

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cost recovery and  
allocation issues for number  
pooling trials in Florida.

DOCKET NO. 001503-TP  
ORDER NO. PSC-03-1096-PAA-TP  
ISSUED: October 2, 2003

The following Commissioners participated in the disposition of  
this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING IN PART BELLSOUTH'S PETITION FOR COST RECOVERY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action discussed herein is preliminary in  
nature and will become final unless a person whose interests are  
substantially affected files a petition for a formal proceeding,  
pursuant to Rule 25-22.029, Florida Administrative Code.

TABLE OF CONTENTS

<u>SECTION</u> <u>NO</u>	<u>DESCRIPTION</u>	<u>PAGE</u> <u>NO</u>
I	BACKGROUND	2
II	JURISDICTION	9
III	COMPLIANCE WITH ORDER NO. PSC-02-0466-PAA-TP	132
IV	AMOUNT TO BE RECOVERED	13
V	HOW COST SHOULD BE RECOVERED	19
VI	NOTICE TO CUSTOMERS	21

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FPSC-COMMISSION CLERK

I. BACKGROUND

Thousands-block number pooling is the process by which telephone companies share a pool of telephone numbers that have the same central office code. Historically, telephone numbers have been assigned to service providers in blocks of 10,000 numbers. Thousands-block number pooling allows phone numbers to be allocated to service providers in blocks of 1,000, instead of the historical 10,000 number blocks, which conserves numbers and provides for more efficient number utilization.

By Federal Communications Commission (FCC) Order No. 99-249<sup>1</sup>, released September 15, 1999, the FCC granted the Florida Public Service Commission (FPSC or Commission) authority to conduct mandatory thousands-block number pooling trials in Florida. The Order also addressed number pooling cost recovery by stating:

We further require that the Florida Commission determine the method to recover the costs of the pooling trials. The Florida Commission must also determine how carrier-specific costs directly related to pooling administration should be recovered.

FCC 99-249 at ¶17. Since receiving authority to implement state number pooling trials, this Commission has taken a pro-active stance regarding number conservation and ordered implementation of the following number pooling trials:

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<sup>1</sup>Order, CC Docket No. 96-98, Order No. FCC 99-249, released September 15, 1999, In the Matter of the Florida Public Service Commission Petition to the Federal Communications Commission for Expedited Decision for Grant of Authority to Implement Number Conservation.

Metropolitan Statistical Area	Area Code	Implementation Date of Number Pooling	Incumbent Local Exchange Company
Ft. Lauderdale	954 and 754	January 22, 2001	BellSouth
West Palm Beach	561	February 5, 2001	BellSouth
Jacksonville	904	April 2, 2001	BellSouth and ALLTEL
Keys Region*	305	May 28, 2001	BellSouth
Daytona Beach	386 (used to be 904)	July 16, 2001	BellSouth
Ft. Pierce-Port St. Lucie	772 (used to be 561)	September 17, 2001	BellSouth and Indiantown
Tampa	813	January 14, 2002	Verizon
Sarasota-Bradenton	941 and 239	February 11, 2002	Verizon and Sprint

\* The Keys area is not a Metropolitan Statistical Area.

This Commission has taken an aggressive approach to number conservation policies, in particular number pooling, which is providing great benefits. NeuStar, Inc., the current number pooling administrator is now keeping a record as to how many 10,000 number blocks (NXXs) are saved due to number pooling. Of the total 301 NXXs (or 3,010,000 numbers) saved by number pooling in Florida to date, 248 NXXs (or 2,480,000 numbers) are from the state mandated pooling areas. Number pooling has also had a large impact on postponing area code (NPA) relief in a number of these areas. The following table shows the impact on areas where state number pooling has taken place.

Area Code	Number of NXXs (10,000 Number Blocks) Saved by Pooling	Estimated Exhaust Date of Area Code as of June 2, 2003	Number of Quarters that Exhaust Date has moved out
239	20	4 <sup>th</sup> Quarter 2017	0
305 (Keys)	6	3 <sup>rd</sup> Quarter 2005	7 Quarters
386	15	1 <sup>st</sup> Quarter 2025	17 Quarters
561	49	2 <sup>nd</sup> Quarter 2013	21 Quarters
772	36	4 <sup>th</sup> Quarter 2026	0
813	28	4 <sup>th</sup> Quarter 2014	25 Quarters
904	25	4 <sup>th</sup> Quarter 2018	30 Quarters
941	29	1 <sup>st</sup> Quarter 2018	27 Quarters
954/754	40	1 <sup>st</sup> Quarter 2019	0

In Order No. FCC 00-104<sup>2</sup>, released March 31, 2000, the FCC stated:

States implementing pooling must also ensure that they provide carriers with an adequate transition time to implement pooling in their switches and administrative systems. In addition, because our national cost recovery plan cannot become effective until national pooling implementation occurs, states conducting their own pooling trials must develop their own cost recovery scheme for the joint and carrier-specific costs of implementing and administering pooling in the NPA in question.

FCC 00-104 at ¶171. The Order further states:

Costs incurred by carriers to implement state-mandated thousands-block number pooling are intrastate costs and should be attributed solely to the state jurisdiction.

FCC 00-104 at ¶197.

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<sup>2</sup> Report and Order and Further Notice of Proposed Rule Making, CC Docket No. 99-200, Order No. FCC 00-104, released March 31, 2000, In the Matter of Numbering Resource Optimization.

By Order No. PSC-00-0543-PAA-TP, issued May 30, 2000, in Docket No. 981444-TP, this Commission found it appropriate to order the mandatory implementation of thousand-block number pooling for all Local Number Portability-capable carriers in the 954, 561, and 904 area codes. The Order was subsequently protested by a number of parties<sup>3</sup> (Joint Petitioners). Specifically, the Joint Petitioners protested and sought a hearing regarding only the portions of the PAA order that related to: (1) mandatory implementation of thousand-block pooling; (2) thousand-block pooling software release and implementation dates; and (3) designation of a pooling administrator. The Joint Petitioners filed an Offer of Settlement with this Commission on April 11, 2000 which included verbiage addressing number pooling cost recovery which stated:

In view of the potential ultimate impact of number pooling cost recovery on Florida customers, the Commission should address cost recovery. Accordingly, the Revised Plan requires that the Commission open a docket in accordance with the FCC mandate for the purpose of determining the amount of the costs of number pooling and the method by which they will be recovered. However, in the spirit of moving forward, the Joint Petitioners are willing to proceed now with all aspects of the implementation of number pooling pursuant to the Revised Plan with cost recovery being determined just so long as the Commission has acknowledged the need for cost recovery and has committed to starting the cost recovery process.

By Order No. PSC-00-1046-PAA-TP, issued May 30, 2000, in Docket No. 981444-TP, this Commission approved the Joint Petitioners' Offer of Settlement and thereby acknowledged the need for cost recovery and agreed to open a docket to address the cost recovery process. Subsequently, Docket No. 001503-TP was opened on September 29, 2000 to address number pooling cost recovery.

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<sup>3</sup> ALLTEL Communications, Inc., AT&T Communications of the Southern States, Inc., BellSouth Mobility, Inc., BellSouth Telecommunications, Inc., Florida Cable Telecommunications Association, Inc., Global Naps, Inc., GTE Service Corporation, Intermedia Communications, Inc., MCI WorldCom, Inc., Media One Florida Telecommunications, Inc., Sprint Spectrum L.P., Sprint Communications Company Limited Partnership, Sprint-Florida Incorporated.

On December 12, 2000, a workshop was conducted to solicit input from the industry regarding cost recovery and allocation mechanisms for number pooling trials in Florida. The post-workshop comments were focused mainly on whether cost recovery should be delayed until the FCC makes a determination as to whether state-mandated pooling costs should be rolled into the federal cost recovery mechanism, or whether this Commission should proceed with the cost recovery. However, the Office of Public Counsel comments contended that price cap regulation in Florida already provides cost recovery for the local exchange companies, and there is no need for a local rate surcharge, as the local exchange industry argues, nor is a surcharge on local rates authorized by the Florida Statutes.

In Order No. FCC 00-429<sup>4</sup>, released December 29, 2000, the FCC concluded that the amount and detail of the cost data that had been provided in response to Order No. FCC 00-104 was insufficient for it to determine the amount or magnitude of the costs associated with thousands-block number pooling, and sought additional comments and cost studies that quantify shared industry and direct carrier-specific costs of thousands-block number pooling. Id. at ¶180.

On February 13, 2001, this Commission submitted comments to the FCC regarding Order No. FCC 00-104, stating that the FCC should give state commissions the option to defer state-mandated thousands-block number pooling cost recovery until national thousands-block number pooling is implemented and a federal cost recovery mechanism is put in place. At that time, the costs of the state-mandated thousands-block number pooling could be rolled into one recovery mechanism. This would result in having only one number pooling charge on a customer's bill, which would cause less confusion for the customers.

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<sup>4</sup> Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, CC Dockets Nos. 96-98 and 99-200, Order No. FCC 00-429, released December 29, 2000, In the Matter of Numbering Resource Optimization; Petition of Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, 717.

On December 28, 2001, the FCC released Order No. 01-362<sup>5</sup> which addressed federal cost recovery for national thousands-block number pooling, and re-affirmed that states that have conducted pooling trials should establish cost recovery mechanisms for costs incurred by carriers participating in such trials. Specifically, Order No. FCC 01-362 stated:

In this Third Report and Order, we direct states implementing thousands-block number pooling under delegated authority to commence cost recovery actions for state-mandated thousands-block number pooling trials. We applaud the efforts that state commissions have made in implementing pooling trials within their respective jurisdictions, and we believe that the costs should be recovered within those jurisdictions that have enjoyed the benefits of such trials.

FCC 01-362 at ¶25.

The FCC also acknowledged the argument proffered by some commenters, including the FPSC, that state costs should be combined with national costs, and all thousands-block number pooling costs should be recovered in the federal jurisdiction. *Id.* at ¶26. The FCC expressly rejected this proposal, stating that “. . . [w]e believe that the entire nation should not be required to bear the costs incurred for the benefit of a particular state.” *Id.* at ¶27. Order No FCC 01-362 further stated:

We now direct states that have exercised delegated authority and implemented thousands-block number pooling to likewise commence cost recovery procedures for these state-specific costs. We agree with BellSouth that any state that has ordered implementation of pooling in advance of the national rollout is required to implement a cost recovery scheme.

FCC 01-362 at ¶28.

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<sup>5</sup> Third Report and Order and Second Order on Reconsideration, CC Dockets Nos. 96-98 and 99-200, Order No. FCC 01-362, released December 28, 2001, In the Matter of Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability.

By Order No. PSC-02-0466-PAA-TP, issued April 5, 2002, in Docket No. 001503-TL<sup>6</sup>, we ordered that carriers shall be allowed the opportunity to seek recovery of their costs associated with state-mandated pooling trials. We further ordered that regulated carriers seeking recovery shall file a petition with us for a cost recovery mechanism that meets federal and state law, including all supporting documents related to their cost analysis.

On August 5, 2002, BellSouth filed its Petition for Cost Recovery of its carrier-specific costs (\$3,506,844) associated with state-mandated number pooling trials.

On March 5, 2003, our staff sent an inquiry to the State Coordination Group (SCG)<sup>7</sup> to determine whether their respective commission had implemented any cost recovery mechanism for state-mandated number pooling trials. Based on the responses received, most state commissions have not taken any action because either a cost recovery petition has not been filed by the incumbent carrier, or a petition was filed but the incumbent carrier withdrew its petition.

Prior to the issuance of Order FCC 01-362, two state commissions had addressed cost recovery for state-mandated pooling trials. In Order No. U-13086, issued November 20, 2001, the Michigan Public Service Commission stated that a special cost recovery mechanism shall not be approved for recovery of carrier-specific costs associated with number pooling because these are costs of doing business. In Docket No. T-00000A-01-0076, issued August 29, 2001, the Arizona Corporation Commission stated that carrier-specific costs are not recoverable by a special cost recovery mechanism since they are merely costs of doing business. In Arizona and Michigan there were only two state-mandated pooling trials in each state. Some other states, including New Hampshire and Maine, are still working on the merits of the cost recovery issues.

Responses to our staff's interrogatories show that BellSouth was ordered to initiate state-mandated number pooling trials in Florida, North Carolina, and Tennessee, and it has filed for cost

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<sup>6</sup> Consummating Order PSC-02-0590-CO-TP, issued April 30, 2002.

<sup>7</sup> A group composed of staff from 33 state Commissions who work on numbering issues (AR, AZ, CA, CO, CT, FL, IA, ID, IL, IN, KS, MA, MD, ME, MI, MO, MT, NC, NE, NH, NJ, NY, OH, OK, PA, RI, TN, TX, UT, VA, VT, WA, and WI).



recovery in Florida and North Carolina. The North Carolina petition (Docket P-100, Sub 137) was filed May 19, 2003, but no action has been taken on it by the North Carolina Utilities Commission as of the date of the filing of the recommendation. BellSouth did not file a cost recovery petition for state-mandated number pooling trials in Tennessee because the state trial was initiated one day prior to Federal jurisdiction taking over number pooling.

Our staff filed a recommendation addressing BellSouth's petition for the March 18, 2003, Agenda Conference, which was deferred at BellSouth's request. After the deferral, our staff took the opportunity to meet with representatives of the Office of Public Counsel and BellSouth on March 25, 2003, to attempt to find common ground. Although no agreements were reached, both parties agreed that the meeting was beneficial. Our staff filed a revised recommendation for the May 20, 2003, Agenda Conference to address BellSouth's petition for cost recovery. At the Agenda Conference, we voted to defer this recommendation to allow our staff time to obtain additional information from BellSouth regarding the amount of cost recovery, and the nature and substance of a notice to customers. This supplemental information was included in the revised recommendation although staff's original recommendations did not changed based on the additional information provided by BellSouth.

## II. JURISDICTION

This Commission has federal and state law authority to act regarding number pooling issues. Section 251 (e) of the Telecommunications Act of 1996 (Act) permits the FCC to delegate authority to state commissions to administer telephone numbering. Section 251 (e) states that:

### (e) Numbering Administration.--

(1) Commission authority and jurisdiction - The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

Moreover, Section 251 (e) (2), provides the authority to collect for the cost of number pooling. Section 251 (e) (2) states:

(2) Costs - The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

By Order No. FCC 99-249, released September 15, 1999, the FCC acknowledged the need to delegate number conservation authority to this Commission. In that Order, the FCC states that:

We recognize that the area code situation in Florida is critical, with nine new area codes having been added since 1995, six of which may already be in jeopardy. In light of this extreme situation and in order to empower the Florida Commission to take steps to make number utilization more efficient, we herein grant significant additional authority to the Florida Commission.

Id. at ¶ 5. Further, pursuant to Section 251(e), the FCC delegated authority to conduct number pooling trials. In that Order, the FCC states that:

We therefore grant authority to the Florida Commission to conduct mandatory thousands-block number pooling trials in Florida.

Id. at ¶ 13. Pursuant to Section 251(e) (2), the FCC delegated its obligation to provide for cost recovery for the number pooling trials. Specifically, the FCC states in the Order that:

We further require that the Florida Commission determine the method to recover the costs of the pooling trials. The Florida Commission must also determine how carrier-specific costs directly related to pooling administration should be recovered. The Commission has tentatively concluded that thousands-block number pooling is a numbering administration function, and that section 251(e) (2) authorizes the Commission to provide the distribution and recovery mechanisms for the interstate and intrastate costs of number pooling. We conclude that inasmuch as we are hereby delegating numbering administration authority to the Florida Commission, the Florida Commission must abide by the same statute applicable to this Commission, and, therefore, ensure that costs of number pooling are recovered in a competitively neutral manner.

Id. at ¶ 17. Thus, pursuant to the Act and Order No. FCC 99-249, this Commission has been delegated authority to act under federal law regarding administering telephone numbering issues.

This Commission also has state law authority to act regarding numbering issues. Specifically, the state law authority over numbering policies is granted through Sections 364.01(4)(a), and 364.16(14) Florida Statutes. Section 364.01(4)(a) states:

The commission shall exercise its exclusive jurisdiction in order to:

(a) Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.

Having an adequate supply of numbers available for the provision of telecommunications service is essential to ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.

Section 364.16(4), Florida Statutes states:

In order to assure that consumers have access to different local exchange service providers without being disadvantaged, deterred, or inconvenienced by having to give up the consumer's existing local telephone number, all providers of local exchange services must have access to local telephone numbering resources and assignments on equitable terms that include a recognition of the scarcity of such resources and are in accordance with national assignment guidelines.

Section 364.16(4), Florida Statutes, acknowledges the importance of numbering issues. This section provides for local number portability because of the scarcity of numbering resources and the need to protect and make avail to all local providers, access to numbering resources. Thus, it appears clear from this language that we are charged with ensuring the scarce numbering resources in Florida are protected in accordance with the national assignment guidelines. Although, this subsection of the statute specifically relates to local number portability, the principles acknowledged within this section should and can be applied to our general obligation to ensure the availability of basic local telecommunications service to Florida consumers. Under Florida law, we have the authority and obligation to take reasonable measures to ensure the protection of the scarce numbering resources within the State of Florida. Thus, working in conjunction with the Federal delegation of authority over number pooling and the

cost associated with the number pooling trials, state law also provides authority for us to act consistent with ensuring the protection of the scarce numbering resources within the State of Florida. The U.S. Supreme Court recognized that when federal and state legislative directives are intertwined, state agencies need to act in accordance with, if not at the direction of, Congress. See FERC v. Mississippi, 456 U.S. 742 (1982). Therefore, we find that the FCC's specific delegation of authority to this Commission to implement number pooling and address related cost recovery, in conjunction with Florida Legislator's apparent intent that this Commission act in this area, establishes the basis for our ability to act in this matter.

While we recognize that OPC puts forth an argument that number pooling is a basic telecommunications service and as such the company is not entitled to cost recovery, we find that we need not go further in our analysis regarding jurisdiction to address OPC's argument. Thus, we find that this Commission has authority regarding cost recovery of state-mandated pooling trials granted pursuant to Section 251(e) of the Telecommunications Act of 1996, and Sections 364.01, and 364.16(4), Florida Statutes.

### III. COMPLIANCE WITH ORDER NO. PSC-02-0466-PAA-TP

As stated in the Background, by Order No. PSC-02-0466-PAA-TP, we allowed carriers the opportunity to seek recovery of costs associated with state-mandated number pooling trials. Specifically, the Order stated:

Carriers seeking recovery of carrier-specific costs shall make a filing with this Commission detailing the means by which they propose to recover their costs consistent with FCC guidelines and in accordance with federal and state statutes.

On August 5, 2002, BellSouth filed a petition for recovery of its carrier-specific costs (\$3,506,844) associated with state-mandated number pooling trials. Upon our review and analysis of BellSouth's petition, and based on Order No. PSC-02-0466-PAA-TP, we find that BellSouth's cost recovery petition for state-mandated number pooling trials complies with the filing requirements established pursuant to Order No. PSC-02-0466-PAA-TP.

IV. AMOUNT TO BE RECOVERED

By Order FCC 00-104, the FCC adopted three cost categories for thousands-block number pooling: (1) shared industry costs [costs incurred by the industry as a whole, such as the North American Numbering Plan (NANP) administration costs]; (2) carrier-specific costs directly related to thousands-block number pooling [such as enhancements to carriers' Service Control Point (SCP), Local Service Management System (LSMS), Service Order Activation (SOA), and Operation Support Systems (OSS)]; and (3) carrier-specific costs not directly related to thousands-block number pooling. FCC 00-104 at ¶201, ¶208, and ¶211. Order No. FCC 00-104 concluded that incremental shared industry costs become carrier-specific costs once they are allocated among carriers. *Id.* at ¶204. The FCC also stated that ". . . each carrier should bear its carrier-specific costs not directly related to thousands-block number pooling implementation as network upgrades." *Id.* at ¶211.

When determining if, or how much, of the carrier-specific costs of state-mandated pooling trials should be recovered, we first considered whether these costs should just be treated as an ordinary cost of business. One can theorize that since the state-mandated pooling trials started in 2000, the carriers have already capitalized and expensed the costs, and recouped them through their price cap increases. However, we have previously acknowledged the need for state-mandated number pooling cost recovery by approving the Offer of Settlement mentioned in the Background.

The FCC, in FCC Order 01-362, detailed a three-prong test to determine whether number pooling costs are extraordinary. Specifically, the Order stated:

...to be eligible for the extraordinary recovery we establish above, thousands-block number pooling costs must satisfy each of three criteria identified in the LNP proceedings. First, only costs that would not have been incurred "but for" thousands-block number pooling are eligible for recovery. Second, only costs incurred "for the provision of" thousands-block number pooling are eligible for recovery. Finally, only "new" costs are eligible for recovery. To be eligible for extraordinary recovery, carriers' thousands-block number pooling shared industry and carrier-specific costs directly related to thousands-block number pooling must satisfy all three of these criteria.

FCC Order No. 01-362 at ¶43. The FCC interpreted the first two criteria, the "but for" test and the "for the provision of" test to mean that only the demonstrably incremental costs of thousands-block number pooling may be recovered. FCC 01-362 at ¶44. The third criteria regarding "new" costs was interpreted to mean that costs incurred prior to the implementation of thousands-block pooling are ineligible for recovery because they are embedded investments already subject to recovery through standard mechanisms. FCC 01-362 at ¶46.

By Order No. PSC-02-0466-PAA-TP, we ordered that carriers seeking recovery of carrier-specific costs shall show that:

- 1) pooling results in a net cost increase rather than a cost reduction;
- 2) the costs would not have been incurred "but for" and "for the provision of" thousands-block number pooling;
- 3) the costs are "new" costs;
- 4) the costs for which recovery is requested are Florida-specific costs not related to national number pooling; and
- 5) the costs will be recovered on a competitively neutral basis in accordance with Section 251(e)(2) of the Telecommunications Act of 1996. Order No. PSC-02-0466-PAA-TP at p. 10.

BellSouth's August 5, 2002, Petition included the following assertions in calculating the costs associated with state-mandated number pooling trials:

- a) Costs are associated with the following state-ordered area code number pooling trials: 305<sup>8</sup>, 561, 904, and 954;
- b) Costs included in its petition were not included in the regional study<sup>9</sup>;
- c) Cost categories included consist of: Network Capital and Expenses (switch generic advancement and switch pooling feature software), Employee Related (switch translations, Network contract salaries & Block Administration Center salaries) and Number Portability Administration Center (NeuStar) Expenses;

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<sup>8</sup> The 305 area code only considers the Keys region.

<sup>9</sup> The regional study considers all of BellSouth's territory in the United States for FCC-mandated national number pooling cost recovery.

- d) The cost methodology used in its petition is the total direct long-run incremental costs plus a reasonable allocation of shared and common costs. The study recovers the costs incurred during the years 2000, 2001, and 2002; and
- e) The Present Value (PV) calculations are based on an 11.25% after-tax return rate, which has been used in FCC filings<sup>10</sup>, such as BellSouth's Telephone Number Portability revised tariff filing dated June 11, 1999.

The FCC also required each carrier seeking number pooling cost recovery to estimate the cost savings experienced by postponing area code relief because of the implementation of number pooling. FCC 00-104 at ¶226. In its Petition, BellSouth stated that state-mandated pooling trials have postponed area code relief in its pooling areas and has saved BellSouth approximately \$416,990. BellSouth followed FCC guidelines and deducted this amount from the total costs requested for implementing state-mandated pooling trials.

After examination of the BellSouth cost analyses submitted with its Petition, we find that, based on our previous decisions, certain costs should be excluded from consideration when determining state-mandated number pooling cost recovery. We find that \$536,082 of salaried labor costs of BellSouth employees should be excluded from consideration when determining the amount of number pooling costs which should be recovered. We find that these BellSouth salaried costs are not "incremental" costs, and would have been incurred whether these salaried employees were working on number pooling or something else.

During the May 20, 2003, Agenda Conference, BellSouth stated that the surplused employees were used in the creation of the Block Administration Center (BAC). However, in response to Interrogatory No. 28 of Staff's Second Set of Interrogatories, BellSouth responded:

At the May 20, 2003 Agenda Conference, Nancy White on behalf of BellSouth, stated that surplused employees were used in the creation of the BAC. BellSouth believed that to be accurate. In

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<sup>10</sup> FCC Order No. 01-362 states " . . . an ILEC's unrecovered capital investment will be subject to an 11.25% percent after-tax return, however, a longer recovery period greatly increases the total cost, while a shorter recovery period would decrease total cost by decreasing the interest expense." FCC 01-362 at ¶ 41.

answering this set of interrogatories, however, we have discovered that no surplus employees were indeed used at that time.

When asked in Interrogatory No. 42, to determine what BellSouth's costs would have been if BellSouth used contracted labor instead of internal salaried employees, BellSouth indicated that this information is not available since "BellSouth has not attempted to out-source this work and does not have the appropriate per hour charges to perform such calculations." BellSouth further stated that "[t]he BAC costs are ongoing costs that would not be appropriate for contract employees." We find that BellSouth did not consider out-sourcing labor. Aside from this, BellSouth clearly states that the BAC costs are ongoing costs that BellSouth incurs. In response to Interrogatory No. 27 regarding the functions of the BAC, BellSouth stated that a BAC specialist verifies, analyzes, and corrects all telephone number records within BellSouth's central office switches. The specialist also performs work related to telephone number records within the Number Pooling Administration Center (NPAC).

It is our opinion that BellSouth uses BAC specialists to perform not only duties related to BellSouth's central offices, but also duties related to NPAC. Since these employees are regular salaried employees of BellSouth, we do not find that BellSouth is entitled for recovery. We find that we need not provide a special cost recovery mechanism for salaried employees. We find that this treatment of the costs is inconsistent with the requirements of the FCC, which requires that any cost recovery mechanism be competitively neutral, and has concluded that treating costs as cost of doing business is competitively neutral.<sup>11</sup> The Michigan Public Service Commission endorsed a similar decision in its Opinion and Order in Case No. U-13086, dated November 20, 2001.

Based on BellSouth's filings and subsequent discussions, we find that BellSouth has not demonstrated that it had to create any new positions to implement state-mandated number pooling trials, has not shown that these salaried employees could have been terminated or laid off had the number pooling function not been imposed, and has not demonstrated that it could have saved money if it were to have used contracted employees.

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<sup>11</sup> Report and Order and Further Notice of Proposed Rule Making, CC Docket No. 99-200, Order No. FCC 00-104, released March 31, 2000, In the Matter of Numbering Resource Optimization. Id. at ¶208.



We note that we are charged with determining whether BellSouth's state pooling costs reasonably meet the standards set forth in Order No. PSC-02-0466-PAA-TP, and Order No. FCC 01-362. In ¶ 28 of Order FCC 01-362, the FCC states:

If, after reviewing carrier cost submissions, states determine in accordance with Section 251(e)(2) and the Commission's analysis here and in the First Report and Order that carriers have incurred little or no recoverable carrier-specific costs directly related to state thousands-block number pooling trials (i.e., incremental costs directly attributable to thousands-block number pooling), they should make affirmative findings to that effect.

The salaried labor costs of BellSouth included in its Petition are not incremental costs, and just as the FCC Order states, and thus we find such.

We find that BellSouth's salaried labor costs, have failed to meet the "but for" prong of the "three prong" test set forth in Order No. FCC 01-362 and incorporated in Order No. PSC-02-0466-PAA-TP. BellSouth has failed to meet the "but for" prong, because the labor costs would have been incurred whether or not there was a Florida state-mandated number pooling trial. BellSouth could have retained the employees and treated the associated cost as a cost of doing business regardless of whether a state-mandated number pooling trial took place. As previously noted in the background, theoretically, the number pooling costs could have been depreciated and expensed for financial purposes. Our belief is that BellSouth has not provided justification that all of its labor costs meet the standards for recovery.

BellSouth is a price-regulated company whose earnings are not dictated by us. However, if a company had or should have recovered an expense through the normal course of business and it were recovered through a surcharge, it could be considered tantamount to "double-recovery."

We note that the FPSC has not previously made a "double cost recovery" determination in the context of a telecommunications scenario. However, we have established a "double cost recovery" position in electric and water ratebase regulation proceedings. While we are not mandated to apply this "double cost recovery" standard in telecommunications cases, nevertheless we believe that this "double cost recovery" standard is persuasive in this case.

The "double cost recovery" standard is set forth in a number of our orders. For example, on page 10 of Order No. PSC-97-1047-FOF-EI, issued September 5, 1997, in Docket No. 970007-EI, this Commission states the following with regard to the Environmental Cost Recovery Clause (ECRC):

The Company stated that no new positions were created for this project. Allowing these payroll charges to be included in the ECRC constitutes double recovery. Therefore, TECO should remove these payroll charges, including any applicable interest. . . .

Another example is Order No. PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, in which this Commission states that:

. . . we find that the utility has already recovered the costs of the items expensed prior to the test year and that it would result in double recovery if these items were allowed to be capitalized. This position is supported by Westwood Lake, Inc. v. Metropolitan Dade County Water and Sewer Board, 203 So. 2d 363, 367 (Fla. 3d DCA 1967), in which the court noted that:

Ordinarily, a utility may not capitalize and include in its rate base items which have been accounted for and charged off as operating expenses. This is true because expensed items have been paid for and their costs recovered and the utilities are estopped therefore to capitalize those items which they have already expensed. (Citations omitted)

Based on our standards regarding double recovery set forth in the above cases and analysis of BellSouth's petition for cost recovery, we find that (1) including salaried labor costs may result in double recovery, (2) BellSouth has failed to meet its burden of proof that "but for" number pooling these labor costs would have been incurred, and (3) BellSouth has failed to demonstrate that these salaried employee costs are "new" costs specifically related to number pooling.

BellSouth, however, has shown that it incurred \$66,817 of contracted labor which we find is justified and shall be recovered. Based on this analysis, we find that \$536,082 of salaried labor costs of BellSouth employees shall be excluded when determining the amount of recoverable number pooling costs subject to recovery because BellSouth has not demonstrated that it has met its obligation using the "but for" prong test of the FCC. However, BellSouth shall be allowed to recover the remaining carrier-specific costs of \$2,970,762 associated with implementing state-mandated pooling trials.

#### V. HOW COSTS SHOULD BE RECOVERED

We examined a number of alternatives when determining how the number pooling carrier specific costs of BellSouth should be recovered if approved by us. The FCC has authorized carriers seeking recovery of national federally-mandated number pooling trials to use network access charges as a cost recovery mechanism. However, we find that we should approve a recovery mechanism which is consistent and can be applied to all carriers filing for state-mandated number pooling cost recovery in Florida because many of carriers will not meet the parity standards.

We agree with the FCC position that all subscribers will benefit from number pooling. Order FCC 01-362 states:

. . . all carriers and subscribers will benefit from national thousands-block number pooling to the extent that it postpones or avoids area code relief and ultimately the replacement of the existing NANP.

Id. at ¶34. For this reason, costs of federally-mandated number pooling would be shared and borne by all end-user lines in the United States. To avoid disproportionate impacts from combination of federal and state cost recovery, BellSouth's carrier-specific costs associated with state-mandated number pooling trials should be borne by all BellSouth's Florida end-user lines.

An argument could be made that some end-users may benefit more than others. The FCC, in Order 01-362, rejected the idea that state costs should be combined with national costs, and all thousands-block number pooling trial costs should be recovered in the federal jurisdiction. Id. at ¶26. However, the FCC allows federally-mandated number pooling trial costs to be recovered by

all customers of the ILEC regardless of the state in which the pooling trial took place.

Subscribers located in area codes with state-mandated pooling may benefit more since area code relief for their area code may be postponed further because of number pooling. We have consistently ruled that the "cost causers," not the general body of ratepayers should bear the costs.<sup>12</sup>

However, we find that our previous decisions do not apply here because all customers benefit from extending the life of area codes, and the NANP. This is consistent with the FCC's conclusion that there is no "cost causer" in the traditional sense. FCC Order No. 01-362 at ¶36. Therefore, we find that BellSouth's carrier-specific costs associated with state-mandated number pooling trials shall be borne by all BellSouth's Florida end-user lines. Thus, all customers shall share in the costs of number pooling.

We estimate that BellSouth had approximately 6,200,176 end-user lines in Florida as of June 30, 2003. When addressing the length of time over which to allow number pooling cost recovery, the FCC stated:

We are thus required to establish some reasonable period of time, shorter than five years, over which these costs may be recovered. Given that an ILEC's unrecovered capital investment will be subject to an 11.25 percent after-tax return, however, a longer recovery period greatly increases the total cost, while a shorter recovery period would decrease total cost by decreasing the interest expense. Accordingly, we conclude that recovery should be spread over a two-year period.

FCC 01-362 at ¶41. Using a two-year recovery period, we estimate that each access line would have an approximate additive of \$0.02 per month for the amount approved in Section IV, Amount to Be

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<sup>12</sup> By Order No. PSC-99-1399-PAA-WU, issued July 21, 1999, in Docket No. 981663-WU, the Commission stated "These charges are designed to more accurately reflect the costs associated with each service and to place the burden of payment on the person who causes the cost to be incurred (the 'cost causer,') rather than on the entire ratepaying as a whole. By Order No. PSC-99-0924-PAA-EI, issued May 10, 1999, in Docket No. 990179-EI, the Commission stated "In our order approving the late payment charge for Southern Bell, we stated that 'this Commission has consistently taken action to place costs on the cost-causer rather than the general body of ratepayers.'"

Recovered. However, since the total costs recovered from BellSouth's Florida end users associated with state-mandated number pooling trials would be approximately \$0.48 (\$2,970,762/6,200,176 end-user lines), we find that in the interest of administrative efficiency, a one-time charge would be appropriate, and would not present a hardship to consumers.

We find that BellSouth shall use its Florida end-user lines of customers of record as of June 30, 2003, to calculate the exact charge. We find that equivalency factors regarding end-user lines should be the same as those used for local number portability cost recovery. Furthermore, we find that BellSouth shall submit its final calculation of the end-user line charge to our staff at least 30 days prior to putting any assessment on customer bills for our staff's review. We also find that our staff shall be allowed to approve the calculation of the final assessment administratively; however, our staff should bring any material difference between the estimated one-time charge and the final assessment before us for approval.

#### VI. NOTICE TO CUSTOMERS

During the May 20, 2003, Agenda Conference, we expressed concern as to what type of notice would be given to customers, and what the charge would be called on the end-users' bills if we approved state-mandated number pooling cost recovery for BellSouth. We directed our staff to provide information when the item was brought before us again on the nature and substance of a notice to customers.

Subsequent to the May 20, 2003, Agenda Conference, our staff sent a second set of interrogatories to BellSouth addressing the number pooling cost recovery. Interrogatory No. 39 asked "What type and form of customer notice would BellSouth provide to customers if number pooling cost recovery is allowed?" BellSouth responded that:

BellSouth would more than likely provide customer notice in a bill insert at least 30 days prior to the bill containing the charge. BellSouth would be willing to work with Commission Staff on the appropriate language for the bill insert.

Interrogatory No. 40 of Staff's Second Set of Interrogatories asked "Considering that the Commission has allowed, but not required, carriers to file a petition requesting number pooling cost

recovery, if cost recovery is approved, how would this cost be presented to customers on their bill? Provide the exact wording." BellSouth responded that:

BellSouth would be willing to work with the Commission Staff on the appropriate language for the customer's bill. BellSouth could present this charge as "Number Pooling Cost Recovery Charge."

By Order No. PSC-02-0466-PAA-TP, issued April 5, 2002, we allowed, but did not require, carriers to seek recovery for state-mandated pooling trials.<sup>13</sup> We find that the voluntary aspect should be reflected in the notice and in the line-item name of the charge. The name of the charge should not imply that the charge was mandated, or required by the state. Therefore, staff recommends that BellSouth provide a bill insert or bill message at least 30 days prior to the bill containing the charge. The bill insert or bill message should contain similar wording as stated below:

BellSouth has participated in thousands-block number pooling trials in Florida to conserve telephone numbers and postpone area code changes. Number pooling is the process by which telephone companies share a pool of telephone numbers that have the same central office code (first three numbers of your seven-digit phone number). A one-time charge in the amount of \$0.XX will appear on your next bill and be titled "One-Time BellSouth Florida Number Pooling Cost Recovery Charge." This charge will be for recovery of the expenses involved in the implementation of the Florida number pooling trials. Questions regarding this Florida number pooling charge can be directed to your BellSouth Service representative at (8XX) XXX-XXXX.

However, we recognize that there are certain limitations on length of a bill insert or bill message. Therefore, the Company shall work with our staff to create the final language to be included in the bill insert or bill message which reflects the spirit of the criteria above.

We note the amount of the one-time charge to be recovered is addressed in Section IV. We find that BellSouth shall provide a

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<sup>13</sup> By letter dated September 11, 2002, Verizon Florida, Inc. stated that it would not be seeking cost recovery for state-mandated pooling trials in Florida.

toll free phone number for customers who have questions concerning this charge, and have service representatives available who can respond to questions regarding Florida number pooling.

As noted in the bill insert or bill message language, the line item charge which will appear after the bill insert shall read "One-time Area Code Conservation Charge." The final draft of the bill insert or bill message and line item charge shall be submitted to our staff for approval prior to use.

Based on the above analysis, BellSouth shall provide notice to customers using a bill insert or bill message at least 30 days prior to the bill containing the charge. Further, the Company shall work with our staff to create the final language to be included in the bill insert or bill message which reflects the spirit of the criteria above. We also find it appropriate that the end-user charge be stated as "One-time Area Code Conservation Charge." The final draft of the bill insert or bill message and line item charge shall be submitted to our staff for approval prior to use. BellSouth shall also provide a toll-free telephone number for customers who have questions concerning this charge, and have service representatives available who can respond to questions regarding Florida number pooling.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Petition for Cost Recovery is granted in part as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 2nd Day  
of October, 2003.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding,



in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 23, 2003.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.