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January 7, 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. 971056-TX

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Teleport Communications Group Inc. ("TCG") are the following documents:

1. Original and fifteen copies of TCG's Petition for Leave to Intervene; and
2. A disk containing a copy of the Petition.

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

ACK _____
AFA 1
APP _____
CAF _____
CMU later
CTR _____
EAG _____
LEG 2
LIN 5
OPC _____
RCH _____
SEC 1
WAS _____
OTH Original

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Enclosures

All Parties of Record

added 1/21/98 *uf*

DOCUMENT NUMBER - DATE

00349 JAN-7 88

FPSC-RECORDS/REPORTING

ORIGINAL

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 7, 1998

TCG'S PETITION FOR LEAVE TO INTERVENE

Teleport Communications Group Inc. and TCG South Florida (collectively "TCG"), by and through its undersigned counsel, and pursuant to Rule 25-22.039 and 25-22.036(7)(a), Florida Administrative Code, hereby requests that it be granted intervention with full party rights in the above-referenced proceeding. In support of its Petition for Leave to Intervene, TCG states as follows:

1. The name and address of Petitioner is:

Teleport Communications Group Inc.
2 Lafayette Centre
1133 Twenty First Street, N.W.
Suite 400
Washington, DC 20036
(202) 739-0030 (Telephone)
(202) 739-0044 (Facsimile)

TCG South Florida
1 East Broward Boulevard
Suite 910
Fort Lauderdale, FL 33301
(954) 453-4200

2. All notices, pleadings, orders, staff recommendations, correspondence and other documents issued or served in this proceeding should be served on the following individuals on behalf of TCG:

DOCUMENT NUMBER-DATE
00349 JAN-78
FPSC-RECORDS/REPORTING

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PROCEDURAL BACKGROUND

3. On October 27, 1997, the Commission issued proposed agency action Order No. PSC-97-1347-FOF-WS ("PAA Order") granting BellSouth BSE, Inc.'s ("BSE") application to provide local exchange telecommunications services in Florida as an alternative local exchange telecommunications company ("ALEC"). BSE is a wholly-owned subsidiary of BellSouth BSE Holdings, Inc., which is a wholly-owned subsidiary of BellSouth Corporation. BellSouth Telecommunications, Inc. ("BellSouth") also is a wholly-owned subsidiary of BellSouth Corporation.

4. The PAA Order was timely protested by the Florida Competitive Carriers Association ("FCCA") and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (collectively "MCI"). The petitions filed by FCCA and MCI both protest the Commission's proposed grant of authority to BSE to operate as an ALEC on a statewide basis, including the service territory currently served by BellSouth in its capacity as an incumbent local exchange company ("ILEC").

SUBSTANTIAL INTERESTS OF TCG

5. As discussed in the petitions filed by FCCA and MCI, the federal

Telecommunications Act of 1996 ("Act")¹ creates a framework for fostering competition in the local exchange services markets. The Act seeks to create and enhance competition for local service customers by recognizing the historic entrenchment of ILECs such as BellSouth as the sole provider of local telecommunications services and imposing obligations on the ILECs designed to provide ALECs an opportunity to compete as a local service provider.

6. Recently, the United States Court of Appeals for the Eighth Circuit summarized the obligations imposed by Congress on incumbent LECs and the pro-competition rationale for imposing these obligations:

One hundred twenty years after Bell's discovery, Congress passed the Telecommunications Act of 1996 (the Act), which was designed, in part, to erode the monopolistic nature of the local telephone service industry by obligating the current providers of local phone service (known as "incumbent local exchange carriers" or "incumbent LECs") to facilitate the entry of competing companies into local telephone service markets across the country. Specifically, the Act forces an incumbent LEC (1) to permit a requesting new entrant in the incumbent LEC's local market to interconnect with the incumbent LEC's existing local network and thereby use the incumbent LEC's network to compete with the incumbent LEC in providing telephone services (interconnection); (2) to provide its competing telecommunications carriers with access to individual elements of the incumbent LEC's own network on an unbundled basis (unbundled access); and (3) to sell to its competing telecommunications carriers, at wholesale rates, any telecommunications service that the incumbent LEC provides to its customers at retail rates, in order to allow the competing carriers to resell the service (resale). 47 U.S.C. §251(c)(2)-(4) (West Supp. 1997). A company seeking to enter the local telephone service market may request an incumbent LEC to provide it with any one or any combination of these three services. Through these three duties, and the Act in general, Congress sought "to promote competition and reduce regulation in order to secure lower prices and higher quality

¹Pub. L. No. 104-104, 110 Stat. 56.

services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act of 1996, Pub. L. No. 104-104, purpose statement, 110 Stat. 56, 56 (1996). (Emphasis supplied; footnotes omitted).

Iowa Utilities Board v. Federal Communications Commission, 120 F.3d 753, 791-2 (8th Cir. 1997).

7. The interconnection, resale and unbundled network element ("UNE") obligations imposed by Congress under the Act and by the Florida Legislature under Chapter 364, Florida Statutes², are built on the basic premise that customers will benefit from competition between and among the ILEC in a particular service territory and the new entrants desiring to provide local exchange services in such territory. The PAA Order, to the extent it proposes to authorize BSE to "compete" with BellSouth in BellSouth's service territory, rejects this basic premise and thereby undermines the ability of ALECs, including TCG, to effectively compete for local exchange service customers in BellSouth's service territory.

8. In this proceeding, the Commission must decide if it will authorize BellSouth to effectively operate as an ALEC, through its affiliate BSE. As noted by both MCI and FCCA, in a similar case, the Texas Public Utility Commission denied GTE Communications Corporation's application to operate as a CLEC in the territory of GTE Southwest, Inc., its affiliate (and the incumbent) local exchange carrier.³ In the words of Texas Public Utility Commissioner Walsh, such authorization would have allowed the GTE CLEC to do what its mirror image, the GTE ILEC, could

²See Ch. 95-403, Laws of Florida.

³See Order of Severance issued October 30, 1997 in Application of GTE Communications Corporation for a Certificate of Operating Authority, Docket No. 16495 before the Public Utility Commission of Texas, attached as Exhibit "A" to FCCA's Petition.

not do and "would make a mockery of the whole regulatory and legal scheme" (referring to the Texas deregulation statute and the Act).⁴

9. TCG is certificated by the Commission as an ALEC and interexchange carrier. TCG provides local exchange services, including facilities-based local exchange services, in BellSouth's territory pursuant to TCG's Commission-approved interconnection Agreement with BellSouth.

10. Both BellSouth and BSE will operate under the corporate umbrella of BellSouth Corporation. BSE acknowledges in its application that it intends to rely on the financial strength of BellSouth Corporation to finance and fund its operations and provision of services. Allowing BellSouth to provide local exchange services as an ALEC, through its affiliate BSE, in BellSouth's service territory, will affect TCG's substantial interests by: (a) undermining the legal relationships between ILECs and ALECs created under Chapter 364, F.S. and the Act; (b) allowing BellSouth to shed itself of the legal obligations imposed on ILECs, including BellSouth, under Chapter 364, F.S. and the Act; and (c) subjecting TCG to anticompetitive practices, unfair competition, unlawful cross-subsidization and/or predatory pricing by BellSouth/BSE. Specifically, TCG's ability to compete for and retain local exchange service customers and its substantial interests will be adversely affected if:

(a) BellSouth is able to evade its resale and provision of UNE obligations under Chapter 364 and the Act by providing local service in its service territory through BSE; and

(b) BellSouth, through BSE, is able to retain or capture high-use residential and commercial customers through discounted rates which are below the rates TCG may offer after TCG

⁴See Transcript included in Exhibit "A" to FCCA's Petition, at pp. 96-97.

incurs the cost for UNEs or the cost of BellSouth's wholesale rates.

DISPUTED ISSUES OF MATERIAL FACT, POLICY OR LAW

11. Disputed issues of material fact, policy or law include, but are not limited, to:

(a) Whether the Commission should grant ALEC authority to BSE on a statewide basis.

(b) If the Commission grants BSE a certificate to provide alternative local exchange services, what conditions, limitations or modifications should the Commission impose.

(c) Whether the granting of statewide ALEC authority to BSE would protect the public health, safety and welfare by ensuring that basic local telecommunications services are available to all consumers in BellSouth's service territory at reasonable and affordable prices.

(d) Whether the granting of statewide ALEC authority to BSE would encourage or impair the development of competition in the provision of local exchange services in BellSouth's service territory.

(e) Whether the granting of statewide ALEC authority to BSE would protect the public health, safety and welfare by ensuring that monopoly services provided by BellSouth and/or BSE in BellSouth's service territory are subject to effective price, rate and service regulation.

(f) Whether the granting of statewide ALEC authority to BSE would ensure that all providers of telecommunications services are treated fairly by preventing anticompetitive behavior.

(g) Whether the granting of ALEC authority to BSE in BellSouth's service territory would circumvent the competitive, arms-length relationship between ILECs and ALECs utilized by Congress and the Florida Legislature in the passage of laws intended to bring true

substantial competition in the local exchange markets.

(h) Whether the granting of ALEC authority to BSE in BellSouth's service territory would allow BellSouth, through BSE, to shed the interconnection, resale and provision of UNE obligations imposed under Chapter 364, F.S. and the Act.

(i) Whether the granting of statewide ALEC authority to BSE would present opportunities for BellSouth and/or BSE to engage in anticompetitive behavior, unfair competition, unlawful cross-subsidization and/or predatory pricing of local exchange services in BellSouth's service territory.

(j) Whether the granting of ALEC authority to BSE in BellSouth's service territory could place TCG in a "price squeeze" when attempting to price its services at competitive rates after having to pay BellSouth the cost of UNEs or wholesale services.

(k) Whether the granting of ALEC authority to BSE would provide increased opportunities for BellSouth to abuse its monopoly position and market power in BellSouth's service territory.

(l) Whether the granting of statewide ALEC authority to BSE would create customer confusion in BellSouth's service territory regarding whether services were provided by BellSouth or BSE.

(m) Any and all material facts pertinent to BSE's anticipated provision of local exchange services, any joint marketing plans or strategies and/or any joint provision of local exchange services contemplated by BellSouth and BSE.

(n) Whether BSE is able to provide or intends to provide any local exchange services, packaged services, discounted rates, improved quality of services and/or innovative services

in BellSouth's service territory that BellSouth is not providing today or is not capable of providing in lieu of BSE.

(o) Whether the granting of ALEC authority to BSE in BellSouth's territory should be conditioned on and implemented following an impartial balloting procedure whereby all retail customers of BellSouth in BellSouth's service territory would be given an adequate opportunity to exercise their choice of local exchange service providers.

(p) Whether the granting of ALEC authority to BSE in BellSouth's territory should trigger additional obligations, requirements and/or limitations on BellSouth to ensure BellSouth provides non-preferential and non-discriminatory treatment and services to all ALECs operating in BellSouth's service territory.

(q) Whether the granting of statewide ALEC authority to BSE is in the public interest.

ULTIMATE FACTS ALLEGED

12. Participation by BSE as an ALEC in the geographical area in which BellSouth presently serves as the ILEC would create opportunities for abuse of BellSouth's monopoly and market power, unfair competition, predatory pricing, unlawful cross-subsidization and customer confusion. Authorization of BSE to operate as an ALEC in BellSouth's service territory also would subvert state and federal regulatory schemes and thwart the intent of federal and state law to develop competition in the provision of local exchange services.

WHEREFORE, TCG respectfully requests that it be granted permission to intervene with full party rights in this proceeding and that BSE's application for ALEC authority be denied for the geographic area comprising BellSouth's service territory.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of TCG's Petition for Leave to Intervene was furnished by U. S. Mail and hand delivery (*) to the following this 7th day of January, 1998:

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By:


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BSE:mt