

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Investigation to determine whether BellSouth Telecommunications, Inc.'s tariff filing to restructure its late payment charge is in violation of Section 364.051, F.S.

DOCKET NO. 000733-TL

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

DOCKET NO. 001503-TP

ORDER NO. PSC-04-1124-FOF-TP

ISSUED: November 15, 2004

The following Commissioners participated in the disposition of this matter:

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

ORDER ALLOCATING UNCLAIMED REFUNDS TO OFFSET BELL SOUTH  
TELECOMMUNICATIONS, INC.'S NUMBER POOLING COSTS WITH THE REMAINDER  
TO BE USED FOR LIFELINE AND LINK-UP

BY THE COMMISSION:

**Case Background**

On July 9, 1999, BellSouth Telecommunications, Inc. (BellSouth) filed a tariff to restructure its Late Payment Charge (LPC) in Section A2 of its General Services Tariff. As a presumptively valid tariff, the filing became effective July 24, 1999. The tariff provisions began affecting BellSouth consumers on August 28, 1999. In August 1999, our staff expressed concerns to BellSouth about possible statutory violations regarding its LPC tariff filing, and was made aware of ongoing discussions between BellSouth and the Office of Public Counsel (OPC) on the same filing. In view of the ongoing discussions between BellSouth and OPC, BellSouth requested that the Florida Public Service Commission (PSC or Commission) allow negotiations to continue in an effort to resolve the matter.

After receiving a customer complaint regarding BellSouth's Late Payment Charge, this Commission's staff determined that a our decision on the tariff filing was appropriate, since the negotiations between OPC and BST had apparently not yielded any resolution. On June 19, 2000, our staff opened this docket to investigate whether the LPC tariff filing violated the price increase limitation of Section 364.051, Florida Statutes. In Order No. PSC-01-1769-FOF-TL issued August 30, 2001, this Commission found that the tariff filing violated the aforementioned

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statute and ordered the discontinuance of the restructured LPC and, in accordance with Rule 25-4.114, Florida Administrative Code, ordered the refunding of the interest fee portion of the restructured LPC that was deemed unlawful.

On October 31, 2002, the Supreme Court of Florida affirmed the Commission's Final Order in *BellSouth Telecommunications, Inc., v. Jacobs*, 834 So.2d 855 (Fla. 2002). On April 4, 2003, BellSouth advised that in accordance with our Final Order, refunds to customers had begun and stated that the total refund amount was approximately \$89,279,000. This amount includes accrued interest on the monies ordered to be refunded.

On March 10, 2004, OPC and BellSouth filed a Joint Motion for the disposition of the \$2,798,915 in returned unpaid drafts and refund amounts of less than \$1.00 per customer. In the Joint Motion, BellSouth and OPC agreed that the monies should be used to promote Lifeline and Link-Up programs in a manner consistent with the way these programs have been promoted pursuant to the settlement agreement between BellSouth and OPC, dated July 9, 2001, that this Commission approved by Order No. PSC01-1643-AS-TL, issued August 13, 2001. In the July 9, 2001 settlement agreement, BellSouth and OPC agreed that BellSouth would establish a Community Service Fund (CSF) to be used to promote BellSouth's Lifeline and Link-Up services. Under the agreement, if BellSouth and OPC disagreed as to the method of disposing the contribution amounts, the parties would submit the disagreement to us for resolution.

On October 18, 2004, BellSouth submitted a refund report indicating that as of October 14, 2004, \$84,719,287 has been refunded. The report also indicated that \$4,560,130 still remains to be disbursed (\$2,798,916 of unclaimed refunds, and \$1,761,214 in outstanding drafts).

We have jurisdiction in this matter pursuant to Sections 364.01, 364.025, 364.0252, and 364.051, and 364.10, Florida Statutes.

## **I. Discussion of Refund**

In Order No. PSC-01-1769-FOF-TL, issued August 30, 2001, in Docket 000733-TL, we did not address the disposal of unclaimed refunds. Rule 25-4.114(8), F.A.C., states in part that after the company's last refund report, ". . . (t)he Commission shall then order a method of disposing of the unclaimed funds."<sup>1</sup>

As stated above, in a previous enforcement action, Docket No. 991378-TL<sup>2</sup>, this Commission approved a settlement agreement between BellSouth and OPC in Order No. PSC-

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<sup>1</sup> Rule 25-4.114(8), F.A.C.: With the last report under subsection (7) of this Rule, the company shall suggest a method for disposing of any unclaimed amounts. The Commission shall then order a method of disposing of the unclaimed funds.

<sup>2</sup> Initiation of show cause proceeding against BellSouth Telecommunications, Inc. for violation of service standards

01-1643-AS-TL which established a Community Service Fund (CSF), in the form of a corporate undertaking, to educate customers about and promote BellSouth's Lifeline and Link-Up services.<sup>3</sup> OPC was designated as the entity responsible for certifying eligibility claims for Lifeline customers under the standard contained in the settlement agreement.<sup>4</sup>

To carry out its commitment to promote Lifeline and Link-Up services, BellSouth agreed to contribute a total of \$550,000 into the CSF. BellSouth began disbursements from the CSF in May 2003. As of August 2004, approximately \$247,917 has been disbursed. Of the \$247,917 disbursed, \$242,852 of the funds have been used to pay for contractual services performed by Linking Solutions, Inc. to promote Lifeline and Link-Up services.

On March 10, 2004, BellSouth and OPC filed a Joint Motion seeking approval to apply the unclaimed refund amounts of \$2,798,916 to Lifeline and Link-Up promotional efforts, in a manner consistent with the July 9, 2001, settlement agreement that stated BellSouth and OPC would jointly agree on the appropriate disposition of the monies. With respect to the outstanding drafts of \$1,761,214, BellSouth, in its March 22, 2004 refund report, suggested these monies escheat to the State.

### **Decision**

By Order No. PSC-04-0882-FOF-TP, issued September 9, 2004, Docket No. 001503-TP, In re: Cost Recovery and allocation issues for number pooling trials in Florida, we authorized BellSouth to recover \$2,970,762 of its Florida number pooling costs. While we agree with OPC and BellSouth that it is consistent with the public interest to use a significant portion of the unclaimed and unrefundable LPC amounts for the promotion of Lifeline and Link-Up programs, we find that using the LPC monies to completely offset BellSouth's number pooling costs, which will avoid surcharges to BellSouth customers of approximately \$.048, is more directly beneficial to BellSouth's customers and is consistent with the intent of our Order in Docket No. 000733-TL to make BellSouth's customers whole for the assessment of an improper charge. Therefore, we hereby allocate \$2,970,762 of the unclaimed and unrefundable LPC amounts to offset BellSouth's Florida number pooling costs. Consistent with our direction from the Legislature to promote the Lifeline and Link-up programs, as clearly set forth in Sections 364.0252 and 364.10, Florida Statutes, the remaining \$1,589,368 in monies shall be used to promote those programs.

## **II. Filing of Reports**

Upon consideration, BellSouth shall file reports detailing its Lifeline and Link-Up promotional efforts. Section 364.10 (3) (e), Florida Statutes, requires this Commission to report

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<sup>3</sup> In Docket No. 991377-TL, PSC-00-2462-PAA-TL, this Commission also approved the establishment of a Community Service Fund for Sprint-Florida, Incorporated to promote its Lifeline service.

<sup>4</sup> Under the agreement, the eligibility test was set at 125% of the Federal poverty income guidelines for Lifeline customers and would augment, rather than replace, the former eligibility guidelines based on participation in certain low income assistance programs.

to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31 each year on the number of customers subscribing to Lifeline service and the effectiveness of any procedures to promote participation in the program. The reports will provide needed data on the effectiveness of BellSouth's procedures to promote Lifeline participation. Further, it is important that monitoring measures be implemented because the current settlement involves the disposition of a considerable amount of unclaimed customer money.

BellSouth shall file the following information on a quarterly basis:

1. The dollar amounts disbursed from the Community Service Fund including payee, date, amount, purpose, and description of the services rendered as of the last day of the quarter.
2. The Community Service Fund account balance on the last day of the quarter.

Further, to properly assess the effect of its Lifeline and Link-Up promotional efforts, BellSouth shall submit the following information semi-annually:

1. Procedures developed during the six-month period to promote Lifeline and Link-Up.
2. Criteria developed during the six-month period to evaluate the effectiveness of BellSouth's Lifeline and Link-Up promotional efforts.
3. Analysis performed during the six-month period to evaluate the effectiveness of BellSouth's Lifeline and Link-Up promotional efforts.
4. Identification of the organization originating each Lifeline application. (i.e., Department of Children and Families, Office of Public Counsel, Consultant, BellSouth Direct Contact, etc.)

In addition to the above information, OPC has agreed to provide Lifeline data and statistics available from OPC's Lifeline program for consolidation into this Commission's Lifeline report to the Legislature.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that \$2,970,762 be allocated to offset BellSouth Telecommunications, Inc.'s Florida number pooling costs. It is further

ORDERED that \$1,589,368 be used jointly by the Office of Public Counsel and BellSouth Telecommunications, Inc. to promote Lifeline and Link-Up. It is further


ORDERED that BellSouth Telecommunications, Inc. shall file reports detailing its Lifeline and Link-Up promotional efforts as set forth in the body of this Order. It is further

ORDERED that Docket Nos. 000733-TL and 001503-TP shall be closed.

By ORDER of the Florida Public Service Commission this 15th day of November, 2004.

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

By:

  
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Kay Flynn, Chief  
Bureau of Records

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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.