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Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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DATE: March 18, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Casey, Bulecza-Banks, Dowds, Pittman, Simmons)
Office of the General Counsel (Christensen) *FAE DL*

RE: Docket No. 001503-TP – Cost recovery and allocation issues for number pooling trials in Florida.

AGENDA: 03/30/04 – Regular Agenda – Joint Motion to Amend the Procedural Schedule and Request to Approve Joint Stipulated Record- Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001503.RCM.DOC

Case Background

This docket was established to address cost recovery and allocation issues for number pooling trials in Florida. By Order No. PSC-02-0466-PAA-TP, issued April 5, 2002, this Commission ordered that carriers shall be allowed the opportunity to seek recovery of their costs associated with state-mandated pooling trials. This Commission further ordered that regulated carriers seeking recovery shall file a petition with this Commission 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 Telecommunications, Inc. (BellSouth) filed its Petition for Cost Recovery of its carrier-specific costs associated with state-mandated number pooling trials.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Docket No. 001503-TP

Date: March 18, 2004

By Order No. PSC-03-1096-PAA-TP, issued October 2, 2003, BellSouth's Petition for Cost Recovery was granted in part.

On September 30, 2002, Sprint-Florida, Incorporated (Sprint) filed its Petition for Cost Recovery. Order No. PSC-03-1270-PAA-TP, issued November 10, 2003, granted in part Sprint's Petition for Cost Recovery.

The Office of Public Counsel (OPC) filed its protest of Order No. PSC-03-1096-PAA-TP granting in part BellSouth's Petition on October 22, 2003. OPC also filed its protest of PSC-03-1270-PAA-TP granting in part Sprint's Petition on November 26, 2003. Pursuant to OPC's protest, this matter has been scheduled for a Section 120.57(1), Florida Statutes, administrative hearing on May 24 and 25, 2004.

On February 4, 2004, BellSouth, Sprint, and OPC filed a Joint Motion to Amend Procedural Schedule. Along with their Motion, these Parties filed their Joint Stipulation of the Record of BellSouth, Sprint and OPC and BellSouth's Notice of Intent. No party has filed an objection to the Motions and Joint Stipulation and the time for filing such has expired.

Discussion of Issues

Issue 1: Should the Commission grant the Joint Motion to Amend Procedural Schedule and approve the Joint Stipulated Record?

Recommendation: The Commission should grant, in part, the Joint Motion to Amend the Procedural Schedule filed by the Office of Public Counsel, Sprint-Florida, Incorporated, and BellSouth Telecommunications, Inc. as explained in staff's analysis. Staff also recommends that the Joint Stipulated Record submitted by the Parties including the additional information identified by Commission staff, be approved and serve as the record on which the Commission bases its decision in this matter. (CHRISTENSEN)

Staff Analysis: As noted above, OPC filed its protests to Order No. PSC-03-1096-PAA-TP and Order No. PSC-03-1270-PAA-TP requesting an administrative hearing under Section 120.57(1), Florida Statutes. By Order No. PSC-04-0056-PCO-TP, issued January 20, 2004, the procedural schedule for the administrative hearing was scheduled and key activities dates were established. Currently, the prehearing conference is scheduled for May 5, 2004, and the hearing is scheduled for May 24 and 25, 2004.

In their Joint Motion to Amend Procedural Schedule, the Parties request that the procedural order in this matter be amended to reflect that this matter should be considered in accordance with the procedures in Section 120.57(2), Florida Statutes. The Parties state that a joint stipulation of the record has been reached and filed with the Commission contemporaneously with the Motion. The Parties suggest that briefs be due in June 2004 with the recommendation and Agenda to follow. The Parties further request that the filing dates, prehearing, and hearing dates in Order No. PSC-04-0056-PCO-TP be eliminated. The Parties contend in their Motion that Commission staff has no objection to the substance of their Motion.

In reviewing the Joint Stipulated Record, Commission staff had concerns that there would not be sufficient facts in the stipulated record. Therefore, Commission staff contacted the Parties to ask if they would agree to the inclusion of the following additional information in the Joint Stipulated Record: (1) discovery responses to our staff's discovery propounded on the parties as a result of the petitions; and (2) the dollar amounts identified in the PAA orders granting in part BellSouth's and Sprint's Cost Recovery Petitions, with the acknowledgement that there are disputes as to whether the dollar amounts identified in the PAA have been otherwise recovered by BellSouth and Sprint.

In response to Commission staff's inquiry, the Joint Petitioners agreed to the inclusion of this additional information, responses to Commission staff's discovery and the dollar amounts identified in the PAA orders, as part of the stipulated record.¹ The other parties to the docket were contacted and they did not respond with any objection to the inclusion of this additional information as part of the stipulated record.

¹ The Petitioners Joint Stipulated Record includes PAA orders, Order No. PSC-03-1270-PAA-TP and Order No. 03-1096-PAA-TP, granting in part the cost recovery petitions, however, the parties had reserved the right to dispute the relevance of any of the documents listed in the stipulated record.

Staff notes that a Section 120.57(2), Florida Statutes, hearing is appropriate when there are no disputed issues of material fact. In this case, there are material facts at issue. As such, Section 120.57(2) is not directly applicable. The Parties have, nevertheless, presented a reasonable procedural alternative to a full-blown Section 120.57(1) hearing in this matter. Staff believes that the proposal is appropriate because the Parties agree on what should constitute the record of this case, and they agree that further development of the record through a hearing is unnecessary. As such, staff recommends that the Parties' Joint Motion to Amend Procedural Schedule should be granted to the extent that the prehearing conference and hearing set in this matter should be cancelled and the other procedural dates set forth in Order No. PSC-04-0056-PCO-TP should be suspended. Staff recommends that the parties should, instead, be required to file briefs addressing the issues identified in Order No. PSC-04-0056-PCO-TP on June 10, 2004.

In addition, staff recommends that the Joint Stipulation of the Record submitted by the Parties be approved with the addition of the information identified by Commission staff: (1) parties' responses to Commission staff's discovery propounded in this case; and (2) the specific dollar amounts identified in Orders Nos. PSC-03-1270-PAA-TP and PSC-03-1096-PAA-TP. Staff recommends that this information, along with the briefs filed on June 10, 2004, should constitute the entire record of this case upon which this Commission would rely in making its final decision in this matter.

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Issue 2: Should this docket be closed?

Recommendation: No, this docket should remain open pending further proceedings.
(CHRISTENSEN)

Staff Analysis: Regardless of whether the Commission approves staff's recommendation on Issue 1, this matter requires further Commission action. Thus, this docket should remain open pending further proceedings.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cost Recovery and)
Allocation of Issues for Number) Docket No. 001503-TP
Pooling Trials in Florida)
_____) Filed: February 4, 2004

**Joint Stipulation of the Record of BellSouth Telecommunications, Inc.
Sprint-Florida, Inc. and Citizens of Florida and Notice of Intent by BellSouth**

Pursuant to the Joint Motion to Amend Procedural Schedule filed by BellSouth Telecommunications, Inc. ("BellSouth"), Sprint- Florida, Inc. ("Sprint") and the Citizens of Florida ("Citizens"), BellSouth, Sprint and Citizens hereby submit that the following is a list of the attached documents that form the record in this case:

1. Federal Communications Commission ("FCC") Order No. 99-249, released September 15, 1999.
2. FCC Order No. 00-104, released March 31, 2000.
3. Order No. PSC-00-0543-PAA-TP, issued on May 30, 2000.
4. Order No. PSC-00-1046-PAA-TP, issued on May 30, 2000.
5. Post workshop comments filed by Citizens on February 16, 2001.
6. Post workshop comments filed by BellSouth on February 16, 2001.
7. Post workshop comments filed by Sprint on February 16, 2001.
8. FCC Order No. 00-429, released December 29, 2000.
9. FCC Order No. 01-362, released December 28, 2001.
10. Order No. PSC-02-0466-PAA-TP, issued on April 5, 2002.

11. Order No. U-13086, issued November 20, 2001 by the Michigan Public Service Commission.
12. Order No. 63982, issued August 30, 2001 by the Arizona Corporation Commission.
13. Petition filed by BellSouth in Docket No. 001503-TP on August 5, 2002.
14. Petition filed by Sprint in Docket No. 001503-TP on September 30, 2002.
15. Order No. PSC-03-1270-PAA-TP, issued on November 10, 2003
16. Order No. PSC-03-1096-PAA-TP, issued on October 2, 2003.
17. Revenue Impact of BellSouth price changes.
18. Revenue Impact of Sprint price changes.

The parties' willingness to stipulate the above listed documents as the record does not serve to waive any party's right to dispute the relevance of any of documents in their briefs or at any oral argument.