

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
BellSouth Telecommunications,
Inc.'s tariff filing (02-0057)
on installment billing.

DOCKET NO. 020086-TL
ORDER NO. PSC-02-0255-PAA-TL
ISSUED: February 27, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER ON BELLSOUTH'S INSTALLMENT BILLING TARIFF FILING (02-0057)

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

On January 17, 2002, BellSouth Telecommunications, Inc. (BST) or (BellSouth) filed a tariff on installment billing (02-0057) with this Commission. 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, on January 31, 2002, our staff opened this docket to investigate a potential substantive conflict with Section 364.161(2) Florida Statutes.

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II. ARGUMENTS

Our staff's concern centered on additional wording in the tariff clarifying that installment billing is not available to resellers of local exchange service. Installment billing enables a customer to spread the payment of installation and service charges for an order over twelve months, subject to a minimum monthly payment.

Section 364.161(2), Florida Statutes, addresses resale restrictions:

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.

Section 364.02(11), Florida Statutes, states that "[s]ervice is to be construed in its broadest and most inclusive sense." Thus, our staff was concerned that if installment billing should be construed as a telecommunications service, since billing is associated with the subscribers' usage of telecommunications services, then Section 364.161(2), Florida Statutes, apparently requires that installment billing be made available to resellers of local exchange service. It was noted that this would be consistent with our rationale in Order No. PSC-01-1769-FOF-TL, issued August 30, 2001, in Docket No. 000733-TL, where BST argued that its late payment charge was not a telecommunications service. We found, however, that BST's interest charge is a "service" that BST renders to its delinquent telecommunications customers for carrying their unpaid balances. That Order is currently on appeal at the Florida Supreme Court.

There was a question whether the term "service" should be construed in the broadest sense of the word and whether 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, it appeared logical that installment billing should be available for ALECs.

To support that observation, our staff referenced Section 251(c)(4) of the Telecommunications Act of 1996, which 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, read 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, C.F.R. the only permissible restrictions relate to cross-class selling (to a different set of end users), 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, our staff questioned whether installment billing should be construed as a telecommunications service. As such, installment billing would have to be made available to resellers of local exchange service.

BST'S POSITION

BST argues that installment billing is not a telecommunications service. Rather, it is an option, available to its retail customers which it negotiates on a customer by customer basis. BST asserts it does not place any restrictions on what ALECs can charge endusers or on an ALEC's ability to allow its customers to pay in installments. An ALEC reseller is free to offer installment billing to its end users, should it decide to do so. Further, resale agreements negotiated between ALECs and BellSouth can, and do in some cases, include installment billing.

BST maintains that installment billing is not a telecommunications service as defined by Section 3(a)(2)(51) of the 1996 Telecommunications Act because the definition of "Telecommunications" is the transmission between one or more points of information of the user's choosing." Installment billing does not involve the transmission of information.

III. CONCLUSION

We do not find that installment billing is a telecommunications service. No new telecommunications services are being offered to retail customers with this tariff filing. Our decision in Order No. PSC-01-1769-FOF-TL, in Docket No. 000733-TL can be distinguished from the present case. In Docket No. 000733-TL BellSouth's tariff filing restructured its late payment charge as part of the miscellaneous service basket. The restructure divided the 1986 Late Payment Charge into fixed and variable rate elements--a flat rate late payment fee and an interest charge. We

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did not determine that the late payment charge itself was a service. That late payment charge was assessed on a customer's use of telecommunications services with the desired result being to improve cashflow for BellSouth's telecommunications operations. Therefore, the interest charge for late payment stemmed from BellSouth's telecommunications operations. A late payment charge is a charge that has to be paid if a customer is to continue to receive service.

In this tariff filing, however, BellSouth gains no advantage over competitors by installment billing. The service fee is related to the installment plan. The installment plan is not a prerequisite to receive a telecommunications service and is not a charge for a telecommunications service.

We agree with BellSouth that telecommunications service means the offering of a service that relates to the transmission of information from one point to another. Installment billing is a methodology relating to how a customer pays and not to what services he receives. Since we find there is no conflict with Section 364.161(2) Florida Statutes, BellSouth's late payment charge tariff filing is approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the late payment tariff filing (02-0057) of BellSouth Telecommunication, Inc. is accepted as filed. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

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By ORDER of the Florida Public Service Commission this 27th
Day of February, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

LHD

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 20, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.