

State of Florida



# Public Service Commission

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REPORTING

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**DATE:** JUNE 19, 1998

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

**FROM:** DIVISION OF LEGAL SERVICES (BROWN) *MB*  
DIVISION OF COMMUNICATIONS (SIRIANNI) *MPS RPT*

**RE:** DOCKET NO. 971058-TL - REQUEST FOR REVIEW OF PROPOSED  
NUMBERING PLAN RELIEF FOR 305 AREA CODE.

**AGENDA:** 06/30/98 - REGULAR AGENDA - EMERGENCY REQUEST FOR  
TEMPORARY VARIANCE - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\971058.RCM

### CASE BACKGROUND

On July 15, 1997, BellSouth Telecommunications, Inc. (BellSouth), the numbering administrator for the 305 area code at that time, notified the Commission that the 305 area code would exhaust its remaining available NXXs sooner than expected. On January 6, 1998, the Commission issued Order No. PSC-98-0040-FOF-TL approving a concentrated growth overlay to provide numbering plan relief for the 305 area code. The new area code selected to relieve 305 is 786 (SUN). The Commission established a 10-digit permissive dialing period beginning on March 1, 1998, and ending on July 1, 1998.

On May 29, 1998, BellSouth filed a motion for extension of the permissive dialing period for the 305 area code. BellSouth stated that some alarm companies had not completed the necessary work to reprogram some of their alarm monitoring systems, and thus they would be unable to meet the July 1, 1998, deadline for mandatory 10-digit dialing. Shortly thereafter, on June 3, 1998, SecurityLink from Ameritech, Inc. (SecurityLink), filed an

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Emergency Request for Temporary Variance from Order No. 98-0040-FOF-TL, requesting an extension of the permissive ten-digit dialing period for six months (i.e., January 1, 1999).

At its June 16, 1998, Agenda Conference, the Commission considered BellSouth's motion. The Commission did not specifically consider SecurityLink's emergency petition for a variance, although SecurityLink was present at the Agenda Conference and did indicate to the Commission that it wanted an extension of the permissive dialing period for 6 additional months. The Commission voted to extend the permissive dialing period for three months, until October 1, 1998, for alarm companies only, so that they would have additional time to complete the necessary reprogramming. The Commission's decision was memorialized in Order No. PSC-98-0812-FOF-TL, issued June 19, 1998.

After the Commission's decision to extend the permissive dialing period for three months, staff explored with SecurityLink's attorney the possibility that SecurityLink might withdraw its petition for temporary variance, in light of the Commission's decision, but SecurityLink's attorney indicated to staff that she would not be able to receive an answer from her client before this recommendation was due to be filed. Therefore, this is staff's recommendation on SecurityLink's emergency petition for temporary variance.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant SecurityLink's Emergency Request for Temporary Variance?

**RECOMMENDATION:** No, The Commission should deny SecurityLink's request. Section 120.542, Florida Statutes provides for waivers or variances to administrative rules, where certain criteria are met, but it does not provide for waivers or variances, emergency or otherwise, to administrative final orders. Furthermore, the Commission has recently addressed the same substantive issue regarding the extension of the permissive dialing period for the 305 area code relief in Order No. PSC-98-0812-FOF-TL, issued June 19, 1998.

**STAFF ANALYSIS:** In its emergency request, which it filed pursuant to Rule 28-104.001, et. seq., Florida Administrative Code, Florida's uniform rules of procedure for variance or waiver,

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SecurityLink asserts that it has taken all necessary and reasonable steps to complete the conversion of its customers' alarm systems to 10-digit dialing by the July 1, 1998 deadline, but it has been unable to do so. SecurityLink states that its customer base is comprised substantially of original customers of ten to twelve companies, which were acquired by SecurityLink. The customers' alarm systems have different technologies, which require a site visit to make the necessary conversion. Since the majority of the site visits are residential, SecurityLink personnel must make an appointment to gain entry. SecurityLink has discovered that approximately 10-15% of the site visits require a total replacement of the equipment before the conversion can be made.

SecurityLink states that it will be unable to complete the conversion process until January 1, 1999. Therefore, if a temporary variance or extension of time of the mandatory ten-digit dialing for a period of six months for those phone exchanges where SecurityLink has affected customers is not granted, approximately 18,000 customers will be without monitoring service for a period of time up to six months. The inability to provide service to those customers could expose SecurityLink's customers to potential life-threatening situations. SecurityLink states that a denial of SecurityLink's request would create a substantial hardship on SecurityLink and its customers, and could expose those customers to significant and unintended harm.

Section 120.542 (2), Florida Statutes, provides that variances and waivers to administrative rules shall be granted;

when a 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 a rule would create a substantial hardship or would violate principles of fairness. . .

Rule 28-104.004, Florida Administrative Code provides that a petitioner requesting an emergency variance from an agency rule must demonstrate that its request meets the criteria of section 120.542(2), Florida Statutes, and must demonstrate the specific facts that make the situation an emergency and thus require more expeditious consideration of the request. Rule 28-105.005, Florida Administrative Code provides that an agency must grant or deny a petition for emergency variance within 30 days of its receipt or the petition will be deemed approved.

Staff recommends that SecurityLink's emergency request should be denied for two reasons: 1) the request is procedurally incorrect, and; 2) the Commission has already addressed the substantive issue SecurityLink raises in its request.

SecurityLink's request is founded on the provisions of the Administrative Procedures Act and the Uniform Rules of Procedure implementing the act, as cited above. Both legal authorities permit variances and waivers to administrative rules, not to administrative orders. SecurityLink has not cited, and staff cannot find, any statutory or rule authority to request a variance, emergency or otherwise, to an administrative order. Staff notes also that SecurityLink had ample notice and opportunity to participate in the administrative hearings that led to the Commission's decision in this area code case. If SecurityLink had chosen to participate at that time, it could have informed the Commission of its concerns about the length of the permissive dialing period and the constraints that the alarm industry would experience meeting the July 1 deadline. Under these circumstances, and in view of the insufficient legal grounds that SecurityLink has cited in support of its request, the request should be denied.

That is not to say, however, that SecurityLink has not raised a matter of serious concern. The Commission has already addressed that concern. Because of the potential threat to the safety of the alarm companies' customers, in response to BellSouth's motion to extend the permissive dialing period, the Commission expeditiously issued Immediate Final Order No. PSC-98-0812-FOF-TL to extend the permissive dialing period for alarm companies for 3 months. While SecurityLink has requested an additional 6 months to complete its reprogramming, we note that many alarm companies worked very hard to successfully complete the conversion of their customer's alarm systems within the required time. Staff believes, considering the resources at SecurityLink from Ameritech's disposal, that 3 months should be sufficient. For these reasons as well, staff recommends that SecurityLink's petition should be denied.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, the docket should be closed.

**STAFF ANALYSIS:** If the Commission approves staff's recommendation in Issue 1, the docket should be closed.