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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

**IN RE: DOCKET NO. 000733-TL - 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.**

**BEFORE: CHAIRMAN J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS, JR.
COMMISSIONER LILA A. JABER**

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 10**

DATE: Tuesday, July 11, 2000

**PLACE: 4075 Esplanade way, Room 148
Tallahassee, Florida**

**REPORTED BY: MARY ALLEN NEEL
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**DIRECTOR - REG. RELATIONS
TALLAHASSEE, FL**

PARTICIPANTS:

- CHARLES BECK, Office of Public Counsel.
MARSHALL CRISER, BellSouth Telecommunications.
BETH KEATING, Commission Staff.
SALLY SIMMONS, Commission Staff.

STAFF RECOMMENDATION

Issue 1: Should the Commission find that BST's GST filing of July 9, 1999, to restructure its late payment penalties is in violation of Section 364.051(6)(a), Florida Statutes?

Recommendation: Yes. The Commission should find that BST's GST filing of July 9, 1999, to restructure its late payment penalties is in violation of Section 364.051(6)(a), Florida Statutes, and should therefore be canceled immediately. Also, the Commission should require BST to provide refunds to all affected customers within 90 days of issuance of the Consummating Order. Further, Staff recommends that BST should file a report with the Commission upon completion of this refund showing monies that were collected from and refunded to customers.

Issue 2: Should this docket be closed?

Recommendation: No. If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the order, the order will become final upon issuance of a Consummating Order. If a timely protest is not filed, the docket should remain open pending completion by BellSouth of the refund within 90 days of issuance of the Consummating Order. Upon notification that the refund has been completed, this docket should be closed administratively. If a timely protest is filed, the tariff should remain in effect pending the outcome of further proceedings, with any revenues collected held subject to refund.

1 CHAIRMAN DEASON: Item 10.

2 MS. SIMMONS: Commissioners, Item 10
3 addresses whether BellSouth's tariff filing to
4 restructure its late payment charge is a
5 permissible increase for a price regulated local
6 exchange company. If only the flat fee portion
7 of the tariff is considered, then the filing
8 would be a permissible increase. If both the
9 flat fee and the percentage charge are
10 considered non-basic service rates, the filing
11 would not be a permissible increase.

12 I would like to give an overview of this
13 issue before the parties make their remarks. I
14 think it may help in trying to understand the
15 crux of the dispute.

16 First, I would like to say that Staff and
17 BellSouth appear to agree on the nature of the
18 costs covered by the 1987 late payment filing
19 and also the 1999 late payment filing. The '99
20 filing did incorporate additional cost that was
21 not reflected in the '87 filing. These were
22 administrative -- administrative type costs were
23 reflected in the '87 filing, whereas in the '99
24 filing it went beyond administrative type costs
25 to include the time value of money, or the

1 opportunity cost of these late payers. So I
2 don't think there's any dispute between Staff
3 and BellSouth as to the type of costs covered by
4 the '87 and the '99 filings.

5 I think the crux of the dispute seems to be
6 whether the nature of the additional cost that
7 was reflected in the '99 filing is a relevant
8 consideration in determining the legality of the
9 '99 filing. Staff believes the nature of the
10 additional cost really isn't relevant. I
11 believe BellSouth thinks the nature of the cost
12 is extremely relevant, and I believe it is the
13 basis for their contention that the filing is a
14 permissible increase.

15 Let me just go on just a little bit more.

16 In Staff's mind, the critical point is how
17 the statute defines service. Under the statute,
18 service is defined as something that should be
19 construed in its broadest and most inclusive
20 sense. So from Staff's perspective, we believe
21 the original late payment fee was in fact a
22 non-basic service rate. In our mind, with the
23 '99 filing, what BellSouth has done is, they
24 have restructured and expanded the charges
25 applicable to late payment. Staff doesn't

1 believe that the nature of the costs covered by
2 the flat fee as compared to the nature of the
3 costs covered by the percentage fee really can
4 be used as a basis for excluding the percentage
5 charge from non-basic service rate monitoring.
6 And our conclusion really hinges on the
7 statutory definition of service, which we
8 believe makes it very difficult to exclude the
9 percentage charge from consideration.

10 But I did want to let you know, I don't
11 really think there is a dispute over the nature
12 of the costs covered by the '87 filing versus
13 the '99 filing.

14 I know there are parties here to speak.

15 CHAIRMAN DEASON: Mr. Criser?

16 MR. CRISER: Commissioners, I'm Marshall
17 Criser appearing for BellSouth.

18 Commissioners, on July 6th, I filed a
19 letter in this docket which I believe in more
20 detail outlines BellSouth's position on this
21 matter, as well as our response to the staff
22 recommendation. What I would like to do this
23 morning is briefly summarize our position, and
24 then we're available to answer any questions
25 that you have.

1 First off, I would like to talk about what
2 . it is we did, and I think that is really the
3 crux of this matter. First of all, BellSouth
4 restructured its existing late payment charge to
5 a flat rate fee. We converted the previous
6 interest charge -- or excuse me, the percentage
7 charge to a flat rate of \$1.50 for residence
8 customers and \$9 for business customers. We
9 also created a \$6 exemption which was created in
10 order to address Lifeline subscribers with basic
11 services, essentially to give them a break and
12 not charge late payment fees to Lifeline
13 subscribers if they would otherwise have
14 incurred a late payment charge.

15 We structured and implemented the late
16 payment charge in compliance with the
17 Commission's price regulation statute. That
18 late payment charge restructure is in compliance
19 with the statute.

20 Secondly, we created a new charge, which is
21 created to address the loss of the use of money.
22 That charge, which also incorporates the
23 exemption for Lifeline customers, specifically
24 addresses loss of use of money. And the only
25 relevance to us of looking at the cost studies

1 from the original filing were to demonstrate
2 that in the cost studies, the tariff filing, all
3 of the supporting documentation, and this
4 Commission's order around our original late
5 payment charge, there was never any inclusion,
6 mention, or discussion of the use of money. Our
7 point in the cost study was to show that the
8 late payment charge does not address interest
9 charges.

10 At the same time --

11 CHAIRMAN DEASON: Mr. Criser, let me ask
12 you a question on that. Weren't you given a
13 working capital allowance in your rate case
14 which compensated you for the use of money, in
15 the sense that you would have to have money to
16 operate, and to the extent you have
17 collectables, and maybe even collectables that
18 are in arrears, you were compensated for that
19 through those rates?

20 MR. CRISER: Commissioner, I guess I'm
21 looking under the regime of price regulation,
22 which is the regime under which we filed the
23 interest charge tariff and the late payment
24 charge restructuring. Under that regulation,
25 there are statutes which govern price and not

1 cost. Again, our backup of going back to the
2 cost study was to ensure that we weren't trying
3 to go back under the late payment charge and
4 capture something that was already there. So we
5 looked at that cost study to demonstrate that it
6 was not in fact a part of the late payment
7 charge.

8 I guess what I've looked at in this case is
9 -- for late payment charges, we've tried to look
10 at what is the definition of a late payment
11 charge. And in doing that, we looked at
12 BellSouth's tariff, we looked at the materials
13 that we submitted to this Commission, we looked
14 at this Commission's discussion at agenda, and
15 this Commission's order on that tariff, and
16 nowhere in there is a reference to the loss of
17 use of money or interest charges. We therefore
18 hold that the interest charge we have now
19 implemented is something distinct and separate
20 from that late payment charge.

21 In addition to that, the interest charge
22 that we implemented complies with the legal
23 definition and regulations for an interest
24 charge. And therefore, I would respectfully
25 submit it is in compliance with Florida law in

1 the context of what is an interest charge.

2 I also would suggest we have held that
3 since this is a fee, it is not is a service and
4 therefore not subject to the price regulation
5 baskets. But in either case, whether it's a fee
6 and not subject to the baskets or treated as a
7 new service, our interest charge complies with
8 the price regulation statutes.

9 Finally, I would also -- I think it's worth
10 commenting that I believe that these charges are
11 a part of a responsible business approach to
12 late payment of bills. Most importantly, they
13 are the most avoidable charges on a customer's
14 bill. A customer does not pay these charges if
15 they pay their bill on time. In fact, the
16 customer response to these charges is that since
17 last August when the tariffs were implemented,
18 8% of residence accounts which were previously
19 paying late and 13% of business accounts that
20 were previously paying late are now paying on
21 time.

22 So this charge is not just about revenue.
23 It's about trying to drive positive customer
24 behavior in terms of the payment of their bills.

25 In addition to that, BellSouth works with

1 customers to create desired payment dates, to
2 establish installment billing, and other
3 mechanisms which will facilitate their payment
4 of their bills. And I would note that when we
5 create an installment billing plan for a
6 customer, we do not charge the late payment
7 charge or interest charge on a recurring base.
8 It's calculated on the balance at the time the
9 installments are created, and it holds at that
10 level. So this is not a matter of continually
11 going back to the customer.

12 And as I've noted previously, we attempted
13 to create in these new charges an exemption for
14 Lifeline subscribers, because we believe that if
15 we're going to look at an area that we can
16 target to create a break, essentially, that
17 that's the most appropriate way to approach
18 that.

19 I also think it's worth noting that in the
20 past year since this tariff and these charges
21 went into effect, we have had virtually no
22 customer complaints. Again, our main customer
23 reaction has been the case where we have some
24 customers who are now paying their bills on time
25 when they previously didn't.

1 Commissioners, BellSouth believes that
2 . there is a legal distinction between late
3 payment charges and interest charges. The two
4 cannot and should not be treated as the same.
5 We have developed, we have implemented, and we
6 are applying these charges in compliance with
7 the appropriate Florida Statutes and in a manner
8 which we believe reflects responsible business
9 practice.

10 We would therefore respectfully request
11 that you deny staff's recommendation. Again,
12 I'm available for questions.

13 COMMISSIONER JABER: Mr. Criser, just two
14 questions. You said early on that BellSouth
15 created a new charge. I'm assuming you're
16 referring to the 1.5% on the unpaid balance
17 greater than \$6.

18 MR. CRISER: The interest charge, yes,
19 ma'am.

20 COMMISSIONER JABER: All right. But you
21 already had that percentage on unpaid balances
22 greater than a dollar, so help me understand how
23 increasing the amount upon which you tack on the
24 interest is a creation of a new charge.

25 MR. CRISER: Again, the original tariff was

1 a late payment charge tariff. That tariff at
2 its inception was for 1-1/2% on the customer's
3 balance over a dollar on their bill. We
4 restructured the late payment charge to convert
5 it to a flat rate charge and created the
6 exemption for Lifeline subscribers.
7 Essentially, we restructured the late payment
8 charge and did that in compliance with the
9 appropriate guidelines from the price regulation
10 statutes.

11 In addition to that -- and that may be what
12 has created some of the confusion, but honestly,
13 an interest charge is a percent charge. We then
14 created a new charge, which is the interest
15 charge, and we did that in compliance with the
16 appropriate Florida Statutes with reference to
17 interest charges.

18 COMMISSIONER JABER: You would agree with
19 me that both charges are triggered by a late
20 payment.

21 MR. CRISER: I would agree with you that
22 both charges are triggered by a late payment. I
23 would also observe that there are other charges,
24 as an example, the returned check charge, that
25 are triggered by the manner in which a customer

1 pays their bill, and the returned check charge
2 is also shown as a separate -- which is also a
3 fee. It's a fee controlled by other statutes as
4 well, and is also in the basket as a separate
5 item.

6 COMMISSIONER JABER: That's an interesting
7 point. So in your tariff -- you have let us
8 know what your returned check fee is. Is that
9 approved in your tariff?

10 MR. CRISER: That's in our tariffs, and
11 it's in the basket.

12 COMMISSIONER JABER: It is in the basket?

13 MR. CRISER: Yes. And if this Commission's
14 preference is for the interest charge to be in
15 the basket, I think there are some issues around
16 what that may do to the basket, and we would be
17 happy to discuss those. But if it is in the
18 basket, then it's in the basket as a new and
19 separate service, and we've introduced it in
20 compliance with the price regulation.

21 COMMISSIONER JACOBS: You would agree that
22 we're trying to follow your costs. That was
23 what the purpose of the original tariff was,
24 that you were recovering the additional costs
25 that you would have to carry these past due

1 accounts.

2 MR. CRISER: The tariff at the time it was
3 introduced, the late payment charge tariff, was
4 set at a time when cost of service was a driving
5 factor in the determination of rates. And we
6 believe in addition to that, the cost studies
7 that were filed are relevant, because they
8 helped to distinguish what was included.
9 whether it's costs or not, it's also -- to me,
10 it's a definitional issue, did this cover
11 certain things. And I believe we actually agree
12 that it did not.

13 I believe cost is relevant from that
14 perspective. But by the same token, under the
15 price regulation statutes, cost is provided as
16 supporting evidence to ensure that we cover
17 costs, but it's not the driver for determining
18 whether or not a charge is going to be charged.

19 COMMISSIONER JACOBS: what would that be?
20 what would you argue that that should be?

21 MR. CRISER: Well, in the case of interest
22 charges, there are actually separate statutes
23 which govern, you know, what the level of
24 interest charges can be. And we have done this
25 -- in addition to the regulations which

1 typically would apply to the regulated side of
2 the business, we have also done this in
3 compliance with the statutes that address things
4 like interest charges. There are other Florida
5 statutes that are relevant to that.

6 CHAIRMAN DEASON: Mr. Criser, the 1.5% fee,
7 as you refer to it, for amounts in arrears
8 beyond \$6, that's at 1.5% per month; is that
9 correct?

10 MR. CRISER: Yes, sir.

11 CHAIRMAN DEASON: Which equates to 18% per
12 year?

13 MR. CRISER: That's correct.

14 CHAIRMAN DEASON: Which is in excess of
15 your cost of capital?

16 MR. CRISER: I would not hold that that
17 equals our cost of capital, no. We set it at
18 the statutory rate, not on a cost-based rate.

19 CHAIRMAN DEASON: So then it's more than
20 just a cost recovery. It is a charge that would
21 -- and I think you have indicated that it
22 already has. It would impact the actions of
23 customers, hopefully in a positive manner by
24 having them pay their bills on time.

25 MR. CRISER: Yes, sir.

1 CHAIRMAN DEASON: So it's more than just
2 . recovery.

3 MR. CRISER: Yes. If I haven't been clear
4 about that, I think that's part of what I have
5 tried to walk myself through, is our focus --
6 where we focused on the cost study in the
7 original tariff was to demonstrate that this was
8 not a part of that original tariff. We also
9 looked at other -- I guess I think of it as what
10 is the definition of a late payment charge, and
11 what is the body of evidence that shows what
12 defined that. The loss of use of money or
13 interest charges are not included anywhere in
14 that discussion.

15 So what we are looking at now is an
16 interest charge, which, frankly, is a desire to
17 -- if there's a cost issue, we frankly would
18 prefer for customers to pay on time and not
19 incur those costs and not earn that charge. And
20 we have been pleased to see that we in fact have
21 a positive trend in customers who are now paying
22 their bills on time. The residence percentage
23 equates to some 150,000 residence accounts, a
24 reduction of 150,000 residence accounts in terms
25 of paying their bills on time, or paying their

1 bills late. I said that backwards. I'm sorry.

2 . COMMISSIONER JABER: If we accepted Staff's
3 recommendation, Mr. Criser, and you had to do a
4 refund, have you done preliminary calculations
5 to indicate how much the amount would be?

6 MR. CRISER: Again, I believe that the late
7 payment charge restructure that we implemented
8 is in compliance with the statute, that portion
9 of it. And then what we -- what I would reduce
10 the debate over is whether the interest charge
11 is in fact a new service, a fee, or the same. I
12 believe that amount is somewhere in the
13 neighborhood of \$25 million, but I don't have a
14 specific calculation on that. And again, right
15 -- I mean, we could go back. We certainly can
16 calculate that. And in terms what the long-term
17 impact is, it's unclear, because we're actually
18 seeing that we have fewer customers now paying
19 these charges.

20 CHAIRMAN DEASON: Thank you. Mr. Beck?

21 MR. BECK: Thank you, Chairman Deason. My
22 name is Charlie Beck, with the Office of Public
23 Counsel. We fully support the Staff's analysis
24 and their recommendation.

25 BellSouth has had a late payment fee since

1 1987, and for 12 years that late payment fee was
2 a charge of 1-1/2% per month on the balance of
3 late payments in excess of a dollar. When we
4 went to price regulation in 1996, the late
5 payment fee was placed in a category consistent
6 with the price cap regulation scheme that places
7 limits on the increases that can be placed on
8 categories of non-basic services.

9 This charge of 1-1/2% per month was a late
10 payment fee until 1999, when Bell came in and
11 restructured their late payment fee. I think
12 you might find it interesting that the tariff
13 itself, they filed this both with the late
14 payment fee restructured as a flat amount and
15 what they now call an interest fee as all part
16 of the same sentence in the same tariff. I
17 mean, there are not two separate tariffs, one
18 calling for an interest fee and one for late
19 payment. It's the same sentence in their
20 tariff.

21 Because Bell changes the name of the 1-1/2%
22 per month fee, which had been a late payment fee
23 for 12 years, doesn't make it different. I
24 mean, you can't just change the name of
25 something and say now it's an interest fee, it's

1 no longer a late payment fee, to let them out of
2 the restraints that are placed by the statutes
3 on non-basic service categories. The tariff
4 filing itself Bell made for both of these items
5 is described as a revision of the late payment
6 charge for Florida subscribers.

7 I think the Staff's analysis is right on
8 point, and we urge you to adopt it.

9 COMMISSIONER JABER: Mr. Beck, do you agree
10 that the flat fee change is appropriate under
11 the statute?

12 MR. BECK: I think they can do that. The
13 restraint is that the non-basic service category
14 for miscellaneous services can't go up by more
15 than 6%.

16 COMMISSIONER JABER: But you agree that
17 they haven't gone up by more than 6%, so that
18 portion of BellSouth's change is acceptable to
19 you?

20 MR. BECK: If you looked at that in
21 isolation, yes. It's the combination of the two
22 charges that makes it violate the price cap
23 restraints.

24 CHAIRMAN DEASON: Further questions?

25 COMMISSIONER JACOBS: Staff -- I have a

1 question of Staff. You argue that regardless of
2 how described by company, that there are two
3 issues here. One is to what extent this should
4 be just one basket, and so you would refute the
5 company's argument with that. But let's go for
6 a moment with the argument they raise that this
7 is a separate item.

8 Under their argument, it would appear that
9 the interest charge would no longer be subject
10 to the cap, the increase limits; is that
11 correct?

12 MS. SIMMONS: Under BellSouth's point of
13 view, the percentage charge, or the interest
14 charge, as they label it, is either a fee and
15 would never be subject to non-basic service rate
16 monitoring, or it's a new service that would be
17 considered on a going-forward basis for rate
18 monitoring purposes.

19 COMMISSIONER JACOBS: Would it be subject
20 to the 6% cap?

21 MS. SIMMONS: It would down the road if the
22 company wanted to increase the rate. Say the
23 percentage charge, if they wanted to increase it
24 or in some way modify it, then they would be
25 subject to the non-basic service rate caps or

1 rate limitations, however you want to call it.

2 COMMISSIONER JACOBS: Okay.

3 MR. CRISER: Commissioner Jacobs, the
4 observation I would make is there are separate
5 Florida statutes which regulate the level of
6 interest charges, and so those charges in
7 themselves have a cap on them. Whether they're
8 in the basket or not, there is a cap.

9 COMMISSIONER JACOBS: Do you know what
10 those caps are for this kind of a charge?

11 MR. CRISER: It's 18% per year is my
12 understanding, which would be 1-1/2% per month,
13 which is the level of the charge we have now.

14 The point I would make in addition to that,
15 I think the suggestion was that if we had
16 somehow put these things -- and I've heard this
17 before. If we had somehow put these things into
18 two different filings, it wouldn't be an issue.

19 Frankly, if that's an error, that's an
20 error because we tried to make it clear to a
21 customer reading the tariff exactly what the
22 applicable fees would be for late payment of a
23 bill, and including the language together I
24 think is a -- you know, it's an attempt to be as
25 up-front and thorough in the explanation. And

1 I'm somewhat concerned that -- the suggestion
2 that by simply separating them somehow we could
3 turn this into a different matter I think falls
4 short.

5 COMMISSIONER JABER: Is that correct,
6 staff? Could they have filed separately and
7 this would have been an appropriate --

8 MS. SIMMONS: No. We still would have had
9 the same concern, because we just have
10 difficulty trying to separate the flat fee from
11 the percentage charge, because both of them
12 apply in a late payment sense. And based on how
13 the statute defines service, and since service
14 should be construed in its broadest and most
15 encompassing sense, staff finds it very
16 difficult to separate these two items.

17 COMMISSIONER JABER: Could you address also
18 Mr. Criser's comments regarding returned checks,
19 that this isn't any different than having a
20 returned check fee in a tariff?

21 MS. SIMMONS: Well, the returned check fee,
22 you know, is in the tariff. It has been
23 mentioned that it's subject to the non-basic
24 service rate monitoring. I'm not sure that I
25 would really view this any differently. Perhaps

1 Ms. Keating -- she may have other observations.
2 But, you know, in both cases, there is a action
3 taken by the customer, or non-action, some event
4 that triggers charges. And here we're talking
5 about late payment triggering a charge, and
6 we've now gone from one charge being applicable
7 to two charges being applicable. As I say, we
8 just can't find a way to separate these two in
9 our minds.

10 COMMISSIONER JABER: Let me ask a legal
11 question. BellSouth has filed a tariff. Under
12 telecommunications law as it exists today, those
13 tariffs are presumptively valid.

14 MS. KEATING: Correct.

15 COMMISSIONER JABER: If all parties agree
16 that the flat fee change is acceptable under the
17 statute, do we have the authority to modify this
18 tariff to split the baby, so to speak?

19 MS. KEATING: I believe that you could.
20 You would probably have to do so as a proposed
21 agency action. But there is precedent in the
22 past where you've taken similar action. In a
23 prior case involving rate regrouping, the
24 Commission found that the tariff was not in
25 compliance and required BellSouth to go back and

1 reset the rates for the areas that had been
2 . regrouped. But as long as you do so as proposed
3 agency action, I believe that you can.

4 COMMISSIONER CLARK: Do you mean we
5 rejected the tariff filing, we found it invalid
6 and directed them to refile?

7 MS. KEATING: That's correct. And that was
8 held up on appeal.

9 COMMISSIONER JABER: And they would have to
10 give the refunds for -- what would the refund
11 amount be in that scenario?

12 MS. KEATING: Well, if you believe that
13 it's appropriate to keep the late payment charge
14 but not the interest charge, then only the
15 interest would need to be refunded.

16 MS. SIMMONS: And at the time of filing,
17 BellSouth estimated that the interest charge
18 would bring in roughly between 23 and 24 million
19 annually. That's shown on page 6 of the staff
20 recommendation.

21 MR. CRISER: Commissioners, at the risk of
22 making one point too many, a concern I still
23 have is that there seems to be a logic that says
24 that this is simply a matter of semantics. I
25 think it's important to understand that there is

1 a clear distinction between interest charges,
2 and there are statutes, usury statutes that
3 regulate that. And one of the concerns we have
4 tried to distinguish is that if you suddenly say
5 late payment charges and interest charges are
6 synonymous, you have a whole area that you need
7 to look at in terms of whether or not late
8 payment charges are being pulled under the usury
9 charges.

10 I think I would also observe in terms of
11 distinguishing between these charges, this
12 Commission itself has a late payment process for
13 regulatory assessment fees which assesses a late
14 payment penalty of 5% per month up to a total of
15 25% of the balance due, a 12% cost of money or
16 interest charge, and a charge for recovering the
17 cost of collections. So the distinguishing
18 between the types of charges is not something
19 new, and it is dangerous to oversimplify this
20 process and draw these things all into one pot.

21 COMMISSIONER JABER: Mr. Criser, but the
22 Commission orders refunds with interest, for
23 example, and those interest payments are
24 governed by our statutes and the usury laws;
25 right? The trouble I'm having understanding

1 your point is the interest charge, as you call
2 it, is triggered by a late payment. That's the
3 trouble I'm having understanding your --

4 MR. CRISER: I suppose -- I heard the
5 reference earlier about taking things at their
6 most broad and inclusive level. And not to be
7 flip about it, but at some point, people who
8 have telephone services incur charges, but they
9 are not all the same thing. There are different
10 types of charges.

11 Historically, we never included an interest
12 charge or a loss of use of money type charge in
13 our late payment fee. This is a new and
14 distinct fee. It may -- for purposes of going
15 forward, at this Commission's discretion, may be
16 included in the basket or not included in the
17 basket, but it is something new and distinct.
18 That's the point we're trying to make. And we
19 believe the Florida Statutes, both the statutes
20 that apply to price regulation, as well as some
21 of the broader statutes that apply to things
22 like interest charges, that all of those things
23 align, that we are allowed and we are permitted
24 to do what we are doing.

25 CHAIRMAN DEASON: I have a question for

1 staff. The statute makes a distinction between
2 . 6% allowable increases for non-basic services
3 and then a 20% for those areas in which there is
4 competition. Have we made any determination as
5 to areas in which there is competition where the
6 company would be permissible to impose a 20%
7 increase in non-basic services?

8 MS. SIMMONS: We have not had a company
9 that has requested to use the 20% flexibility;
10 thus, there has not been a need to make a
11 determination. In this particular case, even if
12 the Commission felt that the 20% flexibility
13 would be appropriate, the amount of money
14 generated from this filing is still in excess of
15 that limit.

16 CHAIRMAN DEASON: I realize it is in
17 excess. But if there were 20% increases
18 allowed, at least in some areas it would reduce
19 the amount of refund, would it not?

20 MS. SIMMONS: Yes, it would.

21 CHAIRMAN DEASON: Mr. Criser, have you
22 given any thought to whether there are areas in
23 which you would be permitted to impose a 20%
24 increase?

25 MR. CRISER: Yes, we've looked at that.

1 Again, I would say -- and I don't mean to stick
2 myself out on a rock, I guess is what I'm trying
3 to say. I think, clearly, when we've looked at
4 this particular issue, you know, I guess there's
5 an issue and argument that says it's common
6 industry practice. We have companies out there
7 who have charges far in excess of the level that
8 BellSouth charges. It's an area that I think
9 frankly comes back to -- I'm worried about
10 splitting the baby, because I really believe
11 there is a danger in trying to combine these
12 things into one thing. It is --

13 COMMISSIONER JABER: Those companies that
14 you cite to in your letter, are they price
15 regulated telephone companies?

16 MR. CRISER: Some of them are. The ones we
17 cite in our letter, no, I don't believe so.
18 They are companies that have tariffs on file
19 with this Commission. That information was from
20 tariffs on file with this Commission.

21 CHAIRMAN DEASON: Commissioners, further
22 questions?

23 COMMISSIONER JACOBS: The essence of the
24 recommendation today goes to whether or not
25 there's a violation. Is that the only avenue by

1 which we can address the legitimacy of this
2 . tariff? In other words, do we have to say it's
3 violating? Can we just reject the tariff?

4 MS. KEATING: In order to reject the
5 tariff, I believe you need to find that it is in
6 violation, because they are filed and become
7 presumptively valid.

8 CHAIRMAN DEASON: Commissioners, do we have
9 a motion?

10 COMMISSIONER JACOBS: Well, I'll wade in.
11 I began on this one from the premise that the
12 company says that's the basis of their charge.
13 Once you step away from the idea that you're
14 looking at cost-based and you're looking at rate
15 of return, you're looking at what we were
16 anticipating would be a competitive
17 marketplace. And in a competitive marketplace,
18 the company surely has the right to go out and
19 offer services and products for which it should
20 seek the market-based price, and the company
21 seems to be offering this as something in that
22 order.

23 I differ. I do not see this as a company
24 offering a service. I see this as an issue
25 where the company is attempting to manage its

1 business. And again, it ought to have the
2 flexibility and opportunity to do that.

3 The troubling aspect for me is, I see an
4 effort here to look at an aspect of its business
5 from a different way, and that is, to what
6 extent it can serve as a revenue-producing
7 vehicle. In this regard, and in particular,
8 this circumstance troubles me. When I start
9 thinking about the consumers who are going to
10 incur this charge, the first thing I think about
11 is that they're already having problems paying
12 the bill.

13 So there's a divergence here. The company
14 would say, well, this would be an incentive to
15 make them focus and give priority to this bill
16 and make sure they pay this on time. There's
17 some value in that. I don't disagree with
18 that.

19 My experience is that most people are
20 robbing Peter to pay Paul. And to the extent
21 that this would be an incentive to the consumer,
22 I think it would be fairly limited. Most people
23 value their telephone. They will do most
24 anything they can to keep their telephone
25 service on.

1 And the ultimate avenue that the company
2 has to ensure that is that they disconnect them.
3 When a customer refuses to pay their bill, the
4 companies have the opportunity to disconnect
5 them. They minimize the extent of past due
6 balances by that ultimate act, and it's done
7 fairly frequently. So if I were looking to
8 manage this area of the business, I would think
9 that you have a cap there.

10 Now, I've seen that there is this issue of
11 consumers who repetitively -- who continue to
12 have late balances. That's probably an issue
13 here, and I would think that that's something
14 that the company might want to look at and might
15 want to manage through this provision.
16 Unfortunately, I see this provision as being
17 quite onerous in terms of managing that number
18 of customers who are continually late month
19 after month. I may be wrong. I have to say the
20 evidence is not really clear to me here as to
21 whether or not it's appropriate to manage that
22 body of customers through this provision.

23 Absent that, I see a provision that will
24 generate a substantial, according to projections
25 from staff, a substantial amount of revenue from

1 the body of consumers that I would say would be
2 highly taxed, if not poorly equipped to
3 contribute that revenue.

4 Now, it would trouble me even more if this
5 were really a competitive offering, because in
6 that instance, you have an industry where
7 companies are seeking market share and seeking
8 to attract customers, and who would impose an
9 18% charge on this customer that they value.
10 That would trouble me. But we understand that
11 we're transitioning to competition, and so we're
12 here as a surrogate to make sure that -- in that
13 transition, we're trying to make sure that all
14 players in the marketplace, and the consumers
15 particularly, are treated with fairness and with
16 equity.

17 That's how I approach this question. I
18 have no doubt that the company has the
19 opportunity, and should have the opportunity to
20 manage their business, and if they want to
21 restructure this charge, that's up to them. But
22 we're here as a surrogate, and we're here to see
23 that to the extent that we're transitioning to
24 competition, consumers see as much of the
25 benefits of competition as possible. I don't

1 see that in this offering. I see consumers
2 being fairly burdened by this offering.

3 COMMISSIONER CLARK: I have a question,
4 Mr. Criser. The previous late payment charge of
5 1.5% on the unpaid balance greater than a
6 dollar, was that part of the miscellaneous
7 non-basic service basket? Was that previously
8 part of it?

9 MR. CRISER: Yes, it was.

10 COMMISSIONER CLARK: So it was a graduated
11 rate. But now you're saying the fixed rate
12 should be only considered part of that basket,
13 and the interest rate should not. Is that what
14 you're saying?

15 MR. CRISER: Our logic -- I hate to get
16 into this argument. I think our logic -- one
17 part of my answer would be that that should be
18 irrelevant, because we believe this is either a
19 fee and not part of the basket, or this is a new
20 item, and it is in the basket.

21 COMMISSIONER CLARK: It's certainly not a
22 new service. I don't think the customers would
23 see it as a service.

24 MR. CRISER: And frankly, our argument for
25 not putting it -- part of our logic for not

1 putting it in the basket is that if you put
2 . things in the basket, if there's a concern --
3 what we've tried to be is responsible about
4 this. If you put things in the basket that are
5 capped otherwise, then you leverage the basket
6 to be able to increase other services by a
7 greater amount than you would have been able to
8 do if you hadn't done that, if that makes
9 sense. We're building the foundation in the
10 basket with things that have statutory controls
11 on them, and so we believe you potentially
12 create a negative public policy by throwing
13 things into baskets just to do so.

14 COMMISSIONER CLARK: Well, it would be fair
15 to say that previously you had considered the
16 late payment charge or the percentage was part
17 of the miscellaneous non-basic service basket.

18 MR. CRISER: Yes. Yes.

19 COMMISSIONER CLARK: But now you're arguing
20 that it should only be the flat rate and not the
21 interest charge.

22 MR. CRISER: Well, I mean, this Commission
23 had -- I think I would say it differently. At
24 the time the price regulation baskets were
25 created, the existing late payment charge was

1 put in a basket. On looking at that, I believe
2 there is an issue, you know, whether it's in
3 part of or beyond this particular discussion,
4 which is, should fees like the returned check
5 charge, like interest fees, be in the basket or
6 not, and what's the appropriate way for those to
7 be administered.

8 We frankly have tried to look at this not
9 just from a company trying to make money
10 perspective, but from what is the best public
11 policy approach. And one of the observations we
12 have is that by just throwing things into
13 baskets, particularly ones that are capped
14 otherwise, you create maybe some unintended --
15 or increases that wouldn't have been there
16 otherwise as you apply the basket. I hope I
17 haven't confused that totally.

18 CHAIRMAN DEASON: Commissioners, maybe we
19 can refocus for just a moment. I appreciate all
20 the debate and dialogue that we've had here, but
21 to me it's not an issue as to whether it's
22 burdensome on the customers, or whether it is a
23 good management policy, or whether this
24 restructure makes management sense and it
25 incentivizes customers to pay their bills on

1 time. All of that, while that's important if we
2 - were in that mode, we're not in that mode.

3 We're strictly looking as to whether under
4 the statute and the interpretation of the
5 statute, whether this is a permissible charge,
6 and we're not here to debate the merits of this,
7 other than can it be implemented consistent with
8 the statute. That's the critical issue. We've
9 got to address that issue.

10 And I believe that this charge is not
11 consistent with the statute, that our Staff's
12 interpretation is correct. The only leeway I
13 see in it, that is, there may be areas in the
14 state where there is sufficient competition that
15 a 20% increase in these charges may be
16 permissible. But as Staff has pointed out, the
17 increase in terms of revenue for this basket is
18 somewhere in excess of 50%. But that's my
19 narrow viewpoint on it.

20 I think that's the critical issue, and
21 that's what we've got to grasp and decide one
22 way or the other, is it legal or is it not under
23 our interpretation of the statute.

24 COMMISSIONER JABER: May I try to give a
25 motion, Mr. Chairman, and see how far we get?

1 In response to Staff's response to my
2 question, I think it is clear that the flat fee
3 change is not violative of the statute, and I
4 think that there's agreement from the parties
5 that that's correct.

6 With respect to the percentage changes, I
7 completely agree with what you're saying,
8 Mr. Chairman, and that was the nature of the
9 questions I asked. I can't understand why now
10 there is a difference in philosophy. To me, the
11 percentage change, whether it was called
12 interest or not, existed from the beginning of
13 the baskets. I don't understand how changing
14 the amount upon which the percentage is applied
15 is now a new service charge.

16 Saying that, if we modify this tariff and
17 it has to be PAA and BellSouth has to file a new
18 tariff, perhaps in that new tariff they can let
19 us know what areas might be at 20% competition.
20 I don't know.

21 But my motion is to modify the tariff, or
22 to reject the tariff and allow them to file a
23 modified tariff that indicates only the change
24 in the flat fee, and to give the appropriate
25 refunds for the so-called interest charges.

1 COMMISSIONER CLARK: The only question I
2 · have about that is, I think we should simply
3 reject it and let them come back with one that
4 complies with the law, and then it's up to them
5 to decide if they can meet a 20% -- if they can
6 meet the requirements for doing that.

7 MS. SIMMONS: Commissioner Clark, then
8 would your suggestion be that basically the
9 tariff be cancelled and that the company would
10 revert back to the prior version of the tariff?

11 COMMISSIONER CLARK: We could either do
12 that or give them some opportunity to file a
13 modified tariff. I guess my point is that I
14 don't know that we should direct them as to what
15 kind of tariff they should file. We should
16 reject this one and allow them to file one
17 that's in compliance.

18 COMMISSIONER JABER: I think staff is
19 making the clarification for us that we have to
20 let some tariff remain in effect. Otherwise,
21 they would have -- the company would have to
22 refund the entire amount. I think that's the
23 distinction.

24 COMMISSIONER CLARK: We would revert -- as
25 far as I'm concerned, we would revert back to

1 the tariff that was in effect prior to that.

2 CHAIRMAN DEASON: Well, can we do this?
3 This -- obviously, BellSouth has the opportunity
4 to carry this to hearing by some mechanism, I
5 guess protesting the Commission's decision. If
6 they are willing to guarantee that the refunds
7 would be made, can they continue the charges as
8 they currently exist while the matter goes to
9 hearing?

10 MS. SIMMONS: That would seem to be an
11 option.

12 COMMISSIONER CLARK: Say that again.

13 CHAIRMAN DEASON: Simply have the charges
14 remain in effect as they are, if they're willing
15 to take the burden of ultimately making the
16 refunds if we go to hearing and some other -- if
17 we go to hearing, will we have the latitude then
18 to impose whatever we believe is the correct
19 structure for a late payment charge if we go to
20 hearing? At the conclusion of that, we can
21 impose our own, not just rely upon them to come
22 back with a different filing.

23 MS. KEATING: I believe that you do have
24 that leeway.

25 COMMISSIONER CLARK: I'm not sure

1 procedurally what -- that we would do a PAA
2 . rejecting the tariff?

3 CHAIRMAN DEASON: No. We would -- I guess
4 my concern is this. If BellSouth takes us to
5 hearing, which is certainly within their right,
6 why do we want to be changing rates back and
7 forth and back and forth? These rates have been
8 in effect for some time. If they're going to
9 take this to hearing and have their day in
10 court, which they're certainly entitled to, why
11 not just allow the same rates to continue,
12 realizing that if they lose their case at
13 hearing, then the refund just -- the refund
14 continues to grow, and they will be responsible
15 for making those refunds.

16 MS. KEATING: Let me just try to make sure
17 I understand what you're saying. You would say
18 reject the tariff as not in compliance, and then
19 if they protest, allow them to continue
20 operating under the tariff pending the outcome
21 of further proceedings?

22 CHAIRMAN DEASON: If that can be done
23 procedurally legally.

24 BellSouth, do you have a -- do you want to
25 -- I don't know what the vote is going to be,

1 but at least there's some sentiment that there's
2 going to be a finding that the tariff is in
3 violation, and there may be a necessity to take
4 this to hearing. What do we do in the meantime?

5 MR. CRISER: Chairman Deason, we committed
6 at the beginning of this process at the time
7 when our tariff was originally being considered
8 that if our tariff were found to be unlawful, we
9 would refund the appropriate amounts to
10 customers. So I think that the hold harmless
11 provision is already there.

12 I would also observe, let's just say
13 looking at where I think I see we are right now,
14 the other complexity you have, as an example, we
15 created an exemption for Lifeline subscribers in
16 this current tariff. If we suddenly went back
17 to the tariff that was in effect before that
18 time, it would effectively remove that
19 exemption. I think the proposal that says we go
20 forward with where we are till this is concluded
21 is probably the least complicated and probably
22 the least disruptive way to proceed.

23 CHAIRMAN DEASON: Can we just take it to
24 hearing on our own motion and the refund
25 provisions continue while we take it to hearing?

1 COMMISSIONER CLARK: Well, it's not clear
2 . to me that we would go to hearing. I mean, it
3 seems to me that BellSouth may choose to file
4 another tariff.

5 CHAIRMAN DEASON: That's certainly possible
6 too.

7 COMMISSIONER CLARK: I guess -- why don't
8 we issue a proposed agency action that would
9 reject the tariff, but allow it to remain in
10 effect for 30 days, within which time BellSouth
11 can either file a new tariff that would be in
12 compliance with or consistent with our vote
13 today, or request a hearing. If they request a
14 hearing, then the tariff would remain in effect
15 until the conclusion of that process, with the
16 understanding that refunds would be due back to
17 the time the tariff originally went into effect
18 in 1999.

19 MS. KEATING: would you actually be finding
20 the tariff in violation, and if so --

21 COMMISSIONER CLARK: Yes.

22 MS. KEATING: -- what about refunds after
23 that 30-day period?

24 COMMISSIONER CLARK: They would have -- the
25 refunds -- we would find it in violation. If

1 they choose to go to hearing, we would allow it
2 to stay in effect, and at the conclusion of the
3 hearing, the refunds would be due from the time
4 they first filed the tariff and changed the
5 rates. Okay? And they would have -- in the
6 meantime, they have the option of filing a new
7 tariff and have that go into effect, at which
8 time the rates would change to their new tariff,
9 because they're presumptively valid.

10 COMMISSIONER JABER: Let's be clear on the
11 nature of the refunds. We're all talking about
12 the interest charge, quote, unquote. We are not
13 talking about the change in the flat fee being
14 refunded.

15 COMMISSIONER CLARK: Well, I think it would
16 depend on --

17 CHAIRMAN DEASON: I think the refunds have
18 to be based upon revenues and percentage
19 increases in revenues. They are allowed a 6%
20 increase, so we would have to calculate --
21 assuming we ignore the 20% -- and they may can
22 justify some 20% increases. I'm not sure. But
23 it would be a calculation of the revenues
24 generated with this new structure versus the old
25 structure, and compare those two revenues, and

1 to the extent that the new structure generates
2 more revenue than a 6% increase of the old
3 structure, that amount of dollars has to be
4 refunded. And how you calculate that on a per
5 customer basis I'm not sure, but that would be
6 the mechanism of the calculation.

7 COMMISSIONER CLARK: I think the Staff
8 could come back to us with a recommendation on
9 the amount of the refund.

10 MS. SIMMONS: Right. It could get a little
11 bit awkward because of different customers --

12 COMMISSIONER CLARK: Sure.

13 MS. SIMMONS: -- being billed differently.

14 COMMISSIONER CLARK: Sure. You would have
15 to come back to us after you've had a chance to
16 look at it.

17 MS. SIMMONS: I mean, I guess conceptually
18 or theoretically, it would seem as though you --

19 COMMISSIONER CLARK: Sally, do we have to
20 figure this out now?

21 MS. SIMMONS: We don't have to.

22 COMMISSIONER CLARK: Okay. I would move
23 staff.

24 CHAIRMAN DEASON: All right. Let me see if
25 I'm clear. You're just moving staff's

1 recommendation without a PAA or anything else.

2 COMMISSIONER CLARK: No. I guess I should
3 be clearer. I would move that we find the
4 tariff invalid, allow it to remain in effect for
5 30 days, at which time BellSouth can either file
6 a new tariff that is consistent with what we've
7 done today, or they can ask for a hearing, in
8 which case the tariff remains in effect, but
9 then at the conclusion of that proceeding,
10 appropriate refunds would be due.

11 CHAIRMAN DEASON: Only one question, and
12 I'll direct this toward you. Is 30 days
13 sufficient for BellSouth to structure a new
14 tariff or else -- it would obviously be
15 sufficient for you to request a hearing, I would
16 think.

17 MR. CRISER: Thirty days is sufficient.

18 CHAIRMAN DEASON: Very well.

19 MS. SIMMONS: Commissioners, I need to make
20 one clarification, and that is that this filing
21 was made in both the general services tariff as
22 well as the private line tariffs.

23 COMMISSIONER CLARK: Well, we are finding
24 both tariffs invalid.

25 MS. KEATING: And let me also clarify. You

1 would be doing this as PAA?

2 COMMISSIONER CLARK: Yes. Don't we have to
3 do it as PAA?

4 MS. KEATING: I believe so, because --

5 COMMISSIONER CLARK: Okay.

6 CHAIRMAN DEASON: There is a motion. Is
7 there a second?

8 COMMISSIONER JABER: Second.

9 COMMISSIONER JACOBS: Second.

10 CHAIRMAN DEASON: Moved and seconded. All
11 in favor say "aye."

12 COMMISSIONER JACOBS: Aye.

13 COMMISSIONER JABER: Aye.

14 COMMISSIONER CLARK: Aye.

15 CHAIRMAN DEASON: Aye. Show the motion
16 carries unanimously. Thank you.

17 (Conclusion of consideration of Item 10.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 46 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 17th day of July, 2000.



MARY ALLEN NEEL, RPR
100 Salem Court
Tallahassee, Florida 32301
(850) 878-2221

COPY

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

IN RE: DOCKET NO. 000733-TL - 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.

**BEFORE: CHAIRMAN J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS, JR.
COMMISSIONER LILA A. JABER**

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 10**

DATE: Tuesday, July 11, 2000

**PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida**

**REPORTED BY: MARY ALLEN NEEL
Registered Professional Reporter**

**ACCURATE STENOTYPE REPORTERS
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(850)878-2221**

1 CHAIRMAN DEASON: Item 10.
2 MS. SIMMONS: Commissioners, Item 10
3 addresses whether BellSouth's tariff filing to
4 restructure its late payment charge is a
5 permissible increase for a price regulated local
6 exchange company. If only the flat fee portion
7 of the tariff is considered, then the filing
8 would be a permissible increase. If both the
9 flat fee and the percentage charge are
10 considered non-basic service rates, the filing
11 would not be a permissible increase.

12 I would like to give an overview of this
13 issue before the parties make their remarks. I
14 think it may help in trying to understand the
15 crux of the dispute.

16 First, I would like to say that Staff and
17 BellSouth appear to agree on the nature of the
18 costs covered by the 1987 late payment filing
19 and also the 1999 late payment filing. The '99
20 filing did incorporate additional cost that was
21 not reflected in the '87 filing. These were
22 administrative -- administrative type costs were
23 reflected in the '87 filing, whereas in the '99
24 filing it went beyond administrative type costs
25 to include the time value of money, or the

PARTICIPANTS:

**CHARLES BECK, Office of Public Counsel.
MARSHALL CRISER, BellSouth Telecommunications.
BETH KEATING, Commission Staff.
SALLY SIMMONS, Commission Staff.**

STAFF RECOMMENDATION

Issue 1: Should the Commission find that BST's GST filing of July 9, 1999, to restructure its late payment penalties is in violation of Section 364.051(6)(a), Florida Statutes?

Recommendation: Yes. The Commission should find that BST's GST filing of July 9, 1999, to restructure its late payment penalties is in violation of Section 364.051(6)(a), Florida Statutes, and should therefore be canceled immediately. Also, the Commission should require BST to provide refunds to all affected customers within 90 days of issuance of the Consummating Order. Further, Staff recommends that BST should file a report with the Commission upon completion of this refund showing monies that were collected from and refunded to customers.

Issue 2: Should this docket be closed?

Recommendation: No. If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the order, the order will become final upon issuance of a Consummating Order. If a timely protest is not filed, the docket should remain open pending completion by BellSouth of the refund within 90 days of issuance of the Consummating Order. Upon notification that the refund has been completed, this docket should be closed administratively. If a timely protest is filed, the tariff should remain in effect pending the outcome of further proceedings, with any revenues collected held subject to refund.

1 opportunity cost of these late payers. So I
2 don't think there's any dispute between Staff
3 and BellSouth as to the type of costs covered by
4 the '87 and the '99 filings.

5 I think the crux of the dispute seems to be
6 whether the nature of the additional cost that
7 was reflected in the '99 filing is a relevant
8 consideration in determining the legality of the
9 '99 filing. Staff believes the nature of the
10 additional cost really isn't relevant. I
11 believe BellSouth thinks the nature of the cost
12 is extremely relevant, and I believe it is the
13 basis for their contention that the filing is a
14 permissible increase.

15 Let me just go on just a little bit more.

16 In Staff's mind, the critical point is how
17 the statute defines service. Under the statute,
18 service is defined as something that should be
19 construed in its broadest and most inclusive
20 sense. So from Staff's perspective, we believe
21 the original late payment fee was in fact a
22 non-basic service rate. In our mind, with the
23 '99 filing, what BellSouth has done is, they
24 have restructured and expanded the charges
25 applicable to late payment. Staff doesn't

1 believe that the nature of the costs covered by
 2 the flat fee as compared to the nature of the
 3 costs covered by the percentage fee really can
 4 be used as a basis for excluding the percentage
 5 charge from non-basic service rate monitoring.
 6 And our conclusion really hinges on the
 7 statutory definition of service, which we
 8 believe makes it very difficult to exclude the
 9 percentage charge from consideration.

10 But I did want to let you know, I don't
 11 really think there is a dispute over the nature
 12 of the costs covered by the '87 filing versus
 13 the '99 filing.

14 I know there are parties here to speak.

15 CHAIRMAN DEASON: Mr. Criser?

16 MR. CRISER: Commissioners, I'm Marshall
 17 Criser appearing for BellSouth.

18 Commissioners, on July 6th, I filed a
 19 letter in this docket which I believe in more
 20 detail outlines BellSouth's position on this
 21 matter, as well as our response to the staff
 22 recommendation. What I would like to do this
 23 morning is briefly summarize our position, and
 24 then we're available to answer any questions
 25 that you have.

1 First off, I would like to talk about what
 2 it is we did, and I think that is really the
 3 crux of this matter. First of all, BellSouth
 4 restructured its existing late payment charge to
 5 a flat rate fee. We converted the previous
 6 interest charge -- or excuse me, the percentage
 7 charge to a flat rate of \$1.50 for residence
 8 customers and \$9 for business customers. We
 9 also created a \$6 exemption which was created in
 10 order to address Lifeline subscribers with basic
 11 services, essentially to give them a break and
 12 not charge late payment fees to Lifeline
 13 subscribers if they would otherwise have
 14 incurred a late payment charge.

15 We structured and implemented the late
 16 payment charge in compliance with the
 17 Commission's price regulation statute. That
 18 late payment charge restructure is in compliance
 19 with the statute.

20 Secondly, we created a new charge, which is
 21 created to address the loss of the use of money.
 22 That charge, which also incorporates the
 23 exemption for Lifeline customers, specifically
 24 addresses loss of use of money. And the only
 25 relevance to us of looking at the cost studies

1 from the original filing were to demonstrate
 2 that in the cost studies, the tariff filing, all
 3 of the supporting documentation, and this
 4 Commission's order around our original late
 5 payment charge, there was never any inclusion,
 6 mention, or discussion of the use of money. Our
 7 point in the cost study was to show that the
 8 late payment charge does not address interest
 9 charges.

10 At the same time --

11 CHAIRMAN DEASON: Mr. Criser, let me ask
 12 you a question on that. Weren't you given a
 13 working capital allowance in your rate case
 14 which compensated you for the use of money, in
 15 the sense that you would have to have money to
 16 operate, and to the extent you have
 17 collectables, and maybe even collectables that
 18 are in arrears, you were compensated for that
 19 through those rates?

20 MR. CRISER: Commissioner, I guess I'm
 21 looking under the regime of price regulation,
 22 which is the regime under which we filed the
 23 interest charge tariff and the late payment
 24 charge restructuring. Under that regulation,
 25 there are statutes which govern price and not

1 cost. Again, our backup of going back to the
 2 cost study was to ensure that we weren't trying
 3 to go back under the late payment charge and
 4 capture something that was already there. So we
 5 looked at that cost study to demonstrate that it
 6 was not in fact a part of the late payment
 7 charge.

8 I guess what I've looked at in this case is
 9 -- for late payment charges, we've tried to look
 10 at what is the definition of a late payment
 11 charge. And in doing that, we looked at
 12 BellSouth's tariff, we looked at the materials
 13 that we submitted to this Commission, we looked
 14 at this Commission's discussion at agenda, and
 15 this Commission's order on that tariff, and
 16 nowhere in there is a reference to the loss of
 17 use of money or interest charges. We therefore
 18 hold that the interest charge we have now
 19 implemented is something distinct and separate
 20 from that late payment charge.

21 In addition to that, the interest charge
 22 that we implemented complies with the legal
 23 definition and regulations for an interest
 24 charge. And therefore, I would respectfully
 25 submit it is in compliance with Florida law in

1 the context of what is an interest charge.
 2 I also would suggest we have held that
 3 since this is a fee, it is not is a service and
 4 therefore not subject to the price regulation
 5 baskets. But in either case, whether it's a fee
 6 and not subject to the baskets or treated as a
 7 new service, our interest charge complies with
 8 the price regulation statutes.
 9 Finally, I would also -- I think it's worth
 10 commenting that I believe that these charges are
 11 a part of a responsible business approach to
 12 late payment of bills. Most importantly, they
 13 are the most avoidable charges on a customer's
 14 bill. A customer does not pay these charges if
 15 they pay their bill on time. In fact, the
 16 customer response to these charges is that since
 17 last August when the tariffs were implemented,
 18 8% of residence accounts which were previously
 19 paying late and 13% of business accounts that
 20 were previously paying late are now paying on
 21 time.
 22 So this charge is not just about revenue.
 23 It's about trying to drive positive customer
 24 behavior in terms of the payment of their bills.
 25 In addition to that, BellSouth works with

1 Commissioners, BellSouth believes that
 2 there is a legal distinction between late
 3 payment charges and interest charges. The two
 4 cannot and should not be treated as the same.
 5 We have developed, we have implemented, and we
 6 are applying these charges in compliance with
 7 the appropriate Florida Statutes and in a manner
 8 which we believe reflects responsible business
 9 practice.
 10 We would therefore respectfully request
 11 that you deny Staff's recommendation. Again,
 12 I'm available for questions.
 13 COMMISSIONER JABER: Mr. Criser, just two
 14 questions. You said early on that BellSouth
 15 created a new charge. I'm assuming you're
 16 referring to the 1.5% on the unpaid balance
 17 greater than \$6.
 18 MR. CRISER: The interest charge, yes,
 19 ma'am.
 20 COMMISSIONER JABER: All right. But you
 21 already had that percentage on unpaid balances
 22 greater than a dollar, so help me understand how
 23 increasing the amount upon which you tack on the
 24 interest is a creation of a new charge.
 25 MR. CRISER: Again, the original tariff was

1 customers to create desired payment dates, to
 2 establish installment billing, and other
 3 mechanisms which will facilitate their payment
 4 of their bills. And I would note that when we
 5 create an installment billing plan for a
 6 customer, we do not charge the late payment
 7 charge or interest charge on a recurring base.
 8 It's calculated on the balance at the time the
 9 installments are created, and it holds at that
 10 level. So this is not a matter of continually
 11 going back to the customer.
 12 And as I've noted previously, we attempted
 13 to create in these new charges an exemption for
 14 Lifeline subscribers, because we believe that if
 15 we're going to look at an area that we can
 16 target to create a break, essentially, that
 17 that's the most appropriate way to approach
 18 that.
 19 I also think it's worth noting that in the
 20 past year since this tariff and these charges
 21 went into effect, we have had virtually no
 22 customer complaints. Again, our main customer
 23 reaction has been the case where we have some
 24 customers who are now paying their bills on time
 25 when they previously didn't.

1 a late payment charge tariff. That tariff at
 2 its inception was for 1-1/2% on the customer's
 3 balance over a dollar on their bill. We
 4 restructured the late payment charge to convert
 5 it to a flat rate charge and created the
 6 exemption for Lifeline subscribers.
 7 Essentially, we restructured the late payment
 8 charge and did that in compliance with the
 9 appropriate guidelines from the price regulation
 10 statutes.
 11 In addition to that -- and that may be what
 12 has created some of the confusion, but honestly,
 13 an interest charge is a percent charge. We then
 14 created a new charge, which is the interest
 15 charge, and we did that in compliance with the
 16 appropriate Florida Statutes with reference to
 17 interest charges.
 18 COMMISSIONER JABER: You would agree with
 19 me that both charges are triggered by a late
 20 payment.
 21 MR. CRISER: I would agree with you that
 22 both charges are triggered by a late payment. I
 23 would also observe that there are other charges,
 24 as an example, the returned check charge, that
 25 are triggered by the manner in which a customer

13

1 pays their bill, and the returned check charge
2 is also shown as a separate -- which is also a
3 fee. It's a fee controlled by other statutes as
4 well, and is also in the basket as a separate
5 item.

6 COMMISSIONER JABER: That's an interesting
7 point. So in your tariff -- you have let us
8 know what your returned check fee is. Is that
9 approved in your tariff?

10 MR. CRISER: That's in our tariffs, and
11 it's in the basket.

12 COMMISSIONER JABER: It is in the basket?

13 MR. CRISER: Yes. And if this Commission's
14 preference is for the interest charge to be in
15 the basket, I think there are some issues around
16 what that may do to the basket, and we would be
17 happy to discuss those. But if it is in the
18 basket, then it's in the basket as a new and
19 separate service, and we've introduced it in
20 compliance with the price regulation.

21 COMMISSIONER JACOBS: You would agree that
22 we're trying to follow your costs. That was
23 what the purpose of the original tariff was,
24 that you were recovering the additional costs
25 that you would have to carry these past due

15

1 typically would apply to the regulated side of
2 the business, we have also done this in
3 compliance with the statutes that address things
4 like interest charges. There are other Florida
5 Statutes that are relevant to that.

6 CHAIRMAN DEASON: Mr. Criser, the 1.5% fee,
7 as you refer to it, for amounts in arrears
8 beyond \$6, that's at 1.5% per month; is that
9 correct?

10 MR. CRISER: Yes, sir.

11 CHAIRMAN DEASON: Which equates to 18% per
12 year?

13 MR. CRISER: That's correct.

14 CHAIRMAN DEASON: Which is in excess of
15 your cost of capital?

16 MR. CRISER: I would not hold that that
17 equals our cost of capital, no. We set it at
18 the statutory rate, not on a cost-based rate.

19 CHAIRMAN DEASON: So then it's more than
20 just a cost recovery. It is a charge that would
21 -- and I think you have indicated that it
22 already has. It would impact the actions of
23 customers, hopefully in a positive manner by
24 having them pay their bills on time.

25 MR. CRISER: Yes, sir.

14

1 accounts.

2 MR. CRISER: The tariff at the time it was
3 introduced, the late payment charge tariff, was
4 set at a time when cost of service was a driving
5 factor in the determination of rates. And we
6 believe in addition to that, the cost studies
7 that were filed are relevant, because they
8 helped to distinguish what was included.
9 Whether it's costs or not, it's also -- to me,
10 it's a definitional issue, did this cover
11 certain things. And I believe we actually agree
12 that it did not.

13 I believe cost is relevant from that
14 perspective. But by the same token, under the
15 price regulation statutes, cost is provided as
16 supporting evidence to ensure that we cover
17 costs, but it's not the driver for determining
18 whether or not a charge is going to be charged.

19 COMMISSIONER JACOBS: What would that be?
20 What would you argue that that should be?

21 MR. CRISER: Well, in the case of interest
22 charges, there are actually separate statutes
23 which govern, you know, what the level of
24 interest charges can be. And we have done this
25 -- in addition to the regulations which

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1 CHAIRMAN DEASON: So it's more than just
2 recovery.

3 MR. CRISER: Yes. If I haven't been clear
4 about that, I think that's part of what I have
5 tried to walk myself through, is our focus --
6 where we focused on the cost study in the
7 original tariff was to demonstrate that this was
8 not a part of that original tariff. We also
9 looked at other -- I guess I think of it as what
10 is the definition of a late payment charge, and
11 what is the body of evidence that shows what
12 defined that. The loss of use of money or
13 interest charges are not included anywhere in
14 that discussion.

15 So what we are looking at now is an
16 interest charge, which, frankly, is a desire to
17 -- if there's a cost issue, we frankly would
18 prefer for customers to pay on time and not
19 incur those costs and not earn that charge. And
20 we have been pleased to see that we in fact have
21 a positive trend in customers who are now paying
22 their bills on time. The residence percentage
23 equates to some 150,000 residence accounts, a
24 reduction of 150,000 residence accounts in terms
25 of paying their bills on time, or paying their

17

1 bills late. I said that backwards. I'm sorry.
 2 COMMISSIONER JABER: If we accepted Staff's
 3 recommendation, Mr. Criser, and you had to do a
 4 refund, have you done preliminary calculations
 5 to indicate how much the amount would be?
 6 MR. CRISER: Again, I believe that the late
 7 payment charge restructure that we implemented
 8 is in compliance with the statute, that portion
 9 of it. And then what we -- what I would reduce
 10 the debate over is whether the interest charge
 11 is in fact a new service, a fee, or the same. I
 12 believe that amount is somewhere in the
 13 neighborhood of \$25 million, but I don't have a
 14 specific calculation on that. And again, right
 15 -- I mean, we could go back. We certainly can
 16 calculate that. And in terms what the long-term
 17 impact is, it's unclear, because we're actually
 18 seeing that we have fewer customers now paying
 19 these charges.
 20 CHAIRMAN DEASON: Thank you. Mr. Beck?
 21 MR. BECK: Thank you, Chairman Deason. My
 22 name is Charlie Beck, with the Office of Public
 23 Counsel. We fully support the Staff's analysis
 24 and their recommendation.
 25 BellSouth has had a late payment fee since

18

1 1987, and for 12 years that late payment fee was
 2 a charge of 1-1/2% per month on the balance of
 3 late payments in excess of a dollar. When we
 4 went to price regulation in 1996, the late
 5 payment fee was placed in a category consistent
 6 with the price cap regulation scheme that places
 7 limits on the increases that can be placed on
 8 categories of non-basic services.
 9 This charge of 1-1/2% per month was a late
 10 payment fee until 1999, when Bell came in and
 11 restructured their late payment fee. I think
 12 you might find it interesting that the tariff
 13 itself, they filed this both with the late
 14 payment fee restructured as a flat amount and
 15 what they now call an interest fee as all part
 16 of the same sentence in the same tariff. I
 17 mean, there are not two separate tariffs, one
 18 calling for an interest fee and one for late
 19 payment. It's the same sentence in their
 20 tariff.
 21 Because Bell changes the name of the 1-1/2%
 22 per month fee, which had been a late payment fee
 23 for 12 years, doesn't make it different. I
 24 mean, you can't just change the name of
 25 something and say now it's an interest fee, it's

19

1 no longer a late payment fee, to let them out of
 2 the restraints that are placed by the statutes
 3 on non-basic service categories. The tariff
 4 filing itself Bell made for both of these items
 5 is described as a revision of the late payment
 6 charge for Florida subscribers.
 7 I think the Staff's analysis is right on
 8 point, and we urge you to adopt it.
 9 COMMISSIONER JABER: Mr. Beck, do you agree
 10 that the flat fee change is appropriate under
 11 the statute?
 12 MR. BECK: I think they can do that. The
 13 restraint is that the non-basic service category
 14 for miscellaneous services can't go up by more
 15 than 6%.
 16 COMMISSIONER JABER: But you agree that
 17 they haven't gone up by more than 6%, so that
 18 portion of BellSouth's change is acceptable to
 19 you?
 20 MR. BECK: If you looked at that in
 21 isolation, yes. It's the combination of the two
 22 charges that makes it violate the price cap
 23 restraints.
 24 CHAIRMAN DEASON: Further questions?
 25 COMMISSIONER JACOBS: Staff -- I have a

20

1 question of Staff. You argue that regardless of
 2 how described by company, that there are two
 3 issues here. One is to what extent this should
 4 be just one basket, and so you would refute the
 5 company's argument with that. But let's go for
 6 a moment with the argument they raise that this
 7 is a separate item.
 8 Under their argument, it would appear that
 9 the interest charge would no longer be subject
 10 to the cap, the increase limits; is that
 11 correct?
 12 MS. SIMMONS: Under BellSouth's point of
 13 view, the percentage charge, or the interest
 14 charge, as they label it, is either a fee and
 15 would never be subject to non-basic service rate
 16 monitoring, or it's a new service that would be
 17 considered on a going-forward basis for rate
 18 monitoring purposes.
 19 COMMISSIONER JACOBS: Would it be subject
 20 to the 6% cap?
 21 MS. SIMMONS: It would down the road if the
 22 company wanted to increase the rate. Say the
 23 percentage charge, if they wanted to increase it
 24 or in some way modify it, then they would be
 25 subject to the non-basic service rate caps or

1 rate limitations, however you want to call it.
 2 COMMISSIONER JACOBS: Okay.
 3 MR. CRISER: Commissioner Jacobs, the
 4 observation I would make is there are separate
 5 Florida Statutes which regulate the level of
 6 interest charges, and so those charges in
 7 themselves have a cap on them. Whether they're
 8 in the basket or not, there is a cap.

9 COMMISSIONER JACOBS: Do you know what
 10 those caps are for this kind of a charge?

11 MR. CRISER: It's 18% per year is my
 12 understanding, which would be 1-1/2% per month,
 13 which is the level of the charge we have now.

14 The point I would make in addition to that,
 15 I think the suggestion was that if we had
 16 somehow put these things -- and I've heard this
 17 before. If we had somehow put these things into
 18 two different filings, it wouldn't be an issue.

19 Frankly, if that's an error, that's an
 20 error because we tried to make it clear to a
 21 customer reading the tariff exactly what the
 22 applicable fees would be for late payment of a
 23 bill, and including the language together I
 24 think is a -- you know, it's an attempt to be as
 25 up-front and thorough in the explanation. And

1 Ms. Keating -- she may have other observations.
 2 But, you know, in both cases, there is a action
 3 taken by the customer, or non-action, some event
 4 that triggers charges. And here we're talking
 5 about late payment triggering a charge, and
 6 we've now gone from one charge being applicable
 7 to two charges being applicable. As I say, we
 8 just can't find a way to separate these two in
 9 our minds.

10 COMMISSIONER JABER: Let me ask a legal
 11 question. BellSouth has filed a tariff. Under
 12 telecommunications law as it exists today, those
 13 tariffs are presumptively valid.

14 MS. KEATING: Correct.

15 COMMISSIONER JABER: If all parties agree
 16 that the flat fee change is acceptable under the
 17 statute, do we have the authority to modify this
 18 tariff to split the baby, so to speak?

19 MS. KEATING: I believe that you could.
 20 You would probably have to do so as a proposed
 21 agency action. But there is precedent in the
 22 past where you've taken similar action. In a
 23 prior case involving rate regrouping, the
 24 Commission found that the tariff was not in
 25 compliance and required BellSouth to go back and

1 I'm somewhat concerned that -- the suggestion
 2 that by simply separating them somehow we could
 3 turn this into a different matter I think falls
 4 short.

5 COMMISSIONER JABER: Is that correct,
 6 Staff? Could they have filed separately and
 7 this would have been an appropriate --

8 MS. SIMMONS: No. We still would have had
 9 the same concern, because we just have
 10 difficulty trying to separate the flat fee from
 11 the percentage charge, because both of them
 12 apply in a late payment sense. And based on how
 13 the statute defines service, and since service
 14 should be construed in its broadest and most
 15 encompassing sense, Staff finds it very
 16 difficult to separate these two items.

17 COMMISSIONER JABER: Could you address also
 18 Mr. Criser's comments regarding returned checks,
 19 that this isn't any different than having a
 20 returned check fee in a tariff?

21 MS. SIMMONS: Well, the returned check fee,
 22 you know, is in the tariff. It has been
 23 mentioned that it's subject to the non-basic
 24 service rate monitoring. I'm not sure that I
 25 would really view this any differently. Perhaps

1 reset the rates for the areas that had been
 2 regrouped. But as long as you do so as proposed
 3 agency action, I believe that you can.

4 COMMISSIONER CLARK: Do you mean we
 5 rejected the tariff filing, we found it invalid
 6 and directed them to refile?

7 MS. KEATING: That's correct. And that was
 8 held up on appeal.

9 COMMISSIONER JABER: And they would have to
 10 give the refunds for -- what would the refund
 11 amount be in that scenario?

12 MS. KEATING: Well, if you believe that
 13 it's appropriate to keep the late payment charge
 14 but not the interest charge, then only the
 15 interest would need to be refunded.

16 MS. SIMMONS: And at the time of filing,
 17 BellSouth estimated that the interest charge
 18 would bring in roughly between 23 and 24 million
 19 annually. That's shown on page 6 of the staff
 20 recommendation.

21 MR. CRISER: Commissioners, at the risk of
 22 making one point too many, a concern I still
 23 have is that there seems to be a logic that says
 24 that this is simply a matter of semantics. I
 25 think it's important to understand that there is

1 a clear distinction between interest charges,
2 and there are statutes, usury statutes that
3 regulate that. And one of the concerns we have
4 tried to distinguish is that if you suddenly say
5 late payment charges and interest charges are
6 synonymous, you have a whole area that you need
7 to look at in terms of whether or not late
8 payment charges are being pulled under the usury
9 charges.

10 I think I would also observe in terms of
11 distinguishing between these charges, this
12 Commission itself has a late payment process for
13 regulatory assessment fees which assesses a late
14 payment penalty of 5% per month up to a total of
15 25% of the balance due, a 12% cost of money or
16 interest charge, and a charge for recovering the
17 cost of collections. So the distinguishing
18 between the types of charges is not something
19 new, and it is dangerous to oversimplify this
20 process and draw these things all into one pot.

21 COMMISSIONER JABER: Mr. Criser, but the
22 Commission orders refunds with interest, for
23 example, and those interest payments are
24 governed by our statutes and the usury laws;
25 right? The trouble I'm having understanding

1 Staff. The statute makes a distinction between
2 6% allowable increases for non-basic services
3 and then a 20% for those areas in which there is
4 competition. Have we made any determination as
5 to areas in which there is competition where the
6 company would be permissible to impose a 20%
7 increase in non-basic services?

8 MS. SIMMONS: We have not had a company
9 that has requested to use the 20% flexibility;
10 thus, there has not been a need to make a
11 determination. In this particular case, even if
12 the Commission felt that the 20% flexibility
13 would be appropriate, the amount of money
14 generated from this filing is still in excess of
15 that limit.

16 CHAIRMAN DEASON: I realize it is in
17 excess. But if there were 20% increases
18 allowed, at least in some areas it would reduce
19 the amount of refund, would it not?

20 MS. SIMMONS: Yes, it would.

21 CHAIRMAN DEASON: Mr. Criser, have you
22 given any thought to whether there are areas in
23 which you would be permitted to impose a 20%
24 increase?

25 MR. CRISER: Yes, we've looked at that.

1 your point is the interest charge, as you call
2 it, is triggered by a late payment. That's the
3 trouble I'm having understanding your --

4 MR. CRISER: I suppose -- I heard the
5 reference earlier about taking things at their
6 most broad and inclusive level. And not to be
7 flip about it, but at some point, people who
8 have telephone services incur charges, but they
9 are not all the same thing. There are different
10 types of charges.

11 Historically, we never included an interest
12 charge or a loss of use of money type charge in
13 our late payment fee. This is a new and
14 distinct fee. It may -- for purposes of going
15 forward, at this Commission's discretion, may be
16 included in the basket or not included in the
17 basket, but it is something new and distinct.
18 That's the point we're trying to make. And we
19 believe the Florida Statutes, both the statutes
20 that apply to price regulation, as well as some
21 of the broader statutes that apply to things
22 like interest charges, that all of those things
23 align, that we are allowed and we are permitted
24 to do what we are doing.

25 CHAIRMAN DEASON: I have a question for

1 Again, I would say -- and I don't mean to stick
2 myself out on a rock, I guess is what I'm trying
3 to say. I think, clearly, when we've looked at
4 this particular issue, you know, I guess there's
5 an issue and argument that says it's common
6 industry practice. We have companies out there
7 who have charges far in excess of the level that
8 BellSouth charges. It's an area that I think
9 frankly comes back to -- I'm worried about
10 splitting the baby, because I really believe
11 there is a danger in trying to combine these
12 things into one thing. It is --

13 COMMISSIONER JABER: Those companies that
14 you cite to in your letter, are they price
15 regulated telephone companies?

16 MR. CRISER: Some of them are. The ones we
17 cite in our letter, no, I don't believe so.
18 They are companies that have tariffs on file
19 with this Commission. That information was from
20 tariffs on file with this Commission.

21 CHAIRMAN DEASON: Commissioners, further
22 questions?

23 COMMISSIONER JACOBS: The essence of the
24 recommendation today goes to whether or not
25 there's a violation. Is that the only avenue by

1 which we can address the legitimacy of this
2 tariff? In other words, do we have to say it's
3 violating? Can we just reject the tariff?

4 MS. KEATING: In order to reject the
5 tariff, I believe you need to find that it is in
6 violation, because they are filed and become
7 presumptively valid.

8 CHAIRMAN DEASON: Commissioners, do we have
9 a motion?

10 COMMISSIONER JACOBS: Well, I'll wade in.
11 I began on this one from the premise that the
12 company says that's the basis of their charge.
13 Once you step away from the idea that you're
14 looking at cost-based and you're looking at rate
15 of return, you're looking at what we were
16 anticipating would be a competitive
17 marketplace. And in a competitive marketplace,
18 the company surely has the right to go out and
19 offer services and products for which it should
20 seek the market-based price, and the company
21 seems to be offering this as something in that
22 order.

23 I differ. I do not see this as a company
24 offering a service. I see this as an issue
25 where the company is attempting to manage its

1 And the ultimate avenue that the company
2 has to ensure that is that they disconnect them.
3 When a customer refuses to pay their bill, the
4 companies have the opportunity to disconnect
5 them. They minimize the extent of past due
6 balances by that ultimate act, and it's done
7 fairly frequently. So if I were looking to
8 manage this area of the business, I would think
9 that you have a cap there.

10 Now, I've seen that there is this issue of
11 consumers who repetitively -- who continue to
12 have late balances. That's probably an issue
13 here, and I would think that that's something
14 that the company might want to look at and might
15 want to manage through this provision.
16 Unfortunately, I see this provision as being
17 quite onerous in terms of managing that number
18 of customers who are continually late month
19 after month. I may be wrong. I have to say the
20 evidence is not really clear to me here as to
21 whether or not it's appropriate to manage that
22 body of customers through this provision.

23 Absent that, I see a provision that will
24 generate a substantial, according to projections
25 from Staff, a substantial amount of revenue from

1 business. And again, it ought to have the
2 flexibility and opportunity to do that.

3 The troubling aspect for me is, I see an
4 effort here to look at an aspect of its business
5 from a different way, and that is, to what
6 extent it can serve as a revenue-producing
7 vehicle. In this regard, and in particular,
8 this circumstance troubles me. When I start
9 thinking about the consumers who are going to
10 incur this charge, the first thing I think about
11 is that they're already having problems paying
12 the bill.

13 So there's a divergence here. The company
14 would say, well, this would be an incentive to
15 make them focus and give priority to this bill
16 and make sure they pay this on time. There's
17 some value in that. I don't disagree with
18 that.

19 My experience is that most people are
20 robbing Peter to pay Paul. And to the extent
21 that this would be an incentive to the consumer,
22 I think it would be fairly limited. Most people
23 value their telephone. They will do most
24 anything they can to keep their telephone
25 service on.

1 the body of consumers that I would say would be
2 highly taxed, if not poorly equipped to
3 contribute that revenue.

4 Now, it would trouble me even more if this
5 were really a competitive offering, because in
6 that instance, you have an industry where
7 companies are seeking market share and seeking
8 to attract customers, and who would impose an
9 18% charge on this customer that they value.
10 That would trouble me. But we understand that
11 we're transitioning to competition, and so we're
12 here as a surrogate to make sure that -- in that
13 transition, we're trying to make sure that all
14 players in the marketplace, and the consumers
15 particularly, are treated with fairness and with
16 equity.

17 That's how I approach this question. I
18 have no doubt that the company has the
19 opportunity, and should have the opportunity to
20 manage their business, and if they want to
21 restructure this charge, that's up to them. But
22 we're here as a surrogate, and we're here to see
23 that to the extent that we're transitioning to
24 competition, consumers see as much of the
25 benefits of competition as possible. I don't

1 see that in this offering. I see consumers
2 being fairly burdened by this offering.

3 COMMISSIONER CLARK: I have a question,
4 Mr. Criser. The previous late payment charge of
5 1.5% on the unpaid balance greater than a
6 dollar, was that part of the miscellaneous
7 non-basic service basket? Was that previously
8 part of it?

9 MR. CRISER: Yes, it was.

10 COMMISSIONER CLARK: So it was a graduated
11 rate. But now you're saying the fixed rate
12 should be only considered part of that basket,
13 and the interest rate should not. Is that what
14 you're saying?

15 MR. CRISER: Our logic -- I hate to get
16 into this argument. I think our logic -- one
17 part of my answer would be that that should be
18 irrelevant, because we believe this is either a
19 fee and not part of the basket, or this is a new
20 item, and it is in the basket.

21 COMMISSIONER CLARK: It's certainly not a
22 new service. I don't think the customers would
23 see it as a service.

24 MR. CRISER: And frankly, our argument for
25 not putting it -- part of our logic for not

1 put in a basket. On looking at that, I believe
2 there is an issue, you know, whether it's in
3 part of or beyond this particular discussion,
4 which is, should fees like the returned check
5 charge, like interest fees, be in the basket or
6 not, and what's the appropriate way for those to
7 be administered.

8 We frankly have tried to look at this not
9 just from a company trying to make money
10 perspective, but from what is the best public
11 policy approach. And one of the observations we
12 have is that by just throwing things into
13 baskets, particularly ones that are capped
14 otherwise, you create maybe some unintended --
15 or increases that wouldn't have been there
16 otherwise as you apply the basket. I hope I
17 haven't confused that totally.

18 CHAIRMAN DEASON: Commissioners, maybe we
19 can refocus for just a moment. I appreciate all
20 the debate and dialogue that we've had here, but
21 to me it's not an issue as to whether it's
22 burdensome on the customers, or whether it is a
23 good management policy, or whether this
24 restructure makes management sense and it
25 incentivizes customers to pay their bills on

1 putting it in the basket is that if you put
2 things in the basket, if there's a concern --
3 what we've tried to be is responsible about
4 this. If you put things in the basket that are
5 capped otherwise, then you leverage the basket
6 to be able to increase other services by a
7 greater amount than you would have been able to
8 do if you hadn't done that, if that makes
9 sense. We're building the foundation in the
10 basket with things that have statutory controls
11 on them, and so we believe you potentially
12 create a negative public policy by throwing
13 things into baskets just to do so.

14 COMMISSIONER CLARK: Well, it would be fair
15 to say that previously you had considered the
16 late payment charge or the percentage was part
17 of the miscellaneous non-basic service basket.

18 MR. CRISER: Yes. Yes.

19 COMMISSIONER CLARK: But now you're arguing
20 that it should only be the flat rate and not the
21 interest charge.

22 MR. CRISER: Well, I mean, this Commission
23 had -- I think I would say it differently. At
24 the time the price regulation baskets were
25 created, the existing late payment charge was

1 time. All of that, while that's important if we
2 were in that mode, we're not in that mode.

3 We're strictly looking as to whether under
4 the statute and the interpretation of the
5 statute, whether this is a permissible charge,
6 and we're not here to debate the merits of this,
7 other than can it be implemented consistent with
8 the statute. That's the critical issue. We've
9 got to address that issue.

10 And I believe that this charge is not
11 consistent with the statute, that our Staff's
12 interpretation is correct. The only leeway I
13 see in it, that is, there may be areas in the
14 state where there is sufficient competition that
15 a 20% increase in these charges may be
16 permissible. But as Staff has pointed out, the
17 increase in terms of revenue for this basket is
18 somewhere in excess of 50%. But that's my
19 narrow viewpoint on it.

20 I think that's the critical issue, and
21 that's what we've got to grasp and decide one
22 way or the other, is it legal or is it not under
23 our interpretation of the statute.

24 COMMISSIONER JABER: May I try to give a
25 motion, Mr. Chairman, and see how far we get?

1 In response to Staff's response to my
2 question, I think it is clear that the flat fee
3 change is not violative of the statute, and I
4 think that there's agreement from the parties
5 that that's correct.

6 With respect to the percentage changes, I
7 completely agree with what you're saying,
8 Mr. Chairman, and that was the nature of the
9 questions I asked. I can't understand why now
10 there is a difference in philosophy. To me, the
11 percentage change, whether it was called
12 interest or not, existed from the beginning of
13 the baskets. I don't understand how changing
14 the amount upon which the percentage is applied
15 is now a new service charge.

16 Saying that, if we modify this tariff and
17 it has to be PAA and BellSouth has to file a new
18 tariff, perhaps in that new tariff they can let
19 us know what areas might be at 20% competition.
20 I don't know.

21 But my motion is to modify the tariff, or
22 to reject the tariff and allow them to file a
23 modified tariff that indicates only the change
24 in the flat fee, and to give the appropriate
25 refunds for the so-called interest charges.

1 the tariff that was in effect prior to that.

2 CHAIRMAN DEASON: Well, can we do this?
3 This -- obviously, BellSouth has the opportunity
4 to carry this to hearing by some mechanism, I
5 guess protesting the Commission's decision. If
6 they are willing to guarantee that the refunds
7 would be made, can they continue the charges as
8 they currently exist while the matter goes to
9 hearing?

10 MS. SIMMONS: That would seem to be an
11 option.

12 COMMISSIONER CLARK: Say that again.

13 CHAIRMAN DEASON: Simply have the charges
14 remain in effect as they are, if they're willing
15 to take the burden of ultimately making the
16 refunds if we go to hearing and some other -- if
17 we go to hearing, will we have the latitude then
18 to impose whatever we believe is the correct
19 structure for a late payment charge if we go to
20 hearing? At the conclusion of that, we can
21 impose our own, not just rely upon them to come
22 back with a different filing.

23 MS. KEATING: I believe that you do have
24 that leeway.

25 COMMISSIONER CLARK: I'm not sure

1 COMMISSIONER CLARK: The only question I
2 have about that is, I think we should simply
3 reject it and let them come back with one that
4 complies with the law, and then it's up to them
5 to decide if they can meet a 20% -- if they can
6 meet the requirements for doing that.

7 MS. SIMMONS: Commissioner Clark, then
8 would your suggestion be that basically the
9 tariff be cancelled and that the company would
10 revert back to the prior version of the tariff?

11 COMMISSIONER CLARK: We could either do
12 that or give them some opportunity to file a
13 modified tariff. I guess my point is that I
14 don't know that we should direct them as to what
15 kind of tariff they should file. We should
16 reject this one and allow them to file one
17 that's in compliance.

18 COMMISSIONER JABER: I think Staff is
19 making the clarification for us that we have to
20 let some tariff remain in effect. Otherwise,
21 they would have -- the company would have to
22 refund the entire amount. I think that's the
23 distinction.

24 COMMISSIONER CLARK: We would revert -- as
25 far as I'm concerned, we would revert back to

1 procedurally what -- that we would do a PAA
2 rejecting the tariff?

3 CHAIRMAN DEASON: No. We would -- I guess
4 my concern is this. If BellSouth takes us to
5 hearing, which is certainly within their right,
6 why do we want to be changing rates back and
7 forth and back and forth? These rates have been
8 in effect for some time. If they're going to
9 take this to hearing and have their day in
10 court, which they're certainly entitled to, why
11 not just allow the same rates to continue,
12 realizing that if they lose their case at
13 hearing, then the refund just -- the refund
14 continues to grow, and they will be responsible
15 for making those refunds.

16 MS. KEATING: Let me just try to make sure
17 I understand what you're saying. You would say
18 reject the tariff as not in compliance, and then
19 if they protest, allow them to continue
20 operating under the tariff pending the outcome
21 of further proceedings?

22 CHAIRMAN DEASON: If that can be done
23 procedurally legally.

24 BellSouth, do you have a -- do you want to
25 -- I don't know what the vote is going to be,

41

1 but at least there's some sentiment that there's
2 going to be a finding that the tariff is in
3 violation, and there may be a necessity to take
4 this to hearing. What do we do in the meantime?

5 MR. CRISER: Chairman Deason, we committed
6 at the beginning of this process at the time
7 when our tariff was originally being considered
8 that if our tariff were found to be unlawful, we
9 would refund the appropriate amounts to
10 customers. So I think that the hold harmless
11 provision is already there.

12 I would also observe, let's just say
13 looking at where I think I see we are right now,
14 the other complexity you have, as an example, we
15 created an exemption for Lifeline subscribers in
16 this current tariff. If we suddenly went back
17 to the tariff that was in effect before that
18 time, it would effectively remove that
19 exemption. I think the proposal that says we go
20 forward with where we are till this is concluded
21 is probably the least complicated and probably
22 the least disruptive way to proceed.

23 CHAIRMAN DEASON: Can we just take it to
24 hearing on our own motion and the refund
25 provisions continue while we take it to hearing?

43

1 they choose to go to hearing, we would allow it
2 to stay in effect, and at the conclusion of the
3 hearing, the refunds would be due from the time
4 they first filed the tariff and changed the
5 rates. Okay? And they would have -- in the
6 meantime, they have the option of filing a new
7 tariff and have that go into effect, at which
8 time the rates would change to their new tariff,
9 because they're presumptively valid.

10 COMMISSIONER JABER: Let's be clear on the
11 nature of the refunds. We're all talking about
12 the interest charge, quote, unquote. We are not
13 talking about the change in the flat fee being
14 refunded.

15 COMMISSIONER CLARK: Well, I think it would
16 depend on --

17 CHAIRMAN DEASON: I think the refunds have
18 to be based upon revenues and percentage
19 increases in revenues. They are allowed a 6%
20 increase, so we would have to calculate --
21 assuming we ignore the 20% -- and they may can
22 justify some 20% increases. I'm not sure. But
23 it would be a calculation of the revenues
24 generated with this new structure versus the old
25 structure, and compare those two revenues, and

42

1 COMMISSIONER CLARK: Well, it's not clear
2 to me that we would go to hearing. I mean, it
3 seems to me that BellSouth may choose to file
4 another tariff.

5 CHAIRMAN DEASON: That's certainly possible
6 too.

7 COMMISSIONER CLARK: I guess -- why don't
8 we issue a proposed agency action that would
9 reject the tariff, but allow it to remain in
10 effect for 30 days, within which time BellSouth
11 can either file a new tariff that would be in
12 compliance with or consistent with our vote
13 today, or request a hearing. If they request a
14 hearing, then the tariff would remain in effect
15 until the conclusion of that process, with the
16 understanding that refunds would be due back to
17 the time the tariff originally went into effect
18 in 1999.

19 MS. KEATING: Would you actually be finding
20 the tariff in violation, and if so --

21 COMMISSIONER CLARK: Yes.

22 MS. KEATING: -- what about refunds after
23 that 30-day period?

24 COMMISSIONER CLARK: They would have -- the
25 refunds -- we would find it in violation. If

44

1 to the extent that the new structure generates
2 more revenue than a 6% increase of the old
3 structure, that amount of dollars has to be
4 refunded. And how you calculate that on a per
5 customer basis I'm not sure, but that would be
6 the mechanism of the calculation.

7 COMMISSIONER CLARK: I think the Staff
8 could come back to us with a recommendation on
9 the amount of the refund.

10 MS. SIMMONS: Right. It could get a little
11 bit awkward because of different customers --

12 COMMISSIONER CLARK: Sure.

13 MS. SIMMONS: -- being billed differently.

14 COMMISSIONER CLARK: Sure. You would have
15 to come back to us after you've had a chance to
16 look at it.

17 MS. SIMMONS: I mean, I guess conceptually
18 or theoretically, it would seem as though you --

19 COMMISSIONER CLARK: Sally, do we have to
20 figure this out now?

21 MS. SIMMONS: We don't have to.

22 COMMISSIONER CLARK: Okay. I would move
23 Staff.

24 CHAIRMAN DEASON: All right. Let me see if
25 I'm clear. You're just moving Staff's --

1 recommendation without a PAA or anything else.
 2 COMMISSIONER CLARK: No. I guess I should
 3 be clearer. I would move that we find the
 4 tariff invalid, allow it to remain in effect for
 5 30 days, at which time BellSouth can either file
 6 a new tariff that is consistent with what we've
 7 done today, or they can ask for a hearing, in
 8 which case the tariff remains in effect, but
 9 then at the conclusion of that proceeding,
 10 appropriate refunds would be due.

11 CHAIRMAN DEASON: Only one question, and
 12 I'll direct this toward you. Is 30 days
 13 sufficient for BellSouth to structure a new
 14 tariff or else -- it would obviously be
 15 sufficient for you to request a hearing, I would
 16 think.

17 MR. CRISER: Thirty days is sufficient.

18 CHAIRMAN DEASON: Very well.

19 MS. SIMMONS: Commissioners, I need to make
 20 one clarification, and that is that this filing
 21 was made in both the general services tariff as
 22 well as the private line tariffs.

23 COMMISSIONER CLARK: Well, we are finding
 24 both tariffs invalid.

25 MS. KEATING: And let me also clarify. You

1
 2 CERTIFICATE OF REPORTER

3
 4 STATE OF FLORIDA)

5 COUNTY OF LEON)
 6

7 I, MARY ALLEN NEEL, do hereby certify that the
 8 foregoing proceedings were taken before me at the time
 9 and place therein designated; that my shorthand notes
 10 were thereafter transcribed under my supervision; and
 11 that the foregoing pages numbered 1 through 46 are a
 12 true and correct transcription of my stenographic
 13 notes.

14 I FURTHER CERTIFY that I am not a relative,
 15 employee, attorney or counsel of any of the parties,
 16 or relative or employee of such attorney or counsel,
 17 or financially interested in the action.

18 DATED THIS 17th day of July, 2000.
 19
 20
 21
 22

23 MARY ALLEN NEEL, RPR
 24 100 Salem Court
 Tallahassee, Florida 32301
 (850) 878-2221
 25

1 would be doing this as PAA?

2 COMMISSIONER CLARK: Yes. Don't we have to
 3 do it as PAA?

4 MS. KEATING: I believe so, because --

5 COMMISSIONER CLARK: Okay.

6 CHAIRMAN DEASON: There is a motion. Is
 7 there a second?

8 COMMISSIONER JABER: Second.

9 COMMISSIONER JACOBS: Second.

10 CHAIRMAN DEASON: Moved and seconded. All
 11 in favor say "aye."

12 COMMISSIONER JACOBS: Aye.

13 COMMISSIONER JABER: Aye.

14 COMMISSIONER CLARK: Aye.

15 CHAIRMAN DEASON: Aye. Show the motion
 16 carries unanimously. Thank you.

17 (Conclusion of consideration of Item 10.)
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 19
 20
 21
 22
 23
 24
 25

Finally ^[1] 9:9
financially ^[1] 47:17
find ^[5] 18:12 23:8 29:5 42:25
45:3
finding ^[3] 41:2 42:19 45:23
finds ^[1] 22:15
First ^[5] 3:16 6:1,3 30:10 43:4
fixed ^[1] 33:11
flat ^[14] 3:6,9 5:2 6:5,7 12:5 18:
14 19:10 22:10 23:16 34:20 37:
2,24 43:13
flexibility ^[3] 27:9,12 30:2
flip ^[1] 26:7
Florida ^[8] 8:25 11:7 12:16 15:4
19:6 21:5 26:19 47:4
focus ^[2] 16:5 30:15
focused ^[1] 16:6
follow ^[1] 13:22
foregoing ^[2] 47:8,11
forth ^[2] 40:7,7
forward ^[2] 26:15 41:20
found ^[3] 23:24 24:5 41:8
foundation ^[1] 34:9
frankly ^[6] 16:16,17 21:19 28:9
33:24 35:8
frequently ^[1] 31:7
fully ^[1] 17:23
Further ^[4] 19:24 28:21 40:21
47:14

G

general ^[1] 45:21
generate ^[1] 31:24
generated ^[2] 27:14 43:24
generates ^[1] 44:1
give ^[7] 3:12 6:11 24:10 30:15
36:24 37:24 38:12
given ^[2] 7:12 27:22
going-forward ^[1] 20:17
got ^[2] 36:9,21
govern ^[2] 7:25 14:23
governed ^[1] 25:24
graduated ^[1] 33:10
grasp ^[1] 36:21
greater ^[4] 11:17,22 33:5 34:7
grow ^[1] 40:14
guarantee ^[1] 39:6
guess ^[11] 7:20 8:8 16:9 28:2,4
38:13 39:5 40:3 42:7 44:17 45:
2
guidelines ^[1] 12:9

H

happy ^[1] 13:17
harmless ^[1] 41:10
hate ^[1] 33:15
heard ^[2] 21:16 26:4
hearing ^[18] 39:4,9,16,17,20 40:
5,9,13 41:4,24,25 42:2,13,14 43:
1,3 45:7,15
held ^[2] 9:2 24:8
help ^[2] 3:14 11:22
helped ^[1] 14:8
hereby ^[1] 47:7
highly ^[1] 32:2
hinges ^[1] 5:6
Historically ^[1] 26:11
hold ^[3] 8:18 15:16 41:10
holds ^[1] 10:9

honestly ^[1] 12:12
hope ^[1] 35:16
hopefully ^[1] 15:23
however ^[1] 21:1

Idea ^[1] 29:13
Ignore ^[1] 43:21
impact ^[2] 15:22 17:17
implemented ^[7] 6:15 8:19,22
9:17 11:5 17:7 36:7
important ^[2] 24:25 36:1
importantly ^[1] 9:12
impose ^[5] 27:6,23 32:8 39:18,
21
incentive ^[2] 30:14,21
incentivizes ^[1] 35:25
inception ^[1] 12:2
include ^[1] 3:25
included ^[5] 14:8 16:13 26:11,
16,16
including ^[1] 21:23
inclusion ^[1] 7:5
inclusive ^[2] 4:19 26:6
incorporate ^[1] 3:20
incorporates ^[1] 6:22
increase ^[14] 3:5,8,11 4:14 20:
10,22,23 27:7,24 34:6 36:15,17
43:20 44:2
increases ^[6] 18:7 27:2,17 35:
15 43:19,22
Increasing ^[1] 11:23
incur ^[3] 16:19 26:8 30:10
incurred ^[1] 6:14
indicate ^[1] 17:5
indicated ^[1] 15:21
indicates ^[1] 37:23
industry ^[2] 28:6 32:6
information ^[1] 28:19
installment ^[2] 10:2,5
installments ^[1] 10:9
instance ^[1] 32:6
interest ^[46] 6:6 7:8,23 8:17,18,
21,23 9:1,7 10:7 11:3,18,24 12:
13,14,17 13:14 14:21,24 15:4 16:
13,16 17:10 18:15,18,25 20:9,13
21:6 24:14,15,17 25:1,5,16,22,23
26:1,11,22 33:13 34:21 35:5 37:
12,25 43:12
interested ^[1] 47:17
interesting ^[2] 13:6 18:12
interpretation ^[3] 36:4,12,23
introduced ^[2] 13:19 14:3
invalid ^[3] 24:5 45:4,24
involving ^[1] 23:23
irrelevant ^[1] 33:18
isn't ^[2] 4:10 22:19
isolation ^[1] 19:21
issue ^[15] 3:13 14:10 16:17 21:
18 28:4,5 29:24 31:10,12 35:2,
21 36:8,9,20 42:8
issues ^[2] 13:15 20:3
Item ^[6] 3:1,2 13:5 20:7 33:20
46:17
items ^[2] 19:4 22:16
itself ^[3] 18:13 19:4 25:12

J

JABER ^[20] 11:13,20 12:18 13:6,

12 17:2 19:9,16 22:5,17 23:10,
15 24:9 25:21 28:13 36:24 38:
18 43:10 46:8,13
JACOBS ^[11] 13:21 14:19 19:25
20:19 21:2,3,9 28:23 29:10 46:9,
12
July ^[2] 5:18 47:18
justify ^[1] 43:22

K

Keating ^[12] 23:1,14,19 24:7,12
29:4 39:23 40:16 42:19,22 45:
25 46:4
keep ^[2] 24:13 30:24
kind ^[2] 21:10 38:15

L

label ^[1] 20:14
language ^[1] 21:23
last ^[1] 9:17
late ^[60] 3:4,18,19 4:1,21,25 6:4,
12,14,15,18 7:4,8,23 8:3,6,9,10,
20 9:12,19,20 10:6 11:2 12:1,4,7,
19,22 14:3 16:10 17:1,6,25 18:1,
3,4,9,11,13,18,22 19:1,5 21:22
22:12 23:5 24:13 25:5,7,12,13
26:2,13 31:12,18 33:4 34:16,25
39:19
latitude ^[1] 39:17
law ^[3] 8:25 23:12 38:4
laws ^[1] 25:24
least ^[4] 27:18 41:1,21,22
leeway ^[2] 36:12 39:24
legal ^[4] 8:22 11:2 23:10 36:22
legality ^[1] 4:8
legally ^[1] 40:23
legitimacy ^[1] 29:1
LEON ^[1] 47:5
letter ^[3] 5:19 28:14,17
level ^[6] 10:10 14:23 21:5,13 26:
6 28:7
leverage ^[1] 34:5
Lifeline ^[6] 6:10,12,23 10:14 12:
6 41:15
limit ^[1] 27:15
limitations ^[1] 21:1
limited ^[1] 30:22
limits ^[2] 18:7 20:10
line ^[1] 45:22
little ^[2] 4:15 44:10
local ^[1] 3:5
logic ^[4] 24:23 33:15,16,25
long ^[1] 24:2
long-term ^[1] 17:16
longer ^[2] 19:1 20:9
look ^[7] 8:9 10:15 25:7 30:4 31:
14 35:8 44:16
looked ^[9] 8:5,8,11,12,13 16:9
19:20 27:25 28:3
looking ^[10] 6:25 7:21 16:15 29:
14,14,15 31:7 35:1 36:3 41:13
lose ^[1] 40:12
loss ^[5] 6:21,24 8:16 16:12 26:12

M

ma'am ^[1] 11:19
made ^[4] 19:4 27:4 39:7 45:21
main ^[1] 10:22
manage ^[5] 29:25 31:8,15,21 32:
20

management ^[2] 35:23,24
managing ^[1] 31:17
manner ^[3] 11:7 12:25 15:23
many ^[1] 24:22
market ^[1] 32:7
market-based ^[1] 29:20
marketplace ^[3] 29:17,17 32:14
Marshall ^[1] 5:16
MARY ^[1] 47:7
materials ^[1] 8:12
matter ^[6] 5:21 6:3 10:10 22:3
24:24 39:8
mean ^[8] 17:15 18:17,24 24:4
28:1 34:22 42:2 44:17
meantime ^[2] 41:4 43:6
mechanism ^[2] 39:4 44:6
mechanisms ^[1] 10:3
meet ^[2] 38:5,8
mention ^[1] 7:6
mentioned ^[1] 22:23
merits ^[1] 36:6
might ^[4] 18:12 31:14,14 37:19
million ^[17] 17:13 24:18
mind ^[2] 4:16,22
minds ^[1] 23:9
minimize ^[1] 31:5
miscellaneous ^[3] 19:14 33:6
34:17
mode ^[2] 36:2,2
modified ^[2] 37:23 38:13
modify ^[4] 20:24 23:17 37:16,21
moment ^[2] 20:6 35:19
money ^[12] 3:25 6:21,24 7:6,14,
15 8:17 16:12 25:15 26:12 27:
13 35:9
monitoring ^[4] 5:5 20:16,18 22:
24
month ^[8] 15:8 18:2,9,22 21:12
25:14 31:18,19
morning ^[1] 5:23
most ^[9] 4:19 9:12,13 10:17 22:
14 26:6 30:19,22,23
motion ^[6] 29:9 36:25 37:21 41:
24 46:6,15
move ^[2] 44:22 45:3
Moved ^[1] 46:10
moving ^[1] 44:25
MS ^[27] 3:2 20:12,21 22:8,21 23:
1,14,19 24:7,12,16 27:8,20 29:4
38:7 39:10,23 40:16 42:19,22
44:10,13,17,21 45:19,25 46:4
much ^[2] 17:5 32:24
myself ^[2] 16:5 28:2

N

name ^[3] 17:22 18:21,24
narrow ^[1] 36:19
nature ^[9] 3:17 4:6,9,11 5:1,2,11
37:8 43:11
necessity ^[1] 41:3
need ^[5] 24:15 25:6 27:10 29:5
45:19
NEEL ^[1] 47:7
negative ^[1] 34:12
neighborhood ^[1] 17:13
never ^[3] 7:5 20:15 26:11
new ^[24] 6:20 9:7 10:13 11:15,24
12:14 13:18 17:11 20:16 25:19
26:13,17 33:19,22 37:15,17,18

42:11 43:6,8,24 44:1 45:6,13
non-action (1) 23:3
non-basic (13) 3:10 4:22 5:5 18:
8 19:3,13 20:15,25 22:23 27:2,7
33:7 34:17
note (1) 10:4
noted (1) 10:12
notes (2) 47:9,13
noting (1) 10:19
nowhere (1) 8:16
number (1) 31:17
numbered (1) 47:11

O

observation (1) 21:4
observations (2) 23:1 35:11
observe (3) 12:23 25:10 41:12
obviously (2) 39:3 45:14
offer (1) 29:19
offering (5) 29:21,24 32:5 33:1,
2
Office (1) 17:22
Okay (4) 21:2 43:5 44:22 46:5
old (2) 43:24 44:2
Once (1) 29:13
one (19) 18:17,18 20:3,4 23:6 24:
22 25:3,20 28:12 29:11 33:16
35:11 36:21 38:3,16,16 45:11,20
onerous (1) 31:17
ones (2) 28:16 35:13
only (10) 3:6 6:24 24:14 28:25
33:12 34:20 36:12 37:23 38:1
45:11
operate (1) 7:16
operating (1) 40:20
opportunity (7) 4:1 30:2 31:4
32:19,19 38:12 39:3
option (2) 39:11 43:6
order (5) 6:10 7:4 8:15 29:4,22
orders (1) 25:22
original (7) 4:21 7:1,4 11:25 13:
23 16:7,8
originally (2) 41:7 42:17
other (12) 10:2 12:23 13:3 15:4
16:9 23:1 29:2 34:6 36:7,22 39:
16 41:14
otherwise (5) 6:13 34:5 35:14,
16 38:20
ought (1) 30:1
out (6) 19:1 28:2,6 29:18 36:16
44:20
outcome (1) 40:20
outlines (1) 5:20
over (3) 5:11 12:3 17:10
oversimplify (1) 25:19
overview (1) 3:12
own (2) 39:21 41:24

P

PAA (5) 37:17 40:1 45:1 46:1,3
page (1) 24:19
pages (1) 47:11
part (13) 8:6 9:11 16:4,8 18:15
33:6,8,12,17,19,25 34:16 35:3
particular (4) 27:11 28:4 30:7
35:3
particularly (2) 32:15 35:13
parties (5) 3:13 5:14 23:15 37:4
47:15

past (3) 13:25 23:22 31:5
pat (1) 10:20
Paul (1) 30:20
pay (9) 9:14,15 15:24 16:18 30:
16,20 31:3 35:25
payers (1) 4:1
paying (9) 9:19,20,20 10:24 16:
21,25,25 17:18 30:11
payment (56) 3:4,18,19 4:21,25
6:4,12,14,16,18 7:5,8,23 8:3,6,9,
10,20 9:12,24 10:1,3,6 11:3 12:1,
4,7,20,22 14:3 16:10 17:7,25 18:
1,5,10,11,14,19,22 19:1,5 21:22
22:12 23:5 24:13 25:5,8,12,14
26:2,13 33:4 34:16,25 39:19
payments (2) 18:3 25:23
pays (1) 13:1
penalty (1) 25:14
pending (1) 40:20
people (3) 26:7 30:19,22
per (9) 15:8,11 18:2,9,22 21:11,
12 25:14 44:4
percent (1) 12:13
percentage (15) 3:9 5:3,4,9 6:6
11:21 16:22 20:13,23 22:11 34:
16 37:6,11,14 43:18
Perhaps (2) 22:25 37:18
period (1) 42:23
permissible (7) 3:5,8,11 4:14
27:6 36:5,16
permitted (2) 26:23 27:23
perspective (3) 4:20 14:14 35:
10
Peter (1) 30:20
philosophy (1) 37:10
place (1) 47:9
placed (3) 18:5,7 19:2
places (1) 18:6
plan (1) 10:5
players (1) 32:14
pleased (1) 16:20
point (11) 4:16 7:7 13:7 19:8 20:
12 21:14 24:22 26:1,7,18 38:13
pointed (1) 36:16
policy (3) 34:12 35:11,23
poorly (1) 32:2
portion (3) 3:6 17:8 19:18
position (2) 5:20,23
positive (3) 9:23 15:23 16:21
possible (2) 32:25 42:5
pot (1) 25:20
potentially (1) 34:11
practice (2) 11:9 28:6
precedent (1) 23:21
prefer (1) 16:18
preference (1) 13:14
preliminary (1) 17:4
premise (1) 29:11
presumptively (3) 23:13 29:7
43:9
previous (2) 6:5 33:4
previously (9) 9:18,20 10:12,25
33:7 34:15
price (6) 3:5 6:17 7:21,25 9:4,8
12:9 13:20 14:15 18:4,6 19:22
26:20 28:14 29:20 34:24
prior (3) 23:23 38:10 39:1
priority (1) 30:15

private (1) 45:22
probably (4) 23:20 31:12 41:21,
21
problems (1) 30:11
procedurally (2) 40:1,23
proceed (1) 41:22
proceeding (1) 45:9
proceedings (2) 40:21 47:8
process (4) 25:12,20 41:6 42:15
products (1) 29:19
projections (1) 31:24
proposal (1) 41:19
proposed (3) 23:20 24:2 42:8
protest (1) 40:19
protesting (1) 39:5
provided (1) 14:15
provision (3) 31:15,16,22,23 41:
11
provisions (1) 41:25
Public (3) 17:22 34:12 35:10
pulled (1) 25:8
purpose (1) 13:23
purposes (2) 20:18 26:14
put (5) 21:16,17 34:1,4 35:1
putting (2) 33:25 34:1

Q

question (9) 7:12 20:1 23:11 26:
25 32:17 33:3 37:2 38:1 45:11
questions (6) 5:24 11:12,14 19:
24 28:22 37:9
quite (1) 31:17
quote (1) 43:12

R

raise (1) 20:6
rate (20) 4:22 5:5 6:5,7 7:13 12:5
15:18,18 20:15,17,22,25 21:1 22:
24 23:23 29:14 33:11,11,13 34:
20
rates (9) 3:10 7:19 14:5 24:1 40:
6,7,11 43:5,8
reaction (1) 10:23
reading (1) 21:21
realize (1) 27:16
realizing (1) 40:12
really (9) 4:10 5:3,6,11 6:2 22:25
28:10 31:20 32:5
recommendation (9) 5:22 11:
11 17:3,24 24:20 28:24 44:8 45:
1
recovering (2) 13:24 25:16
recovery (2) 15:20 16:2
recurring (1) 10:7
reduce (2) 17:9 27:18
reduction (1) 16:24
refer (1) 15:7
reference (3) 8:16 12:16 26:5
referring (1) 11:16
refile (1) 24:6
reflected (3) 3:21,23 4:7
reflects (1) 11:8
refocus (1) 35:19
refund (9) 17:4 24:10 27:19 38:
22 40:13,13 41:9,24 44:9
refunded (3) 24:15 43:14 44:4
refunds (13) 24:10 25:22 37:25
39:6,16 40:15 42:16,22,25 43:3,
11,17 45:10

refuses (1) 31:3
refute (1) 20:4
regard (1) 30:7
regarding (1) 22:18
regardless (1) 20:1
regime (2) 7:21,22
regrouped (1) 24:2
regrouping (1) 23:23
regulate (2) 21:5 25:3
regulated (3) 3:5 15:1 28:15
regulation (12) 6:17 7:21,24 9:4,
8 12:9 13:20 14:15 18:4,6 26:20
34:24
regulations (2) 8:23 14:25
regulatory (1) 25:13
reject (7) 29:3,4 37:22 38:3,16
40:18 42:9
rejected (1) 24:5
rejecting (1) 40:2
relative (2) 47:14,16
relevance (1) 6:25
relevant (6) 4:7,10,12 14:7,13
15:5
rely (1) 39:21
remain (5) 38:20 39:14 42:9,14
45:4
remains (1) 45:8
remarks (1) 3:13
remove (1) 41:18
repetitively (1) 31:11
REPORTER (1) 47:2
request (4) 11:10 42:13,13 45:
15
requested (1) 27:9
required (1) 23:25
requirements (1) 38:6
reset (1) 24:1
residence (5) 6:7 9:18 16:22,23,
24
respect (1) 37:6
respectfully (2) 8:24 11:10
response (4) 5:21 9:16 37:1,1
responsible (4) 9:11 11:8 34:3
40:14
restraint (1) 19:13
restraints (2) 19:2,23
restructure (5) 3:4 6:18 17:7
32:21 35:24
restructured (6) 4:24 6:4 12:4,
7 18:11,14
restructuring (1) 7:24
return (1) 29:15
returned (7) 12:24 13:1,8 22:18,
20,21 35:4
revenue (5) 9:22 31:25 32:3 36:
17 44:2
revenue-producing (1) 30:6
revenues (4) 43:18,19,23,25
revert (3) 38:10,24,25
revision (1) 19:5
risk (1) 24:21
road (1) 20:21
robbing (1) 30:20
rock (1) 28:2
roughly (1) 24:18

S

Salem (1) 47:23
Sally (1) 44:19

same ^[10]7:10 11:4 14:14 17:11
18:16,19 22:9 26:9 40:11
saying ^[5]33:11,14 37:7,16 40:
17
says ^[4]24:23 28:5 29:12 41:19
scenario ^[1]24:11
scheme ^[1]18:6
second ^[3]46:7,8,9
seconded ^[1]46:10
Secondly ^[1]6:20
see ^[15]16:20 29:23,24 30:3 31:
16,23 32:22,24 33:1,1,23 36:13,
25 41:13 44:24
seeing ^[1]17:18
seek ^[1]29:20
seeking ^[2]32:7,7
seem ^[2]39:10 44:18
seems ^[4]4:5 24:23 29:21 42:3
seen ^[1]31:10
semantics ^[1]24:24
sense ^[6]4:20 7:15 22:12,15 34:
9 35:24
sentence ^[2]18:16,19
sentiment ^[1]41:1
separate ^[11]8:19 13:2,4,19 14:
22 18:17 20:7 21:4 22:10,16 23:
8
separately ^[1]22:6
separating ^[1]22:2
serve ^[1]30:6
service ^[26]3:10 4:17,18,22 5:5,
7 9:3,7 13:19 14:4 17:11 19:3,
13 20:15,16,25 22:13,13,24 29:
24 30:25 33:7,22,23 34:17 37:15
services ^[9]6:11 18:8 19:14 26:
8 27:2,7 29:19 34:6 45:21
set ^[2]14:4 15:17
share ^[1]32:7
short ^[1]22:4
shorthand ^[1]47:9
show ^[2]7:7 46:15
shown ^[2]13:2 24:19
shows ^[1]16:11
side ^[1]15:1
similar ^[1]23:22
SIMMONS ^[15]3:2 20:12,21 22:
8,21 24:16 27:8,20 38:7 39:10
44:10,13,17,21 45:19
simply ^[4]22:2 24:24 38:2 39:
13
since ^[5]9:3,16 10:20 17:25 22:
13
sir ^[2]15:10,25
so-called ^[1]37:25
somehow ^[3]21:16,17 22:2
somewhat ^[1]22:1
somewhere ^[2]17:12 36:18
sorry ^[1]17:1
specific ^[1]17:14
specifically ^[1]6:23
split ^[1]23:18
splitting ^[1]28:10
Staff ^[16]3:16 4:2,9,25 5:21 19:
25 20:1 22:6,15 24:19 27:1 31:
25 36:16 38:18 44:7,23
Staff's ^[9]4:16,20 11:11 17:2,23
19:7 36:11 37:1 44:25
start ^[1]30:8

state ^[2]36:14 47:4
statute ^[15]4:17,17 6:17,19 17:8
19:11 22:13 23:17 27:1 36:4,5,8,
11,23 37:3
statutes ^[18]7:25 9:8 11:7 12:
10,16 13:3 14:15,22 15:3,5 19:2
21:5 25:2,2,24 26:19,19,21
statutory ^[3]5:7 15:18 34:10
stay ^[1]43:2
stenographic ^[1]47:12
step ^[1]29:13
stick ^[1]28:1
still ^[3]22:8 24:22 27:14
strictly ^[1]36:3
structure ^[6]39:19 43:24,25 44:
1,3 45:13
structured ^[1]6:15
studies ^[3]6:25 7:2 14:6
study ^[4]7:7 8:2,5 16:6
subject ^[7]9:4,6 20:9,15,19,25
22:23
submit ^[1]8:25
submitted ^[1]8:13
subscribers ^[6]6:10,13 10:14
12:6 19:6 41:15
substantial ^[2]31:24,25
suddenly ^[2]25:4 41:16
sufficient ^[4]36:14 45:13,15,17
suggest ^[1]9:2
suggestion ^[3]21:15 22:1 38:8
summarize ^[1]5:23
supervision ^[1]47:10
support ^[1]17:23
supporting ^[2]7:3 14:16
suppose ^[1]26:4
surely ^[1]29:18
surrogate ^[2]32:12,22
synonymous ^[1]25:6

T
tack ^[1]11:23
target ^[1]10:16
tariff ^[6]3:3,7 7:2,23 8:12,15 10:
20 11:25 12:1,1 13:7,9,23 14:2,3
16:7,8 18:12,16,20 19:3 21:21
22:20,22 23:11,18,24 24:5 29:2,
3,5 37:16,18,18,21,22,23 38:9,10,
13,15,20 39:1 40:2,18,20 41:2,7,
8,16,17 42:4,9,11,14,17,20 43:4,
7,8 45:4,6,8,14,21
tariffs ^[9]9:17 13:10 18:17 23:
13 28:18,20 45:22,24
taxed ^[1]32:2
telecommunications ^[1]23:
12
telephone ^[4]26:8 28:15 30:23,
24
terms ^[7]9:24 16:24 17:16 25:7,
10 31:17 36:17
themselves ^[1]21:7
theoretically ^[1]44:18
there's ^[10]4:2 16:17 28:4,25
30:13,16 34:2 37:4 41:1,1
thereafter ^[1]47:10
therefore ^[4]8:17,24 9:4 11:10
therein ^[1]47:9
thinking ^[1]30:9
thinks ^[1]4:11
Thirty ^[1]45:17

thorough ^[1]21:25
though ^[2]31:22 44:18
throwing ^[2]34:12 35:12
till ^[1]41:20
today ^[4]23:12 28:24 42:13 45:
7
together ^[1]21:23
token ^[1]14:14
total ^[1]25:14
totally ^[1]35:17
toward ^[1]45:12
transcribed ^[1]47:10
transcription ^[1]47:12
transition ^[1]32:13
transitioning ^[2]32:11,23
treated ^[3]9:6 11:4 32:15
trend ^[1]16:21
tried ^[6]8:9 16:5 21:20 25:4 34:
3 35:8
triggered ^[4]12:19,22,25 26:2
triggering ^[1]23:5
triggers ^[1]23:4
trouble ^[4]25:25 26:3 32:4,10
troubles ^[1]30:8
troubling ^[1]30:3
true ^[1]47:12
try ^[2]36:24 40:16
trying ^[10]3:14 8:2 9:23 13:22
22:10 26:18 28:2,11 32:13 35:9
turn ^[1]22:3
two ^[10]11:3,13 18:17 19:21 20:
2 21:18 22:16 23:7,8 43:25
type ^[4]3:22,24 4:3 26:12
types ^[2]25:18 26:10
typically ^[1]15:1

U
ultimate ^[2]31:1,6
ultimately ^[1]39:15
unanimously ^[1]46:16
unclear ^[1]17:17
Under ^[16]4:17 7:21,22,24 8:3
14:14 19:10 20:8,12 23:11,16
25:8 36:3,22 40:20 47:10
understand ^[7]3:14 11:22 24:
25 32:10 37:9,13 40:17
understanding ^[4]21:12 25:25
26:3 42:16
Unfortunately ^[1]31:16
unintended ^[1]35:14
unlawful ^[1]41:8
unpaid ^[3]11:16,21 33:5
unquote ^[1]43:12
until ^[2]18:10 42:15
up ^[6]19:14,17 24:8 25:14 32:21
38:4
up-front ^[1]21:25
urge ^[1]19:8
usury ^[3]25:2,8,24

V
valid ^[3]23:13 29:7 43:9
value ^[4]3:25 30:17,23 32:9
vehicle ^[1]30:7
version ^[1]38:10
versus ^[2]5:12 43:24
view ^[2]20:13 22:25
viewpoint ^[1]36:19
violate ^[1]19:22

violating ^[1]29:3
violation ^[5]28:25 29:6 41:3 42
20,25
violative ^[1]37:3
virtually ^[1]10:21
vote ^[2]40:25 42:12

W

wade ^[1]29:10
walk ^[1]16:5
wanted ^[2]20:22,23
way ^[7]10:17 20:24 23:8 30:5
35:6 36:22 41:22
whatever ^[1]39:18
whereas ^[1]3:23
whether ^[18]3:3 4:6 9:5 14:9,18
17:10 21:7 25:7 27:22 28:24 31:
21 35:2,21,22,23 36:3,5 37:11
whole ^[1]25:6
will ^[5]10:3 30:23 31:23 39:17
40:14
willing ^[2]39:6,14
within ^[2]40:5 42:10
without ^[1]45:1
words ^[1]29:2
working ^[1]7:13
works ^[1]9:25
worried ^[1]28:9
worth ^[2]9:9 10:19

Y

year ^[3]10:20 15:12 21:11
years ^[2]18:1,23