

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: October 21, 2004

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

FROM: Division of Competitive Markets & Enforcement (Casey, Bulecza-Banks, C. Williams, Simmons)
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.

Docket No. 001503-TP – Cost recovery and allocation issues for number pooling trials in Florida.

AGENDA: 11/02/04 – Regular Agenda – 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 LPC 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 Florida Public Service Commission (PSC or Commission) allow negotiations to continue in an effort to resolve the matter.

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After receiving a customer complaint regarding BellSouth's Late Payment Charge, staff determined that a Commission decision on the tariff filing was appropriate, since the negotiations between OPC and BST had apparently not yielded any resolution. 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, 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 the Commission's Final Order refunds to customers had begun, and stated that the total refund amount was approximately \$89,279,000, which 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, which was approved by the Commission 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 the Commission 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).

Issue 1 is staff's recommendation regarding the disposition of the refund monies. Issue 2 is staff's recommendation to require quarterly and semi-annual 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, and 364.10, Florida Statutes.

Discussion of Issues

Issue 1: What is the appropriate disposition of BellSouth's unclaimed refund amounts (\$2,798,916), and outstanding drafts (\$1,761,214) related to Docket No. 000733-TL?

Primary Recommendation: Staff recommends that of the \$4,560,130 in monies to be disbursed, \$2,970,762 be allocated to offset BellSouth's Florida number pooling costs. Staff also recommends that the remaining \$1,589,368 be used to promote Lifeline and Link-Up. Further, staff recommends that the Commission direct BellSouth, OPC, and PSC staff to jointly determine what programs would best promote Lifeline and Link-Up, and after developing a joint plan and timeline for disposition of the monies, bring the plan before the Commission for approval. (Casey, Bulecza-Banks)

Alternative 1 Recommendation: Alternative 1 staff recommends that the Commission approve BellSouth and OPC's Joint Motion, in part, and authorize the use of \$2,798,916 (unclaimed refunds) in the form of a corporate undertaking for the Lifeline and Link-Up programs. Staff also recommends that the Commission direct BellSouth, OPC, and PSC staff to jointly determine what programs would best promote Lifeline and Link-Up, and after developing a joint plan and timeline for disposition of the monies, bring the plan before the Commission for approval. In addition, Alternative 1 staff also recommends that the remaining \$1,761,214 (outstanding drafts) be allocated to offset BellSouth's Florida number pooling costs. The remaining \$1,209,548 in number pooling costs should be collected through a one-time surcharge to BellSouth end-user lines pursuant to the methodology approved in Order No. PSC-04-0882-FOF-TP, issued September 9, 2004, in Docket No. 001503-TP. (Casey, Bulecza-Banks)

Alternative 2 Recommendation: Alternative 2 staff recommends that all \$4,560,130 of LPC monies be used for Lifeline and Link-Up. Further, staff recommends that the Commission direct BellSouth, OPC, and PSC staff to jointly determine what programs would best promote Lifeline and Link-Up, and after developing a joint plan and timeline for disposition of the monies, bring the plan before the Commission for approval. (Casey, Bulecza-Banks)

General Staff Analysis: The Final Order, PSC-01-1769-FOF-TL, issued August 30, 2001, in this docket, did not address the matter of 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."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 CSF, in the form of a corporate undertaking, to educate customers about and

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

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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 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 which 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 of Florida. While staff believes the Commission has the option to order monies be submitted to Florida's General Fund, staff notes that once the monies are deposited into the fund, those monies may or may not be used in a manner that directly benefits BellSouth's customers.

Regardless of which option Commissioners may choose, staff believes that BellSouth should be required to use the Lifeline and Link-Up monies in a specified manner and within a stated timeframe. Staff recommends that BellSouth, OPC, and PSC staff jointly determine what programs would best promote Lifeline and Link-Up, and after developing a joint plan and timeline for disposition of the monies, bring the plan before the Commission for approval. Staff believes this joint effort to develop a plan is in accordance with Section 364.10 (d), Florida Statutes, which states:

By December 31, 2003, each state agency that provides benefits to persons eligible for Lifeline service shall undertake, in cooperation with the Department of Children and Family Services, the commission, and telecommunications companies providing Lifeline services, the development of procedures to promote Lifeline participation.

Historically, public service announcements contracted through a government entity such as the PSC have been obtained at a better cost than industry could contract them for. Staff believes that a joint effort by BellSouth, OPC, and PSC staff could produce the most cost-effective means for disbursement of any funds allocated to Lifeline and Link-Up. Some programs to consider would include public education of the availability of Lifeline/Link-Up programs through television, radio, and print media, community outreach, printed brochures,

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.

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waiver of the initial connection charge for Link-Up customers, and establishment of a central statewide Lifeline and Link-Up call center. Should the Commission vote to have monies assigned to the CSF for consumer outreach, staff believes it would be reasonable to disburse the monies as shown below:

- | | | |
|----|--|-----|
| 1) | Advertising of the Availability of Lifeline/Link-Up Programs | 50% |
| 2) | Other Consumer Oriented Alternatives | 50% |

Staff believes that a joint plan which includes a timeline for the systematic disposal of the LPC monies and specifies the amounts that should be spent, by category (i.e. public awareness campaign through the use of television, radio, and newspaper media, community events, printed brochures, etc.) for Lifeline and Linkup activities is necessary. BellSouth began disbursing funds from the CSF in May 2003, and is averaging \$15,495 per month in expenditures. At that monthly rate, if the Commission approves the primary recommendation, it would take over 8 years to dispose of the LPC monies (\$1,589,368), if the Commission approves Alternative 1, it would take over 15 years to dispose of the LPC monies (\$2,798,916), and if the Commission approves Alternative 2, it would take over 24 years to dispose of the LPC monies (\$4,560,130).

Primary Staff Analysis: 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, the Commission approved \$2,970,762 of BellSouth's Florida number pooling costs. Primary staff believes that the LPC monies should be used to offset this cost to avoid having to add a one-time surcharge of approximately \$0.48 to all BellSouth end-user lines. By offsetting this number pooling cost with LPC monies, all BellSouth customers would benefit.

Primary staff also believes the remaining \$1,589,368 of LPC monies should be used to promote Lifeline and Link-Up. In the current docket, OPC and BellSouth filed a joint motion where they recommended that the \$2,798,916 of unclaimed refund amounts should be used to promote Lifeline and Link-Up programs. They believe that the use of unclaimed refunds in this manner is consistent with the public interest and Chapter 364, Florida Statutes.

Primary staff agrees that the use of unclaimed refunds for the promotion of Lifeline and Link-Up programs is consistent with the public interest, but believes that offsetting potential surcharges totaling \$2,970,762 to all BellSouth end-users, and using the remaining \$1,589,368 in monies for Lifeline and Link-Up is more beneficial to BellSouth customers as a whole. Primary staff also believes that in accordance with Section 364.10 (d), Florida Statutes, which recognizes the need for a joint effort to promote Lifeline service, the Commission should direct BellSouth, OPC, and PSC staff to jointly determine what programs would best promote Lifeline and Link-Up, and after developing a joint plan and timeline for disposition of the monies, bring the plan before the Commission for approval.

Therefore, primary staff recommends that \$2,970,762 be allocated to offset BellSouth's Florida number pooling costs. Primary staff also recommends that the remaining \$1,589,368 be used to promote Lifeline and Link-Up. Further, primary staff recommends that the Commission direct BellSouth, OPC, and PSC staff to jointly determine what programs best promote Lifeline

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and Link-Up, and after developing a joint plan and timeline for disposition of the monies, bring the plan before the Commission for approval.

Alternative 1 Staff Analysis: On March 10, 2004, OPC and BellSouth filed a joint motion recommending that the unclaimed refund amounts should be used to promote Lifeline and Link-Up programs. They believe that the use of \$2,798,916 in unclaimed refunds in this manner is consistent with the public interest and Chapter 364, Florida Statutes.

In the Joint Motion, OPC maintains that Section 364.025, Florida Statutes (2003) states the Legislature's intent that universal service objectives be maintained after the local exchange market is opened to competitively provided services. The use of unclaimed refunds to promote Lifeline and Linkup programs will help to meet this objective. In addition, the importance of Lifeline and Linkup programs in meeting this objective is demonstrated by Section 364.0252, Florida Statutes (2003), which states the Legislature's specific concern that consumers be informed about the availability of the Lifeline and Linkup Programs for low-income households.

Alternative 1 staff believes that the use of the \$2,798,916 in 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. Alternative 1 staff also believes that in accordance with Section 364.10 (d), Florida Statutes, which recognizes the need for a joint effort to promote Lifeline service, the Commission should direct BellSouth, OPC, and PSC staff to jointly determine what programs would best promote Lifeline and Link-Up, and after developing a joint plan and timeline for disposition of the monies, bring the plan before the Commission for approval.

Alternative 1 staff also believes that the remaining \$1,761,214 of LPC monies should be used to partially offset the \$2,970,762 of BellSouth's Florida number pooling costs, leaving a balance of \$1,209,548. The potential one-time surcharge of \$0.48 per end-user line could be reduced to approximately \$0.20 per end-user line with this option.

Therefore, Alternative 1 staff recommends that the Commission approve BellSouth and OPC's Joint Motion and authorize the use of \$2,798,916 in the form of a corporate undertaking for the Lifeline and Link-Up programs. Alternative 1 staff also recommends that the Commission direct BellSouth, OPC, and PSC staff to jointly determine what programs best promote Lifeline and Link-Up, and after developing a joint plan and timeline for disposition of the monies, bring the plan before the Commission for approval. In addition, Alternative 1 staff also recommends that the remaining \$1,761,214 be allocated to offset BellSouth's Florida number pooling costs. The remaining \$1,209,548 in number pooling costs should be collected through a one-time surcharge to BellSouth end-user lines pursuant to the methodology approved in Order No. PSC-04-0882-FOF-TP, issued September 9, 2004, in Docket No. 001503-TP.

Alternative 2 Staff Analysis Alternative 2 staff believes all \$4,560,130 of LPC monies should be used for Lifeline and Link-Up. Alternative 2 staff also believes that in accordance with Section 364.10 (d), Florida Statutes, which recognizes the need for a joint effort to promote Lifeline service, the Commission should direct BellSouth, OPC, and PSC staff to jointly determine what programs would best promote Lifeline and Link-Up, and after developing a joint

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plan and timeline for disposition of the monies, bring the plan before the Commission for approval. Some programs to consider would include public education of the availability of Lifeline/Link-Up programs through television, radio, and print media, community outreach, printed brochures, waiver of the initial connection charge for Link-Up customers, and establishment of a central statewide Lifeline and Link-Up call center.

BellSouth began disbursing funds from the CSF in May 2003. Since that time, BellSouth has disbursed \$247,917 representing 45% of the monies contributed to the fund. Staff has concerns that if a detailed plan addressing the timing and disbursement of the LPC monies is not provided, aggressive disbursement of funds for Lifeline and Linkup activities will not happen. The \$4,560,130 of LPC monies is significant and staff believes that if effectively used, these monies can serve to significantly increase program participation, thus allowing eligible Floridians to obtain telecommunication services at a reduced cost.

Alternative 2 staff believes that a BellSouth, OPC, and PSC staff joint plan that provides a timeline for the systematic disposal of the LPC monies and specifies the amounts that should be spent, by category (i.e. public awareness campaign through the use of television, radio, and newspaper media, community events, printed brochures, etc.) for Lifeline and Linkup activities is necessary.

Therefore, Alternative 2 staff recommends that all \$4,560,130 of LPC monies be used for Lifeline and Link-Up. Further, staff recommends that the Commission direct BellSouth, OPC, and PSC staff to jointly determine what programs best promote Lifeline and Link-Up, and after developing a joint plan and timeline for disposition of the monies, bring the plan before the Commission for approval.

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Issue 2: Should the Commission order BellSouth to file reports detailing its Lifeline and Link-Up promotional efforts?

Recommendation: Yes. Staff recommends that BellSouth be ordered to file reports with the Commission detailing its Lifeline and Link-Up promotional efforts. Data regarding the disbursement of funds from the CSF and the balance of the CSF would be filed thirty days after the end of each quarter, beginning with the calendar quarter ending September 30, 2004. Information regarding BellSouth's promotional efforts to expand Lifeline and Link-Up participation along with information regarding the origin of Lifeline/Link-Up applications submitted to BellSouth, would be filed thirty days after each six-month period beginning with the six-month period ending December 31, 2004. (C. Williams)

Staff Analysis: Staff recommends that the Commission order BellSouth to file 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 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.

Staff recommends that BellSouth be ordered to 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, staff recommends that BellSouth 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.)

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In addition to the above information, 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.

Issue 3: Should these dockets be closed?

Recommendation: Staff recommends that Docket No. 000733-TL remain open so that a detailed joint plan specifying how and when any Lifeline and Link-Up monies will be used and disbursed can be developed by OPC, BellSouth and staff, and a recommendation can be brought before the Commission for approval. Staff also recommends that Docket No. 001503-TP be closed. (Susac)

Staff Analysis: Docket No. 000733-TL should remain open so that a detailed joint plan specifying how and when any Lifeline and Link-Up monies will be used and disbursed can be developed by OPC, BellSouth and staff, and a recommendation can be brought before the Commission for approval. Docket No. 001503-TP should be closed.