IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T MISSISSIPPI, **PLAINTIFF-APPELLANT**

v. **NO. 2009-UR-00071**

MISSISSIPPI PUBLIC SERVICE COMMISSION, **DEFENDANT-APPELLEE**

ON APPEAL FROM THE MISSISSIPPI PUBLIC SERVICE COMMISSION

REPLY BRIEF OF APPELLANT BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T MISSISSIPPI

ORAL ARGUMENT REQUESTED

John C. Henegan, MB No. [redacted]
LeAnn W. Nealey, MB No. [redacted]
Butler, Snow, O'Mara,
Stevens & Cannada, PLLC
210 East Capitol Street, 17th Floor
Jackson, Mississippi 39201
601.948.5711

Thomas B. Alexander, MB No. [redacted]
General Counsel - Mississippi
BellSouth Telecommunications, Inc.
d/b/a AT&T Mississippi
Suite 790, Landmark Center
175 E. Capitol Street
Jackson, Mississippi 32901
601.961.1700

James G. Harralson, PHV
General Attorney & Associate
General Counsel
BellSouth Telecommunications, Inc.
d/b/a AT&T Southeast
Suite 4329, 675 W. Peachtree Street NW
Atlanta, Georgia 30375
404.927.2890

ATTORNEYS FOR BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T MISSISSIPPI

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ORAL ARGUMENT REQUESTED

Pursuant to Miss. R. App. P. 34(b), Appellant AT&T Mississippi requests oral argument. This matter involves an issue of first impression regarding the interpretation of Miss. Code § 77-3-35(4) (2009),[1] a statute adopted in 2006 by the State Legislature, which prescribes the circumstances in which a telecommunications company can ask for an inflation-based rate increase for the retail rates of its single line flat rate voice telephone service. Other jurisdictions have adopted similar but not identical statutes or rules authorizing such inflation-based retail rate increases,[2] and the Mississippi Public Service Commission's Order, dated December 31, 2008, rejecting AT&T Mississippi's inflation-based retail rate increase, is the only such negative decision of which AT&T Mississippi is aware.[3] An authoritative decision interpreting Section 77-3-35(4) should provide guidance for the Commission and the public utilities governed by the statute and reduce or eliminate future appeals. AT&T Mississippi respectfully suggests that oral argument will benefit the Court in deciding this appeal.

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[1] Since the filing of AT&T Mississippi's Primary Brief, the 2009 Regular Session of the Legislature has ended and therefore AT&T Mississippi cites to the 2009 statute, which remains the same, in relevant part.

[2] *See* I R. 86-88.

[3] *See* Composite Ex. 3 to Nov. 7, 2008 Public Hearing before the Mississippi Public Service Commission (CONFIDENTIAL - UNDER SEAL (opened for purposes of briefing only pursuant to Order of the Supreme Court of Mississippi, Cause No. 2009-UR-00071-SCT (February 4, 2009)), BellSouth Telecommunications, Inc. d/b/a AT&T Mississippi's Response to Mississippi Public Utilities Staff's First Set of Data Requests - Resp. to Data Req. No. 10; BellSouth Telecommunications, Inc. d/b/a AT&T Mississippi's Response to Mississippi Public Utilities Staff's Second Set of Data Requests - Resp. to Data Req. No. 4.

INTRODUCTION

Through its 2006 amendment to Miss. Code § 77-3-35 (2009), Miss. Laws ch. 313 (2006), the Legislature expressly authorized certain telephone companies to obtain inflation-based rate increases to the retail rates for their single-line flat rate voice communication service. The Legislature specifically prescribed the inflation index to be used and how frequently such telephone companies may seek such an increase, leaving it to the discretion of the telephone company as to when, if at all, it will seek such an increase. *See* Miss. Code § 77-3-35(4) (2009). No one disputes that the proposed inflation-based increase at issue here complies with the limit, or cap, imposed by the index prescribed by the Legislature in Section 77-3-35(4).

The Commission ignored the fact that AT&T Mississippi's filing fully complied with the statute. The Commission denied the requested statutory increase, reading the statute to permit an increase *only if* the Commission finds it to be "just and reasonable" -- and only then is the inflation-based increase to be used to cap the increase permitted. R.E. 6, I R. 102; Appellee's Brief at 4, 7. In its Order, the Commission erroneously held that the proposed increase was not "just and reasonable" because AT&T Mississippi "provided no cost of service study, cost justification data or any other type of study or data" to support the proposed increase, citing a 1989 traditional rate of return case[4] decided under a different statute that used an entirely different ratemaking model to support its ruling. R.E. 12, I R. 108. In its brief, the Commission *now* says its order was not re-imposing cost-based regulation on AT&T after a decade's departure from such regulation. Appellee's Brief at 3, 5, 6, 11, and 12. Rather, the Commission says that AT&T's evidence was insufficient to meet some threshold not disclosed in the Commission's Order, its appeal brief, or what the Commission repeatedly refers to as the plain language of Miss. Code § 77-3-35(4) (2009).

[4] *See State ex rel. Pittman v. Miss. Pub. Serv. Comm'n,* 538 So. 2d 387 (Miss. 1989).

Regardless of whether the Commission is now announcing its decision to use a cost-based rate of return standard or some other undisclosed standard, there can be no dispute that the Commission is reading Section 77-3-35(4) to require "two cap" rate regulation: one cap imposed by the Commission's ambiguous "just and reasonable" standard and a second cap imposed by the inflation index found in the statute. Such a reading, conflating two separate rate setting statutes, is arbitrary and capricious because it permits the Commission's judgment about "just and reasonable" retail rates to overcome or conflict with the express controlling legislative determination to use the inflation index for the retail rates at issue. If the Commission's judgment of what is "just and reasonable" exceeds the index found in the statute, then the Commission's use of the index to refuse the full increase confiscates the company's property (*see* AT&T Mississippi's Principal Brief at 22). If, as here, the Commission's judgment of what is "just and reasonable" is below the index, then the remedy provided by the statute is wholly nugatory, and the statute is rendered useless, a cipher.

Section 77-3-35(4) is not a "two cap" statute; it is a "one cap" statute. It is the Legislature's cap that governs. This statute plainly does not countenance the Commission's "two cap" rate regulation, and the Commission's arbitrary action in furtherance of its interpretation must be vacated. The Commission's arguments are addressed in detail below.

ARGUMENT AND AUTHORITIES

A. The Standard of Review in this Case is De Novo.

The Commission claims its decision is entitled to deference, but it fails to explain why or to cite any judicial precedent for its ipse dixit: The Commission's erroneous construction of Section 77-3-35(4)(a) is readily transparent.

The statute unambiguously requires the application of the statutorily mandated CPI-U Index to AT&T Mississippi's Notice for an inflation-based rate increase. This is a question of

law -- a situation ***excepted*** from Miss. Code § 77-3-67, the very statute upon which the Commission relies. *See* Appellee's Brief at 6.[5]

Because the Commission "has misapprehended a ***controlling legal principle***, no deference is due, and [appellate] review is de novo." *ABC Mfg. Corp. v. Doyle*, 749 So. 2d 43, 45 (Miss. 1999) (emphasis added). *See* AT&T Mississippi's Principal Brief at 9. Further, the legal question involves a finding of the State Legislature that is expressly set forth in Section 77-3-35(4), which the Commission concedes is clear or plain on its face. Thus, there is no reason to defer to the Commission's interpretation of the statute. *See Barbour v. State ex rel. Hood,* 974 So. 2d 232, 240 (Miss. 2008). The Court is charged under the State Constitution when construing the statute to ensure that the express intent of the Legislature is carried out.

B. The Commission Cites No Judicial Precedent, Law Or Any Other Basis That Supports Its Interpretation of Miss. Code § 77-3-35(4)(a) (2009).

The Commission argues that under Section 77-3-35(4)(a), the Legislature imposes a cap on how high the Commission may allow the retail rates of AT&T Mississippi at issue here to increase each year **if** the Commission **first** finds that such rate increase is "just and reasonable." Appellee's Brief at 1, 4, and 7. But nothing in Section 77-3-35(4)(a) delineates any such "just and reasonable" test or requires a finding that a proposed inflation-based rate request be in the "public interest", as the Commission claims. The reason is that the Legislature made those determinations when it incorporated the inflation-based rate cap in the statute as amended.

[5] The applicable section of Miss. Code 77-3-67 provides that on appeal of an order of the Commission, "[t]he order shall not be vacated or set aside either in whole or in part, *except for errors of law*, unless the court finds that the order of the commission is not supported by substantial evidence . . . ." Miss. Code Ann. § 77-3-67(4) (emphasis added).

1. The Commission's Construction and Administration of Section 77-3-35(4)(a) is Contrary to the Legislature's Statutorily Mandated Rate Formula and the Commission's Own Prior Constructions.

There is no statutory, judicial, or regulatory support for the Commission's interpretation of Section 77-3-35(4)(a). Instead, when read in the light of its legislative history, the expressly declared policy of the Legislature, and prior orders of the Commission, Section 77-3-35(4)(a) embodies a price-cap regulation method, similar to the method already being used by the Commission, for the sole remaining retail rate that the Commission has authority to regulate, and uses an inflation index to calculate the cap. *See* AT&T Mississippi's Principal Brief at 15-20.

As addressed in AT&T Mississippi's opening brief, the regulatory ratemaking regime has evolved considerably since 1989 due to advances in telecommunications technology and increased competition in the provision of telecommunications services by regulated and non-regulated business entities. AT&T Mississippi detailed this evolution, discussing the cases and prior statutes, the Mississippi Rate Stabilization Plan, the Price Regulation Evaluation Plan, and the legislative history of Section 77-3-35(4).

AT&T Mississippi summarized this development as follows:

> (i) **1956 to 1989**: **Cost-based regulation.** Telephone companies offering intra-state telephone service (like AT&T Mississippi and its predecessors), were subject to traditional "rate of return" regulation. The Commission considered the utility's cost based filing and any other evidence and calculated a revenue requirement for the utility; then the Commission set rates that were designed to produce the revenue requirement. AT&T Mississippi's Principal Brief at 10. The process was time-consuming and costly, and the public ultimately bore the burden of the regulatory expense.
>
> (ii) **1989 to 1995: Incentive formula type rate of return regulation - MRSP.** In 1989, the Legislature authorized the Commission to move from the traditional rate of return ratemaking model and to "consider and adopt a formula type rate of return evaluation rate", resulting in the approval of an incentive formula type rate of return regulation plan for South Central Bell (AT&T Mississippi's predecessor) known as the Mississippi Rate Stabilization Plan ("MRSP"). AT&T Mississippi's Principal Brief at 10-11. The MRSP essentially created a rate case calculation formula that was performed every six months under the rules of the plan, thus

saving litigation expense and providing for a more efficient implementation of rate adjustments. AT&T Mississippi's Principal Brief at 11.

(iii) **1995 to 2006: Price-capped method of regulation - PREP.** In 1995, the Commission completely departed from rate of return, or cost-based regulation. It replaced the MRSP with a price-capped method of regulation known as the Price Regulation Evaluation Plan ("PREP"), which regulated rates by imposing a pre-determined annual cap on existing rates rather than by calculating cost and an appropriate rate of return. Under this form of rate making ("price cap" or "rate cap" ratemaking), rates can only be adjusted annually up to the capped amount. This new, non-cost based regulation became effective January 1, 1996; it was in force for more than a decade. AT&T Mississippi's Principal Brief at 11-13.

(iv) **2007 to date: Section 77-3-35(4)(a) - The Legislature sets a rate cap formula for potential increases in the "retail rates" for single-line flat rate voice communication service. The rate cap formula basically uses the procedure previously followed under PREP, i.e. the use of a predetermined annual cap on rate increases.** The Legislature authorized certain telephone companies to obtain annual inflation-based rate increases not to exceed the CPI-U Index for the prior year for the retail rates of their single-line flat rate voice communication service, but they are not required to do so. AT&T Mississippi's Principal Brief at 13-15.

In discussing this evolution in the ratemaking process for telephone companies (as a result of competition and technological advances), AT&T Mississippi showed how the "rate of return" regulation used by the Commission in 1956 evolved to where, beginning in 1995, the Commission stopped regulating the rates of AT&T Mississippi based on cost. This culminated in the Legislature's 2006 enactment at issue here: a rate cap formula for potential increases in the "retail rates" for single-line flat rate voice communication service pursuant to Section 77-3-35(4)(a). *See* AT&T Mississippi's Principal Brief at 1-20. Though this historical analysis of prior statutes and legislative history plainly supports AT&T Mississippi's position that a price cap regulation method is applicable here, the Commission addressed none of the authorities, statutes or other precedents discussed by AT&T Mississippi.

Indeed, the only case cited by the Commission in support of its position, *State ex rel. Pittman v. Miss. Pub. Serv. Comm'n,* 538 So. 2d 387 (Miss. 1989), does not even apply to this case. *Pittman* involves rate of return regulation; was decided in 1989 (prior to the adoption of

MRSP and the evolution eventually eliminating cost-based regulation (*see* (i)-(iv) above); and has nothing to do with Section 77-3-35(4)(a). At bottom, the Commission completely ignores, fails to address, and thereby implicitly concedes the legal arguments made by AT&T Mississippi in support of its interpretation of Section 77-3-35(4)(a).

In its response brief, the Commission inexplicably fails to address the precedents, including its own orders, that AT&T Mississippi has presented to this Court. Rather, the Commission repeatedly mischaracterizes AT&T Mississippi's arguments, stating, for example, that it has argued that the Commission must "rubber stamp" its inflation-based rate increases, a phrase found nowhere in AT&T Mississippi's prior arguments, briefing, or its discovery responses. *See, e.g.,* Appellee's Brief at 8.

2. The Commission's Construction and Administration of Section 77-3-35(4)(a) is Unsupported by the Plain Language of the Statute.

Section 77-3-35(4)(a) provides in pertinent part:

> the commission is only authorized to regulate the rates, terms and conditions of switched access service and single-line flat rate voice communication service. . . . The retail rates for such single-line flat rate voice communication service. . . may only be increased during the calendar year by an amount that does not exceed the rates for such service on January 1 of the previous year, plus [inflation as measured by the CPI-U].

The Commission argues that the use of the term "may" rather than "shall" in Section 77-3-35(4)(a) gives the Commission discretionary authority to impose a "just and reasonable" standard in approving a rate increase. Commission's Brief at 9.

The Commission plainly ignores the operative term -- "only" -- that modifies "may" in the statute. Thus, the statute provides that "the commission is only authorized to regulate the rates, terms and conditions of" the two remaining services listed in the statute; and it "may **only**" authorize retail rate increases up to a certain limit, or cap, that the Legislature has expressly prescribed in the statute (the CPI-U Index for the prior year). Contrary to the Commission's

argument, "the plain meaning of the words 'may **only**' . . . unequivocally evinces the mandatory nature" of the clause at issue. *Klotz v. Xerox Corp.*, 519 F. Supp. 2d 430, 434 (S.D.N.Y. 2007) (emphasis added).

In total disregard of three of the more fundamental rules of statutory construction used by this Court, the Commission also asserts without any supporting case law that there is no distinction in Section 77-3-35(4)(a) between the use of the term "rates" in the first sentence and the phrase "retail rates" in the second sentence. The Commission then reasons that it can bootstrap a second cap on retail rates through the "just and reasonable" and "public interest" requirements of Miss. Code § 77-3-33. Commission's Brief at 7 & n. 1.

First, because the two sentences of Section 77-3-35(4)(a) address the same subject matter, they must be read *in pari materia. E.g., Yarbrough v. Camphor,* 645 So. 2d 867, 871 (Miss. 1994). Another "well known rule of statutory construction [is] that every word, sentence, phrase, or clause in a statute must be given a meaning." *Morgan v. State ex rel. Dist. Atty.*, 44 So. 2d 45, 49 (Miss. 1950); *see Gilmer v. State,* 955 So. 2d 829, 835 (Miss. 2007) (detailing its statutory analysis in light of its duty to "give[] effect to the plain meaning of each word and phrase in the statute"); *State v. Jackson,* 81 So. 1, 6 (Miss. 1919) "[T]he court should avoid a [statutory] construction which renders any provision meaningless or inoperative."). Finally, when two sentences encompass the same subject matter, one being general and the other specific, the latter will control. *See McCrory v. State,* 210 So. 2d 877, 877-78 (Miss. 1968). The Commission's argument fails to comprehend that Miss. Code Section 77-3-33 and Section 77-3-35(4)(a) are separate rate setting statutes. Nowhere in Miss. Code Section 77-3-35 (4)(a) are the words "just and reasonable" found. The reason is that the Legislature has already made the determination as to how retail rates for single-line flat rate voice communication service are to be

handled by using the existing Commission approved rate (in July 2006) and placing a cap on any future rate increases to the rate of inflation from the prior year.

The specific use of "retail rates" in the second sentence shows that the Legislature is addressing those services offered at "retail", that is, to consumers or business customers who make ultimate use of the service. *See* AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000). "Retail rates" are a subset of "rates" and do not include rates for services at "wholesale", that is services provided to other telecommunications carriers who then sell to consumers or businesses. There can be no credible dispute that the rates at issue here are retail rates. AT&T Mississippi's tariff on file with the Commission clearly defines their uses, and limits them to residence and business customers (i.e., ultimate users) respectively. I R. 1-16; (*see also* General Subscriber Services Tariff (available for review at http://cpr.bellsouth.com/pdf/ms/ms.htm (date last accessed April 14, 2009)) Section A3, Pages 1.1, 12, 13, 14, 15, 16, 17, 18.1, 19, 20, 21, 22, 23).

The Commission's reading completely ignores the specific use of "retail" rates in the second sentence, and, instead, imposes its own interpretation, unsupported by the Legislature's plain statutory language. In doing so, the Commission has erroneously conflated 77-3-33 and 77-3-35(4)(a), which impermissibly causes it to exceed the scope of its legislation-granted authority. *See Miss. Pub. Serv. Comm'n v. Miss. Power & Light Co.,* 593 So. 2d 997, 998 (Miss. 1991) ("[A] statutory agency has only legislation granted authority[;] there is no inherent authority."). The Commission's interpretation, in fact, is a direct violation of the constitutional separation of powers doctrine. The Commission's interpretation and application of Section 77-3-35(4)(a) impermissibly encroaches upon and usurps the Legislature's express constitutional authority to regulate the rates of public utilities and its express finding about the type of cap

based regulation to apply to the retail rates at issue here. *Compare* Miss. Const. art. 7, § 186 (1890), *and* Miss. Code § 77-3-35(4)(a) (2009).

3. AT&T Mississippi's Request For A Retail Rate Increase Here Exemplifies The Appropriate Use of Miss. Code § 77-3-35(4)(a).

AT&T Mississippi's request for a retail rate increase in May 2008 is a textbook example of how Section 77-3-35(4)(a) should operate. Under the statute, a telecommunications company has the flexibility and discretion to decide whether it wants to seek a retail rate increase in light of market and competition criteria. Thus, although the statute allows AT&T Mississippi to seek annual inflation adjustments, the Company has limited the times and categories of service for which it has sought a rate increase under Section 77-3-35(4)(a).

For example, AT&T Mississippi "elected not to seek a rate adjustment in 2007 based upon the rate of inflation for 2006" (I R. 90); and "elected to wait until May of 2008 to file a tariff seeking a rate adjustment based upon the percentage increase in inflation for 2007 instead of filing on January 1st as the law allows." *Id.* Even as to the 2008 adjustment, AT&T Mississippi asked for a rate increase in less than all of the eligible classes of service. *See* Appellee's Brief at 3. As explained by Ms. Stockdale,[6] AT&T Mississippi "did not increase the [$19.01] rate in rate groups 10 through 13 [for single-line flat rate residential service] because we believe . . . that rate group is close to the market rate." Tr. 28. In 2009, AT&T Mississippi has not asked for any increase.

Incredibly, because AT&T Mississippi has exercised its discretion - based on competition and the use of different technologies from other companies, including companies that are not subject to the regulation of the Commission - **not** to ask for annual across the board, inflation-based retail rate price increases, the Commission appears to fault and punish the Company for its

[6] Elizabeth Stockdale is employed by AT&T (Senior Product Marketing Manager) and testified as an expert witness for AT&T Mississippi at the November 7, 2008 hearing before the Commission.

actions. Does the Commission really intend to suggest that the Company must raise its retail rates across the board or not at all? The statute contains no such supporting language. Correctly interpreted and applied, Section 77-3-35(4)(a) provides an efficacious, highly cost-effective method for obtaining an inflation-based rate increase for the retail rates at issue here. This is wholly consistent with, and the logical result of, the Legislature's statutory changes in the regulatory rate-making process between 1956 and 2006 in the light of the technological advances and increased competition in the telecommunications industry with many of today's major players – wireless carriers and cable companies - having never been subject to the jurisdiction of the Commission.

C. The Hearing Evidence Shows AT&T Mississippi Furnished The Requisite Data To Support Its Requested Retail Rate Increase.

Before the Commission, AT&T Mississippi made a *prima facie* case that its tariff filing complied with Section 77-3-35(4)(a). In particular, the Company showed that (a) its retail rates then in effect had been previously approved by the Commission (Exs. 4 and 5 to Nov. 7, 2008 Public Hearing before the Mississippi Public Service Commission (CONFIDENTIAL - UNDER SEAL (opened for purposes of briefing only pursuant to Order of the Supreme Court of Mississippi, Cause No. 2009-UR-00071-SCT (February 4, 2009))[7]; Tr. 20-22, 26); (b) its retail rates were lawful (*id.*); (c) its retail rates were eligible for an inflation-based rate adjustment (I R. 83-85; Tr. 8-10) and (d) the proposed rate adjustment was within the CPI-U inflation index authorized by state law. I R. 85; Tr. 8-10.

Notably, the Mississippi Public Utilities Staff (MPUS) did not offer anything to rebut this evidence. Also noteworthy is that neither the Commission nor the MPUS disputes that the

[7] AT&T Mississippi's General Subscriber Services Tariff, which contains the rates, terms, and conditions for its single-line flat rate voice communication service, is available for review at http://cpr.bellsouth.com/pdf/ms/ms.htm (date last accessed April 14, 2009).

Company's requested increase fully complied with the inflation-based formula set out in the statute.

The MPUS acknowledged that "[t]his is primarily a legal question . . . ." Tr. at 64. The MPUS was correct. The Commission was obligated to apply Section 77-3-35(4)(a) **as written**. Yet the Commission denied AT&T Mississippi's requested increase based on an unauthorized requirement that the Company furnish a "cost of service study, cost justification data or . . . other type of study or data" to support the proposed rate increases -- **above and beyond** the proof required under the statute and furnished by AT&T Mississippi that the proposed retail rate increases did not exceed the statutory cap. *See* Appellee's Brief at 3, 5, 10-11; R.E. 12, I R. 108.

The Commission is simply incorrect in trying to impose a "just and reasonable" or "cost justification" standard to AT&T Mississippi's tariff filing seeking an inflation-based rate increase under Section 77-3-35(4)(a). In its December 31, 2008 Order, the Commission cited Miss. Code § 77-3-33 (just and reasonable) and Miss. Code § 77-3-39 (cost based) as its authority to impose these standards. Both of these statutes clearly apply to traditional regulated monopoly type utilities such as electric, gas, water and sewer companies which are not subject to competition like the Legislature expressly recognized exists in the telecommunications industry when it enacted Section 77-3-35.

The Commission ignores this key distinction. In its Order at page 5 (R.E. 7; R. 103) the Commission states that part of its "implied" duty under Section 77-3-35 is to "ensure that rates charged by public utilities are just and reasonable." The Commission cites Miss. Code § 77-3-33 as its authority. The primary problem with this reasoning is that Miss. Code. § 77-3-33 expressly applies to "rate of return" regulated utilities ("Rates prescribed by the commission shall be such as to yield a fair ***rate of return*** to the utility furnishing service....") Miss. Code § 77-3-33(1) (emphasis added). Likewise, when the Commission relies in its Order on Miss. Code § 77-3-39

as authority for it to impose a "reasonableness" or "cost based" standard (*see* R.E. 7; R. 103), the Commission again wrongly relies upon a statute that applies to "rate of return" regulated utilities ("the commission shall determine and fix by order such rate or rates as will yield a fair ***rate of return*** to the public utility for furnishing service....") Miss. Code § 77-3-39 (9) (emphasis added).). A "reasonableness" standard is nowhere to be found, and certainly is not "implied", in Section 77-3-35.

There is no legal support for what the Commission did in denying the proposed increase for the retail rates at issue. In adopting Section 77-3-35(4)(a), the Legislature completely eliminated rate regulation for all but two services,[8] while opting to continue ***inflation-based price cap regulation*** for the retail rates of "single-line flat rate voice communication service", which is at issue here. It is only the inflation-based cap that the Commission has the authority to impose, and it clearly misinterpreted and misapplied Section 77-3-35(4)(a), thereby impermissibly exceeding its statutory authority.

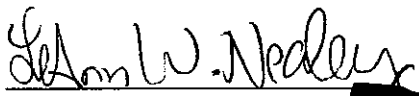
CONCLUSION

For the forgoing reasons, the Court should vacate the December 31, 2008 Order of the Commission with instructions that the Commission apply the statutorily mandated CPI-U formula found in Section 77-3-35(4)(a).

[8] The two services are: "single-line flat rate voice communication service", which is the only retail service remaining and the service at issue on this appeal; and "switched access service", which is a service provided to other telephone companies (i.e. a wholesale service), for which the rate is currently set to mirror the interstate rate for switched access service.

This, the 16th day of April, 2009.

BELLSOUTH TELECOMMUNICATIONS, INC.
D/B/A AT&T MISSISSIPPI



John C. Henegan, MB No. [redacted]
LeAnn W. Nealey, MB No. [redacted]
Butler, Snow, O'Mara,
Stevens & Cannada, PLLC

Thomas B. Alexander, MB No. 1332
General Counsel – Mississippi
BellSouth Telecommunications, Inc.
d/b/a AT&T Mississippi

James G. Harralson, PHV.
General Attorney & Associate
General Counsel
BellSouth Telecommunications, Inc.
d/b/a AT&T Southeast

CERTIFICATE OF SERVICE

I, LeAnn W. Nealey, an attorney of record for BellSouth Telecommunications, Inc. d/b/a AT&T Mississippi, do hereby certify that I have this day caused to be hand-delivered a copy of the foregoing Reply Brief to the following people:

Brian U. Ray
Executive Secretary
Mississippi Public Service Commission
501 North West Street
2nd Floor, Woolfolk Building
Jackson, Mississippi 39201

George M. Fleming
General Counsel
Mississippi Public Utilities Staff
501 North West Street
3rd Floor, Woolfolk Building
Jackson, Mississippi 39201

V. Lynn Carlisle
General Counsel
Mississippi Public Service Commission
501 North West Street
2nd Floor, Woolfolk Building

Jackson, Mississippi 39201

Chad J. Reynolds
Senior Attorney
Mississippi Public Utilities Staff
501 North West Street
3rd Floor, Woolfolk Building
Jackson, Mississippi 39201

Catherine P. Nicholas
Court Reporter
Mississippi Public Service Commission
2nd Floor, Woolfolk Building
Jackson, Mississippi 39201

This, the 16th day of April, 2009.

LeAnn W. Nealey

CERTIFICATE OF FILING

I, LeAnn W. Nealey, certify that I have had hand-delivered the original and three copies of the Reply Brief of Appellant BellSouth Telecommunications, Inc. d/b/a AT&T Mississippi on April 16, 2009, addressed to Ms. Betty W. Sephton, Clerk, Supreme Court of Mississippi, 450 High Street, Jackson, Mississippi 39201.

LeAnn W. Nealey

LEANN W. NEALEY

Jackson 3869729v.1