



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: MARCH 4, 1999

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

FROM: DIVISION OF COMMUNICATIONS (AUDU) *[Signature]*
DIVISION OF LEGAL SERVICES (MILLER) *MLB for JM*

RE: DOCKET NO. 982019-TL - PETITION BY GTE FLORIDA INCORPORATED FOR WAIVER OF RULE 25-4.115, F.A.C., TO PERMIT NATIONAL DIRECTORY ASSISTANCE (NDA) SERVICE.

AGENDA: MARCH 16, 1999 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\982019TL.RCM

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 RECORDS AND REPORTING

CASE BACKGROUND

On December 31, 1998, GTE Florida Incorporated (GTE or the Company) filed a petition (Attachment A) with this Commission for waiver of Rule 25-4.115, Florida Administrative Code, in order to offer National Directory Assistance (NDA) service. In its petition, GTE states that per Commission interpretation of Rule 25-4.115, Florida Administrative Code, GTE is prohibited in its current capacity as a local exchange company (LEC) from providing directory assistance (DA) listings for subscribers whose telephone numbers are outside the caller's home numbering plan area (HNPA). GTE also states that its proposed NDA service offering will allow a customer who calls 411 or 1+411 to obtain not only local telephone listings, but out-of-franchise, national number listings and/or customer names and addresses within the United States.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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The Notice of Petition for Waiver was submitted to the Secretary of State for publication in the Florida Administrative Weekly on February 3, 1999. No comments were received in response to the published notice.

The Commission has addressed several NDA waiver petitions and has approved these petitions in the past. In Proposed Agency Action Order No. PSC-98-0362-FOF-TL, issued March 5, 1998, in Docket No. 971560-TL, the Commission 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. Also, in Order No. PSC-98-0665-FOF-TL, issued May 14, 1998, in Docket No. 980231-TL, a petition for waiver was granted to Sprint-Florida. Further, in Order Nos. PSC-98-1378-FOF-TL and PSC-99-0381-FOF-TL, issued October 13, 1998 and February 23, 1999, in Docket Nos. 980716-TL and 981610-TL, Northeast Florida and Vista-United, respectively, were also granted waivers of Rule 25.4-115, Florida Administrative Code, to allow for the provision of NDA service.

At the February 17, 1998, Agenda Conference, the Commission directed staff to initiate rulemaking for purposes of revising Rule 25-4.115, Florida Administrative Code to allow for the provision of NDA service. Staff delayed rulemaking pending Commission resolution of the protest in Docket No. 971560-TL. Since the Commission reaffirmed its earlier decision in BellSouth's petition, at the February 2, 1999, Agenda Conference, the Commission directed staff to proceed with rulemaking to revise Rule 25-4.115, Florida Administrative Code.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant GTE's petition for waiver of Rule 25-4.115, Florida Administrative Code, allowing GTE to provide National Directory Assistance effective March 3, 1999?

RECOMMENDATION: The Commission should grant GTE's petition for waiver of Rule 25-4.115, Florida Administrative Code, allowing GTE to provide National Directory Assistance. The petition and tariff should become effective at the expiration of the protest period of the proposed agency action order. (AUDU, MILLER)

STAFF ANALYSIS:

Rule Waiver

With the amendments made to the Administrative Procedures Act by the 1996 Legislature, 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.

GTE seeks a waiver of Rule 25-4.115, Florida Administrative Code. The rule prohibits GTE 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, that:

(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 in this case are Sections 364.03 and 364.04, Florida Statutes. Section 364.03, Florida Statutes, is inapplicable to GTE as a price regulated local exchange carrier. Section 364.051, Florida Statutes. Section 364.04, Florida Statutes, in pertinent part, provides that:

(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.

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(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 anywise change, affect, or determine any of the aggregate of the rates, tolls, rentals, or charges for the service rendered.

Staff believes that GTE has satisfied the requirements of Section 120.542, Florida Statutes. GTE has demonstrated that the purpose of the underlying statute will be served by granting the waiver. The underlying statutes in this case are Sections 364.03 and 364.04, Florida Statutes. These sections require the Commission to regulate in the public interest and to promote competition in the telecommunications market. GTE states that the waiver request will benefit its customers and promote competition in the telecommunications market. Thus, the waiver request is consistent with the underlying statutes.

No comments were filed in response to the notice of this rule waiver petition, which was published in the Florida Administrative Weekly.

National Directory Assistance

In its petition, GTE argues that there is no law that prohibits it from provisioning NDA service. GTE states that it is not a Bell Operating Company; therefore the requirements of Section 271 of the Telecommunications Act of 1996 (the Act) are not applicable. Further, GTE contends that its proposed NDA service is an "adjunct-to-basic"¹ (rather than enhanced²) service as has been

¹Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, FCC 96-489, (rel. Dec. 24, 1996) (Non-Accounting Safeguards Order), ¶107.

²In the Matter of North American Telecommunications Association Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment, ENF No. 84-2, 101 FCC 2d 349, 359-61 (1985), (NATA Centrex Order) aff'd on rec., Memorandum Opinion and Order, 3 FCC Rcd 4385, FCC 88-221 (rel Jul. 21, 1988).

determined by the FCC and this Commission in its prior NDA decisions. Therefore, GTE asserts that as an adjunct-to-basic service offering, the proposed NDA service does not trigger any FCC obligations under the FCC's N11 Order, which provides that the "[L]ocal exchange company may not itself offer enhanced services using a 411 code ... unless that LEC offers access to the code on a reasonable, non-discriminating basis to competing enhanced service providers." ³

In its petition, GTE states that its proposed NDA service will be available from residence, business, and coin telephone lines. GTE asserts that its systems are capable of differentiating local DA telephone listings from national telephone listing requests, which will ensure the appropriate call record is created for billing purposes. GTE states that local DA charges and call allowances will not be affected with the proposed offering of NDA service. However, GTE proposes to charge \$0.95 for NDA service for up to two (2) telephone listings requests per call, with no call allowance. Similarly, GTE indicates it will charge \$0.95 for up to two (2) customer name and address requests per call, from local or national directory listings. Customers who want more than two listings per call must hang up and redial to obtain more listings according to GTE. Where a customer requests one local DA listing and one NDA listing, GTE states that the customer will be billed \$0.95 as though the customer requested only NDA listings, and these calls will not count toward the customer's local DA call allowance.

GTE argues that its proposed NDA offering will enable customers to obtain both local and national telephone listings with a single call to 411 or 1+411. GTE contends that with the current set-up, a customer has to place two calls and thus, incurs two charges for unknown area codes. GTE argues that this process is time consuming and potentially costly for the customer compared to GTE's proposed NDA service. GTE argues that granting its rule waiver request is in the public interest since it offers consumers a new service option and therefore, furthers consumer choice of competitive services.

GTE contends that interchange carriers (IXCs) and other ILECs are currently providing this service; thus, a strict application of the rule will harm GTE and violate the principle of fairness.

³The Use of N11 Codes and Other Abbreviated Dialing Arrangements, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 92-105, FCC 97-51 (rel. Feb. 19, 1997) (petitions for reconsideration or clarifications pending) (N11 Order), ¶2.

Since GTE will tariff its proposed NDA service with this Commission, GTE asserts that granting the requested rule waiver will not disserve the purpose of Section 364.04, Florida Statutes, which is to ensure public access to the tariffs of telecommunications companies. GTE argues that in granting its request for rule waiver, the Commission will be consistent with Section 364.01, Florida Statutes, and its prior decisions regarding NDA service rule waivers.

Staff agrees with GTE that Rule 25-4.115, Florida Administrative Code, prohibits it from providing DA service outside the HNSA of a caller. Since GTE is not a Bell Operating Company, it is therefore not subject to the requirements of Section 271 of the Telecommunications Act, 1996. Staff is unaware of other applicable law that may prohibit GTE from providing NDA service. Staff agrees that NDA service is not an enhanced service. Thus, staff further agrees with GTE that the provision of NDA using the 411 code does not trigger any obligations under the FCC's N11 Order given the fact that NDA is "adjunct-to-basic" and not an enhanced service.

Staff agrees with GTE that by granting this relief, the Commission's decision will be consistent with its earlier decisions in Order Nos. PSC-98-0362-FOF-TP (BellSouth), PSC-98-0665-FOF-TP (Sprint) PSC-98-1378-FOF-TL (Northeast) and PSC-99-0381-FOF-TL (Vista-United). In these Orders, the Commission granted waivers of Rule 25-4.115, Florida Administrative Code, to BellSouth, Sprint Northeast and Vista-United, respectively, allowing them to provide NDA service. Staff agrees with GTE that the proposed NDA service will increase customers' choice of a competitive service. Staff believes that customers will benefit from the convenience of a single call to either 411 or 1+411 compared to two (2) separate calls -- first to the LEC, then to an IXC. Staff cannot comment on the appropriateness of the \$0.95 charge for GTE's proposed NDA offering, however, staff believes that with the appropriate pricing, NDA service will be cost effective and may be a cheaper service for Florida customers. Thus, staff believes that granting GTE this relief is consistent with the provisions of Chapter 364.01, Florida Statutes, whereby the Commission is called upon to promulgate rules and policies that will promote competition and eliminate unnecessary regulatory restraints.

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Based on the above, staff recommends that the Commission should grant GTE's petition to waive Rule 25-4.115, Florida Administrative Code, allowing GTE to offer its proposed NDA service. Also, GTE should be required to file a tariff reflecting its NDA offering.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendations in Issue 1, this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. (MILLER)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of GTE Florida Incorporated)
for Waiver of Rule 25-4.115, Florida)
Administrative Code)

Docket No. 982019-TL
Filed: December 31, 1998

**GTE FLORIDA INCORPORATED'S PETITION
FOR WAIVER OF RULE 25-4.115**

GTE Florida Incorporated (GTE) asks the Commission to waive its Rule 25-4.115 to permit GTE to provide national directory assistance (NDA). Rule 25-4.115, as the Commission has interpreted it, would prohibit GTE in its capacity as a local exchange company (LEC) from providing directory assistance (DA) listings for subscribers whose telephone numbers are outside the caller's home numbering plan area (HNPA). In an Order issued May 14, 1998, this Commission granted a similar request for waiver from Sprint Florida Incorporated (Sprint), allowing Sprint to provide NDA. (Order No. PSC-98-0665-FOF-TL ("Sprint Order").) GTE asks the Commission to apply the same rationale to GTE's waiver request.

With GTE's NDA service, a customer would call 411/1+411 for local DA and could obtain not only local numbers, but out-of-franchise, national numbers and/or customer names and addresses within the United States. When GTE's automated response system answers the 411/1+411 call, the customer will be prompted to give the desired city and listing. If the listing could be out of state, the operator will prompt for clarification. The operator will then ask the customer to hold for the listing before releasing the caller to the

automated system to provide the number(s) requested.

NDA will be available from residence, business, and coin lines. GTE's systems will differentiate local from national listing requests and will create the appropriate call record to bill distinctly for local DA and national DA. Local directory assistance charges and call allowances will remain the same and unchanged by this new offering. NDA charges will be \$.95 for up to two listings per call, with no call allowances. The \$.95 charge will also apply for up to two customer name and address requests, whether local or national.

Customers who want more than two listings per call will have to hang up and redial to obtain more listings. In the event a customer requests one local listing and one national listing, the customer will be billed as though he requested only the national listing (i.e., the \$.95 charge), but there will be no deduction from his local call allowance.

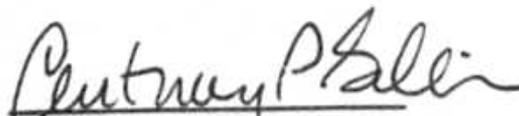
This waiver request satisfies the requirements of Florida Statutes, chapter 120.542. That section provides that rule waivers will be granted when the petitioning party demonstrates that the purpose of the underlying statute will be achieved by other means and when application of the rule would create a substantial hardship or violate principles of fairness.

The underlying statute in this case (as in the Sprint NDA waiver case) is section 364.04. The section requires telecommunications companies to file with the Commission and keep open to public inspection schedules showing the rates and charges for their services. Such schedules are to state "the places between which telecommunications service will be rendered" and state separately all charges and conditions that may affect the charges.

to promulgate rules and policies that will promote competition and eliminate unnecessary regulatory restraints." (Sprint Order at 8.) The competitive provision of telecommunications service is in the public interest and will further consumer choice. GTE's NDA would offer customers a new service option, in competition with those already offered by IXCs and at least one other incumbent local exchange carrier.

For all the reasons explained here, GTE asks the Commission to grant this waiver. GTE's plans call for a service introduction date of March 3, 1999, if the waiver is approved. GTE would thus ask the Commission to set this item for vote at agenda as soon as possible, so the March 3 date will remain viable.

Respectfully submitted on December 31, 1998.



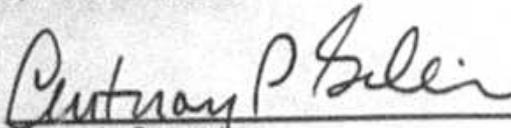
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Attorneys for GTE Florida Incorporated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of GTE Florida Incorporated's Petition for Waiver of Rule 25-4.115, Florida Administrative Code was sent via overnight delivery on December 30, 1998 to:

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



For Kimberly Caswell