

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation to determine whether BellSouth Telecommunications, Inc.'s tariff filing to restructure its late payment charge is in violation of Section 364.051, F.S.

DOCKET NO. 000733-TL
ORDER NO. PSC-01-0228-PCO-TL
ISSUED: January 23, 2001

ORDER GRANTING MOTION TO AMEND PROCEDURAL SCHEDULE

Background

On June 19, 2000, this docket was established to investigate whether BellSouth Telecommunications, Inc.'s (BellSouth) tariff filing to restructure its late payment charge is in violation of Section 364.051, Florida Statutes. By proposed agency action Order No. PSC-00-1357-PAA-TL, issued July 27, 2000, the Commission found BellSouth's July 9, 1999, tariff filings revising its Late Payment Charge in Section A2 of its General Subscriber Service Tariff and Section B2 of its Private Line Services Tariff in violation of Section 364.051(6)(a), Florida Statutes. The Commission also ordered that the tariffs remain in effect for 30 days from the issuance of the Order. If a timely protest of this Order was filed, then the tariffs were to remain in effect pending the outcome of a hearing with any revenues resulting from the tariff held subject to refund.

On August 17, 2000, BellSouth timely petitioned for a formal hearing. By Order No. PSC-00-2458-PSC-TL, issued December 20, 2000, the Office of Public Counsel's (OPC) Notice of Intervention was acknowledged. By Order No. PSC-00-2279-PCO-TL, a hearing was set for April 18, 2001. On December 11, 2000, BellSouth and OPC (parties) filed a Joint Motion to Amend Procedural Schedule.

The parties state that the procedure established for this docket is based on Section 120.57(1), Florida Statutes. They request that the procedural order be amended to reflect that the case proceed pursuant to Section 120.57(2), Florida Statutes. The parties assert that a joint stipulation of the facts can be reached constituting the evidentiary record, and that a briefing schedule

DOCUMENT NUMBER-DATE

00991 JAN 23 01

FLORIDA PUBLIC SERVICE COMMISSION

is appropriate. The parties suggest that briefs be due in late March, with the staff recommendation and Agenda Conference to follow. Finally, the parties request that the filing, prehearing and hearing dates in Order No. PSC-00-2279-PCO-TL be eliminated. Staff counsel has indicated that our staff agrees that this proposed revision to the procedure for this case will not impair staff's ability to fully analyze the issues presented in this matter.

Decision

Upon consideration, the parties' Motion shall be granted. Proceeding in accordance with Section 120.57(2), Florida Statutes, will promote judicial economy benefitting all participants. Accordingly, the procedures set forth in Order No. PSC-00-2279-PCO-TL are hereby superseded in their entirety by this Order.

Jurisdiction and Scope

This Order is issued pursuant to the authority granted by Rule 28-106.305, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff.

Discovery

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by March 23, 2001. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be

numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 75, and requests for production of documents, including all subparts, shall be limited to 75.

Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183, Florida Statutes.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Briefs on the Issues

Attached to this order as Appendix "A" is a list of the issues which have been identified in this proceeding. The parties shall file briefs by March 30, 2001, addressing the issues set forth in Appendix "A". The briefs shall be no more than 40 pages in length.

Stipulated Facts

The parties shall submit their stipulated facts to this Commission no later than March 30, 2001.

ORDER NO. PSC-01-0228-PCO-TL
DOCKET NO. 000733-TL
PAGE 4

Use of Confidential Information

The Commission recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record upon submission of the stipulated facts. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure to comply with this notification shall be grounds to exclude such information from the proceeding.

Based upon the foregoing, it is therefore,

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission. It is further

ORDERED that Order No. PSC-00-2279-PCO-TL is superseded by this Order.

By ORDER of Commissioner Lila A. Jaber as Prehearing Officer, this 23rd Day of January, 2001.



LILA A. JABER
Commissioner and Prehearing Officer

(S E A L)

DWC

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.

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

ATTACHMENT "A"

ISSUES

1. Is BellSouth's interest charge of 1.50% on unpaid balances, as filed in T-991139, a rate element of an existing service that is subject to the provisions of Section 364.051(6)(a), Florida Statutes?
2. Is the interest charge filed by BellSouth in T-991139 a "new service" for the purposes of Section 364.051(6)(a), Florida Statutes?
3. Does BellSouth's tariff filing (T-991139) violate Section 364.051(6)(a), Florida Statutes? If so, what amount needs to be refunded, and how should the refund be determined and made effective?