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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN 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 264.051, F.S.

BEFORE: CHAIRMAN E. LEON JACOBS, JR.
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 3

DATE: Tuesday, August 14, 2001

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL
Registered Professional Reporter

ACCURATE STENOGRAPHY REPORTERS
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
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PARTICIPANTS:

JONATHAN AUDU, Commission Staff.
PATTY CHRISTENSEN, on behalf of the Commission
Staff.
SALLY SIMMONS, Commission Staff.

STAFF RECOMMENDATION

ISSUE 1: Is BellSouth's interest charge of 1.50% on unpaid balances, as filed in T-991139, a rate element of an existing service that is subject to the provisions of Section 364.051(5)(a), Florida Statutes?

RECOMMENDATION: Yes. BST's restructured interest charge of 1.50% on unpaid balances, as filed in T-991139, is a rate element of an existing service that is subject to the provisions of Section 364.051(5)(a), Florida Statutes.

ISSUE 2: Is the interest charge filed by BellSouth in T-991139 a "new service" for the purposes of Section 364.051(5)(a), Florida Statutes?

RECOMMENDATION: No. The restructured interest charge as filed in BST's T-991139 is not a new service for the purposes of Section 364.051(5)(a), Florida Statutes.

ISSUE 3: Does BellSouth's tariff filing (T-991139) violate Section 364.051(5)(a), Florida Statutes? If so, what amount needs to be refunded, and how should the refund be determined and made effective?

RECOMMENDATION: Yes. BST's tariff filing (T-991139) violates Section 364.051(5)(a), Florida Statutes.

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Staff recommends that BST be required to discontinue assessing the restructured 1.50% interest charge on unpaid balances in excess of \$6.00 upon the issuance of an order in this proceeding. The Commission should order BST to refund all amounts collected through the restructured interest charge of 1.50%, with interest, to all affected customers within 120 days of a final order. Staff further recommends that this refund be made in the form of a credit to the affected customers' bills; where BST cannot provide a refund through a bill credit, BST should send the customers a check for the appropriate amount.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes.

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1 CHAIRMAN JACOBS: Item 3.

2 MR. AUDU: Commissioners, Item No. 3 is
3 staff's recommendation for BellSouth's
4 restructure of its late payment fees to assess
5 1-1/2% interest on the customer's unpaid balance
6 in excess of \$6. This is in addition to the
7 fixed rate late payment charge.

8 BellSouth basically argues that the 1.5%
9 interest charge does not belong in the
10 miscellaneous services basket, hence, it is not
11 subject to Section 364.05(5)(a). Staff
12 disagrees and does recommend that this
13 Commission find that the 1.5% interest charge as
14 restructured by BellSouth belongs in the

15 miscellaneous basket and that BellSouth is in
16 violation of the 6% increase cap.

17 Staff is available for questions.

18 COMMISSIONER JABER: I know I had a couple
19 of questions, Mr. Chairman, with respect to
20 whether the interest charge constitutes a rate
21 element. Throughout the recommendation we
22 referred to the interest charge as being a rate
23 increase and an element, and I guess what was
24 traditional ratemaking. Are we sure about
25 that? Do the statutes define interest charges

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1 as a rate?

2 MS. CHRISTENSEN: Commissioners, the
3 statutes and the legislative intent provide very
4 little guidance as to this issue. My
5 understanding is that traditionally we have
6 considered the late payment charge as part of
7 the telecommunications service basket.

8 MS. SIMMONS: I was going to add in
9 addition that when looking at the statute, the
10 term "service" isn't specifically defined, but

11 it does indicate -- in 364.02(11), it states
12 that service is to be construed in its broadest
13 and most inclusive sense. And on that basis, I
14 have difficulty in my mind excluding the quote,
15 interest charge. To me, it does constitute a
16 rate element based on this language in the
17 statute. But as is often the case, this is
18 subject to interpretation.

19 COMMISSIONER JABER: Yes.

20 CHAIRMAN JACOBS: I was persuaded by that,
21 particularly when we note that, as raised by
22 OPC, that there was an opportunity for the
23 Legislature to back away from any idea that it
24 would be excluded in the 1995 rewrite, and they
25 did not do that. In other words, the rewrite

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1 does not give any indication that it was the
2 intent of the Legislature to exclude interest as
3 a part of that definition.

4 COMMISSIONER JABER: You know, but my
5 concern always -- and honestly, this case is
6 troublesome to me, because I've always viewed
7 interest charge as a recovery for the time value

8 of money, and I've never really associated it
9 with the costs incurred in collecting the late
10 charges. But what always troubles me about the
11 statement that the Legislature could have
12 changed something is that assumed in that is
13 that the Legislature is going to think about
14 every situation that a company is going to bring
15 before the PSC. You know, could the Legislature
16 have contemplated that BellSouth was going to
17 file a tariff seeking a separate interest charge
18 as part of their late payment charge? I mean,
19 as I understand BellSouth's argument, they don't
20 consider it part of the late payment charge.
21 They consider it over and above their late
22 payment charge and are adamant that it's
23 recovery for the time value of money.

24 CHAIRMAN JACOBS: I think that's a
25 reasonable position to take. But I think the

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1 very nature of how this has evolved gives some
2 guidance to that, because historically this
3 charge has been accepted as part of the nonbasic

4 bundle. Am I correct?

5 MR. AUDU: That is correct, yes.

6 CHAIRMAN JACOBS: And so it would not have
7 been -- if there were any assumption that the
8 Legislature would have taken, it would have
9 taken that history would go forward, i.e., we
10 would continue to have the late payment function
11 as a part of this nonbasic bundle. And so I
12 don't understand why the Legislature, they would
13 have had to proactively and affirmatively take a
14 decision to take it out of that bundle by
15 putting language in the statute. And that's
16 what I think OPC cites, is that they chose not
17 to do that.

18 COMMISSIONER JABER: Let me make sure I
19 understand. The interest charge was included in
20 the original late payment charges assessed by
21 BellSouth?

22 CHAIRMAN JACOBS: No.

23 COMMISSIONER JABER: No. So this is --

24 MR. AUDU: According to BellSouth,
25 basically the initial late payment charge was

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1 more so inclined to recover for the cost of
2 collecting those monies that were owed by the
3 customers, which has merits to a degree. The
4 thing that is kind of interesting is the idea
5 that the notion of recovering the cost of money
6 skipped BellSouth as of that time back in '9 --
7 I mean in '87. I find that a little bit
8 difficult to comprehend that you're talking of
9 recovering for debt, and yet you don't factor in
10 the cost of money. I mean, that's a little bit
11 difficult.

12 Now, assuming that is even an argument that
13 walks, the question --

14 COMMISSIONER JABER: Isn't that common in a
15 -- Jonathan, isn't that common in a market-
16 driven business economy?

17 MR. AUDU: Business economy as in --

18 COMMISSIONER JABER: If you're late on your
19 credit card bill, you're going to get assessed
20 an interest or a finance charge.

21 MR. AUDU: Yes, ma'am. I think -- I do
22 believe that what you are saying is that -- I
23 mean, with a financial institution assessing
24 late payment on interest charges, I do believe

25 that that those two rate elements are both

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1 construed as revenue as to that operation. And
2 that's exactly what we're arguing for, that the
3 interest charge that BellSouth is assessing is
4 equally telecom revenue, because it's being
5 derived from a telecom service.

6 Now, I would almost guarantee that Capital
7 City Bank would argue that the interest charge
8 it derives from its own credit card is part of
9 its banking revenue. And that's all that we're
10 asking here, that the interest charge be
11 construed as part of telecom revenue; therefore,
12 it's subject to the basket calculation. I mean,
13 we are not saying they cannot charge it. We are
14 only saying that it should be part and parcel of
15 the basket.

16 COMMISSIONER JABER: Okay. So it's not the
17 interest charge itself that you define as a
18 service. It's the fact that it's derived from
19 -- it's revenue derived from the service of
20 telecommunications, basically.

21 MR. AUDU: And therefore can be construed
22 in the broadest sense to be part of the service,
23 yes.

24 COMMISSIONER DEASON: Let me make an
25 observation here. First of all, let me say up

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1 front that I'm in total agreement with staff's
2 recommendation. The cost of money is like any
3 other cost. It's a cost of providing telephone
4 service. The question is, how do you recover
5 that cost which is part of providing telephone
6 services.

7 Apparently BellSouth now wishes to have a
8 separate charge. I don't find fault with the
9 methodology of having a separate charge. It may
10 be the most accurate and may be the most
11 equitable way to collect that. But the fact
12 remains that we're constrained by the statutes
13 and what is considered and defined to be a
14 telephone service, and there's constraints upon
15 what can be -- what percentage increases can
16 apply. And we have this basket of goods
17 concept, so we're constrained. We don't really

18 have the luxury to say, "Well, can we put in
19 this new mechanism and do something else?"
20 We're constrained by the statute.

21 And, Commissioners, back in the days when
22 we fully regulated telephone companies and we
23 set their rate base, we factored in what was the
24 cost of money. And usually the way we did it on
25 outstanding balances from customers that were

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1 late, instead of having a separate interest
2 charge, it was part of the working capital
3 requirements of the company. We calculated the
4 balance of accounts receivable, which included
5 not only current accounts receivable, but those
6 that were late. And we calculated that as part
7 of their cost of providing service. It was part
8 of being a telephone company, and I don't see
9 any difference here.

10 So that's the reason that I concluded that,
11 yes, this is part of the basket. It is
12 constrained by the current requirements of the
13 statute. The staff's recommendation is correct.

14 COMMISSIONER PALECKI: I agree with
15 Commissioner Deason. I view the time value of
16 money as being an administrative expense that
17 has always been part of the late payment fee.
18 I'm also of the opinion that the current
19 statutory scheme provides quite a bit of
20 flexibility, that BellSouth can get to the level
21 of total revenues they want to get to for late
22 payment fees, including the interest expense, by
23 increasing the basket, the total basket on a 6%
24 basis during any 12-month period. It might take
25 them several years to get to that level of

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1 revenues, but it's my opinion that the 6%
2 provision in the statutory scheme gives
3 BellSouth quite a bit of flexibility here and
4 that they can get to the level of revenues that
5 they would like to achieve. And I want to ask
6 staff, am I correct in my perception or my view
7 of the statute?

8 MR. AUDU: I do believe that what you said
9 is right on point, in the sense that BellSouth
10 definitely can get to exactly where they want to

11 go within the 6% increase. It's definitely
12 going to take time, but that's doable.

13 COMMISSIONER PALECKI: And they can assign
14 the entire 6% for the entire basket just to the
15 late payment fee; correct?

16 MR. AUDU: They can do that.

17 COMMISSIONER PALECKI: And that would be a
18 sizable amount of dollars in that.

19 MR. AUDU: In order to achieve that, they
20 basically would have to have some reductions in
21 other things that they deem are worth reducing.
22 But, yes, they can assign the whole 6%.

23 COMMISSIONER JABER: They would change the
24 allocations and --

25 MR. AUDU: They would change the

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1 allocations, yes.

2 COMMISSIONER PALECKI: Thank you.

3 COMMISSIONER JABER: Now, there was
4 something, though, Commissioner Palecki said
5 that -- I thought staff in the recommendation
6 acknowledged that the interest charge is not

7 intended to be part of the late payment charge.
8 You acknowledged in the recommendation that the
9 late payment charge is only the cost associated
10 with collecting the late bill, the
11 administrative cost associated with collecting
12 the bill.

13 MR. AUDU: Okay. Let me work that back.
14 The representation that we had at the time of
15 the 1987 filing when they first initiated late
16 payment was that it was intended to recover for
17 the cost of -- I mean for the administrative
18 portion of recovering the debt that the customer
19 owes. Our analysis of that cost study lends
20 credibility to the idea that it wasn't true
21 completely, whereby the cost of money was
22 completely factored in. That said and done, it
23 does not go to exclude the fact that the
24 interest charge, the 1.5 interest charge that
25 they're restructuring today is not part and

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1 parcel of the late payment fee system.

2 So, I mean, even when you look at what they
3 did back in '87 and you bring this in, it's

4 still part of the same basket. It's just a
5 question that they're now trying to make it
6 explicit. They could have easily gone ahead and
7 increased the actual late payment charge to
8 recover the cost of money versus restructuring
9 it into a different rate element.

10 COMMISSIONER JABER: Okay. Now, before we
11 even get to the baskets, could we have denied
12 the late payment tariff, the interest charge
13 part of their submission?

14 MR. AUDU: At what date?

15 COMMISSIONER JABER: When they filed the
16 initial tariff.

17 MR. AUDU: Back in '87?

18 COMMISSIONER JABER: I think it was '99
19 they changed the tariff.

20 MR. AUDU: Okay.

21 COMMISSIONER JABER: July 7, 1999. Could
22 we have denied that?

23 MR. AUDU: We could have denied that, and
24 we did take steps to deny that. What had
25 happened was that they had -- a discussion

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1 . between BellSouth and Public Counsel had ensued
2 in order to try to resolve that. At the point
3 in time that it didn't -- I mean, we just
4 figured it was not prudent to just keep waiting
5 until that was completed, so we went forward
6 with the July 2000 recommendation.

7 MS. SIMMONS: Let me just add that normally
8 the Commission would -- if they felt there was a
9 problem with a particular tariff, you would
10 normally cancel it in total, you know, not one
11 of these situations, cancel in part, you know,
12 allow a portion to continue forward.

13 In this particular case, the only point of
14 contention has been the new, quote, interest
15 charge, the 1-1/2% on balances over \$6. That
16 has been the only portion in dispute. So I
17 guess this is a little bit of a unique
18 situation. That really is the only portion in
19 dispute. And BellSouth has agreed from early on
20 that they would refund in the event the tariff
21 is found to be unlawful, and it's only that
22 portion that appears to be in dispute.

23 COMMISSIONER JABER: Okay. And you don't

24 disagree, Sally, with respect to what that
25 portion is, right, the amount? If we agree with

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1 staff's recommendation, there's a refund amount.

2 MS. SIMMONS: Correct.

3 COMMISSIONER JABER: And there isn't
4 disagreement between staff and the company on
5 what that amount is; right?

6 MS. SIMMONS: I believe staff would need to
7 continue to work with the company on the refund.
8 The information that is contained in the
9 recommendation on page 15, that information is
10 predicated on fairly old pricing units that were
11 available at the time of the filing. Those
12 probably -- we don't know specifically, but they
13 probably go back to perhaps '98 or early '99. So
14 obviously, those -- we don't know what has
15 transpired since then. So this is merely an
16 estimate of the worth of the old tariff compared
17 to the new tariff at the time the filing was
18 made.

19 COMMISSIONER JABER: Mr. Chairman, I don't
20 have any more questions.

21 COMMISSIONER DEASON: Let me ask a question
22 and raise a thought. When a tariff like this is
23 filed, it's considered presumptively valid?

24 MS. SIMMONS: Correct.

25 COMMISSIONER DEASON: Okay. But staff had

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1 questions based upon your initial review,
2 correct, and it was BellSouth's decision to go
3 ahead and implement the tariff, and understood
4 that there were -- in fact, there was an
5 agreement that they would make the refund if it
6 was --

7 MS. SIMMONS: As I recall, BellSouth
8 provided assurances -- I believe it was in the
9 form of a letter -- that in the event the tariff
10 was found to be unlawful that they would agree
11 to refunds.

12 COMMISSIONER JABER: It was referenced
13 again in their brief. They brought it up in
14 their brief.

15 CHAIRMAN JACOBS: Any other questions,
16 Commissioners, or a motion?

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17 COMMISSIONER DEASON: I move staff.
18 CHAIRMAN JACOBS: Second?
19 COMMISSIONER PALECKI: Second.
20 CHAIRMAN JACOBS: It has been moved and
21 seconded. All in favor, aye.
22 COMMISSIONER JABER: Aye.
23 COMMISSIONER PALECKI: Aye.
24 COMMISSIONER DEASON: Aye.
25 COMMISSIONER BAEZ: Aye.

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1 CHAIRMAN JACOBS: Aye. Opposed? Show it
2 approved.
3 (Conclusion of consideration of Item 3.)
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CERTIFICATE OF REPORTER

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4 STATE OF FLORIDA)

5 COUNTY OF LEON)

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7 I, MARY ALLEN NEEL, do hereby certify that the
8 foregoing proceedings were taken before me at the time
9 and place therein designated; that my shorthand notes

10 were thereafter transcribed under my supervision; and
11 that the foregoing pages numbered 1 through 17 are a
12 true and correct transcription of my stenographic
13 notes.

14 I FURTHER CERTIFY that I am not a relative,
15 employee, attorney or counsel of any of the parties,
16 or relative or employee of such attorney or counsel,
17 or financially interested in the action.

18 DATED THIS 21st day of August, 2001.

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