State of Florida

Public Service Commission

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

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COMMISSION CLERK

DATE: OCTOBER 25, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE SERVICES (SIMMONS, CASEY) SAS
DIVISION OF REGULATORY OVERSIGHT (DANIEL)
DIVISION OF LEGAL SERVICES (B. KEATING, CHRISTENSEN)

RE: DOCKET NO. 011381-TL - INVESTIGATION INTO BELLSOUTH TELECOMMUNICATIONS, INC.'s TARIFF FILING (T-010786) TO ESTABLISH THE KEYS EXCHANGE

AGENDA: 11/06/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\011381.RCM

CASE BACKGROUND

On September 29, 2000, a Special Agenda was convened to address, among other items, area code relief for the 305/786 area codes. At agenda, there was discussion regarding the possibility of implementing rate center consolidation in the Florida Keys. Commissioners concluded that rate center consolidation in the Florida Keys is a number conservation measure which could extend seven-digit dialing in that area and should be pursued.

By Order No. PSC-00-1937-PAA-TL, issued October 20, 2000, in Docket No. 990455-TL, the Commission ordered rate center consolidation to be implemented in the Florida Keys portion of the 305/786 area codes. The Order stated that a revenue neutral cost recovery mechanism would be appropriate for the rate center consolidation of seven rate centers into one.

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On November 13, 2000, BellSouth filed a "Petition for Withdrawal or Modification of Proposed Agency Action, or, in the Alternative, Formal Hearing." In its petition, BellSouth asserted that the Commission lacked statutory authority to order rate center consolidation because it would result in a change of BellSouth's rates. However, in its petition, BellSouth stated that it would voluntarily implement rate center consolidation provided that it would recover the costs, through changes to its rates.

Also, on November 13, 2000, the Office of Public Counsel (OPC) filed a "Limited Protest of Proposed Agency Action Order." The petition stated that on November 9, 2000, BellSouth and OPC entered into a stipulation and agreement in Docket No. 920260-TL. As part of that agreement, BellSouth agreed to absorb the non-recurring cost for the operational support system upgrades necessary to implement rate center consolidation and agreed to absorb the recurring cost of eliminating extended calling service as a result of consolidating the seven Florida Keys rate centers into one.

By Order No. PSC-01-0091-PAA-TL, issued January 10, 2001, the Commission approved the settlement agreement between BellSouth and OPC. The Order did note that there was a possibility that customers in the Florida Keys may incur a cost should BellSouth seek to establish a new exchange due to rate center consolidation.

By Order No. PSC-01-0754-FOF-TL, issued March 23, 2001, the Commission vacated that portion of Order No. PSC-00-1937-PAA-TL which required rate center consolidation in the Florida Keys portion of the 305/786 area codes. This action allowed BellSouth to proceed with voluntary consolidation of the present seven rate centers, in accordance with its settlement agreement with OPC.

On July 16, 2001, BellSouth Telecommunications, Inc. filed a tariff (T-010786) to establish a new exchange (Keys) which became effective July 31, 2001. This new exchange is being created as a result of the planned consolidation of the present seven rate centers in the Florida Keys. When rate center consolidation is implemented, BellSouth will presumably make another tariff filing to eliminate the present seven exchanges.

In its filing, BellSouth assigned the new Keys exchange to Rate Group 5, on the basis that the number of access lines in the flat rate local calling area corresponds to Rate Group 5. The monthly rates for Individual Flat Rate Service for Residential and

Business customers in Rate Group 5 are $8.93 and $24.22, respectively. The local calling scope for the new exchange will encompass the Homestead, Miami and Perrine exchanges.

For Residential Message Rate Service, the monthly rate in the new Keys exchange is $8.03, which includes a monthly allowance of 30 outgoing messages, plus a charge of $.15 for each additional message beyond the allowance. For Business Message Rate Service, the monthly rate is $20.59, which includes a monthly allowance of 75 outgoing messages, plus a charge of $.12 for each additional message. Message rate service is considered "nonbasic" service under Section 364.051, Florida Statutes, and is subject to different, more flexible pricing provisions than apply to "basic" (i.e., flat rate local) service. It should be noted that BellSouth has obsoleted Message Rate Service and will eliminate the service effective February 1, 2002.

The current basic rates that apply to the present seven exchanges (Rate Groups 3, 4, and 4 plus EAS additive) and for the new exchange (Rate Group 5) are shown below.

Monthly Flat Rate Service for Individual Access Line			
Exchange		**Residential**	**Business**
Rate Group 3	Marathon and North Key Largo	$8.22	$22.24
Rate Group 4	Islamorada, Key Largo, Key West, and Sugarloaf Key	$8.53	$23.25
Rate Group 4 Plus EAS Additive	Big Pine Key	$10.66	$29.07
Rate Group 5	Keys	$8.93	$24.22

The purpose of this recommendation is to determine the appropriateness of the basic service rates for the new Keys exchange. BellSouth will not proceed with the rate center consolidation until this issue is resolved.

DISCUSSION OF ISSUES

ISSUE 1: Should BellSouth's tariff filing of July 16, 2001 (T-010786) to establish the new Keys exchange be canceled?

RECOMMENDATION: Yes. BellSouth's tariff filing of July 16, 2001 (T-010786) to establish the new Keys exchange should be canceled. BellSouth should be required to make a new tariff filing which sets basic rates for the Keys exchange at the present weighted average monthly rates calculated across the existing seven exchanges, using access lines as weights. The calculations of the weighted average monthly rates should exclude the Extended Area Service (EAS) additive for the Big Pine Key exchange. BellSouth should be strongly encouraged to make this tariff filing within 15 days of the Commission's order. **(SIMMONS, B. KEATING, CHRISTENSEN, DANIEL)**

STAFF ANALYSIS: Per the stipulation between the Office of Public Counsel and BellSouth which was dated November 9, 2000, in Docket No. 920260-TL, and approved by PSC-01-0091-PAA-TL, issued January 10, 2001, BellSouth agreed to consolidate the seven Florida Keys rate centers into one. The stipulation included the provisions that BellSouth would absorb the "nonrecurring cost for the operational support system upgrades necessary to implement rate center consolidation" and the "recurring cost of eliminating Extended Calling Service." (Stipulation, p. 3) The issue of the appropriate basic service rates for the consolidated Keys rate center was not directly addressed in the stipulation. In PSC-01-0091-PAA-TL, the Commission did note that "it is our understanding that the parties to the stipulation have agreed that any rate increase associated with establishing a new exchange in the Florida Keys will be addressed pursuant to Section 364.05[1](3), Florida Statutes." (Order, p. 4) The purpose of this recommendation is to address BellSouth's tariff filing establishing the Keys exchange and to determine the appropriate basic service rates.

Before reaching the question of the appropriate basic service rates, staff will address some underlying issues. One fundamental issue is whether rate center consolidation should be treated as a change in service or a change in rate. In addition, staff will discuss the need for a uniform set of basic service rates in the Keys exchange, in order to avoid discrimination among similarly situated customers.

One effect of BellSouth agreeing to implement rate center consolidation in the Florida Keys is that existing Extended Calling Service (ECS) is converted to Extended Area Service (EAS). Under ECS, residential calls are rated at $.25 per call, regardless of duration, and business calls are rated at $.10 for the first minute and $.06 for each additional minute. Under EAS, customers have unlimited calling included in the monthly flat rate. In order to effectuate rate center consolidation, the existing flat rate local calling areas for the seven present exchanges must be combined into one, such that all customers in the consolidated Keys exchange have the same flat rate local calling area. Under the present seven exchange configuration, a customer in one exchange typically has flat rate calling to its two neighboring exchanges, and ECS calling beyond. When these seven flat rate local calling areas are combined into one, the effect is flat rate local calling from the Key West exchange to the North Key Largo exchange.

Since ECS routes are being converted to EAS, staff believes that this rate center consolidation constitutes a change in basic service. Therefore, staff believes that the basic service rates for the Keys exchange cannot be governed by Section 364.051(3), Florida Statutes, as the Commission previously understood would be the case. (PSC-01-0091-PAA-TL, p. 4) Section 364.051(3), Florida Statutes, places limitations on basic service price increases, which staff interprets as rate increases for the same basic service. In this instance, the nature of the basic service is clearly changing.

Staff notes that the definition of "basic local telecommunications service" provided in Section 364.02(2), Florida Statutes, includes any EAS and ECS in existence or ordered by the Commission on or before July 1, 1995. In addition, Section 364.385(2), Florida Statutes, does not allow the Commission to initiate further EAS proceedings with a price regulated LEC. In this instance, BellSouth has volunteered to implement rate center consolidation in the Florida Keys, which will have the effect of converting ECS routes to EAS. Staff believes that this action constitutes a BellSouth initiated expansion in "basic local telecommunications service," which appears to be permissible under the Florida Statutes, although there is no explicit statutory guidance on the appropriate rate levels in such an instance. Nonetheless, staff believes that Section 364.051(3), Florida Statutes, which addresses allowable price increases for basic service, only applies to basic service as defined in Section 364.02(2), Florida Statutes:

> "Basic local telecommunications service" means voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, such term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

Three different sets of rates apply across the present seven exchanges -- Rate Group 4 for Islamorada, Key Largo, Key West, and Sugarloaf Key; Rate Group 4 plus an EAS additive for Big Pine Key; and Rate Group 3 for Marathon and North Key Largo. Since all customers in the new Keys exchange will have the same flat rate local calling area, staff believes that the rates cannot vary by location. To do otherwise would be contrary to Sections 364.08, 364.09, and 364.10, Florida Statutes, which prohibit any reduced rate, differing charges for like services provided under substantially similar circumstances, or undue advantage or disadvantage among similarly situated customers. Charging multiple sets of rates within the same exchange would mean that similarly situated customers would pay different rates. In Order No. PSC-97-0488-FOF-TL, issued April 28, 1997, in Docket No. 951354-TL at p.8, the Commission indicated that as we move towards a more competitive environment, customers in different exchanges, with similarly sized flat rate local calling areas, may pay different rates. The Order further indicates, however, that it would not be appropriate for customers within the same exchange (and same class of service) to pay different rates for the same calling privileges. (Order, p. 8) This decision was upheld by the Florida Supreme Court on appeal. BellSouth Telecommunications, Inc. v. Johnson, 708 So. 2d 594 (Fla. 1998) Finally, staff notes that it is not technically feasible to bill multiple sets of rates within the same exchange, based on location, since BellSouth offers number portability within an exchange. With number portability, a telephone number used in one of the seven old exchanges could be ported anywhere within the new Keys exchange.

In BellSouth's tariff filing (T-010786), the company assigned the new Keys exchange to Rate Group 5, on the basis that the number of access lines in the flat rate local calling area corresponds to Rate Group 5. While this approach would have been the one traditionally used, staff believes that such an approach would constitute a violation of Order No. PSC-01-0091-PAA-TL, which approved the stipulation between BellSouth and the Office of Public Counsel. As mentioned earlier, the stipulation specified that BellSouth would absorb the recurring cost (i.e., lost revenue) of eliminating ECS. This means that the monthly basic recurring revenue is all that remains. If the new Keys exchange is assigned to Rate Group 5, BellSouth will realize an increase in monthly basic recurring revenue, which would run counter to the stipulation. Based on the Commission's order approving the stipulation and Order No. PSC-95-0513-FOF-TL which is referenced below, staff believes that this rate center consolidation must be revenue neutral to BellSouth, except for the forgone ECS revenue and the present Big Pine Key EAS additive. Staff emphasizes that this revenue neutral approach, with the noted exclusions, would not necessarily be applicable in another rate center consolidation.

Staff observes that the present EAS additive for Big Pine Key has been in effect since December 22, 1995. Per Order No. PSC-95-0513-FOF-TL, issued April 26, 1995, in Docket No. 941144-TL, this additive for EAS to Key West was to be "removed after two years or in a company's next rate case, whichever is later." Since BellSouth elected price regulation effective January 1, 1996, the company will not have a "next rate case." Accordingly, staff believes that it would be appropriate to remove this additive when calculating the monthly basic recurring revenue that BellSouth is entitled to receive. See Order No. PSC-98-1169-FOF-TL, issued August 28, 1998, in Docket No. 970808-TL (Commission retains authority to enforce prior Orders, even if Company elects price regulation in the interim); GTC v. Joe Garcia, 778 So. 2d 923 (Fla. 2000).

If the EAS additive for Big Pine Key is not considered, all customers in the Florida Keys, with the exception of those in the present Marathon and North Key Largo exchanges, are currently paying Rate Group 4 prices. Also, the weighted average monthly rates across the present seven exchanges would be slightly less than the Rate Group 4 prices, since the Marathon and North Key Largo exchanges (Rate Group 3) represent roughly 19% of BellSouth's access lines in the Florida Keys. Given the customer distribution across the present seven exchanges, the majority of customers would benefit from the rate center consolidation if the monthly basic rates for the Keys exchange were set at the present weighted average monthly rates. Staff believes that such an approach would be consistent with Order No. PSC-01-0091-PAA-TL, which specified that BellSouth would absorb the recurring cost (forgone revenue) of eliminating ECS, and Order No. PSC-95-0513-FOF-TL, which indicated that the Big Pine Key additive would be temporary.

Staff wants to emphasize that tariff filings associated with any future rate center consolidations should be evaluated based on the facts, circumstances, and governing law relevant to each case. In the instant docket, staff's conclusions are based on the order approving the stipulation between the Office of Public Counsel and BellSouth; the order requiring EAS between Big Pine Key and Key West; and Sections 364.02(2), 364.051(3), 364.08, 364.09, and 364.10, Florida Statutes.

Based on the above analysis, staff recommends that BellSouth's tariff filing of July 16, 2001 (T-010786) to establish the new Keys exchange should be canceled. BellSouth should be required to make a new tariff filing which sets basic rates for the Keys exchange at the present weighted average monthly rates calculated across the existing seven exchanges, using access lines as weights. The calculations of the weighted average monthly rates should exclude the EAS additive for the Big Pine Key exchange. BellSouth should be strongly encouraged to make this tariff filing within 15 days of the Commission's order.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, the resulting decision should be issued as a Proposed Agency Action. The Docket should, however, remain open in order for BellSouth to make a new tariff filing. Commission staff should be given administrative authority to close the docket if the new tariff filing is consistent with the Commission's decision and if no person whose substantial interests are affected timely files a protest of the Commission's decision within 21 days of the issuance of the Commission's Proposed Agency Action Order.

If the Commission denies staff's recommendation in Issue 1 and BellSouth's tariff is not cancelled, the Commission need only close this docket as a procedural matter, since the Commission would have found the tariff consistent with the law. **(B. KEATING, CHRISTENSEN)**

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, the resulting decision should be issued as a Proposed Agency Action. The Docket should, however, remain open in order for BellSouth to make a new tariff filing. Commission staff should be given administrative authority to close the docket if the new tariff filing is consistent with the Commission's decision and if no person whose substantial interests are affected timely files a protest of the Commission's decision within 21 days of the issuance of the Commission's Proposed Agency Action Order.

If the Commission denies staff's recommendation in Issue 1 and BellSouth's tariff is not cancelled, the Commission need only close this docket as a procedural matter, since the Commission would have found the tariff consistent with the law.