MEMORANDUM

APRIL 28, 1997

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BROWN) MCB

RE: DOCKET NO. 951354-TL - NOTICE OF ELECTION OF PRICE REGULATION BY BELLSOUTH TELECOMMUNICATIONS, INC.

0488-FOF

Attached is an ORDER DENYING TARIFF FILING FOR RATE REGROUPING, to be issued in the above-referenced docket. (Number of pages in Order - 10)

PLEASE ISSUE THIS ORDER TODAY.

see 5+7

MMB/clp
Attachment
cc: Division of Communications
I: 951354fo.mcb

MUST GO TODAY

5 ↑ faxed
3 ↑ mailed
- TGG
- PSC/A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Notice of election of price regulation by BellSouth Telecommunications, Inc.	)	DOCKET NO. 951354-TL ORDER NO. PSC-97-0488-FOF-TL ISSUED: April 28, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

APPEARANCES:

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On behalf of Sprint/United Centel

Ben Poag, Esquire, Post Office Box 165000, Altamonte Springs, Florida 32716
On behalf of Sprint/United Centel

Nancy H. Sims, Esquire, 150 Monroe, Suite 400, Tallahassee, Florida 32301
On behalf of BellSouth Telecommunications, Inc.

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On behalf of GTE Florida, Inc.

Martha Carter Brown, Esquire, Florida Public Service Commission, 2540 Shumard Oaks Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff

ORDER DENYING TARIFF FILING FOR RATE REGROUPING

BY THE COMMISSION:

BACKGROUND

Section 364.051, Florida Statutes, provides that local exchange companies may elect price regulation, effective January 1, 1996. The statute also provides in subsection 2(a) that the rates for basic local telecommunications services of companies subject to this section shall be capped at July 1, 1995, rates, and those

rates cannot be increased before January 1, 1999. Subsection 2(b) states that the rates for basic local service of a company that elects to become subject to price regulation shall be capped at the rates in effect on the date the company files its election with the Commission, and shall remain capped until January 1, 1999.

BellSouth Telecommunications, Inc. (BellSouth) elected price regulation, effective January 1, 1996. Prior to the effective date of its price regulation, the company filed tariffs to reclassify (regroup) the Jensen Beach, West Palm Beach, and Holley-Navarre exchanges into higher rate groups. The regrouping raised basic rates for customers in those exchanges to reflect the expanded local calling scope caused by the higher number of access lines in the exchanges.

On January 10, 1996, we issued Proposed Agency Action Order No. PSC-96-0036-POF-TL, which acknowledged BellSouth's election of price regulation. We also ordered BellSouth to reduce the rates in the Jensen Beach, West Palm Beach and Holley-Navarre exchanges to eliminate the rate increases stemming from the reclassification of those exchanges. We determined that the rate regroupings were not permitted by Section 364.051, Florida Statutes, because BellSouth's local exchange rates are capped at the rates in effect on July 1, 1995.

On January 31, 1996, BellSouth filed a protest to the portion of the Order that required it to eliminate rate increases due to reclassification, and requested a hearing. The case was initially set for hearing, and BellSouth prefiled the Direct Testimony of Mr. A. J. Varner on May 28, 1996. Thereafter, since there were no contested factual matters, the parties agreed to file briefs and present oral arguments on the issues, in lieu of a formal evidentiary proceeding. The parties agreed that the factual portions of Mr. Varner's testimony and the factual stipulations of the parties would provide the evidentiary basis for the proceeding. In Order No. PSC-96-0981-PCO-TL, issued July 31, 1996, the Prehearing Officer approved this procedure pursuant to Section 120.57(2), Florida Statutes. Sprint United/Centel (Sprint) and GTE Florida, Inc. (GTE) intervened in the proceedings, and filed briefs on the issues.

Upon consideration of the evidence presented, the briefs of the parties and the recommendations of our staff, we find that BellSouth shall reduce basic rates in the Jensen Beach, West Palm Beach and Holley-Navarre exchanges to eliminate the rate increases stemming from the reclassification of those exchanges. Reclassification of an exchange subsequent to election of price regulation by BellSouth is a price increase that is prohibited

under Section 364.051, Florida Statutes. Since BellSouth elected price regulation effective January 1, 1996, the statute precludes BellSouth from increasing local exchange rates subsequent to July 1, 1995. Therefore, BellSouth is prohibited from raising rates as a result of regrouping after this date. The reasons for our decision are set out below.

DECISION

Section 364.051, Florida Statutes, permits local exchange companies to elect price regulation effective January 1, 1996. Section 364.051 also provides that the rates for basic residential and single line business local telecommunications services, as well as certain protected non-basic services, will be capped at the rates in effect on July 1, 1995. Specifically, Section 364.051(2) states:

> (a) Effective January 1, 1996, the rates for basic local telecommunications service of each company subject to this section shall be capped at the rates in effect on July 1, 1995, and such rates shall not be increased prior to January 1, 1999. However, the basic local telecommunications service rates of a local exchange telecommunications company with more than 3 million basic local telecommunications service access lines in service on July 1, 1995, shall not be increased prior to January 1, 2001.
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> (b) Upon the date of filing its election with the Commission, the rates for basic local telecommunications service of a company that elects to become subject to this section shall be capped at the rates in effect on that date and shall remain capped as stated in paragraph (a).[1]

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[1] Section 364.02 Florida Statutes, defines basic local telecommunications service as:

> . . . 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 multi-frequency 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

For protected non-basic telecommunications services, Section 364.051(6)(a) states that the prices of:

> 1. A voice-grade, flat-rate,multi-line business local exchange service, including multiple individual lines, centrex lines, private branch exchange trunks, and any associated hunting services, that provides dial tone and local usage necessary to place a call within a local exchange calling area; and
> 2. Telecommunications services provided under contract service arrangements to the SUNCOM Network, as defined in chapter 282,
>
> shall be capped at the rates in effect on July 1, 1995, and such rates shall not be increased prior to January 1, 1999; . . .

BellSouth elected price regulation effective January 1, 1996. GTE and Sprint have also elected price regulation pursuant to section 364.051. Under section 364.051(1)(b), their rates are capped as of the date they elected price regulation.

BellSouth contends in its brief that rate regroupings do not constitute rate increases in contravention of section 364.051. BellSouth argues that the higher prices customers pay merely represent a more valuable version of the local service. The customers are not paying a higher price for the same local service. BellSouth argues that when the customer moves from a smaller rate group to a larger one, the move is a change from a lower priced service to a higher priced, but more valuable service, and not an increase in the price of the customer's service.

BellSouth explains that when access lines within the exchange increase or decrease so that it places the exchange in another rate group, it is required to reclassify the exchange pursuant to Commission Rule 25-04.056, Florida Administrative Code. Decreased access lines that result in a lower rate group would bring about a decrease in the rates charged, and increased access lines that result in a higher rate group would bring about an increase in the rates charged.

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exchange telecommunications company, such a 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.

In Order No. PSC-96-0036-FOF-TL, we described rate regrouping this way:

> Rate regrouping is a rate design mechanism that has been used historically to insure that the rates for certain customer classes are equalized. Rate groups are premised on the number of access lines an end user can call on a local flat-rate basis. As the number of access lines an end-user can call increases, the rate for flat-rate local service also increases. The increase in rates is rooted in an historic value-of-service pricing philosophy; as the number of lines a person can call increases, the more valuable the person's local flat-rate service becomes. As the service becomes more valuable, customers should pay more for it. The rates for each rate group are set for each LEC. Pursuant to Rule 25-4.056, Florida Administrative Code, rate regrouping has been accomplished on an automatic basis by the LECs based on subscribership in an exchange.

Order No. PSC-96-0036-FOF-TL, p.3.

BellSouth claims that its position that rate regrouping is not a price increase is consistent with the rationale that the Commission used in Docket No. 820112-TP, In re: Extended Area Service between Holley-Navarre and Gulf Breeze, Pensacola and Fort Walton Beach. There the Commission authorized an increase in rates reflective of the change in rate groups brought about by extended area service. The Commission stated that since the customers in Holley-Navarre would be able to call more people, they would move into a higher rate group. BellSouth points out that the customers of the other exchanges did not receive a rate increase, because the extended calling scope was not sufficient to change their rate group. BellSouth argues that the Commission's decision in that case reflects the rationale "that a large calling scope equals a more valuable version of local service, which justifies a higher price." BellSouth Brief, p.13.

BellSouth also directs our attention to the Pennsylvania Public Utility Commission's approval of a local exchange company's proposal to classify certain exchanges into new rate groups with higher rates even though it had agreed to a freeze on protected service rates under an alternative regulation plan. In Re: Bell Atlantic-Pennsylvania, Inc.'s Petition and Plan for Alternative

Form of Regulation under Chapter 30, Docket Nos. P-00930715; P-00930715C001; P-0093071C002, 1995 Pa. LEXIS 134, the Pennsylvania Commission recognised that service for exchanges with more density is a more valuable quality of service than service for exchanges with less density.

In its brief, GTE adopts and agrees with BellSouth's position that section 364.051, Florida Statutes, requires that the rates of rate groups must be capped, not the rates of individual customers. Sprint also agrees with BellSouth that Section 364.051, Florida Statutes caps the prices that apply to existing rate groups, not to individual customers. Sprint argues that moving an exchange to a higher rate group does not constitute a rate increase, because the rates are not increased.

> The prohibition in the statute is that existing rates may not be increased. The rates in effect on July 1, 1995, were approved by this Commission for rate groups, not individual customers. As the Commission noted in its Order, the rate regrouped customer pays more because the customer gets more benefits for the new price than he or she got for the old price. If, however, the Commission were to adopt the policy that a rate regrouping is a rate increase for individual customers, such policy would have to be premised on a belief that a local exchange customer, who receives greater benefit because of increased calling scope should, nonetheless, never pay more than he or she is currently paying for local exchange service.

Sprint Brief, p. 5.

Sprint argues that if there can be no further rate regroupings, then there should not be any further Extended Area Service for price-regulated LECs, either. Sprint contends that in time there will be many communities whose customers will be paying rates for local exchange service different from rates paid by customers in other communities of exactly the same size. Sprint argues that there can be no rational basis for what Sprint characterizes as an "anomaly".

The parties in this proceeding have misinterpreted the clear language of section 364.051, Florida Statutes. Section 364.051 prohibits rate increases by price regulated LECs in basic and protected non-basic telecommunications services for the time set

out in the statute, period. It does not make any exceptions to that prohibition, for rate regrouping, extended area service after July 1, 1995, or any other price "adjustment". We believe that the parties have misinterpreted section 364.051 to permit the price increases at issue here, because they have applied traditional regulatory pricing principles of rate setting and rate structure to a statutory scheme that rejects those principles, and instead embraces a deliberate move to the pricing mechanisms of a competitive market for telecommunications services in Florida. The Commission's decision cited by BellSouth, as well as the Pennsylvania Public Utility Commission's recent decision, reflect the traditional philosophies of pricing that are appropriate for rate of return regulation, but are not appropriate for deregulation.

Rate grouping is a creature of the rate-of-return regulatory era, created as a value-of-service, revenue generating mechanism, where rates were not necessarily based on cost. The increase in rates was rooted in a value-of-service pricing philosophy. It was logical to assume that customers should pay more if they could call more lines. Rule 25-4.056, Florida Administrative Code, reflects this traditional regulatory philosophy, and, as witness Varner stated, regrouping occurred fairly automatically under this rule, based on growth in subscribership in a local calling area.

Under a statutory scheme that deregulates local telecommunications service, however, it is not appropriate to provide regulated revenue streams for price-regulated LECs, unless the statute specifically contemplates, and provides for, such an aberration, which it does not. We still agree with our analysis in Order No. PSC-96-0036-POF-TL where we said:

> [T]he rate grouping plans are something that have [sic] originated from rate of return regulation. With the revisions of Chapter 364 and the encouragement of competition, current rate structures of the local exchange companies ultimately may vary greatly to respond to competitive pressures. As competition develops, particularly price competition, pricing plans such as regrouping will become an historic anachronism.

Order No. PSC-96-0036-POF-TL, p. 4.

We do not believe that the statute contemplates a rate increase for price-regulated LECs under the rationale that it is appropriate to raise basic telecommunications service rates for

certain customers by moving them into a different group as long as the rates of any group are not raised. The statute does not say that rate group rates will be capped. It says that rates will be capped. "Rates" means all rates to customers for basic local and protected non-basic telecommunications services.

The parties argued that if rate regrouping for LECs who elected to operate under price regulation is prohibited by statute, the resulting rate disparity among similarly situated customers would result in discrimination, and is contrary to sections 364.08(1), 364.09 and 364.10(1), Florida Statutes.

In its brief, BellSouth explains that the prices charged for the Jensen Beach, West Palm Beach, and Holley-Navarre exchanges will be different from customers similarly situated in other exchanges and it will be subjecting customers in Florida to undue or unreasonable prejudice or disadvantage. Sprint and GTE agree with BellSouth that the disparity in prices from the prohibition of rate grouping constitutes discrimination against similarly situated customers.

We believe that price differences caused by the implementation of price caps for basic and protected non-basic services under the provisions of section 364.051, Florida Statutes, do not constitute undue discrimination pursuant to sections 364.08, 364.09, or 364.10, Florida Statutes. Circumstances that would have amounted to undue discrimination in rate setting under monopoly regulation do not amount to undue discrimination under deregulation. While the rate caps established in section 364.051, create differences between the prices customers in different exchanges pay, customers within an exchange will still pay the same rates for the same calling privileges.

The 1995 legislation recognizes that prices can vary between exchanges for the same service within a LEC's territory. Subject to the caps established in section 364.051(2), section 364.051(6), Florida Statute, allows the LECs to respond to competitive offers by altering their current rate structure in an attempt to match these offerings. As competition evolves and the companies use these options, we believe that there will be many instances of appropriate differential pricing.

We find that there is reasonable justification for price differences between exchanges when the differences are caused by the implementation of Section 364.051, Florida Statutes. A disparity in prices under these circumstances does not constitute undue discrimination. We do agree with the parties that if further rate regrouping is not permitted under section 366.051, some

customers may be paying rates for local exchange service different from rates paid by customers in other exchanges of the same size. We do not agree, however, that the answer to that problem is the perpetuation of a traditional regulatory pricing system. The answer is the development of an effective competitive marketplace.

Based on the foregoing,

It is ORDERED by the Florida Public Service Commission that BellSouth is prohibited from regrouping subsequent to the effective date of its elected price regulation, January 1, 1996. It is further

ORDERED that BellSouth shall reduce its rates to the Jensen Beach, West Palm Beach and Holley-Navarre exchanges to eliminate the rate increases stemming from the reclassification of those exchanges. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 28th day of April, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MCB

Commissioner Susan F. Clark and Commissioner J. Terry Deason dissented.

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.