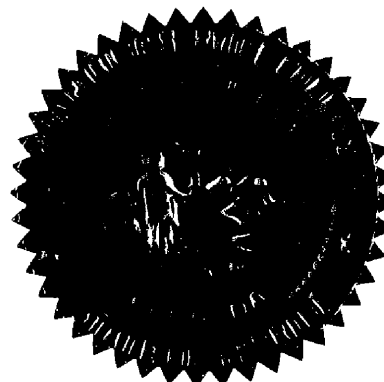


**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

DOCKET NO. 020507-TL

In the Matter of

**Complaint of Florida Competitive
Carriers Association against
BellSouth Telecommunications, Inc.
regarding BellSouth's practice of
refusing to provide FastAccess
Internet Service to customers who
receive voice service from a
competitive voice provider, and request
for expedited relief.**



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PROCEEDINGS:	Prehearing Conference
BEFORE:	COMMISSIONER BRAULIO L. BAEZ
DATE:	January 6, 2003
TIME:	Commenced at 3:00 p.m. Concluded at 3:25 p.m.
PLACE:	Betty Easley Conference Center Esplanade Way Room 152 Tallahassee, Florida
REPORTED BY:	Jane Faurot, RPR Chief, Office of Hearing Reporter Services FPSC Division of Commission Clerk and Administrative Services (850)413-6732

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1 APPEARANCES:

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3 McGlothlin, Davidson, Decker, Kaufman & Arnold, P.A., 117 South
4 Gadsden Street, Tallahassee, Florida 32301, on behalf of the
5 Florida Competitive Carriers Association.**

**6 FLOYD R. SELF, Esquire, Messer, Caparello & Self, P.A.,
7 Post Office Box 1876, Tallahassee, Florida 32302-1876 and
8 NANETTE S. EDWARDS, ITC^DeltaCom, 4092 South Memorial Parkway,
9 Huntsville, Alabama 35802-4343 on behalf of ITC^DeltaCom
10 Communications, Inc.**

**11 NANCY B. WHITE, c/o Nancy Sims, 150 South Monroe Street,
12 Suite 400, Tallahassee, Florida 32301, on behalf of BellSouth
13 Telecommunications, Inc.**

**14 PATTY CHRISTENSEN, Esquire, Florida Public Service
15 Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida
16 32399-0850, on behalf of the Commission Staff.**

17**18****19****20****21****22****23****24****25**

PROCEEDINGS

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COMMISSIONER BAEZ: Call it to order.

Counsel, read the notice.

MS. CHRISTENSEN: By notice issued December 23rd, 2002, this time and place having been set for prehearing conference in Docket Number 020507, Complaint of the Florida Competitive Carriers Association against BellSouth Telecommunications, Inc., regarding BellSouth's practice of refusing to provide FastAccess Internet Service to customers who receive voice service from a competitive voice provider and request for expedited relief. The purpose of this prehearing conference is as set forth in the notice.

COMMISSIONER BAEZ: We will take appearances.

MS. WHITE: Nancy White for BellSouth Telecommunications, Incorporated.

MS. KAUFMAN: Vicki Gordon Kaufman on behalf of the Florida Competitive Carriers Association.

MR. SELF: Floyd Self and Nanette Edwards on behalf of ITC^DeltaCom.

MS. CHRISTENSEN: Patricia Christensen on behalf of Staff.

COMMISSIONER BAEZ: Thank you, Ms Christensen. I am showing here some preliminary matters.

MS. CHRISTENSEN: Commissioner, we have some discovery pending. We have a motion to compel that was filed

1 by BellSouth and FCCA's response to that motion as well as a
2 request for protective order. Staff recommends that this be
3 addressed in a separate order.

4 COMMISSIONER BAEZ: Okay. And without strenuous
5 objection, that is what we are going to do on the discovery
6 matter. The confidential matters, are we straight with that?

7 MS. CHRISTENSEN: We note that BellSouth's two
8 outstanding requests for specified confidential classification
9 have been addressed in separate orders that are going to be
10 issued. And there is also one notice of an intent to file a
11 request for confidential classification outstanding, and staff
12 recommends that once a request is filed that that also be
13 addressed by separate order.

14 COMMISSIONER BAEZ: Very well. Is there anything
15 else?

16 MS. CHRISTENSEN: No. Commissioner, staff is not
17 aware of any further preliminary matters. We would recommend
18 going through the draft prehearing order issue-by-issue.

19 COMMISSIONER BAEZ: Let's do that. The first five
20 sections, if there is any typos or anything like that that
21 anyone has caught, and I will just ask staff to keep an eye on
22 it. You know, whatever changes, whatever typos you may find.

23 Order of witnesses. FCCA, you -- I am only showing
24 one direct and three rebuttal.

25 MS. KAUFMAN: That is correct, Commissioner Baez.

1 **COMMISSIONER BAEZ:** And your rebuttal witnesses are
2 in the appropriate order?

3 **MS. KAUFMAN:** They are in the appropriate order, but
4 I would suggest that they ought to be the last witnesses in the
5 rebuttal round rather than the first.

6 **COMMISSIONER BAEZ:** And why is that?

7 **MS. KAUFMAN:** Well, two of them filed only rebuttal
8 testimony. And since we are the complainant, typically we get
9 the last word. Ms. Lichtenberg and Mr. Bradbury have only
10 rebuttal testimony.

11 **COMMISSIONER BAEZ:** That is correct.

12 **MS. WHITE:** We are not going to do direct and
13 rebuttal at the same time?

14 **COMMISSIONER BAEZ:** Yes. I was holding off on that.
15 But I think to that extent, what effect would that have on the
16 order, or if you have a problem with that?

17 **MS. KAUFMAN:** I don't have any objection to doing
18 direct and rebuttal together, understanding we only have one
19 day and we have quite a few witnesses. So I don't have an
20 objection to Mr. Gillan being the first witness and doing his
21 direct and rebuttal together, but I would suggest that Ms.
22 Lichtenberg and Mr. Bradbury be moved to the end of the
23 rebuttal section.

24 **COMMISSIONER BAEZ:** I think what we are going to try
25 and do is keep the groupings of the witnesses together. So to

1 the extent that you want to have them be your last witnesses,
2 that will be fine. I don't think we are going to sandwich the
3 FCCA witnesses. So we are going to take them, direct and
4 rebuttal together, and the FCCA witnesses will be up first
5 whether they are rebuttal only or not. Okay?

6 MS. KAUFMAN: Okay. Thank you, Commissioner.

7 COMMISSIONER BAEZ: Ms. White, do you have any
8 changes to your order of witnesses?

9 MS. WHITE: No, sir.

10 COMMISSIONER BAEZ: Okay. Let the record show that
11 we are going to take rebuttal and direct together.

12 MS. CHRISTENSEN: Yes, sir.

13 COMMISSIONER BAEZ: Next section. Ms. Kaufman or Mr.
14 Self, do you have any changes that you need to make to your
15 basic position?

16 MS. KAUFMAN: No, sir.

17 COMMISSIONER BAEZ: Ms. White?

18 MS. WHITE: No, sir.

19 COMMISSIONER BAEZ: Okay. We are just going to go
20 through issues here. Staff, I am assuming you don't have any
21 changes, is that correct?

22 MS. CHRISTENSEN: No, sir.

23 COMMISSIONER BAEZ: Okay. Issue 1. Issue 2. Issue
24 3. Issue 4. Issue 5. Issue 6A. Issue 6B. All right. Yes,
25 ma'am.

1 **MS. CHRISTENSEN:** Commissioner, can I go back to
2 **Issue 3? BellSouth's position on Issue 3. There appears to be**
3 **a typo, but it was a typo that was in the prehearing statement.**
4 **I want to make sure, see if we can't correct that.**

5 **COMMISSIONER BAEZ:** Can you point us?

6 **MS. CHRISTENSEN:** I'm looking at BellSouth's
7 **position, it is the third sentence down, the last word of that**
8 **sentence, and it says overly. Is that supposed to be overly or**
9 **overlay?**

10 **MS. WHITE:** I believe it is supposed to be overlay.

11 **MS. CHRISTENSEN:** Okay.

12 **COMMISSIONER BAEZ:** All right. The exhibit list,
13 **Section IX. Ms. White, I'm showing one exhibit for Witness**
14 **Ruscilli, is that still the case? I'm sorry, and another one.**

15 **MS. WHITE:** They're apparently divided up into direct
16 **and rebuttal.**

17 **COMMISSIONER BAEZ:** Okay. So no changes to your --
18 **do you have any changes to your exhibit list?**

19 **MS. WHITE:** No, sir.

20 **COMMISSIONER BAEZ:** Okay. Ms. Kaufman.

21 **MS. KAUFMAN:** I have no changes, Commissioner.

22 **COMMISSIONER BAEZ:** Okay. Mr. Self, I am assuming
23 **you don't --**

24 **MR. SELF:** No changes.

25 **COMMISSIONER BAEZ:** All right. Proposed

1 stipulations, showing none. The pending motions. Which was
2 the one that we addressed? We are going to address them in a
3 separate order, right, both of these?

4 MS. CHRISTENSEN: Correct. Both of the pending
5 motions will be addressed probably in one order, but
6 separately.

7 COMMISSIONER BAEZ: Okay. And then the pending
8 confidentiality matters, items one and two have been addressed
9 already, so they can be stricken?

10 MS. CHRISTENSEN: Correct.

11 COMMISSIONER BAEZ: And the notice of intent to
12 request.

13 MS. WHITE: Commissioner Baez, I would note, I think
14 as staff did earlier, there is outstanding discovery to
15 BellSouth from the FCCA, and I believe from the staff. And
16 there is outstanding discovery from BellSouth to the FCCA. So
17 depending on what happens with that, there may be additional
18 confidentiality motions and/or a motion to compel.

19 COMMISSIONER BAEZ: All right. And we should be
20 prepared to --

21 MS. WHITE: We will be prepared to deal with this.

22 COMMISSIONER BAEZ: You have warned me, I guess. All
23 right. Section XIII, are there any changes to the cases? Any
24 additions?

25 MS. WHITE: And this is just a matter of making sure

1 I understand. This is something new that we have started
2 doing, I have noticed, putting these up there. And just
3 because I know that Ms. Kaufman had asked that the decisions
4 the FCC asserts may impact be separated from BellSouth's, but I
5 am assuming because they are separated doesn't mean that
6 BellSouth can't mention these orders and vice versa.

7 COMMISSIONER BAEZ: I would hope not.

8 MS. WHITE: I am just double-checking the way I
9 understand this to work.

10 COMMISSIONER BAEZ: And, I'm sorry, this part is a
11 little new for me, too. I mean, nobody asked me if they could
12 do this.

13 MS. WHITE: Is this to replace the notice, the
14 judicial notice?

15 COMMISSIONER BAEZ: I think it goes back to something
16 like that, I would suspect.

17 MS. CHRISTENSEN: I think in part it is that as well
18 as trying to make sure that there is no definitive preemption
19 order, order that preempts the Commission's power, or something
20 that would come in after we have done the hearing that would
21 say that we didn't have the authority to do it. I think that
22 was some of the thought behind it, as well.

23 COMMISSIONER BAEZ: Well, then, clear this up for me.
24 If something came out after the fact, you know, it will be what
25 it will be, you know.

1 **MS. CHRISTENSEN:** That's true. I mean, if they
2 haven't decided on it yet, then obviously they cannot put it in
3 here. But if somebody is aware that there is a pending
4 decision, that could be something that could be addressed in
5 here that may preempt it. That would be something that I think
6 the Commission would want brought to their attention. That was
7 part of it. But that is probably not the case.

8 **COMMISSIONER BAEZ:** This is all FYI, really, just for
9 us to know.

10 **MS. CHRISTENSEN:** Okay.

11 **COMMISSIONER BAEZ:** And I don't believe it to be
12 binding. I mean, it can be added on at hearing or throughout
13 the hearing or as a result of the hearing process. This is
14 just something to kind of let everybody know what is in the
15 neighborhood.

16 **MS. WHITE:** I noticed this in the last couple of --
17 and I wanted to make sure I understood what the purpose of it
18 was.

19 **COMMISSIONER BAEZ:** I have, too, although I must say
20 I have never seen it as crowded as this time around. I don't
21 know what that means, but --

22 **MS. KAUFMAN:** Commissioner Baez, let me just make a
23 comment if I could about those. When I did my prehearing
24 statement, I didn't submit any decisions because I guess
25 everyone was kind of confused, maybe, by this new requirement.

1 I read it to mean decisions that might preempt the Commission's
2 ability to act here. I don't think there are any. But then
3 when BellSouth submitted all of these decisions that I would
4 suggest to you are persuasive of their position, I said, well,
5 there is quite a few decisions that are persuasive of our
6 position, as well. And I think that is how -- maybe this idea
7 is perhaps getting out of hand. I don't object to them all
8 being in there, and I'm sure they will be argued in the briefs
9 for whatever weight you want to give them.

10 COMMISSIONER BAEZ: And I also want to give you some
11 comfort as to if you come up with any cases in addition, I'm
12 sure the presiding officer will be accommodating. If Beth
13 wants to nod or shake her head at the end, how we are going to
14 deal with this, because there seems to be --

15 MS. KEATING: I can give you background on it, if you
16 want.

17 COMMISSIONER BAEZ: You can talk to me later. I'm
18 sorry, Mrs. Keating, I didn't mean to drag you into the
19 prehearing unannounced.

20 MS. WHITE: We can talk to her after the prehearing
21 if you would rather, but I just wanted to get a handle on it.

22 COMMISSIONER BAEZ: Well, I must confess, I would
23 like to get it straight in my mind, as well.

24 MS. KEATING: This actually came up a few months ago.
25 It originated in one particular docket, and one prehearing

1 officer was concerned about -- primarily, I think Ms. Kaufman's
2 interpretation is probably a little bit closer. Cases that
3 have a direct impact on the Commission's jurisdiction, on their
4 ability to act in a particular area. And so we started adding
5 that into the order establishing procedure as a requirement for
6 prehearing statements. Not as a definitive list, really, but
7 just so that if there are any decisions out there that we can
8 be aware of ahead of time going into the hearing so that we are
9 aware of them. But it is definitely not to be an all-inclusive
10 or preclusive list.

11 COMMISSIONER BAEZ: Right. And that is my
12 understanding of it. You are just really giving the
13 Commissioners and the Commission staff as well a head start on
14 whatever you all might be discussing, what kind of cases might
15 be alluded to it at the hearing. So, again, I will restate.
16 Ms. Kaufman, if you have any additional -- if there was any --
17 you know, if there was any call that you made against including
18 it as a result of your understanding of it, you know, you have
19 leave to amend the list.

20 MS. KAUFMAN: Thank you. Can I just ask one more
21 question about this?

22 COMMISSIONER BAEZ: Please.

23 MS. KAUFMAN: I don't think you meant that please.

24 COMMISSIONER BAEZ: I don't mean please just one, I
25 mean please ask your question.

1 **MS. KAUFMAN:** My question is does this obviate the
2 need to do requests for official recognition? I mean, more
3 typically prior to this section being included, we would just
4 have done a request for official recognition. I'm happy not to
5 do that.

6 **COMMISSIONER BAEZ:** This young woman's health is on
7 your head, okay. (Laughter.)

8 **MS. CHRISTENSEN:** I can answer that question which is
9 we are no longer doing the official recognition list.

10 **COMMISSIONER BAEZ:** We have been back and forth. And
11 not to suggest that this in any way takes the place of it,
12 because I think the whole situation was that we didn't need one
13 in the first place. I guess really that was the argument. So
14 this, again, just take this as the informational section so
15 that the Commission can be -- any other questions before I let
16 Mrs. Keating sit down.

17 **MS. KAUFMAN:** And the fewer filings the better. I
18 think that takes care of it. Thank you.

19 **MS. WHITE:** She sat down now. I have one more --
20 no.

21 **COMMISSIONER BAEZ:** You have one more question.
22 Thank you, Ms. White.

23 **MR. SELF:** Commissioner, is it true that we are not
24 doing the official recognition list anymore because this is an
25 odd-numbered year?

1 **COMMISSIONER BAEZ:** And is it a leap year, I think,
2 really -- (simultaneous conversation). That is good for
3 reading the recommendations with a nice bottle of wine. The
4 opening statements, we are going to set them at ten minutes.
5 Don't feel the need to use them all, but unless there is any
6 objection ten minutes it will be. I see nodding.

7 **MS. WHITE:** Ten minutes per side or ten minutes per
8 party?

9 **COMMISSIONER BAEZ:** Seeing as how we have --

10 **MS. KAUFMAN:** Per side is fine.

11 **COMMISSIONER BAEZ:** Per side is fine. Okay.

12 All right. If there is nothing else, speak now or
13 forever hold your peace, or at least until next time. All
14 right. Thanks all for coming, have a great afternoon. We are
15 adjourned.

16 (The prehearing concluded at 3:25 p.m.)

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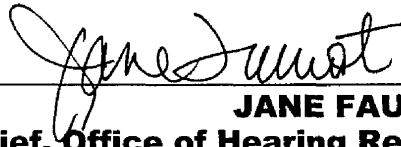
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 9th day of January, 2003.



JANE FAUROT, RPR
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