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RECORDS AND  
REPORTING

December 13, 1999

Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 980918-TC (Florida BillSouth)**

Dear Mrs. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications Inc.'s Brief of the Evidence, which we ask that you file in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me.

Sincerely,

*Michael P. Goggin (M.P.G.)*  
Michael P. Goggin

MPG/vf  
Enclosures

cc: Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey

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CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
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**CERTIFICATE OF SERVICE  
DOCKET NO. 980918-TC**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by

U.S. Mail this 13th day of December, 1999 to the following:

Beth Keating  
Staff Counsel  
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2540 Shumard Oak Blvd.  
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Florida BillSouth Telephone Company  
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Tel. No. (305) 207-1687  
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Michael P. Goggin (k2)  
Michael P. Goggin

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate to )  
provide pay telephone service by )  
Florida BellSouth Telephone Company )  
\_\_\_\_\_ )

Docket No.: 980918-TC

Filed: December 13, 1999

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**BELLSOUTH TELECOMMUNICATIONS, INC.  
BRIEF OF LAW AND THE EVIDENCE**

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## STATEMENT OF THE CASE

On July 21, 1998, FLORIDA BILLSOUTH TELEPHONE COMPANY filed an application to provide pay telephone service in Florida. On July 29, 1998, BellSouth filed a protest with the Commission. BellSouth's subsequent petition to intervene in this matter was granted. Order No. PSC-98-1751-PCO-TC (Dec. 22, 1998). At its December 1, 1998 Agenda Conference, the Commission set the matter for hearing on March 17, 1999. The March hearing and a subsequent hearing were both continued after FLORIDA BILLSOUTH's owner belatedly informed the Commission that he would be unable to attend. The hearing was rescheduled for the third time, and took place on November 29, 1999. Once again, neither Mr. Pelletier nor any other representative of FLORIDA BILLSOUTH appeared at the hearing. At the hearing, BellSouth consented to entering the prefiled testimony of each party into the record, in lieu of a formal hearing.

## STATEMENT OF BASIC POSITION

It would be contrary to the public interest to permit FLORIDA BILLSOUTH TELEPHONE COMPANY to offer pay telephone services. The name "FLORIDA BILLSOUTH" is confusingly similar to BellSouth's name. BellSouth or its affiliates have offered pay telephone services (and other telecommunications services) in Florida for many years and the name "BellSouth" is well known to Florida consumers. To prevent confusion on the part of Florida consumers, the Commission should deny FLORIDA BILLSOUTH's application.

## STATEMENT OF POSITION ON THE ISSUES

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

**\*\*Position:** No. The name "FLORIDA BILLSOUTH TELEPHONE COMPANY" is likely to confuse Florida customers. It would be contrary to the public interest for the Commission to grant a certificate to a company with a name like "BILLSOUTH" that is confusingly similar to BellSouth's.

The Commission has a duty to review applications for certificates to provide pay telephone services, and to grant only those applications that are not contrary to the public interest. Florida Statutes, §§ 364.335; 364.3375 (1997). It clearly would not be in the public interest to grant certificates to pay telephone providers with names that could easily be confused with the names of existing carriers whose names are well known to the public, like AT&T or Sprint. Location owners might permit the placement of a new company's phones under the mistaken impression that they were dealing with AT&T, or a customer might call Sprint to complain about losing coins in a new carrier's phone. Similarly, granting this application would be contrary to the public interest because Florida customers would be confused as to the source of the services provided to them under the name "BILLSOUTH," or "FLORIDA BILLSOUTH TELEPHONE COMPANY."<sup>1</sup>

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<sup>1</sup> BellSouth recognizes that it has been suggested that courts often hear cases involving allegations of trademark infringement and therefore may be well suited to hear claims like the protest BellSouth has made in this docket. Indeed, it has been suggested that the Commission, in its discretion, should decline to hear protests in such application dockets that arise from claims that the applicant's name would be confusingly similar, leaving such matters entirely to the courts. BellSouth maintains, however, that the Commission is well-positioned to prevent harm to the public by considering such issues at the application stage. Moreover, where the likely harm to consumers is obvious, as in this case, the Commission is obligated to deny the application as contrary to the public interest.

The issue of whether the use of the term "BILLSOUTH" in connection with the offering of pay telephone service would confuse customers can be answered by using the traditional test used by courts in trademark infringement cases. Evans Dir. at 2-3.<sup>2</sup> One factor to be considered is what would be called the "strength" of the name in question. The "Bell" name and symbol have been used in Florida for more than one hundred years. BellSouth was formed in 1984 and Southern Bell began using this brand in 1995. The Commission is well aware of the amount of marketing and advertising in which BellSouth has engaged to make the public aware of its name. The name "BellSouth" is not used by others on any similar products or services. Evans Dir. at 4-5.

A second factor to consider is the similarity of the names. Evans Dir. at 5. The names "BELLSOUTH" and "BILLSOUTH" are virtually identical in sound and in sight. "BELLSOUTH" is the dominant element in the names of the products and services of BellSouth Telecommunications, Inc. and its affiliates, such as BellSouth Mobility, BellSouth Advertising and Publishing and BellSouth Entertainment. *Id.* Similarly, if the public were to consider using a "FLORIDA BILLSOUTH TELEPHONE COMPANY" service, the public is likely to focus on the word "BILLSOUTH" as the dominant element in the name, both because of the public's familiarity with the "BELLSOUTH" name, *id.*, and because the words "BILL SOUTH" appear in type at least twice as large as the

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<sup>2</sup> Direct testimony of Sandra J. Evans (Filed Jan. 29, 1999). It should be noted that a trademark court has a similar mandate to that of the Commission in this instance—to protect consumers from being confused as to the source of the goods or services they are purchasing. Evans Dir. at 2-3.

words "Florida" or "Telephone Company" in the "FLORIDA BILLSOUTH TELEPHONE COMPANY" logo.<sup>3</sup>

In addition, the service to be offered by FLORIDA BILLSOUTH TELEPHONE COMPANY is the same as a service offered by BellSouth—pay telephone service. Evans Dir. at 6. The channels through which each company would offer these services and the purchasers of each companies services are the same—each would compete for the same locations and customers. *Id.* While we do not have any information regarding FLORIDA BILLSOUTH's advertising plans, BellSouth advertises in virtually every medium available—television, print, radio, and on outdoor billboards. It seems inevitable that FLORIDA BILLSOUTH would advertise its services in some of the very same media. *Id.*

In addition, it is troubling to note that Mr. Pelletier, the owner of FLORIDA BILLSOUTH, apparently intends to cause such confusion. In addition to choosing the name FLORIDA BILLSOUTH, and displaying the word BILLSOUTH in letters at least twice the size of the word FLORIDA in his logo, Mr. Pelletier apparently told at least one South Florida newspaper that he intends to create a logo "in the shape of a bell, which will look similar to BellSouth's, only larger." *Id.* at Exh. SE-1. He also plans to use trucks "painted white with a yellow and blue stripe, similar to BellSouth's, which sport a gold and blue stripe." *Id.*

When the Commission weighs all of the foregoing factors, it should be clear that the public is likely to be confused if Mr. Pelletier is permitted to offer pay telephone

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<sup>3</sup> See, Letter from Martha Pelletier to Kimberly Pena (Feb. 24, 1999)(attached to Florida Billsouth Telephone Company's prehearing statement in this matter, which displays a photocopy of a business card with the logo).



services under the "FLORIDA BILLSOUTH" name. Of course, so far, no customers have likely been confused because the Commission has not granted FLORIDA BILLSOUTH a certificate to offer pay telephone services. Given the virtual certainty of consumer confusion if this certificate were granted, and the absence of any prejudice to Mr. Pelletier if it were denied<sup>4</sup>, the Commission should not hesitate to find that granting this application would be against the public interest.

### CONCLUSION

For the reasons stated above, the Commission should deny the application of FLORIDA BILLSOUTH TELEPHONE COMPANY for a certificate of public convenience and necessity to offer pay telephone service.

Respectfully submitted this 13th day of December, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

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<sup>4</sup> It should be noted that Mr. Pelletier would not be harmed if this certificate were denied. He received a certificate to offer pay telephone services in his own name. Order No. PSC-99-1822-PAA-TC (September 20, 1999).