IN THE SUPREME COURT
OF THE STATE OF FLORIDA

BELLSOUTH TELECOMMUNICATIONS, INC., a Georgia corporation,

appellant,

v.

Julia L. Johnson, Susan F. Clark, J. Terry Deason, Joe Garcia and Diane K. Kiesling, in their official capacities as members of the FLORIDA PUBLIC SERVICE COMMISSION,

appellees.

Case No. 90,671

INITIAL BRIEF OF APPELLANT

On Appeal From Florida Public Service Commission Order No. PSC-97-0488-FOF-TL

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ABBREVIATIONS

As used herein, the term "BellSouth" shall refer to the appellant, BellSouth Telecommunications, Inc.

As used herein, the term "PSC" or "Commission" shall refer to the appellee, the Florida Public Service Commission and the individual members thereof acting in their official capacities.

As used herein, the term the "Order Below" shall refer to that certain Order Denying Tariff Filing For Rate Regrouping, number PSC-97-0488-FOF-TL, issued by the Florida Public Service Commission on April 28, 1997. This is the order on appeal.

STATEMENT OF THE ISSUE PRESENTED ON APPEAL

Where the level of service provided within an exchange increases, does section 364.051(2)(a) -- which "caps" BellSouth's various "rates" for local service as of July 1, 1995 -- prevent BellSouth from continuing to treat similarly-situated customers similarly by applying the standard rate applicable to the new level of service?

INTRODUCTORY STATEMENT

This appeal presents an issue of statutory construction. Briefly, the 1995 revision to Florida Statutes chapter 364 "caps" BellSouth's various standard rates for local service, and prohibits increasing those rates beyond their July 1, 1995, levels. BellSouth provides many different levels of service, however, and at July 1, 1995, it had different standard rates for each level, all of which were duly approved by the Public Service Commission. The issue on appeal is simple: under the revised statute's rate cap, when the level of service provided to any particular location increases, can BellSouth apply the standard rate for that enhanced level of service -- unchanged from that rate's July 1, 1995, level -- or must the old rate continue to apply notwithstanding the enhancement in service,

The Commission, in **a** close 3-2 vote, construed the statute to prohibit the choice of a different rate to reflect the different level of service being purchased. In the Commission's view, even if the level of service provided is enhanced, the imposition of the standard rate applicable to that new level of service violates the prohibition on raising rates from their 1995 levels. BellSouth, on the other hand, contends that while the statute proscribes increasing the rates which are charged for the various levels of service, it does not proscribe charging the appropriate standard rate for any particular level of service, even when service is upgraded. In this event BellSouth's rates are not increased. The rates stay the same; it is the choice of which rate to apply that

changes as the product being purchased is enhanced, according to the Commission's long-established protocol.

Accordingly, this appeal turns on the appropriate construction of section 364.051(2)(a). If the "capping" of rates required by that section vitiates the established operation of BellSouth's rate structure, and entitles each consumer to continue paying no more than the rate applicable to him or her as of July 1, 1995, no matter what level of service is purchased, then the Order Below should be affirmed. On the other hand, if the statute simply caps the various rates at which service is provided but leaves the choice among these rates to be determined by the level of service being purchased, according to the regulatory mechanism already in place, then the Order Below is erroneous and should be reversed.

STATEMENT OF THE CASE AND FACTS

Appellant, BellSouth Telecommunications, Inc., presents the following statement of the case and facts pursuant to Rule 9.210(b), Fla. R. App. P.

A. Statement of the Case

On November 1, 1995, BellSouth filed with the Florida Public Service Commission written notification of its election of price regulation pursuant to section 364.051 (a), Florida Statutes. BellSouth's election was to be effective January I, 1996. [Vol. 1, R. 1401

Prior to January 1, 1996 (but after July 1, 1995), BellSouth filed tariffs regrouping the rates for the Jensen Beach, West Palm

Beach and Holley-Navarre exchanges (the "Rate Regroupings"). The Rate Regroupings reclassified these exchanges from one standard rate group to another, but did not cause any standard rate to increase or decrease, The Regroupings reflected changes to the nature of local service within these exchanges, i.e. growth -- the expanded scope of local calling caused by an increase in the number of access lines within the exchanges. [Vol. 1, R. 1413 The Rate Regroupings were to be effective October 20, October 22 and November 28, 1995, respectively.

On January 10, 1996, the Florida Public Service Commission (the "Commission" or "PSC") issued its "Order Acknowledging Election of Price Regulation and Notice of Proposed Agency Action Order Requiring Reduction of Certain Rates".[1] [Vol. 1, R. 140-149] This order determined that the Jensen Beach, West Palm Beach and Holley-Navarre rate regroupings constituted "increases" in rates for basic local telecommunications service and certain protected non-basic service within the proscription of section 364.051, Florida Statutes. The Commission directed BellSouth to "eliminate the (so-called) rate increases stemming from the Rate Regroupings". [Vol. 1, R. 146-148]

On January 31, 1996, BellSouth filed its Petition on Proposed Agency Action, thereby challenging the Commission's proposed agency action with respect to the Rate Regroupings. [Vol. 1, R. 141] On May 28, 1996, BellSouth filed the direct testimony of Alphonso J. Varner. [Vol 1, R. 129-1391 No other party filed any direct or

'Order PSC-96-0036-FOF-TL.

rebuttal testimony below. On July 22, 1996, the Commission entered an order allowing Sprint-United/Centel to intervene. [Vol. 1, R. 501 No other party intervened below.

On July **31,** 1996, the Commission issued its "Order Modifying Procedure", which acknowledged the parties' stipulation to a factual record and directed briefing on various issues.[2]

On April 28, 1997, the Commission issued its "Order Denying Tariff Filing For Rate Regrouping" (the "Order Below"), denying BellSouth's protest of the proposed agency action and directing BellSouth to in effect reverse the Rate Regroupings.[3] This is the order on appeal here. BellSouth filed its notice of appeal on May 27, 1997. [Vol. 1, R. 1501

B. Statement of Facts.

Rate Regrouping - BellSouth sets rates under a "systematic grouping" plan, which has long been approved by the **Commission as a** means to set exchange rates. See Rule 25-4.053(1), F.A.C. Rates for local service are set according to the value of the service provided, with value being a function of the number of different lines to which local (i.e. flat-rate) calls can be placed. See Rules 25-4.055(1) and 25-4.056(2), F.A.C. In other words, local calling rates for any particular exchange are set according to the number of **access** lines which are available to be called locally

[2]Order PSC-96-0981-PCO-TL. The factual record **was** to consist of the factual portions of Mr. Varner's written testimony as well as additional stipulated facts, which are attached to that Order.

'Order PSC-97-0488-FOF-TL, attached as Appendix Exhibit 1.

within that exchange; the more lines available the higher the rate.[4] The rates are "grouped" in the sense that consumers within like exchanges -- i.e. exchanges with the same number of access lines available for local calls -- pay the same standard rate. See Rule 25-4.055(1), F.A.C. In this manner BellSouth avoids the statutory proscription against discrimination among similarly-situated consumers. See §§ 364.08, . 09 and .10, Fla. Stat. (1995) .

BellSouth's exchanges are fluid in the sense that the number of access lines within each exchange is constantly increasing or decreasing, with a concomitant increase or decrease in the value of the service provided. However, new rates are not set with each ebb and flow. BellSouth's full rate structure -- already on file and approved by the Commission -- covers the spectrum of potential access lines. When the number of lines in any particular exchange crosses the threshold into the next larger or smaller group, BellSouth simply reclassifies or "regroups" that exchange into the next higher or lower rate group, as required by the Commission's regulations. [Vol. 1, R. 132-1331 See Rule 25-4.056(1), F.A.C.

To illustrate, Rate Group 10 includes all exchanges with between 450,001 and 550,000 local access lines. All customers living within such exchanges pay the same rates for local service because the value of the service provided -- the ability to make

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[4]BellSouth's Rate Groups -- all Commission-approved -- run from small to large. For example, Rate Group 1 includes exchanges with from 1 to 2,000 access lines, whereas Rate Group 10 includes exchanges with from 450,001 to 550,000 access lines. Rate Group 1 would typically encompass the less populated areas such as Cedar Key, whereas Rate Group 10 would encompass more densely-populated areas such as Boca Raton. [Vol. 1, R. 134-136]

local (i.e. flat-rate as opposed to toll) calls to between 450,001 and 550,000 lines -- is the same. Rate Group 9, on the other hand, encompasses exchanges falling within the next lower bracket, with an average calling scope of just 433,000 access lines. Because consumers in Rate Group 9 exchanges have access to fewer lines on a local basis than their counterparts in Rate Group 10 exchanges, the value of their local service is less and they are charged a lower rate. However, if the number of lines in a Rate Group 9 exchange increases beyond 450,000, the value of local service in that exchange is increased to a level consistent with Rate Group 10 exchanges, and the former Group 9 exchange is reclassified accordingly. [Vol. 1, R. 133-135]

Several points are important here. First, the rates set under this "systematic grouping" protocol (see Rule 25-4.053) are not customer-specific in the sense that the identity of the customer dictates the particular rate to be charged. Rather, rates are product-specific; they are applied "across-the-board" to all Florida rate payers, whoever they may be and wherever they may be, based upon the level of service being purchased -- the ability to make local calls to *x* number of lines. Therefore, there is no "rate increase" where a specific customer pays more because he or she purchases a different level of service. It is only a rate increase violative of the cap when the rate increases but the level of service being purchased remains the same.

Second, there are two different ways in which a customer's rate group can change, yet the Commission only disapproves of one.

When a customer moves to a locale that affords more or less local-calling lines than at his prior locale, the customer does not take his prior rate with him but rather is charged the rate applicable to the new level of service. In the Commission's view this does not constitute a "rate increase" proscribed by statute, even if the rate group applicable to the new level of service causes the customer to pay more. It is only when the customer remains in the same locale, and the rate group to which that locale is assigned changes as a result of demographic growth, that the Commission discerns an inappropriate "rate increase". Logically speaking, however, the effect is the same in both situations; the customer pays more because the value of the service being purchased is increased.

Third, the process of shifting exchanges from one standard rate group to another as the level of service provided at the exchange changes (i.e. the process of rate regrouping) does not in any way alter the amount charged under any standard rate. [Vol. 1, R. 1281 In other words, transferring an exchange into or out of rate group 5 has no impact on the amount charged to a rate group 5 customer for that level of service. Since July 1, 1995, the prices charged within BellSouth's various rate groups for the various levels of service have not changed.

Finally, rate regrouping is not volitional on BellSouth's part, in the sense that BellSouth can decide whether or when it wants to regroup any particular exchange. Regrouping is a function of increases or decreases in the number of access lines in an

exchange, which is in large part derivative of consumer demand and shifts in population. It is but a numeric exercise. BellSouth is required by Rule to file a revised tariff regrouping and exchange whenever the number of access lines in that exchange increases or decreases to the requisite extent. [Vol. 1, R. 1321 Rule 25-4.056(1), F.A.C. This enables BellSouth to comply with the statutory requirement, discussed above, that similarly-situated rate payers be treated alike.

West Palm Beach was previously a Rate Group 9 exchange. However, the West Palm Beach exchange has now grown to approximately 485,000 lines, crossing the threshold into Rate Group 10. [Vol. 1, R. 134-1361 Put another way, the value of local service provided in West Palm Beach has increased because West Palm Beach consumers now have access to more lines on a local-calling basis. Absent the Rate Regrouping, consumers in West Palm Beach will pay less for local service than consumers in the other Rate Group 10 exchanges (e.g. Boca Raton) for precisely the same level of service. Conversely, consumers in the other Rate Group 9 exchanges will pay the same rate as those in West Palm Beach for local service of a lower value -- local **access** to far fewer lines.

This is the process at issue here. As the Jensen Beach, West Palm Beach and Holley-Navarre exchanges grew and the number of lines increased, the value of local service in those exchanges likewise increased. When the number of lines in each exchange exceeded the threshold for the next rate group, BellSouth followed the Commission's standard procedure to "regroup" those exchanges

and apply the standard rate applicable to that level of service. [Vol. 1, R. 1321 See Rule 25-4.056, F.A.C. It is the Commission's disallowance of this regrouping, purportedly under authority of the 1995 revisions to chapter 364, which BellSouth contends was erroneous.

The 1995 Revisions to Chapter 364 - In 1995, the Legislature amended chapter 364 of the Florida Statutes. In essence, the statutory amendments provide for a transition from traditional rate of return regulation to, eventually, a telecommunications industry wholly-responsive to market forces.

Section 364.051 provides in pertinent part that local exchange companies such as BellSouth may elect to replace rate of return regulation with "price regulation".[5] In the event such an election is made, rates for basic telecommunications services are to be capped at the rates in effect as of July 1, 1995, and may not be increased until (in BellSouth's case) the year 2001:

> Effective January 1, 1996, the rates for basic local telecommunications service of each company subject to this section shall be capped at the rates in effect on July 1, 1995, and such rates shall not be increased prior to . . . January 1, 2001.

§ 364.051(2)(a), Fla. Stat. (1995). BellSouth elected price regulation effective January 1, 1996. [Vol. 1, R. 1401

'Generally, under "rate of return" regulation the State regulated the level of return on invested capital (i.e. a profit margin) that a telephone company could obtain. Rates were set according to what was necessary to attain the targeted return. Under price regulation, the State simply regulates the price that can be charged, without regard to the telephone company's margin.

Accordingly, under the section quoted above BellSouth's various rates for basic **local** service are capped at July 1, 1995, **levels.**

The Order Below - After July 1, 1995, but prior to January 1, 1996, BellSouth filed revised tariffs which "regrouped" the Jensen Beach, West Palm Beach and Holley-Navarre exchange areas into new rate groups to reflect the expanded level of local service now being provided in those areas. This was not a discretionary act on BellSouth's part; the filing of these revised tariffs was required by Rule 25-4.056(1). The regrouping of these exchanges altered the choice of which rate to apply, based on changes in the level of service provided, but did not increase any rate beyond its July 1, 1995, level.

In other words, West Palm Beach was in Rate Group 9 as of July 1, 1995. Because of growth in the exchange and the concomitant increase in the value of the service provided, West Palm Beach **was** regrouped into Rate Group 10 effective October 22, 1995. Rate Group 10 is **a** more costly group than Rate Group 9, to reflect the enhanced value of the local service being provided. However, the rates charged in Rate Group 10 as of October 22 were precisely the same as they were on July 1, 1995.

There was no dispute below with respect to the pertinent facts. First, there **was** no dispute that these exchange areas have grown such that the number of lines available for local calls now exceeds the threshold for the next standard rate group. Second, there was no dispute that, as a result, the value of the ability to make local calls within these exchange areas has increased. Third,

there was no dispute that the price for local service within BellSouth's various rate groups has remained at July 1, 1995, levels. Finally, there was no dispute that as these three exchanges were "regrouped" to reflect the enhanced level of service now being provided there, the newly-applicable rates were precisely the same as those applied state-wide to all customers receiving that level of service.[6] Nevertheless, by the slimmest of margins (a 3-2 vote), the Order Below invalidated BellSouth's rate regrouping as an inappropriate rate increase under section 364.051(2).

SUMMARY OF THE ARGUMENT

BellSouth's position is simple and straightforward. The Commission erred in ruling that section 364.051 precludes rate regrouping where, as here, price regulation has been elected. The statute simply caps BellSouth's standard rates for basic local service; it does not even mention the choice of which rate to apply as the level of service provided changes, let alone vitiate the long-standing mechanism for making this kind of determination.

Furthermore, the Commission acknowledges that its construction of section 364.051 will inevitably lead to similarly-situated consumers being charged different rates for the same level of service. Such a result would violate directly applicable statutory

[6]Indeed, the Commission specifically acknowledged that if regrouping were not allowed, customers in different parts of the state would end up paying different rates for precisely the same service, depending upon the date at which their exchange hit any particular service level. Order Below at 8-9.

proscriptions and the well established policy of this State that similarly-situated persons should be treated alike. Even if the Commission's proffered construction of section 364.051 were otherwise reasonable (and it is not), it was error to choose a construction which is inconsistent with other statutory provisions and which contravenes public policy, particularly given the fact that BellSouth's proffered construction is wholly consistent with law and policy.

Accordingly, the Commission's construction of section 364.051 was clearly erroneous, and the Order Below should be reversed and remanded with instructions to apply an appropriate construction.

ARGUMENT AND CITATION OF AUTHORITY

THE APPLICATION OF DIFFERENT STANDARD RATES AS THE LEVEL OF SERVICE INCREASES CONSTITUTES A CHOICE AMONG CURRENTLY-EXTANT RATES RATHER THAN AN IMPERMISSIBLE INCREASE IN THOSE RATES.

The base issue can be summarized succinctly. When the service being purchased is enhanced, and there is an already-established rate scale applicable to such upgrades, has the rate for the service been increased or has a new service been purchased at an already-established rate? In other words, if a consumer leases an economy car at standard economy rates, and then begins leasing a luxury sedan at standard luxury rates, has the lessor "increased" the rate or has the lessor simply charged the standard rate for the upgraded product? Common sense provides the answer. The "rates" are standard; they have not changed. It is the product which is the determinant here. The application of the standard rate

structure to the enhanced product is but a ministerial derivative of the change in the product.

BellSouth submits that the foregoing logic is dispositive here. Section 364.051 caps BellSouth's rates for various levels of service, but does not preclude enhancement of the service provided. The so-called "rate increase" here is thus no increase at all; it results from the ministerial application of the existing rates to enhancements in the services being purchased.

A. Rate Regrouping is not an "increase" in the rate for a constant level of service; it is a choice among standard, previously-extant rates to reflect changes in the level of service being purchased

Local, flat-rate service in Florida is priced differentially according to the value of the service provided, so that ratepayers pay the same rates for the **same** level of service; higher rates being charged for the more valuable service. Local exchanges are assigned to particular rate "groups" depending on the number of **access** lines within each exchange which can be accessed on a local, flat-rate basis. As the value of the service provided increases in any particular exchange, i.e. as the number of lines which can be accessed locally increases, rate follows value -- the exchange is reclassified into the rate group correlating to the upgrade in service.[7] This is a common and specifically authorized

[7] Of course, the converse also holds true. If the number of access lines available for calling on **a** local basis declines below the floor for **any** particular rate group, that exchange will be "regrouped" to the lower rate group. Rule 25-4.056(1), F.A.C.

methodology, and has been utilized throughout Florida (and in other states) for some time. See Rules 25-4.055 and 25-4.056, F.A.C.[8]

As the Commission itself has noted, the concept of matching rates to value, with rates following value, is a basic tenet of this kind of rate structure:

> Rate regrouping is a rate design mechanism that has been used historically to insure that the rates for certain customer classes are equalized. Rate groups are premised on the number of access lines an end user can call on a local flat-rate basis. As the number of access lines an end user can call increases, the rate for flat-rate local service also increases. The increase in rates is rooted in historic value-of-service pricing philosophy; as the number of lines a person can call increases, the more valuable the person's local flat-rate service becomes. As the service becomes more valuable, customers should pay more for it.

[Vol. 1, R. 11] See also Rules 25-4.055 and 25-4.056, F.A.C. Nevertheless, the Order Below divorces rates and value, holding that under section 364.051(2) all exchanges must remain in their current rate groups without regard to changes in the level and value of the service provided. In so doing, the Commission misconstrues the statute.

Section 364.051(2) provides simply that "rates" for basic local service shall be "capped" at July 1, 1995, levels. See § 364.051(2), Fla. Stat. (1995). BellSouth has fully complied with

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[8] This is identical in concept to Extended Area Service or "EAS". Under EAS, the number of lines which can be accessed on a flat-rate basis is increased geographically by expanding the local service area. Thus, what was formerly a toll call between north and south Dade County can be made on a flat-rate basis, and rates are increased to reflect the additional number of so-called local lines. Under the Commission's view, this would constitute a "rate increase" notwithstanding the fact that it is in effect the purchase of a different product.

this mandate; its rates for basic local service are precisely where they were on July 1, 1995. Moving exchanges from one rate group to another as the level of service provided increases (or decreases) does not increase those rates above the cap; they are and will remain constant as required by the statute.

BellSouth's rates -- as they existed on July 1, 1995 -- applied not to any specific customer or even any specific exchange, but rather to all exchanges accordins to set criteria. Nothing in the statute provides that the operation of BellSouth's rate structure must be suspended, or that the criteria used to select which rate shall apply to which exchange must now be ignored. The statute does not even mention the choice among currently-extant rates, let alone vitiate the process by which this choice is made. Therefore, the Commission erred in holding that section 364.051(2) precludes rate regrouping when and as would normally occur under the rates in place on July 1. The statute clearly contemplates that rate structures in existence as of that date would remain in effect and operative; it only imposes a cap on the rates themselves.

Other states, operating under similar rate "freezes", follow the same rationale. In Pennsylvania, for example, rates for "protected services" such as basic local service are frozen until 1999. However, according to the Pennsylvania Public Utilities Commission, reclassification of exchanges into higher rate groups (under existing tariffs) does not violate the rate freeze since an increase in the number of lines available for local calling clearly

increases the value of the service being provided. See In re Bell Atl. - Pa. Inc.'s Petition and Plan for Alternative Resulation under Chapter 30, 1995 WL 908609 at *7-9 (Pa. PUC January 23, 1995).[9] That is the appropriate result in Florida as well.

In short, "increasing rates" is not the same as selecting which currently-extant rate should apply as the product being purchased changes, and a prohibition against rate increases does not mean that customers have vested rights to any particular rate without regard to changes in the value of their service. In terms of the analogy discussed above, a rate increase would be an increase in the rate for leasing the same economy car, not the application of a different rate -- the luxury rate -- when the customers begins driving a luxury sedan.

B. A refusal to allow rate regrouping would necessarily result in discriminatory pricing among similarly-situated persons, in contravention of statutory mandates and the public policy of this State

The Commission construes section 364.051(2) to proscribe not just increases in BellSouth's standard rates but also rate regrouping -- the choice of a different (but previously-extant) rate to apply, according to set criteria, as the level of service being purchased is changed. This cannot be the case. Such a

[9] In dissent, one Pennsylvania Commissioner asserted precisely the position espoused in the Order Below -- that a rate freeze is a rate freeze, and that reclassification will increase the cost to consumers within the affected exchanges. Id at *25. Of course, this view ignores the fact that the service being provided has increased in value. Nowhere does the Florida statute indicate a legislative intent to freeze the level of service provided.

construction would inevitably result in discrimination among similarly-situated consumers, in contravention of other portions of the Florida Statutes and the clear public policy in this State. Logic and reason dictate that a statute should not be construed to conflict with other legislative mandates or established policy concerns, particularly where (as here) the more reasonable construction is perfectly consistent with both.

It is the policy of this State that telecommunications companies shall not discriminate among similarly-situated consumers. See § 364.08, Fla. Stat. (1995) (telecommunications company may not provide any benefit or privilege that is not extended "uniformly" to similarly-situated persons receiving the same or substantially similar service); § 364.09, Fla. Stat. (1995) (telecommunications company required to impose the same charges for the same services to persons in "substantially the same circumstances and conditions"); § 364.10, Fla. Stat. (1995) (telecommunications company may not unreasonably prefer or discriminate against any person or locality). Indeed, section 364.09 is explicit: a telecommunications company may not receive more or less compensation from any person than it receives from any other person for providing a "like and contemporaneous service" under "the same or substantially the same circumstances and conditions". § 364.09, Fla. Stat. (1995). Nevertheless, the Commission's proffered construction of section 364.051(2) will require just that. As the Order Below admits, the Commission's construction guarantees that some ratepayers will pay more than

others for the same level of service under the same "circumstances and conditions":

> We do agree with the parties that if further rate regrouping is not permitted under section [364.051] some customers may be paying rates for local exchange service different from rates paid by customers in other exchanges of the same size.

Order PSC-97-0488-FOF-TL at 8-9. [Vol. 1, R. 147-1481

To illustrate, BellSouth attempted to regroup the West Palm Beach exchange from Rate Group 9 to Rate Group 10 because the exchange had grown above the threshold for Rate Group 10. Consumers in West Palm Beach can now call 485,000 lines on a local, flat-rate basis. This is roughly the same as in Boca Raton, which is also in Rate Group 10. The average exchange in Rate Group 9, on the other hand, has a calling scope of just 433,000 lines, some 52,000 lines less than West Palm Beach. All parties agree that **as** the number of lines which can be accessed on a local, flat-rate basis increase, the value of local service also increases. Therefore, **as** West Palm Beach grows the scope and value of local service in that exchange is altered. Ratepayers in West Palm Beach are no longer similarly-situated with ratepayers in other Rate Group 9 exchanges; they are now similarly situated with ratepayers in Rate Group 10 exchanges. Put another way, the provision of local service in West Palm Beach and Boca Raton is now the provision of a "like and contemporaneous service" under "substantially the same circumstances and conditions", and BellSouth is required by law to charge the same rate in the two exchanges. § 364.09, Fla. Stat. (1995). See also §§ 364.08 and

364.10, Fla. Stat. (1995); Rule 25-4.056(1), F.A.C. Nevertheless, under the Commission's construction of section 364.051(2), BellSouth is prohibited from doing so,

Thus, under the Commission's construction, two kinds of discrimination will necessarily occur. First, similarly-situated customers with the **same basic** local calling scope (e.g. rate payers in West Palm Beach and Boca Raton) will be charged different rates, depending upon when the growth of their exchanges crossed the next higher rate group threshold -- before or **after** July 1, 1995. An exchange which grew beyond a Rate Group threshold after that **date** would still pay the rate for its former, **less valuable** level. Conversely, customers whose calling scopes differ (e.g. West Palm Beach and other Group 9 exchanges) would nevertheless pay the same rate **because** their service used to be of equal value prior to July 1, 1997. Customers will either be unduly benefitted or prejudiced solely as a matter of historical happenstance. The Order Below recognizes that given Florida's shifting population and the growing demand for telecommunications, this kind of inequity is suaranteed to occur. Nevertheless, the Commission still disallowed rate regrouping.

It is axiomatic that all parts of **a** statute should **be read** together to achieve a consistent whole. Forsythe v. Longboat Rev Beach Erosion Control Dist., 604 So.2d 452, 455 (Fla. 1992). Statutes should be read to harmonize their various provisions. Id at 456. See also Department of Environmental Protection v. Millender, 666 So.2d 882, 886 (Fla. 1996) . While a statute may be

ambiguous if reasonable persons can find different meanings in the same language, Forsythe, 604 So.2d at 455, it is not ambiguous if one construction would contradict or render meaningless other portions of the same statute. Logic and reason dictate that where there are alternate constructions of a portion of a statute, with one construction being consistent and the other being inconsistent with the remainder of the statute, the consistent construction is the appropriate one.

Here, the Commission construes section 364.051 in such a way that similarly-situated consumers will inevitably pay different rates for the same level of service. As shown, this directly contradicts sections 364.08, .09 and . 10 as well as the public policy of this State. BellSouth's construction, on the other hand, in addition to being logically compelling, is completely consistent with the balance of Chapter 364 and with applicable policy concerns. The choice among these disparate constructions could not be more clear. The Commission simply erred in construing section 364.051 as prohibiting rate regrouping according to the established criteria and using the established mechanism.

CONCLUSION

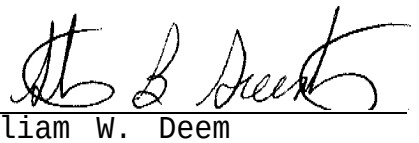
The rate regrouping process is not equivalent to a rate increase. BellSouth maintains, on a tariffed basis, various rates for the various levels of basic local service it provides. Regrouping exchanges does not increase or decrease these rates. Rather, regrouping is simply a change in the selection of which of

these rates should apply to a particular exchange, as the level of service provided at that exchange increases or decreases. This process is necessary to effectuate the public policy that ratepayers receiving the same service should pay the same rates, and nothing in the 1995 amendments to chapter 364 departs from this very basic premise.

Accordingly, for all of the reasons set forth herein, the Order Below clearly is clearly erroneous and BellSouth respectfully requests that it be reversed and remanded for proceedings consistent with the law as set forth herein.

DATED this 5th day of August, 1997.

MAHONEY ADAMS & CRISER, P.A.

By: 

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