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General Counsel - Florida

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150 South Monroe Street
Room 400
Tallahassee, Florida 32301
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COMMISSION
CLERK

September 14, 2001

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 000733-TL (Inv. Tariff Late Payment Charges)

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Stay of Order Pending Judicial Review, which we ask that you file in the above-referenced matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White
Nancy B. White (KA)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

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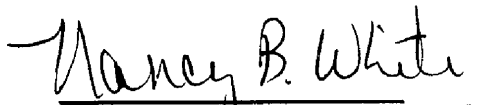
**CERTIFICATE OF SERVICE
Docket No. 000733-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Federal Express this 14th day of September, 2001 to the following:

Lilja Dandelake
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Charles J. Beck (*)
Deputy Public Counsel
Office of Public Counsel
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111 West Madison Street
Room 812
Tallahassee, FL 32399-1400
Attorney for Citizens
of the State of Florida



Nancy B. White (CA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation to determine) Docket No. 000733-TP
Whether BellSouth Telecommunications)
Inc.'s tariff filing to restructure its late)
payment charge is in violation of Section)
364.051, F.S.)
_____) Filed: September 14 , 2001

**BELLSOUTH'S MOTION FOR STAY OF ORDER PENDING
JUDICIAL REVIEW**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 25-22.061, Florida Administrative Code, seeks a stay of the Florida Public Service Commission's ("Commission") Order No. PSC-97-0385-FOF-TL pending judicial review. In support of this motion, BellSouth states as follows:

I. Background

1. On July 9, 1999, BellSouth filed a tariff with this Commission revising its advanced payments tariff to change the Late Payment Charge from a percentage to a flat rate and to add a new interest charge on unpaid balances. After a stipulation of exhibits and briefs, the Commission issued Order No. PSC-01-1769-FOF-TL ("Order") on August 30, 2001. The Commission held that the interest charge imposed by BellSouth violated Section 364.051 (5)(a), Florida Statutes. Because of this, the Commission found that BellSouth should discontinue assessing the interest charge and refund all amounts collected through the interest charge, with interest, to all affected customers within 120 days of a final order.

2. BellSouth will be filing a Notice of Appeal of the Order to the Florida Supreme Court within the appropriate timeframe. Therefore, BellSouth seeks a stay of the Order pending the appeal.

II. The Commission Should Issue a Stay Pending Judicial Review

A. Order Involves a Decrease in Rates

3. BellSouth seeks a stay pursuant to Rule 25-22.061(1)(a) Florida Administrative Code, which requires that a stay be granted pending judicial review when the Order involves the refund of monies or a decrease in rates charged to customers. In these instances, it is not necessary for BellSouth to show that it is likely to prevail on the merits, that it has suffered irreparable harm or that the stay is not contrary to the public interest. There is no question in this case that the Order decreases the rates presently charged by BellSouth to its end user customers and orders a refund of monies.

4. The Order effectively mandates a decrease in BellSouth charges to customers for unpaid balances in excess of \$6.00. Prior to the Order, BellSouth charged such customers an interest charge of 1.50%. The Order essentially mandates that BellSouth may no longer impose this charge. Thus, BellSouth's interest charge for customers who have unpaid balances over \$6.00 have been decreased from 1.5% to zero. BellSouth is therefore entitled to a stay pending judicial review pursuant to Rule 25-22.061(1)(2), Florida Administrative Code.

**B. Alternatively, A Stay Should
Be Issued Under Rule 25-22.061(2)**

5. In the alternative, and only in the event the Commission finds that the Order does not involve a decrease in rates or refund of monies, which BellSouth specifically rejects, BellSouth seeks a stay pending judicial review in accordance with Rule 25-22.061(2), Florida Administrative Code. In determining whether to grant a stay, the Commission may consider whether BellSouth is likely to prevail on appeal; whether BellSouth has demonstrated that it is likely to suffer irreparable harm if the stay is not granted; and whether the delay will cause substantial harm or is contrary to the public interest.

6. BellSouth believes it will prevail on appeal because the interest charge is not a telecommunications service nor part of a telecommunications service. The interest charge is not a fee for service regulated by Section 364.051(5)(a). BellSouth is properly charging customers for the loss of use of money. BellSouth will suffer irreparable harm if a stay is not granted. The Commission has essentially mandated that BellSouth forego the ability to recover the loss of the use of money. BellSouth will not be able to recover its losses if the Commission's Order is eventually overturned. In contrast to the harm to BellSouth if a stay is not granted, the harm to the public if a stay is entered will be inconsequential. BellSouth will continue to collect the interest charge subject to providing refunds with interest to affected customers if the interest charge is ultimately found to be unlawful.

7. BellSouth seeks to preserve the status quo pending appeal. If a stay is granted, BellSouth will collect the monies involved subject to refund. If the

appeal is favorable to the Commission, BellSouth will refund the monies involved. If a stay is not granted and BellSouth is vindicated on appeal, BellSouth will not be allowed to retroactively bill the customers involved even if the customers can be located. Thus, there will be no harm caused to the customers involved or to the general public if a stay is granted.

C. No Bond Should Be Required

8. Rule 25-22.061(1)(a) and Rule 25-22.061(2), Florida Administrative Code, permit the Commission to require BellSouth to post a bond or issue some other corporate undertaking as a condition of the stay. BellSouth recommends that the bond should be set at zero. No bond is necessary because granting the stay will not prejudice the general public.

9. BellSouth submits that, pending the outcome of the judicial review, BellSouth will collect the tariffed charges involved customers in Florida subject to refund as discussed above. Upon the ultimate determination of this matter, BellSouth can make the appropriate disposition of these funds. Thus, the public will not be harmed or prejudiced by the lack of a bond.

For all the reasons discussed herein, BellSouth asks the Commission to issue a stay of its Order pending judicial review.

Respectfully submitted this ___ day of September, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

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