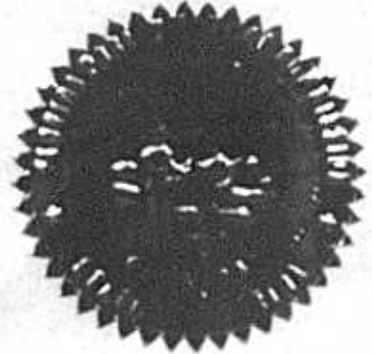


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 971056-TX
Application for certificate :
to provide alternative local :
exchange telecommunications :
service by BellSouth BSE Inc. :



PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER J. TERRY DEASON
Prehearing Officer

DATE: Monday, April 13, 1998

TIME: Commenced at 9:30 a.m.
Concluded at 9:55 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: H. RUTHE POTAMI, CSR, RPR
Official Commission Reporter

DOCUMENT NUMBER - DATE

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FOSC-RECORDS/REPORTING

1 **APPEARANCES:**

2 **MARTHA CARTER BROWN and CATHERINE BEDELL,**
3 Florida Public Service Commission, 2540 Shumard Oak
4 Boulevard, Tallahassee, Florida 32399-0863, on behalf
5 of the Commission Staff.

6 **JOSEPH A. MCGLOTHLIN, McWhirter, Reeves,**
7 McGlothlin, Davidson & Bakas, 315 South Calhoun
8 Street, Tallahassee, Florida 32301, appearing on
9 behalf of the Florida Competitive Carriers
10 Association.

11 **MARK LOGAN, Bryant, Miller & Olive, P.A.,**
12 201 South Monroe Street, Tallahassee, Florida 32301,
13 appearing on behalf of AT&T Communications.

14 **RICHARD MELSON, Hopping Green Sams and**
15 Smith, Post Office Box 6526, Tallahassee, Florida
16 32314, appearing on behalf of MCI Metro Access
17 Transmission Services, Inc.

18 **JOHN R. ELLIS, Rutledge, Eckenia, Underwood,**
19 Purnell & Hoffman, P.A., 215 South Monroe Street,
20 Tallahassee, Florida 32301, appearing on behalf of
21 Teleport Communications Group, Inc. and TCG, South Florida.

22 **GARY EARLY, Akerman, Senterfitt & Edison, P.A.**
23 215 South Monroe Street, Suite 200, Tallahassee, Florida
24 32301, appearing for BellSouth BSE.

25

P R O C E E D I N G

(Hearing convened at 9:30 a.m.)

COMMISSIONER DEASON: Call the prehearing conference to order. Can I have the notice read, please?

MS. BROWN: By notice issued February 27, 1998, this time and place was set for a prehearing conference in Docket No. 971056-TX in re application for certificate to provide alternative local exchange telecommunication service by BellSouth BSE, Inc. The purpose of the prehearing conference is set out in the notice.

COMMISSIONER DEASON: Thank you. Take appearances.

MR. EARLY: Gary Early representing BellSouth BSE, Inc., firm of Akerman, Senterfitt and Edison.

MR. NELSON: Richard Nelson of Hopping Green Sams & Smith on behalf of MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc.

MR. MCGLOTHLIN: Joe McGlothlin on behalf of the Florida Competitive Carriers Association.

MR. LOGAN: Mark Logan, Bryant, Miller & Olive, on behalf of AT&T Communications of the

1 Southern States, Inc., and I'd also like to enter an
2 appearance for Marsha Rule of AT&T.

3 MR. ELLIS: John Ellis with Rutledge,
4 Ecenia, Underwood, Purnell & Hoffman for Teleport
5 Communications Group and TCG South Florida.

6 MS. BROWN: Martha Carter Brown and
7 Catherine Bedell on behalf of the Florida Public
8 Service Commission. °

9 COMMISSIONER DEASON: Mr. Ellis; is that
10 correct?

11 MR. ELLIS: Yes, sir.

12 COMMISSIONER DEASON: E-L-L-I-S?

13 MR. ELLIS: Yes.

14 COMMISSIONER DEASON: And, Mr. Early; is
15 that correct?

16 MR. EARLY: Yes, Commissioner.

17 COMMISSIONER DEASON: Any preliminary
18 matters?

19 MS. BROWN: There are no preliminary matters
20 that Staff is aware of, Commissioner Deason.

21 COMMISSIONER DEASON: Do any parties have
22 any preliminary matters? (No response.)

23 Very well. Then we will proceed in
24 reviewing the draft prehearing order. For the ease of
25 my own review, I'm going to be working from perhaps a

1 draft that is a day or two earlier because I have
2 notes written on that, but it is substantially the
3 same draft, I think, that all the parties have at this
4 point.

5 First of all, let me ask, is there anyone
6 here from Time Warner? (No response.)

7 MS. BROWN: I don't think so, Commissioner
8 Deason.

9 COMMISSIONER DEASON: Is Time Warner a
10 party?

11 MS. BROWN: They petitioned to intervene and
12 were granted intervention. I will call them as soon
13 as the prehearing conference is over and see what the
14 story is. They didn't file a prehearing statement.

15 COMMISSIONER DEASON: Okay. But they do
16 have party status at this point?

17 MS. BROWN: Yes. The Commission voted last
18 Tuesday to grant them party status.

19 COMMISSIONER DEASON: All right. We will
20 review the draft prehearing order beginning with Case
21 Background. Any questions or changes? (No response.)

22 Very well. Section 2, Procedure for
23 Handling Confidential Information. That's fairly
24 standard. (No response.)

25 Section 3, Prefiled Testimony and Exhibits.

1 (No response.)

2 Section 4, Order of Witnesses. (No
3 response.)

4 Section 5, Basic Positions. (No response.)

5 Section 6, Issues and Positions:

6 Issue No. 1. All parties are in agreement with the
7 wording of this issue; is that correct?

8 MR. EARLY: Gary Early for BellSouth BSE. I
9 just wanted to make sure -- and we have agreed to the
10 basic structure of the issues as presented here, but
11 in the conference that we had in which these issues
12 were put together, I just wanted to make sure that our
13 position -- the issues say it's in light of the
14 provisions of the Telecommunications Act of 1996. And
15 when this issue was put together we wanted to make
16 sure that our position -- that the Telecommunications
17 Act of 1996 does not directly affect the granting of
18 an ALEC certificate in this proceeding.

19 It remains our position that the granting or
20 denial of an ALEC certification in Florida is governed
21 solely by 364.337. This was put in, as I recall, as
22 kind of an overriding restatement of the law. But
23 it's our position that the elements of the
24 Telecommunications Act that deal with anticompetitive
25 behavior and that type of thing are not relevant to

1 the granting of a certificate, although they may be
2 relevant sometime after if there are allegations of
3 anticompetitive behavior.

4 **COMMISSIONER DEASON:** Well, I had a
5 discussion with Staff this morning about this very
6 thing, and the parties agreed to the wording of the
7 issue; but your position may perhaps need to be
8 clarified. Are you suggesting that you need to change
9 your position with this new wording?

10 **MR. EARLY:** Well, at this point I don't want
11 to change the language of the issue because it was
12 agreed to in our meeting, but I think --

13 **COMMISSIONER DEASON:** I'm talking about the
14 language of your position in response to the issue.

15 **MR. EARLY:** I think our position accurately
16 sets forth what our position is, is that it's
17 determined by 364.337.

18 **COMMISSIONER DEASON:** Do the parties wish to
19 address the inclusion of that terminology concerning
20 the federal act?

21 My concern is this, and I've discussed this
22 with Staff: If the parties agree with this wording,
23 fine, we can address it. That's not to be in any way
24 interpreted that by accepting this issue the
25 Commission agrees that the federal act has anything to

1 do with certification.

2 In fact, we can resolve it and it may be
3 that -- I don't know what the Commission's decision is
4 going to be, but it may be that we just decide that
5 according to 364, either a certificate is granted or
6 is not, and silent, or even perhaps say the
7 Telecommunications Act has nothing to do with state
8 certification.

9 **MR. NELSON:** And, Commissioner Deason,
10 that's consistent with the discussion the parties had.
11 We, MCI, does believe that there are provisions of the
12 Telecommunications Act that apply, but we did not
13 intend by including that in the issue to prejudge the
14 decision the Commission ultimately makes.

15 Obviously BSE is free to argue as they do
16 that it has no application at all, and I think that's
17 all fair game. At least it was my understanding that
18 that would all be fair game under this issue.

19 **COMMISSIONER DEASON:** Very well. And all
20 that can be fully explored within this wording.

21 **MR. EARLY:** Yeah, I think that's accurate.
22 We kept it as an issue because the parties other than
23 BellSouth BSE thought that it should be considered,
24 but we just wanted to make sure that when that
25 language went in that it wasn't construed as an

1 admission by BellSouth BSE that that was -- that we
2 were acquiescing to those types of considerations.

3 **COMMISSIONER DEASON:** The parties may need
4 to think about which court -- if there's an appeal as
5 a result of a decision in this case, which court does
6 it go to. If you say that both acts apply and you
7 can't do it one without the other, do you file
8 simultaneous appeals in state and federal court? I
9 mean, you may want to think about it. I don't know
10 the answer to that, but it's just one thing I was
11 thinking about when I was reviewing it.

12 Any changes to the positions in response to
13 Issue 1? (No response.)

14 Okay. Issue 2.

15 **MS. BROWN:** Commissioner Deason, you pointed
16 out to me that FCCA, AT&T, and MCI in the way we had
17 recorded their position, the last line of their
18 position prescribed "whole discounts". I think it
19 should be "wholesale," and I just wanted to point out
20 if there are any other little typos or scrivener's
21 errors that the parties see, they can let me know and
22 I'll fix it.

23 **COMMISSIONER DEASON:** Yes. I believe that
24 should be "wholesale discount". I read it as such,
25 even though the terminology is not totally correct.

1 And as Ms. Brown indicated, if there are any other
2 type similar corrections that need to be made, you can
3 just give those to her and she will be glad to
4 incorporate that.

5 Issue 2, likewise, there is the inclusion of
6 the reference to the Telecommunications Act. I would
7 assume that our previous discussion would apply here
8 as well.

9 MR. NELSON: Yes, sir.

10 MS. BROWN: Commissioner Deason, once again
11 let me put this one on the record, this correction.
12 And I apologize.

13 After "incumbent LEC" in the statement of
14 Issue 2, the issue should read "What conditions or
15 modifications, if any, should the Commission impose?"
16 That was left out.

17 MR. EARLY: Could you repeat that?

18 MS. BROWN: Sure. It's the same as the
19 issue that was incorporated in the order establishing
20 procedure. It should be "What conditions or
21 modifications, if any, should the Commission impose?"

22 COMMISSIONER DEASON: And the way I read
23 this, Issue 1 strictly is "Should a certificate be
24 granted?" And Issue 2 is "If there is one, should
25 there be any conditions, and if so, what are they?"

1 In a nutshell, that's what we're tryin' to accomplish.

2 Any changes or corrections to the positions
3 on Issue 2? We now have additional proposed issues.
4 We'll begin with BellSouth's issues. There are a
5 series of three here which address managerial,
6 technical and financial capability. Mr. Early?

7 MR. EARLY: BellSouth BSE believes that
8 these are the issues that should be for consideration
9 by the Commission, but to the extent that they can be
10 considered as part of Issue 1, then we don't have any
11 objection to their being rolled in.

12 COMMISSIONER DEASON: Well, my question
13 is -- and I guess I'll address this to the other
14 parties -- are these matters really at issue with any
15 party?

16 MR. McGLATHLIN: Commissioner, we don't
17 dispute the expertise. What we contend is that the
18 expertise is derivative of BellSouth and would be
19 perceived as such. So I tend to agree with Staff that
20 these additional issues can be addressed with Issues 1
21 and 2. That would be our position.

22 If this is broken out, we would say that the
23 Commission should more or less pierce the corporate
24 veil and recognize that any expertise or funding that
25 BSE has is also BellSouth's, and it all comes part and

1 parcel to the same basic contention.

2 If BSE is offering to roll those in '0 1 and
3 2, I think I would be in a position to do the same
4 with respect to the additional issue I have in here.

5 **COMMISSIONER DEASON:** And that issue --
6 okay. This is FCCA's issue--

7 **MR. McGLOTHLIN:** We saw that as a separate
8 stand-alone question of law, but I don't disagree that
9 it could be addressed within the framework of the
10 general issues.

11 **COMMISSIONER DEASON:** Is there any
12 objection, then, to excluding these issues, the three
13 issues proposed by BellSouth on technical, financial,
14 and managerial, as well as the FCCA position, all with
15 the understanding that the subject matter is subsumed
16 within the two previous issues?

17 **MR. EARLY:** No objection.

18 **MS. BROWN:** Staff has no objection to that.
19 We still have the question of laws proposed by
20 BellSouth. I have this identified in the later draft
21 of the prehearing order, Commissioner, on Page 10 as
22 Issue C, and then there is also an Issue D.

23 Staff believes that both of these issues can
24 also be addressed in the Issue 1 and Issue 2.

25 **COMMISSIONER DEASON:** Mr. Early?

1 **MR. EARLY:** Again, Issue C relates directly
2 to the fact that there doesn't appear to be a
3 significant dispute that BellSouth BSE has the
4 managerial, financial, and technical capability to act
5 as an ILEC; and to the extent that that is adequately
6 covered in Issue 1, Issue 1 does reference back to
7 364.337. We would have no objection to their being
8 taken up in Issue 1 in that context. I think the same
9 with Issue D.

10 **COMMISSIONER DEASON:** Okay.

11 **MR. EARLY:** Issue D, I guess, would be more
12 related to Issue 2.

13 **COMMISSIONER DEASON:** Any objection, then,
14 with the deletion of the two proposed issues of
15 questions of law, with the understanding that to the
16 extent necessary they can be addressed within Issues 1
17 and 2?

18 **MR. NELSON:** No objection.

19 **COMMISSIONER DEASON:** No objection. Staff
20 has no objection?

21 **MS. BROWN:** No objection.

22 **COMMISSIONER DEASON:** Very well. That then
23 concludes the discussion of all proposed issues,
24 correct?

25 **MS. BROWN:** That's correct.

1 **COMMISSIONER DEASON:** Then we can proceed to
2 Section 7, Exhibit List. Any questions or changes?
3 (No response.)

4 Section 8, Proposed Stipulations. There are
5 none. And Section 9, Pending Motions, and it's my
6 understanding there's nothing pending at this time.

7 **MR. MCGLOTHLIN:** That may be correct,
8 Commissioner. If it's appropriate, I'd like to ask
9 permission for FCCA and for parties to make brief
10 opening statements at the outset of the hearing.

11 **COMMISSIONER DEASON:** Any objection to brief
12 opening statements? (No response.)

13 What is an appropriate time period,
14 Mr. McGlothlin?

15 **MR. MCGLOTHLIN:** Five minutes would serve
16 me.

17 **COMMISSIONER DEASON:** Any objection, then,
18 to a five-minute limitation on opening statements?
19 (No response.)

20 Okay. Please reflect that so the presiding
21 officer at the hearing will know that opening
22 statements are contemplated and that there's a
23 five-minute limit on those statements.

24 **MS. BROWN:** We will, Commissioner. There is
25 one more matter that I would like to bring up.

1 MR. EARLY: If I could have --

2 MS. BROWN: I'm sorry. Go ahead.

3 MR. EARLY: If I could have a question
4 related to that last ruling. Is it each party
5 individually will be allowed an opening statement? I
6 know that FCCA, MCI and -- I don't recall -- anyway,
7 we have three parties that have filed testimony
8 jointly, and they appear to be proceeding through this
9 as a -- jointly. Was that a single opening argument
10 of five minutes, or is it going to be each --

11 COMMISSIONER DEASON: Mr. McGlothlin?

12 MR. MCGLOTHLIN: It wasn't intended to be.
13 We've tried to consolidate some things for convenience
14 and to facilitate things, but we've always maintained
15 our separate intervention status.

16 COMMISSIONER DEASON: I think they would
17 have the ability to have five minutes per individual
18 party, but I would certainly request that the parties
19 not be repetitious. The Commission has a limited
20 amount of time, and to the extent one person's
21 argument captures all the others, it's okay to say, I
22 agree with Mr. Smith and just move on.

23 MS. BROWN: Commissioner Deason,
24 BellSouth BSE filed rebuttal testimony in this case.
25 That's correct; isn't it Mr. Early?

1 **MR. EARLY:** Yes.

2 **MS. BROWN:** I don't know how the parties
3 feel about handling direct and rebuttal testimony at
4 the same time at the hearing. It would be all right
5 with Staff if BellSouth would like to do that.

6 **COMMISSIONER DEASON:** Mr. Gillan has both
7 direct and rebuttal testimony?

8 **MR. EARLY:** Mr. Scheye.

9 **COMMISSIONER DEASON:** I'm sorry; Mr. Scheye
10 has both direct and rebuttal. Is there a purpose as
11 to having that done simultaneously or to having it
12 broken out separately?

13 **MR. EARLY:** I think it's -- from
14 BellSouth BSE's perspective, it's a pretty simple
15 issue. And although I suppose if there are issues
16 taken up in Mr. Gillan's testimony that relate to the
17 potential for anticompetitive behavior and that
18 testimony is accepted over a relevancy or materiality
19 objection, then we would want to have the opportunity
20 to produce Mr. Scheye for rebuttal.

21 **COMMISSIONER DEASON:** We don't have an
22 overabundant number of witnesses, and so let's just
23 for sake of clarity we'll have Mr. Scheye retake the
24 stand and do his rebuttal testimony.

25 **MS. BROWN:** All right.

1 **MR. McGLOTHLIN:** Mr. Deason, I have one more
2 item, and it requires some clarification by both the
3 Commission and BSE. The prehearing order required
4 that discovery be completed by April 13th.

5 Both FCCA and Staff filed some
6 interrogatories prior to the 13th, but the answers
7 weren't due until afterwards. BSE has responded to
8 Staff. At this point they have not responded to FCCA.
9 I think the answers were to fall due on the 20th and I
10 ask whether Mr. Early's client intends to respond to
11 our questions.

12 **MR. EARLY:** We did respond -- you did get
13 our response to your first interrogatories, didn't
14 you?

15 **MR. McGLOTHLIN:** Yes.

16 **MR. EARLY:** And we have an additional set of
17 interrogatories, and it's our intent to answer them.

18 **COMMISSIONER DEASON:** Very well.

19 **MR. EARLY:** I think I calculated the 19th or
20 the 20th, but you'll get them.

21 **MR. McGLOTHLIN:** Okay. Very good.

22 **COMMISSIONER DEASON:** Any other matters?

23 **MS. BROWN:** Not that Staff is aware of,
24 Commissioner.

25 **COMMISSIONER DEASON:** Very well. Thank you

1 all. This prehearing conference is adjourned.

2 (Thereupon, the hearing concluded at

3 9:55 a.m.)

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1 STATE OF FLORIDA)

2 COUNTY OF LEON)

CERTIFICATE OF REPORTER


3 I, H. RUTHE POTAMI, CSR, RPR Official
4 Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing
6 Conference in Docket No. 971056-TX was heard by the
7 Prehearing Officer at the time and place herein
8 stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 19 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 13th day of April, 1998.

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Official Commission Reporter
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