



Public Service Commission

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AUG -5 11:31
DIVISION OF RECORDS AND REPORTING

DATE: AUGUST 5, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF COMMUNICATIONS (BIEGALSKI) *ICB*
DIVISION OF LEGAL SERVICES (CALDWELL) *awc* *CD*

RE: DOCKET NO. 990777-TL - EMERGENCY PETITION BY BELL SOUTH TELECOMMUNICATIONS, INC. TO TEMPORARILY WAIVE TOLL-FREE CUSTOMER SERVICE NUMBER PLACEMENT PROVISION OF RULE 25-4.110(10), F.A.C.

AGENDA: 08/17/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: STATUTORY DEADLINE - SEPTEMBER 24, 1999

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\990777.RCM

CASE BACKGROUND

- December 28, 1998 - Rule 25-4.110, Florida Administrative Code, Customer Billing for Local Exchange Telecommunications Companies, became effective, with delayed implementation dates for certain billing requirements.
- June 16, 1999 - BellSouth Telecommunications, Inc. (BellSouth) filed an Emergency Petition for Temporary Waiver of Rule 25-4.110(10), Florida Administrative Code, which pertains to the toll-free customer service number placement provision. Implementation of this provision of the rule began June 28, 1999. (Attachment A, Pages 5-8)
- June 24, 1999 - Pursuant to Rule 28-104.005(1), Florida Administrative Code, BellSouth waived the time limit as it relates to its Emergency Petition for Temporary Waiver of Rule 25-4.110(10), Florida Administrative Code.

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DIVISION OF RECORDS AND REPORTING

- July 9, 1999 - Notice was published in the Florida Administrative Weekly that BellSouth was seeking a Waiver of a Commission Rule.
- July 23, 1999 - Due date for filing comments. No comments were filed.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant BellSouth's Petition as an emergency request pursuant to Rule 28-104.004, Florida Administrative Code?

RECOMMENDATION: No. BellSouth's Petition does not meet the standard for emergency waiver set forth in Rule 28-104.004, Florida Administrative Code. **(Caldwell)**

STAFF ANALYSIS: Rule 28-104.004, Florida Administrative Code, provides that a petition for an emergency waiver shall specify, in addition to the other requirements of Section 120.542(5), Florida Statutes, the following:

(a) The specific facts that make the situation an emergency; and

(b) The specific facts to show that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in section 120.542, Florida Statutes.

BellSouth's Emergency Petition for Temporary Waiver does not meet the requirements of Rule 28-104.004, Florida Administrative Code as it does not state specific facts that make the situation an emergency nor does it show an immediate adverse effect unless the waiver is issued more expeditiously. Specifically, all companies had six months after the rule became effective to comply with the requirements. The fact that BellSouth did not file its request for waiver sooner than it did does not create an emergency under Rule 28-104.004, Florida Administrative Code. Nowhere in its pleading does BellSouth even mention Rule 28-104.004, Florida Administrative Code. The case pled by BellSouth relates to why it should be

granted a temporary waiver, not that the situation was an emergency under the standards set by rule. Moreover, by letter, BellSouth waived the 30-day time limit set by rule under Rule 28-104.004, Florida Administrative Code. Finally, Rule 28-104.005(2), Florida Administrative Code allows an agency to deny a petition based on its decision that the situation is not an emergency and then requires the agency to review the Petition on a non-emergency basis. Therefore, staff recommends that Commission deny the Petition for emergency treatment, but address the request on a non-emergency basis.

ISSUE 2: Should the Commission grant BellSouth Telecommunications, Inc.'s request for a temporary waiver of Rule 25-4.110(10), Florida Administrative Code?

RECOMMENDATION: Yes. The Commission should grant to BellSouth a temporary waiver of Rule 25-24.110(10) Florida Administrative Code, until April 30, 2000. **(Biegalski, Caldwell)**

STAFF ANALYSIS: Rule 25-4.110(10), Florida Administrative Code, states:

After January 1, 1999, or six months after the effective date of this rule, whichever is later, all bills produced shall clearly and conspicuously display the following information for each service billed in regard to each company claiming to be the customer's presubscribed provider for local, local toll, or toll service:

- (a) The name of the certificated company;
- (b) Type of service provided, i.e., local, local toll, or toll; and
- (c) A toll-free customer service number.

Rule 25-4.110(10), Florida Administrative Code, was recently amended as part of a rule revision to address the problems created by companies that switched customers' telephone numbers without their authorization (slamming). The specific provision in the rule was added after customers testified in ten workshops around the state that they were unable to contact the company to question

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specific charges. Staff believes the purpose of this provision was to protect customers by providing them a way to contact the specific carrier that is providing telephone service to the customer. Because a customer may be slammed before ever receiving any usage charges on the customer's bill, staff believes it is important to have each provider's toll-free customer service number on the telephone bill at all times.

BellSouth argues in its Petition that its request meets the standards of Section 120.542, Florida Statutes. BellSouth states that the purposed of the underlying statutes, 364.604, Florida Statutes, which relates to billing practices, is, in part, to effectively provide information the consumer can use to better protect himself from being slammed. BellSouth argues that a temporary waiver will not undermine this purpose. BellSouth states that while it will provide the name and service of each type of provider on a summary page of the customer's bill, it currently cannot provide the toll-free customer service number of each provider on the that page. BellSouth states that the programming to include the toll-free customer service number on the page that summarizes provider information will take at least 1000 hours. BellSouth states that at this time, it is allocating all its resources to address Y2K conversion issues. However, when a customer receives carrier specific charges on their bill, a toll-free number is listed on that carrier's bill page. Finally, BellSouth states that it would incur substantial economic and technical hardship if it were required to implement the rule requirement during a period critical to Y2K conversion. BellSouth states that it will make every effort to implement this requirement by November 1999, but no later than April 2000.

The waiver is being requested in accordance with the requirements of Section 120.542, Florida Statutes. Subsection (2) provides that variance 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.

Staff believes BellSouth's argument that it cannot implement the rule requirement during a period critical to Y2K conversion is a substantial hardship contemplated by Section 120.542(2), Florida Statutes. Staff believes Y2K compliance is of utmost importance and, if a conflict arises where a company must choose whether to make changes to implement a rule or changes to implement Y2K

compliance because of the time and expense for implementation of either, the Y2K compliance should take precedence.

In addition, staff believes that because BellSouth currently provides a toll-free customer service number on the carrier specific bill page, the customer is able to contact the carrier should they have questions regarding those specific charges. The number of customers receiving a bill without charges should be minimal and because BellSouth will be providing the toll-free customer service number on the page summarizing provider information in the near future, staff believes the underlying intent of Section 364.604, Florida Statutes, to protect consumers from being slammed will be adequately addressed on a temporary basis.

Staff believes that the purpose of the statute to protect consumers from being slammed by providing customers with a means to contact its provider for each service provided will be adequately addressed until full compliance within the rule is accomplished. BellSouth has proved a substantial economic and technical hardship because of the time and expense necessary to implement this change in its billing format in the face of Y2K compliance. Therefore, staff recommends that the temporary waiver requested in this docket be granted with an expiration date of April 30, 2000.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed upon the 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. **(Caldwell)**

STAFF ANALYSIS: Whether staff's recommendation in Issue 1 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon issuance of a Consummating Order.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Rule 25-24.845,) DOCKET NO.: 970882-TI
F.A.C., Customer Relations;)
Rules Incorporated, and proposed)
Amendments to Rules 25-4.003,)
F.A.C., Definitions; 25-4.110,)
F.A.C., Customer Billing; 25-4.118,)
F.A.C., Interexchange Carrier)
Selection; 25-4.490, F.A.C.,)
Customer Relations; Rules)
Incorporated.)
_____) Filed: June 16, 1999

**BELLSOUTH TELECOMMUNICATIONS, INC.'s
EMERGENCY PETITION FOR TEMPORARY WAIVER**

BellSouth Telecommunications, Inc. ("BellSouth") asks the Commission to temporarily waive the toll-free customer service number placement provision of Rule 25-24.110(10) because of resource constraints. Specifically, BellSouth seeks the following:

1. Rule 25-4.110(10) states:

By January 1, 1999, or six months after the effective date of this rule, whichever is later, all bills produced shall clearly and conspicuously display the following information for each service billed in regard to each company claiming to be the customer's publisher and provides for local, local toll, or toll service: (a) the name of the certificated company, (b) type of service provided, i.e., local, local toll or toll; and (c) a toll-free customer service number.

2. This Rule took effect on December 28, 1998. In the absence of a waiver, its provisions must be implemented by June 28, 1999.

3. BellSouth will begin providing a service provider summary section on bills produced on and after June 27, 1999. This summary section will identify the local toll and toll provider for each line.

4. At this time, BellSouth is unable to provide the toll-free customer service number for each service provider on the service provider summary section. Completion of this work requires over 1000 hours of programming. The resources required to complete this work are severely strained by completion of Year 2000 compliance and implementing the FCC Access Reform requirements.

5. BellSouth will make every effort to implement this requirement by November of 1999. If, however, there are unforeseen Year 2000 conversion issues, BellSouth will allocate all its resources for the fourth quarter of 1999 and the first quarter of 2000 solely to ensuring a successful Year 2000 conversion. In as much as the Year 2000 will be the first leap year of the millennium, the possibility of complications cannot be forecasted with complete accuracy. In any event, implementation of the rule requirement will occur no later than April of 2000.

6. While BellSouth seeks a temporary waiver of the placement of the toll-free customer service number, BellSouth will provide a toll-free customer service number on all bills that contain a carrier bill page.

7. BellSouth's temporary waiver request meets the standards of Section 120.542, Florida Statutes. The purpose of the underlying statute, 364.604 ("Billing Practices") is, in part, to effectively provide information the consumer can use to better protect himself from being slammed. BellSouth's temporary waiver will not undermine this purpose. To the contrary, the temporary waiver is necessary to satisfy this objective. As explained above, attempting to implement the toll-free customer service number on the summary

section will certainly have consequences for Year 2000 compliance that could easily affect billing. A temporary waiver of the Rule's notice placement provision is, therefore, necessary to avoid substantial economic and technological hardship. Moreover, BellSouth will continue to have a toll-free customer service number on any bill that has a carrier bill page.

8. Extensive billing system and other process modifications necessitated by the Year 2000 problem are necessarily urgent and have taken resources from more routine compliance efforts. In addition, BellSouth will institute a moratorium on billing system changes later this year to accommodate Year 2000 compliance efforts.

9. BellSouth submits that the equities in this case weigh heavily in favor of granting this temporary waiver. BellSouth has been aggressive in instituting measures to curb slamming and cramming.

10. Because the rule must be implemented by June 28, 1999, BellSouth seeks the temporary waiver on an emergency basis.

11. For all the foregoing reasons, BellSouth seeks a temporary waiver of the notice placement provision of Rule 25-24.110(10).

Respectfully submitted this 16th day of June, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

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