted to support the proposed rule.³ Apparently, BellSouth misunderstands that this is a rulemaking proceeding. As such, it is governed by § 120.54. Specifically, § 120.54(c)1 provides the standard for the information the Commission must consider during rulemaking:

Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted at a public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

¹ The FCCA includes numerous individual competitive carriers as well as the Telecommunications Resellers Association.

² GTE Florida Incorporated (GTE) did not file any responsive comments.

³ At page 2, BellSouth twice says proponents offered no "evidence." At page 3, BellSouth says only two proponents of the rule filed "testimony." At page 4, footnote 5, BellSouth says the remaining proponents (other than the two filing testimony) filed comments but no "evidence."

DOCUMENT NUMBER-DATE

05798 MAY-6 99

FPSC-RECORDS/REPORTING

Thus, not only must the Commission consider the testimony which some parties chose to file, it must consider all comments filed in this proceeding.

3. BellSouth's substantive point⁴ is the same point it attempted to make in its original comments--that local competition is flourishing and therefore there is no need for the proposed rule. To support its claim, BellSouth makes unsubstantiated statements about the large amount of competition for business customers. The facts belie such assertions. For example, BellSouth attempts to rely on this Commission's order denying it entry into the long distance market⁵ as proof that competition exists. The order illustrates exactly the opposite. The Commission found that ALECs were serving approximately 27,000 business access lines. Given the fact that BellSouth has over 6 million access lines, service by competitors of such an infinitesimal number hardly demonstrates robust local competition. And, as FCCA pointed out in its responsive comments, this Commission's on report on the topic of competition shows that ILECs control 98.2% of the local market.⁶

4. BellSouth also argues that competitors can market to *new* businesses.⁷ While that is certainly true (if and when BellSouth puts in place the proper tools to allow ALECs to effectively compete), it has nothing whatsoever to do with the captive customers BellSouth seeks

⁴ BellSouth also states that no parties have discussed BellSouth's claims that the Commission lacks authority to enact the proposed rule and that the proposed rule has constitutional infirmities. FCCA rebutted such claims in its responsive comments filed on April 29, 1999.

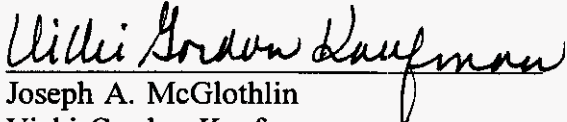
⁵ *In re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Order No. PSC-97-1459-FOF-TL, November 19, 1997.

⁶ Florida Public Service Commission's December 1998 Report on Competition in Telecommunications Markets in Florida, p. 46.

⁷ BellSouth responsive comments at 5.

to continue to control. Competition is far from robust and enactment of the proposed rule is an appropriate step in the direction of a competitive local market.

WHEREFORE, the Commission should either enact the proposed Commission rules with the changes suggested by the FCCA in its April 23 filing, or it should enact the rule proposed by the FCCA.



Joseph A. McGlothlin

Vicki Gordon Kaufman

McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.

117 South Gadsden Street

Tallahassee, Florida 32301

Telephone: (850) 222-2525

Attorneys for the Florida Competitive
Carriers Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the **Florida Competitive Carriers Association's** foregoing **Rebuttal Comments On Proposed Fresh Look Rule** has been furnished by U.S. Mail or Hand Delivery(*) this **6th** day of **May, 1999**, to the following:

Diana W. Caldwell*
Florida Public Service Commission
Division of Appeals
2540 Shumard Oak Boulevard
Gunter Building, Room 301D
Tallahassee, Florida 32399-085

Barbara D. Auger
Pennington, Moore, Wilkinson
& Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

Laura L. Gallagher
204 South Monroe Street, Suite 201
Tallahassee, Florida 32301

Kimberly Caswell
GTE Florida Incorporated
Post Office Box 110, FLTC0007
Tampa, Florida 33601-0110

Nancy B. White
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301-1556

Monica Barone
Sprint Communications Company, L.P.
3100 Cumberland Circle
Atlanta, Georgia 30339

Marsha E. Rule
AT&T Communications
101 North Monroe Street, Suite 700
Tallahassee, Florida 32301

R. Scheffel Wright
Landers & Parsons
Post Office Box 271
Tallahassee, Florida 32308

Kenneth A. Hoffman
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, Florida 32302-0551

Richard D. Melson
Hopping Green Sams & Smith
123 South Calhoun Street
Post Office Box 6526
Tallahassee, Florida 32314

Lynn B. Hall
Vista-United Telephone Company
3100 Bonnet Creek Road
Lake Buena Vista, Florida 32830

Tom McCabe
Quincy Telephone Company
107 West Franklin Street
Quincy, Florida 32351

Bill Thomas
Gulf Telephone Company
115 West Drew Street
Perry, Florida 32347

Robert M. Post, Jr.
Indiantown Telephone Systems, Inc.
15925 S.W. Warfield Boulevard
Indiantown, Florida 34956

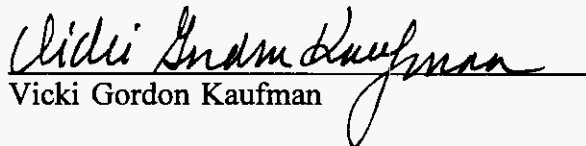
John M. Vaughn
St. Joseph Telephone and
Telegraph Company
502 Fifth Street
Port St. Joe, Florida 32456

Jeffrey J. Wahlen
Ausley & McMullen
227 South Calhoun Street (32301)
Post Office Box 391
Tallahassee, Florida 32302

Richard M. Rindler
Swidler & Berlin
3000 K Street, N.W., #300
Washington, D.C. 20007

Michael McRae
TCG - Washington
2 Lafayette Centre
1133 Twenty-First Street, N.W., Suite 400
Washington, D.C. 20036

Norman H. Horton, Jr.
Messer, Caparello & Self
215 South Monroe Street, Suite 701
Post Office Box 1876
Tallahassee, Florida 32302-1876


Vicki Gordon Kaufman