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JAMES E. "JIM" KING, JR.

PRESIDENT



JOHNNIE BYRD

SPEAKER



STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o THE FLORIDA LEGISLATURE
111 WEST MADISON ST.
ROOM 812
TALLAHASSEE, FLORIDA 32399-1400
850-488-9330

Charles J. Beck
Interim
Public Counsel

September 3, 2003

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

Re: Docket No. 030869-TL

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Motion to Dismiss BellSouth Telecommunications, Inc.'s Petition. A diskette in Word format is also submitted.

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

Sincerely,

H F. Mann
Associate Public Counsel

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by BellSouth)
Telecommunications, Inc.)
To Reduce Its Network Access Charges)
Applicable To Intrastate Long Distance)
In A Revenue-Neutral Manner)

Docket No. 030869-TL
Filed: September 3, 2003

**CITIZENS' MOTION TO DISMISS
BELLSOUTH TELECOMMUNICATIONS, INC.'S PETITION**

The Citizens of Florida ("Citizens"), through the Office of Public Counsel and pursuant to Section 120.54(5), Florida Statutes (2003), and Rule 28-106.204, Florida Administrative Code, hereby file their motion with the Florida Public Service Commission ("Commission") to dismiss the petition of BellSouth Telecommunications, Inc., without prejudice. In support of this request, Citizens state that:

1) On August 27, 2003, ("BellSouth" or "Company") filed its petition with the Commission, pursuant to section 364.164, Florida Statutes (2003), to reduce its switched network access rates applicable to intrastate long distance in a revenue-neutral manner by offsetting the access charge reductions with increases to basic local telecommunications services.

2) The Legislature, in section 364.164(1), explicitly delineates several specific criteria, all of which the Commission must consider in determining whether to grant or deny the Company's petition.

3) One of these criteria, section 364.164(1)(c), commands the Commission to consider whether granting the Company's petition will "[r]equire

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intrastate switched network access rate reductions to parity over a period of not less than 2 years or more than 4 years.”

4) BellSouth, in its petition and in the testimony of its witnesses, John A. Ruscilli and Jerry Hendrix, proposes far less than two years in which it will reduce access rates and increase the rates of residential basic local service line customers.

5) BellSouth, in paragraph 5 of its petition, states that its proposal is more specifically detailed in the direct testimony of its witnesses, which is “made a part hereof as if set forth in whole.”

6) Mr. Ruscilli, in his testimony on pages 5, 7, 8 and 9, identifies the effective dates of BellSouth’s reductions in intrastate switched network access rate, and increases in average single-line residential basic local service line rates, based on two alternative methodologies from which the Commission may choose. These dates are January 1, 2004, and January 1, 2005. On page 7, he identifies the specific amounts of the rate increases to residential customers to be effected on both those dates, depending on which methodology the Commission chooses: \$1.93, if the Commission chooses the Company’s “mirroring methodology;” \$1.75, with the Company’s “typical network composite methodology.”

7) Mr. Hendrix’s testimony further describes the two methodologies and, on pages 5 and 6, also identifies the same effective dates of January 1, 2004, and January 1, 2005, for the reduction in the Company’s intrastate switched network access rates.

8) Irrespective of which methodology the Commission chooses, Bellsouth fails to comply with section 364.164(1)(c). Notwithstanding the Company's assertion that these rate increases for the residential customers will take place over a two-year period, the plain fact is that the rate increases, as proposed by BellSouth, would take place over a period of twelve months.

9) The language of section 364.164(1)(c) is plain and simple. BellSouth, among other specific requirements, must require intrastate switched network access rate reductions to parity over a period of not less than two years. The statute's wording does not allow for a loose interpretation of effecting those rate reductions and corresponding rate increases over a period of twelve months, as BellSouth sets forth in its petition before this Commission. Rate increases on the first of January in successive years does not comply with the statutory mandate that the rate changes take place over a period of *not less than two* years. The Merriam Webster dictionary¹ describes a "year" variously as "the period of about 365 1/4 solar days required for one revolution of the earth around the sun" or "12 months that constitute a measure of age or duration." The statutory definition of "over a period of not less than two years" must therefore encompass a period of not less than 24 months. Rate increases on January first of the next two successive years obviously fails to meet this criteria.

10) Neither does the statute appear to anticipate a "spot" revision by a company to correct such fatal deficiencies. The petition should either be accepted as having facially met the basic requirements of the statute under whose authority it has been filed, or rejected if it has failed in that regard.

¹ <http://www.m-w.com/dictionary.htm>

11) BellSouth, in filing its petition pursuant to the authority of section 364.164, has not met the requirements imposed by that same statute. While Citizens do not advocate that the Company's petition be dismissed with prejudice, we strongly believe that the petition should be dismissed without prejudice, with leave to file anew, with a new established filing date, when it does comply with the basic requirements of the statute

Wherefore, the Citizens move this Commission to dismiss, without prejudice, the petition of BellSouth Telecommunications, Inc., and require the Company to file anew its petition in conformance with section 364.164.

Respectfully submitted,

Charles J. Beck
Interim Public Counsel
Florida Bar #217281

H F. Rick Mann
Associate Public Counsel
Florida Bar #0763225

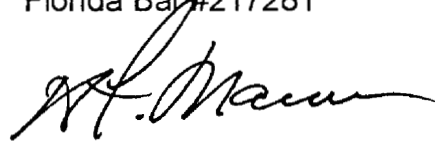
Office of Public Counsel
C/o The Florida Legislature
111 W. Madison Street
Room 812
Tallahassee, FL 32399-140
(850) 488-9330
Attorneys for Florida's Citizens

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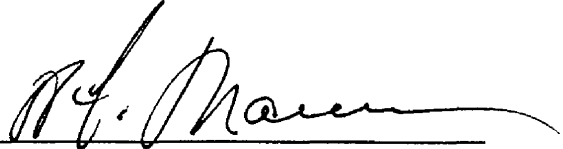
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DOCKET NO. 030869-TL

CERTIFICATE OF SERVICE

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

Mail or hand-delivery to the following parties on this 3rd day of September, 2003.

A handwritten signature in black ink, appearing to read "H. F. Mann", written over a horizontal line.

H F. Mann

Beth Keating, Esquire
Division of Legal Services
Fla. Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Nancy B. White
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301