

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NO. U-22614

BELLSOUTH TELECOMMUNICATIONS, INC.
EX PARTE

Docket No. U-22614. In re: Consumer Price Protection Plan Service Category Classification Report as per Docket U-20883.

(Decided at Open Session May 20, 1998)

Nature of the Case

On July 1, 1997, in accordance with Section 701(F)(3) of the Regulations for Competition in the Local Telecommunications Market ("the Regulations"), BellSouth Telecommunications, Inc. ("BST") filed its Service Category Classification Report ("SCC Report") for the period June 1, 1996 to May 31, 1997. The SCC report identified the proposed classification of new services introduced by BST during the relevant period; the proposed reclassification of existing services from Basic to Non-Basic; and the proposed elimination from any basket of those services that BST is no longer offering. The matter was published in the Commission's official bulletin on July 25, 1997. Several entities intervened in the proceeding, though AT&T Communications of the South Central States, Inc. ("AT&T") was the only intervener who participated in the hearing. The SCC report sought to eliminate three services; to reclassify four existing services currently in the Basic basket as Non-Basic services; and the proposed classification of eleven new services introduced during the period of June 1, 1996 to May 31, 1997. No party objected to the elimination of the listed services or to the introduction of the new services or their classification¹.

At issue were the reclassification of the four existing Basic services (Expanded Local Calling Area, Expanded Local WatSaver®, Local Tele-Thrift and Local Directory Assistance) as

¹ Initially parties were concerned that three of these new services (Complete Choice, Area Plus®, Area Plus® with Complete Choice) which are packages of Basic and Non-Basic services might violate the Regulations' prohibition against cost-subsidy or revenue support and that those Basic services sought to be packaged with Non-Basic services might not be available to end users as stand alone Basic services at the currently capped rates. After BST filed Margaret Thompson's testimony on this issue, Staff withdrew its conditional objection to the introduction of these three services, and AT&T has not raised any objections in its brief.

Non-Basic services. The reason for the requested reclassification of four of the existing Basic services, according to BellSouth, was that those four services are now being offered by competitors, thus making the protection offered by the Price Cap Plan unnecessary. BellSouth contended that the Commission's purpose of classifying certain services was to protect consumers from dramatic increases in prices, and that since competition offers a natural protection against price increases, the Commission's purpose can be achieved without a classification of these services as Basic. AT&T and Staff argued that the reclassification violates the Price Protection Plan, because the four services are listed as Basic Services in the Plan, and further included in the definition of Universal Services; and because there is no wide spread competition in the market in the provisioning of these services, and the alternative services offered by other entities lack dialing parity; therefore, AT&T and Staff averred that BST had failed to bear its burden of proof that the proposed classification is in accordance with the Price Protection Plan. AT&T added that BST's proposed reclassification as an attempt to circumvent the five-year cap applicable to Basic services, contrasted with the one year-cap applicable to Non-Basic services.

PROCEDURAL HISTORY

Pursuant to Section 701(F)(3) of the Regulations, BellSouth filed its SCC report on July 1, 1997, seeking Commission approval of : (1) elimination of three services; (2) the proposed classification of eleven services that BST introduced during the period June 1 1996 to May 31, 1997; (3) the reclassification of four of the services currently in the Basic basket as Non-Basic services. The matter was published in the Commission's official bulletin on July 25, 1997. Several entities intervened, though AT&T was the only intervener who participated in the hearing held in this matter on January 16, 1998. Concerning BST's request to offer certain new services which consisted of a package of Basic and Non-Basic services, the Administrative Law Judge questioned BST as to whether it had provided any cost information to show there would be no cross-subsidy or cost support of Non-Basic services by revenues from Basic services in violation of Section 701(G)(9) of the Regulations. The ALJ then allowed BST to file additional testimony to demonstrate that there would be no prohibited cross-subsidy, and allowed the parties the opportunity to conduct discovery with respect to that additional testimony, to file rebuttal

testimony and to cross-examine the witness offering that testimony at a subsequent hearing. Accordingly, BST filed the testimony of Margaret Thompson on January 21, 1998, providing the results of certain cost studies to support her conclusions that no prohibited cross-subsidy existed. AT&T and Staff did not file rebuttal, or request additional hearing on this issue subsequent to the filing of Thompson's testimony. The parties filed post-hearing briefs on March 27, 1998; upon notice of BST's filing of Margaret Thompson's testimony, Staff filed a supplemental brief on March 31, 1998, noting that testimony has been filed by BST on the issue of cross-subsidy and stating that it "has no objection to the classification of these services as Non-Basic if the Court also finds the services are offered as stand alone services and do not benefit from cross-subsidies or revenue support from any Basic Service in violation of Section 701.G.9 of the Consumer Price Protection Plan." [LPSC Staff Supplemental Brief at p.2]. On April 20, 1998, the ALJ was informed by Counsel for BST that the parties have agreed to waive the procedural step of an initial proposed recommendation (and the time delays incident thereto) in favor of issuance of a single final recommendation by the ALJ. Accordingly, the ALJ hereby issued a final recommendation in the form of a Proposed Order to the Commission. The Commission considered and decided the matter at Open Session May 20, 1998.

JURISDICTION

The Commission, or any tribunal, has subject matter jurisdiction over a particular dispute if it has the legal power and authority to adjudicate the legal relations of the parties and to grant the relief to which the parties are entitled. *Daily Advertiser v. Trans-La.*, 612 So.2d 7, 16 (La. 1993). Jurisdictional authorization with respect to the Commission is found in Article IV, Section 21(B) of the Constitution which vests the Commission with jurisdiction over public utilities and common carriers. The Commission has broad power to regulate the service of telephone utilities; its power is sufficiently broad to include adjustment of telephone service to customer needs. *South Central Bell Tel. Co. v. Louisiana Public Service Commission*, Sup. 1977, 352 So.2d 999.

CONTENTIONS OF THE PARTIES

The SCC report filed by BST seeks Commission approval of the following:

(1) the elimination of the following services from its tariff:

- A. Party Line Service
- B. Public Telephone Service
- C. Semi-Public Telephone Service

(2) the proposed classification of the following new services introduced by BST during June 1, 1996 to May 31, 1997:

I. New services to be placed in the Interconnection basket:

- A. SmartLine® for Public Telephone Access

II. New services to be placed in the Non-Basic basket:

- A. Data Reach*
- B. Multipoint Video Conference
- C. Complete Choice
- D. Area Plus®
- E. Area Plus® with Complete Choice
- F. Business MTS
- G. PATHLINK*
- H. MegaLink® Plus
- I. Courtesy Choice*
- J. Custom Network Serving Arrangement III

(3) the reclassification of the following Basic services as Non-Basic services:

- A. Expanded Local Calling Area
- B. Expanded Local WatSaver®
- C. Local Tele-Thrift
- D. Local Directory Assistance

Commission Staff and AT&T did not oppose the elimination of services listed in (1) above, or the proposed classification of eight of the eleven new services in (2)².

The dispute among the parties concerned the reclassification issue in (3), and those new services in (2) (II) that are packages of existing Basic and Non-Basic Services (i.e. Complete Choice, Area Plus®, Area Plus® with Complete Choice). During the hearing, the ALJ questioned BST as to whether BST could demonstrate with cost studies or other cost information that: (1) the three packaged services do not violate the prohibition against cross-subsidy of Non-Basic services by revenues from Basic services, found in §701(G)(9) of the Regulations; and (2) that

²There was no opposition to the introduction of the following services:

- SmartLine® for Public Telephone Access
- Data Reach*
- Multipoint Video Conferencing
- Business MTS
- PATHLINK**
- MegaLink® Plus
- Courtesy Choice*
- Custom Network Serving Arrangement III

those Basic services to be packaged with Non-Basic services will still be available to end users as stand alone Basic services at the currently capped rates. Pursuant to the ALJ's ruling permitting BST to file testimony and evidence on this issue, and other parties to conduct discovery, file rebuttal testimony and request additional hearing on this issue, BST filed Margaret Thompson's testimony along with cost information on January 21, 1998. The Staff, in its post-hearing brief filed on March 27, 1998, stated that it does not oppose the offering of these new services if BST proved that there was no cross-subsidy or revenue support, and the Basic service components of these new packaged services continue to be available to end users as stand alone Basic services at the currently capped rates. However, in its Supplemental brief filed on March 31, 1998, Staff stated that it became aware of Ms. Thompson's testimony being filed by BST on January 21, 1998, and that it "has no objection to the classification of these services as Non-Basic if the Court also finds the services are offered as stand alone services and do not benefit from cross-subsidies or revenue support from any Basic Service in violation of Section 701.G.9 of the Consumer Price Protection Plan." [LPSC Staff Supplemental Brief at p.2] Thus, the Staff did not contest Margaret Thompson's testimony that the supporting evidence showed that there was no cross-subsidy and that the Basic services to be packaged with Non-Basic services will be available to end users as stand-alone Basic services at the currently capped rates. AT&T did not brief this issue, and did not file rebuttal testimony nor request additional hearing on this issue.

The only remaining dispute among the parties involved the reclassification of Expanded Local Calling Area, Expanded Local WatSaver®, Local Tele-Thrift, and Local Directory Assistance³. In support of its proposed reclassification of these Basic services as Non-Basic services, BST argued that these four services are now available to customers from BST's competitors, and should therefore not be considered Basic services. According to BST, one of the Commission's principal goals in establishing a price cap plan was to provide rate stability to customers with respect to services for which BST is the only source. This goal, BST asserted, is equally achieved by competition which curbs price increases, rendering the price cap plan unnecessary for those services that are offered by BST's competitors in the market.

³Expanded Local WatSaver® and Local Tele-Thrift are the names of services offered by BST that offer Expanded Local Calling Option Plan services. (Tr at 77)

AT&T and Staff denied that these services are currently offered on a truly competitive basis, and stated that the need for price cap protection indeed exists since, according to them, BST continues to largely maintain its monopoly on the Louisiana local telecommunications market. Staff further argued that the Commission specifically classified the four services in question as Basic services in Appendix A of Section 701; and Section 701(C) defines Basic Services as

“those services required to provide basic local service to residential and single line business customers, which include, among others, each of the items comprising the definition of Universal Service as specified in Commission General Order, dated May 22, 1995. Initially, Basic Services shall include the services itemized on Appendix “A” attached hereto and made part hereof.”

They added that Access to Directory Assistance was included in the definition of Universal Service specified in the Commission’s General Order dated May 22, 1995 and AT&T also cited the FCC’s Report and Order in CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service*, released May 8, 1997 (“FCC Order”), which designated Access to Directory Assistance as part of Universal Service.

Staff and AT&T argued that BST had failed to carry its burden of proof of showing why any existing service should be reclassified, and that its classifications are in accordance with the Price Protection Plan. They argued that BST did not demonstrate that the extent of existing competition provides any price protection, since BST could not identify any other TSP that was providing Expanded Local Calling Area Service to Louisiana customers without differences in the dialing pattern. Thus, without dialing parity, Staff and AT&T argued, the services offered by BST’s competitors are not “equivalent” to the service offered by BST, despite BST’s claims that they are. Staff also argued that BST’s position that differences in dialing pattern are of no significance was contradicted by BST’s own assertion that dialing pattern is significant with respect to 1+Presubscription issues, and that BST “ would be at distinct disadvantage”without the dialing parity in that case [Staff Post-Hearing Brief at 7-9; Barron, Tr. at 75-76]

Staff refuted BST’s reference to ACSI as a provider of equivalent services to BST’s Expanded Local Calling Area, since ACSI at most currently offers that service to some business customers only, and not to residential customers.

In response to BST's argument that PCS providers offer equivalent services, Staff cited FCC's Memorandum Opinion and Order in *In the Matter of Application by BellSouth Corporation, et al. pursuant to Section 271 of the Communications Act of 1934, as amended, To provide In-Region, InterLATA services in Louisiana*, CC Docket No. 97-231 Re. February 4, 1998, p.46, which states that an ILEC cannot show that PCS providers offer competitive services unless the carrier can demonstrate that the PCS provider "offers service that both satisfies the statutory definition of "telephone exchange service" in section 3(47)(A) and competes with the telephone exchange service offered by the applicant in the relevant state". The Staff also cited the FCC's statement in that Order that the FCC "recently concluded that PCS providers appear to be positioning their service offerings to become competitive with wireline service, but they are still in the process of making the transition 'from a complementary telecommunications service to a competitive equivalent to wireline services". *Id.* at para. 73. This standard established in the FCC Order, Staff argued, does not support BST's argument that these services (or equivalent services) are offered by PCS providers.

Concerning the Local Option Calling Plans (i.e. Local WatSaver® and Local Tele-thrift), Staff pointed out that BST did not identify any company who provides this service and if provided, through what means, thus failing to provide the evidence that would enable the parties or the ALJ to ascertain the existence of competition, or the availability of equivalent competitive services.

Regarding Directory Assistance, both AT&T and Staff stated that BST could not identify any carrier that is currently offering that service. They challenged BST's suggestion that the Internet is a competitive alternative for Directory Assistance, stating that BST's assumption that every household or single line business has Internet access available was not based on fact. Staff added that the Commission's intent to classify Directory Assistance as a Basic service is evident from its inclusion of that service in the Commission's Universal Service provisions.

AT&T averred that BST's request to reclassify these Basic services as Non-Basic services is an attempt to circumvent the five-year price cap applicable to Basic services (contrasted with the one-year price cap for Non-Basic services). AT&T also stated that, even if BST had succeeded in showing that competition existed in the provisioning of these services, the

classification of services as Basic are independent of competition, as the definition of Basic Local Service has already been determined by the Commission and is set forth in Section 101(1) of the LPSC's Regulations. [AT&T Post-Hearing Brief at 2]. Thus, AT&T concluded, even a showing of competition would not justify reclassifying Basic services as Non-Basic services.

Staff and AT&T therefore concluded that BST's proposed reclassification should be denied, since BST had not met its burden of proof under Section 701(F)(4) of the Commission's Commission's Regulations.

FINDINGS OF FACT

1. The Louisiana Public Service Commission promulgated Regulations for Competition in the Local Telecommunications Market ("the Regulations") on March 15, 1996 and subsequently twice amended those rules.
2. Telecommunication services under section 701 of the Regulations for Competition in the Local Telecommunications Market, the Price Cap Plan, are provided in one of three categories, i.e. Basic services, Interconnection services, or Non-Basic services.
3. Basic services are defined as those services required to provide basic local service, including each of the items comprising the definition of Universal Service as specified in Commission General Order dated May 22, 1995, to residential and single line business customers. §701(C)(2)(a). Basic services are price-capped for five years from the effective date of the Price Plan. §701(G)(1).
4. Universal Service, as defined by the Commission's General Order dated May 22, 1995 includes the following: Residential and single-line business access to the local exchange network, including usage and measured usage within the local service area; touch tone capability; white page directory listing (residential and business); access to directory assistance (local); directory distribution (publication and distribution of at least one annual local directory); access to 911 service (where established by La. R.S. 45:791 et seq.); affordable in connection (for service initiation); access to long distance carriers and operator services; access to the telephone relay system. Access to customer support services, including billing; access to a calling plan for a local service area sufficiently large to encompass a user's community of interest (but no greater than 40 miles). §501(A)
5. In its March 15, 1997 General Order, the Commission found that it was in the public interest to make available Universal Service to all end users at affordable rates. §501 (B). The Commission ordered that all services and functions listed as part of the Universal Service definition shall be required of a CLEC. §501 (C).
6. §601 of the Competition Regulations designates ILECs as Essential Telecommunications Carriers (ETCs). ETCs are obligated to provide basic local service to all customers upon request for such service within the ILEC's historically designated service areas until relieved of this obligation by the Commission. A CLEC providing basic local services in an ILEC's service area does not relieve the ILEC of its ETC obligations (except as otherwise provided)
7. Interconnection services are those services that allow other telecommunications service providers to connect to an ILEC's network to originate and terminate calls.

§701(C)(2)(b).

8. Non-Basic services are those services which are not included in either the Basic or Interconnection Baskets. §701(C)(2)(c). Non-Basic services are not price-capped for 5 years. The prices of Non-Basic services are rate deregulated, subject only to the restriction that the rate for an individual Non-Basic service shall not increase by more than 20% in any 12 month period. Non-Basic services shall not benefit from cross subsidy or revenue support from Basic services.
9. Section 701(F)(3) of the Regulations require the filing of an annual Service Category Classification Report for carriers governed by the Price Cap Plan of the Regulations. The Report shall identify all new services introduced during the 12 month period through May 31 of that year and shall provided the basis for the proposed market classification. The Report shall include any proposals for reclassifying any services, demonstrate the basis for the proposal and meet the requirements for reclassification as specified in the Plan.
10. Section 701 (F)(4) of the Competition Regulation provides the The ILEC retains the burden of proof for all classifications and reclassifications of telecommunications services it proposes.
11. On July 1, 1997 BellSouth Telecommunications, Inc., filed its Service Category Classification Report for the period June 1, 1996 to May 31, 1997.
12. BellSouth's Classification Report proposed the elimination of three services, Party Line Service, Public Telephone Service, and Semi-Public Telephone Service.
13. BellSouth's Classification Report proposed the addition of the following services: SmartLine® for Public Telephone Access (as an Interconnection Service), and as Non-Basic, the following: Data Reach*, Multipoint Video Conference, Complete Choice, Area Plus®, Area Plus® with Complete Choice, Business MTS, PATHLINK*, MegaLink® Plus, Courtesy Choice*, Custom Network Service Arrangement III.
14. No Party objected to the elimination of Party Line Service, Public Telephone Service, or Semi-Public Telephone Service.
15. No objections were raised to the institution of the following services: SmartLine® for Public Telephone Access, Data Reach*, Multipoint Video Conference, Business MTS, PATHLINK*, Megalink® Plus, Courtesy Choice, Custom Network Service Arrangement III.
16. With respect to Complete Choice, Area Plus®, and Area Plus® with Complete Choice, concerns were raised by Staff and AT&T regarding the continuing availability of the Basic services and the possibility of cross subsidization.
17. BellSouth's testimony at hearing was that these Basic services, which will be included in the packages Complete Choice, Area Plus®, and Area Plus® with Complete Choice, will continue to be available to end users as stand alone services at the current capped rates. (Tr at 13, 105)
18. The testimony filed by BellSouth after the hearing stated that there is no subsidy flow from the Basic service components to the Non-Basic service components contained in the three service under discussion, Complete Choice, Area Plus® and Area Plus® with Complete Choice. (Thompson at 5)
19. After receiving Ms. Thompson's testimony, no party filed rebuttal testimony, and no party requested a further hearing in this matter.

20. There has been no evidence to contradict or question BST's assertions that the underlying Basic services remain available to customers on a stand-alone basis at capped rates and that Basic Services are not subsidizing Non-Basic services.
21. BellSouth's Classification Report proposed the reclassification of the following existing Basic services as Non-Basic services: Expanded Local Calling Area, Expanded Local WatSaver®, Local Tele-Thrift, Local Directory Assistance.
22. BST's position is that these services are currently offered on a competitive basis.
23. BST argued that these services are competitive because, according to BST, equivalent services are currently available from IXCs and long distance resellers, and therefore there is no need for price protection.
24. BST concluded that because, according to BST, these services are competitive, they are no longer Basic services.
25. Staff and AT&T are opposed to the reclassification of the Basic services listed above as Non-Basic services.
26. Regarding the availability of these four Basic services on a competitive basis, the position of Staff and AT&T is that BST still largely maintains a monopoly and that these services are not offered on a competitive basis to all end users.
27. The Regulations require that an ILEC requesting reclassification must demonstrate the basis for the proposed reclassification; they do not specify the requirements that a regulated ILEC must meet in order to demonstrate the appropriateness of its proposed reclassification.
28. The Regulations do not provide that Basic services shall be reclassified as Non-Basic services if those Basic services are determined by the Commission to be available on a competitive basis.
29. §701(J) provides that the Commission shall assess the effect of competition on the services provided by an ILEC, on the appropriateness of the classification and on the ILEC, through the Monitoring of Competition.
30. With respect to Expanded Local Calling Area, an end user who wishes to make a call using an IXC or a reseller is required at a minimum to dial extra numbers for an access code, that he would not have to dial using BellSouth Telecommunications. (Tr at 36-37)
31. In the area of InterLATA relief, BST's witness Mr. Baron conceded that it would be a "distinct disadvantage" to not have dialing parity with regard to one plus presubscription, that it would not be willing to allow one plus presubscription to all competing carriers with inside the lata prior to BST obtaining InterLATA authority.
32. Dialing parity is a significant factor in determining equivalence of services.
33. ACSI, suggested by BST as an alternative provider of Extended Local Calling Area, currently only provides this service to some business customers. It does not provide this service to residential customers.
34. BST argued that PCS providers are possible alternative providers of Extended Local Calling Area. (Tr at 93)
35. The FCC found *In the Matter of application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region Inter*

LATA Services in Louisiana, FCC Docket No. 97-231 Re. February 4, 1998, p. 46, that PCS providers do not yet offer competitive services, they are still “in the process of making the transition from a complementary telecommunications service to a competitive equivalent to wireline services.” Id.

36. Expanded Local Calling Area is not offered to all end users within BST’s service territory on a competitive basis at this time in Louisiana.No evidence was presented that this service is available to all business and residential customers from any provider other than BST.
37. Basic Services are defined to include Universal Service. §701(C)(2)(a). Universal Service includes access to Local Directory Assistance. §501(A).
38. As all households and single-line businesses do not have access to the Internet, the Internet is not an alternative source of Local Directory Assistance to all residential and single-line business customers in BST’s service territory.
39. Local Directory Assistance offered by IXC’s lacks dialing parity with BST’s Local Directory Assistance.
40. Local Directory Assistance is not currently available on a competitive basis to all end users in Louisiana in BST’s service territory.
41. Local Calling Option Plans and Local Tele-thrift are among the “Basic Local Services in Louisiana” as itemized in Appendix A of the Regulations.
42. Expanded Local WatSaver® and Local Tele-Thrift are the names of services offered by BST that offer Expanded Local Calling Option Plan services. (Tr at 77)
43. Concerning the Local Tele-Thrift and Expanded Local WatSaver®, (“the local option calling plans”) BST could not identify any competitor who was providing these two services.
44. As a customer must subscribe to Expanded Local WatSaver® and Local Tele-thrift in order to be provided that service, the number of subscribers to these services can generally be ascertained by BST. (Tr at 77)
45. In response to Staff’s question whether the number of subscribers to Expanded Local WatSaver® has decreased due to the alleged availability of that service from other providers, Mr. Baron stated that BST did not have the relevant numbers for comparison. (Tr at 79-80)
46. Expanded Local WatSaver® and Local Tele-thrift are not currently available to all residential and single-line business customers on a competitive basis.

LEGAL ANALYSIS

A. Applicable Law:

The rates, terms and conditions of services offered by BST, (“an ILEC with more than 100,000 access lines statewide”), are regulated by the Commission pursuant to the terms of the Price Cap Plan, contained at Section 701(G) of the Commission’s Competition Regulations; the

terms of the Price Cap Plan remain in effect for a period of six (6) years unless earlier terminated by the Commission. §702(A)(1). Commission shall continue to regulate the rates, terms and conditions of all telecommunications services provisioned in the State by BST. §701(A)(3).

Under the Price Cap Plan, the telecommunications services offered by an ILEC fall into one of three categories: Basic Services, Interconnection Services and Non-Basic Services, defined in §701(C)(2) as follows:

- a. Basic services - “are those services required to provide basic local service to residential and single line business customers, which include, among others, each of the items comprising the definition of Universal Service as specified in Commission General Order, dated May 22, 1995. Initially, Basic Services shall include the services itemized on Appendix “A” attached hereto and made part hereof.
- b. Interconnection Services - are those services that allow other telecommunications services providers to interconnect to an ILEC’s network to originate or terminate telecommunications services. Initially, Interconnection Services shall include the services itemized on Appendix “B” attached hereto and made part hereof.
- c. Non-Basic Services - are all other services which are not classified as either Basic or Interconnection Services. Initially, Non-Basic Services shall include the services not itemized on either Appendix “A” or “B” attached hereto.

Also pertinent to BST’s SCC report at issue in this proceeding is 701(F), which establishes the procedures for an ILEC to submit for Commission approval new services and reclassification of Services under Price Plan. 701(F)(3), (4) and (5) provide:

3. Each July 1, the ILEC shall file a “Service Category Classification Report” with the Commission, which shall address the classification of new services and the reclassification of existing services. The Report shall identify all new services introduced during the 12-month period through May 31 of that year and provide the basis for the proposed market classification. The Report shall include any proposals for reclassifying any services, demonstrate the basis for the proposal and meet the requirements for reclassification as specified in the Plan.
4. The ILEC retains the burden of proof for all classifications and reclassification of telecommunications services it proposes.
5. The Commission retains the right to approve, suspend or reject any proposal to introduce a new service, classify a new service or reclassify an existing service.

§701(G) provides the applicable periods during which the prices are capped for each service category: 5 years for Basic services, 3 years for Interconnection services; and for Non-Basic services, the prices cannot be raised above the 20% ceiling within a 12-month period. §701(H)

provides that an ILEC may not offer services below cost.

G. Pricing Rules under Price Plan

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9. The above price controls and price caps do not apply rates and charges for services included in the Non-Basic Services category. Services so classified shall be rate deregulated, subject only to the price floor restrictions set forth in subsection H below, and the restriction that the rate for an individual service classified as Non-Basic Services shall not increase by more than twenty percent (20%) in any twelve-month period. Non-Basic Services shall not benefit from cross subsidy or revenue support from Basic Services.

§501 defines and enumerates services deemed to be part of Universal Service, including Access to directory assistance (local); §501(B) states the Commission finding that “it is in the public interest to make available universal service to all end users at affordable rates”. §701(J) provides that the Commission shall monitor the development of competition in the local telecommunications market in Louisiana subsequent to the effective date of the Price Plan as to any ILEC taking into consideration information regarding changes in the marketplace, the impact of competition on the ILEC, the competitive status of services to determine the degree of competition in their provisioning, etc. The information will be used by the Commission to assess, among other things, the impact of marketplace changes, the continued viability of the Price Plan, market impact of competition on ILECs, appropriateness of service categories, and other issues arising from the entry of new providers of telecommunications services in the local market.

B. Application:

BST’s SCC report is filed pursuant to §701(F)(3), and any proposed reclassification contained in its report “shall demonstrate the basis for the proposal and meet the requirements for reclassification as specified in the Plan”. Also, under §701(F)(4), BST bears the burden of proof for all proposed classifications and reclassifications. The Regulations do not specify competitive provisioning of services as a basis for reclassification. In fact, AT&T took the position that “the classification of a service as Basic or Non-Basic is not dependent on competition. The definition of Basic Local Service has already been determined by the Commission and is set forth in Section 101(1) of the LPSC’s Regulations.” [AT&T Post-Hearing Brief at 2] The Plan does not pin point what requirements must be met for reclassification, though it provides that an ILEC must “meet the requirements for reclassification as specified in the Plan”, and that the ILEC “bears the burden

of proof of all proposed classifications and reclassifications”. Since BST is asserting the competitive provisioning of the four Basic services as the basis for the proposed reclassification as Non-Basic services, it should demonstrate that: (a) the competitive provisioning of Basic services can serve as a basis for reclassification by the ILEC in the absence of any modification to the Plan by the Commission; and (b) the four services BST seeks to reclassify are currently being offered on a competitive basis to all end users.

An analysis of §701 and the other provisions of the Regulations indicates the Commission’s intent that the Commission, and not an ILEC, determine (among other things) whether Basic services are offered on a competitive basis, and the effect of such competition on the appropriateness of service categories. Even §701(J), which provides that the Commission shall monitor the effect of competition on the terms of the Price Plan, does not provide that a Commission finding of competitive provisioning of some Basic Services shall therefore result in a reclassification of Basic Services into Non-Basic services. Thus BST’s position that an ILEC’s assessment of competition can serve as a ground of reclassification, requires even further extrapolation.

However, as to the impact of competition on the service categories and other aspects of the Plan, there are several provisions in the Regulations suggesting that any change to the Price Cap Plan is to be effected by Commission action: First, the terms of the Price Plan are in effect for a term of six years from April 1, 1997, under §701(A)(1), and the Commission continues to regulate BST under the Price Plan, under §701(A)(3). Furthermore, under §701(J), the Commission has the continuing authority to monitor the development of competition in the local telecommunications market by requesting information from the ILEC regarding the impact of competition on ILEC, the provisioning of services on a competitive basis, etc.; and based on the information furnished by the ILEC, assess, among other things, **the reasonableness of prices, and the appropriateness of service category**. These provisions suggest that the terms of the Price Plan are to be amended by the Commission, and not the ILEC, upon a review of the impact of competition on all relevant aspects of the Price Plan, and on the provisioning of particular

services offered by BST.⁴

In addition, §501(B) states the Commission's finding regarding Universal Service that "it is in the public interest to make available universal service to all end users at affordable rates"; and the enumeration of services comprising Universal Service includes Access Directory Assistance (local). §501(A)(4)⁵. Since Universal Service is included in Basic services under §701(C)(2)(a), BST's request to reclassify Local Directory Assistance is contrary to the provisions of §501(A)(4), §510(B) and §701(C)(2)(a). Furthermore, under §601, BST is the Essential Telecommunications Carrier (ETC), which is "obligated to provide basic local service to all customers upon request for such service within the ILEC's historically designated service area until relieved of this obligation by the Commission". "Basic local service" is part of Basic services under §701(C)(2)(a).

These provisions are a clear indication of the Commission's concern over the availability of Universal Service and basic local services to all end users. It is further significant that this Commission defined the Basic Service category to include both Universal Service and basic local services, thus subjecting them to the five-year price cap. In view of the interconnection between these provisions, and the Commission's express concern about the availability of these services to all end users at prices capped for five years, a request to reclassify Basic services as Non-Basic services must be scrutinized closely by the Commission.

Assuming that an ILEC can propose reclassification of services based on its own assessment of competitive provisioning of services without prior Commission findings, the second issue is whether BST has carried its burden of proving that the services sought to be reclassified

⁴In this context, it should be noted that this Commission's finding in U-22252 that BST has satisfied the 14-point checklist in §271 of the Telecommunications Act of 1996 only concerned BST's opening up access to the local market for entry by competitors, (which finding was rejected by the FCC). That Order assessed the accessibility of the local market, and not the actual availability of various services on a competitive basis. The Commission, therefore, did not make any findings concerning the latter issue. In this proceeding, the provisioning of specific services offered by BST on a competitive basis is the reason asserted by BST for reclassification of the four Basic services in question. Therefore, Order No. U-22252 does not provide the finding relevant to this proceeding.

⁵Universal Service also includes "Access to a calling plan for a local service area sufficiently large to encompass a user's community of interest (but no greater than 40 miles)" (§501(A)(11)) which is analogous to the Expanded Local Calling Area, another Basic service that BST seeks to reclassify.

are available on a competitive basis. BST's reason for the proposed reclassification is the alleged availability of the four Basic services on a competitive basis.

BST has not introduced any testimony or other evidence to show with any degree of specificity the competitive provisioning of the four services it seeks to reclassify. Mr. Baron, BST's witness, was asked by AT&T and Staff to identify the other sources of the four services, was asked about BST's claims that "equivalent services" are offered by other providers, and about the definition of Basic Categories. The evidence on record, as shall be explained in more detail below, did not establish BST's asserted basis for the proposed reclassifications.

a. Local Option Calling Plans (The Expanded Local WatSaver® and Local Tele-thrift):

Regarding Local Option Calling Plans (i.e. Expanded Local WatSaver® and Local Tele-Thrift), Mr. Baron testified that he is not aware of any particular service from any particular competitor, though such information might be available to the Commission through tariffs filed by competitors (Tr at 99); that he could not identify the alternative services or providers at the hearing, though the Staff might be able to. (Id.). However, He conceded that the burden of proof is on BST, not the Staff, to justify the proposed reclassification. (Id.) Concerning the Local Tele-Thrift and Expanded Local WatSaver®, (the local option calling plans), BST could not identify any competitor who was providing these two services. Though BST alleges competitive provisioning of this service, BST could not substantiate its claim through any evidence, such as the decrease in the number of subscribers to the Local WatSaver® and Local Tele-thrift services due to competition. (Tr at 79-80).⁶

Local Calling Option Plans and Local Tele-thrift are among the "Basic Local Services in Louisiana" as itemized in Appendix A of the Regulations. A reclassification of basic local services as Non-Basic services should be approached with caution, given the Commission's express intent of making these services available to all end users, and at prices capped for five years. BST has

⁶Since these two services are not automatically provided to every customer, and a customer needs to subscribe to them in order to receive them, the number of subscribers to these services at a given point can be computed. The decrease in the number of subscribers might be one possible way for BST to substantiate its claim of competitive provisioning of these two services.

not introduced any evidence to substantiate its claims of competitive provisioning of these services, which is asserted to be the basis for reclassification. Based on the evidence on record, the Commission concludes that BST has not carried its burden of proof of justifying the proposed reclassification.

b. Local Directory Assistance:

Concerning Local Directory Assistance, Mr. Baron identified IXC's and the Internet as alternative sources of that service. (Tr at 80). He conceded that there is no dialing parity in the provisioning of this service since a customer must dial extra numbers when using an IXC which are not necessary if the customer is using BST. (Tr at 81). He opined that the local directory service offered by IXC's are equivalent to that provided by BST despite this lack of dialing parity. He also testified that BST proposes to reclassify its Local Directory Assistance so that it can adjust the price of that service *upward* to reflect the competitors' prices. (Tr at 83-85).

It is not disputed by the parties that there is no dialing parity or that all residential and single-line business customers do not have access to the Internet. Dialing parity is a significant factor in determining the equivalence of services, as BST's own witness admitted in the context of InterLATA relief. Finally, BST's argument that the alleged competition should allow *upward adjustment of prices*, especially of a component of Universal Service, is contrary to the expectations of the effect of competition and entirely ignores the express intent of the Commission to make Universal Service available to all end users at affordable rates. Though the requirements for reclassification are not clearly specified, the various provisions of the Regulations clearly show that the Commission did not intend competition to have the effect of *increasing* the price of Basic Services, which are capped for five years.

Furthermore, the Commission has made its finding that it is in the public interest to make Universal Service available to all end users at affordable rates. §501(B). The Commission has also made Universal Service, which includes Local Directory Assistance (§501 (A)) part of Basic Services, thus ensuring that Universal Service will be available at rates price-capped for five years. Thus, the proposed reclassification of access to Local Directory Assistance would also violate §701(C)(2)(a) and §501(A).

Based on the evidence, and for the reasons given above, the Commission finds that BST has not carried its burden of proof of justifying the reclassification of Local Directory Assistance.

c. Expanded Local Calling Area:

Regarding Expanded Local Calling Area, a customer who wishes to make a call using an IXC or a reseller is required at a minimum to dial extra numbers for an access code, that he would not have to dial using BellSouth Telecommunications. (Tr at 36-37). Thus, it is not disputed by the parties that there is no dialing parity in the provisioning of Expanded Local Calling Area. Though BST argued that dialing parity is not required to determine the equivalence of services, Mr. Baron conceded that, when asked about InterLATA relief, the lack of dialing parity would be “a distinct disadvantage” to BST. (Tr at 75). Further, though BST could not identify any provider of Extended Local Calling Area, BST made references to ACSI as a possible alternative provider. However, Staff stated that currently ACSI is only providing that service to some business customers, and not to residential customers. BST’s claim that PCS providers are alternative providers of this service is contrary to the FCC’s finding in *In the Matter of application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region Inter LATA Services in Louisiana*, CC Docket No. 97-231 Re. February 4, 1998, p. 46, that PCS providers do not yet offer competitive services, they are still “in the process of making the transition from a complementary telecommunications service to a competitive equivalent to wireline services.” Id.

BST has not substantiated its claim of competitive provisioning of Expanded Local Calling Area: it has not identified any alternative providers; ACSI currently only provides this service to some business customers; its argument that PCS providers offer equivalent services is contrary to the FCC’s ruling as explained above. BST concedes that IXCs’ provisioning of this service lacks dialing parity with BST’s service. Dialing parity is a significant factor in determining equivalence of services. The Commission finds that Expanded Local Calling Area is not offered to all end users within BST’s service territory on a competitive basis at this time in Louisiana. The Commission concludes that BST has not carried its burden of proof of justifying the proposed reclassification of Expanded Local Calling Area as a Non-Basic service.

On motion of Commissioner Owen, seconded by Commissioner Sittig, and unanimously adopted, the Commission voted to accept the ALJ recommendation, which adopts the Staff recommendation, which is as follows: 1) That BellSouth Telecommunications, Inc. be authorized to cease providing the following services: Party Line Service, Public Telephone Service, and Semi-Public Telephone Service; 2) That BellSouth Telecommunications, Inc. shall continue to offer all Basic Service components of the new packaged service to end users as stand alone Basic Services at the currently capped rates under Price Cap Plan; 3) That no Non-Basic Services shall benefit from any cross-subsidy or revenue support from any Basic Service; 4) That BellSouth Telecommunications, Inc. is authorized to offer: SmartLine® for Public Telephone Access as an Interconnection Service and the following services as Non-Basic services: Data Reach*, Multipoint Video Conference, Complete Choice, Area Plus®, Area Plus® with Complete Choice, Business MTS, PATHLINK*; MegaLink® Plus, Courtesy Choice*; and Custom Network Service Arrangement III; 5) That BellSouth Telecommunication, Inc.'s request to reclassify the following four existing Basic services as Non-Basic services be denied: Expanded Local Calling Area, Expanded Local WatSaver®, Local Tele-Thrift, and Local Directory Assistance.

IT IS THEREFORE ORDERED :

1. That BellSouth Telecommunications, Inc. is authorized to cease providing the following services:

Party Line Service,
Public Telephone Service,
Semi-Public Telephone Service.
2. That BellSouth Telecommunications, Inc. shall continue to offer all Basic Service components of the new packaged service to end users as stand alone Basic Services at the currently capped rates under Price Cap Plan.
3. That no Non-Basic Services shall benefit from any cross-subsidy or revenue support from any Basic Service.
4. That BellSouth Telecommunications, Inc. is authorized to offer:
SmartLine® for Public Telephone Access as an Interconnection Service;

and the following services as Non-Basic services:

Data Reach*
Multipoint Video Conference;
Complete Choice;
Area Plus®;

Area Plus® with Complete Choice;
Business MTS;
PATHLINK*;
MegaLink® Plus;
Courtesy Choice*;
Custom Network Service Arrangement III.

5. That BellSouth Telecommunication, Inc.'s request to reclassify the following four existing Basic services as Non-Basic services is denied:

Expanded Local Calling Area;
Expanded Local WatSaver®;
Local Tele-Thrift;
Local Directory Assistance.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
June 9, 1998

/S/ DON OWEN
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DISTRICT V

/S/ IRMA MUSE DIXON
IRMA MUSE DIXON, VICE-CHAIRMAN
DISTRICT III

/S/ C. DALE SITTIG
C. DALE SITTIG, COMMISSIONER
DISTRICT IV

/S/ JAMES M. FIELD
JAMES M. FIELD, COMMISSIONER
DISTRICT II

/S/ LAWRENCE C. ST. BLANC
SECRETARY

/S/ JACK "JAY" A. BLOSSMAN, JR.
JACK "JAY" A. BLOSSMAN, JR., COMMISSIONER
DISTRICT I

Service List
Docket No. U-22614

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