

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :
Application for certificate :
to provide alternative local :
exchange telecommunications :
service by BellSouth BSE, Inc. :

DOCKET NO. 971056-TX



VOLUME 1
Pages 1 through 144

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JOE GARCIA
COMMISSIONER E. LEON JACOBS, JR.

DATE: Monday, April 27, 1998

TIME: Commenced at 1:00 p.m.
Concluded at 5:10 p.m.

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

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting

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1 **APPEARANCES:**

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

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

10 **MARSHA RULE**, AT&T Communications of the
11 Southern States, Inc., 106 East College Avenue, Suite
12 1410, Tallahassee, Florida 32301-1509, appearing on
13 behalf of AT&T Communications of the Southern States,
14 Inc.

15 **THOMAS K. BOND**, 780 Johnson Ferry Road,
16 Suite 700, Atlanta, Georgia 30342, appearing on behalf
17 of MCI Metro Access Transmission Services, Inc.

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

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1 APPEARANCES CONTINUED:

2 GARY EARLY, Akerman, Senterfitt & Edison, P.A.
3 216 South Monroe Street, Suite 200, Tallahassee,
4 Florida 32301, and HARRY M. LIGHTSEY, III,
5 General Counsel, BSE, Inc., 2727 Paces Ferry Road, Atlanta,
6 Georgia 30339-4053, appearing on behalf of BellSouth BSE, Inc.

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I N D E X

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P R O C E E D I N G S

1 (Hearing convened at 1:05 p.m.)

2 CHAIRMAN JOHNSON: We're going to go on the
3 record. Counsel, could you read the notice?

4 MS. BEDELL: Pursuant to notice issued
5 February 27, 1998, this date and place were set for
6 hearing in Docket No. 971056-TX in re: Application
7 for certificate to provide alternative local exchange
8 telecommunication service by BellSouth BSE, Inc. The
9 purpose of this hearing is set forth in the notice.

10 CHAIRMAN JOHNSON: We'll take appearances.

11 MR. EARLY: For BellSouth BSE, Inc. I'm Gary
12 Early with the firm of Akerman, Senterfitt and Edison.

13 MR. LIGHTSEY: Harry M. Lightsey, III,
14 General Counsel of BellSouth BSE, Inc.

15 MR. MCGLOTHLIN: Joe McGlothlin, 117 South
16 Gadsden Street, Tallahassee, for the Florida
17 Competitive Carriers Association.

18 MR. BOND: Tom Bond on behalf of MCI
19 Telecommunications Corporation.

20 MS. RULE: Marsha Rule on behalf of AT&T.

21 MR. ELLIS: For Teleport Communications
22 Group, John Ellis with the law firm of Rutledge,
23 Ecenia, Underwood, Purnell & Hoffman, and Ken Hoffman.

24 MS. BEDELL: Catherine Bedell for Public
25 Service Commission Staff.

1 **CHAIRMAN JOHNSON:** Counsel, any preliminary
2 matters?

3 **MS. BEDELL:** Staff has passed out to
4 everyone an Official Recognition List, and as it is a
5 little bit long I was wondering if the Chairman would
6 like to enter it in as an exhibit?

7 **CHAIRMAN JOHNSON:** Okay. We'll mark that as
8 Exhibit 1. Staff Official Recognition List. And all
9 of the parties are aware of the documents to which
10 you're requesting official recognition?

11 **MS. BEDELL:** Yes. They all have copies.

12 **CHAIRMAN JOHNSON:** And there are no
13 objections? Seeing none, then we'll go ahead and
14 admit that into the record at this time.

15 **MS. BEDELL:** Thank you.

16 (Exhibit 1 marked for identification and
17 received in evidence.)

18 **MR. EARLY:** BellSouth BSE, Inc. will ask the
19 Commission to take official recognition of the
20 documents that are referred to in our witness's
21 testimony, consisting of the orders of the various
22 other Public Service Commissions in other states
23 dealing with certification. And I thought that we
24 would do that at the close of this testimony. And I
25 do have copies for everybody at the proceeding, and

1 I've informed counsel.

2 CHAIRMAN JOHNSON: Very well. Any other
3 preliminary matters?

4 MR. MCGLOTHLIN: Chairman Johnson, at the
5 earlier stage of this proceeding, FCC attached to one
6 of its pleadings a copy of a Texas order involving the
7 application by a subsidiary of GTE. We would ask that
8 the Commission take official notice of that decision.

9 CHAIRMAN JOHNSON: I'm sorry. What was
10 that?

11 MR. MCGLOTHLIN: We would ask that the
12 Commission take official recognition of that Texas
13 decision involving the GTE subsidiary.

14 CHAIRMAN JOHNSON: At this time?

15 MR. MCGLOTHLIN: Yes, ma'am. The parties
16 have copies.

17 CHAIRMAN JOHNSON: The parties all have
18 copies of the particular documents. Any objections?
19 Seeing none, we'll take official recognition of the
20 Texas -- do you have a cite for that?

21 MR. MCGLOTHLIN: I think find it before the
22 hearing is over.

23 CHAIRMAN JOHNSON: Okay. Then we'll make
24 sure that's clarified for the record.

25 Any other preliminary matters? Seeing none,

1 the witnesses -- I believe we have two, if you could
2 stand I'll swear you in at this time.

3 (Witnesses sworn.)

4 Thank you. You may be seated. I believe
5 BellSouth, you are to go first.

6 MR. EARLY: Right. Is this the appropriate
7 time to take opening statements?

8 CHAIRMAN JOHNSON: Oh, did we have opening
9 statements? Sorry. Did we limit them? To five
10 minutes. Okay. Mr. Early then.

11 MR. EARLY: I'm going to defer to
12 Mr. Lightsey for BellSouth BSE opening statements.

13 MR. LIGHTSEY: Thank you, Commissioner
14 Johnson, and members of the Commission.

15 It is beyond dispute that BellSouth BSE has
16 met all of the statutory requirements in Section
17 364.337(1) of Florida Statutes for certification as an
18 ALEC in the state of Florida. That is why you voted
19 on October 7th, 1997, to approve the certification of
20 BellSouth BSE. And by conceding that BellSouth BSE is
21 qualified as an ALEC outside the operating territory
22 of BellSouth Telecommunications, intervenors and
23 petitioners, in essence, concede these issues as well.

24 We are here today because BellSouth
25 Corporation has chosen to attempt to create BellSouth

1 BSE, Inc. in a manner that will allow it to compete on
2 a level playing field with all of the intervenors and
3 petitioners. BellSouth BSE will attempt to use this
4 capability to create packages of services and
5 geographic coverage that we believe customers, both
6 residential and business, want.

7 Intervenors and petitioners cannot point
8 this Commission to a single statute, rule or
9 regulation that prevents BellSouth BSE from operating
10 as it has stated that it will to provide these
11 services. Instead, intervenors and petitioners ask
12 this Commission to deny BellSouth BSE the opportunity
13 to provide these services because, one, in their
14 opinion, if certified, BellSouth BSE may attempt to
15 engage in anticompetitive activities. And two, in
16 their opinion, customers may be confused because
17 BellSouth BSE will, as a subsidiary of BellSouth
18 Corporation, be entitled to use the name "BellSouth."

19 Taking each of these issues briefly, with
20 regard to anticompetitive activity let me say first
21 that BellSouth BSE has no intention, and today will
22 provide you with sworn testimony, that it has no
23 intention to engage in any anticompetitive activities.

24 Intervenors and petitioners allege that
25 BellSouth BSE has the opportunity to engage in these

1 anticompetitive activities, but in order for you, the
2 Commission, to find that it does, and to deny
3 BellSouth BSE the opportunity to provide services,
4 would, one, require this Commission to believe that
5 BellSouth BSE would blatantly violate numerous
6 provisions of Florida and federal law, thus risking
7 its certification; the opportunity for BellSouth
8 Corporation to provide long distance services in the
9 state of Florida, and the substantial economic stake
10 that BellSouth Corporation has in the state of
11 Florida.

12 And two, that there's nothing that this
13 Commission, the FCC, the Florida Attorney General or
14 anyone else, for that matter, could do to stop such
15 anticompetitive activity from taking place.

16 The FCC and 21 other state Public Service
17 Commissions that have considered these issues have
18 found these arguments to be speculative and
19 unpersuasive, and, indeed, they are.

20 With regard to the use of the BellSouth
21 brand, let me say that we do not believe that
22 customers will be confused. Today customers have
23 shown that they can distinguish between services
24 offered by BellSouth Mobility, BellSouth Long
25 Distance, BellSouth Entertainment and BellSouth

1 Telecommunications.

2 In order to switch to BellSouth BSE a
3 customer must understand that they wish to purchase a
4 service offering of BellSouth BSE and call us, not
5 BellSouth Telecommunications. Our customer contact
6 personnel must process the customer service request,
7 identifying who we are and using the same operating
8 systems as all other ALECs, which means we will have
9 to obtain and confirm all information from the
10 customer in compliance with all federal and state CP&I
11 rules.

12 The customer will likely receive a welcome
13 package from BellSouth BSE, and will receive a final
14 bill from BellSouth Telecommunications, just as they
15 would when they were switching to any other ALEC.
16 After beginning service, any billing problems or
17 service problems will be handled by BellSouth BSE. We
18 do not believe that with all these and other
19 safeguards in place there will be customer confusion.

20 In summary, we ask this Commission to reject
21 this matter as a thinly veiled attempt to preempt or
22 slow roll a substantial competitor from entering the
23 marketplace and approve BellSouth BSE's application.
24 Thank you.

25 **CHAIRMAN JOHNSON:** Mr. McGlothlin.

1 MR. McGLOTHLIN: Commissioners, in getting
2 ready for this hearing a childhood memory came to
3 mind.

4 It's Halloween night. There's a knock on
5 the door. My parents opened it and there were four,
6 five figures standing there all in costumes and masks
7 saying "Trick or treat." And they receive a candy.
8 The door was closed.

9 A few minutes later there's another knock on
10 the door. We opened it, and there's another chorus of
11 "Trick or treat." And although some things had been
12 rearranged, there's something very familiar about the
13 figures who stood there.

14 Well, the third time we got a knock, and the
15 door opened and we heard "Trick or treat," my mom and
16 dad said, "Well, we're going to draw the line here. We
17 can tell that you have been here twice before and you
18 have had your limit, so no more."

19 There's some of that going on in this
20 application. You're very much aware that BellSouth
21 ILEC provides local service, and now you know that
22 there's a BellSouth Telecommunications ALEC that also
23 has authority to offer local service, and now here
24 comes BellSouth BSE also wanting a certificate to
25 offer local service, and someone has to be asking how

1 many BellSouth's does it take to offer local service
2 in Florida?

3 The one difference is that with respect to
4 BellSouth BSE there's no contention that there's
5 anything different about them. As a matter of fact,
6 they are trying to make a case that they are
7 BellSouth. They are going to use the same name. They
8 acknowledge that their management expertise is in the
9 form of people who came from BellSouth companies.
10 Their source of capital is the same source of capital
11 that provides BellSouth Telecommunications. By design
12 they hope that the customer will associate BellSouth
13 BSE with the same BellSouth they've dealt with before.

14 Why should you care? Because federal and
15 state laws impose some requirements on BellSouth
16 Telecommunications, the ILEC, that BellSouth should
17 not be able to avoid by the expedient of a separate
18 corporate subsidiary.

19 One example of the type of requirement that
20 they would be able to avoid, if they get the
21 certificate in the form they ask, is addressed by
22 Mr. Gillan, our witness, who identifies the resale
23 obligation imposed on the ILEC.

24 Very simply, the ILEC must offer a
25 prescribed discount to its competitors. If it tries

1 to lower its retail price, then the competing
2 discounted wholesale price also is lowered in tandem.
3 But that's not true -- would not be true of BellSouth,
4 the ALEC, because it would have no obligation to set
5 its price in any particular way and no obligation to
6 offer a discount.

7 Mr. Gillan is going to make two points about
8 that and I want you to listen very carefully. First
9 of all, he's going to describe how this arrangement,
10 if allowed, would ruin the viability of resale as a
11 competitive entry, a strategy in the Florida market.

12 Secondly, he's going to tell you that the
13 only reason that BellSouth BSE likes that approach is
14 because the economics of the resale option does not
15 apply to them. And if you have any questions or any
16 doubts about the -- either of those points, I hope
17 you'll put the questions to him and ask him about it
18 because he is prepared to explain those positions to
19 you.

20 What can you do? Well, we first offer that
21 you should go as Texas did: Recognize that this
22 BellSouth BSE is a legal fiction; that it is BellSouth
23 Telecommunications' alter ego, and deny their request
24 to perform local service in BellSouth
25 Telecommunications ILEC service area.

1 If, for some reason, you feel constrained to
2 give them a certificate, at a minimum impose on them
3 the same conditions that the ILEC must observe under
4 Sections 251 and 252 of the Federal Act. You've
5 already imposed on them conditions regarding the
6 quality or standard of 911 service that was not
7 explicit in the statute. You've already told the
8 BellSouth Long Distance subsidiary that it can not
9 have authority to go into originating interLATA
10 authority until BellSouth has that authority.

11 It's only an extension of the same logic
12 that we ask you to take the measures necessary to
13 ensure that the implementation of the '96 Act occurs
14 as intended by Congress in Florida. Thank you.

15 MR. BOND: Good afternoon. Tom Bond on
16 behalf of the MCI.

17 The purpose of both the state and federal
18 telecommunications acts are to promote competition.
19 They are designed in large part to prevent incumbents
20 from abusing their monopoly power so that new entrants
21 can come into the market.

22 Under the BellSouth proposal, BSE would have
23 all of the benefits of that market power with none of
24 the restrictions. As Mr. McGlothlin discussed, they
25 want to keep the brand name, they want to keep the

1 logo. They're going to get financing in human capital
2 from BellSouth. But they don't want the restrictions
3 of being required to provide UNEs to their competitors
4 or being required to resell to competitors at a set
5 discount.

6 I'm going to talk in particular now about the
7 resale discount. ILECs under the federal act are
8 required to resell at an avoided cost discount. ALECs
9 and CLECs are not.

10 Since the wholesale rate is a discount off
11 the ILEC's retail price, new entrants using resale can
12 not exert competitive pressure on that wholesale rate.
13 As the incumbent's retail rate goes up, the wholesale
14 rate goes up. As the incumbent's resale rate goes
15 down, the new entrant's wholesale rate goes down.

16 If BSE is allowed to resell in ILEC
17 territory, the ALEC still would not be able to
18 influence that wholesale rate. But the wholesale rate
19 will not be linked to BSE's retail rate. Thus, ALECs
20 are subject to a price squeeze.

21 BSE would be able to keep competitors out of
22 the market by selling at a price that merely covers
23 its cost, while BellSouth continues to make profit off
24 of its retail and wholesale services. And just to lay
25 out an example, assuming that BellSouth's current

1 resale rate was \$10, with a 20% discount, that would
2 make a wholesale rate of \$8. Thus giving new entrants
3 a \$2 margin to come in and try to cover their own
4 costs and compete against BellSouth.

5 If BellSouth lowers that retail rate to \$9,
6 there would still be a 20% discount off of that \$9,
7 and a wholesale rate of \$7.20. So you would have a
8 proportionately different margin of \$1.80, against
9 which competitors would compete.

10 However, under the BSE scenario, if BST
11 still had the \$10 rate, with the 20% discount, the
12 wholesale rate would be \$8. If BSE came in and sold
13 that same service for \$9, the wholesale rate would
14 remain \$8. Thus, the margin at which CLECs compete
15 against is reduced in half to \$1.

16 If BellSouth is allowed to resell, the
17 wholesale rate will never decrease. Under the Act's
18 design, as I think it was intended to function, as an
19 ALEC -- as an ILEC faces competitive pressure from
20 facilities and UNEs, it lowers its own retail rate to
21 meet that competitive challenge. Thus, the wholesale
22 rate decreases too. With BSE, Bell would never have
23 any incentive to lower its retail rates. BSE could
24 selectively target those customers that could move to
25 competitors and the rates for all remaining customers

1 would never go down.

2 And since I believe one of the primary
3 purposes of the Act was to bring competition to all
4 competitors, MCI believes that BSE as an entrant would
5 defeat the purpose of the Act. Thank you.

6 MS. RULE: Commissioners, Marsha Rule for
7 AT&T. And I hope to be brief.

8 I'd like to reiterate what we're asking you
9 to do here today. We're not asking you to deny
10 certification to BellSouth BSE. Instead, we're asking
11 you to limit their operating authority to areas of the
12 state in which BellSouth Telecommunications is not the
13 incumbent ILEC. Now, this request raises two issues
14 of a legal nature.

15 First, do you have the authority to do that?
16 And second, is it in the public interest that you do
17 that? And the answer to both questions is yes.

18 First is to your authority. Under Section
19 364.3353(3) you have the authority to grant a
20 certificate, in whole or in part, or to grant it with
21 modifications in the public interest.

22 You could look at this as a granting of the
23 certificate in part, or you could look at it as a
24 modification of the certificate. Either way, you have
25 the authority to limit BellSouth BSE's operating

1 territory to non-ILEC areas.

2 And the second question, is it in the public
3 interest? I would suggest that it certainly is in the
4 public interest to place this simple geographic
5 limitation upon BellSouth BSE.

6 First of all, it's the only method that will
7 completely resolve the anticompetitive economic
8 incentives that Mr. Bond just discussed, and
9 Mr. Gillan will discuss further in his testimony.

10 But more importantly, BellSouth BSE says it
11 merely wants to compete on a level playing field. And
12 I would submit to you there's no level playing field
13 where BellSouth BSE is attempting sham competition
14 against a sister company, where it has an economic
15 structure that no competitor can ever hope to meet.
16 You don't have to impute bad motives to BellSouth BSE
17 to understand that this situation is anticompetitive
18 by nature.

19 Therefore, it is in the public interest that
20 you limit the certification accordingly. Thank you.

21 MR. ELLIS: Thank you. On behalf of
22 Teleport we would echo AT&T's comments and say that
23 Section 364.335 of the Florida Statutes, which sets
24 forth requirements for any and all applicants for a
25 certificate of necessity to provide telecommunication

1 services to the public applies to BellSouth BSE's
2 application for a certificate, for an ALEC
3 certificate, under Section 364.337.

4 Subsection D(3) provides that the Commission
5 may grant a certificate, in whole or in part, with
6 modifications in the public interest. And both
7 Subsection D(3) and Subsection 2 of Section 364.337
8 concerning certification of alternative local exchange
9 telecommunications company requires the Commission to
10 look to the public interest considerations set forth
11 in Section 364.01 in determining whether to limit or
12 modify an ALEC certificate.

13 These public interest considerations include
14 ensuring that all providers of telecommunication
15 service are treated fairly by preventing
16 anticompetitive behavior, and by promoting
17 competition -- and promoting competition by
18 encouraging new entrants into telecommunications
19 markets.

20 Commissioners, BellSouth BSE is a new
21 entrant in name only in the market for local exchange
22 telecommunications, served by its affiliate BellSouth
23 Telecommunications. And in that market BellSouth
24 BSE's apparent purpose is to compete not against
25 BellSouth Telecommunications, but against legitimate

1 new entrants, for the benefit of the mutual parent,
2 which is BellSouth Corporation.

3 The Commission should exercise its exclusive
4 jurisdiction under Chapter 364 to limit or modify
5 BellSouth BSE's ALEC certificate; to reduce the
6 opportunity for anticompetitive behavior, and to
7 promote competition by encouraging legitimate new
8 entrants in the market for local exchange carrier
9 services. Thank you.

10 **CHAIRMAN JOHNSON:** Thank you. I think then
11 we're ready for the first witness.

12 **MR. EARLY:** On behalf of BellSouth BSE, Inc.
13 we call Robert C. Scheye.

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1 **ROBERT C. SCHEYE**

2 was called as a witness on behalf of BellSouth BSE,
3 Inc. and, having been duly sworn, testified as
4 follows:

5 **DIRECT EXAMINATION**

6 **BY MR. EARLY:**

7 Q Would you state your full name and address,
8 please?

9 A Robert C. Scheye, 2727 Paces Ferry Road,
10 Atlanta, Georgia 30339.

11 Q Mr. Scheye, by whom are you employed?

12 A BellSouth BSE, Incorporated.

13 Q And on behalf the BellSouth BSE,
14 Incorporated, have you filed direct testimony in
15 matter?

16 A Yes.

17 Q Do you have any additions or corrections to
18 the testimony that you've prefiled?

19 A No, I don't. Those were -- any changes were
20 reflected in my rebuttal testimony.

21 Q Did your testimony utilize exhibits?

22 A Yes.

23 Q And were you involved in the preparing of
24 those exhibits?

25 A Yes.

1 **MR. EARLY:** I would like to have
2 Mr. Scheye's Exhibits 1 and 2 to his prefiled direct
3 testimony marked, and I would move Mr. Scheye's
4 testimony and the exhibit into evidence at this time.

5 **CHAIRMAN JOHNSON:** I'll mark Scheye's
6 exhibits as a composite exhibit, consisting of "CLECs
7 Approved in Affiliate's ILEC Territory," and a drawing
8 of the CLECs Approved in Affiliate's ILEC Territory.
9 That will be Composite Exhibit 2, and we will -- did
10 you ask for this to be inserted into the record?

11 **MR. EARLY:** Yes.

12 **CHAIRMAN JOHNSON:** It will be so inserted.

13 (Exhibit 1 marked for identification.)
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