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RECORDS AND
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November 30, 1999

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 991378-TL

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizen's Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action. A diskette in WordPerfect 6.1 is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck
Deputy Public Counsel

CJB:bsr

Enclosures

- AFA _____
- APP _____
- CAT _____
- CRU _____
- CTR _____
- EAC _____
- LEG _____
- MIS 5 _____
- OPC _____
- PAI _____
- SEC _____
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Done 12/01/99

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of Show Cause)
Proceedings against BellSouth)
Telecommunications, Inc.,)
for Violation of Service Standards)

Docket no. 991378-TL
Filed November 30, 1999

ORIGINAL

**PETITION REQUESTING SECTION 120.57 HEARING AND
PROTEST OF PROPOSED AGENCY ACTION**

Pursuant to Rules 25-22.029 and 28-106.201, Florida Administrative Code, the Citizens of Florida (Citizens), by and through Jack Shreve, Public Counsel, file this petition to protest proposed agency action order no. PSC-99-2207-PAA-TL issued November 9, 1999, and to request an evidentiary hearing under section 120.57, Florida Statutes (1999).

1. Section 350.0611, Florida Statutes (1999) provides that it shall be the duty of the Public Counsel to provide legal representation for the people of the state in proceedings before the Commission. It specifically provides the Public Counsel the power to appear, in the name of the state or its citizens, in any proceeding or action before the Commission and urge therein any position which he or she deems to be in the public interest.

2. The Citizens filed a notice of intervention in this docket on September 17, 1999. The action taken by the Florida Public Service Commission (Commission) in its

proposed agency action order no. PSC-99-2207-PAA-TL affects the substantial interests of petitioner because the order imposes a fine on BellSouth Telecommunications, Inc. (BellSouth) for willful violation of Commission rules setting forth minimum quality of service standards that must be met by local exchange telecommunications companies in Florida. The fine imposed by the Commission is far too small considering the seriousness of the willful violations committed by BellSouth, the large number of violations, and the extended period of time over which such violations occurred. Even now, BellSouth continues to violate the Commission's minimum quality of service standards set forth in sections 25-0.066 through 25-4.081, Florida Administrative Code.

3. The name, address and telephone numbers of petitioner are as follows: Jack Shreve, Public Counsel, Charles J. Beck, Deputy Public Counsel, c/o Florida Legislature, 111 West Madison Street, room 812, Tallahassee, FL 32399-1400, telephone 850-488-9330, fax 850-488-4491. Petitioner received notice of the Commission's decision by downloading a copy of order no. PSC-99-2207-PAA-TL from the Commission's web site on or about November 11, 1999.

4. BellSouth is a local exchange telecommunications company, as defined by §364.02(6), Florida Statutes (1999), subject to the jurisdiction of the Commission.

BACKGROUND

5. Historically, BellSouth and other local exchange telecommunications companies were regulated by the Commission under rate of return (profit) regulation. In exchange for a monopoly franchise and the opportunity to earn a reasonable rate of return, local telecommunications companies were required to provide a high quality of service to customers. For example, section 364.03(1), Florida Statutes (1999) provides:

"...the service rendered to any person by any telecommunications company shall be rendered and performed in a prompt, expeditious, and efficient manner. The telecommunications facilities furnished by a telecommunications company shall be safe and kept in good condition and repair; and its service shall be modern, adequate, sufficient, and efficient."

6. Effective January 1, 1996, the legislature authorized local competition in areas served local exchange companies and instituted "price cap" regulation for all of the larger local exchange companies, including BellSouth. Even with emerging competition, quality of service remained a paramount concern. With respect to the newly authorized competitors for local service, the legislature extended quality of service concerns to these new carriers by specifically authorizing "continuing regulatory oversight over the provision of basic local exchange telecommunications service provided by a certificated alternative local exchange telecommunications company or a certificated alternative access vendor for purposes of establishing reasonable service

quality criteria, assuring resolution of service complaints..." Section 364.337(5), Florida Statutes (1999).

7. The legislature further found that the transition from the monopoly provision of local exchange service to the competitive provision of telephone service required appropriate regulatory oversight to protect consumers. It provided the commission exclusive jurisdiction in order to protect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation. Section 364.01, Florida Statutes (1998). The legislature further directed that the term "service" be construed in its broadest and most inclusive sense. Section 364.02(11), Florida Statutes (1999).

8. The National Association of Regulatory Commissions (NARUC) likewise recognizes the importance of maintaining a high quality of service as we transition to a more competitive telecommunications market. At its 1998 annual meeting, NARUC adopted a resolution adopting a white paper on service quality. The resolution acknowledged that the "transition to competition presents complex challenges for maintaining high quality service" and encouraged state commissions to continue promoting high quality telecommunications service through monitoring programs. At its 1999 annual meeting held earlier this month, NARUC again passed a resolution concerning quality of service. That resolution noted trends in service quality that raise

concern regarding the continued quality and reliability of the public switched network.

9. This Commission has a series of rules governing the quality of service that must be provided by local exchange telecommunications companies. These rules existed prior to the institution of "price cap" regulation and continue today.

**BELLSOUTH FAILS TO PROVIDE TIMELY REPAIR
OF SERVICE THAT IS OUT OF ORDER**

10. Section 25-4.070, Florida Administrative Code, provides in part:

"Customer Trouble Reports.

(1)...

(a) Companies shall make every reasonable attempt to restore service on the same day that the interruption is reported to the serving repair center...

(3) Service Objectives:

(a) Service Interruption: Restoration of interrupted service shall be scheduled to insure at least 95 percent shall be cleared within 24 hours of report in each exchange as measured on a monthly basis. For any exchange failing to meet this objective, the company shall provide an explanation with its periodic report to the Commission.

11. BellSouth repeatedly failed the requirement to restore service 95 percent of the time within 24 hours in each exchange each month. In fact, BellSouth *failed* this requirement far more than it passed it. Evaluating BellSouth's performance on an exchange-by-exchange, month-by-month basis, it failed this requirement 1113 times during 1996, 1038 times during 1997, 959 times during 1998, and 813 times during the first 9 months of 1999, for a total of 3923 violations. The proposed agency action

order, however, fails to evaluate the extent of BellSouth's violations.

12. The PAA notes that BellSouth times its performance in repairing service based on the time it receives a report of trouble and the time it closes a trouble report in its computer system. BellSouth agreed to this method of timing in order to conclude an investigation by the Office of Statewide Prosecution into a number of BellSouth practices. The settlement agreement between BellSouth and the Statewide Prosecutor dated October 9, 1992, contained a number of PSC reporting requirements, one of which was that "Southern Bell will use receipt and final status time to determine compliance with the PSC twenty-four (24) hour interruption repair rule."¹ It is clear from the use of this language that BellSouth can not use its method of timing as an excuse for willfully violating the Commission's rule concerning repair of service.² The agreement specifically contemplates compliance.

13. The reason BellSouth failed this quality of service rule requirement month after month and year after year is a simple matter of failing to provide adequate resources to repair out of service lines in a timely manner. BellSouth could have

¹ Settlement Agreement between BellSouth Telecommunications, Inc., and the Office of Statewide Prosecution dated October 9, 1992, exhibit C (Southern Bell Review Program), section E.2.

² The proposed agency action order states that this method of reporting was agreed upon by BellSouth, OPC, and the AG's office in an agreement dated February, 1994, and approved by the Commission. The February, 1994 agreement, however, contains no such terms. The agreement requiring this method of timing was made between BellSouth and the Office of Statewide Prosecution in October of 1992.

complied with the rule by engaging sufficient resources. Instead, it chose to increase its profits under price-cap regulation over providing the level of service required by Commission rule.

BELLSOUTH FAILS TO PROVIDE NEW SERVICE IN A TIMELY MANNER

14. Section 25-4.066, Florida Administrative Code, provides in part:

Availability of Service.

(1) Each telecommunications company shall provide central office equipment and outside plant facilities designed and engineered in accordance with realistic anticipated customer demands for basic telephone service within its certificated area in accordance with its filed tariffs or orders of the Commission, subject to its ability to secure and provide, for reasonable expense, suitable facilities and rights for construction and maintenance of such facilities.

(2) Where central office and outside plant facilities are readily available, at least 90 percent of all requests for primary service in any calendar month shall normally be satisfied in each exchange or service center within an interval of three working days after receipt of application when all tariff requirements relating thereto have been complied with, except those instances where a later installation date is requested by the applicant or where special equipment or services are involved.

15. Evaluating BellSouth's performance on an exchange-by-exchange, month-by-month basis, BellSouth failed this requirement 317 times during 1996, 455 times during 1997, 616 times during 1998, and 330 times during the first 9 months of 1999, for a total of 1718 violations. The Commission's PAA order, however, fails to take these repeated violations into account in determining whether to accept

BellSouth's proposed settlement. Timely installation of new service is an important measure of service quality that must be taken into account along with other willful violations of the Commission's quality of service rules.

BELLSOUTH FAILS TO ANSWER CUSTOMERS' CALLS IN A TIMELY MANNER

16. Section 25-4.073(1)(d), Florida Administrative Code, provides in part:

For subscribers electing the option of transferring to a live assistant, except for business office calls, at least ninety-five (95%) percent of all calls shall be transferred by the system to a live attendant prepared to give immediate assistance within fifty-five (55) seconds after the last digit of the telephone number listed in the directory for the company's service(s) was dialed. Eighty-five (85%) percent of all such calls directed to any business office shall be transferred by the system to a live attendant within fifty-five (55) seconds after the last digit is dialed.

Like the other quality of service rules already discussed, BellSouth repeatedly failed these requirements. In its repair service center, BellSouth failed this rule every month during 1997, 10 out of 12 months during 1998, and all 9 months during the first 9 months of 1999, thereby failing the rule 31 out of 33 times since January, 1997. In its business office, BellSouth failed this rule every month during 1997, every month during 1997, 11 out of 12 months during 1998, and all 9 months during the first 9 months of 1999, thereby failing the rule 44 out of 45 times since January, 1996. The Commission's PAA order fails to take these repeated violations into account in determining whether to accept BellSouth's proposed settlement.

THE COMMISSION HAS AUTHORITY TO IMPOSE PENALTIES

17. Section 364.285(1), Florida Statutes (1999) provides that:

(1) The commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter which is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$25,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by it. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85. Collected penalties shall be deposited in the General Revenue Fund unallocated.

18. The usual meaning assigned to the term "willful" is that an entity has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow. *Metropolitan Dade County v. Florida Department of Environmental Protection*, 714 So.2d 512 (Fla. 3d D.C.A. 1998). Here, BellSouth willfully chose to commit insufficient resources to comply with the Commission's rules governing quality of service. Its repeated failure to comply with the Commission's rules is therefore willful and subjects the company to a fine of up to \$25,000 for each of its rule violations.

THE COMMISSION MUST REQUIRE PROMPT CORRECTIVE ACTION

19. The institution of price cap regulation effective on January 1, 1996, allowed local exchange companies to earn far greater profits than in the past, but quality of service was not supposed to suffer as a result. Today there is no effective local exchange competition for the vast majority of residential and business customers. Customers must still depend on the incumbent local exchange telecommunications companies for their service, but BellSouth has failed to deliver the quality of service required by Commission rules. The Commission should require BellSouth to take corrective measures designed to quickly bring their service up to the level demanded by the Commission's existing rules.

DISPUTED ISSUES OF MATERIAL FACT, POLICY, AND LAW

20. Petitioner submits the following disputed issues of material fact, policy, and law for resolution in a hearing conducted under section 120.57, Florida Statutes (1999):

- a. How many times, if any, did BellSouth violate rule 25-4.066, Florida Administrative Code, during the period January 1, 1996, through the present? Were the violations, if any, willful?

b. How many times, if any, did BellSouth violate rule 25-4.070, Florida Administrative Code, during the period January 1, 1996, through the present? Were the violations, if any, willful?

c. How many times, if any, did BellSouth violate rule 25-4.073, Florida Administrative Code, during the period January 1, 1996, through the present? Were the violations, if any, willful?

d. Is BellSouth presently complying with rules 25-4.066, 25-4.070, 25-4.073, Florida Administrative Code?

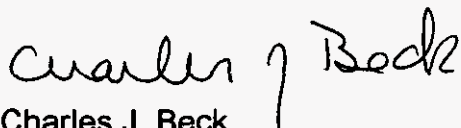
e. Should BellSouth be fined for willfully violating rules 25-4.066, 25-4.070, 25-4.073, Florida Administrative Code? If so, what should be the amount of the fine?

f. Should the Commission require any additional actions by BellSouth? If so, what should those actions be?

WHEREFORE, the Citizens protest the Commission's proposed agency action order no. PSC-99-2207-PAA-TL issued November 9, 1999, and request an evidentiary hearing to be held pursuant to §120.57, Florida Statutes (1999), as described in this petition.

Respectfully submitted,

JACK SHREVE
Public Counsel
Fla. Bar No. 73622


Charles J. Beck
Deputy Public Counsel
Fla. Bar No. 217281

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Attorneys for Florida's Citizens

CERTIFICATE OF SERVICE
DOCKET NO. 991378-TL

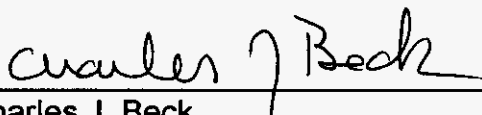
I HEREBY CERTIFY that a copy of the foregoing CITIZENS' REVISED FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO BELLSOUTH has been furnished by U.S.

Mail or hand-delivery to the following parties on this 30th day of November, 1999.

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Florida Public Service Commission
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