

J. Phillip Carver
General Attorney

BellSouth Telecommunications, Inc.
c/o Nancy H. Sims
Suite 400
150 So. Monroe Street
Tallahassee, Florida 32301
Telephone: 305 347-5558

February 16, 1996

Ms. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Rm. 110
Tallahassee, Florida 32399-0850

Re: **Docket No.** 960191-TL
BST's Petition for Declaratory Statement

Dear Mrs. Bayó:

Enclosed please find an original and fifteen copies of BellSouth Telecommunications, Inc.'s Petition for Declaratory Statement, or Alternatively, for Waiver of Penalty, which we ask that you file in the captioned docket.

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 yours,
J. Phillip Carver (03)
J. Phillip Carver

Enclosures

cc: All Parties of Record
R. G. Beatty
A. M. Lombardo
R. Douglas Lackey

28

DOCUMENT NUMBER DATE
01868 FEB 16 96
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: BellSouth Telecommunications,) Docket No.
Inc.'s Petition for Declaratory)
Statement, or Alternatively, for)
Waiver of Penalty.)
_____) Filed: February 16, 1996

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
PETITION FOR DECLARATORY STATEMENT, OR
ALTERNATIVELY, FOR WAIVER OF PENALTY**

BellSouth Telecommunications, Inc. ("BellSouth" or "Company") hereby files, pursuant to Rule 25-22.036, Florida Administrative Code, its Motion for Declaratory Statement, or Alternatively, for Waiver of Penalty and states the following:

1. BellSouth is a telephone company lawfully doing business in the State of Florida whose regulated operations are subject to the jurisdiction of the Commission pursuant to Chapter 364, Florida Statutes.

2. BellSouth's principal place of business in Florida is:

BellSouth Telecommunications, Inc.
150 West Flagler Street, Suite 1910
Miami, Florida 33130

3. All notices, pleadings, orders and process in this matter should be served upon the following:

Robert G. Beatty
J. Phillip Carver
c/o Nancy H. Sims
150 So. Monroe St., Suite 400
Tallahassee, FL 32301

4. BellSouth has a substantial interest in this matter by virtue of the facts set forth below in paragraph 6.

DOCUMENT NUMBER-DATE

U 1868 FEB 16 88

FPSC-RECORDS/REPORTING

5. Rule 25-4.0161, Florida Administrative Code sets forth the requirements for filing regulatory assessment fees pursuant to Section 350.113 and 364.336, Florida Statutes. Under Rule 25-4.0161, regulatory assessment fees are due January 30 for the period that covers the last six months of the previous calendar year.

6. BellSouth's regulatory assessment fee in the amount of \$2,075,381.80 was due to be filed on January 30, 1996 for the last six months of 1995. This fee was not filed due to inadvertence by BellSouth personnel. The inadvertent failure to timely file this fee was caused in part by a number of illnesses that resulted in absences of office personnel. As a result of these absences and an unusually heavy workload on January 30, 1995, the above-described fee was not mailed or delivered to the Florida Public Service Commission even though it had been prepared for delivery.

7. It was discovered early the following morning that the fee had inadvertently not been filed. At that time, the fee was immediately hand-delivered to the Florida Public Service Commission ("Commission"). Accordingly, the fee was received by the Commission at approximately 10:00 a.m. the morning of January 31, 1996. On February 5, 1996, BellSouth received a letter (a copy of which is attached as Exhibit "A") stating that due to its having filed the fee one day late, a penalty and interest totalling \$124,522.91 was owed.

8. Based upon these facts, BellSouth requests a declaratory ruling that it has substantially complied with the filing requirements described above and that it should not be penalized. Alternatively, BellSouth requests that the Commission exercise its discretion to waive the payment of this penalty.

9. The instant case is very similar to the matter the Commission ruled upon in regard to GTE Florida, Inc. ("GTE"), (Docket No. 941196-TL - Request for Ruling or, in the Alternative, Petition for Declaratory Statement or Other Appropriate Action Regarding Penalty Imposed by Florida Public Service Commission for Late Payment of Regulatory Assessment Fees by GTE Florida Incorporated). In that matter, GTE's regulatory assessment fee was due to be filed on a Saturday. GTE hand-delivered the fee the following Monday. The Commission Staff took the initial position that, although delivery of the fee was obviously not possible on the Saturday in question, the fee could have been mailed on that day, and that a letter postmarked and mailed on that day would have complied with the rule¹. GTE asked the Commission to declare that no penalty was due. It also argued that the Commission had considerable discretion in this area, and cited numerous cases in support of the general proposition that penalties of various sorts can be waived.

¹ The Staff Recommendation filed February 23, 1995 stated (at p. 4) that "Form PSC/CMU 25 advises that envelopes containing fee payments must be postmarked on or before the due date to avoid penalty and interest charges."

10. The Commission ruled that GTE had "substantially complied with the requirements of Rule 25-4.0161, F.A.C. ...", by delivering the fee on the date following the Saturday even though, technically speaking, it was due to be filed on Saturday. (Order No. PSC-95-0364-FOF-TL, p. 3)

11. In our case, it is true that BellSouth neither postmarked nor delivered the fee and accompanying form on the due date. BellSouth did, however, deliver the form early the following morning, as soon as it discovered that the fee had not been delivered. Moreover, by hand-delivering the fee the morning of January 31, 1996, BellSouth ensured that the Commission received the fee earlier than it would have if BellSouth had postmarked and mailed it the day before (and, thereby, technically complied with the rule).

12. As a result of BellSouth's prompt remedying of its error, there was no damage done whatsoever. In other words, BellSouth did not receive any additional interest on the money as a result of its late filing, and the Commission was not deprived of any interest on this money. Also, this late filing represents an isolated incident, and BellSouth has always been prompt in its past filings of this fee. Finally, the amount of the fee as set forth in the February 5, 1996 letter is in excess of \$125,000. BellSouth respectfully submits that this is simply an inequitable amount for it to be penalized for a marginal tardiness in the filing of the fee.

13. Given the fact that this fee was actually delivered to the Commission the following morning, along with all the other equitable considerations, BellSouth submits that the Commission should declare, just as it did in the GTE case, that BellSouth has "substantially complied" with the rule and that no penalty and assessment of interest is appropriate. Alternatively, BellSouth requests that the Commission find that any tardiness is excusable under the circumstances, and so minimal that it would be inequitable to assess a penalty of \$125,000. BellSouth submits that, even if a technical violation occurred, the Commission should exercise its considerable discretion in this area to either waive the penalty or to reduce it to a nominal amount that corresponds to the minimal degree of tardiness in payment.

WHEREFORE, BellSouth respectfully requests the entry of an Order as set forth above.

Respectfully submitted this 16 day of February, 1996.

BELLSOUTH TELECOMMUNICATIONS, INC.

Robert G. Bfatty
ROBERT G. BFATTY (og)
J. PHILLIP CARVER
c/o Nancy H. Sims
150 So. Monroe Street, Rm. 400
Tallahassee, FL 32301
(305) 347-5555

CERTIFICATE OF SERVICE
DOCKET NO.
(BST's Petition for Declaratory Statement)

I HEREBY CERTIFY that a true and correct copy of the
foregoing was served by U.S. Mail this 16 day of February, 1996
to the following:

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

J. Phillip Carver
J. Phillip Carver (3)