

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for waiver of Rules 25-4.107, 25-4.108, and 25-4.113, F.A.C., which require provision of basic telecommunications service to certain locations and persons.

DOCKET NO. 000028-TL  
ORDER NO. PSC-00-0902-PAA-TL  
ISSUED: May 5, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.  
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING PETITION FOR RULE WAIVER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On January 10, 2000, this Commission received a petition from BellSouth Telecommunications, Inc. (BellSouth) seeking a waiver of Rules 25-4.107, 25-4.108 and 25-4.113, Florida Administrative Code. The rules require a local exchange company (LEC) to assist any customer or applicant in obtaining telephone service adequate to his communication needs, to provide service, and limit circumstances under which a LEC may refuse telephone service. According to BellSouth, it is seeking a permanent waiver of these rules for one particular customer, because it would otherwise be required to keep trying to work with this particular customer when

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he has repeatedly demonstrated that he will not deal in good faith with BellSouth.

The notice of Petition for Waiver of Rule Requirement was submitted to the Secretary of State for publication in the Florida Administrative Weekly on January 19, 2000. The comment period ended on February 14, 2000, and no comments were submitted. The statutory deadline for our decision regarding this petition was April 10, 2000; however, BellSouth waived the statutory deadline.

On February 24, 2000, BellSouth filed a claim of confidential treatment of Document No. 000354-00 which contains customer specific information regarding BellSouth's petition for rule waiver. Section 364.24(2), Florida Statutes, prohibits telecommunications companies from intentionally disclosing customer account records subject to certain exceptions not applicable in this case. Pursuant to Commission Rule 25-22.006, Florida Administrative Code, the information for which BellSouth has claimed confidentiality has been and will be treated as such until and unless a ruling by a pre-hearing officer is required.

RULE WAIVER

Rule 25-4.107, Florida Administrative Code, states:

25-4.107 Information to Customers.

(1) Each company shall provide such information and assistance as is reasonable to assist any customer or applicant in obtaining telephone service adequate to his communications needs. At the time of initial contact, each local exchange telecommunications company shall advise the person applying for or inquiring about residential or single line business service of the rate for the least expensive one party basic local exchange telephone service available to him unless he requests specific equipment or services. Each company shall inform all persons applying for residential service of the availability of the company's installment plan for the payment of service connection charges. The information will be provided at the time of initial contact and shall include, but not be limited to, information on rate amounts and installment time periods and procedures. Upon customer request, the person shall also be given an 800 number to call to receive information on the "No Sales Solicitation" list offered through the Department of

Agriculture and Consumer Services, Division of Consumer Services. In any discussion of enhanced or optional services, each service shall be identified specifically, and the price of each service shall be given. Such person shall also be informed of the availability of and rates for local measured service, if offered in his exchange. Local exchange telecommunications companies shall submit copies of the information provided to customer service representatives to the Division of Telecommunications for prior approval.

(2) At the earliest time practicable, the company shall provide to that customer the billing cycle and approximate date he may expect to receive his monthly billing.

Rule 25-4.108, Florida Administrative Code, states:

25-4.108 Initiation of Service.

Any applicant for telephone service may be required to make application in writing in accordance with standard practices and forms prescribed by the utility, provided that the policy adopted by the utility for the initiation of service shall have uniform application and shall be set forth in its filed tariff. Such application shall be considered as notice to the utility that the applicant desires service and upon compliance by the applicant with such other provisions governing utility service as may be in effect, the utility shall undertake to initiate service without unreasonable delay. Each company shall permit residential customers to pay service connection charges in equal monthly installments over a period of at least 3 months. A company may charge a monthly service fee of \$1.00 to applicants who elect to pay the service connection charge in installments.

Rule 25-4.113, Florida Administrative Code, states:

25-4.113 Refusal or Discontinuance of Service by Company.

(1) As applicable, the company may refuse or discontinue telephone service under the following conditions provided that, unless otherwise stated, the customer shall be given notice and allowed a reasonable time to comply with any rule or remedy any deficiency:

(a) For noncompliance with or violation of any State or municipal law, ordinance, or regulation pertaining to telephone service.

(b) For the use of telephone service for any other property or purpose than that described in the application.

(c) For failure or refusal to provide the company with a deposit to insure payment of bills in accordance with the company's regulations.

(d) For neglect or refusal to provide reasonable access to the company for the purpose of inspection and maintenance of equipment owned by the company.

(e) For noncompliance with or violation of the Commission's regulations or the company's rules and regulations on file with the Commission, provided 5 working days' written notice is given before termination.

(f) For nonpayment of bills for telephone service, including the telecommunications access system surcharge referred to in Rule 25-4.160(3), provided that suspension or termination of service shall not be made without 5 working days' written notice to the customer, except in extreme cases. The written notice shall be separate and apart from the regular monthly bill for service. A company shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the company. No company shall discontinue service to any customer for the initial nonpayment of the current bill on a day the company's business office is closed or on a day preceding a day the business office is closed.

(g) For purposes of paragraphs (e) and (f), "working day" means any day on which the company's business office is open and the U.S. Mail is delivered.

(h) Without notice in the event of customer use of equipment in such manner as to adversely affect the company's equipment or the company's service to others.

(i) Without notice in the event of hazardous conditions or tampering with the equipment furnished and owned by the company.

(j) Without notice in the event of unauthorized or fraudulent use of service. Whenever service is discontinued for fraudulent use of service, the company may, before restoring service, require the customer to make, at his own expense, all changes in facilities or equipment necessary to eliminate illegal use and to pay

an amount reasonably estimated as the loss in revenues resulting from such fraudulent use.

(2) In case of refusal to establish service, or whenever service is discontinued, the company shall notify the applicant or customer in writing of the reason for such refusal or discontinuance.

(3) Service shall be initiated or restored when the cause for refusal or discontinuance has been satisfactorily adjusted.

(4) The following shall not constitute sufficient cause for refusal or discontinuance of service to an applicant or customer:

(a) Delinquency in payment for service by a previous occupant of the premises, unless the current applicant or customer occupied the premises at the time the delinquency occurred and the previous customer continues to occupy the premises and such previous customer shall benefit from such new service.

(b) Delinquency in payment for service by a present occupant who was delinquent at another address and subsequently joined the household of the customer in good standing.

(c) Delinquency in payment for separate telephone service of another customer in the same residence.

(d) Failure to pay for business service at a different location and a different telephone number shall not constitute sufficient cause for refusal of residence service or vice versa.

(e) Failure to pay for a service rendered by the company which is not regulated by the Commission.

(f) Failure to pay the bill of another customer as guarantor thereof.

(g) Failure to pay a dishonored check service charge imposed by the company.

(5) When service has been discontinued for proper cause, the company may charge a reasonable fee to defray the cost of restoring service, provided such charge is set out in its approved tariff on file with the Commission.

BellSouth has indicated that it is seeking a permanent waiver of the foregoing rules as they pertain to one particular customer. According to BellSouth, over the course of seven years, the customer has repeatedly provided false or invalid information to BellSouth when applying for an account, has presented several checks for payment of services received that were returned for

insufficient funds, and has gotten into a billing dispute with BellSouth in each of the 25 accounts opened in his name, the name of a business allegedly owned by him or at properties owned by him.

It appears that BellSouth's efforts to provide service to the customer and work out billing disputes with him from 1992 to 1999, as chronicled in Exhibit B of Petition by BellSouth Telecommunications, Inc., for Waiver of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, indicates that it has earnestly endeavored to comply with the above rules and is not seeking a waiver from them without just cause.

BellSouth's petition for waiver must meet the requirements of Section 120.542, Florida Statutes. Under this statutory requirement, a petitioner requesting a waiver of a Commission rule must first demonstrate that the purpose of the underlying statute will otherwise be served if waiver of the rule is granted. Secondly, the petitioner must demonstrate that continued enforcement of the rule would result in substantial hardship for the petitioner or violate principles of fairness.

The underlying statutes in this case are Sections 364.025, 364.03, 364.04, and 364.19, Florida Statutes. The purpose of these underlying statutes is, in part, to promote the public health, safety and welfare by ensuring that basic local telecommunications services are available to all consumers.

#### CONCLUSION

We find that BellSouth has fulfilled the requirements of Section 120.542, Florida Statutes. BellSouth has shown that the underlying purpose of the statutes will be fulfilled, because there are several alternative local exchange companies (ALECs) in the area, as well as cellular telephone companies, that the customer may approach for basic local telecommunications services. The customer will, therefore, not be denied access to other options for basic local telecommunications service if this waiver is granted.

BellSouth has shown that continued enforcement of the rule would result in substantial hardship for BellSouth. As discussed above, the customer has allegedly repeatedly provided false or invalid information to BellSouth when applying for an account, has presented several checks for payment of services received that were returned for insufficient funds, and has gotten into a billing dispute with BellSouth in each of the 25 accounts opened in his

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name or associated with him. This has resulted in direct monetary losses to BellSouth totaling \$22,760.70 in past-due billing alone, an undue burden on its human resources and an increase in cost to its other ratepayers. Accordingly, BellSouth's rule waiver petition is hereby granted. This docket shall be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by this Commission's decision files a protest within 21 days of the issuance of the proposed agency action order.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission the Petition for Waiver of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, filed by BellSouth Telecommunications, Inc. is hereby granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 5th day of May, 2000.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 26, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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