FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

JULY 5, 2005

RE: Docket No. 050194-TL - Complaint by Florida BellSouth customers who paid fees to BellSouth Telecommunications, Inc. related to Miami-Dade County Ordinance Section 21-44 ("Manhole Ordinance") and request that Florida Public Service Commission order BellSouth to comply with Section A.2.4.6 of General Subscriber Service Tariff and refund all fees collected in violation thereof.

Issue 1: Should the Commission grant BellSouth's Request for Oral Argument?
Recommendation: Yes.

APPROVED

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS' SIGNATURES

MAJORITY	DISSENTING

REMARKS/DISSENTING COMMENTS:

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Docket No. 050194-TL - Complaint by Florida BellSouth customers who paid fees to BellSouth Telecommunications, Inc. related to Miami-Dade County Ordinance Section 21-44 ("Manhole Ordinance") and request that Florida Public Service Commission order BellSouth to comply with Section A.2.4.6 of General Subscriber Service Tariff and refund all fees collected in violation thereof.

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Issue 2: Should the Commission grant BellSouth's Motion to Dismiss?
Recommendation: The Commission should grant in part and deny in part BellSouth's Motion to Dismiss. Staff believes that the Petitioners have standing to bring the subject matter of the Complaint before the Commission, and to seek a refund for all affected customers of any charges collected in violation of the Tariff. However, staff believes that the other relief requested by the Petitioners, i.e. the injunctive relief and attorney's fees, is not within the Commission's jurisdiction. Furthermore, staff believes that BellSouth's alternative request to refer the Complaint to the Division of Regulatory Compliance and Consumer Assistance for consideration pursuant to Rule 25-22.032, Florida Administrative Code (F.A.C.), is inappropriate in this instance.

MODIFIED The matter will be held in abeyance while staff investigates the history of the tariff and related matters. Staff will report back on results of investigation and a determination will be made at that time on the most efficient way to proceed. The claim for attorney's fees will be stricken because the Commission does not have authority to address attorney's fees. The request for injunctive relief will not be addressed at this time.

Issue 3: Should this docket be closed?
Recommendation: No. If the Commission approves staff's recommendation in Issue 2, this docket should remain open pending further proceedings.

APPROVED