



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-

RECEIVED-1999
99 JAN 21 AM 11:56
RECORDS AND REPORTING

DATE: JANUARY 21, 1999

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

FROM: DIVISION OF COMMUNICATIONS (HAWKINS) *38888*
DIVISION OF LEGAL SERVICES (COX) *McB for WPC McB*

RE: DOCKET NO. 981610-TL - PETITION BY VISTA-UNITED TELECOMMUNICATIONS FOR PARTIAL WAIVER OF RULE 25-4.115, F.A.C., TO ALLOW VISTA-UNITED TO PROVIDE NATIONAL DIRECTORY ASSISTANCE (NDA) UNDER TARIFF TO ITS LOCAL EXCHANGE SERVICE CUSTOMERS.

AGENDA: FEBRUARY 2, 1999 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\981610TL.RCM

CASE BACKGROUND

On November 16, 1998, Vista-United Telecommunications (Vista-United) filed a petition (Attachment A) with this Commission requesting a partial waiver of Rule 25-4.115, Florida Administrative Code, regarding National Directory Assistance (NDA). NDA allows Florida customers to obtain telephone listings from unknown and/or distant area codes with a single call to 411. In its petition, Vista-United states that Rule 25-4.115, Florida Administrative Code, requires a local exchange carrier to provide directory assistance (DA) service to its customers within a customer's Home Numbering Plan Area (HNPA) and that interexchange carriers provide DA outside a customer's HNPA. Vista-United also states that it does not provide DA services to its customers using its own operators. Vista has contracted with BellSouth for operator services, including DA services.

DOCUMENT NUMBER-DATE

00782 JAN 21 99

FPSC-RECORDS/REPORTING

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Vista-United's petition for partial waiver of Rule 25-4.115, Florida Administrative Code, allowing Vista-United to provide National Directory Assistance under its tariff?

RECOMMENDATION: Yes. The Commission should grant Vista-United's petition for partial waiver of Rule 25-4.115, Florida Administrative Code, allowing Vista-United to provide National Directory Assistance under its tariff. (HAWKINS)

STAFF ANALYSIS:

Rule Waiver

With the amendments made to the Administrative Procedures Act by the 1996 Legislature, agencies are required to consider requests for variances or waivers from their rules according to the requirement set forth in Section 120.542, Florida Statutes. Vista-United seeks a waiver of Rule 25-4.115, Florida Administrative Code. The rule prohibits Vista-United as a local exchange carrier from providing directory assistance outside of the caller's HNP.

Section 120.542, Florida Statutes, provides that:

(1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation....

(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 the rule would create a substantial hardship or would violate principals of fairness. For purposes of this section, "substantial hardship" mean a demonstrated economic, technological, legal, or other type of hardship to the

person requesting the variance or waiver. For purposes of this section, "principals 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.

Rule 25-4.115, Florida Administrative Code, Directory Assistance, provides, in pertinent part, that:

(2) Charges for calls within a local calling area or within a customer's Home Numbering Plan Area (HNPA) shall be at rates prescribed in the general service tariff of the local exchange company originating the call and shall be subject to the following:

(b) The same charge shall apply for calls within a local calling area and calls within an HNPA.

(3) Charges for intrastate calls to directory assistance outside of the caller's HNPA shall be at rates prescribed in the general services tariff of the interexchange companies....

The underlying statutes in this case are Sections 364.03 and 364.04, Florida Statutes. Section 364.03, Florida Statutes, is inapplicable to Vista-United as a price regulated local exchange carrier. Section 364.051, Florida Statutes. Section 364.04, Florida Statutes, in pertinent part, provides that:

(1) Upon order of the commission, every telecommunications company shall file with the commission, and shall print and keep open to public inspection, schedules showing the rates, tolls, rentals, contracts, and charges of that company for service to be performed within the state.

(2) The schedule, as printed and open to public inspection, shall plainly state the places between which telecommunications service will be rendered and shall also state separately all charges and all privileges or facilities granted or allowed and any rules or regulations or forms of contract which may in anywise change, affect, or determine any of the aggregate of the rates, tolls, rentals, or charges for the service rendered.

Vista-United states it is a local exchange carrier and does not provide DA service to its customers using its own operators. Instead, Vista-United has contracted with BellSouth to provide operator services, including DA, to Vista-United's local exchange customers. The company states that BellSouth's NDA service is an integral part of the operator services from BellSouth. Therefore, it would be expensive and difficult for Vista-United to take operator services from someone other than BellSouth or to provide such services using its own operators.

National Directory Assistance

In its petition filed November 16, 1998, Vista-United states that it is a small local exchange telecommunications company that provides services in Orange and Osceola counties, pursuant to regulation by the Commission. The company has fewer than 100,000 access lines and has elected price regulation under Section 364.052.(1), Florida Statutes.

Vista-United recognizes the Commission's past decisions regarding similar waiver petitions to support its petition. Specifically, Vista-United states that its petition is similar to BellSouth's, Sprint's and Northeast's in Docket Nos. 971560-TL, 980231-TL and 980716-TL, respectively. Vista-United argues that granting this waiver will advance the system of regulation in Chapter 364, Florida Statutes. It will benefit its customers by allowing them to replace what would be two directory assistance calls (one to get the NPA and one to get the number) with one DA call. It will also allow a telecommunications provider other than an IXC to provide directory listings outside of the NPA originating line, thereby promoting competition and conferring a benefit upon telecommunication customers in Florida. Vista-United also states

DOCKET NO. 981610-12
DATE: JANUARY 21, 1999

that since NDA is part of the package of services that it receives from BellSouth under its OSP contract, it will file a tariff amendment to provide NDA, once the waiver of Rule 25-4.115, Florida Administrative Code, has been approved.

Staff believes that Vista-United has satisfied the requirements of Section 120.542, Florida Statutes. Vista-United has demonstrated that the purpose of the underlying statute will be served by granting the waiver. The underlying statutes in this case are Sections 364.03 and 364.04, Florida Statutes. These sections require the Commission to regulate in the public interest and to promote competition in the telecommunications market. Vista-United states that the waiver request will benefit its customers and promote competition in the telecommunications market. Thus, the waiver request is consistent with the underlying statutes.

Staff believes that Vista-United has demonstrated that the application of the rule would be an economic hardship. Rule 25-4.115, Florida Administrative Code, prohibits Vista-United from providing DA service outside the HNPA of a caller. The company argues that it will be expensive and disruptive for it to receive operator services from a company other than BellSouth or to provide such services using its own operators.

Staff's recommendation in this docket is consistent with the Commission's earlier decisions in Order Nos. PSC-98-0362-FOF-TP (BellSouth), PSC-98-0665-FOF-TP (Sprint) and PSC-98-1378-FOF-TL (Northeast). In these Orders, the Commission granted waivers of Rule 25-4.115, Florida Administrative Code, to BellSouth, Sprint and Northeast, respectively, allowing them to provide NDA service. Like Northeast, the economic hardship is even more apparent in this docket because Vista-United is a small LEC and because it has an OSP contract with BellSouth regarding operator services, including DA services.

Based on the above, staff recommends that the Commission grant Vista-United's petition for partial waiver of Rule 25-4.115, Florida Administrative Code, allowing Vista-United to offer NDA service under its tariff. Staff notes that Vista-United will be filing a tariff amendment to provide NDA once the waiver of Rule 25-4.115, Florida Administrative Code, has been approved.

DOCKET NO. 981610-12
DATE: JANUARY 21, 1999

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendations in Issue 1, this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. (COX)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. If the Commission denies staff's recommendation in Issue 1, this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order.

Lynn B. Hall
Vista-United Telecommunications
3100 Bonnet Creek Road
Lake Buena Vista, FL 32830

J. Jeffry Wahlen
Ausley & McMullen
P. O. Box 391
Tallahassee, FL 32302

5. This petition is similar to the one filed by BellSouth in Docket No. 971560-TL, Sprint-Florida, Inc. in Docket No. 980231-TL, and Northeast in Docket No. 980716-TL, and should be granted because (1) doing so does not offend the underlying statutory framework of Chapter 364, Florida Statutes, especially Section 364.01, Florida Statutes, and (2) application of the rule would create a substantial hardship on Vista.

Facts

6. In pertinent part, Rule 25-4.115, Florida Administrative Code, provides that local exchange carriers provide directory assistance ("DA") to its customers within a customer's Home Numbering Plan Area ("HNPA") and that IXCs provide DA outside a customer's HNPA.

7. Vista does not provide DA to its customers using its own operators. Rather, Vista is contracting with BellSouth so that BellSouth provides operator services, including DA, to Vista's local exchange customers. In this context, BellSouth serves as an operator service provider ("OSP"), not a local exchange telecommunications company.

8. BellSouth has developed an NDA service that it can provide to its customers. BellSouth's NDA service is part and parcel of the operator services BellSouth provides to Vista. It would be expensive and difficult for Vista to take operator services from BellSouth without the NDA service provided by BellSouth. It would be expensive and disruptive for Vista to take operator services from someone other than BellSouth or to provide such service using its own operators.

9. Since NDA is part of the package of services Vista gets from BellSouth under its OSP contract, Vista will file a tariff amendment to provide NDA but has been advised that a waiver of Rule 25-4.115, Florida Administrative Code, will be required before its tariff can be approved.

10. Granting this waiver will advance the system of regulation in Chapter 364, Florida Statutes. It will benefit Vista's customers by allowing them to replace what would be two directory assistance calls (one to get the NPA and one to get the number) with one DA call. It will also allow a telecommunications provider other than an IXC to provide directory listings outside of the MPA of the originating line, thereby promoting competition and conferring a benefit upon telecommunication customers in Florida.

11. If a waiver is not granted, the application of the rule would work a substantial hardship on Vista because Vista would be required to make arrangements with a different OSP or somehow secure blocking of the NDA service from its current OSP. In either case, Vista would be subject to additional costs, and its customers will be prevented from using a customer-friendly service.

12. By Order No. PSC-98-0665-FOF-TL, issued on May 14, 1998, in Docket No. 980231-TL, the Commission approved a similar waiver request for Sprint-Florida, L.C. Likewise, by Order No. PSC-1378-FOF-TL, issued October 13, 1998, the Commission approved a similar request for Northeast.

13. Granting the waiver as requested in this petition is consistent with the underlying statutory mandate in Section 360.01, Florida Statutes, which addresses eliminating unnecessary regulatory restraint.

WHEREFORE, Vista respectfully requests that the Commission grant a partial waiver of Rule 25-4.115, Florida Administrative Code, so that Northeast can provide NDA pursuant to tariff to its end user customers.