

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

RECEIVED-PPSC

JAN 20 AM 11:44

COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: January 20, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Simmons) *CAS*
Office of the General Counsel (Banks, Rojas) *POB 9/11 BLC*

RE: Docket No. 041213-TL – Petition for waiver of Order PSC-96-0012-FOF-TL and request to establish modified price regulation categories by BellSouth Telecommunications, Inc.

AGENDA: 02/01/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Attachment is not available in Word version of document

FILE NAME AND LOCATION: S:\PSC\CMP\WP\041213.RCM.DOC

Case Background

On October 19, 2004, BellSouth Telecommunications, Inc. (BellSouth or Company) filed a Petition seeking a waiver of Order No. PSC-96-0012-FOF-TL to reduce the number of non-basic service categories used under the statutorily sanctioned system of price regulation, from ten (10) to four (4). Pursuant to Section 364.051, Florida Statutes, incumbent local exchange companies (ILECs) have been able to elect price regulation since January 1, 1996. Section 364.051(5)(a), Florida Statutes, limits price increases for any non-basic service category to 6% or 20% within a 12-month period, depending on whether or not there is another carrier providing local telecommunications service in a given exchange. The Commission established non-basic service categories in order to implement this statutory provision. The existing non-basic service categories were established in Docket No. 951159-TP, by the above referenced order, wherein the Commission approved a proposed stipulation among the parties to that docket, which included the Office of Public Counsel (see Attachment). Since BellSouth's Petition was filed on October 19, 2004, no other filings have been made in the current docket.

DOCUMENT NUMBER-DATE

00694 JAN 20 03

FPSC-COMMISSION CLERK

Discussion of Issues

Issue 1: Should the Commission grant BellSouth's Petition for Waiver of Order No. PSC-96-0012-FOF-TL and reduce the number of non-basic service categories from ten (10) to four (4)?

Recommendation: The Commission should grant, in part, BellSouth's Petition for Waiver of Order No. PSC-96-0012-FOF-TL and reduce the number of non-basic service categories from ten (10) to five (5) for BellSouth. The existing Local Directory Assistance and Directory Services category should be maintained as a separate category. (SIMMONS, BANKS)

Staff Analysis: In its Petition, BellSouth explains that since the non-basic service categories first were established, the Company has made numerous tariff filings consistent with the above referenced order. The statutory limitation on rate increases does not apply to individual services, but rather to the average rate change (considering both increases and decreases) across all the services in a non-basic category, over a 12-month period. With each tariff filing, BellSouth submits a price-out for the affected non-basic service category, showing beginning of period and proposed revenue, to demonstrate that the overall rate increase is within the statutory limit. BellSouth takes the position that competition is increasingly limiting its ability to increase prices, which indicates that fewer non-basic service categories are needed. According to BellSouth, fewer categories also would be administratively simpler for the Company and the Commission.

The following chart depicts the present and BellSouth's proposed non-basic service categories:

<u>Present</u>	<u>BellSouth Proposed</u>
Residence Non-Basic Exchange Access	Residential Non-Basic Service
Residential Optional Services	
Business Non-Basic Exchange Access	Business Non-Basic Service
Business Optional Services	
Local Directory Assistance and Directory Services	Optional
Toll Services	
Operator Services	
Transport Services	
Public and Semi-Public Telephone	
Miscellaneous Services	
Miscellaneous Services	Miscellaneous Services

BellSouth states that this proposed category structure "better reflects the migration to a competitive environment in Florida and would better represent the various categories based on

their respective level of competitiveness.” (Petition, p. 4) In addition, BellSouth believes that this structure will have minimal customer impact, while providing the Company the flexibility to compete. Finally, BellSouth explains that since the current 12-month period for monitoring rate increases varies by existing category, BellSouth proposes to migrate the revenue for each existing category to the appropriate new category, at the end of the applicable 12-month period.

The size and structure of the non-basic service categories can directly influence BellSouth’s flexibility to adjust prices and be compliant with the statute. With a larger number of services included in a non-basic service category, BellSouth can increase some rates significantly if market conditions favor the Company, while lowering other rates to address competitive pressures. For this reason, staff believes that the services in a non-basic category should be subject to similar competitive and market conditions. Finally, a system of fewer, but larger, non-basic service categories inherently provides more pricing flexibility, although competitive and market conditions will dictate to what extent this flexibility is actually used.

From staff’s perspective, the proposed category structure does seem to reflect, for the most part, differences in the competitive pressures facing BellSouth. Combining the existing Non-Basic Exchange Access and Optional Services categories for residential and business, respectively, makes sense since both types of services are provided by the end user’s local telephone company. The state of competition in the local market should affect pricing of exchange access and optional local services in a similar manner.

Staff has some concern with BellSouth’s request to combine Local Directory Assistance and Directory Services, Toll Services, Operator Services, and Transport Services.¹ Within the Local Directory Assistance and Directory Services category, there are various listing services (non-published, non-listed, additional listings) that are inherently the purview of the end user’s local telephone company. These listing services do not face competitive pressures like those found with toll, operator, and transport services, where there are a plethora of alternatives. An argument could be made to include these listing services with the existing Non-Basic Exchange Access and Optional Services categories, or to keep Local Directory Assistance and Directory Services a separate category. Staff is hesitant to recommend the first option, since this would require that an existing category, which was established by stipulation, be divided into two parts, with each part being combined with different existing categories. The second option seems more straightforward, yet staff believes this approach might be more restrictive than is necessary. While BellSouth’s listing services may not be subject to competitive pressures like those found in other areas, customer willingness to pay is a limiting factor whenever services are discretionary in nature.

Staff next considers whether BellSouth’s rate increase history provides any indication of how BellSouth might utilize additional pricing flexibility, and how customers might be affected. In reviewing BellSouth’s rate increase history for the various categories, staff noticed that the only area in which BellSouth increased rates to nearly the full extent permitted by statute was the Local Directory Assistance and Directory Services category. This historical pattern suggests that any further pricing flexibility could lead to even higher rate increases, leading staff to conclude

¹ Staff concurs with BellSouth that the Public and Semi-Public Telephone category is no longer applicable since these retail services have been deregulated.

that the Local Directory Assistance and Directory Services category should remain separate. In contrast, for the other non-basic service categories, BellSouth has used only a portion of the current pricing flexibility, which indicates that the additional pricing flexibility gained through consolidating categories is unlikely to lead to higher increases in the future.

Based on the above reasoning, staff recommends that the Commission grant, in part, BellSouth's Petition for Waiver of Order No. PSC-96-0012-FOF-TL and reduce the number of non-basic service categories from ten (10) to five (5) for BellSouth. The existing Local Directory Assistance and Directory Services category should be maintained as a separate category. The chart shown below provides a summary of the present, BellSouth proposed, and staff recommended non-basic service categories.

<u>Present</u>	<u>BellSouth Proposed</u>	<u>Staff Recommended</u>
Residence Non-Basic Exchange Access	Residential Non-Basic Service	Residential Non-Basic Service
Residential Optional Services		
Business Non-Basic Exchange Access	Business Non-Basic Service	Business Non-Basic Service
Business Optional Services		
Local Directory Assistance and Directory Services	Optional	Local Directory Assistance and Directory Services
Toll Services		
Operator Services		
Transport Services		
Public and Semi-Public Telephone		
Miscellaneous Services	Miscellaneous Services	Miscellaneous Services

Finally, as an option to staff's recommendation to allow BellSouth to operate under a five-category system, the Commission could decline to rule on BellSouth's Petition at this time. Since the existing non-basic service categories apply to all ILECs, the Commission may want to consider this issue on a generic basis, rather than rule on individual ILEC requests.

Docket No. 041213-TL

Date: January 20, 2005

Issue 2: Should this docket be closed?

Recommendation: Yes, if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. **(BANKS)**

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation to) DOCKET NO. 951159-TL
determine categories of non-) ORDER NO. PSC-96-0012-FOF-TL
basic services provided by local) ISSUED: January 4, 1996
exchange telephone companies)
pursuant to Chapter 364.051(6),)
Florida Statutes.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER ADOPTING PROPOSAL

BY THE COMMISSION:

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.

On September 27, 1995, we opened this docket to establish categories of non-basic services as described in Section 364.051(6)(a), Florida Statutes. Section 364.051(6)(a), Florida Statutes, provides in pertinent part:

Each company subject to this subsection shall maintain tariffs with the commission containing the terms, conditions and rates for each of its non-basic services, and may set or change, on 15 days' notice, the rate for each of its non-basic services, except that a price increase for any non-basic service category shall not exceed six percent within a twelve-month period until there is another provider providing local telecommunications service in an exchange area at which time the price for any non-basic service category may be increased in an amount not to exceed twenty percent

ORDER NO. PSC-96-0012-FOF-TL
DOCKET NO. 951159-TL
PAGE 2

within a twelve-month period, and the rate shall be presumptively valid.

A workshop was held on October 13, 1995, to address the following topics:

1. Identification of the categories of non-basic services and development of criteria by which non-basic services can be categorized.
2. Identification of issues to be addressed should a hearing be necessary.
3. The possibility of stipulating the issues in this proceeding.

Additional workshops were held on October 31, 1995 and November 27, 1995. On December 20, 1995, the attached proposal was filed with the Commission. The terms of the proposal are summarized below.

The parties have set forth service categories by function and have grouped similar services into these categories. They agree that the price increases for non-basic service categories should not be applicable on a company-wide basis. Further, in those exchanges where a Local Exchange Company (LEC) does not have another company providing local telecommunications services, the aggregate prices for all non-basic services in a category should not be increased more than 6% in a 12 month period. Likewise, in those exchanges where a LEC does have another provider of telecommunications services, the aggregate prices for all non-basic services in a category should not be increased more than 20% in a 12 month period.

Section 364.051 (6)(a), Florida Statutes, provides that once there is another provider providing local telecommunications service in an exchange area, the price for any non-basic service category may be increased in an amount not to exceed 20% within a 12 month period. The parties agree that this issue should be dealt with at a later time.

When filing non-basic service tariffs, the parties agree that certain information, similar to what is currently required by the LECs, should continue to be provided. This information includes a transmittal letter to the Director of Communications, an executive summary, and copies of the tariff. The filings should also include an explanation of the proposed rate increase's effect on the Company's 6/20% cap.

ORDER NO. PSC-96-0012-FOF-TL
DOCKET NO. 951159-TL
PAGE 3

The parties also agree that the non-recurring charges associated with the initiation of basic local telecommunications services should not be included in a non-basic service category. They state that these charges should be associated with their corresponding basic local telecommunications service and be capped pursuant to Section 364.051(2)(a), Florida Statutes.

Finally, the parties agree that the capped non-basic services, described in Section 364.051(6)(a) 1. and 2., Florida Statutes, should not be included in the respective non-basic service categories when computing the allowable increases to non-basic service categories.

Upon consideration, we find that the attached proposal is appropriate. It establishes the categories and descriptions of non-basic services. Moreover, the descriptions will act as a guideline to ensure that future services are placed in the appropriate categories.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the attached proposal is adopted and incorporated by reference into this Order. It is further

ORDERED that the time available for filing a protest shall be 14 days from the issuance date of this Order. It is further

ORDERED that this Order shall become final and effective and this docket shall be closed unless a person whose substantial interests are affected files a protest pursuant to the requirements set forth below.

By ORDER of the Florida Public Service Commission, this 4th day of January, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: /s/ Kay Flynn
Chief, Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-413-6770.

(S E A L)
ATTACHMENT PAGES 5-12 ARE NOT AVAILABLE IN ELECTRONIC MEDIUM.
MME

ORDER NO. PSC-96-0012-FOF-TL
DOCKET NO. 951159-TL
PAGE 4

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f); Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 18, 1996.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation to Determine)
Categories of Non-Basic Services)
Provided by Local Exchange Telephone)
Companies Pursuant to Chapter)
364.051(6), F.S.)

DOCKET NO. 951159-TL
Filed: 12/20/95

STIPULATION

THIS STIPULATION is entered into between the undersigned parties to this docket.

Recitals

1. During 1995, the Florida Legislature passed Chapter 95-403, Laws of Florida, which revised Chapter 364, Florida Statutes.
2. Chapter 95-403, Laws of Florida, created Section 364.051, Florida Statutes. That section addresses price regulation for local exchange telecommunications companies.
3. Section 364.051(6), Florida Statutes, addresses price regulation of non-basic services.
4. During the last half of 1995, the parties to this docket, the Staff of the Florida Public Service Commission, and others met informally to identify issues relating to the non-basic service categories referred to in Section 364.051(6), Florida Statutes. As a result of these meetings, the parties identified seven issues.
5. In addition, the parties have stipulated to language that resolves the issues identified by the parties. The purpose of this stipulation is to memorialize the stipulation of the parties.

ORDER NO. PSC-96-0017-OF-TL
DOCKET NO. 951159-TL
PAGE 6

ATTACHMENT
PAGE 2 of 8

6. It is the intent of the parties that the Florida Public Service Commission approve the stipulation set forth below, thereby eliminating the need for an administrative hearing on these issues.

Stipulation

The undersigned parties to this docket agree as follows:

1. The recitals set forth above are not a part of the agreement between the parties, but serve to explain the circumstances under which this Stipulation was reached.

2. This Stipulation shall become effective upon approval by the Florida Public Service Commission. If this Stipulation is not approved by the FPSC without modification, the whole Stipulation shall be void and shall have no force or effect.

3. The parties agree to the following issues and positions as set forth below:

ISSUE 1. For purposes of Section 364.051(6) (a), Florida Statutes, what are the non-basic service categories within which non-basic services should be placed?

Stipulation: See non-basic service categories list attached as Exhibit "A".

ISSUE 2. What criteria should determine in which non-basic service category a given LEC non-basic service should be included?

Stipulation: The functional service descriptions set forth in the non-basic service categories list (Exhibit "A") should determine service placement.

ISSUE 3. For purposes of Section 364.051(6) (a), Florida Statutes, what constitutes having "another provider providing local telecommunications services?"

Stipulation: The parties agree that this issue need not be decided at this time.

ORDER NO. PSC-96-00126 F-TL
DOCKET NO. 951189-TL
PAGE NO. 7

ATTACHMENT
PAGE 3 of 8

ISSUE 4. If a LEC does not have ALECs operating in all of its exchange areas, should the price increases that result from Section 364.051(6)(a), Florida Statutes, be applicable on a company-wide basis?

Stipulation: The price increases should not be applicable on a company-wide basis. The price increases should be distinguished in the following manner:

Exchanges without another provider

In the aggregate, across all services in a category and all exchanges where there is not another company providing local telecommunications services, prices may not be increased more than 6% within a 12-month period.

Exchanges with another provider

In the aggregate, across all services in a category in the aggregate and all exchanges where there is another company providing local telecommunications services, prices may not be increased more than 20% within a 12-month period.

ISSUE 5. What type of information should the LEC submit to the Commission with its non-basic service tariff filings?

Stipulation: Tariff filings should continue to have a transmittal letter to the Director of Communications stating the nature of the filing and what pages it involves, an executive summary of what it is they are doing and why, and copies of the tariff. Tariffs should provide an explanation and calculation of the proposed rate increase's effect on the Company's 6/20% cap (e.g., an explanation that service X has been increased by 5.5%, accompanied by a price/units calculation to back it up and that the category service X falls in has not exceeded its cap (6/20%) within the 12-month period). If the price/units calculations are used, it should be based on the most current month's data available at the time of the company's initial tariff for the category. Subsequent tariff filings made by the company, for a specific category, would use the same month's data for the next 12 months. In addition to the general requirements, an incremental cost study should not be required; however, a study should be made available upon request by the Commission staff on 5 working days notice.

ISSUE 6. Should non-recurring charges associated with the initiation of basic local telecommunications services be placed in a separate non-basic service category? If not, in which non-basic service category, if any, should they be placed?

ORDER NO. PSC-96-0012 F-TL
DOCKET NO. 951159-TL
PAGE NO. 8

ATTACHMENT
PAGE 4 of 8

Stipulation: No. The non-recurring charges associated with the initiation of basic local telecommunications services should not be included in a non-basic service category. These charges should be associated with their corresponding basic local telecommunications service and be capped pursuant to Section 364.051(2)(a), Florida Statutes.

ISSUE 7. Section 364.(6)(b)1. and 2., Florida Statutes, cap the rates for certain non-basic services. Should these capped services be included in the respective non-basic service categories when computing the allowable increases to non-basic service categories?

Stipulation: No, the capped non-basic services should not be included in the respective non-basic service categories when computing the allowable increases to non-basic service categories.

4. The non-basic service categories list referred to in issues 1 and 2, and attached to this Stipulation as Exhibit A, is a part of this Stipulation as though fully set forth under issues 1 and 2. The list of examples attached to this stipulation as Exhibit "B" is included for illustrative purposes only and is not intended to alter the definitions of the categories shown in Exhibit "A."

5. This Stipulation and Agreement shall be interpreted under the laws of the State of Florida. If this Stipulation and Agreement is not approved by the Commission in its entirety without modification, the Stipulation and Agreement shall not be binding on the parties and shall have no force and effect.

6. Each of the persons signing below represents that he or she has complete actual authority to bind the party on whose behalf her or his signature is given.

Non-Basic Service Categories Definitions

1. **Business Non-Basic Exchange Access**

A service or family of services (excluding basic single line flat-rate business service) offered to business customers that provides access to, and usage of, the switched local exchange network.

2. **Residence Non-Basic Exchange Access**

A service or family of services (excluding basic single line flat-rate residence service) offered to residence customers that provides access to, and usage of, the switched local exchange network.

3. **Business Optional Services**

A service or family of services offered to business customers that provides enhanced calling features or functions complementary to business basic or non-basic exchange access services.

4. **Residential Optional Services**

A service or family of services offered to residential customers that provides enhanced calling features or functions complementary to residential basic or non-basic local exchange access services.

5. **Local Directory Assistance and Directory Services**

Local directory assistance and local directory-based services, including, but not limited to, additional listings, miscellaneous listings, non-published and non-listed service.

6. **Toll Services**

A non-dedicated service that provides non-basic extended local or long distance calling between locations using the public switched network, and toll directory assistance.

7. **Operator Services**

Local and toll services which utilize a live operator or automated equipment to assist end user-initiated calls. Such services would include, but are not limited to, billing or completion of third-party, person-to-person, collect, or calling card or credit card calls, and conference services.

ORDER NO. PSC-96-0012-DF-TL
DOCKET NO. 951159-TL
PAGE NO. 10

ATTACHMENT
PAGE 6 of 8

8. Transport Service

A service that provides a reserved path(s) between customer designated locations.

9. Public and Semi Public Telephone

Pay Telephone services provided by the company.

10. Miscellaneous Services

Company-provided ancillary services other than those indicated in preceding categories. Examples of such services: provision of 911 and E911 equipment; equipment for the hearing impaired.

ORDER NO. PSC-96-0012 F-TL
DOCKET NO. 951159-TL
PAGE NO. 11

ATTACHMENT
PAGE 7 of 8

Non-Basic Service Categories - Examples of Services

1. Business Non-Basic Exchange
ACCESS

Measured Rate Service
Centrex Services
ESSEX Services
FBX Trunks*
NARS*
Dormitory Services*
Centrex and ESSEX Line
Charges*

* Capped Services

2. Residential Non-Basic Exchange
ACCESS

Measured Rate Service

3. Business Optional Services

Custom Calling
AIN
ISDN
ACD Service
Dual Service
DID/100
Prestige
Remote Call Forwarding
Touchstar
Call Screening
Ringmaster
Hot Line
Warm Line
Toll Restriction
Optional Billing and Collection
Services
SMDF
SMDF

4. Residential Optional Services

Custom Calling
AIN
ISDN
ACD Service
Dual Service
DID/100
Prestige
Remote Call Forwarding
Touchstar
Call Screening
Ringmaster
Hot Line
Warm Line
Toll Restriction
Optional Billing and Collection
Services

ORDER NO. PSC-96-0012 F-TL
DOCKET NO. 951159-TL
PAGE NO. 12

ATTACHMENT
PAGE 8 of 8

5. Local Directory Assistance
and Directory Services

Local Directory Assistance
Additional Listings
Non-Published
Non-List
Miscellaneous

6. Toll Services

Two-Point Service
Calling Plans-Saver Service
Wide Area Telecommunications
Service
Long Distance Directory
Assistance

7. Operator Services

Credit Card, Third Number, Collect
Conference Services
Verification Service

8. Transport Services

TAS Facilities
Extension Service and Tie Lines
Foreign Exchange Service
Foreign Co Service
Area Communication Service
Pulselink
Accupulse
Flexserv
Data Transport
Megalink
Synchronet
Lightgate
Smartprim
Smartering
Private Line

9. Public and Semi-Public
Telephone

Public Telephone Service
Semi-Public Telephone Service

10. Miscellaneous

Special Number Assignment
Apartment Door Answering
High Voltage Protection
Service Location Charge
911