

ORIGINAL

Matilda Sanders

From: Fatool, Vicki [Vicki.Fatool@BELLSOUTH.COM]
Sent: Tuesday, August 31, 2004 2:25 PM
To: Filings@psc.state.fl.us
Subject: 040604-TL Petition Requesting Hearing Pursuant to Section 120.57 & Protest of PAA
Importance: High

A. Vicki Fatool
 Legal Secretary to Nancy B. White
 BellSouth Telecommunications, Inc.
 150 South Monroe Street
 Suite 400
 Tallahassee, Florida 32301
 (305) 347-5560
vicki.fatool@bellsouth.com

B. Docket No. 040604-TL

In re: Adoption of the National School Lunch Program and an income-based criterion at or below 135% of the Federal Poverty Guidelines as eligibility criteria for the Lifeline and Link-Up programs

C. BellSouth Telecommunications, Inc.
on behalf of Nancy B. White

D. 7 pages total (including letter, certificate of service and pleading)

E. BellSouth Telecommunications, Inc.'s Petition Requesting Hearing Pursuant to Section 120.57, Florida Statutes and Protest of Proposed Agency Action

.pdf version attached and word version attached

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- GCL _____
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- SCR _____
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- OTH Kemp

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Legal Department

NANCY B. WHITE
General Counsel - FL

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

August 31, 2004

Mrs. Blanca S. Bayó
Director, Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

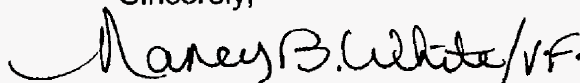
**Re: Docket No. 040604-TL
In re: Adoption of the National School Lunch Program and an
income-based criterion at or below 135% of the Federal Poverty
Guidelines as eligibility criteria for the Lifeline and Link-Up programs**

Dear Ms. Bayó:

Enclosed is BellSouth's Telecommunications, Inc.'s Petition Requesting Hearing Pursuant to Section 120.57, Florida Statutes and Protest of Proposed Agency Action, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


Nancy B. White

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
DOCKET NO. 40604-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and U.S. Mail this 31st day of August 2004 to the following:

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Nancy B. White

FLORIDA PUBLIC SERVICE COMMISSION

In re: Adoption of the National School Lunch Program and an income-based criterion at or below 135% of the Federal Poverty Guidelines as eligibility criteria for the Lifeline and Link-Up programs.

) Docket No. 040604-TL

) Filed: August 31, 2004

PETITION REQUESTING HEARING PURSUANT TO SECTION 120.57, FLORIDA STATUTES AND PROTEST OF PROPOSED AGENCY ACTION

Pursuant to Rules 25-22.029 and 28-106.201, Florida Administrative Code, BellSouth Telecommunications, Inc. ("BellSouth") files this Petition to Protest Order No. PSC-04-0781-PAA-TL ("Order") issued on August 10, 2004, and requests an evidentiary hearing under Section 120.57, Florida Statutes. In support of its Petition and Protest, BellSouth states:

- 1. BellSouth's official address for its Florida business operations is 675 West Peachtree Street, N.E., Suite 4300, Atlanta, Georgia 30375.
2. BellSouth's principal place of business in Florida is 150 W. Flagler Street, Suite 1910, Miami, Florida 33130. Pleadings and process may be served upon:

Nancy White
c/o Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301
(305) 347-5558
nancy.white@bellsouth.com
nancy.sims@bellsouth.com

- 3. BellSouth is a local exchange company providing local exchange and intraLATA toll service in Florida.

4. BellSouth received notice of the Florida Public Service Commission's ("Commission") decision by downloading a copy of the Order from the Commission's web site on or about August 10, 2004.

5. In the Order, the Commission adopted (1) the National School Lunch program and an income-based eligibility criteria of 135% of the Federal Poverty Guidelines for purposes of determining eligibility in the Lifeline and Link-Up programs in Florida; (2) allowed the option of electing a self-certification process by which the amount of Lifeline assistance provided would be based on the type of certification chosen by the consumer; and (3) reporting requirements concerning Lifeline and Link-Up. BellSouth protests the entirety of the Order for the following reasons:

6. First, the Commission has no authority under Chapter 364, Florida Statutes to mandate additions to eligibility tests for Lifeline and Link-Up. Moreover, there is no authorization for the Commission to mandate certification processes beyond that contained in the statute or to mandate whether eligible end users receive partial or full benefits from Lifeline and Link-Up. The Commission is a creature of statute and, as such, the Commission's powers, duties, and authority are only those that are conferred expressly or impliedly by state statute. City of Cape Coral v. GAC Utilities, Inc., 281 So. 2d 493 (Fla. 1973). "Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof." Id.

7. As noted, there is no express authority on which the Commission can base this Order. Any implied authority must be derived from "fair implication and intendment incident to" any express authority. See Atlantic Coast Line R.R. Co. v. State, 74 So. 595, 601 (Fla. 1917) and State v. Louisville N.R. Co., 49 So. 39 (Fla. 1909). In order to determine the scope of any implied power that may have been given to the Commission, the intent of the legislature must be ascertained. See State Dep't. Transp. v. Mayo, 354 So. 2d 359, 360 (Fla. 1978). A review of Section 364.10, Florida Statutes established that the legislature did not intend to give the Commission the power to mandate new eligibility standards (other than the 125% income eligibility test) or to discriminate between Lifeline and Link-Up eligible customers based on certification processes.

8. Nor was the Commission granted such authority by Order No. 03-109, adopted April 2, 2004 by the Federal Communications Commission ("FCC"). In this Order, the FCC added eligibility standards to the federal level of support, not the state.

9. Second, by its Order, the Commission is unreasonably discriminating in the amount of benefits received by Lifeline and Link-Up customers based on the certification process.

10. Third, the Commission has not requested nor has BellSouth been afforded an opportunity to fully discuss and provide cost and implementation information. This is information that would assist the Commission in determining whether there are alternatives to its Order to achieve its goals at a lesser regulatory cost.

11. Fourth, BellSouth submits that its ability to implement the Commission's Order is limited to and subject to technical feasibility issues, as well as issues of fraud. Moreover, the reporting procedures are unduly burdensome.

12. Finally, BellSouth submits that the Commission erred in adopting the Order without rulemaking. Section 120, Florida Statutes requires that rulemaking should occur.

13. The substantial interests of BellSouth are, therefore, affected by the Order.

14. BellSouth submits the following disputed issues of material fact, policy, and law for resolution in a hearing conducted under Section 120.57, Florida Statutes:

A. Is the Commission authorized under state or federal law to order the actions set forth in Order No. PSC-04-0781-PAA-TL?

B. Are the actions taken by the Commission in Order No. PSC-04-0781-PAA-TL unreasonably discriminatory?

C. What are the economic and regulatory costs of implementing the actions taken by the Commission in Order No. PSC-04-0781-PAA-TL?

D. What are the implementation issues related to the actions taken by the Commission in Order No. PSC-04-0781-PAA-TL? Can these issues be resolved? If so, how?

E. Are the reporting requirements contained in Order No. PSC-04-0781-PAA-TL reasonable?

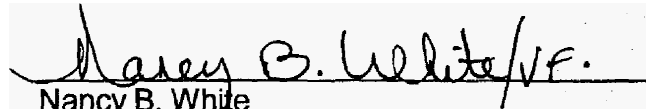
F. Should the Commission deal with these issues in rulemaking?

15. BellSouth is entitled to relief under Chapter 120, 350, and 364, Florida Statutes, and Chapter 25-22 and 28-106, Florida Administrative Code.

WHEREFORE, BellSouth protests the Order discussed herein, requests that a hearing be held on this issue pursuant to Section 120.57, Florida Statutes, and request that the Commission grant such other relief as is necessary and proper under the circumstances.

Respectfully submitted this 31st day of August, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



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c/o Nancy H. Sims
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Tallahassee, FL 32301
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