

**IN THE SUPREME COURT
OF THE STATE OF FLORIDA**

FILED
JUN 4 1994
OC

ED HAVILL, as Lake County
Property Appraiser, et al.,

Petitioners,

vs.

SCRIPPS HOWARD CABLE COMPANY,

Respondent.

CASE NOS. 87,357 and 87,381
5th DCA CASE NOS.: 94-00731
94-01301
L.T. CASE NO.: CI90-2848

DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT OF FLORIDA

**BRIEF OF AMICUS CURIAE
BELLSOUTH TELECOMMUNICATIONS, INC.**

John R. Hargrove
Florida Bar No. 173745
Heinrich, Gordon, Hargrove,
Weihe & James, P.A.
500 E. Broward Boulevard, Suite 1000
Fort Lauderdale, FL 33394
(305) 527-2800

Robert G. Beatty
BellSouth Telecommunications, Inc.
150 W. Flagler St., Suite 1910
Miami, Florida 33130
(305) 347-5555

James W. McBride
Anne M. Stolee
Florida Bar No. 436976
Baker, Donelson, Bearman & Caldwell
801 Pennsylvania Ave., N.W., Suite 800
Washington, D.C. 20004
(202) 508-3400

Richard W. Bell
BellSouth Corporation
1155 Peachtree St., N.E., Suite 1800
Atlanta, Georgia 30309
(404) 249-2726

Attorneys for Amicus Curiae
BellSouth Telecommunications, Inc.

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
INTEREST OF THE AMICUS CURIAE	2
ARGUMENT	4
I. THE TANGIBLE PERSONAL PROPERTY OF CABLE TELEVISION COMPANIES AND TELEPHONE COMPANIES ARE ASSESSED UNDER THE SAME FLORIDA STATUTES	4
A. <u>The Scripps Howard Case</u>	4
B. <u>The Volusia County Case</u>	6
C. <u>The Distinction Between the Cases</u>	8
II. THE VALUATION METHODOLOGY REJECTED IN THIS CASE WAS IMPLICITLY APPROVED IN THE VOLUSIA CASE	9
III. A PROPERLY PERFORMED UNIT VALUATION MAY BE APPROPRIATE FOR A RATE BASE REGULATED COMPANY BECAUSE IT DOES NOT INCLUDE INTANGIBLE VALUES THAT ARE NOT INTRINSIC TO THE PROPERTY BEING ASSESSED	12
A. <u>Background</u>	13
B. <u>Stock Price Valuation is Not Appropriate</u>	14
CONCLUSION	16
CERTIFICATE OF SERVICE	19

TABLE OF AUTHORITIES

Cases

Page

BellSouth Telecommunications, Inc. v. Volusia County,
21 F.L.W. D 1058 (Fla. 5th DCA May 3, 1996) 1, 9, 12, 13

Jones Intercable, Inc. v. Dept. of Rev. 12 OTR 436,
1993 WL 129217 (1993) 5

Scripps Howard Cable Co. v. Havill, 665 So.2d 1071 (Fla. 5th DCA 1995) 1

Statutes and Rules

§ 192.001(11)(d) Fla. Stats. 1, 4, 6, 16

§ 364.051, Fla. Stats. 13

Fla.R.App.Pro. 9.030(a)(2)(A)(v) 5

INTRODUCTION

This case arises out of the Fifth District Court of Appeal's ruling that it is improper to value tangible personal property of a cable television company by a methodology which values the business enterprise that uses the tangible personal property. Scripps Howard Cable Co. v. Havill, 665 So.2d 1071 (Fla. 5th DCA 1995). Unfortunately, however, BellSouth Telecommunications, Inc. ("BST") just received a decision from the same court which summarily affirmed a trial court which held not only that it is permissible to value tangible personal property based on a valuation of the business enterprise, but shockingly utilizing as a basis therefor the fluctuating prices of publicly traded common stock of the taxpayer's parent corporation and other unrelated telecommunications holding companies. BellSouth Telecommunications, Inc. v. Volusia County, 21 F.L.W. D 1058 (Fla. 5th DCA May 3, 1996)("Volusia County"). A panel of the Fifth District has therefore let stand without comment a case embracing the very business enterprise valuation which it has previously rejected. Frankly, the Volusia County decision is equivalent to a holding that a house becomes more or less valuable depending upon the net worth of its owner. The very thought is at best cynical and at worst repugnant to the statutory mandate of "just value."

As explained in greater detail below, these decisions have already caused confusion among county property appraisers and tangible personal property taxpayers across the State of Florida. Consequently, BST requests that this Court clear up this confusion by affirming the decision in this case by the court below. In addition, BST asks that this Court clarify what property is actually taxable under the definition of tangible personal property contained in §192.001(11)(d), Fla. Stats., for all locally assessed taxpayers, and how the constitutional

concept of "just valuation" can be uniformly applied. As it now stands, the legislative effort to adopt uniform standards is being misunderstood or ignored by the courts.

INTEREST OF THE AMICUS CURIAE

BST has requested that petitioner Havill consent to the filing of this brief, but he has refused to do so. (Once Havill refused, BST, of course, did not inquire of the other parties.) Despite that refusal, petitioners' brief filed with this Court contains several sweeping and unsupported statements about the telecommunications industry in general and about BST in particular, none of which can be left unaddressed in a case of this magnitude.¹ Indeed, BST's interests are directly implicated in this case for the following reasons:

1. BST is a public utility providing telecommunications services in Florida, as well as in eight other states. In Florida, BST is subject to ad valorem taxation on its tangible personal property in fifty separate counties, and is one of the largest taxpayers in the State of Florida. In 1995, BST paid \$105 million in property taxes to the various counties in Florida in which it operates.

2. The proceedings below concerned respondent Scripps Howard's claim that the assessment of its tangible personal property located in Lake County, Florida exceeded "just value." Havill, the Lake County Property Appraiser, had assessed Scripps Howard's tangible personal property in Lake County by use of a capitalized income approach. Havill argued that

¹ For example, almost the entire Preface on pp. 2-3 of petitioners' brief concerns the changing nature of the telecommunications industry. It further points out the disparity between the Fifth District's two decisions referred to above. After thus illustrating exactly why BST should have an interest in this case, however, Havill objected to BST filing a brief, presumably so that his own assertions could go unchallenged. For this reason alone, BST should be allowed to file this brief in order to state its actual positions.

this was appropriate because Scripps Howard's business was similar to a public utility, and public utility property is sometimes valued by use of a so-called capitalized income approach. The Fifth District, however, appropriately ruled that the use of this valuation approach had the effect of including non-taxable intangible assets in the assessed value. The court ruled further that Havill's assessment had not valued Scripps Howard's tangible personal property in Lake County, as was required by law.

3. BST's tangible personal property is subject to ad valorem taxation pursuant to the same statutes under which Scripps Howard's tangible personal property is assessed. Despite this, in Volusia County, the Fifth District let stand a trial court decision that applied a different standard to the assessment of BST's tangible personal property than it applied to the assessment of Scripps Howard's tangible personal property in this case. The Broward County property appraiser has since adopted a "business enterprise" valuation as his assessment of BST's tangible personal property for the 1995 tax year, which has had the effect of increasing BST's assessment by more than 50%, and its tax bill by more than \$14 million, in a single year in a single county. In addition, the Broward County Property Appraiser has filed a motion for summary judgment in BST's litigation challenging his assessment in which he claims that the Fifth District's per curiam decision in Volusia County has conclusively resolved all issues in the case.

4. BST is now legitimately concerned that other county property appraisers who assess BST's tangible personal property will likewise interpret the Fifth District's decision as allowing them to ignore the statutes and to begin improperly including intangible values in their assessments of BST's tangible personal property.

5. A decision from this Court is clearly necessary to establish that the definition of

tangible personal property is equally applicable to BST's property and the property of cable television companies and all other locally assessed taxpayers. The correct interpretation by this Court of the statutes under which the tangible personal property of both BST and Scripps Howard is assessed will ensure fair and uniform assessment of BST's tangible personal property throughout the State of Florida.

ARGUMENT

I. THE TANGIBLE PERSONAL PROPERTY OF CABLE TELEVISION COMPANIES AND TELEPHONE COMPANIES IS ASSESSED UNDER THE SAME FLORIDA STATUTES

Recently, the Fifth District had under review two cases involving the correct interpretation of the definition of tangible personal property contained in §192.001(11)(d), Fla. Stats. According to that definition, taxable tangible personal property includes "all goods, chattels, and other articles of value ... capable of manual possession and whose chief value is intrinsic to the article itself." In both cases, the trial court ratified valuation methodologies which included a large amount of intangible value in the assessments of tangible personal property. The Fifth District's decisions in those two cases, however, were directly contrary to each other. In one case, the court reversed the trial court based on a holding that intangible values may not be included in an assessment of tangible personal property, and certified a question to this Court as a matter of great public importance. In the other, the court issued a "per curiam" affirmance, which foreclosed all recourse to this Court for further review.

A. The Scripps Howard Case.

On December 1, 1995, the Fifth District issued its decision in this case, Scripps Howard Cable Company v. Havill, in which it reversed the decision of the trial court upholding the

assessment of Scripps Howard's tangible personal property for several tax years. In that decision, the court ruled that the Lake County property appraiser had improperly included the value of intangible assets in its determination of the taxable value of Scripps Howard's tangible personal property. It further certified the following question as a matter of great public importance pursuant to Fla.R.App.Pro. 9.030(a)(2)(A)(v):

* * *

(1) Is the income/unit rule of appraisal an appropriate method of assessing the tangible personal property of cable television companies?

* * *

The gist of the Fifth District's decision in this case is that it was improper to value tangible personal property by use of a methodology that values the business enterprise that owns the tangible personal property. Using this type of methodology results in the inclusion of exempt or non-taxable intangible values related to the business that owns the property rather than intangible values associated with the property itself. The court held:

There is a difference between location, such as a condominium with an ocean view, and intangibles such as goodwill and franchise rights. View directly relates to and defines the real property, while goodwill and franchise rights relate to the property only in their connection with the business using the property.

665 So.2d at 1074. As authority, the court cited with approval the decision of the Oregon Tax Court in Jones Intercable, Inc. v. Department of Revenue, 12 OTR 436, 1993 WL 129217 (1993), and extensively quoted from it:

Oregon statutes tax only tangible property. While ORS 307.010 includes all rights appertaining to the land, franchise rights do not fall in that category. Franchise rights are the right to conduct a business. They are not tied to any particular equipment or

property. If property is destroyed or removed, the franchise rights continue in existence and are transferrable, separate and apart from any other property.

Many fast-food restaurants and other businesses utilize franchises in connection with their real and personal property. Nevertheless, these businesses are taxed only on the value of their real and personal property; the influence or effect of the franchise is not included in the assessed value.

12 OTR at 443-44, quoted at 665 So.2d at 1074.² Based on these concepts, the Fifth District quite properly drew a sharp distinction between intangible influences which relate directly to the property itself, and intangibles which relate solely to the business enterprise using the property. By using a "going concern" methodology, the property appraiser ignored the statutory definition of tangible personal property as "all goods, chattels, and other articles of value ... capable of manual possession and whose chief value is intrinsic to the article itself." §192.001(11)(d), Fla. Stats. [emphasis added]. The court ruled that it was inappropriate to value tangible personal property using a going concern methodology that included intangible value.

B. The Volusia County Case.

At the same time this case was under review by one panel of the Fifth District, BST filed its appeal of the Volusia County case.³ The trial court decision appealed by BST includes the following language:

² The Oregon Tax Court approved the use of a going concern valuation for public utilities in Jones Intercable because Oregon statutes expressly call for that type of valuation for public utility property. In Florida, public utilities are assessed under the identical statutes as cable television companies and all other taxpayers, with the sole exception of railroads.

³ That case was ultimately decided by a different panel of the Fifth District. BST has filed a Motion for Rehearing En Banc (Exhibit B to this brief) and a Motion for Rehearing and Certification with that Court. Those motions have not yet been resolved.

Both parties used "unit valuation", which is an appropriate method to value the tangible personal property of a telecommunications company. (Exhibit A to this Brief, p. 2).

The Court finds that it is appropriate to rely on prices of securities in the industry in which the subject company operates to establish the appropriate equity capitalization rate which can be used to value the tangible personal property owned by the company. (Exhibit A, p. 8).

The Goodwin/Ifflander direct capitalization approach was properly based on market-derived equity rates. (Exhibit A, p. 9).

The Court finds by a preponderance of evidence that Mr. Goodwin and Dr. Ifflander's appraisal more correctly reflects the market value of Southern Bell's operating properties as of January 1, 1990. (Exhibit A, p. 9).

These excerpts make it apparent that the trial court adopted a value for BST's tangible personal property in Volusia County based on an approach that relied primarily on stock prices of BST's holding company and those of other telecommunications holding companies.⁴ There can be no question that a valuation that depends chiefly on the traded stock prices of other companies is a business enterprise value, which has little or no relationship to BST's tangible personal property in Volusia County, Florida. Despite this illicit analysis, the Fifth District affirmed the decision.

⁴ The two valuation approaches relied on by the county's outside appraisers were the direct capitalization of income approach and the stock and debt approach. The stock and debt approach values assets according to the balance sheet theory that assets equal liabilities plus equity, and is based on the prices of the subject company's traded securities. BST has no publicly traded stock, so the appraisers relied on the publicly traded stock of its parent corporation, BellSouth Corporation. Both of these approaches use the same earnings/price ratios obtained by analyzing stock of BellSouth Corporation and other telecommunications holding companies.

C. The Distinction Between the Cases.

The difference between the two opinions in these two cases could not be more clear. In this case, the court stated:

[I]t is clear from Ross's testimony that Ross ignored the statutory definition of tangible personal property and improperly included the value of certain intangible items in the assessment. Ross's method, the unit method, taxed Scripps Howard upon the income which the entire business generated through its tangible and intangible assets contrary to law. Valuing a cable company as a system necessarily includes taxing otherwise exempt intangibles, just as occurred here. The appraisal of the entire going concern considers the profitability of the business, which is dependent upon a number of intangibles, such as the existence of the franchise, the fact that the company is a natural monopoly, and the skills of its management. Unless and until the Florida Legislature changes section 199.185 to permit the taxation of franchises and other intangibles, Havill's approach is unsustainable.

665 So.2d at 1075-76. This is in stark contrast to the court's decision in Volusia County, which states in full:

PER CURIAM. AFFIRMED on the authority of Southern Bell Tel. & Tel. Co. v. Markham, 632 So.2d 272 (Fla. 4th DCA 1994).

Although BST's tangible personal property is subject to exactly the same statutory definition which the Fifth District found controlling in this case, and although there are no separate statutory provisions in Florida requiring or even allowing that utilities be subject to some other standard, the court affirmed without opinion an order adopting a value that was based not only on income, but on stock prices of other telecommunications companies. It did this without making any finding that telephone companies are somehow different from cable companies,⁵ or

⁵ In fact, counsel for the Lake County property appraiser, the same counsel who represented the Volusia County property appraiser, argues in this case that cable companies are just like

even giving BST an opportunity to seek further review by this Court.

**II. THE VALUATION METHODOLOGY
REJECTED IN THIS CASE WAS IMPLICITLY
APPROVED IN THE VOLUSIA CASE**

The appraisal adopted by the trial court and affirmed by the Fifth District in Volusia County was performed by two outside appraisers, Michael Goodwin and James Ifflander. Not coincidentally, Dr. Ifflander is the same witness who testified on behalf of the Lake County property appraiser in this case. The assessments which were rejected by the Fifth District in this case as improperly including intangible values were almost double the appraised values offered by the taxpayer, Scripps Howard. Dr. Ifflander's appraisals, on the other hand, were more than double the amounts of the assessments, and more than four times the amount of the cost approach appraisals presented by Scripps Howard. As can be seen from the trial court's decision in this case, the assessments ranged from \$14,999,454 in 1989 to \$21,590,700 in 1992. Dr. Ifflander's appraised values ranged from \$42,701,102 in 1990 to \$49,322,000 in 1992. The values obtained under Scripps Howard's depreciated cost approach, however, ranged from \$8,603,400 in 1989 to \$9,600,284 in 1992. Obviously, Dr. Ifflander's methods based on stock prices of other companies can and do result in extreme and unreliable values. In addition, Dr. Ifflander testified in this case that it was proper to include "intangible influences" in an assessment of tangible personal property. The Fifth District, while it did not refer to Dr. Ifflander by name in its opinion, completely rejected that testimony in this case.

Even though there is no difference in the statutory requirements for the assessment of the property of telephone companies and cable television companies, the Fifth District held in this

telephone companies.

case that it is improper to value cable television company property by use of a going concern valuation, while at the same time it affirmed a decision that adopted and approved such a valuation for BST. The importance of this conflict in opinions goes far beyond the specific assessment at issue in the Volusia County case. The actual holding in that case was an affirmance of an assessment that was equal to 90% of the net book cost of BST's property. In dicta, however, the court embraced the Goodwin/Ifflander business enterprise appraisal as the most reasonable estimate of market value. That statement by the trial judge is now being used against BST in another court as though it were the legal holding of the case. The Broward County property appraiser has filed a motion for summary judgment against BST in BST's challenge to its 1995 assessment in Broward County. See Exhibit C to this brief. In an affidavit filed with the motion, the Broward County property appraiser makes the following assertion:

For the year 1995, our office retained Dr. A. James Ifflander and Mr. Michael Goodwin to appraise the tangible personal property of Southern Bell [sic]. I adopted their appraisal as the 1995 assessment, and adjusted this number [by 3%] by the Department of Revenue's certification of the Broward County 1995 level of assessment [of 97%]. Mr. Goodwin and Dr. Ifflander's valuation methodology was specifically approved, and that of Southern Bell's [sic] expert, Tom Tegarden was rejected, by the Circuit Court of the Seventh Judicial Circuit of Florida in Southern Bell Telephone & Telegraph Company, Inc v. County of Volusia, Case No. 90-7426-CA-01-R, Final Judgment of May 26, 1995, affirmed per curiam, ___ So.2d ___ (Fla. 5th DCA 1996).

Exhibit C at p. 4. The affidavit further shows the following assessed values for BST's tangible personal property in Broward County for tax years 1989 through 1995:⁶

⁶ The values for 1989 and 1990 have been upheld in litigation.

<u>Year</u>	<u>Assessed Value</u>
1989	\$ 708,813,000
1990	\$ 723,031,558
1991	\$ 759,554,904
1992	\$ 730,073,763
1993	\$ 751,955,772
1994	\$ 762,823,451
1995	\$1,115,871,165

Exhibit C at p. 3 [emphasis added]. Therefore, by adopting the Goodwin/Ifflander appraisal based chiefly on stock prices, the Broward County property appraiser raised BST's assessment by approximately 50% -- or almost \$400,000,000 -- in one year and without any material change in the amount or condition of BST's actual tangible personal property in the county. This resulted in a one year tax increase of more than \$14,000,000 payable by BST in Broward County. Then, based on the following allegation, the property appraiser has requested that summary judgment be granted in his favor:

The grounds on which the motion is based and the substantial matters of law to be argued in support of the Motion are that there are no contested material issues of fact, that all of Plaintiff's issues have been exhaustively litigated adversely to Plaintiff, and that Defendants are entitled to Summary Judgment as a matter of law.

Exhibit C at p. 1. In effect, the Broward County property appraiser has taken a trial court opinion from Volusia County which was affirmed per curiam by the Fifth District as giving him carte blanche to include vast amounts of intangible values in the assessment of BST's tangible personal property in Broward County, and then argue that BST has no grounds on which to challenge the assessment.⁷

⁷ In their Initial Brief to this Court, petitioners assert at p. 18, without any citation to support the assertion, that when assessing "multi-county taxpayers such as telephone companies and electric utility companies," local property appraisers typically "assess the unit, then allocate

Obviously, the conflicting decisions of the Fifth District, and the conflicting interpretations of Florida law embodied within them, have and will continue to cause confusion as well as overreaching. The importance of a resolution of this problem cannot be overstated.

III. A PROPERLY PERFORMED UNIT VALUATION MAY BE APPROPRIATE FOR A RATE BASE REGULATED COMPANY BECAUSE IT DOES NOT INCLUDE INTANGIBLE VALUES THAT ARE NOT INTRINSIC TO THE PROPERTY BEING ASSESSED

BST relied on a unit appraisal in the Volusia County case. It did not argue at trial that it was improper ever to use a unit value, or that it was improper to include some intangible values in the unit value. BST's unit appraisal and other evidence was placed squarely within the context of rate base regulation and its effects on earnings from the operating tangible property and therefore the value of that property.⁸ Because rate base is directly tied to the cost of the tangible assets, and because the company's income is limited by rate base, both the cost and income approaches to value have a direct connection with the tangible operating assets that are the subject of the assessment. This is almost surely not the case for a business enterprise that is not subject to rate base regulation, such as a cable television company.⁹

a portion of that value to the County." This statement implies that county property appraisers in Florida are doing business enterprise valuations of telephone company property, which is completely untrue. BST is assessed in 50 counties in Florida, and its 1995 assessment in Broward County is the first valuation it has ever received in the State of Florida that is substantially in excess of the depreciated cost of its assets.

⁸ In 1990, the tax year at issue in that case, pure rate base regulation was still in effect in Florida and elsewhere, and there was no immediate prospect of change.

⁹ As the other briefs filed in this case will no doubt point out, the assertion at p. 19 of petitioners' Initial Brief that "[c]able television companies are rate-base regulated in the same manner as telephone companies" is completely false. [Emphasis added.] In addition, while there have been changes in the way in which Florida regulates telephone companies, the

A. Background.

In 1990, BST was a regulated public utility subject to rate base regulation both by the Federal Communications Commission ("FCC") and by the Florida Public Service Commission ("PSC").¹⁰ This fact directly affected BST's earnings, and therefore directly affected the earnings that an investor could reasonably expect to receive from the company's assets, much the way zoning laws act to restrict the type of development permitted on a certain property and hence the earnings an investor could reasonably expect to earn on that property. Any income the telephone company had would have been directly limited by the cost of its tangible property. Thus, when income was capitalized, the resulting value would necessarily approximate the depreciated cost of its tangible assets.

The going concern valuation adopted by the trial court in Volusia County, however, had no relationship to rate base or to the company's tangible assets. The appraisers did not rely on the cost approach at all, and they used income and stock and debt approaches which both emphasized the effects of stock market prices of BST's parent corporation and those of other unrelated telecommunications holding companies. Once a going concern valuation loses all connection to rate base, it also loses all connection to the company's tangible personal property, as the Fifth District recognized in this case.

The appraisal adopted by the trial court in Volusia County relied primarily on valuation

petitioners' statement on the same page of their brief that telephone companies have been "deregulated" is also completely false.

¹⁰ This has begun to change, since the Florida Legislature enacted legislation in 1995 changing the manner in which BST and other local exchange telephone companies are regulated in many respects. See, §364.051, Fla. Stats. (1995). In 1990, however, BST was still subject to strict regulation, and its earnings were still restricted by its rate base.

approaches which were directly controlled by the earnings/price ratios of the stock of BST's parent corporation and of the stock of other regional telecommunications holding companies. This type of valuation approach necessarily included values that have nothing to do with the actual tangible personal property being appraised. BST is not in the cellular business, the PCS business,¹¹ the paging business, the publishing business, or the entertainment business. Its parent corporation, BellSouth Corporation, however, is or has been in all of these businesses, as well as others. BellSouth Corporation has over two hundred subsidiaries participating in a range of telecommunications activities. Each other regional holding company has its own unique mix of subsidiaries and lines of business.

B. Stock Price Valuation is Not Appropriate.

Any valuation approach which relies on stock prices introduces the difficult task of determining the portion of the value of the traded stock which is directly attributable to the taxable assets. It also ignores the vast technological changes taking place in the telecommunications industry as a whole, including the explosion of cellular telephone service and the new introduction of PCS services. It ignores the fact that local exchange companies are attempting to move into long distance service, and that long distance companies are attempting to provide local services. It ignores the fact that telecommunications companies, cable companies, security services, and entertainment companies are all forming alliances or seeking to form alliances in order to be in the best position to exploit a new, competitive marketplace. These are all intangibles that investors consider when buying stock in telecommunications entities

¹¹ PCS, or personal communications service, is a new type of wireless telephone service based on digital technology.

such as BellSouth Corporation. None of them have a single thing to do with the value of BST's tangible personal property in any county in Florida. Under Florida law, these types of values cannot be included in the ad valorem tax assessment of the tangible personal property of any locally assessed taxpayer in Florida. They are, however, precisely the types of values that are included in an appraisal using the valuation approaches approved by the Fifth District in Volusia County.

The value of a share of stock includes many influences and values other than the intrinsic value of the underlying tangible personal property. For example, the United States Congress recently enacted the Telecommunications Act of 1996, which has opened the door to far more competition than in the past, not only in long distance service, but in local exchange service. This legislation was anticipated by telecommunications companies and investors for quite some time, and the expectations before it passed and the furious action after it passed illustrate how much opportunity investors see in the future of telecommunications.¹² This is principally based on new technologies, however, and not on potential growth of local exchange companies such as BST.

The speculative rise in the value of telecommunications company stock is apparent. BellSouth Corporation stock was trading at \$54 1/8 per share on January 1, 1995. By January 1, 1996, when the passage of the Telecommunications Act appeared imminent, it was trading

¹² As a result of the Telecommunications Act, there have recently been two announcements of mergers between regional Bell holding companies, that between SBC Communications, Inc. and Pacific Telesis Group, and that between Nynex and Bell Atlantic. All four of these companies are holding companies such as BellSouth Corporation that own, among other things, local exchange telephone companies, but they are not themselves local exchange telephone companies. According to the analysts, much of the potential growth for these companies is in their wireless companies, i.e., cellular and PCS, and their international ventures.

at \$87 per share.¹³ BST's overall investment in its Florida assets during that period changed by only 4.32%. Based on the valuation methodology approved by the Fifth District in Volusia County, the value of BST's personal property would nevertheless have increased by 61%. This increase would be almost wholly attributable to investors' hopes about the future.

Investor speculation about future mergers and about the great potential for cellular services and PCS cannot possibly be considered as "all goods, chattels, and other articles of value ... capable of manual possession and whose chief value is intrinsic to the article itself." §192.001(11)(d), Fla. Stats. [emphasis added], and therefore it is not taxable property in Florida. BST does not argue here that a going concern valuation can never be used to assess tangible personal property in Florida. BST asserts that any methodology used should include only the value of the taxable property itself, including values that are intrinsic to that taxable property. BST requests that this Court clarify that tangible personal property cannot be assessed in Florida under any methodology that incorporates intangible values related solely to the business enterprise using the property, rather than values that are intrinsic to the property itself.

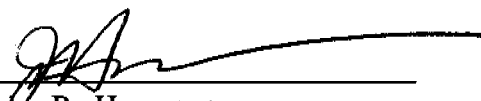
CONCLUSION

The conflicting decisions of the Fifth District Court of Appeal will inevitably lead to doubt on the part of taxpayers and County property appraisers across the state regarding what may legally be included in an assessment of "tangible personal property." As it now stands, one panel of the Fifth District Court of Appeal believes that it is improper to value the "business enterprise" rather than the property itself. Another panel of the same court believes the opposite

¹³ BellSouth Corporation had a two-for-one stock split on November 1, 1995. These prices are both stated in comparable before-split terms. If both are stated in after-split terms, the prices would be \$27 1/16 on January 1, 1995, and \$43 1/2 on January 1, 1996.

is true, however. In effect, the more the house occupant is worth on his financial statement, the more his house is worth. It is hard to imagine a more careless interpretation of the statute. Given the importance of the issues involved to taxpayers generally, as well as the appraisers who affect those taxpayers, BST respectfully requests that the Court take jurisdiction of this case and affirm the decision of the court below.

Respectfully Submitted,

by: 
John R. Hargrove
Florida Bar No. 173745

Heinrich, Gordon, Hargrove,
Weihe & James, P.A.
500 E. Broward Boulevard, Suite 1000
Fort Lauderdale, FL 33394
(305) 527-2800

James W. McBride
Anne M. Stolee
Florida Bar No. 436976
Baker, Donelson, Bearman & Caldwell
801 Pennsylvania Ave., N.W., Suite 800
Washington, D.C. 20004
(202) 508-3400


Robert G. Beatty
BellSouth Telecommunications, Inc.
150 W. Flagler St., Suite 1910
Miami, Florida 33130
(305) 347-5555

Richard W. Bell
BellSouth Corporation
1155 Peachtree St., N.E., Suite 1800
Atlanta, Georgia 30309
(404) 249-2726

Attorneys for Amicus Curiae BellSouth
Telecommunications, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of Amicus Curiae BellSouth Telecommunications, Inc. was mailed to DENIS L. DURKIN, Baker & Hostetler, 2300 Sun Bank Center, 200 South Orange Avenue., P.O. Box 112, Orlando, Florida 32802; GAYLORD WOOD, Wood & Stuart, P.A., 304 SW 12th Street, Ft. Lauderdale, FL 33315; and to JOSEPH MELLICHAMP, Assistant Attorney General, Office of the Attorney General, The Capitol--Tax Section, Tallahassee, FL 32399-1050, on this 3 day of June, 1996.



Attorney for Amicus Curiae
BellSouth Telecommunications, Inc.

f:\law\80001\208\brief