

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-

DATE: FEBRUARY 7, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (GILCHRIST, SIMMONS) *SAS*
OFFICE OF THE GENERAL COUNSEL (DODSON) *Yehs*

RE: DOCKET NO. 020086-TL - INVESTIGATION INTO BELL SOUTH TELECOMMUNICATIONS, INC.'S TARIFF FILING (T-02-0057) ON INSTALLMENT BILLING.

AGENDA: 02/19/2002 - REGULAR AGENDA - TARIFF FILING - PROPOSED AGENCY ACTION - ALL INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020086.RCM

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CASE BACKGROUND

On January 17, 2002, BellSouth Telecommunications, Inc. (BST or the Company) filed a tariff with this Commission introducing a Service Level Agreement for Frame Relay Service and Asynchronous Transfer Mode Service and additional wording to clarify that installment billing is not available to resellers of local exchange service. BST's filing is presumptively valid, pursuant to Section 364.051 (5) (a), and the tariff filing became effective February 1, 2002. However, as the Commission set forth in the footnote to Section 2.07C.14.o of the Administrative Procedures Manual,

In the event that staff's review of the tariff filing uncovers a potential substantive conflict with Florida Statutes, Commission rules or orders, staff will process

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the tariff administratively and concurrently open an investigation docket.

On January 25, 2002, staff contacted BellSouth to express our concerns regarding the additional wording clarifying that installment billing is not available to resellers of local exchange service. Installment billing enables a customer to spread payment of installation and service charges for an order over twelve months, subject to a minimum monthly payment. The discussion between staff and BST regarding this issue has not produced a resolution; therefore, staff deems it appropriate to bring the installment billing issue to the Commission for a decision.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission find BST's tariff filing that installment billing is not available to resellers of local exchange service is in violation of Section 364.161(2), Florida Statutes, and the Provisions of The Code of Federal Regulations, Subpart G, Section 51.605?

RECOMMENDATION: Yes. The Commission should find that BST's tariff filing that installment billing is not available to resellers of local exchange service violates Section 364.161(2), Florida Statutes, and the Provisions of The Code of Federal Regulations, Subpart G, Section 51.605. Section A2, Fourth Revised Tariff page 5, should be canceled (GILCHRIST, SIMMONS, DODSON)

STAFF ANALYSIS: On January 17, 2002, BST filed a tariff with this Commission on installment billing. 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 February 1, 2002, in accordance with Section 364.051(5)(a), Florida Statutes. However, staff has further reviewed the filing in accordance with the footnote to Section 2.07C.14.o in the Administrative Procedures Manual,

In the event that staff's review of the tariff filing uncovers a potential substantive conflict with Florida Statutes, Commission rules or orders, staff will process the tariff administratively and concurrently open an investigation docket.

Staff will first evaluate this issue based on applicable state law. Section 364.161(2), Florida Statutes, addresses resale restrictions and provides as follows:

Other than ensuring that the resale is of the same class of service, no local exchange telecommunications company may impose any restrictions on the resale of its services or facilities except those the commission may determine are reasonable. The local exchange telecommunications company's currently tariffed, flat-rated, switched residential and business services shall not be required to be resold until the local exchange telecommunications company is permitted to provide inter-LATA services and

video programming, but in no event before July 1, 1997. In no event shall the price of any service provided for resale be below cost.

BST argues that installment billing is not a telecommunications service. Staff observes, however, that Section 364.02(11), Florida Statutes, states that "[s]ervice is to be construed in its broadest and most inclusive sense." Thus, staff believes that installment billing should be construed as a telecommunications service since billing is associated with the subscribers' usage of telecommunications services. Accordingly, pursuant to Chapter 364, Florida Statutes, staff believes that installment billing must be available to resellers of local exchange service. This would be consistent with the Commission's rationale in Docket No. 000733-TL, where BST argued that its late payment charge was not a telecommunications service.

In addition, a review of applicable federal law appears to support the same conclusion. Section 251(c)(4) of the Telecommunications Act of 1996 reads in part:

Resale-The duty-(A)to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.

Further, the Provisions of the Code of Federal Regulations, Subpart G-Resale, reads in part:

51.605(a)An incumbent LEC shall offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates that are, at the election of the state commission-

51.605(e)Except as provided in Section 51.613, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC.

Pursuant to Section 51.613, the only permissible restrictions relate to cross-class selling (to a different set of end users),

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short term promotions, and branding. None of these exceptions are germane to the issue at hand.

As under the state law analysis, the crux of the issue is whether or not installment billing is a "telecommunications service." Section 3(a)(2)(51) of the 1996 Telecommunications Act reads:

Telecommunications Service-The term 'telecommunications service' means "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

By virtue of the fact that this definition incorporates the idea of payment for service rendered, staff believes that installment billing should be construed as a telecommunications service. As such, installment billing must be made available to resellers of local exchange service.

The Commission dealt with a similar issue in Docket No. 000733-TL, where BST argued that its late payment charge was not a telecommunications service. In Order No. PSC-01-1769-FOF-TL, issued August 30, 2001, the Commission found that the term "service" should be construed in the "broadest" sense of the word and that BST's interest charge is a "service" that BST renders to its delinquent telecommunications customers for carrying their unpaid balances. Staff notes that this Order is currently on appeal at the Florida Supreme Court. Further, the Commission found that through the use of its interest charge, BST is able to keep its delinquent customers as telecommunications subscribers.

In that Order, as well as in this case, staff believes the term "service" should be construed in the broadest sense of the word and that installment billing is a "service" that BST provides to its retail customers for paying their outstanding balances. Since installment billing is available to BST's retail customers, staff believes installment billing should be available for ALECs. Further, staff believes BST's action of not allowing ALECs the option of installment billing places a restriction on the ALEC that is not being placed on BST, which is in apparent violation of the Statutes and Provisions referenced herein.

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For the foregoing reasons, staff believes BST's tariff filing is not in compliance with Section 364.161(2), Florida Statutes, and the Provisions of the Code of Federal Regulations, Subpart G, Section 51.605. Section A2, Fourth Revised Tariff page 5, should be canceled.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: 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 and the Docket should be closed. If a timely protest is filed, the Docket should remain open and the tariff should remain in effect pending the outcome of further proceedings.
(DODSON)

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