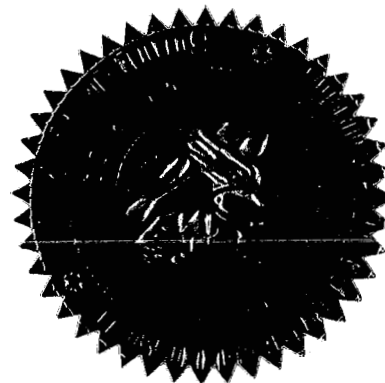


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050194-TL

In the Matter of:

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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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 6

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER J. TERRY DEASON
COMMISSIONER ISILIO ARRIAGA
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. TEW

DATE: Tuesday, May 2, 2006

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

1 PARTICIPATING:

2 MANNY GURDIAN, representing BellSouth.

3 JUSTIN WITKIN, representing the Petitioners.

4 SALLY SIMMONS and KIRA SCOTT, ESQUIRE, representing
5 the Florida Public Service Commission Staff.

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P R O C E E D I N G

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CHAIRMAN EDGAR: That will bring us to Item 6.

MS. SIMMONS: Commissioners, I'm Sally Simmons with Commission staff.

Item 6 addresses a complaint concerning a fee charged by BellSouth to recover the company's costs for complying with the Miami-Dade County Manhole Ordinance. And under this 1983 ordinance, while anyone is working below ground in a manhole, another person must be above ground providing surveillance. The Petitioners in this case are seeking a refund of all fees collected by BellSouth in violation of their applicable tariff since 1983 plus interest.

Staff is recommending that BellSouth did violate the applicable tariff for all or part of the period, 1998 through 2005. However, given the small size of any per line refund, staff is recommending instead that the Commission set the cumulative overage and collections with interest as of the end of 2005. Further, staff believes that the six-month reconciliations specified in the applicable tariff require that BellSouth apply the overage or underage in collections for the proceeding period as an accounting adjustment to determine the appropriate fee for the next six-month period.

With this recommendation, staff has provided three different options for calculating overhead expenses in conjunction with the manhole ordinance. And your determination

1 as to any cumulative overage or underage in collections as of
2 year-end 2005 will depend on the method that you select as
3 being appropriate for purposes of calculating overhead
4 expenses.

5 I know that we have some people here that would like
6 to speak, and that's my opening.

7 CHAIRMAN EDGAR: Thank you.

8 MR. GURDIAN: Good morning, Manny Gurdian on behalf
9 of BellSouth.

10 MR. WITKIN: Good morning, Justin Witkin on behalf of
11 the Petitioners.

12 CHAIRMAN EDGAR: Thank you.

13 BellSouth, would you like to address the Commission?

14 MR. GURDIAN: Yes, Madam Chairman.

15 BellSouth agrees with staff's recommendation on using
16 the overhead method that they want BellSouth to use on a
17 going-forward basis. That means from January 2006 they would
18 be agreeable to using that method on a going-forward basis.
19 BellSouth agrees that using this overhead method gets us to the
20 \$469,000 number calculated by Staff.

21 BellSouth agrees with staff's recommendation that a
22 refund is not required by the tariff. However, BellSouth
23 disagrees with staff's recommendation that BellSouth violated
24 the tariff. BellSouth did not violate the tariff because it
25 performed the reviews required by the tariff; and, two, the

1 tariff does not require that a certain overhead method be used.

2 Staff has come now after the fact, and said,
3 BellSouth, you're using the wrong overhead method, or you
4 should be using a different overhead method than the one you
5 have been using. We believe that the tariff doesn't require
6 us, BellSouth, to use a certain overhead method. The tariff
7 does not require -- excuse me. BellSouth used a reasonable
8 overhead method.

9 BellSouth did not violate a Commission order.
10 BellSouth did not violate a Commission rule. BellSouth did not
11 violate a Florida Statute, nor did it violate the tariff. And
12 I would submit to the Commission that BellSouth should not be
13 found to have violated the tariff. Thank you.

14 MR. WITKIN: Thank you, again. Justin Witkin on
15 behalf of the Petitioners. I thank the staff for its hard
16 work. It was a particularly difficult task facing the staff,
17 and it was made difficult by BellSouth in its incomplete,
18 inconsistent, and wholly inadequate production of information
19 in response to the staff's requests.

20 We had years and years of missing data. We had
21 numbers that they produced that wholly lacked any
22 substantiation at all. We had a statement of overcharges, then
23 we had a restatement of overcharges, then we had a
24 re-restatement of overcharges. Staff is left to guess at the
25 correct and accurate data in response to their inquiries, and

1 they face this difficult task because of BellSouth's
2 twenty-year history of failing to comply with its own tariff.
3 Because this went back 20 years, records are now missing.
4 Well, you can't let a wrong-doer off just because they did the
5 wrong for twenty years. That is not an excuse and it is not
6 the message that this Commission wants to send.

7 In the end, the staff has done its best to interpret
8 the incomplete and inconsistent data, and they are left to make
9 assumptions and best guesses about the amount of the
10 overcharge, the amount of the overhead, the various issues
11 addressed in its recommendation. But we don't believe that the
12 consumers who are in the contract with BellSouth, the customers
13 in Miami-Dade County are limited to best guesses and
14 assumptions. That they are entitled to a full and complete
15 investigation, one that gets to the bottom line, about the
16 amount of the overcharges.

17 We would ask in the end that the Commission find that
18 BellSouth violated its tariff and that this matter be sent back
19 to circuit court so that we can complete the investigation, not
20 on the dime of the citizens of the state of Florida, but in a
21 private proceeding where we can have full discovery and we can
22 further look into the various issues addressed.

23 I want to address specifically a few of the staff's
24 recommendations. The first thing that the staff addresses is
25 the concept of reconciliation, whether that means refund or a

1 prospective adjustment, and obviously the staff concludes that
2 it means prospective adjustment. While I don't agree with that
3 position, I think what's important is not whether it meant
4 prospective adjustment or refund, but that it had to be done
5 every six months. That was very important.

6 It was very important because the people who are
7 being overcharged back in 1983, whether they were entitled to a
8 refund as we suggest, or whether they were entitled to a
9 prospective adjustment, were entitled to it back in 1983. It
10 is highly unlikely that somebody -- or it's less likely that a
11 customer in 1983 will continue to be a customer in 2006. And,
12 therefore, it was important, and that's why the tariff was
13 written that way, that the adjustment be done every six months.

14 There is no dispute about that. Whether it meant
15 refund or prospective adjustment, it had to be done every six
16 months and it wasn't done. There wasn't any dispute about
17 that.

18 The staff concludes that whether BellSouth actually
19 performed the reconciliation is, quote, very much in doubt.
20 Now, you have heard from BellSouth's attorney today, and you
21 see in BellSouth's papers that they claim that they did perform
22 this analysis every six months. Well, we're hard pressed to
23 determine whether or not that actually happened because of this
24 missing data, because this wrongdoing took place over so many
25 years. But it is very interesting, the data that they did

1 provide, where we have actual hard data from, I believe it's
2 '98 through 2005, suggests that either they didn't do it, or if
3 they did it, then they knowingly and consciously violated their
4 tariff.

5 And specifically what I'm talking about is in June of
6 1998 when they performed the analysis of the overcharge or
7 undercharge as it relates to the manhole ordinance, they
8 concluded that there was \$178,000 in revenues collected beyond
9 expenses. The manhole charge at the time was 11 cents. That
10 was in June of '98. In December of '98, they claimed they
11 performed the analysis again, and concluded that there was a
12 \$239,000 overcharge as a result of the manhole ordinance, but
13 the manhole ordinance charge didn't change, it remained 11
14 cents. And this pattern continued.

15 In June of '99, \$308,000 overcharge. The charge
16 doesn't change, 11 cents. December of '99, \$84,000 overcharge,
17 manhole ordinance doesn't change. The manhole ordinance charge
18 doesn't change. June of 2000, \$161,000 overcharge, imposition
19 of the charge doesn't change. December of 2000, \$246,000
20 overcharge, still no change in the manhole tax. June of 2001,
21 they actually conclude that there was an undercharge of
22 \$125,000, but there's no change. And then finally in December
23 of 2001 we are back to \$191,000 overcharge, but no change in
24 the manhole ordinance.

25 So while they may have been performing some analysis

1 of whether there was an overcharge or an undercharge as it
2 related to the manhole ordinance, they weren't doing what the
3 tariff required. They weren't doing a reconciliation. Whether
4 it meant refund or prospective adjustment, nothing was
5 happening, and each year there was an overcharge or an
6 undercharge. In most cases an overcharge, and a substantial
7 overcharge.

8 So the relevant time period. The staff in the end
9 concludes that we need to look at the time period from 1998
10 through 2003 or 2005, and that we can forget about the charges
11 from 1983 through 1997. And they reach this conclusion based
12 on an analysis of the accounting methods used by BellSouth, and
13 I want to talk about that. I think where we start, though,
14 obviously in determining the relevant time period is the
15 tariff. The tariff went into effect in 1983. From 1983,
16 BellSouth customers had a contract, the tariff, that said that
17 this process, this analysis will be performed every six months,
18 and it wasn't. So we obviously start in 1983. And to allow
19 BellSouth to get off the hook just because they did this thing
20 for twenty-plus years and now they don't have the data to
21 substantiate what they did or didn't do is the wrong
22 Commission -- I mean, the wrong message for this Commission to
23 send.

24 BellSouth suggests in its papers that they didn't
25 have any retention requirement, that they didn't have any

1 obligation to keep the data. Well, they did have an obligation
2 under the tariff to perform the reconciliation and they didn't
3 do it. So having not done it, they had an obligation to
4 produce the data that supports their course of conduct.

5 Turning to the specifics of the accounting theory,
6 staff suggests that from 1983 through '93, and then from '93 to
7 '97, the enforcement of the rate of return regulation and then
8 rate of return regulation plus refund somehow makes right any
9 overcharge that took place. Two comments. As I understand
10 rate of return regulation, this Commission on an annual basis
11 or some periodic basis reviews BellSouth's financials,
12 essentially, and says, okay, did you make under or over a
13 certain amount of return on the equity that you have, and
14 that's the statutory thing under Chapter 386.

15 Whether the overcharge affected the ultimate rate
16 that was set as a result of that annual review, we don't know.
17 I don't know whether it did or didn't. It was but a small
18 component of the overall financial picture for BellSouth. So
19 to suggest that the overcharge was somehow making a difference
20 or somehow being righted in this rate of return regulation, it
21 doesn't follow.

22 And, perhaps more importantly, any change that would
23 come as a result of the rate of return regulation would benefit
24 not the people who were charged the manhole ordinance or
25 overcharged on the manhole ordinance, but all BellSouth

1 customers. And that's even more so in the period from '93 to
2 '97 when there was a refund of any surplus over the rate of
3 return regulation or the rate of return on equity.

4 In essence, if there was an overcharge, and that
5 overcharge contributed to BellSouth returning to its customers
6 some portion of the money that they made, they took from the
7 customers of Miami-Dade County and they gave to the customers
8 of the state of Florida, and that's not right. That's not what
9 the tariff required, and that surely isn't a remedy here.

10 Turning to the calculation of overhead and how the
11 overhead was calculated. We have heard that BellSouth agrees
12 with staff's recommendation, so I won't belabor the point, only
13 to say that clearly the amount of overhead is not what
14 BellSouth did for years and years, but what they should have
15 done. It's not for BellSouth to say, well, we did it and,
16 therefore, it's okay. The question is what should they have
17 done. How should the overhead have been calculated? BellSouth
18 has admitted they don't know what the overhead actually was,
19 they have come up with this formula. And so to say, well, we
20 did it this way and, therefore, it should be calculated that
21 way, that is not sufficient.

22 The consumers who were in the contract with BellSouth
23 have a right to be charged not just some amount that BellSouth
24 makes up, but to be charged the actual overhead or at least the
25 best and most reasonable method to arrive at a proxy for that

1 overhead.

2 A quick statement on the accuracy of the data. I
3 mean, when you go back and you look at sort of this concept of
4 a cumulative overcharge, and BellSouth suggested there was no
5 cumulative overcharge, well, Commission, you just can't accept
6 that. There's no data to support it. The overhead
7 calculation, based on staff's conclusion, was wrong for the
8 years 1983 through '96. So we just can't arrive at any kind of
9 conclusion about whether there was or wasn't an overcharge.

10 Okay. So, in closing -- I've been long-winded, I'm
11 going to try to get to it here -- again, I want to say thank
12 you to the staff. I think that what has happened here is that
13 the information that has been provided by BellSouth to this
14 point has raised more questions than it has answered.
15 BellSouth has failed to provide all those years of data because
16 this conduct has taken such a long course of time to come to
17 light. There are some specifics, and I will give you a few
18 examples, of the questions that are raised by the data,
19 questions that there are no answers to at this point.

20 In the original -- we have got this changing data.
21 We have got Exhibit A that BellSouth produced. That was the
22 financial calculations that were done supposedly at the time,
23 every six months, BellSouth asserted, at the time that they
24 were actually incurring the charges, so contemporaneous.
25 Usually the best record of an event is the contemporaneous

1 event. That was Exhibit A.

2 Then we had Exhibit B where BellSouth came back now
3 facing questions from this Commission and said, no, we have
4 gone back and we have looked at it again, and let's revise all
5 of that data. Well, then when the staff supplemented its
6 discovery to BellSouth and said, well, provide some
7 justification now for Exhibit B, they went back again and said,
8 oh, we need to change the data again. So we have got three
9 sets of data that BellSouth has produced changing and changing
10 and changing.

11 We had an Exhibit C which was produced. It was the
12 original data. BellSouth says it's original data that cannot
13 be verified. I don't know what that means. I don't know -- I
14 don't know how this Commission can act on the basis of original
15 data that cannot be verified. We had this revenue accounting
16 charge that went on for years and years, \$14,100, and when
17 staff asked BellSouth about it, to justify it, to explain it,
18 BellSouth responds, well, that's a reasonable charge, and we
19 think it is reasonable. No substantiation. No data. They
20 just say it's reasonable. The Commission can't accept that at
21 face value.

22 What has been done? What has really been done by
23 BellSouth -- BellSouth says it looked in the appropriate
24 places. What has really been done by BellSouth to find the
25 data that would answer the questions facing this Commission?

1 What individuals have they talked to, individuals with
2 knowledge. Who have they talked to? I know they looked for
3 data, or they say they looked for data, but who did they talk
4 to? Does the staff know, do we know? We don't know.

5 What was the real nature and scope of the search that
6 was performed? Was there an electronic search? Was there a
7 search of backup tapes? Was there any effort to restore tapes?
8 We don't know the answer to any of those questions. The
9 missing information, the inconsistent information makes any
10 conclusion that we reach about the overcharge simply
11 unreliable. It is premature for the Commission to act on it in
12 face of this wholly inadequate record.

13 BellSouth's contract with its customer requires that
14 the customers who are overcharged get a reconciliation, a
15 refund, or a prospective adjustment. Not the people in 2006,
16 but the people who were wronged if they were wronged, who were
17 overcharged at the time.

18 CHAIRMAN EDGAR: Mr. Witkin, are you coming to your
19 close?

20 MR. WITKIN: I am coming to my end. In fact, I'm
21 going to sum it up right here. Again, what we are asking is
22 that you send this matter back to the court. The matter was
23 not dismissed, it was abated, with a finding that BellSouth has
24 violated its tariff. Allow us to do the discovery necessary to
25 answer all of these questions and get to an amount of relief

1 which the court has authority to order enforced. Thank you.

2 CHAIRMAN EDGAR: Thank you.

3 MR. GURDIAN: Madam Chairman, may I respond?

4 CHAIRMAN EDGAR: You may.

5 MR. GURDIAN: This Commission has jurisdiction to
6 decide this matter here and now, and should decide this matter
7 here and now. Staff's discovery to BellSouth was fully
8 responded to by BellSouth. Staff has never filed a motion to
9 compel nor mentioned that BellSouth's responses to that
10 discovery was insufficient.

11 With regard to the overhead percentages that have
12 been used by BellSouth, from 1983 to 1997 this Commission
13 monitored BellSouth's activities under rate of return
14 regulation. And as part of that monitoring, monitored
15 BellSouth's revenues and expenses received from the manhole
16 ordinance fee. I would like to point out to the Commission
17 that BellSouth does not make any money off of this. BellSouth
18 collects this fee because of the additional expenses required
19 by this Miami-Dade County ordinance. On top of that fee, there
20 is an overhead loading. Staff says it's reasonable for
21 BellSouth to apply this overhead loading.

22 With regard to the exhibits that Mr. Witkin
23 mentioned, I would point out that Exhibit A was what was used
24 by BellSouth at the time. And in 1998, starting in January
25 1998 right after rate of return regulation ended, there was a

1 cumulative underrecovery of \$1.1 million. From that point
2 forward BellSouth, rather than changing the rate, which would
3 have increased the rate because there was an underrecovery,
4 kept the rate the same, and that continued on for a number of
5 years.

6 Going back in 2003, BellSouth went back and said, you
7 know what, maybe it would be better if we started at zero
8 because rate of return regulation concluded there was
9 additional money that was returned to the ratepayers back at
10 the end of 1997. Mr. Witkin referred to Exhibit C. Exhibit C
11 was what we believed occurred back in 1988 and 1992, however,
12 we couldn't verify that information. BellSouth is not required
13 to keep documents for any time other than what is required by
14 the Commission's document retention policies.

15 BellSouth did not violate the tariff, and has been
16 complying with the tariff since 1983 and would submit to the
17 Commission that it reject the Complainant's arguments and find
18 that BellSouth did not violate the tariff. Thank you.

19 CHAIRMAN EDGAR: Thank you. Commissioners, any
20 questions or comments?

21 Commissioner Arriaga, feel free to make yourself
22 known if you have a question, as well.

23 COMMISSIONER ARRIAGA: Thank you so much. I may, but
24 is there any Commissioner present that would like to go first?

25 CHAIRMAN EDGAR: Commissioner Carter.

1 COMMISSIONER CARTER: Thank you, Madam Chairman.
2 First question, for Staff, I didn't see any comment by OPC.
3 Did they have any input on this matter?

4 MS. SIMMONS: OPC has not participated to date.

5 COMMISSIONER CARTER: Thank you, Madam Chairman. One
6 more.

7 You have heard the perspective of both BellSouth and
8 the customer's representative in this matter saying that -- I
9 guess they agree in part and disagree in part, but it seems to
10 me like they are saying that neither one of them are happy with
11 your recommendation, which makes it sound reasonable to me.
12 But in the context of your going back to '99 through '05, and
13 recommending that you go forward from there with the credit for
14 the customers, is there any problem legally with us taking that
15 perspective or is it -- I mean, what impact would that have on
16 the underlying lawsuit?

17 MS. SCOTT: I don't believe, Commissioner -- Kira
18 Scott on behalf of Commission staff -- I don't believe that
19 there is any problem legally with the rationale that is laid
20 out in the staff's recommendation.

21 COMMISSIONER CARTER: If I may, Madam Chairman.

22 CHAIRMAN EDGAR: Commissioner Carter.

23 COMMISSIONER CARTER: So if we were to take the staff
24 recommendation, that does not necessarily prejudice any party
25 in the underlying action?

1 MS. SCOTT: No, sir.

2 COMMISSIONER CARTER: Thank you, Madam Chairman.

3 CHAIRMAN EDGAR: Commissioner Deason.

4 COMMISSIONER DEASON: Yes. Staff, did BellSouth
5 comply with the discovery requests?

6 MS. SCOTT: Yes, Commissioner Deason.

7 COMMISSIONER DEASON: And based upon the information
8 you were able to obtain, it is your belief that there was a net
9 underrecovery at the end of 1998?

10 MS. SIMMONS: That's what the data shows. However,
11 we really have no way of verifying that.

12 COMMISSIONER DEASON: You cannot verify it, but that
13 is what --

14 MS. SIMMONS: That's what the data shows.

15 COMMISSIONER DEASON: Is it staff's belief that
16 BellSouth complied with the tariff or violated the tariff?

17 MS. SIMMONS: I will go back to something Mr. Witkin
18 said. I believe that BellSouth did violate the tariff, and my
19 reasoning would go as follows: I believe one of two things,
20 either they did not perform the reconciliations every six
21 months, or they did perform the reconciliations but did not
22 apply the overage or underage in collections as an adjustment
23 in setting the fee for the next six months.

24 COMMISSIONER DEASON: Well, I'm looking at the tariff
25 language that is in question, and I'll just read it. It says

1 that an estimated monthly amount of such costs shall be billed
2 to the affected subscribers each month and an adjustment to
3 reconcile these estimates to the actual costs incurred for the
4 six-month period ending June 30th and December 31 for each year
5 shall be applied. So you interpret that language to mean that
6 there needs to be an adjustment every six months?

7 MS. SIMMONS: That's what I believe it means.

8 COMMISSIONER DEASON: Okay. Could that be
9 interpreted to mean there needs to be an accounting of that,
10 whether it's over or under, and that there's not necessarily
11 the need to adjust the rate on a going-forward basis unless the
12 overage or underage exceeds that reasonable amount that would
13 necessitate a change in the going-forward rate?

14 MS. SIMMONS: It's possible the wording could be
15 interpreted that way.

16 COMMISSIONER DEASON: How much is collected per year,
17 in an average year for this, what does this surcharge create?
18 For example, at 11 cents, what was the total revenue generated
19 with all of the loadings added on?

20 MS. SIMMONS: Okay. If you would just give me a
21 moment, please. I would say the charges and the associated
22 revenue, not the charges, per se, but the amount of expenses
23 varied greatly. But you are inquiring about the revenue?

24 COMMISSIONER DEASON: The revenue.

25 MS. SIMMONS: Just the revenue. Okay. Well, for

1 example, for the last six months of 2005, it was approximately
2 \$600,000. For the first half of 2005, it was somewhat higher,
3 about 635,000.

4 COMMISSIONER DEASON: And what was the largest amount
5 of any overage or underage that accumulated during the period
6 from 1999 forward?

7 MS. SIMMONS: Just give me a minute to look here.
8 I'm still looking, Commissioner, but one example is there was
9 an overage of -- based on staff's calculations, which are
10 equivalent to what BellSouth produced in Exhibit C,
11 approximately 303,000 in terms of an overage for the first half
12 of 1999 is an example. I'll keep looking, though.

13 COMMISSIONER DEASON: 300,000?

14 MS. SIMMONS: Yes, approximately.

15 COMMISSIONER DEASON: When did the 11 cents change to
16 8 cents?

17 MS. SIMMONS: That was in the first of 2004.

18 COMMISSIONER DEASON: So if there was an overage of
19 some 300,000 in the '99 to 2000 time period, there was no
20 change in the 11-cent rate, correct?

21 MS. SIMMONS: That's correct.

22 COMMISSIONER DEASON: BellSouth, why didn't you
23 change the rate when you had a 300,000 surplus?

24 MR. GURDIAN: Commissioner, the overage/underage went
25 up and down. For example, as you can see, if we had -- as an

1 example, you had the 300,000 --

2 COMMISSIONER DEASON: I don't have that in front of
3 me. So, Madam Chairman, I mean, that's information that I
4 think that we need and it is not included in the
5 recommendation, so --

6 MR. GURDIAN: As an example, Commissioner --

7 COMMISSIONER DEASON: Hold on just a second.

8 CHAIRMAN EDGAR: Just a moment. Ms. Simmons, can --

9 COMMISSIONER DEASON: Does staff have this
10 information they can share with us?

11 MS. SIMMONS: I do not have extra copies here. I
12 certainly -- if you want to temporarily pass, we can go make
13 some copies. The amount of data is fairly significant, but
14 certainly the backup data for what staff is recommending, we
15 certainly could make copies of that.

16 COMMISSIONER DEASON: Well, I guess what I
17 fundamentally need to know is what the history of this has been
18 in terms of overage, underages, what the rate has been, and if
19 it was reviewed, why it was changed, or why it was not changed.
20 Was that information provided to you by BellSouth?

21 MS. SIMMONS: It's not clear to me in terms of why
22 the rate was or wasn't changed. I have an impression. I
23 believe that my impression is that if the overage or underage
24 was shrinking, that perhaps BellSouth perceived that it wasn't
25 necessary to adjust the rate. That's a perception I have. I'm

1 not certain if that is accurate.

2 COMMISSIONER DEASON: Well, in the calculation of the
3 overage or underage, was there a calculation of interest
4 associated with that?

5 MS. SIMMONS: BellSouth did not do that, but staff
6 did do interest calculations.

7 COMMISSIONER DEASON: I know for your purposes in
8 looking at this retrospectively, my question is that the
9 six-month review or reconciliation, did it calculate any cost
10 or benefit associated with interest one way or the other?

11 MS. SIMMONS: You're asking did BellSouth do that?

12 COMMISSIONER DEASON: Yes.

13 MS. SIMMONS: They did not, based on the data they
14 supplied to staff.

15 COMMISSIONER DEASON: So to the extent that there was
16 an overage and there was a substantial overage and the rate was
17 not adjusted, one could make the argument that it should have
18 been, or at least interest should have been calculated on the
19 overage to make customers whole.

20 MS. SIMMONS: That is certainly an argument that
21 could be made.

22 COMMISSIONER DEASON: Why didn't BellSouth do that?

23 MR. GURDIAN: Commissioner, once you look at the
24 data, in some months you had expenses exceeding or getting
25 close to the \$300,000 number. As to the calculation of

1 interest, I don't have an answer for that. But, there wasn't a
2 change in the rate because you have to take into account the
3 technology, the information technology costs incurred, and the
4 increase in costs associated with customer inquiries. Why did
5 my rate change, why are you changing this rate?

6 I would like to point out that at the beginning of
7 1998, there was a cumulative underrecovery -- the decisions
8 were based on this from 1998 to 2003. There was a cumulative
9 underrecovery of \$1.1 million. So BellSouth, rather than
10 changing the rate, which would have increased the rate at that
11 point, kept it at 11 cents. And over time that number dropped
12 down and where it evened out, because you are going to get some
13 fluctuations where some months the security guards are out
14 there all the time and the expenses increase, and then some
15 months you don't. So it evens out over time.

16 COMMISSIONER DEASON: Why didn't BellSouth just file
17 a report with this Commission every six months detailing that
18 information? Why was that not done? I know perhaps it wasn't
19 required in the tariff, but we wouldn't be here today if that
20 had been done. We would know where we stood and there would
21 have been no question.

22 MR. GURDIAN: Commissioner, I wasn't around at the
23 time and we haven't explored that particular aspect. But, you
24 know, it wasn't required by the tariff and I believe that is
25 the reason why, but I can't verify that information.

1 COMMISSIONER DEASON: Let me tell you I was here when
2 this tariff was approved, and it created a lot of controversy,
3 and the only reason it was approved was because this
4 Commission -- I wasn't on the Commission, but I worked here at
5 the Commission, this Commission was assured that only those
6 customers residing in the municipality or the local government
7 district imposing those costs, only those customers would be
8 charged. And even then there was going to be an accounting so
9 that there would not be any overcharge of those customers. It
10 was going to be a dollar-for-dollar recovery.

11 Don't you think it was incumbent on BellSouth to live
12 up to the spirit of that tariff in which it was approved and
13 make sure that that accounting took place?

14 MR. GURDIAN: Commissioner, we believe that BellSouth
15 did comply with the tariff performing the reviews. I would
16 like to point out, again, the issue of the --

17 COMMISSIONER DEASON: Was any of that information
18 shared with the Commission when you did those six-month
19 reviews?

20 MR. GURDIAN: My understanding is that it was not,
21 Commissioner.

22 COMMISSIONER DEASON: Madam Chairman, I would like to
23 see what the flow of the money has been, and I don't have that
24 in front of me.

25 MS. SIMMONS: Commissioner Deason, I was going to say

1 one thing I could offer to do, if you would like, I could
2 either produce the material for you, or I could read the
3 figures for the first half and second half of years 1998
4 through 2005.

5 COMMISSIONER DEASON: If you've got it on a piece of
6 paper, I would like to see the piece of paper, please.

7 MS. SIMMONS: Certainly, we can make copies.

8 COMMISSIONER DEASON: Thank you.

9 CHAIRMAN EDGAR: Commissioner Deason, what is your
10 pleasure? Would you like to maybe TP this item and move on,
11 would you like to -- I'm open to options to accommodate you.

12 COMMISSIONER DEASON: We can defer the item to
13 another agenda. We can TP it and come back to it later today,
14 perhaps after Internal Affairs, or whatever the chair's
15 pleasure is. To get a feel for -- let me share this with you.
16 I would like to see what the fluctuations have been in the
17 overage or underage in relation to what the revenue collected
18 was to get a feel for where I think a reasonable person should
19 have changed that rate if they were making a six-month
20 reconciliation to see if they have been in compliance with the
21 tariff.

22 CHAIRMAN EDGAR: Ms. Simmons, I note that a few
23 moment ago I think you said that some of this information was
24 voluminous, which makes me wonder if maybe the best thing would
25 be to defer this item to the next meeting. I'm not aware of a

1 problem with deferring this, but I will look to our staff and
2 our legal staff as well to let me know if there is.

3 MS. SIMMONS: Okay. No, I don't see a problem. I
4 may have overstated the situation slightly. I believe that the
5 material that is of interest to Commissioner Deason is probably
6 roughly 16 pages.

7 CHAIRMAN EDGAR: Commissioner Arriaga, do you have
8 any questions at this point?

9 COMMISSIONER ARRIAGA: I am wondering if it is better
10 to defer this item as suggested by Commissioner Deason.

11 CHAIRMAN EDGAR: And I will note, as well, that even
12 if we were to get that information this morning, that
13 Commissioner Arriaga would take additional time to get that to
14 him and for him to review it, as well. So I am leaning towards
15 deferring this item so that this Commission has additional time
16 to review the numbers and any other information. And I am --
17 yes, Commissioner Carter.

18 COMMISSIONER CARTER: If I may be recognized. I'm
19 not sure, did you say that -- in reference to Commissioner
20 Deason's question, did you say you had the information that he
21 actually asked for? I mean, for the time periods?

22 MS. SIMMONS: Yes.

23 COMMISSIONER CARTER: From what I was hearing, it
24 seemed like you said you didn't have the information, it wasn't
25 provided for you.

1 MS. SIMMONS: I have the data that Commissioner
2 Deason is asking for 1998 through 2005.

3 COMMISSIONER CARTER: If I may follow up, Madam
4 Chairman.

5 CHAIRMAN EDGAR: Commissioner Carter.

6 COMMISSIONER CARTER: Because on one of the questions
7 you said you surmised based upon the information. You know,
8 that means to me that that is a guess, an educated guess, but
9 you surmised based on what you had. So it seemed like to me
10 the response was that you didn't have the proper information to
11 respond to him. That's how I interpreted what you said when
12 you said you surmised. Do you remember the first question he
13 asked you?

14 MS. SIMMONS: I guess I'm struggling to recall the
15 specific question. Okay. In terms of -- I guess the question
16 is whether they, BellSouth did or did not perform the
17 reconciliations and adjustments?

18 COMMISSIONER CARTER: Yes, ma'am.

19 MS. SIMMONS: I indicated in the context of that
20 question that I believed they either did not do the
21 reconciliations or they did the reconciliations but did not
22 apply an adjustment. One of those two, and I'm not sure which
23 it was.

24 COMMISSIONER CARTER: Madam Chairman.

25 CHAIRMAN EDGAR: Commissioner Carter.

1 COMMISSIONER CARTER: I mean, I'm left trying to
2 ascertain the -- it seemed to me that would be kind of a
3 threshold question in terms of ascertaining the quality of the
4 data. Would you agree with that?

5 MS. SIMMONS: Commissioner Carter, we do have the
6 data that has been provided in response to discovery, and what
7 we have done is tried to utilize that data. We have been able
8 to, you know, do checks on the data to the extent it's
9 possible. For instance, on the vouchered expenses, we did try
10 to do some checks on that to make sure the voucher expenses
11 tracked to the summary sheets that were provided to us. So we
12 have reasonable confidence in the information for 1998 through
13 2005.

14 COMMISSIONER CARTER: Madam Chairman.

15 CHAIRMAN EDGAR: Commissioner Carter.

16 COMMISSIONER CARTER: I would sincerely appreciate
17 the fact that Commissioner Deason was here at the time when
18 this whole process begun, and I think that he brings a special
19 history, an institutional history to us that would be critical
20 of us arriving at where we need to be. And I would just move
21 that we would defer this action until the information requested
22 is provided.

23 CHAIRMAN EDGAR: Commissioner Deason.

24 COMMISSIONER DEASON: If that's a motion, I can
25 second that.

1 CHAIRMAN EDGAR: Okay. We will ask that staff
2 distribute the information that has been requested and
3 discussed here today. Commission Deason, I note that the next
4 agenda conference is scheduled for two weeks from today, which
5 is May 16th. Do you think that that will allow sufficient time
6 for us to be able to continue discussion?

7 COMMISSIONER DEASON: It depends on how quickly staff
8 can provide the information to me, but I will find the time to
9 give it the necessary review. I will not delay it, Madam
10 Chairman.

11 CHAIRMAN EDGAR: Okay. Then we will defer this item
12 until our next agenda conference for further discussion on May
13 16th. And thank you all.

14 COMMISSIONER DEASON: Madam Chairman, before we leave
15 this item --

16 CHAIRMAN EDGAR: Commissioner Deason.

17 COMMISSIONER DEASON: -- a question, I guess a legal
18 question. If there is a finding of a tariff violation, this
19 Commission has the jurisdiction to deal with that, and there is
20 no need to refer that to a court, is that correct, Mr. Melson?

21 MS. SCOTT: Commissioner Deason, that's certainly
22 true.

23 COMMISSIONER DEASON: So even if there is or is not a
24 tariff violation, there is no need, and we have had adequate
25 discovery here, the information, we can look at it and make an

1 informed decision, and there is no need for it to be referred
2 to the court?

3 MS. SCOTT: That's correct. Staff believes that it
4 is properly before the Commission.

5 CHAIRMAN EDGAR: Thank you.

6 COMMISSIONER ARRIAGA: Madam Chair, may I?

7 CHAIRMAN EDGAR: Commissioner Arriaga.

8 COMMISSIONER ARRIAGA: Very quickly. If staff is
9 going to recommend that BellSouth violated the tariff, in
10 looking at Page 8 of the recommendations in the conclusion
11 paragraph, it's not specifically stated. So, now that we are
12 going for the next two weeks, staff may want to look at the
13 conclusion and state specifically what is it they believed
14 happened with the presumptive violation of the tariff?

15 CHAIRMAN EDGAR: Ms. Simmons.

16 MS. SIMMONS: Yes. We will do that, Commissioner
17 Arriaga. It appears earlier in the recommendation, but it
18 would be better if we included it at the end, as well.

19 COMMISSIONER ARRIAGA: Yes. And I appreciate that,
20 because in reading the conclusion it does not specifically
21 state that issue that is so very important.

22 MS. SIMMONS: Certainly.

23 COMMISSIONER ARRIAGA: Thank you.

24 Thank you, Madam Chair.

25 CHAIRMAN EDGAR: Thank you.

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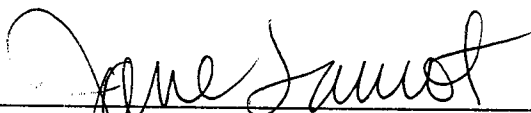
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DATED THIS 8th day of May, 2006.



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