

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 13, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Pruitt, King)
Office of the General Counsel (Mann)

RE: Docket No. 070370-TL – Petition for waiver of Rule 25-4.110(5)(c), F.A.C., regarding requirement of local exchange companies to list items for which nonpayment will result in disconnection of customer's basic local service, by BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast.

AGENDA: 09/25/07 – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: Statutory Deadline: 10/15/07

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\070370.RCM.DOC

Case Background

On June 8, 2007, BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T) filed a request for a rule waiver pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code (F.A.C.). AT&T seeks relief from Rule 25-4.110(5)(c), F.A.C., a customer billing requirement for incumbent local exchange companies.

On July 16, 2007, AT&T filed a Motion for Leave to File Amended Petition and its Amended Petition to supplement its arguments and information in the original petition. On July 20, 2007, the Commission issued Order No. PSC-07-0595-PCO-TL granting the Motion.

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The Florida Administrative Weekly notice of the waiver request was published on August 17, 2007. No written comments were received during the 14-day comment period.

AT&T seeks the waiver in order to use a new bill format that does not have a special identification mark for each separate unregulated charge on a customer's bill. AT&T is currently using the proposed bill format in 13 states. AT&T intends to use the proposed bill format throughout its 22-state region. With the waiver, AT&T states it would not incur additional costs associated with information technology, customer service training, and paper, printing and postage to generate a Florida specific bill format.

The Commission is vested with jurisdiction in this matter pursuant to Sections 120.542, 350.127, 364.012, 364.10, and 364.604, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the request for waiver of the billing requirement of Rule 25-4.110(5)(c), Florida Administrative Code, by BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast?

Recommendation: Yes, the Commission should approve the request for waiver of the billing requirement of Rule 25-4.110(5)(c), Florida Administrative Code. (**Pruitt**)

Staff Analysis: This is a petition for a waiver of Rule 25-4.110(5)(c), Florida Administrative Code. Under Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, a person affected by a Commission Rule may petition the Commission for a waiver of that Rule. The Commission has general statutory authority to grant this waiver under Section 120.542, Florida Statutes, which states:

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.

Pursuant to Rule 25-4.110(5)(c), Florida Administrative Code, an incumbent local exchange company (ILEC) must identify the charges which could result in disconnection of service if not paid. The Rule requires all ILECs to clearly state on their bills:

(c) Items for which nonpayment will result in disconnection of the customer's basic local service, including a statement of the consequences of nonpayment;

In order to comply with the Rule, AT&T currently identifies unregulated charges on its bills (**Attachment A**) with a double asterisk ** and an accompanying footnote. The bills also contain on the second page the following statement:

Regulated charges are the minimum you must pay in order to maintain your local telephone service. If you do not pay this amount: your local service may be disconnected, and you may need to pay a charge or deposit to have your service reconnected. The amount of Regulated Charges may be obtained by calling 1 888 757-6500. If you do not pay the rest of your bill, which includes unregulated charges – all of which are identified by ** on your bill: your local phone service will not be disconnected, and you are still responsible for paying these charges.

Under the current bill format customers must either subtract the unregulated charges from the total charges or call customer service to determine the amount that must be paid to maintain local service. AT&T states that the major concern of customers is the total amount that must be paid to avoid disconnection, not the individual charges.

AT&T currently is using its proposed bill format (**Attachment B**) in 13 states and wants to expand its use to the nine AT&T Southeast states. The proposed bill format does not distinguish between regulated and nonregulated charges. However, all of the charges are listed on the bill which has the following statement:

PREVENT DISCONNECT

Thank you for being a valued customer. Please be aware that all charges must be paid each month to keep your account current and prevent collection activities. We are required to inform you that certain charges **MUST** be paid in order to prevent interruption of basic local service. These charges are already included in the Total Amount Due and are _____. Also, neglecting to pay for remaining charges may result in interruption or removal of these remaining services or further collection action. A Late Payment Charge of \$3.20 may apply to an unpaid regulated balance and a 1.5% Interest charge may apply to an unpaid unregulated balance. For more information, call the Plans and Services number listed in the Billing Summary section on page 1.

Staff notes that AT&T's proposed approach is consistent with one already sanctioned by the Federal Communications Commission (FCC) as being compliant with federal Truth-in-Billing rules.¹

AT&T contends that its proposed bill format meets the Rule's intent and will reduce the number of calls to its customer service centers, increase customer satisfaction, and be more environmentally friendly by reducing the average bill from 4.5 to 2 sheets of paper.

Rule 28-104.002, F.A.C., Petition for Variance or Waiver, asks for specifics regarding what substantial hardship will be incurred if the waiver is not granted. Section 120.542(2), Florida Statutes, defines substantial hardship as “. . . a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.”

In support of its case for substantial hardship, AT&T states that if the waiver is denied the company “. . . would incur (1) information technology costs of \$344,000 (non-recurring) and \$191,000 (recurring yearly) to support a unique bill format for Florida only; (2) training costs of \$130,000 (non-recurring) and \$79,000 (recurring yearly) to train its customer service representatives on two different types of billing methods and procedures; and (3) opportunity costs of missed paper, printing and postage savings totaling \$2,000,000”.² The company argues that “. . . to maintain separate bill formats on an ongoing basis, is an inefficient use of resources and would cause a ‘substantial hardship’ upon AT&T Florida.”

¹ Re. SNET, *Truth-in-Billing and Billing Format*, Order on Reconsideration, CC Docket No. 98-170, FCC 00-111, at ¶¶ 7-8.

² AT&T states that denial of the petition in Florida would cause a four-month delay in implementing the new billing format in the other eight AT&T Southeast states while a unique Florida bill format was programmed and customer service representatives trained to handle calls for either type of bill format. The proposed new bill format would require less paper, printing, and postage for a monthly cost savings of \$500,000 or \$2,000,000 for four months.

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Staff believes that in this instance AT&T's proposed bill format meets the underlying purpose of Rule 25-4.110(5)(c), Florida Administrative Code. The new bill format achieves the Rule's intent by providing the customer the total amount required to avoid disconnection of basic service. Staff also believes that AT&T has met the requirement of Section 120.542(2), Florida Statutes, by demonstrating an immediate and ongoing substantial economic hardship.

Therefore, staff recommends that the Commission approve the request for waiver of Rule 25-4.110(5)(c), Florida Administrative Code.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (**Mann**)

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.