

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Vista-United Telecommunications for partial waiver of Rule 25-4.115, F.A.C., to allow Vista to provide National Directory Assistance (NDA) under tariff to its local exchange service customers.

DOCKET NO. 981610-TL  
ORDER NO. PSC-99-0381-FOF-TL  
ISSUED: February 23, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING PETITION FOR PARTIAL WAIVER

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

On November 16, 1998, Vista-United Telecommunications (Vista-United) filed a petition 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 (IXCs) provide DA outside a

DOCUMENT NUMBER-DATE

02337 FEB 23 99

FPSC-RECORDS/REPORTING

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.

The Notice for Petition of Waiver was submitted to the Secretary of State for publication in the Florida Administrative Weekly on December 9, 1998, and no comments were submitted.

We have addressed several NDA waiver petitions in the past and have approved the petitions. In Order No. PSC-96-1434-FOF-TP, issued November 25, 1996, in Docket 960876-TP, we granted BellSouth Telecommunications, Inc.'s (BellSouth's) petition for waiver of Rule 25-4.115, Florida Administrative Code, with respect to interexchange routing of DA calls within the Southeast LATA following the 305 area code split. In Proposed Agency Action Order No. PSC 98-0362-FOF-TL, issued March 5, 1998, in Docket No. 971560-TL, we granted BellSouth a waiver of Rule 25-4.115, Florida Administrative Code, to enable BellSouth to provide NDA service. This decision was reaffirmed in Order No. PSC-98-1757-FOF-TL, issued December 23, 1998. In Order No. PSC-98-0665-FOF-TL, issued May 14, 1998, in Docket No. 980231-TL, we granted a petition for waiver filed by Sprint-Florida, Inc. (Sprint-Florida) In Order No. PSC-1378-FOF-TL, issued October 13, 1998, in Docket No. 980716-TL, we granted a similar waiver to Northeast Florida Telephone Company (Northeast).

## II. DISCUSSION

### Rule Waiver

With the amendments made to the Administrative Procedures Act by the 1996 Legislature, state agencies are required to consider requests for variances or waivers from their rules according to the requirements set forth in Section 120.542, Florida Statutes.

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.

Vista-United seeks a partial waiver of Rule 25-4.115, Florida Administrative Code. This rule prohibits Vista-United as a local exchange carrier from providing directory assistance outside of the caller's HNPA. Rule 25-4.115, Florida Administrative Code, Directory Assistance, provides in pertinent part:

(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 for this rule 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. See Section 364.051, Florida Statutes. Section 364.04, Florida Statutes, provides in pertinent part:

(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 anyway 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 this Commission. The company has fewer than 100,000 access lines and has elected price regulation under Section 364.052.(1), Florida Statutes.

Vista-United supports its petition with our past decisions regarding similar waiver petitions. 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. Furthermore, 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

ORDER NO. PSC-99-0381-FOF-TL  
DOCKET NO. 981610-TL  
PAGE 6

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Vista-United Telecommunications' petition for partial waiver of Rule 25-4.115, Florida Administrative Code, to allow the company to provide National Directory Assistance under its tariff is granted. It is further

ORDERED that Vista-United Telecommunications shall file a tariff amendment for the provision of National Directory Assistance. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of February, 1999.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

WPC

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 16, 1999.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.