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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast for waiver of Rule 25- 4.040(2), Florida Administrative Code.	DOCKET NO. 090082-TL ORDER NO. PSC-09-0492-PAA-TL ISSUED: July 8, 2009
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The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING TEMPORARY 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.

I. Case Background

On February 13, 2009, BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T Florida), an incumbent local exchange telecommunications company (ILEC), filed a request for a permanent rule waiver pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code (F.A.C.). AT&T Florida seeks relief from Rule 25-4.040(2), F.A.C., which requires the ILEC to furnish each subscriber a directory of local residential and business listings.

If the waiver is granted, AT&T Florida subscribers would no longer receive printed copies of the residential listings on an up-front basis. Instead, AT&T Florida would only furnish printed copies of its business yellow pages directory and provide the residential listings via the internet. Subscribers could request printed copies of the residential white pages directory or CD-ROM (where available) free of charge by calling a toll-free number.

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FPSC-COMMISSION CLERK

The Florida Administrative Weekly (FAW) notice of AT&T Florida's permanent waiver request was published on March 6, 2009. No written comments were received during the 14-day comment period.

On March 16, 2009, our staff met with representatives of AT&T Florida and the Office of Public Counsel (OPC) to discuss consumer safeguards.

On March 25, 2009, AT&T Florida filed additional information addressing consumer issues and the economic impact of continuing to provide printed residential white pages directories or CD-ROMs on an up-front basis.

On May 19, 2009, AT&T Florida provided, per our staff's request, a mock-up of the yellow pages cover for the Miami-Dade area.¹

We are vested with jurisdiction in this matter pursuant to Sections 120.542, 350.127, and 364.02(1), Florida Statutes.

II. Analysis

Under Section 120.542, Florida Statutes, and Rule 28-104.002, F.A.C., a person affected by a Commission Rule may petition this Commission for a waiver of that Rule. We have general statutory authority to grant this waiver under Section 120.542(2), Florida Statutes, which states:

* * *

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute² will be or has been achieved by other means by the person and when the application of a rule would create a substantial hardship or would violate principles of fairness. For 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.

* * *

Rule 28-104.002, F.A.C., states in part:

* * *

(2) The petition must include the following information:

¹ Section 120.542(8), Florida Statutes, states, "An agency shall grant or deny a petition for variance or waiver within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition."

² Section 364.02(1), Florida Statutes, defines basic local telecommunications service to include an alphabetical directory listing.