

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of	:	DOCKET NO. 980918-TC
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<b>Application for certificate:</b>	:	
<b>to provide pay telephone</b>	:	
<b>service by Florida</b>	:	
<b>BillSouth Telephone</b>	:	
<b>Company.</b>	:	

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**PROCEEDINGS:            PREHEARING CONFERENCE**

**BEFORE:                    COMMISSIONER JULIA L. JOHNSON**  
Prehearing Officer

**DATE:                      Friday, March 5, 1999**

**TIME:                      Commenced at 9:45 a.m.**  
Concluded at 10:00 a.m.

**PLACE:                     Betty Easley Conference Center**  
Room 152  
4075 Esplanade Way  
Tallahassee, Florida

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

DOCUMENT NUMBER - DATE  
**03082 MAR 10 99**  
FPSC-RECORDS/REPORTING

1     **APPEARANCES:**

2                     **MICHAEL P. GOGGIN**, BellSouth  
3     Telecommunications, Inc., c/o Nancy Sims, 150 South  
4     Monroe Street, Suite 400, Tallahassee, Florida 32301,  
5     appearing on behalf of **BellSouth Telecommunications,**  
6     **Inc.**

7                     **JAVIER PELLETIER**, 12791 S. W. 8th Terrace,  
8     Miami, Florida 33184-224, appearing on behalf of  
9     **Florida BellSouth Telephone Company.**

10                    **CLINTINA B. WATTS**, Florida Public Service  
11     Commission, Division of Legal Services, 2540 Shumard  
12     Oak Boulevard, Tallahassee, Florida 32399-0870,  
13     appearing on behalf of the **Commission Staff.**

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1 conference, I'm Julia Johnson. I'm the prehearing  
2 officer on this matter.

3 The purpose of the prehearing conference is  
4 as stated in the draft order, and I know you all have  
5 had an opportunity to discuss the prehearing, the  
6 conference, the order, and what we're trying to  
7 accomplish here today.

8 If you have any questions, if you could  
9 raise your hand, because I can't see you, I'll be able  
10 to entertain those as we go through the course of the  
11 prehearing order.

12 Are there any preliminary matters?

13 **MS. WATTS:** Just a couple, Commissioner.  
14 First, on the draft prehearing, Nancy White was listed  
15 for representation of BellSouth, and we need to  
16 correct that to put Mr. Goggin as counsel for  
17 BellSouth.

18 And, in addition, there's one regarding  
19 witnesses. I don't know if you want to handle that  
20 when we go through the prehearing order or if we  
21 should address it now.

22 **COMMISSIONER JOHNSON:** Okay. We'll address  
23 it when we get to that issue.

24 **MS. WATTS:** Okay.

25 **COMMISSIONER JOHNSON:** Everyone has had the

1 benefit and the opportunity to review the prehearing  
2 order, so what I'll do is just go page by page, and to  
3 the extent that there is a correction or an addition  
4 that we need to make, I'll entertain that at the  
5 appropriate time.

6 Page 1 is pretty preliminary information,  
7 but it does start to go into the case background. Any  
8 changes on Page 1 other than the ones stated by  
9 Ms. Watts? (No response.)

10 Page 2? (No response.) Page 3? (No  
11 response.) Page 4? (No response.)

12 Now, on Page 5 we have the two witnesses  
13 stated in the order of witnesses here. Were there  
14 questions with respect to that page?

15 **MS. WATTS:** Yes, Commissioner Johnson. In  
16 Florida Billsouth's prehearing statement, they listed  
17 the public of Dade County as a witness. Pursuant to  
18 the order establishing procedure, there is no prefiled  
19 testimony from customers in Dade County; and the order  
20 establishing procedure says that if there's no  
21 prefiled testimony, that those witnesses cannot be  
22 sponsored.

23 **COMMISSIONER JOHNSON:** So then we have two  
24 witnesses stated; one for Florida Billsouth, and one  
25 witness for BellSouth. Any objections to that? Any

1 questions?

2           And sir, I'm assuming, then, you understand  
3 that what was listed in your prehearing statement as  
4 the public of Dade County, that they will not be  
5 participants in the actual hearing.

6           **MR. PELLETIER:** Yes, ma'am.

7           **COMMISSIONER JOHNSON:** And that we will just  
8 have the two witnesses.

9           **MR. PELLETIER:** Okay.

10          **COMMISSIONER JOHNSON:** Thank you, sir.

11          The basic positions of the parties; any  
12 changes or corrections there?

13          **MS. WATTS:** No.

14          **MR. PELLETIER:** No.

15          **COMMISSIONER JOHNSON:** Okay then. Page 6,  
16 statement of issues, exhibit list, stipulations or  
17 pending motions? (No response.) No changes on  
18 Page 6.

19          Page 7; since there were no pending motions  
20 I guess we have nothing to rule upon.

21          Any other changes or revisions to the draft  
22 prehearing order? Any other matters to be brought to  
23 my attention this morning?

24          **MS. WATTS:** None that we know of.

25          **COMMISSIONER JOHNSON:** Well, that was an

1 easy one. With that, then, we'll show the prehearing  
2 conference adjourned. And how long do you think it  
3 will be before we have the prehearing order prepared  
4 and ready for distribution?

5 **MS. WATTS:** It should be ready this  
6 afternoon. The parties should receive it no later  
7 than Monday by the close of business.

8 **COMMISSIONER JOHNSON:** Very good. Anything  
9 else to come before my attention today? (No  
10 response.)

11 Seeing nothing, this prehearing conference  
12 is adjourned. Thank you very much.

13 **MS. WATTS:** Commissioner Johnson, if we can  
14 note when the date of the hearing is again. It's  
15 March 17th, and it's going to be a full Commission  
16 hearing.

17 **COMMISSIONER JOHNSON:** Okay. Was everyone  
18 aware that the hearing will be held on March 17th and  
19 it's going to be the full Commission?

20 **MR. PELLETIER:** Yes.

21 **COMMISSIONER JOHNSON:** Now, was there any  
22 request for opening statements or anything?

23 **MS. WATTS:** No.

24 **COMMISSIONER JOHNSON:** Sir?

25 **MR. PELLETIER:** No.

1                   **COMMISSIONER JOHNSON:** Could you turn on  
2 your microphone?

3                   **MR. GOGGIN:** I'm sorry. This is Michael  
4 Goggin, BellSouth. BellSouth would like to make an  
5 opening statement.

6                   **COMMISSIONER JOHNSON:** Okay. And I'll allow  
7 both sides to make an opening statements limiting  
8 those to five minutes.

9                   And, sir, for your benefit, the opening  
10 statement will be the opportunity for you to explain,  
11 or for counsel -- and I guess you're going to  
12 represent yourself -- to explain the case and your  
13 position and what evidence you're going to present to  
14 the Commission for their consideration.

15                   So with that in mind, if you have any  
16 questions as to what this opening statement should be  
17 or how you can draft that, I'm sure that Staff can  
18 provide you with that information and then you can  
19 craft it, your statement, as you so see fit. But,  
20 again, I will limit those opening statements to no  
21 more than five minutes. But let the order reflect  
22 that we will allow the opening statements.

23                   Anything else? (No response.)

24                   Show the prehearing conference adjourned.

25 Thank you much.

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(Thereupon, the hearing concluded at 10:00

a.m.)

1 STATE OF FLORIDA)  
2 COUNTY OF LEON )

CERTIFICATE OF REPORTER

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

5 DO HEREBY CERTIFY that the Prehearing  
6 Conference in Docket No. 980918-TC 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 by me; and that this transcript,  
12 consisting of 9 pages, constitutes a true  
13 transcription of my notes of said proceedings.

14 DATED this 9th day of March, 1999.

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H. RUTHE POTAMI, CSR, RPR  
Official Commission Reporter  
(904) 413-6734

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for certificate ) DOCKET NO. 980918-TC  
to provide pay telephone service by)  
Florida Billsouth Telephone Company )  
\_\_\_\_\_ )

PROCEEDINGS: HEARING  
BEFORE: CHAIRMAN JOE GARCIA  
COMMISSIONER SUSAN F. CLARK  
COMMISSIONER E. LEON JACOBS, JR.  
DATE: Monday, November 29, 1999  
TIME: Commenced at 1:30 p.m.  
Concluded at 1:45 p.m.  
PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida  
REPORTED BY: NANCY S. METZKE, RPR, CCR

C & N REPORTERS  
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APPEARANCES:

BETH KEATING, ESQUIRE, FPSC, 2540 Shumard Oak Boulevard,  
Tallahassee, Florida 32399-0850. On behalf of the  
Commissioner staff.

MICHAEL P. GOGGIN, ESQUIRE, 150 West Flagler Street,  
Suite 1910, Miami, Florida 33130. On behalf of  
BellSouth Telecommunications, Inc.

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I N D E X

WITNESSES

NAME	PAGE NO.
JAVIER PELLETIER	
Prefiled Direct Testimony Inserted . . .	7
SANDRA J. EVANS	
Prefiled Direct Testimony Inserted . . .	10

EXHIBITS

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NUMBER		ID.	ADMTD.
#1	West Palm Beach Post newspaper article and videotape . . . . .	19	19

## P R O C E E D I N G S

1  
2 CHAIRMAN GARCIA: All right. We're going to  
3 convene this hearing.

4 Counsel, will you please read the notice?

5 MS. KEATING: By notice issued November 15th,  
6 1999, this time and place have been set for a  
7 hearing in Docket 980918.

8 CHAIRMAN GARCIA: All right. We'll take  
9 appearances.

10 MR. GOGGIN: Commissioners, I'm Michael Goggin.  
11 I'm appearing for BellSouth Telecommunications.

12 CHAIRMAN GARCIA: Okay. The record will show  
13 that Mr. Pelletier is not here.

14 MS. KEATING: And Beth Keating for Commission  
15 staff.

16 CHAIRMAN GARCIA: Okay. Counsel, how do we  
17 proceed?

18 MS. KEATING: Well, in view of the fact that  
19 Mr. Pelletier is not here for the beginning of this  
20 proceeding, staff would recommend that we go ahead  
21 and insert Mr. Pelletier's testimony into the record  
22 with the understanding that it will be given the  
23 weight due in view of the fact that there is no  
24 opportunity for cross examination and then go ahead  
25 and proceed with BellSouth.

1           CHAIRMAN GARCIA: Mr. Goggin doesn't object to  
2 that though, right?

3           MS. KEATING: BellSouth could, of course,  
4 object; but that's our recommendation, is that it be  
5 given -- just simply given the weight that it's due.

6           MR. GOGGIN: We have no objection to that as  
7 long as we're permitted also to put evidence in the  
8 record. Thanks.

9           MS. KEATING: And then proceed with BellSouth's  
10 witness, and then if it's --

11           CHAIRMAN GARCIA: Mr. Goggin, there's no one to  
12 cross examine, so that witness's testimony will go  
13 into the record as it's there. Since they're not  
14 supposed to add anything, and only cross would  
15 elicit things that are new, then we'll also admit  
16 your evidence into the record.

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DOCKET No. 980918-TC.

99 FEB -5 11 1:35

Direct Testimony of

Javier, Pelletier

On Behalf of Florida Billsouth Telephone C.

Before the Florida Public Service Commission

Jan 29, 1999

Q. PLEASE STATE YOUR NAME, ADDRESS AND TITLE.

A. My name is Javier, pelletier. I am the President of FL. Billsouth Telephone C. My business address is 12910 SW 9th Street Miami, Florida. The name of my business is FLORIDA BILLSOUTH TELEPHONE COMPANY.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND YOUR BUSINESS EXPERIENCE.

A. My educational background consist of High School in till 9th grade. and I don't know had to read and write. My background in business involves over 10 month experience on Telephones business for Fl. Billsouth Telephone C. in Miami, Florida. but I will star with experience personel that will work with Fl. Billsouth Telephone C. in Miami Florida.

Q. What are your present duties with Florida Billsouth Telephone Company.

A. My duties with Florida Billsouth Telephone C. is to give a better services, a cheaper services and a good look over the city, to maintain the public phones clean and 24 hour repairment., Not like other Company's like Bellsouth that there

are full of graphite and they are out of services for more than a month.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS DOCKET.

A. The purpose of my testimony is to present evidence to support the FLORIDA BILLSOUTH TELEPHONE C. is not coping the name Bellsouth like they toll to WAMI MIAMI and to a reporter. one of there representative said on TV that I only tuck the letter E of and put the letter I instead. and his taking a short run to become famous., and if we are going to discuss They don't have FLORIDA and they don't have BILL that only word that they have is "South" . and from my point of view is that Bell is totally different from my name FLORIDA BILL SOUTH TELEPHONE C. not like there point of view that there are only putting BILLSOUTH and is not register as "billsouth" is register as FLORIDA BILLSOUTH TELEPHONE C. This is the way they are going to be on my trucks and public phones. as you all see on that about lines you can compare that FLORIDA BILLSOUTH TELEPHONE C. is not the same as Bellsouth. Bellsouth is training to make a confusion regarding the FLORIDA BILLSOUTH TEPHONE C. is trainingto still there name and clientes. BUT THIS IS NOT TRUE.

Q. DOES FLORIDA BILLSOUTH TELEPHONE C. HAVE THE RESOURCES TO EXPAND IN TO FLORIDA AND OTHER STATES.

A. Yes.

Q. HOW.

A. As I see that hard it get , and the crowd't become we will be bumping one to each otherI will not be afraid to expand to other places, like Tampa, Orlando and many other places.

Q. HOW WILL FLORIDA BILLSOUTH TELEPHONE C. BILL FOR ITS SERVICES

A. FLORIDA BILLSOUTH TELEPHONE C. don't need to bill anybody because FLORIDA BILLSOUTH TELEPHONE C. have only Public phone that oppose of that is we are the one's to pay for our lines. what it will cost the public for our services . a Quarter per call. this means that it current be any confusion with that , . what Bellsouth call's for a confusion of billing. There are no billing in my Business. PLEASE MAKE IT CLEAR THERE ARE NO BILLING COFUSION.

1 BILLSOUTH TELECOMMUNICATIONS, INC.  
2 DIRECT TESTIMONY OF SANDRA J. EVANS  
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4 DOCKET NO. 980918-TC  
5 JANUARY 29, 1999  
6

7 Q. Please state your name, address and position with BellSouth  
8 Telecommunications, Inc. or its affiliate. ("BellSouth" or "The  
9 Company").

10

11 A. My name is Sandy Evans. I am employed by BellSouth Intellectual  
12 Property Management Corporation. My business address is 1155  
13 Peachtree Street, N.E., Suite 500, Atlanta, Georgia 30309.

14

15 Q. Please give a brief description of your background and experience.

16

17 A. I am a graduate of Vanderbilt University with a degree in English and  
18 the University of Georgia School of Law with a Juris Doctor degree. I  
19 have 21 years of service with BellSouth. My career with BellSouth  
20 began in the Legal Department of Southern Bell and has continued on  
21 to assignments in BellSouth Services, BellSouth Corporation, BellSouth  
22 Intellectual Property Corporation and BellSouth Intellectual Property  
23 Management Corporation. For the last 13 years, I have acted as in-  
24 house counsel to all BellSouth companies on intellectual property  
25 matters, including trademark matters.

1

2 Q. What is the purpose of your testimony?

3

4 A. The purpose of my testimony is to support BellSouth's protest against  
5 the use of the name and mark BILLSOUTH by Florida BellSouth  
6 Telephone Company, an applicant to provide pay telephone services.

7

8 Q. To what issue will you be addressing?

9

10 A. I will address the issues raised by BellSouth regarding the likelihood of  
11 confusion that would be caused by the use of BILLSOUTH and how  
12 this would negatively impact Florida citizens.

13

14 Q. What is the basis for BellSouth's position that BELLSOUTH and  
15 BILLSOUTH are confusingly similar?

16

17 A. The question of whether the use of the term BILLSOUTH on pay  
18 telephones is likely to cause confusion among the consuming public,  
19 which is used to seeing BELLSOUTH on pay phones, can be answered  
20 by using the traditional test used by the courts in trademark  
21 infringement cases. In trademark infringement cases, the following  
22 factors are considered to determine whether a likelihood of confusion  
23 between two names or marks exists:

24 1. the type of trademark sought to be protected – is it strong and  
25 highly protectable or weak?

- 1           2. similarity of the marks in sight, sound, meaning and overall
- 2           commercial impression;
- 3           3. similarity of the products and services on which the marks are
- 4           used;
- 5           4. identity of retail outlets and purchasers;
- 6           5. similarity of advertising media;
- 7           6. defendant's intent ; and
- 8           7. actual confusion.

9

10           In examining the factors necessary for proving likelihood of confusion,  
11           a trademark owner need not show that all, or even most, of the factors  
12           are present in any particular case to be successful. I believe that you  
13           will agree with me after I have run through the factors that the use of  
14           BILLSOUTH would confuse Florida customers and should not be  
15           allowed.

16

17 Q.       Before we go through these factors, why are you not suing Mr. Pelletier  
18           and his company in court rather than appealing before this  
19           Commission?

20

21 A.       BellSouth will take all legal steps available to it, including filing suit, in  
22           the event that Mr. Pelletier is authorized to provide service under this  
23           name. I am here because this Commission has a concern for the  
24           wellbeing of the Florida consumer of telephone services. In that sense,  
25           the Commission has the same basic legal mandate as the court in a

1 trademark infringement case – to protect consumers from being  
2 confused as to the source of the goods and services they are  
3 purchasing.

4

5 Q. Please briefly review each of the factors used to determine likelihood of  
6 confusion as they apply in this case.

7

8 A. The first factor is to evaluate whether the mark for which protection is  
9 being sought is protectable and, if so, to what degree. A strong mark is  
10 very distinctive and will be widely protected – a weak mark will have a  
11 more limited scope of protection. The factors to consider in  
12 determining whether a mark is strong or weak include whether the mark  
13 is descriptive or arbitrary, whether the term is used by others on the  
14 same type of product or service, and the extent of consumer  
15 recognition of the mark based on its use and the amount of advertising  
16 and promotion done under the mark.

17 BellSouth Corporation and its subsidiaries have made extensive use of  
18 the BELL marks for a significant period of time. The BELL name was  
19 first used by Southern Bell, which was formed in 1879. BellSouth  
20 adopted BELLSOUTH in 1984. Southern Bell began using the  
21 BELLSOUTH brand in 1995. This Commission is well aware of the  
22 widespread use of BELLSOUTH in Florida and the amount of money  
23 spent on advertising and marketing under the BELLSOUTH brand.  
24 The mark is not used by others on the same products or services.

25

1           Therefore, BELLSOUTH is a strong and famous mark deserving of  
2           broad protection against the use of similar marks by others.

3

4   Q.     Please compare the marks for us under the second factor – similarity of  
5           the marks.

6

7   A.     In evaluating this factor, one must examine the overall impression  
8           created by the marks, including a comparison of the appearance,  
9           sound and meaning of the marks.

10          The commercial impression generated by the mark BILLSOUTH on pay  
11          telephones is substantially identical to the commercial impression  
12          created by the use of BELLSOUTH on pay telephones. These marks  
13          sound alike and they look alike. The name and mark BELLSOUTH is  
14          the foundation for all of the names and marks used by BellSouth  
15          Corporation and its subsidiaries. It is the dominant element used in  
16          “BellSouth Telecommunications,” “BellSouth Mobility,” BellSouth  
17          Advertising & Publishing,” etc. In determining the question of likelihood  
18          of confusion greater weight is given to the dominant parts of a  
19          composite mark, because it makes the greatest impression on the  
20          ordinary buyer. Thus, even if the full name “FLORIDA BILLSOUTH  
21          TELEPHONE COMPANY” is used, the public will focus on the  
22          BILLSOUTH portion, as it does on the BELLSOUTH portion of the  
23          BellSouth names and marks. BELLSOUTH and BILLSOUTH are  
24          identical in sound, and virtually indistinguishable in sight. When the

25

1 dominant portions of two marks look so similar and sound the same,  
2 there is likely to be confusion.

3

4 Q. And the third factor?

5

6 A. The parties' respective goods and services are identical. Pay  
7 telephones will be branded BILLSOUTH and BELLSOUTH.

8

9 Q. And the fourth factor?

10

11 A. Just as with the goods and services under the third factor, the outlets  
12 and purchasers of BILLSOUTH and BELLSOUTH pay phone services  
13 are identical.

14

15 Q. How would you evaluate the fifth factor which compares the type of  
16 advertising used by each party.

17

18 A. I do not have any information regarding the applicant's proposed  
19 method of advertising. BellSouth advertises in virtually every  
20 advertising media available – television, on radio, in print, and on  
21 outdoor billboards. Since BellSouth advertises in all media, there is  
22 inevitable overlap between the party's advertising.

23

24 Q. Do you have any evidence of the applicant's intent to infringe under the  
25 sixth factor?

1

2 A. It is very clear that Mr. Pelletier adopted this name with an intent to  
3 confuse the public. I am attaching as Exhibit SE-1 a newspaper article  
4 in which Mr. Pelletier expresses his intention to create a company logo  
5 in the shape of a bell which will be similar to BellSouth's Bell Symbol  
6 logo, "but larger." Mr. Pelletier also states that he plans to paint his  
7 trucks white with blue and yellow stripes to look like BellSouth's trucks.  
8 In the attached television interview, Exhibit SE-2, Mr. Pelletier also  
9 offers to sell the BILLSOUTH mark to BellSouth. There can be no  
10 doubt that his intent in adopting BILLSOUTH is to confuse the public  
11 into using his services.

12

13 Q. With respect to the seventh factor, has there been any actual  
14 confusion?

15

16 A. BellSouth would not need to show actual confusion in order to prove its  
17 trademark infringement case against BILLSOUTH. In this case, he has  
18 not yet used the BILLSOUTH name, so there has not been public  
19 confusion.

20

21 Q. Please summarize your conclusion from the foregoing.

22

23 A. Weighing all of the foregoing factors, it is clear that a pay telephone  
24 company using the name or mark BILLSOUTH or FLORIDA  
25 BILLSOUTH TELEPHONE COMPANY is likely to be confused by the

1 public as being related to, sponsored by or endorsed by BellSouth. (1)  
2 BELLSOUTH is a strong name and trademark used for various  
3 telephone-related goods and services, and is entitled to broad  
4 protection; (2) the name and mark BILLSOUTH and FLORIDA  
5 BILLSOUTH TELEPHONE COMPANY are similar in appearance and  
6 sound, and creates a very similar overall impression to the  
7 BELLSOUTH mark and the names of the various BellSouth entities; (3)  
8 the products and services are identical; (4) the purchasers and  
9 methods used to distribute the products are the same; (5) similar  
10 methods of advertising will be used; (6) there is strong evidence of an  
11 intent to confuse; and (7) there is no evidence of actual confusion  
12 because the BILLSOUTH name and mark is not yet being used.  
13 Virtually none of the foregoing factors weigh in favor of BILLSOUTH.

14  
15 Q. Has BellSouth been successful in preventing others from using  
16 confusingly similar marks and, if so, what marks were being used?

17  
18 A. We have obtained two Orders of the Trademark Trial and Appeal Board  
19 ("TTAB") in which the TTAB found that there was a likelihood of  
20 confusion between the mark BEL BEL-TRONICS and BellSouth's BELL  
21 marks and refused registration of the BEL BEL-TRONICS mark, and  
22 also from the U.S. District Court for the Northern District of Georgia in  
23 which the Defendant was enjoined from using the mark BEL-TRONICS  
24 on or in conjunction with telecommunications equipment. In addition to  
25 the foregoing, we have been successful in obtaining consent judgments

1 involving the use of the marks MICROBELL, ALL FLORIDA BELL,  
2 BABY BELL and MA AND PA BELL in Florida. We have obtained the  
3 agreement of numerous other infringers to stop using the names and  
4 marks incorporating BELL or BELLSOUTH without having to resort to  
5 litigation.

6

7 Q. Would you please summarize your testimony?

8

9 A. Yes. It is the Commission's responsibility to grant applications to  
10 provide telecommunication goods or services only if they are in the best  
11 interest of the citizens of Florida. It is my testimony that Florida  
12 customers would be confused as to the source of goods or services  
13 provided to them under the name or mark BILLSOUTH or FLORIDA  
14 BILLSOUTH TELEPHONE COMPANY.

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1 MS. KEATING: I believe there was a videotape  
2 exhibit.

3 MR. GOGGIN: Yes, our witness, Ms. Evans, had  
4 two exhibits attached to her testimony, one of which  
5 was a newspaper article of one page from the West  
6 Palm Beach Post, and the other was a videotape  
7 recording of an interview with a south Florida  
8 television station and Mr. Pelletier.

9 CHAIRMAN GARCIA: It's a good piece. I saw it.  
10 We -- I didn't see it because you showed it to me.  
11 I saw it because I saw it on TV. I didn't want to  
12 give it a false appearance on the record. There  
13 being no one to object to you putting those on the  
14 record, and I don't think any commissioner has an  
15 objection to it, then we'll put those into the  
16 record also.

17 MS. KEATING: So it will be marked as Composite  
18 Hearing Exhibit 1.

19 CHAIRMAN GARCIA: Composite Exhibit 1, which is  
20 the article and the videotape. Okay?

21 MS. KEATING: All right. Staff would ask that  
22 we be allowed to take a five-minute break. We  
23 believe that we could come back with an oral  
24 recommendation on Mr. Pelletier's petition.

25 CHAIRMAN GARCIA: Just for the interest of

1 justice and procedure, it does no harm to go ahead  
2 and file something at the next available agenda  
3 conference, and that way we don't have to take the  
4 five-minute break.

5 MS. KEATING: Okay.

6 CHAIRMAN GARCIA: And, you know, it will -- so  
7 unless someone has something to add --

8 COMMISSIONER DEASON: Well, it just seems to me  
9 that if -- We may can just get this matter resolved  
10 and over with without having to do the additional  
11 paperwork of filing a recommendation.

12 CHAIRMAN GARCIA: Okay. Very well.

13 MS. KEATING: We could even take less than  
14 that.

15 CHAIRMAN GARCIA: All right. We're going to  
16 take a five-minute recess.

17 (BRIEF RECESS)

18 CHAIRMAN GARCIA: Okay. Staff.

19 MS. KEATING: I think we're ready with a  
20 recommendation.

21 CHAIRMAN GARCIA: All right.

22 MS. KEATING: Staff recommends denying  
23 Mr. Pelletier's application for a certificate in the  
24 name of Billsouth. Mr. Pelletier has demonstrated a  
25 lack of managerial capability by not complying with

1 the Commission's rules and by failure to comply with  
2 the order establishing procedure for this docket.

3 CHAIRMAN GARCIA: Very good. Do I have a  
4 motion?

5 MR. GOGGIN: Mr. Chairman, is it possible to  
6 offer comment on the recommendation?

7 CHAIRMAN GARCIA: Sure.

8 MR. GOGGIN: Would it be possible -- we contend  
9 that it is possible and, in fact, would be proper  
10 based on the evidence in the record to also deny on  
11 the basis that the name, Florida Billsouth Telephone  
12 Company, is confusingly similar to BellSouth.

13 COMMISSIONER CLARK: Yeah. I was going to ask  
14 something similar. What are the criteria that have  
15 to be met to get a certificate? And I'd like  
16 comment from you all on each one of those criteria  
17 because it seems to me he may not meet the others as  
18 well.

19 MS. KEATING: It's technical capability,  
20 managerial capability, and financial capability.

21 COMMISSIONER CLARK: Well, I don't think he has  
22 demonstrated the technical capability, has he?

23 MS. KEATING: We believe that he does have the  
24 technical capability to run a phone company.

25 COMMISSIONER CLARK: On what basis?

1 MS. KEATING: But it's the managerial  
2 capability.

3 COMMISSIONER CLARK: On what basis do you  
4 conclude that?

5 MS. KEATING: On the items that were included  
6 in his application for a certificate.

7 COMMISSIONER CLARK: And what were they?

8 MS. KEATING: They were all the aspects that  
9 are necessary to file a certificate with the  
10 Commission. If you would like a more extensive  
11 recommendation, I mean we can come back with  
12 something more in-depth, or --

13 COMMISSIONER CLARK: Well, I agree he probably  
14 doesn't have the managerial capabilities, but it  
15 also seems to me that I think it's been demonstrated  
16 that the name and his intent to have a Bell -- a  
17 shape to the logo --

18 MS. KEATING: Well, I guess --

19 COMMISSIONER CLARK: I think what has been  
20 demonstrated on the part of BellSouth is a  
21 suggestion that it would be confusing, and he has  
22 not met that suggestion on the part of BellSouth.  
23 We have not previously had a case where a company  
24 has come in and alleged -- opposed a --

25 MS. KEATING: I guess where I'm a little hung

1 up is I don't really consider the fact that the name  
2 "Billsouth" may be confusing as technical  
3 incapability. I guess that's where --

4 COMMISSIONER CLARK: Well, we have had a case  
5 before dealing with confusion, customer confusion.

6 MS. KEATING: Correct.

7 COMMISSIONER CLARK: And I think staff's  
8 recommendation was that it was not confusing in that  
9 instance, and that's because we went to hearing and  
10 we had clarification on the intention of how they  
11 were going to market and what they had done in terms  
12 of clarifying to customers with respect to the  
13 company they are dealing with. We have not had that  
14 here, and I think there is a basis for saying that  
15 it is not in the public interest because it would be  
16 confusing to the public. I think -- It strikes me  
17 that you have to meet those criteria, plus it has to  
18 be in the public interest.

19 MS. KEATING: I agree, and based on the fact  
20 that BellSouth's testimony is the only testimony in  
21 the record that was available for cross examination,  
22 I believe that you could make that conclusion.

23 COMMISSIONER DEASON: So can we make that  
24 conclusion as well as lack of managerial ability and  
25 make no finding concerning financial and technical

1 ability?

2 COMMISSIONER CLARK: I think that would be  
3 acceptable.

4 COMMISSIONER JACOBS: Well, if I may, the  
5 prior -- when we dealt with this issue previously, I  
6 didn't come away with the understanding that we were  
7 making a ruling that the certificate could be --  
8 that the company was clarifying its name and,  
9 therefore, it wouldn't meet our certification  
10 criteria. It was my understanding that staff viewed  
11 our jurisdiction as being limited in being able to  
12 consider that as a matter of certification.

13 MS. KEATING: Well, this is a pay phone  
14 certificate.

15 COMMISSIONER CLARK: No, I think what -- I  
16 understand what you're saying, that when we, when --  
17 It was K --

18 COMMISSIONER JACOBS: KT&T.

19 COMMISSIONER CLARK: KT&T, and in that case it  
20 was initially -- I can't remember whether it was  
21 denied or granted. But, anyway, we went to hearing  
22 on the issue of whether it was confusing, and I  
23 think the record in that case demonstrated that it  
24 was, at least to my satisfaction, that it was not,  
25 and -- but you're saying did we take the position

1 that it wasn't our jurisdiction?

2 COMMISSIONER JACOBS: I prefer -- I prefer this  
3 interpretation. I prefer the interpretation that I  
4 think the statute is broad enough to allow us to  
5 consider whether or not a name imposes undue --  
6 could potentially cause undue confusion to the  
7 public. I think the statute is that broad, but I  
8 think --

9 MS. KEATING: You can reach that conclusion.

10 COMMISSIONER JACOBS: Okay.

11 MS. KEATING: If you choose to do so today, if  
12 you believe that based on the evidence in the  
13 record, which is mainly BellSouth's evidence, that  
14 the BellSouth name is confusing and it's not in the  
15 public interest to grant a certificate under that  
16 name, then I believe that you can do that.

17 COMMISSIONER JACOBS: So as a matter of public  
18 interest.

19 MS. KEATING: Yes.

20 COMMISSIONER JACOBS: And it is sufficient as a  
21 rationale to deny the certificate?

22 MS. KEATING: Yes, commissioner.

23 COMMISSIONER CLARK: I would like to know, does  
24 anyone know what the basis was in that last order if  
25 we took the position we could not -- we didn't have

1 the authority to reject it on the basis of customer  
2 confusion?

3 MS. KEATING: You're referring to the KT&T?

4 COMMISSIONER CLARK: Yes.

5 MS. KEATING: I believe that we -- the  
6 Commission did reach the conclusion that they could  
7 reject that name that it --

8 COMMISSIONER CLARK: Are you certain?

9 MS. KEATING: -- was not in the public  
10 interest.

11 COMMISSIONER CLARK: Are you certain? Norrine,  
12 do you remember?

13 MS. KEATING: I have to confess, I'm not  
14 positive.

15 COMMISSIONER CLARK: Why don't you call up and  
16 see if you can -- Mr. Williams, do you know?

17 MR. WILLIAMS: I'm trying to remember, and I  
18 was on that case too. I know that we did not deny  
19 the KT&T. It was the two names associated with it,  
20 the d/b/a's: I don't care, and it doesn't matter.

21 COMMISSIONER CLARK: Right.

22 MR. WILLIAMS: And we approved that based on,  
23 if it's my recollection, that they would take and  
24 brandish those names first before any recommend --  
25 before anybody could make a decision. But I do not

1 recall exactly what we did on that.

2 COMMISSIONER DEASON: Well, let me ask this  
3 question. I know this is a pay telephone  
4 certificate. That was an interexchange carrier?

5 MR. WILLIAMS: Right, those were interexchange  
6 carriers. On pay phones, I might want to --

7 COMMISSIONER DEASON: The criteria is different, is  
8 it not, or --

9 MR. WILLIAMS: Yes, sir, it's very different.  
10 On pay phones, we do not look at any financial,  
11 managerial, or technical qualifications on pay phone  
12 applications. We do have a right to deny the  
13 application based on it is not in the public  
14 interest.

15 COMMISSIONER CLARK: This is pay phones? Then  
16 we couldn't do what you just recommended.

17 MR. WILLIAMS: Ma'am?

18 COMMISSIONER CLARK: I thought the  
19 recommendation was that we reject it based on the  
20 lack of managerial capability.

21 MR. WILLIAMS: We based it on that because of  
22 his actions that he has shown not proceeding to this  
23 Commission or not abiding by any Commission rules or  
24 orders.

25 MS. KEATING: And because he doesn't appear to

1 have the managerial capability to even comply with  
2 that, then we don't think it's in the public  
3 interest.

4 COMMISSIONER CLARK: Well, I thought I just  
5 heard you say the two standards for the two type of  
6 licenses are different, and it was a lesser standard  
7 for the pay phone.

8 MR. WILLIAMS: Yes, ma'am, there is a lesser  
9 standard for the pay phone certificates.

10 CHAIRMAN GARCIA: We don't look at financials  
11 on pay phones?

12 MR. WILLIAMS: No, sir.

13 CHAIRMAN GARCIA: Okay. Let's --

14 MS. KEATING: Would you prefer us to come back  
15 with a written recommendation? We can do that.

16 CHAIRMAN GARCIA: I want to be careful because  
17 here's my thinking: This is the simplest  
18 certificate we give. This is -- you usually walk  
19 in, as long as you spell your name right and give us  
20 an address that we can count on you, you usually get  
21 this license because the technical capability is  
22 relatively limited. We haven't put much standard to  
23 it. And I think what staff needs to analyze is two  
24 things. I think Susan makes a good point. How does  
25 this affect the KT&T that we've decided before, and

1 are we using that as an issue?

2 Secondly, perhaps we're not even getting to  
3 that issue because we never even had that -- I mean  
4 that was a debate that we've had on paper, but  
5 Mr. Pelletier wasn't here to have it. Clearly we  
6 find that he's lacking in some other ability to  
7 manage his time or whatever for the company, and I'd  
8 like us to use criteria that's consistent with what  
9 we had in the past so we don't create new criteria;  
10 and if we are creating new criteria, you make it  
11 evident to us before we vote it out. And that's why  
12 I think it might be better if you come back.

13 MS. KEATING: We can do that. Let me ask one  
14 question though. Would you -- The schedule  
15 following the hearing was not reset after the second  
16 continuance. Do you want the parties to file  
17 briefs?

18 CHAIRMAN GARCIA: No. I don't think we need  
19 the parties to file briefs. I think you can handle  
20 it on your own, and I think simple rather than  
21 longer and state what we did here today, okay?

22 MS. KEATING: Okay.

23 COMMISSIONER DEASON: I don't mean to  
24 complicate things, but do the parties have a right  
25 to file briefs if they want, or is that something

1 that we just simply say, no, we don't want briefs?

2 MS. KEATING: They have a right to file a  
3 post-hearing statement if they so choose.

4 CHAIRMAN GARCIA: So let's let them do that if  
5 they so choose. Mr. Pelletier can file one, and  
6 Mr. Goggin, of course, you can also, so -- Okay?  
7 Do you need a date on this?

8 MS. KEATING: Yes, please.

9 CHAIRMAN GARCIA: Why don't you give me one.

10 MS. KEATING: I had set up a tentative  
11 schedule. If we could get something in in two  
12 weeks.

13 CHAIRMAN GARCIA: Okay. Someone will contact  
14 Mr. Pelletier to make sure he's aware of this.  
15 Okay.

16 MR. GOGGIN: December 12th?

17 MS. KEATING: Yes.

18 CHAIRMAN GARCIA: All right. Very good. Then  
19 we will adjourn this hearing. Thank you very much.  
20 Appreciate it.

21 MR. GOGGIN: Thank you.

22 (WHEREUPON, THE HEARING WAS ADJOURNED)

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CERTIFICATE

STATE OF FLORIDA       )  
COUNTY OF LEON        )

I, NANCY S. METZKE, Certified Shorthand Reporter and Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 12th day of December, 1998.

*Nancy S Metzke*  
NANCY S. METZKE, CCR, RPR

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