

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

RECORDS AND REPORTING  
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RECEIVED-PPSC

**DATE:** JUNE 29, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF COMPETITIVE SERVICES (AUDU, SIMMONS) *AS*  
DIVISION OF LEGAL SERVICES (B. KEATING) *BK*

**RE:** DOCKET NO. 000733-TL - INVESTIGATION TO DETERMINE WHETHER BELLSOUTH TELECOMMUNICATIONS, INC.'S TARIFF FILING TO RESTRUCTURE ITS LATE PAYMENT CHARGE IS IN VIOLATION OF SECTION 364.051, F.S.

**AGENDA:** 07/11/2000 - REGULAR AGENDA - TARIFF FILING - ALL INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\000733.RCM

### CASE BACKGROUND

On July 9, 1999, BellSouth Telecommunications, Inc. (BST or the Company) filed a tariff with this Commission revising its Late Payment Charge (LPC) in Section A2 of its General Services Tariff (GST). Under this tariff filing, BST applies a LPC of \$1.50 for residential customers and \$9.00 for business customers plus an interest charge of 1.50% on unpaid balances in excess of \$6.00. Prior to this filing, BST applied a LPC of 1.50% to any unpaid balance greater than \$1.00.

BST's filing is presumptively valid, pursuant to Section 364.051 (6) (a), and the tariff filing became effective July 24, 1999. However, the actual tariff provisions became effective August 28, 1999.

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In August 1999, staff first expressed concerns to BST about its LPC tariff filing regarding possible statute violations. Staff was made aware of ongoing discussions between BST and the Office of Public Counsel (OPC) on this same filing. In view of the ongoing discussions between BST and OPC, BST requested that staff allow the negotiations to continue in an effort to resolve the matter. BST furnished staff with a letter stating that BST will provide refunds to affected customers if the LPC is ultimately found to be unlawful. Staff has not been informed of the results, if any, of the negotiations between BST and OPC.

On May 8, 2000, staff received a customer complaint regarding BellSouth's Late Payment Charge. After the receipt of this complaint, staff determined that a Commission decision on this tariff filing is appropriate, since the negotiations between OPC and BST have apparently not yielded any resolution.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission find that BST's GST filing of July 9, 1999, to restructure its late payment penalties is in violation of Section 364.051(6) (a), Florida Statutes?

**RECOMMENDATION:** Yes. The Commission should find that BST's GST filing of July 9, 1999, to restructure its late payment penalties is in violation of Section 364.051(6) (a), Florida Statutes, and should therefore be canceled immediately. Also, the Commission should require BST to provide refunds to all affected customers within 90 days of the issuance of the Consummating Order. Further, staff recommends that BST should file a report with the Commission upon completion of this refund showing monies that were collected from and refunded to customers. (AUDU, SIMMONS)

**STAFF ANALYSIS:**

On July 9, 1999, BST filed a tariff with this Commission to restructure its LPC in its GST. Under this tariff filing, BST applies a LPC of \$1.50 for residential customers and \$9.00 for business customers, plus an interest charge of 1.50% on any unpaid balances in excess of \$6.00. Prior to this filing, BST applied a LPC of 1.50% to any unpaid balance greater than \$1.00.

Since price-regulated LECs' non-basic services filings are presumptively valid and may go into effect fifteen (15) days after the filing, BST's filing became effective July 24, 1999, in accordance with Section 364.051(6) (a), F.S. The tariff provisions became effective August 28, 1999.

Chapter 364, Florida Statutes, allows local exchange companies to elect price regulation effective January 1, 1996. With the election of price regulation, the LEC is subject to certain guidelines, one of which pertains to the pricing of non-basic services. Section 364.051(6) (a), Florida Statutes, reads:

Each company subject to this section shall maintain tariffs with the commission containing the terms, conditions and rates for each of its non-basic services, and set or change, on 15 days' notice, the rate for each of its non-basic services, except that a price increase for any non-basic service category shall not exceed six percent within a twelve-month period until there is another provider

providing local telecommunications service in an exchange area at which time the price for any non-basic service category may be increased in an amount not to exceed twenty percent within a twelve-month period, and the rate shall be presumptively valid.

BST has been a price-regulated local exchange company since January 1, 1996; therefore, BST is subject to Section 364.051, Florida Statutes. Until this filing, BST charged both residential and business customers a LPC of 1.50% on any unpaid balance greater than \$1.00. With this filing, BST has attempted to differentiate the two proposed late payment penalties for the purposes of the Miscellaneous Non-Basic Services basket. BST argues that the only portion of this late payment penalty that is subject to the Non-Basic Services Basket evaluation is the fixed rate of \$1.50 and \$9.00 for residential and business customers, respectively. BST contends that the 1.50% interest charge applicable to any unpaid balances in excess of \$6.00 is not subject to the Non-Basic Services monitoring. BST argues that either the 1.50% interest charge is a new service and should not be construed as a price increase, or that the interest charge is a "fee" and thus does not amount to a service. In either case, BST concludes that the revenue derived from the interest charge should not be included in the basket calculation.

**Structure of BellSouth's LPC Tariff Filing**

	<b>Present Tariff</b>	<b>Proposed Tariff</b>
<b>Residential:</b>		
-- Flat fee	0	\$1.50
-- % charge	1.50% (on unpaid balance greater than \$1.00)	1.50% (on unpaid balances greater than \$6.00)
<b>Business:</b>		
-- Flat fee	0	\$9.00
-- % charge	1.50% (on unpaid balance greater than \$1.00)	1.50% (on unpaid balances greater than \$6.00)

Upon review, staff believes that BST's tariff filing of July 9, 1999, is a price increase pursuant to Section 364.051(6)(a), Florida Statutes, and Order No. PSC-96-0012-FOF-TL issued on

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January 4, 1996 in Docket No. 951159-TL, Investigation to determine categories of non-basic services provided by local exchange telephone companies. BST has assessed a 1.50% late payment penalty in the past, which has been termed a Charge. (See Order No. 17915, Docket No. 870456-TL) Now, BST is restructuring this late payment penalty into a "fixed-dollar" late payment penalty called a Late Payment Charge, and a "fixed-interest" late payment penalty called an interest charge. Staff does not believe that either of these rate elements constitutes a new service; instead, BST has merely introduced a new method of charging for late payments. BST alleges that the original 1.50% LPC was designed to recover a different set of costs. While it appears that BST did not fully recover the carrying costs resulting from customers who continue to pay late, staff cannot confirm what the original 1.50% LPC in Order No. 17915, issued on July 27, 1987, in Docket No. 870456-TL, was designed to recover or include.

In Order No. 17915, issued on July 27, 1987 in Docket No. 870456-TL, Review of Southern Bell Telephone and Telegraph Company's Late Payment Charge, this Commission approved a 1.50% LPC. In that proceeding, BST stated that the LPC was designed to offset those expenses resulting from late payments. The company supplied an analysis showing the estimated incremental revenue and estimated incremental expense associated with the late payment fee. BST indicated that there were incremental effects on five types of expenses. BST's analysis showed increases in bad debt, business office and comptrollers expenses, and reductions in processing and interest expenses. BST asserted that the LPC would enable BST to cover some of the costs associated with late payments. After reviewing the cost study, staff believes the LPC did not recover the interest expense associated with subscribers who continued to pay late. In the final analysis, however, staff does not believe the nature of the cost is germane. The key point from staff's perspective is that per BST's tariff, the old and new charges are for late payment of subscribers' telecommunications services.

Using BST's calculations in this filing, staff observes that the revenue impact of the "fixed-dollar" late payment penalty (i.e., \$1.50 LPC for residential and \$9.00 LPC for business customers) increases the Miscellaneous Services Basket by 5.01%. Staff notes that the revenue impact of the 1.50% interest charge (that BST argues should not be included in the Basket calculation) is approximately 10 times the fixed dollar LPC penalty. At this rate, staff believes that the effective price increase for the Miscellaneous Services Basket is in excess of 50%. Staff contends that absent the separation of these penalties as BST contends is appropriate, BST is clearly in violation of Section 364.051(6)(a),

Florida Statutes, and Order No. PSC-96-0012-FOF-TL, issued on January 4, 1996.

**Revenue Impact of BST's LPC Tariff Filing**

	Current Revenue (million)	Proposed Revenue (million)	Change in Revenue (million)
<b>Rate Element</b>			
1.50% LPC (applied to unpaid balance greater than \$1.00)	\$30.26	0	(\$30.26)
Flat Fee LPC (Res. & Bus.)	0	32.50	32.50
<b>Sub-Total (per BST)</b>			<b>\$2.24</b>
1.50% Interest Charge (applied to unpaid balance greater than \$6.00)	0	23.64	23.64
<b>Grand Total</b>	<b>\$30.26</b>	<b>\$56.14</b>	<b>\$25.88</b>

Staff agrees with BST that the revenue from new services is not initially included for purposes of basket monitoring. Further, it appears that BST did not fully recover the carrying costs resulting from customers who continue to pay late. BST indicates that this restructuring is intended to directly recover these costs from the cost causers. However, staff disagrees with BST that the purported interest charge is not a service, but rather a fee, for the purposes of the basket calculations. Staff believes that the 1.50% interest charge is financial compensation that BST receives from its late paying customers for carrying the customers' late payments resulting from subscribed telecommunications services. As such, staff believes that LPC is a derivative telecommunications service, since interest charges are assessed on subscribers' usage of telecommunication services. Section 364.02(11), Florida Statutes, states that "[S]ervice is to be construed in its broadest and most inclusive sense." Thus, the LPC should be construed as being a part of a telecommunications service. Staff further believes that BST's tariff restructuring to add another rate element (i.e., the percentage interest charge in addition to

the "fixed dollar" charge) cannot be construed to be the same as introducing a new telecommunications service. Thus, staff believes that the reclassified 1.50% interest charge (which was formerly the LPC) is an increase that results from late payment penalties, regardless of what this penalty is called, and should therefore be included in the basket calculation.

Based on the above arguments, staff concludes that these late payment penalties cannot be separated for purposes of compliance with Section 364.051(6)(a), Florida Statutes, and Order No. PSC-96-0012-FOF-TL. Clearly, the accompanying late payment interest charge (for whatever purpose it is targeted) is derived from the mere existence of unpaid balances that result from subscribers' use of regulated telecommunications services. These unpaid balances have been assessed a late payment charge (i.e., 1.5% on all outstanding balances in excess of \$1.00) in the past as some form of late payment penalty. Thus, staff recommends that the Commission should determine that BST's July 9, 1999, GST filing is an impermissible increase in violation of Section 364.051(6)(a), and order that this tariff be canceled immediately. Also, the Commission should require BST to provide refunds to all affected customers within 90 days of the issuance of the Consummating Order. Further, staff recommends that BST should file a report with the Commission upon completion of this refund showing monies that were collected from and refunded to customers.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No. If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final upon the issuance of a Consummating Order. If a timely protest is not filed, the docket should remain open pending completion by BellSouth of the refund within 90 days of the issuance of the Consummating Order. Upon notification that the refund has been completed, this docket should be closed administratively. If a timely protest is filed, the tariff should remain in effect pending the outcome of further proceedings, with any revenues collected held subject to refund.  
(B. KEATING)

**STAFF ANALYSIS:** If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final upon the issuance of a Consummating Order. If a timely protest is not filed, the docket should remain open pending completion by BellSouth of the refund within 90 days of the issuance of the Consummating Order. Upon notification that the refund has been completed, this docket should be closed administratively. If a timely protest is filed, the tariff should remain in effect pending the outcome of further proceedings, with any revenues collected held subject to refund.