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January 26, 1998

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center  
Room 110  
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. [REDACTED]

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Teleport Communications Group Inc. and TCG South Florida ("TCG") are the original and fifteen copies of TCG's Response in Opposition to BellSouth BSE's Amended Motion to Dismiss.

- ACK
- AFA  1
- APP
- CAF
- CMU  *Isles*
- CTR
- EAG
- LEG  1
- LIN  5
- OPC  KAH/rl
- RCH
- SEC  1
- WAS
- OTH  Trib.3

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

*Kenneth A. Hoffman*  
Kenneth A. Hoffman

Enclosures  
cc: All Parties of Record

DOCUMENT NUMBER-DATE  
[REDACTED] 01379 JAN 26 98  
FPSC-RECORDS/REPORTING

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate )  
to provide alternative local )  
exchange telecommunications )  
service by BellSouth BSE, Inc. )  
) )  
\_\_\_\_\_ )

Docket No. 971056-TX

Filed: January 26, 1998

**TCG'S RESPONSE IN OPPOSITION TO  
BELL SOUTH BSE'S AMENDED MOTION TO DISMISS**

Teleport Communications Group Inc. and TCG South Florida (collectively "TCG"), by and through its undersigned counsel, hereby files its Response in Opposition to the Amended Motion to Dismiss TCG's Petition for Leave to Intervene filed by BellSouth BSE, Inc. ("BSE") on January 23, 1998. BSE's Amended Motion to Dismiss should be denied for the reasons set forth below.

1. BSE's Motion to Dismiss reiterates the arguments for dismissal offered by BSE in prior motions to dismiss petitions filed by the Florida Competitive Carriers Association ("FCCA") and MCI Telecommunications Corporations/MCImetro Access Transmission Services, Inc. (collectively "MCI") challenging the Commission's proposed granting of a statewide alternative local telecommunications company ("ALEC") certificate to BSE. BSE's prior motions to dismiss, like the instant motion directed to TCG, allege that FCCA and MCI lack standing to challenge the Commission's proposed action.

2. FCCA and MCI have demonstrated in their respective responses opposing BSE's motions to dismiss that their substantial interests will be or are affected by the Commission's intended action under the standards set forth in Rule 25-22.036(7)(a), Florida Administrative Code and Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478, 482 (Fla. 1<sup>st</sup>

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DCA 1981).<sup>1</sup>

3. Like FCCA and MCI, TCG must demonstrate that it has standing to participate in this proceeding. The test for standing for an intervenor is substantially the same as that for a party challenging proposed agency action. Under Rule 25-22.039, Florida Administrative Code, TCG must demonstrate that its substantial interests are subject to determination or will be affected through the proceeding.

4. TCG's Petition for Leave to Intervene establishes its standing under Rule 25-22.039, Florida Administrative Code, and the AgriCo decision. TCG's Petition alleges that allowing BellSouth Telecommunications, Inc. ("BellSouth") to provide local exchange services as an ALEC, through its affiliate BSE, in BellSouth's territory where BellSouth serves as the incumbent provider of local service, will affect TCG's substantial interests by:

a. undermining the legal relationships between incumbent local exchange companies ("ILECs") and ALECs created under Chapter 364, Florida Statutes, and the Telecommunications Act of 1996 (the "Act");

b. allowing BellSouth to shed itself of the legal obligations imposed on ILECs, including BellSouth, under Chapter 364, Florida Statutes and the Act; and

c. subjecting TCG to anti-competitive practices, unfair competition, unlawful cross-subsidization and/or predatory pricing by BellSouth/BSE.

5. TCG goes on to say in its Petition that its ability to compete for and retain local

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<sup>1</sup>MCI filed its Response in Opposition to BSE's Motion to Dismiss on November 17, 1997. FCCA filed its Response in Opposition to BSE's Motion to Dismiss on December 12, 1997.

exchange service customers will be adversely affected if BellSouth through BSE, is able to:

a. evade its resale and provision of unbundled network elements ("UNEs") obligations under Chapter 364 and the Act; and

b. retain or capture high-use residential and commercial customers through discounted rates which are below the rates TCG may offer after TCG incurs the cost for UNEs or the cost of BellSouth's wholesale rates.

6. Rather than reiterate the comprehensive arguments presented by MCI and FCCA in their respective responses to BSE's motions to dismiss, TCG incorporates those arguments, which apply equally to TCG, in support of TCG's standing to challenge the Commission's proposed granting of an ALEC certificate to BSE which would authorize BSE to provide local exchange services in the geographic area in which BellSouth is the incumbent provider of local service.

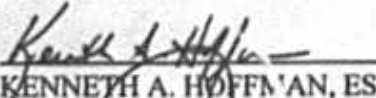
7. In addition to the arguments presented by MCI and FCCA, TCG further asserts that the second prong of the Agrico test - - that TCG's injury is of the type this proceeding is designed to protect - - is satisfied under the "public interest" provisions of Section 364.335(3), Florida Statutes (1995). That statute provides, in pertinent part, that "[t]he commission may grant a certificate, in whole or in part or with modifications in the public interest .." The Legislature has declared "that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure." §364.01(2), Fla. Stat. (1995) (emphasis supplied). In determining that the competitive provision of local exchange telecommunications services is in the public interest, the Legislature expressly conferred exclusive

authority on the Commission to foster local exchange competition by ensuring that all providers of telecommunications services are treated fairly and by preventing anti-competitive behavior. §364.01(4), Fla. Stat. (1995).

8. TCG maintains that the public interest standard articulated in Sections 364.335(3) and 364.01(3), Florida Statutes, requires consideration of all evidence and argument which bear on the issues of whether allowing BSE to provide local exchange services in the geographic territory of its affiliate incumbent BellSouth promotes competition, ensures fair treatment for all providers, prevents anti-competitive behavior and serves the public interest. See § 364.01(4), Fla. Stat. (1995). TCG has raised a number of these issues in its Petition for Leave to Intervene, at paragraph 11.

WHEREFORE, for the foregoing reasons, TCG respectfully requests that the Commission deny BellSouth BSE, Inc.'s Amended Motion to Dismiss TCG's Petition for Leave to Intervene.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of TCG's Response in Opposition to BellSouth BSE's Motion to Dismiss was furnished by U. S. Mail to the following this 26th day of January, 1998:

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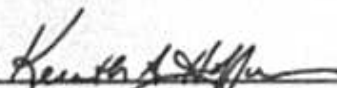
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