

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 20, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Simmons, Pruitt, Casey, C. Williams)
Office of the General Counsel (Susac)

RE: Docket No. 000733-TL – 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.

AGENDA: 06/01/04 – Regular Agenda – Issue 1 – Final – Issues 2 & 3 – Procedural – Parties May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\000733.RCM.DOC

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, staff expressed concerns to BellSouth about possible statutory violations regarding its Late Payment Charge tariff filing. Staff 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 Commission allow negotiations to continue in an effort to resolve the matter.

On June 19, 2000, Commission 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 statute and ordered the discontinuance of the restructured LPC and, in accordance with Rule 25-4.114, Florida Administrative Code, the refunding of the interest fee portion of the restructured LPC.

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 the Commission's Final Order refunds to customers had begun, and stated that the total refund amount including interest was approximately \$89,279,000. On March 10, 2004, OPC and BellSouth filed a Joint Motion for the disposition of the returned unpaid drafts and refund amounts of less than \$1.00 per customer. On March 22, 2004, BellSouth filed a status report on the LPC refunds. According to the report, as of March 16, 2004, \$84,716,065.19 has been refunded, \$2,799,515.11 has been unclaimed, and \$1,763,835.88 has been classified as drafts still outstanding, for a total refund accounting of \$89,279,416.18.

Issue 1 is staff's recommendation to approve the Joint Motion regarding the use of the \$2,799,515.11 of unclaimed refunds for the Lifeline and Link-Up programs. Issue 2 is staff's recommendation regarding the \$1,763,835.88 in outstanding drafts. Issue 3 is staff's recommendation to require quarterly reports detailing the Lifeline and Link-Up promotional efforts of BellSouth.

The Commission has jurisdiction in this matter pursuant to Sections 364.01, 364.025, 364.0252, and 364.051, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the Joint Motion filed by OPC and BellSouth to authorize the use of unclaimed refunds in this docket for the promotion of Lifeline and Link-Up programs?

Recommendation: Yes. Staff recommends that the Commission approve the Joint Motion and authorize the use of \$2,799,515.11 in the form of a corporate undertaking for the Lifeline and Link-Up programs, subject to the reporting requirements specified in Issue 3. (Simmons, Pruitt, C. Williams)

Staff Analysis: The Final Order, PSC-01-1769-FOF-TL, issued in the instant docket did not address the matter 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."¹

In a previous enforcement action, Docket No. 991378-TL², this Commission approved a settlement agreement between BellSouth and OPC in Order No. PSC-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.³ OPC was designated as the entity responsible for certifying eligibility claims for Lifeline customers under the standard contained in the settlement agreement.⁴

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 March 2004, approximately \$132,326 has been disbursed. The funds have primarily been used to pay for contractual services performed by Linking Solutions, Inc. to promote Lifeline and Link-Up services. As of March 2004, BellSouth has paid Linking Solutions, Inc. approximately \$130,892 for professional fees and expenses through the CSF.

In the instant Joint Motion, the parties are proposing that the unclaimed refunds in the form of returned unpaid drafts and unrefunded amounts of less than \$1.00 per customer be used to promote the two programs in a manner consistent with the settlement agreement approved by this Commission in Docket No. 991378-TL. On March 22, 2004, BellSouth filed a status report on the LPC refunds. According to the report, as of March 16, 2004, \$84,716,065.19 has been

¹ 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.

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

³ 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.

⁴ 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.

refunded, \$2,799,515.11 has been unclaimed, and \$1,763,835.88 has been classified as drafts still outstanding.

Staff believes that the use of the unclaimed refunds to promote BellSouth's Lifeline and Link-Up programs is consistent with the universal service goals of Section 364.025, Florida Statutes, the consumer information programs of Section 364.0252, Florida Statutes, and the public health, safety and welfare provision of Section 364.01(4)(a), Florida Statutes.

Therefore, staff recommends that the Joint Motion of BellSouth and OPC be approved, subject to the reporting requirements specified in Issue 3.

Issue 2: Should the Commission dispose of the \$1,763,835.88 in outstanding drafts at this time?

Recommendation: No. Staff recommends deferring a decision determining the appropriate disposition of these funds. The Commission should retain jurisdiction over these funds until permanent disposition is made. (Susac, C. Williams, Casey)

Staff Analysis: In its refund report dated March 22, 2004, BellSouth proposed that the \$1,763,835.88 in drafts still outstanding should revert to the State. As noted in Issue 1, Rule 25-4.114(8), F.A.C., states in part, ". . . (t)he Commission shall then order a method of disposing of the unclaimed funds." Staff believes that any amounts due to bank drafts still outstanding, plus additional interest,⁵ should be used to benefit the general body of ratepayers, if possible.

For example, staff notes that, depending upon the Commission's final order in Docket No. 001503-TP, Cost Recovery and Allocation Issues for Number Pooling Trials in Florida, BellSouth may be entitled to recovery of expenditures not yet collected. If so, staff preliminarily believes that this cost recovery could be addressed, at least in part, by allowing BellSouth to retain some or all of the monies associated with the outstanding drafts, which would ensure that the unrefundable monies resulting from this proceeding still provide a real, direct benefit to BellSouth's ratepayers.

⁵ The additional monthly interest, based on the 30-day commercial paper rate for the number of months that have elapsed since the original calculation of interest, should be added to the amount of the outstanding drafts.

Issue 3: Should the Commission order BellSouth to file quarterly reports detailing its Lifeline and Link-Up promotional efforts?

Recommendation: Yes. If the Commission approves Issue 1, staff recommends that BellSouth be ordered to file quarterly reports with the Commission detailing its Lifeline and Link-Up promotional efforts. Beginning with the quarter ending June 30, 2004, staff recommends that the Commission order BellSouth to file a report within thirty days of the end of each quarter. (C. Williams)

Staff Analysis: If the Commission approves the Joint Motion, staff recommends that the Commission order BellSouth to file quarterly reports detailing its Lifeline and Link-Up promotional efforts. Section 364.10(3)(e), Florida Statutes, requires the Commission to report 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 quarterly reports will provide useful data on the effectiveness of BellSouth's procedures to promote Lifeline participation. Further, it is important that stronger accountability measures be implemented because the current settlement involves the disposition of a considerable amount of unclaimed customer money.

Staff recommends that BellSouth be ordered to file the following:

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

Beginning with the quarter ending June 30, 2004, staff recommends that the Commission order BellSouth to file a report within thirty days of the end of each quarter, providing the information specified above. In addition to the information received from BellSouth, OPC has agreed to provide Lifeline data and statistics available from OPC's Lifeline program for consolidation into the Commission's Lifeline report to the Legislature.

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Date: May 20, 2004

Issue 4: Should this docket be closed?

Recommendation: No. Whether or not the Commission approves staff's recommendations in Issues 1 and 3, the docket should remain open to resolve the disposition of any remaining funds due to bank drafts that are still outstanding. (Susac)

Staff Analysis: The docket should remain open to finalize the disposition of funds addressed in Issue 2.