

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 000733-TL
ORDER NO. PSC-00-1357-PAA-TL
ISSUED: July 27, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION
ORDER FINDING TARIFFS IN NON-COMPLIANCE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On July 9, 1999, BellSouth Telecommunications, Inc. (BST or the Company) filed tariff revisions with this Commission revising its Late Payment Charge (LPC) in Section A2 of its General Subscriber Service Tariff (GSST) and in Section B2 of its Private Line Services Tariff (PLST). Under the revisions, 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.

Because price-regulated local exchange companies' (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),

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Florida Statutes. The tariff provisions became effective August 28, 1999.

In August 1999, our staff first expressed concerns to BST about its LPC tariff revisions. Our staff was concerned that the filings appeared to conflict with provisions of Chapter 364, Florida Statutes. Our staff was subsequently 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 asked that the negotiations be allowed to continue in an effort to resolve the matter. BST furnished our staff with a letter stating that BST would provide refunds to affected customers if the LPC is ultimately found to be unlawful. To date, however, our staff has not been informed of the results, if any, of the negotiations between BST and OPC.

On May 8, 2000, our staff received a customer complaint regarding BellSouth's Late Payment Charge. In view of the receipt of this complaint, we have moved forward with consideration of these tariff filings, because the negotiations between OPC and BST have apparently not yielded any resolution.

Chapter 364, Florida Statutes, allows LECs 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 LEC 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 these revisions, 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 Previous and Current LPC Tariff Filings

	<u>Present Tariffs</u>	<u>Proposed Tariffs</u>
Residential:		
-- Flat fee	0	\$1.50
-- % charge	1.50% (on unpaid balance greater than \$1.00)	1.50% (on unpaid balances greater than \$6.00)
Business:		
-- 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, we find that BST's tariff filings of July 9, 1999, are a price increase pursuant to Section 364.051(6)(a), Florida Statutes, and Order No. PSC-96-0012-FOF-TL issued on January 4, 1996 in Docket No. 951159-TL, Investigation to Determine Categories of Non-Basic Services Provided By Local Exchange Telephone Companies. We note that BST has assessed a 1.50% late

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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. We do not consider either of these rate elements a new service. Instead, it appears to us that BST has merely introduced a new method of charging for late payments, even though BST contends that the original 1.50% LPC was designed to recover a different set of costs. We emphasize that while it appears that BST did not fully recover the carrying costs resulting from customers who continue to pay late under its prior late payment tariff, Order No. 17915, issued on July 27, 1987, in Docket No. 870456-TL, does not clearly define what costs were to be recovered or included in the original 1.50% LPC.

In Order No. 17915, 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 comptroller's expenses, and reductions in processing and interest expenses. BST asserted that the LPC would enable it to cover some of the costs associated with late payments. After reviewing the cost study submitted in that prior proceeding, our staff has concluded that the LPC apparently did not recover the interest expense associated with subscribers who continued to pay late. In the final analysis, however, we do not believe the nature of the cost is germane. Regardless of how characterized or packaged, both the old and new late payment charges are for late payment of subscribers' telecommunications services.

Using BST's calculations in this filing, 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%. The revenue impact of the 1.50% interest charge is approximately 10 times the fixed dollar LPC penalty. At this rate, the effective price increase for the Miscellaneous Services Basket is in excess of 50%. Absent the separation of these penalties, BST's tariff filings appear to be 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 Previous and Current LPC Tariff Filings

	<u>Current Revenue (million)</u>	<u>Proposed Revenue (million)</u>	<u>Change in Revenue (million)</u>
Rate Element			
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
Sub-Total (per BST)			\$2.24
1.50% Interest Charge (applied to unpaid balance greater than \$6.00)	0	23.64	23.64
Grand Total	\$30.26	\$56.14	\$25.88

We do agree with BST that the revenue from new services is not initially included for purposes of basket monitoring. Further, as we have noted herein, 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. Nevertheless, we disagree with BST that the purported interest charge is not a service, but rather a fee, for the purposes of the basket calculations. 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, the 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. Further, BST's tariff restructuring to add another rate

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element, the percentage interest charge, cannot be construed to be the same as introducing a new telecommunications service. Thus, we find that the reclassified 1.50% interest charge is an increase that results from late payment penalties, regardless of what this penalty is called, and shall, therefore, be included in the basket calculation.

Based on the foregoing, we find that BST's 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, because the accompanying late payment interest charge is derived from the mere existence of unpaid balances that result from subscribers' use of regulated telecommunications services. Thus, we find that BST's July 9, 1999, GSST and PLST filings are an impermissible increase in violation of Section 364.051(6)(a), Florida Statutes. The tariffs shall, however, be allowed to remain in effect for 30 days following the issuance of this Order. If a protest of this decision is filed within the 21-day protest period by a person whose substantial interests are affected, then the tariffs will remain in effect pending the outcome of a hearing with any revenues resulting from the tariff held subject to refund. If a timely protest is not filed and this Order becomes final, BST will have the remainder of the 30 days to file revised tariffs in compliance with this Order. Upon such filing, a determination will be made as to the appropriate refund amount.

It is therefore

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s July 9, 1999, tariff filings revising its Late Payment Charge in Section A2 of its General Subscriber Service Tariff and Section B2 of its Private Line Services Tariff are in violation of Section 364.051(6)(a), Florida Statutes. It is further

ORDERED that the tariffs shall remain in effect for 30 days from the issuance of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the

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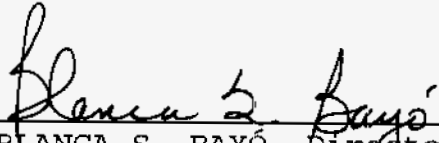
close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if a timely protest of this Order is filed, then the tariffs will remain in effect pending the outcome of a hearing with any revenues resulting from the tariff held subject to refund. It is further

ORDERED that if a timely protest is not filed and this Order becomes final, BellSouth Telecommunications, Inc. shall have the remainder of the 30 days to file revised tariffs in compliance with this Order. A determination as to the appropriate refund amount will be rendered subsequently. It is further

ORDERED that in the event this Order becomes final, this Docket shall remain open pending the filing of the revised tariffs and the determination of the appropriate refund amount.

By ORDER of the Florida Public Service Commission this 27th day of July, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 17, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.