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July 6, 2000

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Re: 000733-TL - Investigation into BellSouth's
Tariff on Late Payment Charge

Dear Ms. Bayo:

On June 29, 2000, the Staff issued a Recommendation in the above-captioned matter seeking a finding that BellSouth's restructured late payment charge and new interest charge were in violation of Section 364.051 (6)(a), Florida Statutes. BellSouth opposes this Recommendation for the reasons set forth herein.

In Order No. 17915, issued on July 27, 1987, the Commission approved a 1.5% late payment charge tariff filed by Southern Bell. The charge was imposed on outstanding balances existing at the next billing date. As noted in Order No. 17915, the purpose of the late payment charge was to contribute to the recovery of the expenses incurred by the Company in "treating customer accounts." Order No. 17915, p. 1. Specifically, the Staff Recommendation issued on May 28, 1987 in Docket No. 870456-TL, stated that the expenses intended to be covered by the late payment charge were those incurred by treating delinquent accounts and "generated by activities such as the business office making and receiving calls to delinquent customers." Staff Rec., Docket No. 870456-TL, p. 12. In other words, the late payment charge was an attempt to recover the costs associated with administering the collection process from the cost causers.

On July 7, 1999, BellSouth filed a tariff restructuring its late payment charge and adding a new interest charge. Specifically, BellSouth restructured its 1.5% late payment charge to a flat rate fee of \$1.50 for residence customers and \$9.00 for business. The tariff was further revised so that the late payment charge would apply only to past due accounts greater than \$6.00. A new charge of 1.5% was added as an interest charge to recover the cost of money associated with delinquent payments. The interest charge is applied only to past due accounts greater than \$6.00. The tariff was approved on July 24, 1999. Customers were given 30 days notice via their bills and the new rates were billed beginning August 28, 1999.

The gravamen of Staff's Recommendation in the above captioned matter is Staff's belief that the flat rate late payment charge and the new interest charge are commingled for purposes of determining BellSouth's compliance with the price increase statute (Section 364.051(6)(a), Florida Statutes and Order No. PSC-96-0012, FOF-TL issued on January 4, 1996 in Docket No. 951159-TL). Staff's belief is wrong.

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Conversion of the existing late payment charge from a percentage to a flat rate does not exceed the allowable price increase and the late payment charge remains a charge to recover the administrative expenses of handling delinquent accounts. In addition, BellSouth has the authority to levy an interest charge to recover the carrying charges on money, so long as that charge complies with the appropriate usury laws. Section 687.02(1), Florida Statutes. The interest charge at issue is in compliance with Florida's statute. Staff cannot commingle two completely different charges, charges that recover completely different types of costs, and charges that are legitimate and reasonable based merely on the faulty reasoning contained in the Recommendation.

First, Staff is recommending that the entire tariff should be cancelled immediately and that all monies collected thereunder be refunded even though the restructure of the original late payment charge from a percentage to a flat fee does not exceed the non-basic miscellaneous basket. This was proven to the Staff by the price-out provided to the Commission erroneously dated May 23, 1999 (should have been dated May 23, 2000). Staff's recommendation should be limited to the interest charge only. Even if the Commission approves Staff's position on the new interest charge, which BellSouth opposes, the restructured late payment charge is appropriate and does not violate Section 364.051/(6)(a), Florida Statutes.

Second, Staff claims that the nature of the cost is not germane. Staff Rec., Docket No. 000733-TL, p.5. Staff is in error. The cost at issue here is the cost of money, not the cost associated with the collection of late payments which was the sole basis of BellSouth's existing late payment charge. See Order No. 17915 and Staff Rec., Docket No. 870456-TL, p. 12.

Third, Staff claims that the new interest charge is a derivative telecommunications service, Staff Rec., Docket No. 000733-TL, p. 6. Staff is in error. An interest charge is a fee, a fee that is for the use or detention of money. The interest fee is not associated with a particular service; it is governed solely by the monies owed. Moreover, the new interest charge cannot be "resold" in the sense that "telecommunication service" can be "resold". Therefore, it should not be included in any service category for purposes of Section 364.051(6), Florida Statutes.

In the alternative, Staff claims that the interest charge is not a new service. Staff cannot have it both ways. If the interest charge is a telecommunications service, as Staff claims and BellSouth denies, then it must be viewed as a new service not initially included for purposes of basket monitoring. The interest charge must be viewed as a new service because the nature of the interest charge is opposite of the late payment charge. As discussed above, the late payment charge was intended to recover the administrative costs associated with the collection of late payments. The interest charge is intended to recover BellSouth's loss of the use of money.

Fourth, the Staff claims that the restructured late payment charge and the new interest charge are essentially one and the same charge. Staff Rec., Docket No. 000733-TL, p. 7. Once again, Staff is in error. There are services provided by BellSouth that are connected, but are considered separate for purposes of the basket. For example, Privacy Director is a service that can only work if the customer has Caller ID. They are considered separately with regard to price increases. Moreover, these charges are an attempt by BellSouth to recover two very different kinds of expenses: (1) The cost of collections and (2) the cost of money. Even Staff noted that the original late

payment charge did not recover any interest expense. Staff Rec., Docket No. 000733-TL, p. 5. The term interest is defined as the compensation for the use or detention of money; the cost of hiring money. See Parker v. Brinson Const. Co., 78 So.2d 873 (1955) and 32 Fla. Jur. 2d, Section 1, p.9 (1994). The amount of 1.50% per month for interest is within the usury statute. Section 687.02(1), Florida Statutes. While there are no cases on point in Florida, other states have held that late payment charges for non-payment of bills from regulated utilities are not interest and therefore, the usury statute should not apply. See Rimco Enters, Inc. v. Texas Electric Service, 559 S.W. 2d 362, 365 (Tex. Ct. App. 1980), Guste v. Council of the City of New Orleans, 309 So.2d 290, 2926 (La. 1975).

Further, Staff's basis for its claim that the restructured late payment charge and the new interest charge are one and the same stems from the fact that they are assessed on delinquent customers. When the Staff was considering BellSouth's original late payment tariff, it reviewed other states' activities in this record. As indicated in Attachment D, page 2 of the Staff Recommendation filed on May 28, 1987 in Docket No. 870456-TL, it was noted that the Anchorage Telephone Utility charged a finance (interest) charge in addition to a late payment charge.

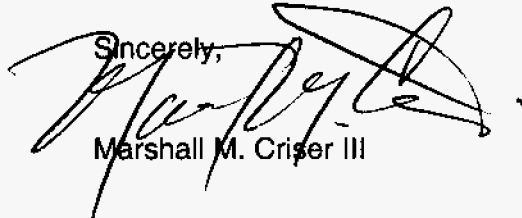
Fifth, it should be recognized that payment vel non of the restructured late payment charge and the new interest charge is strictly in the control of the customer. These charges are avoided if bills are paid timely. BellSouth notes that the impetus for the Staff Recommendation was a complaint from a business whose purpose is to process white pages directory listing bills from BellSouth to various advertisers. The nature of the complaint was that not enough time was allowed between receipt of the bill and the due date for this business to forward the bills to its customers for approval, have the customers return the approved bills, and pay the bills before late payment charges were incurred. Notwithstanding the fact that this business provides its customers with the opportunity to delay payments of their bills, BellSouth offered this business several alternatives, including changing the billing date, thereby changing the pay by date and setting up yearly billing. This business refused these options. From the limited Florida specific information BellSouth has on this business' accounts, the billing cycles are in compliance with Rule 25-4.110(3)(a), Florida Administrative Code and Section A2.4.3.G of BellSouth's General Subscriber Service Tariff.

Sixth, BellSouth makes every effort to keep users on the local exchange network. BellSouth structured the tariff at issue specifically to exempt basic Lifeline customers from the requirement of paying the restructured late payment charge and the new interest charge by providing an exception for bills \$6.00 or less. Moreover, BellSouth remains committed to the requirements of Order No. 17915, issued on July 27, 1987, approving BellSouth's original late payment charge, in giving customers the option of changing their bill cycle to any other cycle than the first cycle of the month. In addition, BellSouth has liberalized its deposit and installment payment policies. The charges are not unreasonable. In order for a residential customer to realize a total of \$1.50 late payment charge, plus \$1.50 of interest for one month, the bill would have to total at least \$100.00.

Finally, BellSouth notes that this Commission has approved numerous late payment charges that are greater than those proposed by BellSouth. Specifically, the Commission approved a 5% late payment charge for Santa Villa Utilities, and a \$5.00 late payment charge for Crystal River Utilities, Inc., and Morningside Utility, Inc. See

Order No. 8157, issued on February 2, 1978; Order No. PSC-97-0187-FOF-WU, issued on February 18, 1997; and Order No. PSC-98-1585-FOF-WU, issued on November 25, 1998. In addition, an informal review by BellSouth of Florida price lists for Alternative Local Exchange Companies ("ALECs") reveals a \$10.00 late payment charge by Coral Bay Financial, Inc.; a \$10.00 penalty fee by International Design Group, Inc., d/b/a USA Telecom; a \$25.00 late payment charge by AMAFLA Telecom, Inc., and WAMnet Communications, Inc.; and a 5% late payment charge by My-Tel, Inc. If the Commission determines that BellSouth's interest charge and late payment charge are one and the same, then the Commission may have to examine the fees previously approved for all utilities for possible violation of the maximum interest allowed by Florida usury laws.

BellSouth asserts that Staff's reasoning in the Recommendation filed on June 29, 2000 in Docket No. 000733-TL is flawed for the reasons set forth herein, and, therefore, respectfully requests the Commission to reject the Recommendation.

Sincerely,

Marshall M. Criser III

cc: Chairman J. Terry Deason
Commissioner Susan E. Clark
Commissioner E. Leon Jacobs
Commissioner Lila J. Jaber
Ms. Beth Keating
Ms. Sally Simmons
Mr. Charles Beck

PC Docs 218862