

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-

RECEIVED
JUN 27 AM 10:29
COMMISSION
CLERK

DATE: JUNE 27, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (FONDO, M.WATTS)
OFFICE OF THE GENERAL COUNSEL (DODSON) *[Signature]*

RE: DOCKET NO. 020421-TL - PETITION FOR WAIVER OF RULE 25-4.073(1)(F), F.A.C., WHICH PROHIBITS THE PLACEMENT OF PROMOTIONAL OR MERCHANDISING MATERIAL IN AUTOMATED ANSWERING SYSTEMS, BY BELL SOUTH TELECOMMUNICATIONS, INC.

AGENDA: 07/09/2002 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 60-DAY SUSPENSION DATE: 08/14/2002

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020421.RCM

CASE BACKGROUND

On May 14, 2002, pursuant to Section 120.542, Florida Statutes, and Rule No. 28-104.002, Florida Administrative Code, BellSouth Telecommunications, Inc. (BellSouth), filed a Petition for Waiver of Rule 25-4.073(1)(f), Florida Administrative Code (Petition).

In its Petition (Attachment A), BellSouth explains that its waiver request meets the standards of Section 120.542, Florida Statutes. Further, BellSouth explains that the purpose of the underlying statutes, Sections 364.01(4), 364.025, 364.03, 364.386 and 364.171, Florida Statutes, will not be undermined by the request for waiver.

DOCUMENT NUMBER-DATE

06611 JUN 27 8

FPSC-COMMISSION CLERK

DATE: June 27, 2002

To briefly summarize, BellSouth requests a waiver of Rule 25-4.073(1)(f), Florida Administrative Code, prohibiting the placement of promotional or merchandising material on BellSouth's automated answering system. The automated answering system is on BellSouth's business line and its customers would listen to the messages while on hold. BellSouth states that allowing the rule waiver will ensure BellSouth customers are given as much information as possible regarding services available to them, such as current specials. The waiver will also provide BellSouth with parity inasmuch as neither Alternative Local Exchange Telecommunications Companies (ALECs) nor Interexchange Companies (IXCs) are governed by this prohibition. BellSouth also states that granting this waiver will not increase the time that a customer spends on hold. BellSouth will continue to be responsible for meeting the answer time requirements contained in the remainder of Rule 25-4.073, Florida Administrative Code.

Pursuant to Section 120.542(6), Florida Statutes, the notice of BellSouth's Petition was submitted to the Secretary of State for publication in the June 7, 2002, Florida Administrative Weekly. No comments concerning the Petition were filed within the 14-day comment period provided by Rule 28-104.003, Florida Administrative Code.

The Commission has authority over these matters pursuant to Sections 120.542, 364.01(4), 364.025, 364.03, 364.386 and 364.171, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve BellSouth's Petition for Waiver of Rule 25-4.073(1)(f), Florida Administrative Code?

RECOMMENDATION: Yes. Staff recommends that the Commission should approve BellSouth's Petition for Waiver of Rule 25-4.073(1)(f), Florida Administrative Code. (FONDO, M.WATTS, DODSON)

STAFF ANALYSIS: Section 120.542(2), Florida Statutes, states in part:

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

The following analysis addresses whether BellSouth has demonstrated that the underlying purpose of the statute will be or has been achieved by other means. The underlying statutes of Rule 25-4.073, Florida Administrative Code, are Sections 364.01 (4), 364.025, 364.03, 364.386 and 365.171, Florida Statutes. The purposes of these statutes are:

- To protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices;
- to encourage and promote competition in order to ensure the widest possible range of consumer choice in the provision of telecommunications services;
- to ensure that all providers of telecommunications services are treated fairly by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint;
- to provide for universal service objectives;
- to provide minimum mandatory service standards and maintenance of telecommunications facilities; and

DATE: June 27, 2002

- to provide for "911" availability.

In whole, Rule 25-4.073, Florida Administrative Code, was initially adopted to ensure that customers would be provided timely service without unnecessary exposure to marketing scripts from a monopolistic service provider. In its Petition, BellSouth states that granting a waiver of Rule 25-4.073(1)(f) would not increase the time that a customer spends on hold and that BellSouth would continue to be responsible for meeting the answer time requirements contained in the remainder of Rule 25-4.073, Florida Administrative Code. Other purposes of the underlying statutes are, in part, to promote competition in order to ensure the widest possible range of consumer choice in the provision of telecommunications services and to ensure that all providers of telecommunications services are treated fairly by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint. Staff believes that BellSouth's Petition addresses and fulfills all the requirements of the underlying statutes.

Section 120.542(2), Florida Statutes, requires that the petitioner also show that application of the rule would create a substantial hardship or would violate principles of fairness. In 1968, when Rule 25-4.073, Florida Administrative Code, became effective, competition did not exist and a prohibition on advertising by a monopoly provider while a customer was on hold for customer service was appropriate. However, in the current competitive environment and with rapidly evolving technology making new services available, allowing advertising during customer hold times is an effective way to inform customers of the choices they have in meeting their telecommunications needs. BellSouth notes in its petition that neither IXC's nor ALEC's are prohibited from putting advertising on their automated answering systems. Preventing BellSouth from doing the same would violate principles of fairness by denying it parity with its competitors. Therefore, staff recommends that the Commission should approve BellSouth's Petition for Waiver of Rule 25-4.073(1)(f), Florida Administrative Code.

DATE: June 27, 2002

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation on Issue 1, then a Proposed Agency Action (PAA) Order will be issued. The PAA Order will become final and effective upon the issuance of a Consummating Order, unless a person whose substantial interests are affected files a protest within 21 days of the issuance of the 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 administratively upon issuance of the Consummating Order. (DODSON)

STAFF ANALYSIS: If the Commission approves staff's recommendation on Issue 1, then a PAA Order will be issued. The PAA Order will become final and effective upon the issuance of a Consummating Order, unless a person whose substantial interests are affected files a protest within 21 days of the issuance of the 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 administratively upon issuance of the Consummating Order.

Legal Department

Nancy B. White
General Counsel-Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

May 14, 2002

Mrs. Blanca S. Bayó
Director, Division of The Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: BellSouth's Petition for Waiver of Rule 25-4.073(1)(f),
Florida Administrative Code

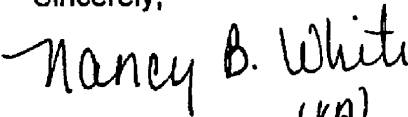
020421-TL

Dear Ms. Bayó:

Enclosed please find an original and fifteen copies of BellSouth Telecommunications, Inc.'s Petition for Waiver of Rule 25-4.0073(1)(f), which we ask that you file in the above matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me.

Sincerely,


Nancy B. White (KA)

Enclosures

cc: Marshall M. Criser III
R. Douglas Lackey

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth)	Docket No. _____
Telecommunications, Inc. for Waiver)	
of Rule 25-4.073(1)(f), Florida)	
Administrative Code)	
_____)	Filed: May 14, 2002

**BELLSOUTH TELECOMMUNICATIONS, INC.'s
PETITION FOR RULE WAIVER**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Section 120.542, Florida Statutes and Rule 28-104.004, Florida Administrative Code, hereby petitions the Commission to waive rule 25-4.073(1)(f), Florida Administrative Code, prohibiting the placement of promotional or merchandising material in automated answering systems. Specifically, BellSouth seeks the following:

1. Rule 25-4.073(1)(f), Florida Administrative Code, states that automated, interactive answering systems shall not contain promotional or merchandising material unless the customer selects and chooses to receive such information.
2. Rule 25-4.073(1)(f), Florida Administrative Code, has been in effect in one form or other since 1968. As far as BellSouth can determine, subsection 1(f) has never been amended. While the prohibition against advertising messages may have been appropriate in a time when competition did not exist, enormous change has occurred in the telecommunications industry since 1968.
3. Competition is now present in the long distance, intraLATA toll, and local markets of telecommunications. Customers have many different choices of providers for each portion of their telecommunications needs and many different

service options within each segment. Customer knowledge is key to making informed decisions. As a result, BellSouth seeks the Commission's permission to place advertising material on its automated interactive answering system.

4. BellSouth's waiver request meets the standards of Section 120.542, Florida Statutes. The purpose of the underlying statutes, 364.01(4), 364.025, 364.03, 364.386 and 365.171 is, in part, to ensure that basic local telecommunications services are available to all consumers and to encourage and promote competition in order to ensure the widest possible range of consumer choice in the provision of all telecommunications services. Allowing advertising on BellSouth's automated answering systems will ensure customers have that choice by providing information on any specials that may be available. The waiver will also provide BellSouth with parity inasmuch as neither ALECs or IXC's are governed by this prohibition.

5. Granting of this waiver will not increase the time a customer spends on hold. BellSouth will continue to be responsible for meeting the answer time requirements contained in the remainder of Rule 25-4.073, Florida Administrative Code. Rule 25-4.073(1)(f), Florida Administrative Code.

6. BellSouth submits that the equities in this case weigh heavily in favor of granting this waiver.

7. For the foregoing reasons, BellSouth seeks a waiver of the advertising prohibition provisions of Rule 25-073(1)(f), Florida Administrative Code.

WHEREFORE, having demonstrated good cause for its request,
BellSouth asks that the Commission grant its Petition for Rule Waiver.

Respectfully submitted this 14th day of May, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White
NANCY B. WHITE (KA)
JAMES MEZA III
c/o Nancy H. Sims
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558

R. Douglas Lackey
R. DOUGLAS LACKEY (KA)
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0747

443426v1