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May 30, 2001

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

Re: Docket No. 000733-TL

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Brief. A diskette in Word format is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck  
Deputy Public Counsel

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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

Filed: May 30, 2001

CITIZENS' BRIEF

The Citizens of Florida (Citizens), by and through Jack Shreve, Public Counsel, file this brief pursuant to Commission order no. PSC-01-0714-PCO-TL issued March 21, 2001.

Background

For approximately thirteen years BellSouth charged a monthly fee on late payments equal to 1.5% of a customer's unpaid balance in excess of \$1.00. According to BellSouth, this charge generates \$30,258,230 per year.

On July 9, 1999, BellSouth filed a tariff purporting to revise the late payment charge to a fixed charge of \$1.50 for residential customers and \$9.00 for business customers. BellSouth expected this charge to generate \$32,500,923 per year. At the same time, BellSouth filed a tariff to create a "new" monthly interest charge of 1.5% of a customer's unpaid balance in excess of six dollars. Except for the new name and threshold amount, this 1.5% charge on late payments is identical to the late payment charge that had been in existence for approximately thirteen years. BellSouth expected the "interest" charge to generate \$23,636,356 per year.

Together, BellSouth expected the two charges to generate \$56,137,279 per year, compared to the amount of \$30,258,230 generated by the previous late payment charge, for a net increase of \$25,879,049.

Under section 364.051, Florida Statutes (1999), BellSouth could not increase the price of basic local exchange telecommunications service prior to January 1, 2001. BellSouth could increase the price of nonbasic services, but a price increase for any nonbasic service category may not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area, at which time the price for any nonbasic service category could increase in an amount not to exceed 20 percent within a 12-month period in that exchange. This new law is the only protection customers have against unrestrained price increases by a company subject to little effective competition, particularly for its residential services.

On July 27, 2000, the Commission issued a proposed agency action order finding that BellSouth's two tariffs violated section 364.051, Florida Statutes. The Commission found that the two filings amounted to a restructure of the late payment charge. What was once a charge of 1.5% on unpaid balances greater than \$1.00 had become a 1.5% charge on unpaid balances greater than \$6.00 plus a fixed charge of \$1.50 for residential customers and \$9.00 for business customers. The price increase of the combined tariff filings far exceeded the 6% increase allowed for a non basic service category.

#### Classification of Services Under the 1995 Statutes

In 1995 the Florida legislature adopted a new regulatory paradigm. Under the new

system, price restraints for different types of services are set by guidelines found in chapter 364, Florida Statutes. The old system of setting rates based on cost of service (rate of return regulation) was abandoned.

The new system contains different procedures governing the rates for basic local telecommunications services, local interconnection arrangements, network access services, and nonbasic services. Section 364.02(2), Fla. Stat., defines basic local telecommunications services; section 364.16, Fla. Stat., defines network access services; and section 364.16, Fla. Stat., describes interconnection arrangements. Nonbasic services encompass the residual of all services not otherwise defined. Section 364.02(8), Fla. Stat., defines the term "nonbasic service" to mean any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement described in s. 364.16, or a network access service described in s. 364.163).

#### BellSouth's 1.5% Per Month Fee is a Service

Chapter 364, Fla. Stat, does not expressly define the term "service," but it does state that the term "service" is to be construed in its broadest and most inclusive sense. The 1995 re-write of chapter 364, Florida Statutes, does not contain the slightest hint that the legislature intended to exclude late payment or "interest" charges from any type of price regulation.

The broad and all inclusive construction of the term "service," together with the residual definition for the term "nonbasic service," lead inescapably to the conclusion that

the late payment charge, which was in existence long before the re-write of chapter 364, must be included in the definition of nonbasic service. Had the legislature intended to allow BellSouth to charge \$1.00, \$10.00, \$100.00, or whatever it wanted for late payments, it would have exempted late payment charges from the definition of services.

#### Until 1999, BellSouth Always Treated the 1.5% Per Month Fee as a Nonbasic Service

As mentioned previously, in 1995 the legislature made fundamental changes to chapter 364, Florida Statutes. The primary change involved the substitution of price regulation for cost of service (rate of return) regulation for the largest telecommunications companies, including BellSouth. As part of price regulation, the legislature limited the total price increases allowed each year for each nonbasic service "category." Section 364.051(5)(a), Florida Statutes.

Shortly after passage of the new law, the staff of the Florida Public Service Commission initiated a series of meeting and workshops to determine the various categories of nonbasic services. The record in this proceeding includes a number of documents showing that BellSouth affirmatively asserted that its late payment charge -- a 1.5% charge on unpaid balances in excess of \$1.00 -- was a nonbasic service.

For example, staff asked BellSouth to identify and describe in detail the specific services that fell within each basket of services, one of which was nonbasic services. In its response dated August 25, 1995, BellSouth listed late payment charges as tariffs in its "Non Basic Services - Business Ancillary" and "Non Basic Services - Residential Ancillary" baskets that would be included as nonbasic services under the new statute.

On October 27, 1995, BellSouth responded to a PSC request to provide a list of BellSouth's non-basic services according to non-basic service category. BellSouth's response included late payment charges as an "other" non-basic service.

On November 13, 1995, BellSouth responded to a request made at a previous "Non Basic Service Category Workshop." Staff had asked BellSouth for a sample price-out of an increase in an existing non basic services. In its sample price-out provided to staff, BellSouth listed late payment charges as a residential ancillary service in its sample price-out for an increase in the proposed category "residential ancillary service."

On March 6, 1996, BellSouth responded to a request to provide information regarding which non-basic services belong within each non-basic service category. BellSouth's response provided what it called its "actual list on non-basic services according to category." The "other non basic services" category included late payment charges.

Month after month, it was BellSouth itself which declared its 1.5% late payment fee to be a non basic service when construing the intent of the new legislation. The Commission should give no weight to BellSouth's newly discovered claim that the 1.5% charge is not a non basic service. During the entire period when the Commission was working out the implementation of the new law, BellSouth represented that its 1.5% fee was a non basic service.

Further evidence of this construction can be found in a filing made by BellSouth in June, 1997, to increase the 1.5% fee to 1.63% fee. As part of the filing, BellSouth included a price-out of the late payment charge increase to the miscellaneous non-basic service

category and showed that the increase to the late payment charge resulted in no more than a 6% increase to the miscellaneous non-basic service category. Again, this plainly shows BellSouth's own construction that the 1.5% fee (and its proposed 1.63% fee) was a non basic service subject to the restriction that the category to which it belonged could not increase by more than 6% per year. Ultimately, BellSouth withdrew the tariff filing.

#### An Established Service Does Not Become a New Service by Changing its Name

BellSouth's newly discovered claim the 1.5% per month fee is not a service rings hollow. For four years , BellSouth repeatedly and affirmatively asserted that its 1.5% fee was a non basic service. Now, BellSouth has changed its mind and claims that its 1.5% fee is not even a service. If the previous late payment charge of 1.5% on unpaid balances in excess of \$1.00 belonged to the miscellaneous nonbasic service category, then the so-called new interest charge of 1.5% on unpaid balances in excess of \$6.00 also belongs to that category, no matter what BellSouth calls it. It does not matter whether BellSouth calls the new charge of 1.5% on unpaid balances in excess of six dollars an "interest" charge or anything else. The nature of a charge does not change simply by changing its name..

#### Old Cost Studies Have No Relevance to Price Cap Restrictions

The record in this proceeding includes the original 1986 tariff filing for late payment charges. That filing claimed that the charge covered most, but not all, of the costs associated with late payments at that time.

The 1986 cost study has no relevance to the issue of whether BellSouth's 1999

restructure of its late payment charge violates the price cap statute. At the time of the original filing, BellSouth was governed by rate of return regulation, and arguably the late payment charge could have had an effect on the rates for basic local telecommunications service. In fact, the tariff filing stated that "this charge will recover most of the costs from the customers who cause them rather than from the general body of rate payers." Any such relationship ceased on January 1, 1996, with the advent of price cap regulation.

Further, any cost relationship that may have existed in 1986 would no longer apply after more than a decade. A document in the record entitled "Florida Regulatory Meeting - LPC / OCA" dated June 9, 1999, shows decreases in consumer net bad debt each year since 1996, as well as late payment charge trends during the same time period. The magnitude of the decreases in consumer net bad debt during the period negates any inference that cost relationships that may have existed in 1986 would hold true today.

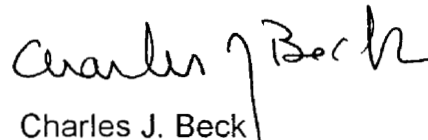


Conclusion

The Commission proposed agency action correctly concluded that the two filings amounted to a restructure of the late payment charge. What was once a charge of 1.5% on unpaid balances greater than \$1.00 became a 1.5% charge on unpaid balances greater than \$6.00 plus a fixed charge of \$1.50 for residential customers and \$9.00 for business customers. The Commission should affirm its earlier decision that the tariff filings violate the price caps for non basic service categories.

Respectfully submitted,

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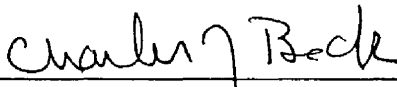
Attorneys for Florida's Citizens

DOCKET NO. 000733-TL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.

Mail or hand delivery to the following parties on May 30, 2001.

  
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