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From: Fatool, Vicki [Vicki.Fatool@BELLSOUTH.COM]
Sent: Friday, November 19, 2004 2:54 PM
To: Filings@psc.state.fl.us
Subject: 040604-TL BST's Opposition to AARP's Motion for Reconsideration/Rescheduling/and Removal of Funding Mechanism Issue
Importance: High

A. Vicki Fatool
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B. Docket No. 040604-TL

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

- C. BellSouth Telecommunications, Inc.
on behalf of Nancy B. White
- D. 7 pages total (including letter, certificate of service and pleading)
- E. BellSouth Telecommunications, Inc.'s Opposition to AARP's Motion for Reconsideration/Rescheduling/and Removal of Funding Mechanism Issue

.pdf version attached

<<040604-T.pdf>>

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November 19, 2004

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

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

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Opposition to AARP's Motion for Reconsideration/Rescheduling/and Removal of Funding Mechanism Issue, which we ask that you file in the captioned docket.

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

Sincerely,


Nancy B. White

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

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**CERTIFICATE OF SERVICE
DOCKET NO. 040604-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and U.S. Mail this 19th day of November, 2004 to the following:

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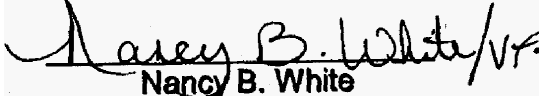
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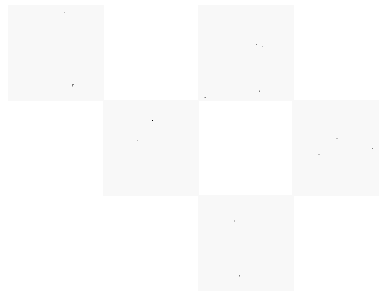
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Nancy B. White



FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 040604-TL

Filed: November 19, 2004

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
OPPOSITION TO AARP'S MOTION FOR RECONSIDERATION/
RESCHEDULING/AND REMOVAL OF FUNDING MERCHANISM ISSUE**

Pursuant to Rule 25-22.0376, Florida Administrative Code, BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Opposition to the Motion for Reconsideration/Rescheduling/and Removal of the Funding Mechanism Issue filed by the AARP. BellSouth opposes AARP's Motion for the following reasons:

- 1. On July 9, 2004, the Staff of the Florida Public Service Commission ("FPSC") filed a recommendation in this docket seeking Commission approval to, among other things, adopt additional eligibility criteria for the Lifeline and Link-Up programs and to allow self-certification.
- 2. At the July 20, 2004 agenda conference, this recommendation was debated. Present and participating in the discussion was the representative for the AARP. The Staff recommendation was adopted at the agenda.
- 3. On August 10, 2004, Order No. PSC-04-0781-PAA-TL was issued. That Order embodied the adoption of the Staff recommendation.
- 4. On August 31, 2004, several entities filed petitions protesting the Order and requesting a hearing. These entities included BellSouth, the Office of Public Counsel, Sprint-Florida, Verizon and Quincy Telephone Company.

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5. On October 7, 2004, the Staff issued a notice of an issue identification meeting to be held on October 20, 2004. This notice was addressed to all parties and interested persons. It should be noted that the AARP is listed on the Commission's website as an interested person. The notice also requested a preliminary list of issues to be filed with the Commission by October 15, 2004.

6. The AARP did not file a list of preliminary issues with the Commission. The AARP participated in the issue identification meeting in person. At the October 20, 2004 issue identification meeting, the issues submitted by the various parties were discussed and finalized.

7. The outcome of the meeting was reflected in the Order Establishing Procedure issued on November 1, 2004 (Order No. PSC-04-1066-PCO-TL). The Order Establishing Procedure also set forth the controlling dates in this docket, including the filing of direct testimony on November 17, 2004. Indeed, the Staff had advised the parties at the Issue Identification meeting that November 17, 2004 was the tentative due date for direct testimony. The Order Establishing Procedure merely confirmed that. Moreover, attached to the Order Establishing Procedure was the tentative issues list. Pursuant to Rule 25-22.0376, Florida Administrative Code, a motion for reconsideration of a non-final order must be filed within ten days after issuance of the order. AARP filed its Motion one day after this deadline.

8. On November 5, 2004, the Commission issued an Order Modifying Procedure (Order No. PSC-04-1096-PCO-TL). This Order merely modified the date of the prehearing conference.

9. On November 12, 2004, some eleven days after the Order Establishing Procedure and three weeks after the issue identification meeting, AARP filed the instant Motion. Essentially, the gravamen of AARP's Motion is that they did not have an "opportunity" to argue whether the funding mechanism issue should be included as an issue in this docket and whether the testimony dates were adequate. Absolutely no explanation was given by the AARP as to why their participation in the issue identification meeting which had been noticed and where there was ample opportunity to be heard was insufficient. Absolutely no explanation was given by the AARP as to why they had not sought a ruling from the Prehearing Officer on the appropriateness of including the funding mechanism issue. Absolutely no basis is cited by the AARP as to why testimony could not be filed by the due date when just about every other party managed to do so.

10. Moreover, BellSouth avers that the AARP has missed the deadline for reconsideration of the procedural order and, is therefore, barred from protesting. As noted above, the AARP did not file a timely reconsideration of the original procedural order. The Order Modifying Procedure did not deal with dates for testimony. The AARP cannot use a motion for reconsideration of the Order Modifying Procedure to argue the substance of the original procedural order to excuse their untimely reconsideration of the original procedural order.

11. In addition, it is well established that an intervener takes the case as he finds it. Rule 25-22.039, Florida Administrative Code. The AARP filed their intervention on November 10, 2004, well after testimony dates were set and the issues established.

12. The AARP is seeking special treatment and this should not be allowed. Rebuttal testimony is due December 17, 2004. The AARP thus has an ample opportunity to address the issue in that testimony.

WHEREFORE, BellSouth requests that the Commission deny AARP's motion for the reasons set forth herein.

Respectfully submitted this 19th day of November, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

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