

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

INVESTIGATION CONCERNING THE	)	
PROPRIETY OF INTERLATA SERVICES	)	
BY BELLSOUTH TELECOMMUNICATIONS,	)	CASE NO. 2001-105
INC. PURSUANT TO THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

**BELLSOUTH’S MOTION TO PLACE SEEM PAYMENTS IN ESCROW**

BellSouth Telecommunications, Inc. (“BellSouth”), hereby files its Motion to Place SEEM Payments In Escrow, and states the following:

On October 17, 2003, BellSouth filed its Motion to Modify SEEM Plan, which requested the entry of an Order to remove any penalties from the SEEM Plan relating to the provision of line sharing. Subsequently, a Response to the Motion was filed on behalf of a number of CLECs, and BellSouth filed a Reply to the Response on November 19, 2003. As stated in BellSouth’s Motion, the Federal Communications Commission (“FCC”) recently ruled in the Triennial Review Order<sup>1</sup> that line sharing is no longer an unbundled network element that incumbent LECs are required to offer pursuant to Section 251 of the Act. For this reason, and for the other reasons set forth in BellSouth’s Motion and Reply, penalties relating to the provisioning of line sharing should immediately be removed from the SEEM Plan.

The FCC’s Triennial Review Order became effective on October 2, 2003. Thus, the first month for which penalties relating to line sharing should not be paid is October of 2003. Under the terms of the SEEM Plan, both Tier I and Tier II penalties are paid 45 days after the end of the

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<sup>1</sup> *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking* (FCC-03-36). *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket No. 01-338, *et al.*, FCC 03-36 (rel. Aug. 21, 2003) (“Triennial Review Order”).

month in which the performance occurs. Thus, any penalties that would be payable for the month of October 2003 would be due on December 15, 2003. BellSouth stated in its Motion that, in the event that the Commission did not rule on BellSouth's Motion by December 15, 2003, then BellSouth would propose to escrow any SEEM payments that relate to line sharing while awaiting the Commission's ruling on BellSouth's Motion. As of this date, all filings relating to BellSouth's Motion have been made by the parties, and the issue is ripe for resolution. BellSouth understands, however, that the Commission may not be able to rule on its Motion prior to December 15, 2003. Therefore, BellSouth hereby formally requests that the Commission enter an Order allowing BellSouth to place in escrow any line sharing penalty payments pending the Commission's ruling on BellSouth's Motion, if this ruling does not occur by December 15, 2003.

If the requested relief is not granted, then BellSouth will be required to pay both Tier I and Tier II penalties on December 15, 2003 that the Commission could well subsequently determine should not be paid. In this event, BellSouth would be placed in the untenable position of having to attempt to recoup penalty payments from a number of CLECs. Thus, under the best case scenario, BellSouth would have the unnecessary administrative burden of making payments to CLECs only to later expend additional efforts to recover these funds. There is, of course, a substantial likelihood that at least some of the CLECs would decline to voluntarily return the penalty payments. If these CLECs do not repay the subject penalties for line sharing, then BellSouth would be unjustly deprived of these payments.

Given the above, the better alternative would be for the Commission to allow BellSouth to place into escrow all penalties attributable to line sharing that would be payable on December 15, 2003, until such time as the Commission rules on BellSouth's Motion to Modify SEEM Plan. If the Commission subsequently rules in BellSouth's favor, then the payments would be returned from escrow to BellSouth. Although BellSouth should prevail in this issue for the reasons set forth in its Motion and Reply, if BellSouth does not obtain the requested relief, any payments due

would be promptly remitted to the CLECs upon the entry of an Order by the Commission. Therefore, granting BellSouth's Motion, and allowing these funds to be paid into escrow, would not cause harm to any party.


Although the immediate entry of an Order allowing BellSouth to pay the above-described funds into escrow is the best approach, BellSouth also proposes an alternative, i.e., that the Commission allow BellSouth to offset any SEEM payments made for line sharing, which the Commission's subsequently determines are not required, against subsequent penalty payments due under Tier I and Tier II. In other words, if the Commission ultimately rules in BellSouth's favor on the Motion to Modify SEEM Plan, then BellSouth would be allowed to offset all SEEM payments for line sharing, beginning with those due December 15, 2003, against penalties that BellSouth otherwise would owe under the Plan. Thus, if at the time the Commission rules, BellSouth owes penalty payments to a given CLEC, it would simply reduce the amount of the payment by the amount of the line sharing penalties that BellSouth had paid beginning December 15, 2003. Again, BellSouth believes that the better alternative is to enter immediately an Order allowing BellSouth the authority to place the subject payments into escrow. If the Commission declines to take this action, however, then allowing BellSouth to offset these penalties against others that are due in the future would likely represent the only realistic opportunity that BellSouth would have to recoup these funds.

Finally, there is a possibility that the Commission will not be able to rule on the instant Motion prior to December 15, 2003. This would mean that, even if the Commission ultimately grants BellSouth's Motion to escrow funds, then the payments due on December 15, 2003 (and perhaps even later payments) would be made before the Commission grants BellSouth the right to escrow funds or grants BellSouth relief on the Motion to modify the SEEM Plan. Thus, BellSouth requests that the Commission also Order that, if this occurs, then BellSouth will be allowed to recoup any penalties paid under either Tier I or Tier II prior to the time this motion is granted, by

offsetting those line sharing penalties against other payments that are owed by BellSouth under the Plan, as described above.

WHEREFORE, BellSouth respectfully requests the entry of an Order allowing it to escrow all SEEM payments relating to line sharing, beginning with October of 2003 (i.e., for which penalties are payable beginning December 15, 2003), until such time as the Commission has ruled on BellSouth's Motion to Modify SEEM Plan. In the alternative, BellSouth requests that the Commission grant BellSouth the ability to offset any SEEM penalties paid for line sharing that are subsequently determined not to be due (in the event the Commission grants BellSouth's Motion to Modify SEEM Plan) by allowing BellSouth to offset the amount of these Tier I and Tier II line sharing penalties against other Tier I and Tier II penalty payments that are due.

Respectfully submitted this 5th day of December, 2003.

  
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