

MEMORANDUM

December 22, 1998

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RECORDS AND REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (WATTS) *CBW* *read for [unclear]*

RE: DOCKET NO. 971560-TL - Petition by BellSouth Telecommunications, Inc. for waiver of Rule 25-4.115, F.A.C., Directory Assistance, and for authorization to provide National Directory Assistance (NDA) in Florida.

98-1757-FOF-TL

Attached is an ORDER APPROVING WAIVER OF RULE 25-4.115, FLORIDA ADMINISTRATIVE CODE, to be issued in the above-referenced docket. (Number of pages in order - 9)

CBW/anr  
Attachment  
cc: Division of Communications  
I: 971560or.cbw

*see 1, 2, 4*

*SKO RAR*  
*SKO*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for waiver of Rule 25-4.115, F.A.C., Directory Assistance, and for authorization to provide National Directory Assistance (NDA) in Florida.

DOCKET NO. 971560-TL  
ORDER NO. PSC-98-1757-FOF-TL  
ISSUED: December 23, 1998

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
JOE GARCIA  
E. LEON JACOBS, JR.

ORDER APPROVING WAIVER OF RULE 25-4.115.  
FLORIDA ADMINISTRATIVE CODE

APPEARANCES:

Nancy B. White, Esquire, c/o Nancy H. Sims, 150 South Monroe Street, Suite 400, Tallahassee, FL 32301-1556.  
On behalf of BellSouth Telecommunications, Inc. (BellSouth)

Tracy Hatch, Esquire, 101 North Monroe Street Suite 700, Tallahassee, FL 32301.  
On behalf of AT&T Communications of the Southern States, Inc. (AT&T)

Richard Melson, Esquire, P.O. Box 6526, Tallahassee, FL 32314.  
On behalf of MCI Metro Access Transmission Services, Inc. (MCI)

Catherine Bedell, Esquire and Clintina B. Watts, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850.  
On behalf of Commission Staff.

DOCUMENT NUMBER-DATE

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BY THE COMMISSION:

BACKGROUND

On November 26, 1997, BellSouth Telecommunications, Inc. (BellSouth) filed a petition with this Commission requesting a waiver of Rule 25-4.115, Florida Administrative Code. In its petition, BellSouth indicated that Rule 25-4.115, Florida Administrative Code prohibits BellSouth in its present capacity as a local exchange company from providing directory assistance (DA) listings for subscribers whose telephone numbers are outside the Home Numbering Plan Area (HNPA) of the caller. BellSouth proposed to provide National Directory Assistance (NDA) to its Florida customers.

Pursuant to Section 120.542(6), Florida Statutes, notice of BellSouth's petition for waiver was submitted to the Secretary of State, for publication in the Florida Administrative Weekly on December 19, 1997. No comments were submitted during the comment period, which ended on January 2, 1998.

By Proposed Agency Action Order No. PSC-98-0362-FOF-TL issued on March 5, 1998, we granted BellSouth's waiver request and authorized BellSouth to provide NDA. On March 26, 1998, MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., (MCI) filed a protest of the Commission's Proposed Agency Action Order. AT&T Communications of the Southern States, Inc. (AT&T) filed a petition to intervene on June 15, 1998, which was granted by Order No. PSC-98-0857-PCO-TL issued on June 29, 1998. The parties agreed that the issues in this proceeding could be resolved by an informal hearing pursuant to Section 120.57(2), Florida Statutes. The issues were briefed and the parties were heard at the Commission's Agenda Conference on December 1, 1998. Upon consideration of the parties' briefs, their oral arguments, and our staff recommendation, we find that BellSouth's petition should be granted. Our reasons for that decision are set forth below.

DECISION

In its petition, BellSouth explained that with NDA its customers would be able to obtain telephone numbers in unknown or distant area codes with a single call to either 411 or HNPA-555-1212. BellSouth alleged its proposed NDA service would be more convenient to its customers.

BellSouth explained that a customer seeking a number for which the customer does not know the area code, must make two DA calls: one call to find the area code and the second for the specific number the customer desires. If the desired telephone number is outside the caller's HNPA, the caller often has to reach an interexchange carrier operator in order to obtain this telephone listing. In this case, the customer incurs two DA charges, one from BellSouth as the customer gets the area code, and another from the interexchange carrier as the customer dials 1-NPA-555-1212 for the desired telephone number.

With the proposed NDA service, BellSouth's Florida customers will obtain telephone numbers of unknown or distant area codes by dialing either 411 or HNPA-555-1212. Upon dialing 411 or HNPA-555-1212, customers will be prompted by an automated announcement which asks, "What State?", then "What City?" and then "What listing?" If the customer requests a listing in BellSouth's local serving area or the HNPA serving area of the originating line, the call will be routed to the same DA operator center that currently provides service on such DA listing requests. The applicable rates and charges for this call will be the same as today. If the customer requests a listing that is outside BellSouth's local serving area and the HNPA serving area of the originating line, the call will be routed to BellSouth's NDA operator center. At the NDA operator center, BellSouth's database will be queried if the listing is in the nine-state BellSouth region. For requested listings which are outside the BellSouth region, a third-party database will be queried by BellSouth's NDA operator. With either a traditional DA or NDA call, customers will be entitled to request two listings per call. BellSouth indicated at oral argument that it would not offer to complete a call as an extension of its NDA service until permitted to provide interexchange telecommunications service by the FCC.

In its petition, BellSouth stated that customers dialing 411 or 1-HNPA-555-1212 and requesting listings within their local or HNPA serving area will continue to receive service at the current rates and call allowance levels for traditional DA service. Calls for listings outside the HNPA will be treated differently. They will not count toward the call allowance for traditional DA service, but will cost less than the interexchange carriers' charge for a 1-NPA-555-1212 call inquiry. BellSouth argued that the NDA service is the most cost effective option for customers.

MCI and AT&T urge that we deny BellSouth's NDA proposal because it violates the conditions of the Modified Final Judgment (MFJ) and provisions of the Telecommunications Act of 1996 (the Act). They raised four specific issues for our consideration: a) the MFJ and the Act, b) incidental interLATA service, c) adjunct-to-basic, and d) 411 access to NDA. These issues are discussed below.

#### A. THE MFJ AND THE ACT

BellSouth argued in its brief that the provision of NDA service by a Bell Operating Company (BOC) is not prohibited under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act). BellSouth contended that NDA is an "adjunct-to-basic" service as determined by the FCC, and not an "enhanced" service. BellSouth contended that adjunct-to-basic services facilitate the use of the basic network without changing the nature of the basic telephone service. BellSouth concluded that "nothing in the statutory construction of the Act supports a reading that Section 271 applies to NDA service."

In their briefs, MCI and AT&T stated that BellSouth is specifically prohibited from providing NDA by the Modified Final Judgment (MFJ) and Section 271(f) of the Act. MCI and AT&T further argued that National Directory Assistance is not an adjunct-to-basic service that is a permissible activity for BellSouth under the Act. MCI argued that BellSouth would have required a waiver of the MFJ to provide interLATA DA and contended that BellSouth's proposed NDA service would provide interLATA transmission when the MFJ only authorized local DA service. AT&T argued that the NDA service would provide interLATA transport; thus, the NDA would

violate Section 271 of the Act and would not have been permitted under the MFJ.

Upon consideration, we conclude that BellSouth is not specifically prohibited from providing NDA by the MFJ or the Act. DA is one of the most competitive aspects of the telecommunications industry. We believe that allowing BellSouth to provide NDA furthers the intent and spirit of competition sought in the Act. We also believe that NDA makes good sense for the end user customer, and it is in the public interest for this service to be offered.

#### B. INCIDENTAL INTERLATA SERVICE

All parties agreed that NDA is not an incidental service pursuant to Section 271(g). We agree that in order for NDA to be considered an incidental service under 271(g)(4), a BellSouth customer must retrieve the desired number from BellSouth information storage facilities located outside the customer's LATA. If a customer requests a listing in the customer's local or HNPA serving area, the call will be routed to the same DA operator center that currently provides service on such DA listing requests. However, if the customer requests a listing that is outside the customer's local and HNPA serving area of the originating line, the call will be routed to BellSouth's NDA operator center. At the NDA operator center, an operator will query BellSouth's database if the desired listing is in the nine-state BellSouth region. For requested listings which are outside the BellSouth region, BellSouth's NDA operator will query a third-party database. BellSouth's NDA service utilizes live operators and thus is not an incidental service.

We believe that an incidental service pursuant to Section 271(g)(4) requires electronic retrieval of stored information at a centralized computer. Because BellSouth's NDA service requires operator intervention, BellSouth's NDA service does not meet the definition of incidental service pursuant to Section 271(g)(4). This determination, however, is not material to our ultimate decision in this case, because we have found that NDA is not the type of service contemplated by the MFJ or the Act in the first instance.

C. ADJUNCT-TO-BASIC

In its N11 Order, the FCC clarified the labeling of DA as adjunct-to-basic service. Order No. FCC 97-51. The FCC stated at Footnote No. 170 that:

By 'traditional' directory assistance services we refer to operator provision of local telephone numbers. The Commission has determined that traditional directory assistance services are 'adjunct' to basic services, ...

Adjunct-to-basic services are services that facilitate the use of the basic network without changing the nature of the basic telephone service. BellSouth argued that the inclusion of other carriers' subscriber listings in a DA service does not have a bearing on the regulatory classification of the DA service. Additionally, according to BellSouth, a customer's subsequent placement of an interLATA call to a telephone number received from DA service does not render the DA service impermissible interLATA service, nor does it alter the DA service classification as an adjunct-to-basic service.

MCI argued that NDA service is an adjunct-to-basic interLATA service, not adjunct-to-basic local or intraLATA service. MCI maintained that local DA is an adjunct-to-basic local service based on the traditional use of a number obtained from the DA service. MCI also argued that because the IXCs depend on the LECs to provide them DA listings for the completion of toll DA, the NDA service will enable BellSouth to compete with the IXCs in providing toll DA and thus the provision of NDA is subject to Section 271 of the Act. AT&T argued that the NDA service is an entirely new service that is already being provided by the IXCs and is not adjunct-to-basic to any service that BellSouth is currently allowed to provide.

Upon consideration, we do not believe that this fact is central to our decision in this case, and thus based on our earlier decision that NDA is not prohibited by the MFJ or the Act, we find it unnecessary to rule on the question of whether BellSouth's provision of NDA service should be considered an "adjunct-to-basic" service.

D. 411 ACCESS TO NDA

In FCC Order 97-51, the FCC did not specifically address NDA. In paragraph 47 of the Order, the FCC stated that: "..., 411 has long been assigned for access to local DA services, ... we find continued use of 411 to call local DA services justified by public convenience and necessity." The FCC concluded that: "..., a LEC may not itself offer enhanced services using a 411 code, or any other N11 code, unless that LEC offers access to the code on a reasonable, nondiscriminatory basis to competing enhanced service providers in the local service area,..." In this same Order, the FCC determined that 411 DA service is classified as adjunct-to-basic service. (97-51 ¶22). The FCC clarified adjunct-to-basic service as a service that may fall within the literal reading of enhanced services but is clearly basic in purpose and use. (97-51, Footnote #75) Therefore, since the FCC did not specifically address the service in question, we believe that BellSouth's provision of NDA through 411 does not violate FCC Order 97-51.

BellSouth argued that NDA service is not an enhanced service; thus according, to BellSouth, using 411 for access to NDA does not trigger the rulings of FCC Order No. 97-51.

MCI argued that allowing NDA access via 411 constitutes an unreasonable practice because other IXCs cannot offer NDA service with the simplicity and ubiquity of an N11 code. AT&T argued that if BellSouth is permitted to offer its NDA service using 411, the Act requires BellSouth to unbundle this service and provide access to the elements on a nondiscriminatory basis.

Upon consideration, we find that BellSouth's proposal for NDA using the 411 access code will only constitute an unjust and unreasonable practice pursuant to Section 201(b) of the Act, if BellSouth fails to make NDA available through resale or unbundled network elements, and BellSouth acknowledged at our agenda conference that it would provide the service for resale.

Thus, we find that directory assistance was not contemplated under the MFJ or the Act to be a telecommunications service that BellSouth is prohibited from providing to its customers. We believe that directory assistance of any scope is not a

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telecommunications service itself but it is also not a service that can be separated from regular telephone service in the minds and basic expectations of customers. Customers will benefit from the convenience of a single call to either 411 or HNPA-555-1212 compared to two separate calls, first to the local exchange company, then to an interexchange carrier. Therefore, based on the foregoing, we find it appropriate to grant BellSouth's petition for waiver of Rule 25-4.115, Florida Administrative Code, in order for BellSouth to provide NDA using the 411 access code.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the petition of BellSouth Telecommunications, Inc., for a waiver of Rule 25-4.115, Florida Administrative Code, is hereby granted. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of December, 1998.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

CBW

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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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.