

Bane
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MAP
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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-

COMMISSION
CLERK

RECEIVED-PSC
FEB 24 2002
HILL: 19

DATE: JANUARY 24, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF GENERAL COUNSEL (FUDGE) *✓ B/C*
DIVISION OF COMPETITIVE MARKETS AND ENFORCEMENT (BUYS) *D/B* *ED*

RE: DOCKET NO. 010097-TL - COMPLIANCE INVESTIGATION OF
BELLSOUTH TELECOMMUNICATIONS, INC. FOR VIOLATION OF
SERVICE STANDARDS.

AGENDA: 02/05/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 03/07/02 - 90-DAY STATUTORY DEADLINE FOR RULE
WAIVER.

SPECIAL INSTRUCTIONS: PLEASE PLACE RECOMMENDATION IMMEDIATELY
FOLLOWING DOCKET NO. 991378-TL

FILE NAME AND LOCATION: S:\PSC\CMW\WP\010097.RCM

CASE BACKGROUND

- BellSouth Telecommunications, Inc. (BellSouth) is required to file periodic reports with the Florida Public Service Commission (Commission) regarding its quality of service.
- January 24, 2001 - Staff opened this docket to investigate BellSouth's apparent violation of the Commission's service standards for the calendar years 2000 and 2001.
- August 13, 2001 - In Docket No. 991378-TL, the Commission issued Order No. PSC-01-1643-AS-TL approving a settlement agreement jointly filed by BellSouth and the Office of Public

DOCUMENT NUMBER-DATE

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PSPC-COMMISSION CLERK

Counsel (OPC) to resolve the apparent violations of the Commission's service standards for calendar years 1996 through 1999. As part of that settlement agreement, BellSouth implemented a Service Guarantee Plan.

- December 7, 2001 - The Commission received BellSouth's proposed offer of settlement and petition for a limited waiver of Rule Nos. 24-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code, to resolve the issues in this docket. (Attachment A)
- December 21, 2001 - In accordance with Section 120.542(6), Florida Statutes, notice of BellSouth's petition for limited waiver of Rule Nos. 24-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code, appeared in the December 21, 2001, issue of the Florida Administrative Weekly.
- January 4, 2002 - Comments on the petition were due. No comments were filed with the Division of the Commission Clerk and Administrative Services.
- January 22, 2002 - BellSouth filed a letter clarifying the starting and ending dates of its Service Guarantee Plan. (Attachment B)

The Commission is vested with jurisdiction over these matters pursuant to Sections 120.542, 364.01, 364.03, 364.17, and 364.183, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant BellSouth's petition for a limited waiver of Rule Nos. 24-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code?

RECOMMENDATION: Yes. The Commission should grant BellSouth's petition for a limited waiver of Rule Nos. 24-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code. The waiver of the rules should remain in effect until midnight on February 28, 2005, the expiration of BellSouth's Service Guarantee Plan, unless otherwise directed by the Commission. (**Buyς, Fudge**)

STAFF ANALYSIS: BellSouth has requested a limited waiver of the applicability of Rule Nos. 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code. The waiver of these rules is a condition of BellSouth's proposal to settle the apparent violations of the Commission's service standards during calendar years 2000 and 2001.

Rule Nos. 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code, pertain to the establishment of primary service and repair of interrupted service within specific time frames.

Rule 25-4.066(2), Florida Administrative Code, provides:

(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.

Rule 25-4.070(3)(a), Florida Administrative Code, provides:

(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.

Rule 25-4.070(1)(b), Florida Administrative Code, provides:

(b) In the event a subscriber's service is interrupted other than by a negligent or willful act of the subscriber and it remains out of service in excess of 24 hours after being reported to the company, an appropriate adjustment or refund shall be made to the subscriber automatically, pursuant to Rule 25-4.110 (Customer Billing). Service interruption time will be computed on a continuous basis, Sundays and holidays included. Also, if the company finds that it is the customer's responsibility to correct the trouble, it must notify or attempt to notify the customer within 24 hours after the trouble was reported.

In order for the Commission to grant a waiver of the rules, BellSouth must demonstrate that its Service Guarantee Plan and proposed settlement will achieve the same results as the statutes underlying the rules. Section 120.542(2), Florida Statutes, states:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For the purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

BellSouth submits that the extension of the Service Guarantee Plan for an additional year, March 1, 2004, through March 1, 2005, and the offering of BellSouth Internet accounts, satisfies the requirement that a demonstration be made that the purpose of the underlying statute will be achieved by other means.

BellSouth further states that the Service Guarantee Plan meets the quality of service provisions of Chapter 364 by giving immediate and direct compensation to customers and provides similarly swift penalties to BellSouth for not meeting objectives that are consistent with the Commission's service rules. BellSouth also stated that the application of the Commission's rules, during the same time credits are being made or accrued, would constitute unfairness and an economic hardship by imposing duplicate penalties.

Furthermore, BellSouth stipulated that it would continue to track and report its performance to the Commission under the existing rules, however, it would not be subject to any punitive action by the Commission for violations of the rules.

The implementation date for the Service Guarantee Plan, as specified in BellSouth's and OPC's Stipulation and Settlement, dated July 9, 2001, in Docket No. 991378-TL, is no later than six months from the date of the final Commission order approving the settlement. In Docket No. 991378-TL, Order No. PSC-01-1643-AS-TL, approving the settlement, was issued on August 13, 2001. Thus, the implementation date is scheduled to occur no later than February 13, 2002. In Docket No. 991378-TL, BellSouth filed a motion to extend the implementation date of its Service Guarantee Plan until March 1, 2002. If BellSouth's motion in Docket No. 991378-TL is approved and if BellSouth's proposed settlement offer in this proceeding is approved, the Service Guarantee Plan will be extended one year, and will be in effect until midnight on February 28, 2005. Accordingly, the rules waiver should expire at midnight on February 28, 2005.

Staff agrees that BellSouth has met the requirements of Section 120.542, Florida Statutes, and believes that it is in the public interest to waive Rule Nos. 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code, so that BellSouth can extend its Service Guarantee Plan for one year, as proposed in its settlement offer. Accordingly, staff recommends that the Commission should grant BellSouth's petition for a limited waiver of Rule Nos. 24-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code. The waiver of the rules should remain in effect until midnight on February 28, 2005, unless otherwise directed by the Commission.

DOCKET NO. 010097-TL
DATE: January 24, 2002

ISSUE 2: Should the Commission approve BellSouth's proposed settlement offer to resolve the compliance investigation for the apparent violation of service standards during the calendar years 2000 and 2001?

RECOMMENDATION: Yes. The Commission should approve BellSouth's proposed settlement offer in its entirety. The Order should become final and the company's proposed settlement offer become effective upon issuance of a Consummating Order. **(Buys, Fudge)**

STAFF ANALYSIS: The provisions of BellSouth's settlement are extensions and additions to the actions required by the Stipulation and Settlement between the OPC and BellSouth dated July 9, 2001, and approved by the Commission in Order No. PSC-01-1643-AS-TL, issued on August 13, 2001, in Docket No. 991378-TL (Attachment C). In this settlement proposal, BellSouth has offered the following:

- Incur the cost of extending the July 9, 2001 Stipulation and Settlement approved in Docket No. 991378-TL for a third year. BellSouth's Service Guarantee Plan automatically provides payments in the form of credits to customers in the event certain service installation and repair of service interruption objectives are not met.
- Contribute \$150,000 in the third year of the settlement to the Community Service Fund established in the July 9, 2001, Stipulation and Settlement.
- Make approximately 8,000 BellSouth internet accounts available per year for three years (beginning in 2002) for Florida K-12 public schools. Priority will be given to schools with rating of "C" or less on the Board of Education Accountability Report.
- Work directly with the individual school boards in BellSouth's territory to determine how the 8,000 BellSouth internet accounts should be distributed in order to create and to enhance access to information technology where most needed.
- Issue a status report to the Commission on a quarterly basis.

BellSouth stipulated that its proposed settlement offer is contingent upon approval in its entirety by the Commission. As a condition of its proposed settlement offer, BellSouth has requested

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a limited waiver of the applicability of Rule Nos. 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code. Accordingly, if the Commission denies staff's recommendation in Issue 1, this issue becomes moot.

BellSouth has also stated that the Commission may terminate its proposed settlement agreement at any time for any reason. However, if the Commission were to terminate the agreement, the company would no longer be liable for continuing the Service Guarantee Plan and would then be subject to Rule Nos. 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code, and will only be subject to sanction for violations of those rules that may occur after termination of the agreement.

Staff believes that the company's proposal to resolve this docket is in the public interest and recommends that the Commission should approve BellSouth's proposed settlement offer in its entirety. The Order should become final and the company's proposed settlement offer become effective upon issuance of a consummating order.

DOCKET NO. 010097-TL
DATE: January 24, 2002

ISSUE 3: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendations in Issue 1 and Issue 2, this docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. If the Commission denies staff's recommendation in either Issue 1 or Issue 2, this docket should remain open pending resolution of the compliance investigation. **(Fudge)**

STAFF ANALYSIS: If the Commission approves staff's recommendations in Issue 1 and Issue 2, this docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action order. If the Commission denies staff's recommendation in either Issue 1 or Issue 2, this docket should remain open pending resolution of the compliance investigation.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)
proceedings against BellSouth) Docket No. 010097-TL
Telecommunications, Inc. for)
violation of service standards.) Filed: December 7, 2001
)

**BELLSOUTH'S PROPOSED OFFER OF SETTLEMENT
AND PETITION FOR LIMITED WAIVER OF
RULES 25-4.066(2), 25-4.070(3)(A), AND
25-4.070(1)(B), FLORIDA ADMINISTRATIVE CODE**

Pursuant to Section 120.57(4) and Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, BellSouth Telecommunications, Inc. ("BellSouth") hereby submits its proposed offer of settlement to resolve the above captioned docket and its petition for a limited waiver of Rules 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code. Specifically, BellSouth submits the following:

I. Background and Introduction

This docket was initiated on January 24, 2001. Since the initiation of the Docket, BellSouth and the Staff of the Florida Public Service Commission have engaged in discussions for the purpose of resolving this matter. To this end, BellSouth is proposing a settlement in full resolution of the issues before the Commission. The period to which this offer of settlement applies includes the period from 2000 up to and including 2001. The provisions of this offer of settlement are intended to supplement the actions required by the Stipulation and Settlement between the Office of Public Counsel and

BellSouth dated July 9, 2001 and approved by the Commission in Order No.

01-1643-AS-TL, issued on August 13, 2001.

The settlement proposed by BellSouth herein is an effort to effect an informal disposition and complete and binding resolution of any and all matters and issues which might be addressed by the Florida Public Service Commission ("Commission") in this docket regarding the Company's service during the years 2000 through 2001. This Settlement avoids the time, expense and uncertainty associated with adversarial litigation in keeping with the Florida Public Service Commission's long-standing policy and practice of encouraging parties in contested proceedings to settle issues whenever possible.

The proposed Settlement is not intended to eliminate the Commission's statutory authority to establish and monitor compliance with service quality standards. It represents a compromise between possible assessment and payment of penalties and/or fines and a desire to insure that customers receive direct and immediate tangible relief when service does not meet certain objectives.

II. Offer of Settlement

BellSouth proposes the following in complete settlement of this docket:

BellSouth will agree to incur the cost of extending the July 9, 2001 Stipulation and Settlement approved in Docket No. 991378-TL for a third

year (2004). BellSouth will agree to contribute \$150,000 in the third year of the settlement to the Community Service Fund established in the July 9, 2001 Stipulation and Settlement.

BellSouth will agree to make available approximately 8,000 BellSouth Internet accounts per year for three years (beginning in 2002) for Florida K-12 public schools. BellSouth will work directly with the individual school boards in BellSouth's territory to determine how these accounts should be distributed in order to create and to enhance access to information technology where most needed. Priority will be given to schools with ratings of "C" or less on the Board of Education Accountability Report. BellSouth will issue a status report to the Commission on a quarterly basis. BellSouth's commitment will represent additional funding over and above the educational dollars that would normally be budgeted by BellSouth for the State of Florida for the three-year term of this offer.

III. Petition for a Limited Waiver of Rules 25-4.066(2),
25-4.070(3)(a) and (25-4.070(1)(b),
Florida Administrative Code

As a condition of the offer of settlement set forth herein, BellSouth respectfully requests a limited waiver of the applicability of Rules 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code.

Rule 25-4.066(2), Florida Administrative Code, requires that 90% of all requests for the primary service be satisfied within three working days. Rule 25-4.070(1), Florida Administrative Code requires the classification of

troubles as "out-of-service" or "service affecting". Subsection (b) of Rule 25-4.070(1), Florida Administrative Code requires that if the subscriber's service remains out of service in excess of 24 hours after being reported, an adjustment will be made to the subscriber automatically pursuant to Rule 25-4.110. Rule 25-4.070(3)(a), Florida Administrative Code, requires that 95% of interrupted service be cleared within 24 hours of report in each exchange.

Pursuant to Section 120.542, Florida Statutes, BellSouth submits that the extension of the Service Guarantee Plan and the offering of BellSouth Internet accounts satisfies the requirement that a demonstration be made that the purpose of the underlying statute will be achieved by other means. By providing direct credits to customers whose service is affected by delayed installation or repair, and by BellSouth's commitment to public education, the purpose of the underlying statutes are achieved. Provisions of Florida Statutes authorizing or directing the Commission to establish, monitor and enforce service standards, such as Section 364.01(4), 364.025, Florida Statutes (1999) (carrier of last resort obligations, service availability) will be adequately met if the basic service subscriber receives a direct and material credit for being without basic service.

The Service Guarantee Plan meets the quality of service provisions of Chapter 364 by giving immediate and direct compensation to customers and provides similarly swift penalties to BellSouth for not meeting objectives that are consistent with the existing Commission service rules. In addition,

application of the above rules to BellSouth at the same time direct credits are being made or accrued would constitute unfairness or economic hardship by imposing duplicate penalties. For this reason, BellSouth requests a waiver so that the Service Guarantee Plan can be implemented. It is further the intent of BellSouth that the waiver will be effective as to any amendments to the subject rules for the duration of the Plan. BellSouth would continue to track and report its performance under the existing service rules, however, no punitive action would be taken against BellSouth during this interim period for misses under these rules.

The Petition of BellSouth meets the standards of Section 120.542, Florida Statutes. The purpose of the underlying statutes, 364.01(4), 364.025, 364.15, 364.183 and 364.19, is, in part, to promote competition, to protect the public health, safety and welfare, and ensure service availability. The temporary waiver will not undermine these purposes. BellSouth will continue to strive to meet the repair, installation, and answer time rules. BellSouth will continue to track and report its progress to the Commission. The purposes of the underlying statutes will be achieved. The increase in the out-of-service adjustment will provide the subscribers with a direct and material credit for being without basic local residential service.

IV. Miscellaneous Matters

This offer of Settlement is contingent upon the Florida Public Service Commission's acceptance of the provisions herein, which acceptance shall

include explicit recognition by the Florida Public Service Commission that all such matters are resolved by this Stipulation and Settlement.

This offer of Settlement is also contingent upon approval in its entirety by the Florida Public Service Commission. This Stipulation and Settlement will resolve all matters in this docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (1999). This docket will be closed effective on the date the Florida Public Service Commission order approving this Settlement is final. If this Settlement is not accepted and approved without modification by an order not subject to further proceedings or judicial review, then this Settlement shall be considered null and void and of no further force or effect.

In the event that the Commission does not accept this document in its entirety pursuant to its terms, this document shall not be admissible in any hearing on the matters established by this docket, or in any other docket or forum. Moreover, BellSouth does not waive any position on any issue that it could have otherwise asserted in this or any other docket as if this document had never been developed and written.

The Commission may terminate this agreement at any time for any reason. The company will be liable for credits to customers and community service credits, as contemplated by the agreement, until the date of such termination. Upon termination, the company will no longer be liable for such credits and will instead be subject to Commission Rules 25-4.066(2), 25-

4.070(3)(a) and, 25-4.070(1)(b), Florida Administrative Code. The company will only be subject to sanction for violations of said rules that may occur after termination of the agreement.

V. Conclusion

BellSouth is committed to providing high quality service to our customers, and with this plan, our customers will receive immediate compensation if we do not meet our commitments. BellSouth has recently adopted a set of guiding principles of service referred to as "The Customer Rules". This clearly states what we must do to meet our customers' expectations with a shared focus and standards that should govern every contact we have with every customer. This includes: Taking Ownership-Showing We Care, Being Responsive and Delivery, Doing It Right (first time, every time), Making it Seamless, and Meeting Our Commitments. Two initiatives that have been developed under Meeting Our Commitments are 1) Establishing a regional practice and guidelines for service technician use of a cell phone to call ahead before going to an appointment and 2) instituting a regionally consistent practice for contacting customers before we miss an appointment and measuring performance on missed commitments. We endeavor to stay ahead of the curve on these initiatives in Florida. BellSouth recently received the JD Power Award for service to small business and was named number one for consumer service by the Yankee Group.

In conclusion, BellSouth believes that this settlement will give direct benefit to our customers and to the communities that BellSouth serves. We realize that the local telecommunications market is becoming more competitive, and that good service plays an important part in retaining and maintaining customers. If we do not perform as we say, then we pay the customer and/or the customer chooses another provider.

BellSouth appreciates the assistance staff has given to developing this proposal.

Wherefore, BellSouth respectfully requests that the Commission accept BellSouth's offer of Settlement and Grant BellSouth's Petition for Limited Waiver.

Respectfully submitted this 7th day of December, 2001

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White
NANCY B. WHITE (KA)
JAMES MEZA III
c/o Nancy Sims
150 South Monroe Street, #400
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423282.v2



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Nancy H. Sims
Director

850 222 1201
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January 22, 2002

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

Re: Docket No. 010097-TL

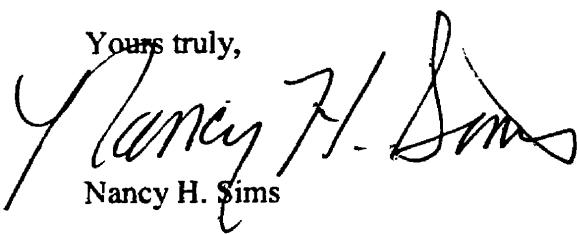
Dear Ms. Bayó:

On December 7, 2001, BellSouth filed a Proposed Offer of Settlement and Petition for Limited Waiver of Rules 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code, in Docket No. 010097-TL. By this letter, we are making a clarification to the pleading that was attached to that filing.

On pages 2 and 3 of the pleading that was attached to the filing, we indicated that the Stipulation and Settlement approved in Docket No. 991378-TL would be extended for a third year (2004). The actual ending date of the third year would be March 1, 2005. This is calculated based on a starting date of March 1, 2002.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Yours truly,



Nancy H. Sims

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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause
proceedings against BellSouth
Telecommunications,
Incorporated for violations of
service standards /

Docket No. 991378-TL
Filed: July 9, 2001

**STIPULATION AND SETTLEMENT BY AND BETWEEN
THE OFFICE OF PUBLIC COUNSEL AND
BELLSOUTH TELECOMMUNICATIONS, INC.**

Pursuant to Section 120.57(4), Florida Statutes (1999), BellSouth Telecommunications, Incorporated (BellSouth or the Company) and the Office of the Public Counsel (OPC or Citizens) (hereinafter the Parties) have entered into this Stipulation and Settlement to effect an informal disposition and complete and binding resolution of any and all matters and issues which might be addressed by the Florida Public Service Commission (FPSC or Commission) in this docket regarding the company's service during the years 1996 through 1999. This Stipulation and Settlement avoids the time, expense and uncertainty associated with adversarial litigation in keeping with the Florida Public Service Commission's long-standing policy and practice of encouraging parties in contested proceedings to settle issues whenever possible. Accordingly, without prejudice to any Party's position in any other proceeding before the Florida Public Service Commission or any other venue, present or future, the Parties stipulate and agree as follows:

ATTACHMENT "A"

1. BACKGROUND & INTRODUCTION

This Docket was initiated on September 10, 1999 pursuant to a memorandum dated September 10, 1999 issued by the Florida Public Service Commission. The OPC intervened on September 17, 1999. At its October 19, 1999, Agenda Conference, the Commission voted to accept BellSouth's offer of settlement and to close the docket upon remittance of a voluntary contribution of \$125,000 to the General Revenue Fund. That payment was made by BellSouth to the Florida Public Service Commission on November 18, 1999. A Proposed Agency Action Order No. PSC-99-2207-PAA-TL was issued November 9, 1999. On November 30, 1999, OPC filed a timely protest of the Order, and the matter was set for hearing. On May 17, 2000, an issue identification conference was held. At that time the Parties agreed with the FPSC staff (Staff) to establish a list of issues. On May 23, 2000, the Commission established the procedural schedule through the release of Order No. PSC-00-1027-PCO-TL. The OPC has served three Requests for Production of Documents and three sets of Interrogatories on BellSouth. BellSouth has made its responses to the discovery available to the OPC for inspection. The Commission Staff served one set of Interrogatories on BellSouth and BellSouth responded.

Since the initiation of the Docket, the Parties have engaged in discussions for the purposes of resolving this matter. To this end, the Parties have reached the following Stipulation and Settlement in full resolution of the issues before the Commission. Furthermore, the Parties agree that the period to which this Stipulation and Settlement applies, for any violation of the aforesaid rules, will include the period from 1996 up to and including 1999. The provisions of this agreement shall supplement the actions required by the Commission's Proposed Agency Action order no. PSC-99-2207-PAA-TL, including payment of a \$125,000 voluntary contribution to the General Revenue Fund.

As a resolution of this docket the Parties agree that BellSouth will incur the cost of and establish a new Service Guarantee Plan that will automatically provide payments in the form of credits to customers in the event certain service objectives are not met, and will require the payment of monies to a Community Service Fund. The Service Guarantee Plan will not require customers whose service is not installed or repaired within the objectives set out below to request that a credit be placed on the bill. Any credits called for in the plan will be applied automatically. The Stipulation and Settlement generally, and the Service Guarantee Plan, specifically, are not intended to eliminate the FPSC's statutory authority to establish, monitor compliance with and/or enforce service quality standards, nor does this agreement waive any of the FPSC's existing rules governing service quality. It represents a compromise of the Parties between possible assessment and payment of penalties and/or fines and a desire to insure that customers receive direct and immediate tangible relief when service does not meet the Service Guarantee Objectives agreed upon herein.

2. THE SERVICE GUARANTEE PLAN

The Parties hereby create a Service Guarantee Plan that establishes service objectives, credits for failure to meet those objectives, and contains terms and definitional language for application of the Service Guarantee Plan. One of the objectives is designed to result in direct and automatic credits to customers if installation commitments are not met. This includes, where facilities are available, installation of residential basic local service (primary and additional) and single line business. The second objective is for repair of primary residential and single line business out-of-service conditions. BellSouth also commits to establish and to contribute to a Community Service Fund that

will educate customers about and promote BellSouth's Lifeline and LinkUp services. In addition, BellSouth commits to tariff an income eligibility test for Lifeline services.

A. Service Guarantee Commitments and Credits

(1) Repair - Out of Service (Service Interruption):

BellSouth agrees to make the applicable automatic credits on the bills of each primary residential and single line business local customer for whom BellSouth fails to meet the service objective. This automatic credit would apply to primary residential and single line business local customers experiencing an out-of-service condition irrespective of whether the trouble is caused by a network, Customer Provided Equipment, or inside wire condition. Where the Company fails to complete a repair within 24 hours from the time received (the service objective), the Company will increase the current service rebate such that the customer will receive a credit of \$4.00 plus three times the customer's daily recurring local service charges, up to a maximum of \$35.00. In no event, however, shall the customer receive a credit of less than \$10.00. Saturdays, Sundays and holidays are included in calculating service credits. Periods of time associated with and covered by the force majeure clause in Section (2)(D)(1) of the Stipulation and Settlement shall be excluded from this calculation.

An out-of-service condition for purposes of this Service Guarantee Plan occurs when a subscriber's service is interrupted (1) other than by a negligent or willful act of the subscriber, and (2) where the customer is able to continue to take service (e.g. not where the service location has been destroyed by fire, flood, wind, etc.).

(2) Service Installation:

Where central office or outside plant facilities are readily available, if BellSouth fails to install a customer's primary or additional residential local or single line business service on the date which the customer and the Company have agreed, BellSouth will give the customer an automatic bill credit of \$25. The commitment due date for installation shall be agreed upon by the Company and the customer. Where the Company is offering a commitment date greater than three days and the customer requests an earlier date, the commitment credit will be based on the customer requested date or on three days, whichever is greater.

Saturdays, Sundays and holidays are included for determining the applicable credits. Periods of time associated with and covered by the force majeure clause in Section (2)(D)(1) of the Stipulation and Settlement shall be excluded from this calculation. BellSouth will be subject to FPSC Rule 24-066 (3) and (5), Florida Administrative Code where central office or outside plant facilities are not readily available.

B. Establishment of a Community Service Fund and Disposition of the Funding

BellSouth shall establish a Community Service Fund in the form of a corporate undertaking. For the first year of this settlement (calendar year 2002), BellSouth will make a contribution to the Community Service Fund in the amount of \$250,000 to be used to educate customers about and promote BellSouth's Lifeline and LinkUp services. For the second year of this settlement (calendar year 2003), BellSouth's contribution will be \$150,000. The annual contribution will be made in January of each year this agreement is in effect. In the event the Parties disagree as to the method of disposing of the contribution amounts, the Parties shall submit such disagreement to the Florida Public Service

Commission for resolution.

C. Filing of an Income Eligibility Tariff for Lifeline

BellSouth commits that it will file a tariff providing for an income eligibility test at 125% of the federal poverty income guidelines for Lifeline customers. This test for eligibility will augment, rather than replace, the current eligibility guidelines based on participation in certain low income assistance programs. This tariff filing is conditioned on a governmental or non-profit entity assuming responsibility for certifying eligibility. The Florida Public Service Commission may designate itself as the entity responsible for certifying claims of eligibility, or, if it prefers, may designate another entity, such as the Office of Public Counsel.

D. Other Provisions of the Service Guarantee Plan

(1) Force Majeure

In the event of an emergency due to major events such as hurricanes, work stoppages, or acts of third parties outside BellSouth's control, when it is reasonable to expect that the Company will be unable to meet its installation and repair commitments, BellSouth may declare a service emergency. In declaring a service emergency, the Company shall define the geographic area, on a minimum of an exchange basis, where the emergency exists, may make indefinite commitments for installation and repair services within the affected areas, shall initiate public service announcements to inform customers, and shall notify the Commission at the time of implementation and termination of the service emergency period. In such cases, the Company shall be relieved of its obligations to provide credits for failure to meet the objectives for installation and repair service.

Where BellSouth is relieved of meeting the objectives, it will revert to making refunds or adjustments for customers affected by a service emergency, pursuant to Rule 25-

4.110(6), Florida Administrative Code, for out-of-service conditions as defined by Rule 25-

4.070(1)(b), Florida Administrative Code.

(2) Commission's Continuing Jurisdiction

The intent of the Parties is that the Commission shall have the right to enforce the provisions of this Service Guarantee Plan including, but not limited to, verification that the credits are made consistent with the Service Guarantee Plan. Furthermore, it is not the intent of the Parties to deprive the Commission of its authority to resolve customer complaints and monitor and ensure that service is adequate and reasonable. The Parties contemplate that the Commission will retain its ability to monitor service through auditing and reviewing filed reports.

The Parties contemplate that this Stipulation and Settlement will resolve all issues defined in Order No. PSC-00-1027-PCO-TL for the period from January 1, 1996 through December 31, 1999. BellSouth will provide monthly reports to the Commission and the Office of the Public Counsel within 30 days of the end of the reporting month detailing the amount of credits related to missed objectives for installation and repair.

(3) Term of Service Guarantee Plan

The term of the Service Guarantee Plan is for a period of two years beginning on the implementation date. Each party will work in good faith to address and correct any unanticipated difficulties in a manner consistent with the intent of the Service Guarantee Plan.

(4) General Terms

(a) Implementation Date: BellSouth will implement this Service Guarantee Plan no later than six months from the date of a final Commission order approving the Stipulation and Settlement.

(b) Credits: Credits to customers will be made automatically and will not require the customer to request them.

(5) Definitions

(a) Basic Local Service: As defined in Section 364.02 (2), Florida Statutes (1999).

(b) Day: The twenty-four hour period beginning and ending at midnight. (For example, if a trouble report is received at 3 p.m. on Monday, and the trouble is cleared at 3:01 p.m. or later on Tuesday, a credit for one day would apply. A credit for two days would apply if the repair is completed at any time during the period 12:01 a.m. through 11:59 p.m. on Wednesday; a credit for three days would apply if the repair is completed at any time during the period 12:01 a.m. through and 11:59 p.m. on Thursday; and so forth.)

(c) Service Guarantee Objective: The standard(s) agreed to within this agreement.

(d) Community Service Contribution: Contribution made by the Company to the Community Service Fund on an annual basis.

(e) Community Service Fund: The fund (i.e. corporate undertaking) established pursuant to Section 2(B) and/or the fund (i.e. corporate undertaking) created by the annual contribution from the Company.

3. MISCELLANEOUS MATTERS

This Stipulation and Settlement will become effective on the day following the vote of the Florida Public Service Commission approving this Stipulation and Settlement.

The Florida Public Service Commission's decision will be reflected in a final order.

No Party to this Stipulation and Settlement will request, support or seek to impose a change in the application of any provision hereof. Furthermore, subject to the approvals of the Florida Public Service Commission set forth herein, all Parties hereto waive any right to request further administrative or judicial proceedings in regards to the establishment or implementation of this Stipulation and Settlement. This waiver of the

right to further administrative or judicial proceedings shall include (but not be limited to): a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code; a motion for reconsideration of the decision in this matter in the form prescribed by Rule 25-22.060, Florida Administrative Code; or a notice of appeal to initiate judicial review by the Florida Supreme Court pursuant to Rule 9.110, Florida Rules of Appellate Procedure, in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

This Stipulation and Settlement is contingent upon the Florida Public Service Commission's acceptance of the provisions herein, which acceptance shall include explicit recognition by the Florida Public Service Commission that all such matters are resolved by this Stipulation and Settlement.

This Stipulation and Settlement is also contingent upon approval in its entirety by the Florida Public Service Commission. This Stipulation and Settlement will resolve all matters in this docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (1999). This docket will be closed effective on the date the Florida Public Service Commission order approving this Stipulation and Settlement is final. If this Stipulation and Settlement is not accepted and approved without modification by an order not subject to further proceedings or judicial review, then this Stipulation and Settlement shall be considered null and void and of no further force or effect.

In the event that the FPSC does not accept this document in its entirety pursuant to its terms, this document shall not be admissible in any hearing on the matters established by this docket, or in any other docket or forum. Moreover, no Party to this Stipulation and Settlement waives any position on any issue that it could have otherwise asserted in this or any other docket as if this document had never been developed and written.

This Stipulation and Settlement dated this 9th day of July, 2001 may be executed in counterpart originals and a facsimile of an original signature shall be deemed an original.

The Parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signatures:

Office of Public Counsel
111 W. Madison Street, Room 812
Tallahassee, Florida 32399-1400

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By: Jack Shreve
Jack Shreve

By: Joseph P. Lacher
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