

BEFORE THE PUBLIC SERVICE COMMISSION

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

DOCKET NO. 001503-TP
ORDER NO. PSC-04-0395-PCO-TP
ISSUED: April 14, 2004

The following Commissioners participated in the disposition of this matter:

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

ORDER GRANTING IN PART JOINT MOTION TO AMEND PROCEDURAL SCHEDULE
AND APPROVING JOINT STIPULATION OF THE RECORD

BY THE COMMISSION:

I. 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. 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-

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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.

II. Joint Motion to Amend Procedural Schedule and Joint Stipulation of the Record

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 this 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 our staff has no objection to the substance of their Motion.

In reviewing the Joint Stipulated Record, our staff had concerns that there would not be sufficient facts in the stipulated record. Therefore, our 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 our staff's inquiry, the Joint Petitioners agreed to the inclusion of this additional information, responses to our 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.

We note 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. We

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.

find 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, the Parties' Joint Motion to Amend Procedural Schedule shall be granted to the extent that the prehearing conference and hearing set in this matter shall be cancelled and the other procedural dates set forth in Order No. PSC-04-0056-PCO-TP shall be suspended. The parties shall, instead, be required to file briefs addressing the issues identified in Order No. PSC-04-0056-PCO-TP on June 10, 2004.

In addition, the Joint Stipulation of the Record submitted by the Parties shall be approved with the addition of the information identified by our staff: (1) parties' responses to our 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. This information, along with the briefs filed on June 10, 2004, shall constitute the entire record of this case upon which this Commission will rely in making a final decision in this matter.²

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Motion to Amend Procedural Schedule filed by the Office of Public Counsel, Sprint-Florida, Incorporated, and BellSouth Telecommunications, Inc., is hereby granted in part as set forth in the body of this Order. It is further

ORDERED that the Joint Stipulation of the Record with the inclusion of the additional information as identified in the body of this Order is approved. It is further

ORDERED that the procedural dates set forth in Order No. PSC-04-0056-PCO-TP are suspended and the prehearing and hearing are cancelled. It is further

ORDERED that the parties shall file briefs addressing the issues identified in Order No. PSC-04-0056-PCO-TP by June 10, 2004. It is further

ORDERED that Order No. PSC-04-0056-PCO-TP is otherwise reaffirmed to the extent the procedures set forth therein do not conflict with the procedure adopted by this Order. It is further

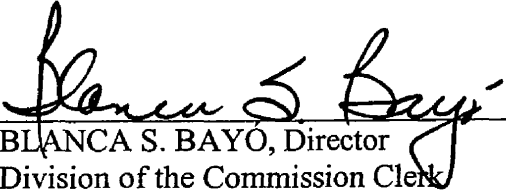
ORDERED that the record for our decision in this case will consist of the information set forth in the Joint Stipulation, as amended by the additional information identified in this Order, and the briefs filed on June 10, 2004.

ORDERED that this docket shall remain open pending further proceedings.

² We note that, as with an matter which goes to hearing, we reserve the right to reopen the record if at the conclusion of the proceeding we determine that the record is insufficient.

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By ORDER of the Florida Public Service Commission this 14th day of April, 2004.


BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative 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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.