

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
BellSouth Telecommunications,
Inc.'s tariff filing (T-01786)
to establish the Keys Exchange.

DOCKET NO. 011381-TL
ORDER NO. PSC-01-2308-PAA-TL
ISSUED: November 21, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER CANCELING TARIFF

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

On September 29, 2000, a Special Agenda was convened to address, among other items, area code relief for the 305/786 area codes. At agenda, there was discussion regarding the possibility of implementing rate center consolidation in the Florida Keys. After consideration, we concluded that rate center consolidation in the Florida Keys is a number conservation measure which could extend seven-digit dialing in that area and should be pursued.

By Order No. PSC-00-1937-PAA-TL, issued October 20, 2000, in Docket No. 990455-TL, we ordered rate center consolidation to be implemented in the Florida Keys portion of the 305/786 area codes. Our Order stated that a revenue neutral cost recovery mechanism would be appropriate for the rate center consolidation of seven rate centers into one.

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ORDER NO. PSC-01-2308-PAA-TL
DOCKET NO. 011381-TL
PAGE 2

On November 13, 2000, BellSouth Telecommunications Inc. (BellSouth) filed a "Petition for Withdrawal or Modification of Proposed Agency Action, or, in the Alternative, Formal Hearing." In its petition, BellSouth asserted that we lack statutory authority to order rate center consolidation because it would result in a change of BellSouth's rates. However, in its petition, BellSouth stated that it would voluntarily implement rate center consolidation provided that it would recover the costs, through changes to its rates.

Also, on November 13, 2000, the Office of Public Counsel (OPC) filed a "Limited Protest of Proposed Agency Action Order." The petition stated that on November 9, 2000, BellSouth and OPC entered into a stipulation and agreement in Docket No. 920260-TL. As part of that agreement, BellSouth agreed to absorb the non-recurring cost for the operational support system upgrades necessary to implement rate center consolidation and agreed to absorb the recurring cost of eliminating extended calling service as a result of consolidating the seven Florida Keys rate centers into one.

By Order No. PSC-01-0091-PAA-TL, issued January 10, 2001, we approved the settlement agreement between BellSouth and OPC. Therein, we noted that there was a possibility that customers in the Florida Keys may incur a cost should BellSouth seek to establish a new exchange due to rate center consolidation.

By Order No. PSC-01-0754-FOF-TL, issued March 23, 2001, we vacated that portion of Order No. PSC-00-1937-PAA-TL which required rate center consolidation in the Florida Keys portion of the 305/786 area codes. This action allowed BellSouth to proceed with voluntary consolidation of the present seven rate centers, in accordance with its settlement agreement with OPC.

On July 16, 2001, BellSouth filed a tariff (T-010786) to establish a new exchange (Keys) which became effective July 31, 2001. This new exchange is being created as a result of the planned consolidation of the present seven rate centers in the Florida Keys. When rate center consolidation is implemented, BellSouth will presumably make another tariff filing to eliminate the present seven exchanges.

In its filing, BellSouth assigned the new Keys exchange to Rate Group 5, on the basis that the number of access lines in the flat rate local calling area corresponds to Rate Group 5. The monthly rates for Individual Flat Rate Service for Residential and Business customers in Rate Group 5 are \$8.93 and \$24.22; respectively. The local calling scope for the new exchange will encompass the Homestead, Miami, and Perrine exchanges.

For Residential Message Rate Service, the monthly rate in the new Keys exchange is \$8.03, which includes a monthly allowance of 30 outgoing messages, plus a charge of \$.15 for each additional message beyond the allowance. For Business Message Rate Service, the monthly rate is \$20.59, which includes a monthly allowance of 75 outgoing messages, plus a charge of \$.12 for each additional message. Message rate service is considered "nonbasic" service under Section 364.051, Florida Statutes, and is subject to different, more flexible pricing provisions than apply to "basic" (i.e., flat rate local) service. It should be noted that BellSouth considers Message Rate Service obsolete and will eliminate the service effective February 1, 2002.

The current basic rates that apply to the present seven exchanges (Rate Groups 3, 4, and 4 plus EAS additive) and for the new exchange (Rate Group 5) are shown below.

Monthly Flat Rate Service for Individual Access Line			
Exchange		Residential	Business
Rate Group 3	Marathon and North Key Largo	\$8.22	\$22.24
Rate Group 4	Islamorada, Key Largo, Key West, and Sugarloaf Key	\$8.53	\$23.25
Rate Group 4 Plus EAS Additive	Big Pine Key	\$10.66	\$29.07
Rate Group 5	Keys	\$8.93	\$24.22

In this Order, we address the tariffed basic service rates for the new Keys exchange. BellSouth has indicated to our staff that it will not proceed with the rate center consolidation until this issue is resolved.

II. ANALYSIS

In accordance with the stipulation between the Office of Public Counsel and BellSouth, which we approved by PSC-01-0091-PAA-TL, issued January 10, 2001, BellSouth agreed to consolidate the seven Florida Keys rate centers into one. The stipulation included the provisions that BellSouth would absorb the "nonrecurring cost for the operational support system upgrades necessary to implement rate center consolidation" and the "recurring cost of eliminating Extended Calling Service." See Stipulation at p. 3. The issue of the appropriate basic service rates for the consolidated Keys rate center was not directly addressed in the stipulation. In PSC-01-0091-PAA-TL, we did note that "it is our understanding that the parties to the stipulation have agreed that any rate increase associated with establishing a new exchange in the Florida Keys will be addressed pursuant to Section 364.05[1](3), Florida Statutes." Order at p. 4.

Before reaching the question of the appropriate basic service rates, we must first address some underlying issues. One fundamental issue is whether rate center consolidation should be treated as a change in service or a change in rate. In addition, we find it necessary to address the need for a uniform set of basic service rates in the Keys exchange, in order to avoid discrimination among similarly situated customers.

One effect of BellSouth agreeing to implement rate center consolidation in the Florida Keys is that existing Extended Calling Service (ECS) is converted to Extended Area Service (EAS). Under ECS, residential calls are rated at \$.25 per call, regardless of duration, and business calls are rated at \$.10 for the first minute and \$.06 for each additional minute. Under EAS, customers have unlimited calling included in the monthly flat rate. In order to effectuate rate center consolidation, the existing flat rate local calling areas for the seven present exchanges must be combined into one, such that all customers in the consolidated Keys exchange have the same flat rate local calling area. Under the present seven

exchange configuration, a customer in one exchange typically has flat rate calling to its two neighboring exchanges, and ECS calling beyond. When these seven flat rate local calling areas are combined into one, the effect is flat rate local calling from the Key West exchange to the North Key Largo exchange.

Since ECS routes are being converted to EAS, we find that this rate center consolidation constitutes a change in basic service. Therefore, the basic service rates for the new Keys exchange are not governed by Section 364.051(3), Florida Statutes, as we previously understood would be the case. See Order No. PSC-01-0091-PAA-TL at p. 4. Section 364.051(3), Florida Statutes, places limitations on basic service price increases, which we interpret as rate increases for the same basic service. In this instance, however, the nature of the basic service is clearly changing.

Further supporting this interpretation is the definition of "basic local telecommunications service" in Section 364.02(2), Florida Statutes, which states:

"Basic local telecommunications service" means voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, such term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

Here, we reference in particular the last sentence of the statutory definition and note that Section 364.385(2), Florida Statutes, does not allow us to initiate further EAS proceedings with a price-regulated LEC. In this instance, however, BellSouth has volunteered to implement rate center consolidation in the Florida Keys, which will have the effect of converting ECS routes to EAS. This action constitutes a BellSouth-initiated expansion in "basic local telecommunications service," which appears to be permissible

under the Florida Statutes, although there is no explicit statutory guidance on the appropriate rate levels in such an instance. Nevertheless, it does appear that Section 364.051(3), Florida Statutes, which addresses allowable price increases for basic service, only applies to basic service as defined in Section 364.02(2), Florida Statutes, and does not apply in this instance.

Three different sets of rates apply across the present seven exchanges -- Rate Group 4 for Islamorada, Key Largo, Key West, and Sugarloaf Key; Rate Group 4, plus an EAS additive, for Big Pine Key; and Rate Group 3 for Marathon and North Key Largo. Since all customers in the new Keys exchange will have the same flat rate local calling area, we find that the rates cannot vary by location. To do otherwise would be contrary to Sections 364.08, 364.09, and 364.10, Florida Statutes, which prohibit any reduced rate, differing charges for like services provided under substantially similar circumstances, or undue advantage or disadvantage among similarly situated customers. Charging multiple sets of rates within the same exchange would mean that similarly situated customers would pay different rates. In Order No. PSC-97-0488-FOF-TL, issued April 28, 1997, in Docket No. 951354-TL at p.8, we noted that as we move towards a more competitive environment, customers in different exchanges, with similarly-sized flat rate local calling areas, may pay different rates. We further explained, however, that it would not be appropriate for customers within the same exchange (and same class of service) to pay different rates for the same calling privileges. Order at p. 8. Our decision was upheld by the Florida Supreme Court on appeal. See BellSouth Telecommunications, Inc. v. Johnson, 708 So. 2d 594 (Fla. 1998).

Finally, it is our understanding that it is not technically feasible to bill multiple sets of rates within the same exchange, based on location, since BellSouth offers number portability within an exchange. With number portability, a telephone number used in one of the seven old exchanges could be ported anywhere within the new Keys exchange.

In BellSouth's tariff filing (T-010786), the company assigned the new Keys exchange to Rate Group 5, on the basis that the number of access lines in the flat rate local calling area corresponds to Rate Group 5. In similar situations in the past, this approach would likely have been acceptable, but in this case, the

stipulation between BellSouth and the Office of Public Counsel specified that BellSouth would absorb the recurring cost (i.e., lost revenue) of eliminating ECS. This implies that the monthly basic recurring revenue is all that remains. Nevertheless, if the new Keys exchange is assigned to Rate Group 5, BellSouth will still realize an increase in monthly basic recurring revenue. In this unique situation, we find that this rate center consolidation should be revenue neutral to BellSouth, except for the forgone ECS revenue. We emphasize that this revenue neutral approach, with the noted exclusion, would not necessarily be applicable in another rate center consolidation.

Most customers in the Florida Keys are currently paying Rate Group 4 prices. The exceptions are those customers in the Marathon and North Key Largo exchanges who are paying Rate Group 3 prices, and customers in the Big Pine Key exchange who are paying Rate Group 4 prices, plus an EAS additive for calling to the Key West exchange. Based on the distribution of access lines within the Florida Keys, the weighted average monthly rates across the present seven exchanges would be slightly more than the Rate Group 4 prices. If the monthly basic rates for the Keys exchange were set at the present weighted average monthly rates, the majority of customers would experience only a slight rate increase, while concomitantly receiving a substantial expansion in flat rate local calling. Upon consideration, we find that this approach is consistent with Order No. PSC-01-0091-PAA-TL, which specified that BellSouth would absorb the recurring cost (forgone revenue) of eliminating ECS.

Based on the foregoing, we hereby cancel BellSouth's tariff filing of July 16, 2001 (T-010786) to establish the new Keys exchange. BellSouth shall make a new tariff filing which sets basic rates for the Keys exchange at the present weighted average monthly rates calculated across the existing seven exchanges, using access lines as weights. BellSouth is strongly encouraged to make this tariff filing within 15 days of the issuance of this Order. We note that our staff has informed us that BellSouth is agreeable to making such a tariff filing, given the specific circumstances of this rate center consolidation. Again, we emphasize that tariff filings associated with any future rate center consolidations will be evaluated based on the facts, circumstances, and governing law relevant to each case. In this case, our conclusions are based on

ORDER NO. PSC-01-2308-PAA-TL
DOCKET NO. 011381-TL
PAGE 8

our Order approving the stipulation between the Office of Public Counsel and BellSouth, and Sections 364.02(2), 364.051(3), 364.08, 364.09, and 364.10, Florida Statutes.

It is therefore

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s tariff filing of July 16, 2001, T-010786, is hereby canceled. It is further

ORDERED that BellSouth Telecommunications, Inc. shall file a new tariff that sets basic rates for the Keys exchange at the present weighted average monthly rates calculated across the existing seven exchanges, using access lines as weights. It is further

ORDERED that BellSouth Telecommunications, Inc. is hereby encouraged to make this new tariff filing within 15 days of the issuance of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall remain open until BellSouth Telecommunications, Inc. makes its new tariff filing in accordance with this Order. It is further

ORDERED that if the new tariff filing is consistent with this Order, this Docket may be closed administratively.

ORDER NO. PSC-01-2308-PAA-TL
DOCKET NO. 011381-TL
PAGE 9

By ORDER of the Florida Public Service Commission this 21st
Day of November, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding,

ORDER NO. PSC-01-2308-PAA-TL
DOCKET NO. 011381-TL
PAGE 10

in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 12, 2001.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.