



Public Service Commission

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DATE: NOVEMBER 5, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF COMMUNICATIONS (YAMBOR, MOSES) *YMB*
DIVISION OF LEGAL SERVICES (WATTS, PENA) *Watts*

RE: DOCKET NO. 980918-TC - APPLICATION FOR CERTIFICATE TO PROVIDE PAY TELEPHONE SERVICE BY FLORIDA BILLSOUTH TELEPHONE COMPANY

AGENDA: 11/17/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\980918TC.RCM

CASE BACKGROUND

On July 21, 1998, Florida Billsouth Telephone Company (Billsouth), filed an application to provide pay telephone services (PATS) in Florida. Billsouth received authorization from the Secretary of State to conduct business as a registered corporation in the state on June 29, 1998.

On July 29, 1998, the Commission received a courtesy copy of correspondence from BellSouth Telecommunications, Inc. (BellSouth) to Billsouth. (Attachment A, pp 5,6.) In the correspondence, BellSouth asserted that Billsouth's name is "confusingly similar" to its registered trade name and demanded that Billsouth discontinue using the similar name. BellSouth stated that by copy of the letter to the Commission, BellSouth was requesting that the application be denied. As of this writing, BellSouth has not formally objected to Billsouth's pay telephone certificate application and has not requested intervention in the docket.

Staff believes the following recommendations are appropriate.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Florida Billsouth Telephone Company an application for a certificate to provide pay telephone service in Florida?

PRIMARY RECOMMENDATION: Yes. Staff recommends that it is in the public interest to grant the application to provide pay telephone service. (Yambor)

ALTERNATIVE RECOMMENDATION: No. (Moses)

PRIMARY STAFF ANALYSIS: Rule 25-24.510, Florida Administrative Code, provides that no person shall provide pay telephone service in Florida without first obtaining a certificate of public convenience and necessity. Rule 25-24.511, Florida Administrative Code provides that "a certificate will be granted if the Commission determines that grant of the application is in the public interest." In order to promote competition in the telecommunications markets in Florida, the Commission has given telecommunications companies great latitude to conduct business using a wide variety of unique and possibly controversial names. The rationale for this policy is that the Commission's statutory mandate is to encourage competition. A restrictive view of what sort of names could be used by telecommunications companies could have a chilling effect on the development of competition, and thus it is in the public interest to grant certificates to companies with unique names. If a telecommunications company believes that its own trade name is adversely affected by another company's use of a particular name, that company has remedies in court to protect its trade name. The Commission is not authorized to enforce Florida's Unfair Trade Practices Act through its certification authority.

Each controversial name must of course be considered on its own merit and contextual circumstances. Consideration must also be given to the nature of the company's business in light of any questions or controversy surrounding the name. Staff has reviewed Billsouth's application for a pay telephone certificate in light of these policy considerations, and we believe that the certificate should be granted. If the Commission grants a certificate, Billsouth will only provide pay telephone service. The public will only be exposed to the Billsouth name because it will be printed on the pay telephone identification placard. We do not believe that these circumstances will lead to public confusion over Billsouth's name.

BellSouth's letter of objection to Billsouth maintains that the name Billsouth is "confusingly similar" under trademark law because it creates the likelihood of public deception and affiliation between Billsouth and BellSouth. While we acknowledge BellSouth's concerns, we believe they are more appropriately directed to the court system.

On June 29, 1998, the Florida Secretary of State approved Florida Billsouth Telephone Company as a registered corporation.

Upon review of Billsouth's application, staff recommends that Billsouth has met the requisite showing, pursuant to Section 364.3375, Florida Statutes, that its certificate would be consistent with the public interest.

ALTERNATIVE STAFF ANALYSIS: Rule 25.24.511 (4), Florida Administrative Code, states in part:

A certificate will be granted
if the Commission determines
that grant of the application
is in the public interest.

Staff's concern in this recommendation is not whether the name Billsouth violates trademark law but rather the potential for customer confusion. In a deregulated telecommunications market, the customer is currently faced with choices, charges, and bills that are frustrating to most. While we acknowledge the registered name was approved by the Secretary of State, we also recognize the public is best served by competition, not confusion.

When Billsouth becomes an operating company, BellSouth, as the incumbent LEC, will on some occasions have to bill for Billsouth. Reimbursements are due the pay telephone owner when pay telephone callers use calling cards, dial 0+ interlata calls, utilize store and forward or calling 1-800 numbers. If any of these occur (and others not listed), the LEC becomes the biller for the pay telephone company. Consequently, the customer, when receiving the bill, may become confused when Billsouth and BellSouth charges appear on the same bill.

Thus the public interest issue should be the basis to grant or deny a certificate to provide pay telephone service in Florida, and staff recommends that in this case, the public interest is not served by granting this certificate.

DOCKET NO. 980918-1C
DATE: November 5, 1998

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final and this docket may be closed.
(Watts, Peña)

STAFF ANALYSIS: If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final and this docket may be closed.

Legal Department

Nancy B. White
Assistant General Counsel - Florida
BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

July 29, 1998

RECEIVED

AUG 03 1998

Via Federal Express (Priority Delivery)

Javier Pelletier
President
Florida BellSouth Telephone Company
12791 S.W. 8th Terrace
Miami, Florida 33184-2242

CMU

RE: Infringement of the Trademark BellSouth (Docket No. 980918)

Dear Mr. Pelletier:

I represent BellSouth Telecommunications, Inc. ("BellSouth"). BellSouth provides a wide range of telecommunications goods and services. It has come to my attention that you have filed incorporation papers with the Secretary of the State of Florida and are now incorporated as "Florida Billsouth Telephone Company" ("Billsouth"). Moreover, you have applied to the Florida Public Service Commission (the "Commission") for a pay telephone certificate in the name of Florida Billsouth Telephone Company in Docket No. 980918.

As you may be aware, all of AT&T's rights in BELL and the Bell Symbol mark were assigned to BellSouth Corporation, Ameritech Information Technologies Corp., Bell Atlantic, NYNEX, Pacific Telesis Group, Southwestern Bell and US West, Inc., as well as Cincinnati Bell and Southern New England Telephone Company at divestiture. Additionally, BellSouth Corporation is the owner of a family of "Bell Marks" including, but not limited to Registration No. 1,565,562 for the mark BELL, Registration Nos. 1,459,196 and 1,565,559 for the mark BELLSOUTH, Registration No. 1,459,998 for the mark SOUTHERN BELL, Registration No. 1,459,194 for the mark SOUTHERN BELL, Registration No. 1,459, 194 for the mark SOUTH CENTRAL BELL, Registration No. 1,602,875 for the mark SOUTHERN BELL SAVER, and Registration No. 1,670,082 for the mark BELLSOUTH MOBILITY. BellSouth and its subsidiaries currently use these marks in connection with telecommunications, cellular phones and

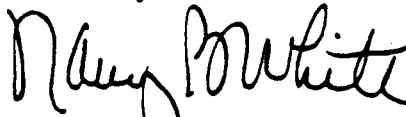
services, and other communications goods and services. Copies of our federal registrations are attached for your reference.

Your use of "Billsouth" within a corporate name, trade name, trademark, service mark or domain name unlawfully trades on the goodwill associated with our marks and dilutes the significance and distinctive quality of our famous trademarks, which has been built up through extensive use of SOUTHERN BELL and BELL over the past century and of BILLSOUTH since 1984. Your use of Billsouth is considered "confusingly similar" under trademark law because it creates the likelihood that the public will be deceived into believing there is some connection or affiliation between your company and BellSouth. This constitutes trademark infringement and unfair competition under federal and state law and also causes dilution of our ownership rights in our famous marks under federal and state law.

We hereby demand that you discontinue all use of Billsouth and that you file a change of name notice with the Secretary of State and the Commission.

Please forward your written assurance within five (5) days of your receipt of this letter that you will refrain from infringing our rights in the future, that you have made the name change filing, have discontinued all use of Billsouth or other designation confusingly similar to our marks, and have destroyed all advertising and tangible material (such as stationary, business cards, fliers, coupons, etc.) on which they appear. By copy of this letter to the Commission, I am hereby requesting that your application for a payphone certificate be denied until you have complied.

Sincerely,



Nancy B. White

NBW/vf
Attachments

cc: Blanca S. Bayo (w/Attachments)
Walter D'Haesseleer (w/Attachments)
Sandra J. Evans (W/Attachments)
Nancy H. Sims (w/Attachments)