

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-04-0882-FOF-TP  
ISSUED: September 9, 2004

The following Commissioners participated in the disposition of this matter:

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

FINAL ORDER APPROVING COST RECOVERY

BY THE COMMISSION:

APPEARANCES BY BRIEFS AND COMMISSION STAFF:

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On behalf of 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-02-0446-PAA-TP, issued April 5, 2002, we ordered

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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 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 filed its protest of PSC-03-1270-PAA-TP granting in part Sprint's Petition on November 26, 2003. In both protests, OPC identified the dispute as whether this Commission had the authority to impose an end-user charge without violating Section 364.051, Florida Statutes.

Section 120.80(13)(b), Florida Statutes, states that:

Notwithstanding ss. 120.569 and 120.57, a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed action which are not in dispute are deemed stipulated.

Thus, the only issues in dispute are those addressed in this Order. Orders Nos. PSC- PSC-03-1096-PAA-TP and PSC-03-1270-PAA-TP, which are attached as Attachment A and Attachment B respectively, and incorporated by reference, are deemed stipulated as to all other issues.

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. By Order No. PSC-04-0395-PCO-TP, issued April 14, 2004, we granted, in part, the Joint Motion to Amend Procedural Schedule, and approved the Joint Stipulation of the Record which includes both PAA Orders approving Sprint and BellSouth cost recovery petitions. The Order stated that although there are material facts at issue, and Section 120.57(2), Florida Statutes is not directly applicable, the Parties have presented a reasonable procedural alternative to a full-blown Section 120.57(1) hearing. We found that the proposal was appropriate because the Parties agreed on what should constitute the record of this case, and they agreed that further development of the record through

an evidentiary hearing was unnecessary. On June 10, 2004, BellSouth, Sprint, and OPC filed briefs on the issues.

## **II. PERMISSIBILITY OF COST RECOVERY IN RELATION TO SECTION 364.051, FLORIDA STATUTES**

At its essence, this section addresses whether it is appropriate to allow recovery of the cost for state-mandated number pooling via a mechanism separate and apart from, and in addition to, the rate and revenue increases to basic and non-basic service implemented since January 1, 2000. BellSouth, in its Brief, addresses all issues through one argument. Thus, we reiterate those portions of the argument appropriate to this issue. Further, we are asked to determine whether our authority to address cost recovery conflicts with Section 364.051, Florida Statutes.

### **A. OPC's Argument**

In its Brief, OPC asserts that under rate-of-return regulation, this Commission set the companies' retail rates at a specific level, which allowed the companies the opportunity to recover all of their prudently incurred expenses plus a reasonable profit on their investment used to provide intrastate regulated services to their customers. OPC contends that even under rate-of-return regulation there was no guarantee that the company would exactly earn its authorized return on equity. OPC states that this Commission would typically set a midpoint for the authorized return of equity and allow the company to earn 100 points above or below without Commission action. OPC asserts that if the company earned above the rate of return, it was up to this Commission or a party to bring an action against the company to reduce its rates.

OPC opines that under the current price cap regulatory paradigm, the direct link between rates and cost recovery was broken. OPC contends that rather than setting rates to recover costs and to target an authorized midpoint return on equity, price cap regulation sets prices independent of costs. OPC argues that if a company can successfully reduce its overall costs or hold costs steady while its revenues increase, it can reap the benefits of the cost reductions for its stockholders.

OPC asserts that the price cap system put into effect during 1996 generally froze rates at levels in existence as of July 1, 1995, and allowed the companies to later gradually raise rates by certain percentages unrelated to the costs incurred by the companies. OPC refers to Exhibits 17 and 18 which show the incremental revenue increases BellSouth and Sprint gained since January 1, 2000, under price cap regulation. OPC contends that rate changes have allowed BellSouth to increase revenues by more than \$90 million in 2000, another \$96 million in 2001, and another \$94 million in 2002, for revenue increases totaling more than \$280 million by the end of the three year period. See, Exhibit 17. OPC argues that compared to the \$2.97 million cost to implement number pooling, BellSouth has recovered the cost of number pooling many times over through rate increases implemented over the three year period. OPC asserts that the price

cap filings by Sprint resulted in incremental revenue increases in excess of \$12 million in 2000, another \$17 million in 2001, another \$15 million in 2002, and another \$17 million in 2003 - - over \$60 million by the end of this four year period. OPC contends that compared to the number pooling cost of \$627,000, Sprint, like BellSouth, recovered the cost of number pooling many times over through rate increases implemented since January 1, 2000.

OPC states that the Federal Communications Commission (FCC) has made it clear that it views numbering administration costs as ordinary costs of doing business. OPC maintains that in its Third Report and Order<sup>1</sup>, the FCC stated that “number administration . . . is a basic telephone network function. IXCs would not be able to route calls from their subscribers without a numbering system. Thousands-block number pooling is thus different from LNP because it is, essentially, an enhancement of existing numbering administration procedures designed to extend the life of the existing numbering system.”<sup>2</sup> OPC contends that later in the same order, the FCC stated that “we agree with those commenters that maintain that the costs of numbering administration are generally and appropriately treated as an ordinary cost of doing business.”<sup>3</sup> OPC asserts that as ordinary costs of doing business, numbering administrative costs, which include number pooling costs, are the type of costs already recovered by the companies through Florida’s price cap regulatory plan.

OPC contends that in addition to the regular price increases allowed under price cap regulation, the statutes governing pricing regulation also provide a method for the local exchange companies to seek additional rate increases. OPC states that according to Section 364.051(4), Florida Statutes (2003),

. . . any local exchange telecommunications company that believes circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances.

OPC asserts that no local exchange telecommunications company, including BellSouth and Sprint, has filed such a petition at this Commission, presumably because the profits the companies are earning under the price cap regulatory paradigm are fully adequate.

OPC contends that neither of the petitions seeking to recover number pooling costs from customers in this proceeding claim to be filed under the provisions of Section 364.051(4),

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<sup>1</sup> Third Report and Order and Second Order on Reconsideration, CC Docket No. 96-98 and CC Docket No. 99-2000, In the matter of Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability; Order No. FCC 01-362, (released December 28, 2001)

<sup>2</sup> Id. at ¶34.

<sup>3</sup> Id. at ¶37.

Florida Statutes (2003). OPC asserts that, instead, the petitions filed by the companies seek a one-time increase in rates without purporting to comply with the price cap regulation statutes. OPC argues that by failing to claim or show that they qualify for an exception to the price cap restriction (as set forth in Section 364.051(4), Florida Statutes), the companies must comply with all of the price cap restrictions governing their rates. OPC concludes that the price cap statutes do not allow the additional one-time rate increases granted by this Commission in the Proposed Agency Action (PAA) orders.

**B. BellSouth's Argument**

BellSouth asserts that OPC's analysis of Section 364.051(4), Florida Statutes, creates a direct conflict with the FCC's analysis of the extraordinary costs of thousands-block number pooling that the FCC says carriers are entitled to recover.<sup>4</sup> BellSouth asserts that this Commission cannot simply ignore this controlling federal law on cost recovery as OPC proposes.

BellSouth contends that this Commission recognized in its Proposed Agency Action Order concerning BellSouth's petition that under the federal three-prong test, only BellSouth's extraordinary costs may be recovered, not costs already included in the cost of service. BellSouth states that this Commission carefully explained why certain salaried labor costs of BellSouth did not meet the federal tests, and thus, recovery of those costs should not be allowed.

BellSouth asserts that under the theory put forth by OPC, any FCC authorized surcharge or cost recovery mechanism would be subjected to the state law requirements of Section 364.051, Florida Statutes, regardless of whether federal law occupied the field of regulation. BellSouth contends that in this case, the FCC has narrowly delegated authority to this Commission to conduct number pooling trials and to provide a mechanism for cost recovery. BellSouth claims that this delegation is pursuant to federal law and federal law controls this Commission's action. Thus, BellSouth argues that Section 364.051, Florida Statutes, is preempted by federal law and is irrelevant to these proceedings.

**C. Sprint's Argument**

Sprint contends that Section 364.051, Florida Statutes, sets forth the price regulation scheme applicable to price-regulated local exchange companies and addresses two categories of services provided by LECs: basic and nonbasic services. The rates for these services were frozen at the level in effect on July 1, 1995, and only annual percentage increases to those rates as set forth in the statute were allowed. Sprint asserts that the allowable increases for basic rates (inflation minus 1% annually) are intended to reflect increases in costs attributable to inflation minus a productivity factor. Sprint contends that companies are allowed more flexibility for nonbasic service price increases (6% to 20% annually, depending on the level of competition), to allow flexibility to respond to competitive pressures. Sprint asserts that the extraordinary

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<sup>4</sup> See FCC Order No. 01-362 at ¶43 (discussing the three-prong test under which carriers may recover extraordinary costs).

expenses that are associated with the mandatory implementation of thousands-block number pooling are in no way contemplated or addressed by the pricing mechanisms for basic and nonbasic services delineated in the statute; rather, these one-time charges are not “prices” for “services” but are a mechanism to recover extraordinary regulatory costs.

Sprint asserts that the FCC and this Commission have correctly recognized that certain expenditures incurred to implement number pooling are outside the costs carriers incur in the ordinary course of business. Sprint contends that in FCC Order No. 01-362 (Attachment 9 to the Joint Stipulation)<sup>5</sup>, the FCC acknowledged that many, if not most, of the costs associated with implementing number pooling could be considered ordinary business costs recovered through a carrier’s rates.<sup>6</sup> Sprint states that the FCC, however, also explicitly recognized that certain costs associated with number pooling are above and beyond ordinary business expenses, and that companies are entitled to recover these costs.<sup>7</sup> Sprint contends that in this Commission’s Order Approving Settlement to resolve disputed issues related to implementation of state-mandated number pooling trials, this Commission acknowledged its obligation to consider a mechanism that would allow companies an opportunity to seek recovery of costs incurred as a result of their implementation of state-mandated number pooling. Sprint asserts that as a party to the stipulation, the affected companies committed to expeditiously implement thousands-block number pooling, despite the lack of an existing cost recovery mechanism, in reliance on this Commission’s commitment to open a docket to address this issue.

Sprint contends that in FCC Order No. 00-104 (Attachment 2 to the Joint Stipulation)<sup>8</sup> and again in FCC Order No. 01-362, the FCC set forth certain criteria that it would apply, and that the states also should apply, in determining which costs incurred in implementing number pooling are extraordinary costs that companies are entitled to recover. Sprint states that the five criteria adopted by this Commission comport with the criteria set forth by the FCC.<sup>9</sup> Sprint asserts that its Petition details how its costs meet these criteria. (Sprint’s Petition at Exhibit A and attachment). Sprint contends that this Commission carefully evaluated its Petition and approved those costs it determined were extraordinary costs that Sprint could recover.<sup>10</sup>

Sprint states that, in fact, its Commission-approved costs meet each of the criteria identified by the FCC and established in this Commission’s Order on the Cost Recovery Petition Filing, in that they are: (1) costs that result in a net increase to Sprint because of its implementation of state number pooling; (2) the costs would not have been incurred “but for”

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

<sup>6</sup> FCC Order No. 01-362 at ¶37.

<sup>7</sup> *Id.* at ¶39.

<sup>8</sup> First Report and Order, CC Docket 99-2000, In the Matter of Numbering Resource Optimization, FCC Order No. 00-104, (released March 31, 2000)

<sup>9</sup> See, Order No. PSC-02-0466-PAA-TP, issued April 5, 2002 at p. 10 (Attachment 10 to the Joint Stipulation)

<sup>10</sup> See, Order No. PSC-03-1270-PAA-TP, issued November 10, 2003 at pp. 15-18(Attachment 15 to the Joint Stipulation).

number pooling and were incurred “for the provision of” number pooling; (3) they are “new” costs, in that they were incurred subsequent to this Commission’s implementation of thousands-block number pooling; (4) they are Florida-specific costs; and (5) the costs are recovered through a competitively neutral cost mechanism. Sprint concludes that in demonstrating that the costs for which recovery is sought meet these criteria, Sprint has demonstrated that, contrary to the OPC’s position, these costs were not, and could not, have been recovered through the basic and nonbasic price increases implemented pursuant to the price regulation scheme set forth in Section 364.051, Florida Statutes.

#### D. Decision

Numbering resources are an essential requirement for the provision of telecommunications services and as the FCC noted “[n]umbering administration . . . is a basic telephone network function.”<sup>11</sup> Thus, as a basic telephone network function, the costs of numbering administration are ordinary business costs that the FCC noted “[u]nder price caps, they are usually considered normal network upgrades that do not qualify for extraordinary recovery (*i.e.*, through an exogenous adjustment to the price cap formula). . . . This means that, in principle, recovery of the costs of numbering administration is already provided for in LEC compensation.”<sup>12</sup> However, the FCC clarified that while NPA area code relief is an ordinary cost of business, some costs associated with thousands-block number pooling qualify as extraordinary costs subject to extraordinary cost recovery:

However, because the Commission has mandated thousands-block number pooling as a national numbering resource optimization strategy, increased costs, if any, associated with thousands-block number pooling are distinguishable from those associated with NPA relief. Therefore, we conclude that a very narrow approach to thousands-block number pooling recovery is appropriate, and that extraordinary recovery should be granted only for extraordinary implementation costs.<sup>13</sup>

Thus, under the FCC’s rationale and contrary to OPC’s argument, not all costs associated with thousands-block number pooling are ordinary costs already being recovered under a price-cap regulatory scheme such as the scheme under Section 364.051, Florida Statutes. In fact, the FCC delineated a three prong test to determine whether a company incurred extraordinary expense for implementing the thousands-block number pooling.

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<sup>11</sup> Order No. FCC 01-362 at ¶34.

<sup>12</sup> *Id.* at ¶37.

<sup>13</sup> Order No. FCC 01-362 at ¶38.

Under state law, numbering issues such as area code relief and thousands-block number pooling are essential to the functioning of telecommunications services. Section 364.02(2), Florida Statutes, defines basic telecommunication service as

. . . voice-grade, flat-rate residential, and flat-rate single business local exchange services which provide dial tone, local usage necessary to place unlimited calls with a local exchange area, dual tone multifrequency dialing and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator service, relay service, and an alphabetical directory listing.

We agree with the FCC that while numbering issues are not in and of themselves a separately identified characteristic of basic telecommunications service, they are essential components of providing such service.<sup>14</sup> Thus, costs associated with numbering issues have been part of the ordinary costs of doing business to provide basic service under the price-cap scheme. We also agree with Sprint and BellSouth, however, that the costs related to thousands-block number pooling can be extraordinary costs for which cost recovery was not contemplated under the price-cap scheme. *See*, Sprint BR at p. 5, BellSouth BR at p. 19. Based on the foregoing, we find that the extraordinary costs associated with thousands-block number pooling fall outside the price-cap scheme set forth in Section 364.051, Florida Statutes. Nevertheless, for reasons discussed in the next section, we find that we have jurisdiction and may act in this matter pursuant to both federal and state law. While we do not find that thousands-block number pooling is itself a service subject to price cap scheme, the regulatory activity necessary to facilitate pooling and ensure proper cost recovery is within our authority.

Thus, under federal and state law we have the authority to authorize cost recovery for number pooling. Further, we find that the extraordinary costs related to thousands-block number pooling, as defined by the FCC, are outside the price-cap scheme set forth in Section 364.051, Florida Statutes. Thus, BellSouth and Sprint may recover the cost for state-mandated number pooling via a mechanism separate and apart from the price cap scheme for basic and non-basic services.

### **III. AUTHORITY FOR COST RECOVERY**

This section addresses the basis of the authority under which we may permit BellSouth and Sprint to recover the costs of number pooling through a separate end-user charge.

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<sup>14</sup> Order No. FCC 01-362 at ¶34.



A. OPC's Argument

OPC contends that this Commission has no general power to authorize rate increases, much less any specific power to grant a rate increase beyond those allowed by the price cap regulation statutes. OPC asserts that the price cap statute specifically contemplates an exception to otherwise applicable price cap restriction and sets forth guidelines that must be followed in orders to increase rates beyond those allowed by the price cap provisions. OPC contends that the exception to the price cap provisions, Section 364.051(4), Florida Statutes (2003), sets forth standards that the companies have not satisfied in this proceeding. OPC argues that the companies do not even purport to comply with the provisions of Section 364.054(4), Florida Statutes. OPC asserts that the power exercised by this Commission in relation to telecommunications companies is the power conferred by Chapter 364, Florida Statutes.

OPC asserts that in Order No. PSC-02-0466-PAA-TP, this Commission recognized that any petitions for number pooling cost recovery would have to be consistent with federal and state statutes. OPC contends that nothing in Order No. FCC 99-249 preempts state law in any manner. OPC argues that any order from this Commission authorizing the companies to add a surcharge to local rates must therefore comply with Florida law.

OPC contends that there is no power set forth in Chapter 364, Florida Statutes, allowing an extra one-time rate increase to pay for number pooling costs. OPC states that Section 364.16(4), Florida Statutes (2003), recognizes the scarcity of telephone numbering resources and the need for all local exchange service providers to have access to local telephone numbering resources on equitable terms. OPC asserts that this provision could have also addressed and authorized an extra rate increase to pay for number pooling costs, but it does not. OPC avers that there are no provisions allowing an increase other than (1) the gradual increase to basic/non-basic service rates which BellSouth and Sprint have already used to increase their revenues by more than \$280,000,000 and \$60,000,000, respectively, and (2) the exception allowed by Section 364.051(4), Florida Statutes (2003), which the companies have neither sought nor satisfied. OPC argues that accordingly, this Commission may not grant the additional revenue increases set forth in the PAA orders.

B. BellSouth's Argument

BellSouth contends that federal law governs this Commission's determination of cost recovery for pooling trials. BellSouth states that Congress has made clear that it intends for the FCC to have exclusive jurisdiction to administer telecommunication numbering with the purpose of making such numbers available on an equitable basis and to conserve numbering resources.<sup>15</sup> BellSouth contends that the Telecommunications Act also provides that the FCC has exclusive

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<sup>15</sup> See, 47 U.S.C. §251(e)(1).

authority concerning the costs of numbering administration arrangements.<sup>16</sup> BellSouth asserts that the statute states that 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 [FCC].”<sup>17</sup>

BellSouth cites several cases for the proposition that federal law may preempt state law.<sup>18</sup> Specifically, state law may be preempted: (1) where federal law is intended to “occupy the field,” or (2) where federal law does not “occupy the field,” to the extent state law conflicts with a federal statute.<sup>19</sup> BellSouth argues that the Supreme Court has stated that the commerce power permits Congress to preempt the States entirely in the regulation of private utilities.<sup>20</sup> BellSouth contends that Section 251(e)(1) of the Act provides that the FCC may delegate authority to the state commissions to administer telephone numbering. BellSouth asserts that the FCC has allowed various states, including Florida, to administer their own regulatory programs, structured to meet their own particular needs, regarding number pooling and recovery.<sup>21</sup>

BellSouth asserts that this Commission has state legislative authority to request and accept delegation of authority regarding number pooling trials. BellSouth states that in 1999, this Commission petitioned the FCC for certain authority relating to area code conservation. BellSouth asserts that the FCC, recognizing the critical need for number conservation, delegated limited authority to this Commission to conduct mandatory thousands-block number pooling trials in Florida.<sup>22</sup> BellSouth contends that the FCC also required that this Commission determine a method to recover the costs of number pooling trials.<sup>23</sup> BellSouth asserts that pursuant to the Telecommunications Act, and Order No. 99-249, this Commission has been delegated authority to act under federal law regarding those telephone numbering issues delineated in Order No. FCC 99-249.

BellSouth states that Florida Statutes provide this Commission with general authority over telephone numbering policies, and provide a basis for this Commission to request delegation from the FCC. BellSouth cites Proposed Agency Action Order No. PSC-03-1096-PAA-TP in which this Commission found statutory authority regarding number pooling pursuant to Sections 364.01(4)(a) and 364.16(4), Florida Statutes. BellSouth contends that this state statutory authority enables this Commission to act pursuant to the delegated authority from the FCC.<sup>24</sup>

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<sup>16</sup> See, 47 U.S.C. §251(e)(2).

<sup>17</sup> See, 47 U.S.C. §251(e)(2)

<sup>18</sup> Crosby v. Nat'l Foreign Trade Counsel, 530 U.S. 363, 372 (2000).

<sup>19</sup> Crosby, 530 U.S. at 372; Hines v. Davidowitz, 312 U.S. 52, 67 (1941)

<sup>20</sup> FERC v. Miss., 456 U.S. 742, 764 (1982).

<sup>21</sup> FERC v. Miss., at 769 (the Court found that Titles I and III of the Public Utility Regulatory Policies Act established requirements for continued state activity in and otherwise pre-emptible field.)

<sup>22</sup> Order No. FCC 99-249 at ¶13.

<sup>23</sup> Order No. FCC 99-249 at ¶17.

<sup>24</sup> Ocampo v. Florida Department of Health, 806 So. 2d 633, 634(Fla. 1<sup>st</sup> DCA 2002)

BellSouth asserts that the FCC's orders relating to cost recovery for number pooling direct this Commission to permit such recovery based on federal law.<sup>25</sup> BellSouth contends that without the delegation of authority by the FCC, this Commission has no authority to act regarding number pooling. BellSouth asserts that therefore, this Commission's action must be consistent with the delegation or its actions would be ultra vires. Further, BellSouth, citing to Order No. PSC-00-1046-PAA-TP at page 15, states that this Commission has acknowledged that federal law controls decisions concerning number pooling cost recovery.

BellSouth argues that because federal law controls, Section 364.051, Florida Statutes, relating to price regulation, is irrelevant to this proceeding. BellSouth contends that with respect to number pooling trials and associated cost recovery, Congress and the FCC have provided authority that preempts Section 364.051, Florida Statutes. BellSouth notes that the end-user charge for number pooling is neither a charge for a basic nor a charge for a non-basic service; rather, it is a charge, as authorized by Congress and the FCC, for the costs associated with implementing a federal program. BellSouth also argues that none the less, because Section 364.051, Florida Statutes, is preempted by federal law in this case, the issue of whether the end-user charge for number pooling would constitute a basic service or non-basic service pursuant to Section 364.051, Florida Statutes is irrelevant. Moreover, BellSouth contends that such preemption does not invalidate the state statute; rather, BellSouth must comply with Florida law unless, as in this case, the federal government has provided authority to the contrary.<sup>26</sup>

BellSouth maintains that another reason that Section 364.051, Florida Statutes, is preempted is because the application of Section 364.051, Florida Statute, to these proceedings would frustrate the intent of federal law and the intent of the relevant FCC Orders, which is to allow carriers who participate in number conservation efforts to recover their extraordinary costs.<sup>27</sup> BellSouth claims that reliance on Section 364.051, Florida Statutes, as a basis for preventing the recovery of extraordinary costs, as defined by the FCC in its orders and applied to BellSouth's petition by this Commission, would frustrate the operation of federal law. BellSouth concludes that Section 364.051, Florida Statutes, is preempted by federal law and cannot serve as a basis for prohibiting cost recovery.

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<sup>25</sup> See, e.g. Order No. FCC 00-104 (requiring cost recovery to be handled on a competitively neutral basis and identifying the types of costs that should be attributed to implementation of number pooling.); and Order No. FCC 01-362 at ¶28 ("In our orders delegating authority to the state commissions to institute thousands-block number pooling trials, we have reminded the states to ensure that the shared costs of thousands-block number pooling are borne and that the carrier-specific costs of thousands-block number pooling are recovered on a competitively neutral basis in accordance with Section 251(e)2 . . .").

<sup>26</sup> See, Phillips v. General Finance Corp. of Fla., 297 So.2d 6,8(Fla. 1974).

<sup>27</sup> Phillips, 297 So.2d at 8 ("Where there is conflict with the federal law, the test in determining whether the state law has been superseded by the federal law is whether the state law frustrates the operation of the federal law and prevents the accomplishment of its purpose.")

C. Sprint's Arguments

Sprint asserts that OPC's arguments are wrong because as this Commission noted in its Order Approving its Petition, this Commission has both federal and state authority to approve Sprint's cost recovery from implementing Florida number pooling trials. Sprint states that pursuant to Section 251(e) of the Act, the FCC delegated to this Commission authority to implement state number pooling trials and the obligation to allow carriers to recover the costs associated with such trials in its order granting this Commission's request for authority to implement state number pooling trials and in its subsequent orders addressing issues of federal number pooling and cost recovery. Sprint contends that because the FCC has plenary jurisdiction over numbering administration, this Commission's exercise of its state-accorded jurisdiction is subordinate to the FCC's jurisdiction and must be exercised consistent with FCC policy and direction. Sprint asserts that in granting the delegation to implement thousands-block number pooling to this Commission, the FCC expressly required this Commission to ensure cost recovery for any state-mandated number pooling trials.<sup>28</sup>

Sprint contends that this Commission exercised this delegated authority pursuant to its authority over numbering resources set forth in Section 364.16(4), Florida Statutes, and in accordance with Section 364.01, Florida Statutes, which provides direction to this Commission in the exercise of its statutory jurisdiction. Sprint cites to the specific relevant portion of Section 364.16(4), Florida Statutes, that states:

In order to ensure that consumers have access to different local exchange service providers without being disadvantaged, or inconvenienced by having to give up the customer'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.

Sprint also states that Section 364.01(4)(a), Florida Statutes, directs this Commission to exercise its exclusive statutory jurisdiction, in this case its specific authority over numbering resources, to:

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.

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<sup>28</sup> Order No. FCC 99-249 at ¶ 17.

Sprint contends that number optimization and number conservation measures, including the implementation of thousands-block number pooling, are designed to achieve just that goal. Sprint asserts that this Commission has previously asserted its jurisdiction over numbering issues pursuant to Sections 364.01 and 364.16, Florida Statutes, in numerous orders unchallenged on jurisdictional grounds.<sup>29</sup> Sprint also noted that case law supports this Commission's interpretation of its jurisdiction under Section 364.01, Florida Statutes.<sup>30</sup>

Sprint asserts that one of the criteria the FCC established for number pooling cost recovery is that the recovery mechanism must be competitively neutral.<sup>31</sup> Sprint states that for the federal number pooling recovery mechanism, the FCC authorized that the charges be recovered through an access charge adjustment.<sup>32</sup> Sprint contends that while recovery through access charges is one alternative for a competitively neutral recovery mechanism, the FCC did not mandate that the states adopt this identical mechanism. Sprint asserts that since Florida Statutes constrain this Commission's ability to alter the access charge regime established in the statute, the specific cost recovery mechanism adopted by the FCC is not available to this Commission for state number pooling cost recovery.

Sprint claims that the price regulation statutes do not have any bearing on this Commission's approval of cost recovery through an end user surcharge. Sprint notes that in the Order Approving Sprint's Petition at page 18, this Commission recognized that an end user surcharge is also a competitively neutral cost recovery mechanism that meets the requirements established by the FCC. Sprint also notes in its Order Approving BellSouth's Petition at page 21, this Commission recognized that given the level of cost recovery approved by this Commission, a one-time end user surcharge would not impose an undue financial burden on BellSouth's customers and would be the least administratively burdensome alternative. Sprint states that consistent with its action on BellSouth's Petition, this Commission approved a one-time end user surcharge to recover Sprint's approved costs.<sup>33</sup>

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<sup>29</sup> See, e.g. Order No. PSC-03-1133-PA-TX, in Docket No. 030937-TX, In re: Petition for Expedited Review of Central Office Growth Code Denial In North Naples by Number Pooling Administrator by US LEC of Florida, Inc. at p. 2; Order No. PSC-03-0248-PAA-TL in Docket No. 030118-TL, In re: Petition for Expedited Review of Growth Code Denials by Number Pooling Administrator for Palm Coast Exchange for BellSouth Telecommunications, Inc. at p. 2; Order No. PSC-02-0406-PCO-TL in Docket No. 990457-TL, In re: Request for Review of Proposed Numbering Plan Relief for the 954 Area Code at 2.

<sup>30</sup> Level 3 v. Jacobs, 841 So. 2d 447 (Fla. 2003) (addressing the application of 364.01, Florida Statutes, to the Commission interpretation of its jurisdiction under Section 364.336, Florida Statutes.)

<sup>31</sup> See, Order No. FCC 00-104 at ¶198.

<sup>32</sup> See, Order No. FCC 01-362 at ¶25.

<sup>33</sup> Order Approving Sprint's Petition at p. 18; See, also Sprint's Responses to Staff's First Set of Interrogatories, Interrogatory No. 1.

D. Decision

As noted in the Orders approving BellSouth's Cost Recovery Petition in part and Sprint's Cost Recovery Petition in part, we find that we have both federal and state law authority.<sup>34</sup> The FCC has authority under Section 251(e) of the Act to delegate authority to the 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.

In addition, Section 252(e)(2) of the Act provides the authority to collect number pooling costs:

(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.

In its Order No. FCC 99-249, released September 15, 1999, the FCC acknowledged the need to delegate number conservation authority to this Commission. Specifically, the FCC found that due to Florida's critical area code situation, it would grant additional authority to this Commission:

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.<sup>35</sup>

Moreover, pursuant to Section 251(e) of the Act, the FCC delegated authority “. . . to the Florida Commission to conduct mandatory thousands-block number pooling trials in Florida.”<sup>36</sup> In

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<sup>34</sup> See, Order No. PSC-03-1270-PAA-TP at 9; Order No. PSC-03-1096-PAA-TP.

<sup>35</sup> Id. at ¶ 5.

<sup>36</sup> Id. at ¶ 13.

delegating its authority regarding number pooling, the FCC also delegated its obligation to provide for cost recovery for the number pooling trials. In Paragraph 17 of that Order, the FCC states:

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.<sup>37</sup>

Thus, pursuant to the Act and Order No. FCC 99-249, we have been delegated authority to conduct mandatory thousands-block number pooling and have also been further obligated to provide a cost recovery mechanism as required under federal statute.

Further, we have state law authority to act regarding numbering issues. We have state law authority over numbering policies and issues through Sections 364.01(4)(a), and Section 364.16(14), Florida Statutes. Section 364.01(4)(a) provides that:

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.

As a policy matter, 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.

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<sup>37</sup> Id.

Section 364.16(4), Florida Statutes, provides that:

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.

We find that Section 364.16(4), Florida Statutes, acknowledges the importance of numbering issues and the need for us to act in this regard. This section provides for local number portability because of the scarcity of numbering resources and the need to protect and make available to all local providers, access to numbering resources. Based on this language, we find that it is clear that we are charged with ensuring the scarce numbering resources in Florida are protected in accordance with the national assignment guidelines. We find that 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 take reasonable measures to ensure the protection of the scarce numbering resources within the State of Florida.

We also find that working in conjunction with the federal delegation of authority over number pooling and the cost associated with 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). We find that the FCC's specific delegation of authority to us to implement number pooling and to address related cost recovery, in conjunction with the Florida Legislature's apparent intent that we act in this area, establishes the basis for our ability to act in this manner. The FCC contemplated that we would abide by the same statutory obligation<sup>38</sup> to provide cost recovery. Furthermore, once we acted to implement the number pooling trials, we were further obligated to approve cost recovery in accordance with Order No. FCC 99-249, which allowed us to conduct the trials.

Our authority to authorize a one-time end user charge is addressed further under the previous section. Moreover, the arguments raised by the parties in reference to Section 364.051, Florida Statutes, have been addressed in the previous section.

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<sup>38</sup> Section 251(e)(2) of the Act requires that "[t]he 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." 47 U.S.C. §251(e)(2)



Based on the foregoing, we find that pursuant to Section 251(e) of the Telecommunications Act of 1996 and Order No. FCC 99-249, we have been delegated authority under federal law regarding administrative telephone numbering issues. Specifically, we have been further granted authority to conduct mandatory thousands-block number pooling and have been obligated to provide a cost recovery mechanism as required under federal law. Further, we find that we have state law authority over numbering policies and issues through Sections 364.01(4)(a), and Section 364.16(14), Florida Statutes.

#### **IV. MANNER OF COST RECOVERY**

The Parties in this docket are not challenging the amount of the state-mandated number pooling cost recovery, just how the state-mandated number pooling costs should be recovered.

##### **A. OPC's Argument**

OPC believes that the FCC directly opposes the use of end user charges, such as the ones authorized by this Commission in this docket, to recover number pooling costs. OPC included copies of Paragraphs 33-37 of Order No. FCC 01-362 in its Brief. Paragraph 33 of Order No. FCC 01-362 states that the FCC, despite the urging of many commenters, resists imposing another direct charge on end-users for national thousands-block number pooling costs. Although the FCC approved the use of an end-user surcharge for local number portability (LNP) costs, OPC emphasizes that it is using access charges for recovery of number pooling costs.

OPC asserts that the FCC believes the use of access charges for recovery of number pooling costs is appropriate since access charges are the means by which access customers share in the costs of the telephone network. OPC states that the FCC also believes that all carriers and subscribers 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 North American Numbering Plan (NANP).

OPC opines that although this Commission believes it must provide number pooling cost recovery to the companies, this Commission is acting directly contrary to the FCC's intent by approving an end-user charge. OPC believes that this Commission should issue an order that reverses its initial decision to grant the companies an additional one-time rate increase to pay for the state-mandated number pooling.

B. BellSouth's Argument

BellSouth believes this Commission followed federal law and FCC orders in authorizing cost recovery through an end-user surcharge. BellSouth believes this Commission correctly determined that certain BellSouth costs meet the three-prong test established by the FCC:

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.

BellSouth also asserts that Order No. PSC-03-1096-PAA-TP, issued October 2, 2003, proposing that BellSouth recover \$2,970,762 in costs, demonstrates careful adherence to the criteria outlined by the FCC for state-mandated thousands-block number pooling trials. We note that we disallowed \$536,082 of salaried labor costs of BellSouth employees because these costs did not meet the "new" cost requirement of the three-prong test.

BellSouth opines that: 1) it should be entitled to recover all costs for state-mandated pooling trials that meet the FCC's three-prong test for extraordinary costs; 2) this Commission correctly permitted cost recovery through a mechanism separate from the rate and revenue increases to basic and non-basic service implemented since January 1, 2000; and 3) this one-time, separate end-user charge proposed by this Commission is consistent with federal law and FCC precedent.

C. Sprint's Argument

Sprint believes that the manner by which this Commission allowed BellSouth and Sprint to recover their number pooling costs is consistent with FCC policy and decisions delegating authority to Florida to implement thousands-block number pooling trials and providing for number pooling cost recovery. In its post-hearing Brief, Sprint notes that "Since the Florida Statutes constrain the FPSC's ability to alter the access charge regime established in the statute, the specific cost recovery mechanism adopted by the FCC is not available to the FPSC for state number pooling cost recovery." Sprint BR at p. 9.

Sprint notes that in addition to the three-prong test outlined above, this Commission adopted three additional criteria: 1) pooling results in a net cost increase rather than a cost reduction; 2) the costs for which recovery is requested are Florida-specific costs not related to

national number pooling; and 3) the costs will be recovered on a competitively neutral basis in accordance with Section 251(e)(2) of the Telecommunications Act of 1996. We note that we disallowed \$756,190 of salaried labor costs of Sprint because these costs did not meet the “new” cost requirement of the three-prong test.

Sprint opines that the criteria established by this Commission are consistent with FCC regulations and ensure that the costs recovered are extraordinary costs, beyond the costs incurred in the ordinary course of business, and that this Commission’s approval of Sprint’s recovery of its costs through a one-time charge to Sprint’s end users customers was lawful and appropriate.

#### D. Decision

By FCC Order No. 99-249<sup>39</sup>, released September 15, 1999, the FCC granted this 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.<sup>40</sup>

Since receiving authority to implement state number pooling trials, we have ordered implementation of state number pooling trials in the Ft. Lauderdale, West Palm Beach, Jacksonville, Keys, Daytona Beach, Ft. Pierce-Port St. Lucie, Tampa, and Sarasota-Bradenton areas. In Order No. FCC 00-104<sup>41</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.<sup>42</sup>

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<sup>39</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.

<sup>40</sup> Order No. FCC 99-249 at ¶ 17.

<sup>41</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.

<sup>42</sup> 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.<sup>43</sup>

By Order No. PSC-00-1046-PAA-TP, issued May 30, 2000, in Docket No. 981444-TP, In Re: Number Utilization Study: Investigation Into Number Conservation Measures, we acknowledged an obligation to review the issues pertaining to number pooling cost recovery. We also acknowledged Order No. FCC 00-104, requiring us to resolve any matters related to cost recovery under the federal law.

In Order No. FCC 01-362<sup>44</sup>, released December 28, 2001, the FCC again addressed state-mandated number pooling costs and 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 covered within those jurisdictions that have enjoyed the benefits of such trials.<sup>45</sup>

We filed comments to the FCC stating that state number pooling costs should be combined with national costs, and all thousands-block number pooling costs should be recovered in the federal jurisdiction.<sup>46</sup> However, 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.”<sup>47</sup> With the FCC deciding that state number pooling costs needed to be recovered in the states which benefit from state number pooling, it became necessary to determine the most appropriate means for the recovery. 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.

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<sup>43</sup> Id. at ¶197.

<sup>44</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.

<sup>45</sup> Order No. FCC 01-362 at ¶ 25.

<sup>46</sup> Id. at ¶ 26.

<sup>47</sup> Id. at ¶ 27.

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.<sup>48</sup>

By Order FCC 00-104, the FCC adopted three cost categories for thousands-block number pooling: shared industry costs [costs incurred by the industry as a whole, such as the North American Numbering Plan (NANP) administration costs]; 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 carrier-specific costs not directly related to thousands-block number pooling. Order No. FCC 00-104 concluded that incremental shared industry costs become carrier-specific costs once they are allocated among carriers.<sup>49</sup> 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."<sup>50</sup>

We find that BellSouth's and Sprint's carrier-specific costs associated with state-mandated number pooling trials shall be borne by all of their Florida end-user lines. Since all customers benefit from extending the life of area codes, because it extends the life of the NANP, all customers shall share the cost of number pooling. This position is also consistent with the FCC's decision on federally-mandated number pooling costs. Order No. 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.<sup>51</sup>

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.

We concluded that we have correctly followed the rules and Orders of the FCC in approving cost recovery for state-mandated pooling trials. The FCC's three-prong test was used to examine carrier's costs, and we found that \$536,082 of BellSouth's costs, and \$756,190 of Sprint's costs did not qualify for recovery, and were disallowed. We believe OPC's position that the FCC opposes the use of end-user surcharges for number pooling is correct as it relates to the FCC's national number pooling cost recovery. However, with regard to state number pooling

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<sup>48</sup> Order No. FCC 01-362 at ¶ 28.

<sup>49</sup> *Id.* at ¶ 204.

<sup>50</sup> *Id.* at ¶ 211.

<sup>51</sup> Order No. FCC 01-362 at ¶ 34.

cost recovery, we find that the FCC gave states the latitude to determine what method of cost recovery is appropriate for their state when it stated:

In the past, the Commission has urged state commissions to follow the “road map” provided in the *First Report and Order* regarding cost recovery for thousands-block number pooling. To the extent that states were awaiting additional guidance on a specific cost recovery mechanism, they may now follow the blueprint for cost recovery that we lay out here and in our prior orders, should they so choose.<sup>52</sup>

We find that the FCC clearly articulates that the number pooling cost recovery mechanisms in its Order are only guidelines for the states to use if they so choose. Furthermore, we approved mechanism for state-mandated number pooling cost recovery is within the scope of our authority under state law, whereas the mechanism offered as a guideline by the FCC does not appear to be. We are correct in approving the end-user surcharge as the most efficient means of recovery.

Therefore, the manner by which we allowed BellSouth and Sprint to recover the costs of number pooling is consistent with FCC policy and decisions. Also, we find that the parties shall proceed to recover the cost of number pooling in accordance with Order Nos. PSC-PSC-03-1096-PAA-TP, and PSC-03-1270-PAA-TP. Further, based on the record in this case, we reaffirm the findings and decisions in Order Nos. PSC-PSC-03-1096-PAA-TP, and PSC-03-1270-PAA-TP, which are attached as Attachment A and Attachment B respectively, and incorporated by reference in this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.’s and Sprint-Florida, Incorporated’s Petitions for Cost Recovery shall be granted in part for the reasons stated above as set forth in the body of this Order. It is further

ORDERED that Order Nos. PSC-PSC-03-1096-PAA-TP, and PSC-03-1270-PAA-TP, which are attached as Attachment A and Attachment B respectively, are reaffirmed in their findings and decisions and incorporated by reference. It is further

ORDERED that BellSouth Telecommunications, Inc. and Sprint-Florida, Inc. shall proceed to recover the cost of number pooling in accordance with Order Nos. PSC-PSC-03-1096-PAA-TP, and PSC-03-1270-PAA-TP. It is further

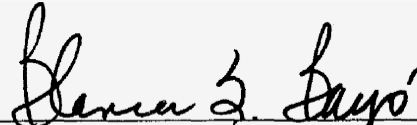
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<sup>52</sup> Order No. FCC 01-362 at ¶ 27.

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ORDERED that the docket should be closed 32 days after issuance of this Order, to allow the time for filing an appeal to run.

By ORDER of the Florida Public Service Commission this 9th day of September, 2004.



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

( S E A L )

PAC

DISSENTS:

Commissioner J. Terry Deason dissents without comment from the majority's decision.

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DOCKET NO. 001503-TP  
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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.



**ATTACHMENT A**

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.

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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>53</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:

Metropolitan Statistical		Implementation Date of	Incumbent Local
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<sup>53</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.

Area	Area Code	Number Pooling	Exchange Company
			BellSouth
West Palm Beach	561	February 5, 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

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
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>54</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>54</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>55</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

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<sup>55</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.

the cost recovery process. Subsequently, Docket No. 001503-TP was opened on September 29, 2000 to address number pooling cost recovery.

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>56</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

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<sup>56</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.

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only one number pooling charge on a customer's bill, which would cause less confusion for the customers.

On December 28, 2001, the FCC released Order No. 01-362<sup>57</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

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<sup>57</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.

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.

By Order No. PSC-02-0466-PAA-TP, issued April 5, 2002, in Docket No. 001503-TL<sup>58</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>59</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

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<sup>58</sup> Consummating Order PSC-02-0590-CO-TP, issued April 30, 2002.

<sup>59</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 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 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>60</sup>, 561, 904, and 954;
- b) Costs included in its petition were not included in the regional study<sup>61</sup>;

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<sup>60</sup> The 305 area code only considers the Keys region.

- 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;
- 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>62</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"

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<sup>61</sup> The regional study considers all of BellSouth's territory in the United States for FCC-mandated national number pooling cost recovery.

<sup>62</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.



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 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>63</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.

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

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<sup>63</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.

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>64</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 Recovered. However, since the total costs

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<sup>64</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 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>65</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.

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<sup>65</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.



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 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

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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: /s/ Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

This is a facsimile copy. Go to the  
Commission's Web site,  
<http://www.floridapsc.com> or fax a  
request to 1-850-413-7118, for a copy of  
the order with signature.

( S E A L )  
PAC

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.

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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.

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**ATTACHMENT B**

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-03-1270-PAA-TP ISSUED: November 10, 2003
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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 APPROVING SPRINT'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.

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 this 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:

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

<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
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 320 NXXs (or 3,200,000 numbers) saved by number pooling in Florida to date, 261 NXXs (or 2,610,000 numbers) resulted from the state mandated pooling areas, rather than from the federally-mandated number pooling trials. 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	19	4 <sup>th</sup> Quarter 2017	0
305 (Keys)	7	3 <sup>rd</sup> Quarter 2005	7 Quarters
386	16	1 <sup>st</sup> Quarter 2025	17 Quarters
561	52	2 <sup>nd</sup> Quarter 2013	21 Quarters
772	37	4 <sup>th</sup> Quarter 2026	0
813	29	4 <sup>th</sup> Quarter 2014	25 Quarters
904	28	4 <sup>th</sup> Quarter 2018	30 Quarters
941	33	1 <sup>st</sup> Quarter 2018	27 Quarters
954/754	40	1 <sup>st</sup> Quarter 2019	0

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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.

By Order No. PSC-00-0543-PAA-TP, issued May 30, 2000, in Docket No. 981444-TP, In Re: Number Utilization Study: Investigation into Number Conservation Measures, 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

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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.

<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.

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, In Re: Number Utilization Study: Investigation into Number Conservation Measures, 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. Our staff subsequently opened Docket No. 001503-TP on September 29, 2000 to address number pooling cost recovery.

On December 12, 2000, our staff conducted a workshop to solicit input from the industry regarding cost recovery and allocation mechanisms for number pooling trials in Florida. The post-workshop comments 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.



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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.

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

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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.

<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.

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 commentors, including this Commission, 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.

By Order No. PSC-02-0466-PAA-TP, issued April 5, 2002, in Docket No. 001503-TL, In Re: Cost recovery and allocation issues for number pooling trials in Florida,<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 September 30, 2002, Sprint filed a petition for recovery of its carrier-specific costs (\$1,515,000) associated with state-mandated number pooling trials. This Order addresses Sprint's cost recovery petition for state-mandated number pooling trials.

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

By Order No. PSC-03-1096-PAA-TP, issued October 2, 2003, we considered BellSouth's August 5, 2002 petition for recovery of its carrier-specific costs for state-mandated number pooling trials. We approved all BellSouth's state-mandated number pooling implementation costs, with the exception of BellSouth's salaried costs. In that Order, we also modified the recommended notice to include the caveat that the company was to work with our staff on its bill-insert notice to ensure that (1) the language would be adequate for customers' understanding, (2) the notice would fit on the bill so no additional costs would be incurred, and (3) the end-user charge would be stated as "One-Time Area Code Conservation Charge."

## II. JURISDICTION

We have 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.

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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, we have been delegated authority to act under federal law regarding administering telephone numbering issues.

We also have 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 available 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 us to implement number pooling and address related cost recovery, in conjunction with Florida Legislator's apparent intent that we act in this area, establishes the basis for our ability to act in this matter.

We find that we have 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 September 30, 2002, Sprint filed a petition for recovery of its carrier-specific costs (\$1,515,000) associated with state-mandated number pooling trials. Upon our review and analysis of Sprint's petition, and based on Order No. PSC-02-0466-PAA-TP, we find that Sprint'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

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.

Sprint's September 30, 2002 petition included the following assertions in calculating the costs associated with state-mandated number pooling trials:

- a) Sprint proposes to recover its carrier-specific costs through a one-time surcharge per access line, excluding Lifeline access lines.
- b) Pooling results in a net cost increase, rather than a cost reduction for Sprint. The costs included in the calculation are "new" costs and are Florida-specific costs not related to national number pooling.
- c) Sprint has utilized the same Local Number Portability cost recovery methodology used in the FCC filing in preparing its cost recovery study for the pooling trials in Florida.
- d) Recovery of investments and expenses within the revenue requirement include prior year expenditures from 1998 through 2001 and cost savings for 2002 through 2006.
- e) The labor costs include activities associated with number pooling began in 1998 to assure successful implementation of all necessary processes and procedures. These costs were not included in Sprint's federal number pooling cost recovery filing which amounts to \$3,441,057.
- f) Sprint's total revenue requirement for number pooling implementation in Florida is \$1,515,000. As of January, 2003, Sprint had approximately 2,115,000 access lines. The revenue requirement per line is \$0.72.

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, Sprint stated that state-mandated pooling trials have postponed area code relief in its pooling areas which saved Sprint approximately \$187,408. Sprint followed FCC guidelines and deducted this amount from the total costs requested for implementing state-mandated pooling trials.



After careful examination of Sprint's cost recovery petition and considering our previous decision in Order No. PSC-03-1096-PAA-TP, we find that salaried labor costs shall be excluded from consideration when determining state-mandated number pooling cost recovery.

In its petition, Sprint states that it began working on implementing state-mandated number pooling trial processes and procedures in 1998. In response to Staff's Interrogatory #13, Sprint states:

The labor costs listed in Exhibit 2 relate to the state number pooling trials because these activities associated with number pooling began in 1998 in order to assure successful implementation of all necessary processes and procedures.

Sprint's petition includes labor costs of \$440,138 for 1998 and \$447,128 for 1999. Per FCC 01-362, the third part of the three-prong test for recovery of number pooling implementation costs is that the costs must be "new" costs. *Id.* at ¶ 46. The FCC further states:

Costs incurred prior to the implementation of thousands-block number pooling are ineligible for recovery because they are embedded investments already subject to recovery through standard mechanisms. Thus, permitting recovery of these costs again through this extraordinary mechanism would amount to double recovery. Costs are not "new," and thus are ineligible for extraordinary treatment as thousands-block number pooling charges, if they previously were incurred, are already being recovered under ordinary recovery mechanisms, or are already being recovered thorough the number portability end-user charge or query charge.

(footnotes omitted) FCC 01-362 at ¶ 46.

Sprint's petition included \$756,190 of salary labor costs that were incurred prior to this Commission obtaining authority from the FCC to order state-mandated number pooling trials in September 1999. The recovery of pooling costs that are not considered "new", as defined by the FCC, are not eligible for recovery. As Sprint incurred these labor costs prior to Florida

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obtaining authority to mandate state number pooling trials, these costs shall be disallowed for recovery purposes.

Sprint included a total of \$887,266 of salaried labor in its cost recovery petition. While we find that \$756,190 shall be disallowed for recovery purposes since the costs were incurred prior to Florida obtaining authority to mandate number pooling trials, we also find that the entire amount (\$887,266) shall be disallowed based on the argument that salaried labor costs are not "incremental" in nature. In our opinion, these costs would have been incurred whether these salaried employees were working on number pooling or something else. This proposed disallowance is consistent with our vote regarding BellSouth's petition for number pooling cost recovery.

We find that Sprint has not demonstrated that it had to create any new positions to implement state-mandated number pooling trials, and has not shown that these salaried employees could have been terminated or laid off had the number pooling function not been imposed.

We are charged with determining whether Sprint's state pooling costs reasonably meet the standards set forth in 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.

Thus, we affirmatively find that the salaried labor costs Sprint included in its petition are not incremental costs which is consistent with the affirmative find made regarding BellSouth's cost recovery petition.

Therefore, we find that the \$887,266 of salaried labor costs of Sprint employees shall be excluded when determining the amount of recoverable number pooling costs subject to recovery

because Sprint has not demonstrated that it has met its obligation using the "but for" prong test of the FCC and included costs prior to FCC's delegation of authority to this Commission. However, Sprint shall be allowed to recover the remaining carrier-specific costs of \$627,734 associated with implementing state-mandated pooling trials, which consists of pooling administration costs, SS7 and OSS upgrades, and incremental investment and installation costs.

V. HOW COSTS SHOULD BE RECOVERED

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, Sprint's carrier-specific costs associated with state-mandated number pooling trials shall be borne by all Sprint's Florida end-user lines.

According to Sprint's petition, Sprint had approximately 2,115,000 end-user lines in Florida as of January, 2003, which would result in an approximate \$0.30 ( $\$627,734/2,115,000$  end-user lines) one-time end-user charge.

We find that Sprint shall use its Florida end-user lines of customers of record as of June 30, 2003, excluding Lifeline access lines, to calculate the exact charge. We find that equivalency factors regarding end-user lines shall be the same as those used for local number portability cost recovery. Furthermore, we find that Sprint 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

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administratively; however, our staff shall bring any material difference between the estimated one-time charge and the final assessment before us for approval.

VI. NOTICE TO CUSTOMERS

We find that Sprint shall work with our staff on its bill-insert notice to ensure the notice language is adequate for customers' understanding, and fit on the bill so that no additional charges would be incurred. The state number pooling implementation charge shall be referred to as "One-Time Area Code Conservation" charge. We also find that Sprint shall provide a 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sprint-Florida, Incorporated'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.

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By ORDER of the Florida Public Service Commission this 10th  
Day of November, 2003.

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

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

This is a facsimile copy. Go to the  
Commission's Web site,  
<http://www.floridapsc.com> or fax a  
request to 1-850-413-7118, for a copy of  
the order with signature.

( S E A L )

PAC

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

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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 December 1, 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.