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December 17, 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 an original and fifteen copies of BellSouth  
Telecommunications, Inc.'s Prehearing Statement, which we ask that you file in  
the captioned docket.

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

Sincerely,

  
Nancy B. White

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

DOCUMENT NUMBER-DATE  
13267 DEC 17 2004  
FPSC-COMMISSION CLERK

**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 17<sup>th</sup> day of December, 2004 to the following:

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Nancy B. White

**FLORIDA PUBLIC SERVICE COMMISSION**

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

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Docket No. 040604-TL

Filed: December 17, 2004

**PREHEARING STATEMENT OF BELL SOUTH TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth"), in compliance with the Order Establishing Procedure (Order No. PSC-04-1066-PCO-TL) issued on November 1, 2004, hereby submits its Prehearing Statement for Docket No. 040604-TL.

**A. Witnesses**

BellSouth proposes to call the following witness to offer testimony on the issues in this docket:

<b><u>Witness</u></b>	<b><u>Issue(s)</u></b>
Carlos Morillo (Direct)	1, 2, 3, 6
James R. DeYonker (Direct and Rebuttal)	4, 5

BellSouth reserves the right to call additional witnesses, witnesses to respond to Commission inquiries not addressed in direct and rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Prehearing Officer at the prehearing conference to be held on January 5, 2005. BellSouth has listed the witnesses for whom BellSouth believes testimony will be filed, but reserves the right to supplement that list if necessary.

## **B. Exhibits**

None, however BellSouth reserves the right to file exhibits to any testimony that may be filed under the circumstances identified in Section "A" above. BellSouth also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

## **C. Statement of Basic Position**

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

As noted, there is no express authority on which the Commission can base this Order. Any implied authority must be derived from "fair implication and intendment incident to" any express authority. See Atlantic Coast Line R.R. Co. v. State, 74 So. 595, 601 (Fla. 1917) and State v. Louisville N.R. Co., 49 So. 39 (Fla. 1909). In order to

determine the scope of any implied power that may have been given to the Commission, the intent of the legislature must be ascertained. See State Dep't Transp. v. Mayo, 354 So. 2d 359, 360 (Fla. 1978). A review of Section 364.10, Florida Statutes established that the legislature did not intend to give the Commission the power to mandate new eligibility standards (other than the 125% income eligibility test) or to discriminate between Lifeline and Link-Up eligible customers based on certification processes.

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

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

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

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

**D. BellSouth's Position on the Issues**

**Issue 1:** Is the Commission authorized under state or federal law to order the actions set forth in Order No. PSC-04-0781-PAA-TL?

**Position:** No. Nothing in current federal or state laws provides this Commission with the authority to require unilateral changes to the Lifeline and Link-Up programs.

**Issue 2:** Are the actions taken by the Commission in Order No. PSC-04-0781-PAA-TL reasonable and non discriminatory?

**Position:** No. There is no basis upon which the Commission can reasonably determine that the method of certification allows for different amounts of benefits for the Lifeline and Link-Up programs.

**Issue 3:** Should the Commission address the Lifeline and Link-Up issues in rulemaking pursuant to Section 120.54, Florida Statutes?

**Position:** Yes. The Commission is putting a permanent process in place that will govern all affected carriers. As such, rulemaking is required by statute.

**Issue 4:** What are the economic and regulatory impacts of implementing the actions taken by the Commission in Order No. PSC-04-0781-PAA-TL?

**Position:** There are significant economic and administrative costs associated with implementing the Commission's Order. BellSouth would be required to modify its billing systems at a cost of approximately \$1 million. This modification would take

approximately nine months to implement. In addition, BellSouth would be required to immediately apply benefits based upon a customer's verbal certification and implement new verification and recertification processes, all of which would impose an economic burden.

**Issue 5:**     **A. Should consumers be allowed to self-certify for program-based Lifeline and Link-Up eligibility?**

**B. If so, how much assistance should be provided for customers using self-certification?**

**Position:**   BellSouth supports self-certification only in the event all eligible customers receive the full benefit payment.

**Issue 6:**     **Is the Commission authorized under statute or federal law to establish a state Lifeline funding mechanism? If so, (a) should a state Lifeline funding mechanism be established? (b) What is the appropriate State Lifeline funding mechanism and how should it be complemented and administered?**

**Position:**   The Commission has no authority to establish a cost recovery mechanism associated with changes in the Lifeline and Link-Up programs.

**E. Stipulations**

None.

**F. Pending Motions**

AARP's Motion for reconsideration/rescheduling/and removal of funding mechanism issue.




**I. Confidentiality Motions**

None.

Respectfully submitted this 17<sup>th</sup> day of December, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

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