

State of Florida



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-

DATE: APRIL 6, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF TELECOMMUNICATIONS (M. WATTS)
DIVISION OF LEGAL SERVICES (VACCARO)
DIVISION OF CONSUMER AFFAIRS (PENA) *Q. Peña*

RE: DOCKET NO. 000028-TL - PETITION BY BELL SOUTH
TELECOMMUNICATIONS, INC., FOR WAIVER OF RULES 25-4.107,
25-4.108 AND 25-4.113, F.A.C.

AGENDA: 04/18/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: APRIL 10, 2000 - STATUTORY DEADLINE - WAIVED

SPECIAL INSTRUCTIONS: CERTAIN FACTS IN THE CASE TO BE TREATED AS
CONFIDENTIAL

FILE NAME AND LOCATION: S:\PSC\CMU\WP\000028.RCM

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CASE 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, since it would otherwise be required to keep trying to work with this particular customer when 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

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ended on February 14, 2000, and no comments were submitted. The statutory deadline for the Commission's decision regarding this petition was April 10, 2000; however, BellSouth has waived the statutory deadline.

The Commission has addressed several rule waiver petitions in the past, and has approved or denied them based on the data provided by the petitioning telecommunications carrier. As explained below, staff recommends that BellSouth be granted the waiver from Rules 25-4.107, 25-4.108 and 25-4.113, Florida Administrative Code.

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 by staff until it can be ruled upon by a pre-hearing officer.

Additional information provided by BellSouth to supplement this petition is provided as Attachment A, pages 9-11. A copy of the letter from BellSouth waiving the statutory deadline is included as Attachment B, page 12.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant BellSouth Telecommunications, Inc.'s request for waiver of Rules 25-4.107, 25-4.108 and 25-4.113, Florida Administrative Code, for this particular customer?

RECOMMENDATION: Yes. (M. Watts)

STAFF ANALYSIS: 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.

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(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 (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).

Staff believes 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.

Staff believes that 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 and will, therefore, not be

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denied basic local telecommunications service if this waiver is granted.

Staff believes that 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 name or associated with him. This has resulted in direct monetary losses to BellSouth (\$22,760.70 in past-due billing alone), an undue burden on its human resources and an increase in cost to its other ratepayers (see Attachment A, pages 9-11.) Accordingly, staff recommends that BellSouth's rule waiver petition be granted.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed upon 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 order. (Vaccaro)

STAFF ANALYSIS: Whether staff's recommendation on 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 the issuance of a Consummating Order.

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ATTACHMENT A



BellSouth Telecommunications, Inc. 850 222-1201
Suite 400 Fax 850 222-8640
150 South Monroe Street
Tallahassee, Florida 32301

Nancy H. Sims
Director - Regulatory Relations

March 21, 2000

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Subject: Docket No. 000028-TL BellSouth Petition for Rule Waiver

Dear Mrs. Bayo,

On January 10, 2000, BellSouth filed a Petition for Waiver of certain Florida Public Service Commission rules to enable BellSouth to refuse to provide service to the person named in the petition. This person does not presently have service with BellSouth, but he is believed to be currently served by an alternative local exchange company (ALEC). Since this case involves customer specific information, the details, such as names, account numbers and addresses were filed as confidential at the time the petition was filed. This letter is an attempt to give an overall summary of the situation and to give the Commission Staff a better understanding of our petition.

The subject subscriber has been associated with at least twenty-five separate accounts with BellSouth since 1992. He has used many avenues to obtain service, and, in every instance, his account has been disconnected for fraudulent practices and/or for nonpayment.

On several occasions the subscriber has skirted the Commission's rules by having others call the BellSouth business office for him and establish service in the caller's name. Eventually, the location where service is established is found to be leased to the subject subscriber, or the name the service is established in is found to be fictitious. Five different personal names of subscribers have been consistently traced back to the subject subscriber. In addition, at least seven different business names have been associated with the subject subscriber. In at least five of these situations, the businesses were not registered with the State and papers represented as being proof of corporation were determined to be invalid; therefore, the subject subscriber was responsible for the billing. He even used the name of an existing corporation without permission. In most all cases, service was disconnected with an outstanding balance due. As of this date, the subscriber is responsible for \$22,760.70 in past due billing.

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FPSO-REGULATORY REPORTING

He purposely deceived the Company in order to have telephone service. For instance, he has written several checks to prevent disconnection of service, only to immediately stop payment of the checks. He has used multiple social security numbers and has written checks on closed accounts. He uses false credit information in setting up the business accounts.

He has also purposely misled the Commission Staff on many occasions. He will use the Commission's rule to dispute legitimate charges in order to delay disconnection of service. In at least eight situations appeals have gone to the Commission Staff; all invalid.

Because of his continued deceptions, this subscriber has cost the Company, as well as the Commission Staff, a lot of time and money. He has taken time away from BellSouth service representatives and Commission Staff appeals personnel; time that could have been used more efficiently and effectively to handle valid customer concerns and needs. There is no way to accurately determine the number of hours that have been involved in repeatedly having to handle calls into the business office to establish service, to investigate credit, employment and corporate information, to send out denial notices, to process checks with insufficient funds, to process checks that have had payment stopped, to disconnect service, to reconnect service, to answer Commission inquiries and participate in informal conferences with the Commission Appeals Staff.

We realize that we have the ability to continue to deny service to this individual based on his past due amounts and fraudulent activities, but we are also aware that we are obligated to follow the Commission's rules. More specifically, Rule 25-4.113 "Refusal or Discontinuance of Service by Company" details situations where service may or may not be refused or discontinued. Because of the Company's interpretation of these rules, the subject subscriber has repeatedly been able to obtain telephone service. By changing names, addresses and using business facades, he has been able to manipulate the system to continue to defraud the Company.

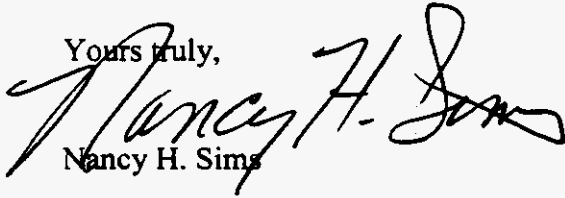
If our petition is granted, BellSouth will mark the records of the various personal names, businesses and addresses that have been associated with the subject subscriber to indicate that service should not be connected without checking with BellSouth Legal or an appointed BellSouth contact. Of course, there is no way to guarantee that the subject subscriber will not find some other way to establish service, but we will make every effort to prevent this from happening. If service is inadvertently connected, BellSouth will follow proper disconnect procedures which includes no notice if fraudulent use is detected.

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ATTACHMENT A

If you have any questions or need any further information, please give me a call. Thank you for your assistance in this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Nancy H. Sims". The signature is fluid and cursive, with a large initial "N" and "S".

Nancy H. Sims

Copy to: Walter D'Haeseleer
Melinda Watts
Tim Vaccaro
Nancy White

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ATTACHMENT B



BellSouth Telecommunications, Inc. 850 222-1201
Suite 400 Fax 850 777-8640
160 South Monroe Street
Tallahassee, Florida 32301

Nancy H. Sims
Director - Regulatory Relations

April 3, 2000

Mrs. Blanca A. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Subject: Docket No. 000028-TL BellSouth Petition for Rule Waiver

Dear Mrs. Bayo,

On January 10, 2000, BellSouth filed a Petition for Waiver of certain Florida Public Service Commission Rules to enable BellSouth to refuse to provide service to the person named in the petition. Because of the nature of the filing, we have been asked to waive the statutory deadline for the Commission to address this request.

With this letter, BellSouth is willing to extend the statutory deadline with the understanding that our petition will be addressed at the April 18, 2000 agenda. If any further information is needed to assist the Staff in responding to this petition, please let me know.

Thank you for your help in this matter.

Yours truly,

A handwritten signature in cursive script that reads 'Nancy H. Sims'. Below the signature is the printed name and title.

Nancy H. Sims
Director - Regulatory Relations

Copy to: Walter D'Haeseleer
Melinda Watts
Tim Vaccaro
Nancy White