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January 19, 2001

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. 001762-TC (Rules - Location of Pay Telephones)**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Comments on the Florida Public Service Commission's Statutory Authority to Promulgate Rules Addressing the Location of Payphones, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

*Patrick W. Turner*  
Patrick W. Turner *(PW)*

- APP 1
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- LEG 1
- OPC \_\_\_\_\_
- PAI \_\_\_\_\_
- RGO \_\_\_\_\_
- SEC 1
- SER \_\_\_\_\_
- OTH \_\_\_\_\_

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

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**CERTIFICATE OF SERVICE  
DOCKET NO. 001762-TC**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
U.S. Mail this 19th day of February, 2001 to the following:

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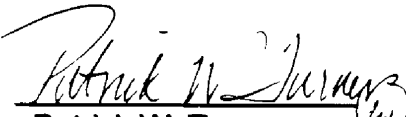
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Patrick W. Turner

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Rule 25-24.517, F.A.C.     )  
Location of Pay Telephones                 )  
\_\_\_\_\_ )

Docket No. 001762-TC

Filed: February 19, 2001

**COMMENTS OF BELL SOUTH PUBLIC COMMUNICATIONS  
ON THE FLORIDA PUBLIC SERVICE COMMISSION'S  
STATUTORY AUTHORITY TO PROMULGATE RULES  
ADDRESSING THE LOCATION OF PAYPHONES**

As requested by the Staff of the Florida Public Service Commission ("Commission") during the Workshop it conducted in this docket on January 10, 2001, BellSouth Public Communications, Inc. ("BellSouth") respectfully submits the following analysis of the Florida Public Service Commission's legal authority to promulgate rules addressing the placement of payphones throughout the state of Florida. Not only does the Commission have the statutory authority to enact such rules, but Florida law plainly grants the Commission the *exclusive jurisdiction* to do so. Moreover, nothing in either the Telecommunications Act of 1996 or Section 377.401 of the Florida Statutes inhibits or alters the Commission's exclusive jurisdiction over such matters. The Commission, therefore, clearly has the authority to adopt rules regarding the placement of payphones (provided that such rules are consistent with controlling federal and state law), and the Commission should adopt its proposed rules subject to the revisions suggested by BellSouth in its separate filing of February 19, 2001.

**I. Florida law vests the Commission with the exclusive jurisdiction to enact rules addressing the location of payphones.**

The Florida Legislature has vested the Commission with the "exclusive jurisdiction" to regulate telecommunications companies, including pay telephone service

providers, through Florida Statutes, Chapter 364. The exclusive power of the Commission and the legislative intent is set forth in §364.01, which state in relevant part:

- (2) It is the legislative intent to give *exclusive jurisdiction* in all matters set forth in this chapter to the Florida Public Service Commission in regulating telecommunications companies, and *such preemption supersede any local or special act or municipal charter* where any conflict of authority may exist . . . .

\* \* \*

- (4) The [Commission] shall exercise its jurisdiction in order to:
  - (a) Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to *all* consumers in the state at reasonable and affordable prices.

This jurisdictional embodiment of public policy to provide the Commission with “exclusive jurisdiction” over the regulation of telecommunications companies is unambiguous. Additionally, it reflects the very policy of its federal counterpart, the Telecommunications Act of 1996, which is designed, in pertinent part, to promote the widespread development of payphone service to “*benefit the general public.*” See 47 U.S.C. §276. The Federal Communications Commission has interpreted this provision as one intended to protect the public’s “safety and welfare.” *In the Matter of California Payphone Association Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park, California*, FCC 97-251 (July 17, 1997).

In light of the Commission’s exclusive jurisdiction to regulate telephone service, the Supreme Court of Florida has held that:

[the Commission’s] jurisdiction extends over both the rates charged by telecommunications companies and *the services the companies provide*. The statute directs the Commission to exercise its *exclusive jurisdiction* to “protect the public health, safety, and welfare by ensuring that basic telecommunications services are available to all residents of the state at reasonable and affordable prices . . . .”

*Florida Interexchange Carriers Ass'n v. Beard*, 624 So.2d 248, 251 (Fla. 1993)(emphasis added). In this regard, the legislature has prohibited municipalities from enacting legislation addressing “any subject *expressly preempted* to state or county government by the constitution or by general law.” Florida Statutes, §166.021(3)(c)(emphasis added). The Supreme Court has also held that municipal ordinances are invalid if they adversely impact the expenses and revenues of a regulated utility. In *Florida Power Corp. v. Seminole County*, 579 So.2d 105, 107 (Fla. 1991), for instance, the Court considered an analogous point relating to the relocation of power lines and held:

We believe that the jurisdiction of the Public Service Commission to regulate rates and services of public utilities *preempts the authority of the city and county to require [Florida Power Corp.] to place its lines underground*. While the authority given to cities and counties in Florida is broad, both the constitution and statutes recognize that cities and counties have no authority to act in areas that the legislature has preempted.

*Id.* at 107 (emphasis added). Thus, ordinances governing the placement of payphones (which conceivable would require the relocation of any payphones that did not comply with the provisions of such ordinances) would be in direct conflict with the jurisdictional preemption of the Commission.

Accordingly, cities and counties are not authorized to determine, on a balkanized basis, where payphones may be placed in each individual locality in the State of Florida. Instead, the Commission has the *exclusive jurisdiction* to make that determination on a state-wide basis. The Commission, therefore, has the authority to promulgate its proposed rules addressing the placement of payphones.

In exercising that authority, the Commission obviously is bound by controlling federal and state statutes, including without limitation the provisions of section 253(a) of the Telecommunications Act of 1996. This statute states that

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services.

It is clear, therefore, that any rules addressing the placement of payphones must comply with this statute and the cases interpreting it. It is equally clear that it is the Commission, and not each city or county in the State, that is permitted to enact such rules.

**II. The Telecommunications Act of 1996 does not alter or affect the Commission's exclusive jurisdiction to enact rules addressing the location of payphones.**

The Telecommunications Act of 1996 expressly states that it *does not affect* a State's ability to impose, on a competitively neutral basis, "requirements necessary to . . . protect the public safety and welfare . . . ." See 47 U.S.C. §253(b). In other words, the manner in which a State elected to protect the public safety and welfare prior to the effective date of the 1996 Act remains in full force and effect after the effective date of the 1996 Act. Accordingly, just as the Commission had the exclusive jurisdiction to protect the public "health, safety, and welfare" with regard to the operations of telecommunications companies before the effective date of the 1996 Act, the Commission continues to have the exclusive jurisdiction to protect the public "health, safety, and welfare" with regard to the operations of telecommunications companies after the effective date of the 1996 Act.

**III. Florida Statutes section 337.401 does not alter or affect the Commission's exclusive jurisdiction to regulate telecommunications companies like BellSouth.**

Both the current version of Florida Statutes §337.401 and the version that will become effective on October 1, 2001 contain the following language:

A local governmental entity *may not* use its authority over the placement of facilities in its roads and rights-of-way as a basis for asserting or exercising regulatory control over a telecommunications company *regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or the Federal Communications Commission . . . .*

Florida Statutes, §337.401(3)(h) (emphasis added); Florida Statutes, §337.401(6) (emphasis added) (effective October 1, 2001). The legislature is presumed to have knowledge of the legal authority discussed in Section I of this brief when it enacted section 337.401,<sup>1</sup> and the legislature stated in section 337.401(6) that it has preserved the Commission's exclusive jurisdiction to regulate telecommunications companies, including pay telephone service providers. The Commission, therefore, has the exclusive jurisdiction to enact rules addressing the location of pay telephones in the State of Florida.

### CONCLUSION

As long as any rules it promulgates are consistent with controlling federal and state law, the Commission is authorized to enact rules addressing the location of pay telephones in the State of Florida.

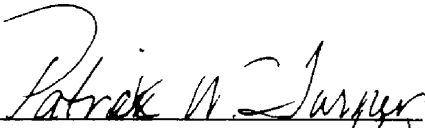
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<sup>1</sup> See, e.g., *City of Hollywood v. Lombardi*, 770 So. 2d 1196, 1202 (Fl. 2000) ("The legislature is presumed to know the judicial constructions of a law when enacting a new version of that law.").



Respectfully submitted this 19<sup>th</sup> day of February, 2001.

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