



Public Service Commission

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DATE: JANUARY 15, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (BARRETT) *MCB SAS for WDH*
 GENERAL COUNSEL (R. VANDIVER) *R*
 DIVISION OF LEGAL SERVICES (M. BROWN) *MCB R*

RE: DOCKET NO. 990043-TP - PETITION TO REVIEW AND TO CANCEL
 BELL SOUTH TELECOMMUNICATIONS, INC.'S PROMOTIONAL TARIFF
 (T-98-1783) BY ARROW COMMUNICATIONS, INC.

AGENDA: 1/19/1999 - REGULAR AGENDA - PROTEST OF TARIFF FILING -
 INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: IMMEDIATE ACTION REQUESTED

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990043.RCM

CASE BACKGROUND

On December 31, 1998, BellSouth Telecommunications, Incorporated (BellSouth or the Company) filed a tariff to offer a promotion called "Three Free." Attachment A contains the tariff filing (T-981783). The "Three Free" program is a ninety-day promotion targeted at small business customers in their exchange areas who are currently receiving telecommunication services from alternative local exchange companies (ALECs). As titled, the "Three Free" promotion offers the incentive of three (3) months of no-cost telecommunications services in exchange for a contractual commitment to remain with BellSouth for eighteen (18) months. The "Three Free" promotional period began January 14, 1999 and will end April 9, 1999.

On January 13, 1999, a petition was filed with the Commission's Division of Records and Reporting by Arrow Communications, Incorporated (Arrow or ACI), a certificated ALEC,

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FPSC-RECORDS/REPORTING

to review and cancel BellSouth's promotional tariff. This petition is included as Attachment B. The Division of Communications received this petition on January 14, 1999, the date the proposed tariff became effective.

DISCUSSION OF ISSUES

ISSUE 1: Should BellSouth's "Three Free" tariff promotion be suspended, pending resolution of the petition filed by Arrow?

RECOMMENDATION: Yes. BellSouth's "Three Free" tariff promotion should be suspended, pending the resolution of the petition filed by Arrow. (Barrett, Vandiver, Brown)

STAFF ANALYSIS: The petitioner, ACI, cites numerous objectionable grounds as the basis for its protest; namely, that it is a substantially affected competitor of BellSouth's. ACI claims the BellSouth tariff violates Section 364.08(1), Florida Statutes, by extending lower rates to one segment of small business customers that are indistinguishable from all other small business customers during the effective period of lower rates. ACI asserts that BellSouth is extending such an advantage to a select group of small business customers.

Additionally, ACI states that BellSouth - as a result of the "Three Free" promotion - is violating Section 364.08(2), Florida Statutes, by giving free or reduced service. Staff notes that the no-cost benefit period is for the first three (3) months of the eighteen (18) month contract. ACI contends that in averaging the value of the benefit ("Three Free") over the life of the contract, the resultant price is over sixteen (16) percent lower than the regularly tariffed rate, which approximates the discounted rate available to ALEC resellers, such as Arrow. In much the same manner, ACI alleges that the BellSouth promotion violates Section 364.09, Florida Statutes, by charging unique rates to a certain group of small business customers.

Staff believes the petitioner has raised significant prima facie issues regarding possible discriminatory and anti-competitive behavior which the Commission needs to investigate. The Commission has authority under Sections 364.08, 364.09 and 364.10(1), Florida

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Statutes, to examine discriminatory actions and under Sections 364.01(4)(g) and 364.3381(3), Florida Statutes, to address anti-competitive practices.

While the Commission has the authority to examine discriminatory actions and anti-competitive practices, there is a question as to whether the Commission even has the authority to suspend a tariff filing of a price-regulated telephone company. The power to suspend tariffs of telephone companies is in Subsection 364.05(5), Florida Statutes. This subsection does not apply to price-regulated telephone companies. (See Subsection 364.051(1)(c), Florida Statutes) Thus, the Legislature may have intended for tariff issues to be resolved after the tariffs go into effect, regardless of the nature of the issue. The Commission certainly has the authority to consider this matter on an expedited basis without suspension.

Although there are differing interpretations of whether the Commission has the authority to hold this tariff in abeyance, staff is concerned that ALECs may be irreparably harmed if this tariff remains in effect, and the Commission ultimately determines that the tariff is discriminatory or anti-competitive. Given the Commission's broad authority to prevent discriminatory and anti-competitive practices, staff recommends that the tariff be suspended pending the resolution of Arrow's petition.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open, pending the resolution of this petition. **(Brown)**

STAFF ANALYSIS: Staff, therefore, concludes that this docket should remain open, pending the resolution of this petition.

ISSUED: December 30, 1998
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: January 14, 1999

Attachment A
Docket No. 990043-TP

A2. GENERAL REGULATIONS

A2.10 Special Promotions (Cont'd)

A2.10.2 Descriptions (Cont'd)

A. The following promotions are approved by the Commission: (Cont'd)

Area of Promotion	Service	Charges Waived	Period	Authority
BellSouth's Service Territory ¹ -From Central Offices where Designer Listings are available.	Designer Listings (residence)	Nonrecurring Charges	03/14/98 to 02/28/99	
BellSouth's Service Territory ¹ -From Central Offices where Message Waiting is available.	Message Waiting Indication (residence)	Nonrecurring Charges	03/14/98 to 02/28/99	
BellSouth's Service Territory ¹ -From Central Offices where Rotary Line Service is available.	Rotary Line Service (residence)	Nonrecurring Charges	03/14/98 to 02/28/99	
(DELETED)				(D)
(DELETED)				(D)
(DELETED)				(D)
(DELETED)				(D)
BellSouth's Service Territory ¹	All Business Services excluding: taxes, late payment charges, charges billed pursuant to Federal or State Access Service Tariffs, charges collected on behalf of municipalities (including, but not limited to surcharges for 911 service and dual party relay service), and charges for services provided by other companies, billed charges on any account that provides any service rated according to customer-specific negotiations, contracts or service arrangements (including, but not limited to Contract Service Arrangements (CSAs and MSAs) and Special Service Arrangements).	Line Connection Charges and three months' recurring charges for returning business customers that previously had BellSouth service and left BellSouth before October 1, 1998 and that currently have local service with a CLEC (facilities based or reseller). These customers must sign a contract agreeing to remain a BellSouth customer for 18 months. Customers leaving BellSouth prior to the end of the 18 month agreement will reimburse BellSouth for nonrecurring and recurring charges waived.	01/14/99 to 04/09/99	(N)

Note 1: Customer may elect to participate only once during each promotion.

David B. Erwin
Attorney-at-Law

127 Riversink Road
Crawfordville, Florida 32327

Phone 850.926.9331
Fax 850.926.8448
derwin@lewisweb.net

January 13, 1999

990043-TP

Blanca Bayo
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

In re: Petition to Review and to Cancel Promotional
Tariff of BellSouth Telecommunications

Dear Ms. Bayo:

Please find enclosed an original and ten copies of the Petition to Review and to Cancel Promotional Tariff of BellSouth Telecommunications, by Arrow Communications, Inc.

Please call me if you have any questions.

Sincerely,



David B. Erwin

DBE:jm
Enclosure

DOCUMENT NUMBER-DATE

00471 JAN 13 99

FPSC-REGULATORY REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Review)
and to Cancel Promotional Tariff)
of BellSouth Telecommunications)
_____)

Docket No.

Filed: January 13, 1999

PETITION TO REVIEW AND TO
CANCEL PROMOTIONAL TARIFF

Arrow Communications, Inc., d/b/a ACI, through its undersigned attorney petitions the Commission to Review the Promotional Tariff of BellSouth Telecommunications, Inc. (hereinafter BellSouth), filed December 30, 1998, to become effective January 14, 1999, (T-98-1783) and to cancel said tariff forthwith.

In support of its petition, ACI states as follows:

1. ACI is a certificated ALEC, with Certificate No. 4468, issued by the Commission, and as such, ACI is a substantially affected competitor of BellSouth, and, as such, has standing to protest the objectionable tariff filing of BellSouth.

The petitioner's name, address and telephone number is:

Arrow Communications, Inc. d/b/a ACI
16001 S. W. Market Street
Indiantown, Florida 34956
Telephone: 561.597.3113
Fax: 561.597.2115
President: Robert M. Post, Jr.

The petitioner's representative's name, address and telephone number is:

David B. Erwin
127 Riversink Road
Crawfordville, Florida 32327
Telephone: 850.926.9331
Fax: 850.926.8448

2. The tariff filing of BellSouth is objectionable on various factual and legal grounds, as hereinafter set forth, because of the inducements offered by the promotion, the circumstances under which the inducements are offered and the persons to whom they are made available. BellSouth intends to lure BellSouth's competitors' small business customers away from those competitors and back to BellSouth by giving those small business customers free service for three months in return for an 18 month commitment to be a customer of BellSouth once again.

a. The promotional scheme of BellSouth embodied in its proposed tariff is objectionable because it violates Section 364.08(1), Florida Statutes. The tariff extends lower rates to one segment of small business customers that are indistinguishable from all other small business customers during the effective period of the lower rates. The only distinguishing factor between the two groups of small business customers is the carrier with which each customer was doing business before the effectiveness of the lower rate. Section 364.08(1), F. S., prohibits extending to any person any contractual advantage not regularly extended to all persons under like circumstances for the same or substantially similar service, and BellSouth is extending such an advantage to selected small business customers.

b. The promotional scheme of BellSouth embodied in its proposed tariff is objectionable because it violates Section 364.08(2), F. S., by giving free or reduced service. The service is free for three months to returning selected small business customers, or, if the free service is averaged with the cost of service for the 18 month term of commitment, the service is at a reduced rate (at least 16.6% of the regularly tariffed rate).

c. The promotional scheme of BellSouth embodied in its proposed tariff is objectionable because it violates Sections 364.09, F. S., in the same manner described in the two previous paragraphs, by charging special rates to one group of small business customers when that group is indistinguishable from any other group of small business customers. All such customers receive the same or substantially similar service, but one group, over an eighteen month period will receive service at a rate that is at least 16.6% lower.

d. The fact that BellSouth can charge rates to one group of small business customers that are 16.6% lower than its regular retail rates calls into question the sufficiency of the avoidable costs that BellSouth has alleged as the basis for reducing its retail rates by 16.81% to resellers. If BellSouth can make do with revenue from a number of small business customers that is reduced by at least 16.6%, then perhaps BellSouth needs less revenue from its small business customers and/or BellSouth's wholesale rate to resellers should have a greater percentage reduction than the 16.81% currently approved by the Commission.

e. The promotional scheme of BellSouth embodied in its proposed tariff is objectionable because it is anticompetitive. Under the current resale environment, resellers can compete with BellSouth on the basis of price. Resellers of business service can obtain service from BellSouth at a 16.81% discount and then offer service to customers at a rate that is less than BellSouth's retail rate. Under BellSouth's promotional scheme, however, the reseller's ability to compete will evaporate. Under that scheme BellSouth can offer the competitor's customer rates for 18 months that are virtually the same as the competitor's rates, and may well be lower, since the competitor can not pass on the entire BellSouth discount and cover costs and provide a profit margin.

WHEREFORE and in consideration of the above, Arrow Communications, Inc. d/b/a ACI, respectfully requests the Commission to review the promotional tariff filing of BellSouth Telecommunications, Inc., referenced herein, and cancel said tariff, if the allegations herein are determined to be meritorious.

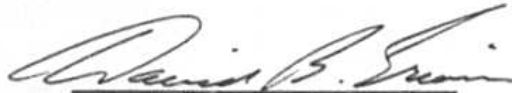
Respectfully submitted,



David B. Erwin

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition for Arrow Communications, Inc. was hand delivered to the party indicated below, this 13th day of January, 1999.



David B. Erwin

Nancy White, c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 S. Monroe Street, Suite 400
Tallahassee, FL 32301