

Bane *MAB*  
McLean *[Signature]*

State of Florida



Public Service Commission

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

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

RE: DOCKET NO. 000028-TL - PETITION BY BELL SOUTH  
TELECOMMUNICATIONS, INC. FOR WAIVER OF RULES 25-4.107, 25-  
4.108, AND 25-4.113, F.A.C., WHICH REQUIRE PROVISION OF  
BASIC TELECOMMUNICATIONS SERVICE TO CERTAIN LOCATIONS AND  
PERSONS.

AGENDA: 06/11/02 - REGULAR AGENDA - POST HEARING DECISION -  
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\000028PH.RCM

CASE BACKGROUND

On January 10, 2000, this Commission received a petition from BellSouth Telecommunications, Inc. (BellSouth) seeking a waiver of Rules 25-4.107, 25-4.108 and 25-4.113, Florida Administrative Code. The rules require a Local Exchange Company (LEC) to assist any customer or applicant in obtaining telephone service adequate to his communication needs, to provide service, and limit circumstances under which a LEC may refuse telephone service. According to BellSouth, it is seeking a permanent waiver of these rules for one particular customer, Mr. Anthony Parks, since it would otherwise be required to keep trying to work with this

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particular customer when he has repeatedly demonstrated that he will not deal in good faith with BellSouth.

The notice of Petition for Waiver of Rule Requirement was submitted to the Secretary of State for publication in the Florida Administrative Weekly on January 19, 2000. The comment period ended on February 14, 2000, and no comments were submitted. The statutory deadline for the Commission's decision regarding this petition was April 10, 2000; however, BellSouth waived the statutory deadline.

On February 24, 2000, BellSouth filed a claim of confidential treatment of Document No. 00354-00 which contains customer specific information regarding BellSouth's petition for rule waiver. On March 23, 2001, the Commission issued the Order Granting Request for Specified Confidential Classification of Document No. 01474-01 (Cross-Reference Documents Nos. 00354-00 and 00427-01) and Setting Forth Conditions for Inspection of Document.

By Notice of Proposed Agency Action Order No. PSC-00-0902-PAA-TL, issued May 5, 2000, the Commission granted BellSouth's request for waiver. On May 30, 2000, Mr. Parks filed a timely protest and request for hearing.

On March 12, 2001, the prehearing conference was held. Thereafter, several requests were made by the parties for continuances of the scheduled hearing dates. By Order No. PSC-01-1771-PCO-TL, issued August 30, 2001, the hearing was scheduled for February 4, 2002, and the Order indicated that no further continuances of the hearing date would be granted. On February 4, 2002, the administrative hearing was held.

At the hearing, Ms. Nancy H. Sims and Ms. Patricia K. Shields testified on behalf of BellSouth. However, at the hearing Mr. Parks was not permitted to present testimony on his own behalf because he failed to file any prefiled testimony as required by Order No. PSC-00-2406-PCO-TP (Order Establishing Procedure), issued December 14, 2000.

On March 4, 2002, BellSouth filed its Post-Hearing Brief and its Notice of Intent to Request Specified Confidential Classification for portions of its Post-Hearing Brief. On March 22, 2002, BellSouth filed its Request for Specified Confidential Classification for portions of its Post-Hearing Brief.

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On March 4, 2002, Mr. Parks filed his Motion for Extension of Time to File Brief. By Order No. PSC-02-0325-PCO-TL, issued March 13, 2002, Mr. Parks's Motion was granted in part and denied in part. Mr. Parks requested a 30-day extension but was granted a two-week extension until March 18, 2002, to file his brief. On March 18, 2002, Mr. Parks sent a facsimile copy of his Interim Brief. On March 19, 2002, Mr. Parks's original Interim Brief was received by the Office of the General Counsel and was sent to the Division of the Commission Clerk and Administrative Services.

In his brief, Mr. Parks failed to address the issues as set forth in Order No. PSC-01-0722-PHO-TL, issued March 23, 2001, (the Prehearing Order). Therefore, staff will address the arguments raised by Mr. Parks in his brief under the most appropriate issues.

This recommendation addresses the issues raised in the hearing.

**DISCUSSION OF ISSUES**

**ISSUE A:** [LEGAL ISSUE] What is the Commission's jurisdiction in this matter?

**RECOMMENDATION:** Section 120.542, Florida Statutes, authorizes the Commission to grant variances and waivers to requirements of its rules. (CHRISTENSEN)

**POSITION OF THE PARTIES**

**BELLSOUTH:** The Commission has jurisdiction in this matter because state law and not federal law is the basis for the rules that govern the provision of telecommunications service to Mr. Parks and the requested waiver.

**PARKS:** Mr. Parks failed to address this issue as set forth in the Prehearing Order in his post-hearing brief.

**STAFF ANALYSIS:**

This issue addresses what the Commission's jurisdiction is in this matter. As noted above, Mr. Parks failed to address this issue specifically in his post-hearing brief. However, several of the arguments presented by Mr. Parks appear to be appropriate to address in this issue. Therefore, his arguments are addressed herein.

I. BellSouth's Argument

BellSouth contends that the Commission has jurisdiction in this matter because Commission rules and not federal law are the basis for BellSouth's waiver request. BellSouth's waiver request applies to Rules 25-4.107, 25-4.108 and 25-4.113, Florida Administrative Code. (TR 15) Generally, these rules require BellSouth to provide information and assistance "as is reasonable" to any customer in order for him to obtain service, to apply its initiation of service in a uniform manner, and to initiate service without delay. (TR 16) Further, Rule 25-4.113, Florida Administrative Code, details the conditions under which BellSouth may or may not refuse or discontinue service. (TR 16) BellSouth argues that these rules prohibit it from refusing to provide service to a specific property based on the account activity of a previous resident at the property or because of the payment history

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of another customer at the same residence. (BellSouth BR p.3) BellSouth states that due to this rule, Mr. Parks has repeatedly been able to obtain telephone service by gaming the rule. (BellSouth BR p.3; TR 19) BellSouth further argues that by changing names, addresses and using business facades, he and his "tenants" have been able to manipulate the system. (BellSouth BR p.3) Further, BellSouth asserts that pursuant to Rule 28-104.002, Florida Administrative Code, the Commission has the authority to determine a party's request for a waiver of otherwise applicable Commission rules. (BellSouth BR p.4)

## II. Mr. Parks' Argument

Mr. Parks argues that telephone service is a right under various state and federal laws. (Parks BR p.1) Mr. Parks asserts that in order to take away a person's rights or privileges, a person is entitled to due process as guaranteed by the Fourteenth Amendment of the United States Constitution. (Parks BR p.1) Mr. Parks cites several examples. Mr. Parks argues that prior to revocation of a drivers license, which is a privilege, the person is entitled to a hearing after proper notice, or that prior to termination of parental rights of a father, the father must be duly served and given an opportunity to defend himself. (Parks BR p.2)

Mr. Parks argues that he was never served a summons or petition in this matter. Mr. Parks states that BellSouth admits it never served him or attempted to serve him with a copy of the petition. Further, Mr. Parks contends that the only reason he knew of the proceeding was due to a phone call from staff. Mr. Parks asserts that he was only faxed a copy after BellSouth's petition was granted which is not service. (Parks BR p.2) Mr. Parks argues that under Florida law if anyone is seeking any action against a person that person must be duly served by the plaintiff or in this case, Petitioner, BellSouth. Once served, Mr. Parks contends that he would have the right to defend his position in accordance with federal law as governed by the Fourteenth Amendment. (Parks BR p.2)

Further, Mr. Parks argues that the rule waiver that BellSouth is seeking is meant for general changes that concern the general public. Mr. Parks contends that going against an individual is another matter which is why the Fourteenth Amendment exists as well as various other federal and state laws. Mr. Parks states that he only knew about BellSouth's actions after the fact. He further

contends that this was done without proper legal notice and was ex parte. He argues that this is clearly illegal. (Parks BR p.4)

### III. Analysis

BellSouth has requested waiver of Rules 25-4.107, 25-4.108 and 25-4.113, Florida Administrative Code. Rule 25-4.107, Florida Administrative Code, requires BellSouth to provide information and assistance as is reasonable to assist any customer or applicant in obtaining telephone service adequate to his communication needs. Rule 25-4.108, Florida Administrative Code, requires BellSouth to initiate service without unreasonable delay when a customer files a complete application in accordance with its governing provisions in effect at the time. Rule 25-4.113, Florida Administrative Code, addresses the conditions under which BellSouth can refuse to provide service to a customer or discontinue service to a customer. These rules were implemented pursuant to the Commission's authority under Chapters 350 and 364, Florida Statutes, to regulate telephone service.

Section 120.542, Florida Statutes, states that the Commission is authorized to grant waivers to requirements of its rules consistent with Chapter 120, Florida Statutes, and with rules adopted under the authority of Chapter 120, Florida Statutes. Staff believes that it is clear that the Commission has authority to waive these rules.

Mr. Parks argues that a rule waiver is inappropriate because the rules at issue here impact him as an individual rather than the public at large. (Parks BR p.4) Section 120.542(1), Florida Statutes, states in part that:

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.

Section 120.542(1), Florida Statutes, permits BellSouth to seek a waiver of the Commission's rules when it results in unreasonable, unfair, and unintended results. There is no requirement that rule waiver only be sought for those rules which involve the general public.

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Mr. Parks also argues that he did not receive proper notice and was denied his due process rights because he was not served with a copy of BellSouth's petition before it was granted using the proposed agency action. (Parks BR p.2) Staff notes that Mr. Parks acknowledges receiving a copy of the petition in his post-hearing brief, and that he in fact protested the proposed agency action order which was issued granting BellSouth's petition. (Parks BR p.2) The proposed agency action process allows for a point of entry for an individual whose substantial interests are affected by the agency's action to protest the order. In this instance Mr. Parks did in fact protest the Commission's order granting BellSouth's waiver request and a hearing was held in this matter. (TR 1-3) Therefore, staff believes that Mr. Parks was afforded his due process right to a hearing.

Moreover, Section 120.542(6), Florida Statutes, requires that the agency publish a notice regarding the petition in the Florida Administrative Weekly. However, Section 120, Florida Statutes, does not require individual notice to all persons who may be impacted by a requested waiver. Staff notes that the noticing requirements set forth in Section 120.542 (6), Florida Statutes, were complied with in this matter.

For the foregoing reasons, staff believes that Section 120.542, Florida Statutes, authorizes the Commission to grant variances and waivers to requirements of its rules.

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**ISSUE 1:** In the event that BellSouth Telecommunications, Inc. is granted a waiver of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, as set forth in its petition, will the purpose of the underlying statutes be achieved by other means?

**RECOMMENDATION:** Yes. Staff believes that BellSouth Telecommunications, Inc. will achieve the underlying purpose of the statute by other means and with conditions imposed. (CHRISTENSEN, M. WATTS)

**POSITION OF THE PARTIES**

**BELLSOUTH:** Yes. If BellSouth's waiver request is granted, Mr. Parks and those persons residing at property he owns or leases will still be able to obtain telecommunications service from numerous Alternative Local Exchange Telecommunications Companies (ALECs) and wireless carriers.

**PARKS:** Mr. Parks failed to address this issue as set forth in the Prehearing Order in his post-hearing brief.

**STAFF ANALYSIS:**

This issue addresses whether Mr. Parks and those persons residing at his owned or leased property will still be able to obtain telecommunications services should BellSouth's petition be granted. As noted previously, although Mr. Parks did not specifically address this issue, staff will address Mr. Parks' arguments that appropriately respond to this issue.

I. BellSouth's Argument

BellSouth states that at the outset, it must be noted that BellSouth has never previously requested a waiver of these rules. The company maintains that this is a very unique situation that BellSouth takes very seriously. BellSouth contends that it did not consider this waiver request lightly and it is not its intent to use waiver requests in the future in general for this purpose. (TR 20-21; BellSouth BR p.4) Witness Sims testified that the purpose of this waiver request is not to harass Mr. Parks or his tenants. (TR 59) Further, witness Sims noted in her testimony that BellSouth routinely provides service to individuals who reside at properties where a previous customer had a delinquent account. (TR 59)



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BellSouth argues that if its waiver request is granted, the purpose of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, will be achieved by other means. (BellSouth BR p.4) First, Mr. Parks and the properties he owns, leases or otherwise is associated with are all located in South Florida. (EXH 1) Mr. Parks and those residing at the properties at issue can obtain service from several ALECs operating in the 561, 954, and 305 area codes. (TR 21) In addition, the witnesses testified that there are several wireless carriers offering very reasonable flat and measured rate calling plans in this area. (TR 21-22) Moreover, BellSouth argues that Mr. Parks presented no evidence that proves he nor any of his other tenants have ever been prohibited from receiving telecommunications service, even though BellSouth has not knowingly provided service to either Mr. Parks or any of his properties since 1999. (BellSouth BR p.5; EXH 1) BellSouth contends that, in fact, as evidenced by the several pleadings filed by Mr. Parks in this proceeding, he currently has a voice line as well as a fax line. (BellSouth BR p.5)

Second, BellSouth states that the purpose of the underlying statutes, Sections 364.03, 364.04, 364.19, and 427.704, Florida Statutes, is, in part, to promote the public health, safety and welfare by ensuring that basic local telecommunications services are available to all consumers. (TR 21) BellSouth argues that its waiver will not undermine that purpose and in fact will promote it. The rules in question entitle BellSouth to receive rates and set terms for those services. (TR 21; BellSouth BR p.5) Continuing to provide service to Mr. Parks and the associated properties could result in a negative impact on BellSouth's other ratepayers, in terms of time and expense. (TR 21).

BellSouth concludes that, accordingly, there is no question that the purpose of the underlying statutes will be achieved if BellSouth's waiver request is granted. Mr. Parks has presented no evidence to the contrary. (BellSouth BR p.5)

## II. Mr. Parks' Argument

Mr. Parks did not provide any prefiled testimony in accordance with the Order Establishing Procedure. Further, he did not address this issue in his post-hearing brief, filed on March 18, 2002.

However, Mr. Parks argues in his brief that none of his tenants have third party accounts with resellers. (Parks BR p.7)

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Mr. Parks contends that either BellSouth was in error when this statement was made because of lack of knowledge or BellSouth willfully lied. (Parks BR p.7) Further, Mr. Parks asserts that when questioning witnesses Shields and Sims about several current and past tenants of his, witness Shields testified that she did not know those names. (TR 57-58) Mr. Parks argues that this is because BellSouth has never had a problem with these tenants and their BellSouth accounts. (Parks BR pp.6-7)

Further, Mr. Parks questions that if BellSouth's petition is granted, whether this would give BellSouth the right to disconnect all the individuals or corporations that rent in his facilities. (Parks BR p.7) In his brief, Mr. Parks also points out that these persons have rights to due process and to be properly served with notice and to have representation and a hearing. (Parks BR p.7)

### III. Staff Analysis

Section 120.542, Florida Statutes, authorizes the Commission to grant a waiver if 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. This analysis addresses whether BellSouth has demonstrated that the underlying purpose of the statute on which the rules are based will be or has been achieved by other means.

Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, implement the following sections of Chapter 364: Sections 364.025, 364.03, 364.04, 364.051, 364.08, 364.15, 364.19, and 427.704, Florida Statutes. Staff believes that the underlying purpose of these sections is to ensure that basic local telecommunications service is provided to all customers at fair, just, and reasonable rates within a reasonable time period. Specifically, Section 364.025, Florida Statutes, imposes on BellSouth, as an Incumbent Local Exchange Carrier, a carrier of last resort obligation, which in pertinent part states that:

For a period of 8 years after January 1, 1996, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory.

However, this obligation is limited under Section 364.03(3), Florida Statutes, to

all persons who may apply therefor and **be reasonably entitled thereto** suitable and proper . . . connections for telecommunications services and furnish telecommunications service as demanded upon terms to be approved by the commission.

Further, staff notes that under certain circumstances as set forth in Rule 25-4.113, Florida Administrative Code, a customer may be refused service or discontinued from service. These circumstances include nonpayment for telecommunications services by a customer and fraudulent or illegal use of the service. Staff also notes that Section 364.245, Florida Statutes, provides that a customer may only use the telecommunications service for lawful purposes. Thus, staff believes that it is not the intent of the carrier of last resort obligation to permit a person to obtain service under assumed individual or corporate names to avoid payment of bills. Nor does it appear to staff that the carrier of last resort obligation was intended to allow a person to use others to obtain service for that person's benefit when that person would otherwise be ineligible for service.

BellSouth argues that the underlying purpose of the statute is to promote the public health, safety and welfare by ensuring that basic local telecommunications services are available to all consumers. (TR 21) Staff notes that BellSouth did not address its carrier of last resort obligation which is in part implemented by the rules subject to the waiver request. However, for the reasons stated above staff does not believe that in the instant case that this statutory obligation is dispositive of whether the overall underlying purpose of the statutory sections at issue can be achieved by other means.

BellSouth's witnesses Sims and Shields testified that there are several ALECs providing residential and business local exchange service in the 561, 954, and 305 area codes in Florida. (TR 21) Staff notes that not only are ALEC providers available, the witnesses also testified that there are several wireless carriers available who are offering very reasonable flat and measured rate calling plans. (TR 21-22) Although, Mr. Parks argues in his brief that none of his tenants have third party accounts with resellers, there is no evidence in the record to support his contention.

(Parks BR p.7) However, staff believes that this point is not dispositive because the testimony supports the fact that these services are available to Mr. Parks and others who have been associated with Mr. Parks should the rule waiver be granted. Moreover, staff notes that Mr. Parks' pleadings indicate that he has telephone service as well as a facsimile line. (Parks BR pp.1-10) Staff believes that this record evidence demonstrates that there are suitable telecommunications service alternatives for Mr. Parks, his tenants, and corporations.

However, staff has concerns because the record appears to support that Mr. Parks is a landlord. (Shields TR 43) Staff is concerned that someone may rent from Mr. Parks in the future who is unaware of his history with BellSouth and who might legitimately seek to establish service with BellSouth on their own behalf. During cross-examination Mr. Parks identified several of his alleged current and previous tenants to witness Shields who he contended had maintained BellSouth service without any problems. Witness Shields testified that she did not know anything about these people. (TR 57-58) When asked whether BellSouth necessarily cares if Mr. Parks owns the property if his tenant does pay or writes an individual check from his own account, witness Shields replied, "No." (TR 63) Thus, staff believes that granting the waiver as applicable to the locations that Mr. Parks currently owns, leases, or with which he is, in any way, associated, would not meet the underlying purpose of the statute without the imposition of conditions.

Section 120.542, Florida Statutes, authorizes the Commission to impose conditions on the grant only to the extent necessary for the purpose of the underlying statute to be achieved. Thus, staff believes that conditions which ensure that the carrier of last resort obligation is maintained and avoid harm to other persons who are not complicit with Mr. Parks is appropriate. If BellSouth determines that a person seeking BellSouth telecommunications service at a location identified in BellSouth's petition is not attempting to obtain service on Mr. Parks' behalf, then the rule waiver would not apply to this person. However, if BellSouth later obtains evidence that this person was in fact obtaining service on Mr. Parks' behalf, then the rule waiver would apply to that address so long as that person resides there. This evidence would include, but is not limited to, a check signed by Mr. Parks, evidence that Mr. Parks resides at the same location, or Mr. Parks attempts to act on behalf of the person.

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For the forgoing reasons, staff believes that other telecommunications service providers are available to Mr. Parks, his tenants, and his corporation. Moreover, staff believes that BellSouth will achieve the underlying purpose of the statute by other means and with conditions imposed.

**ISSUE 2:** Does the application of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, as set forth in BellSouth Telecommunications, Inc.'s petition, create a substantial hardship for BellSouth Telecommunications, Inc. or violate principles of fairness?

**RECOMMENDATION:** The Commission should find that the application of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, as set forth in BellSouth Telecommunications, Inc.'s petition, creates a substantial hardship for BellSouth Telecommunications, Inc. in this limited circumstance.  
(CHRISTENSEN, M. WATTS)

**POSITION OF THE PARTIES**

**BELLSOUTH:** Yes. Mr. Parks has cost BellSouth as well as the Commission Staff a great deal of time and money. He has taken time away from BellSouth service representatives and Staff personnel that could have been used to handle valid customer concerns and needs. There is no way to accurately determine the number of hours that have been involved in repeatedly dealing with Mr. Parks.

**PARKS:** Mr. Parks failed to address this issue as set forth in the Prehearing Order in his post-hearing brief.

**STAFF ANALYSIS:**

This issue addresses whether by the application of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, in the instant case BellSouth has suffered a substantial hardship and/or whether application of these rules to BellSouth in the instant case violates the principles of fairness. As previously noted, Mr. Parks did not address this issue in his post-hearing brief. However, staff has endeavored to address the arguments that appear to address this issue as set forth in his brief.

I. BellSouth's Argument

BellSouth argues that Mr. Parks has been linked to at least twenty-five separate accounts with BellSouth, both residence and business, since 1992. (TR 16) BellSouth contends that Mr. Parks has used many avenues to obtain service, and in every instance, the accounts have been terminated for nonpayment and/or fraudulent practices or incorrect billing information. (TR 16-17) For

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instance, he has written several "bad" checks to prevent disconnection or to establish accounts, by stopping payment of the checks, by writing checks on closed accounts, or by writing checks despite not having sufficient funds to cover the check. (EXH 1)

BellSouth asserts that Mr. Parks' actions are not limited to accounts established in his own name. Rather, they include accounts for invalid corporate entities for which Mr. Parks was an officer or registered agent and for persons who reside at properties owned, leased, or otherwise associated with Mr. Parks, including but not limited to the accounts listed in EXH 1: (1) NHS/PKS-1 at 16; (2) NHS/PKS-1 at 18; (3) NHS/PKS-1 at 19; (4) NHS/PKS-1 at 23; and (5) NHS/PKS-1 at 24. (Shields TR 60-65) BellSouth asserts that in addition to not refuting his relationship with the alleged "tenants," Mr. Parks presented at hearing suspect affidavits which establish without question his association with accounts established in the name of others but at properties owned or associated with Mr. Parks. (BellSouth BR pp.8-9) BellSouth argues that in each of these accounts, Mr. Parks wrote a "bad" check to either prevent disconnection or to establish service. (BellSouth BR p.6)

Additionally, BellSouth contends that Mr. Parks has used erroneous credit information in setting up business accounts, including providing BellSouth with the name of businesses that are not recognized by the Florida Secretary of State and by using the name of a legitimate corporation without permission. (EXH 1; TR 17) BellSouth argues that in every instance, by the time BellSouth became aware of the improper billing or credit information or receives a "bad" check, the customer had incurred substantial charges on the account, forcing BellSouth to close the account without any compensation. (BellSouth BR p.7)

Further, BellSouth contends that in at least eight situations, Mr. Parks has submitted official appeals to the Commission Staff regarding billing for himself, his corporations, and his alleged "tenants." In each instance, Staff has found the appeal to be without merit. (TR 17) Witnesses Shields and Sims testified that Mr. Parks has cost BellSouth and the Commission a great deal of time and money. (TR 17-18) The witnesses testified that Mr. Parks has taken away from BellSouth service representatives and Commission staff time that could have been used more efficiently and effectively to handle valid customer concerns and needs. (TR 18) As stated by witnesses Sims and Shields:

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There is no way to accurately determine the number of hours that have been involved in repeatedly dealing with Mr. Parks in repeatedly having to handle calls into the business office to establish service, to investigate credit, employment and corporate information, to send out denial notices, to process checks with insufficient funds, to process checks that have had payment stopped, to disconnect service, to reconnect service, to answer Commission inquiries and participate in informal conferences with the Commission Appeals Staff.

(TR 18) While incurring the costs in dealing with Mr. Parks, BellSouth is also unable to recover valid, legitimate charges that were incurred by Mr. Parks or by customers associated with Mr. Parks. (BellSouth BR pp.7-8) Of the twenty-five accounts at issue, not a single one has a zero balance. (Shields TR 59) BellSouth concludes that continuing to provide service to Mr. Parks and/or to the properties he owns, leases, or is otherwise associated with, will subject BellSouth to an undue burden or hardship. (BellSouth BR p.8)

## II. Mr. Parks' Argument

Mr. Parks did not address this issue in his post-hearing brief, filed on March 18, 2002. However, Mr. Parks did raise an argument which appears to be appropriate to address herein.

Mr. Parks argues in his brief that as a landlord under Florida law he is not responsible for the delinquent bills of his tenants. (Parks BR p.6) Mr. Parks claims that it would be illegal for the Commission to take an adverse action against him by allowing BellSouth not to provide him phone service based on his tenants' utility bills. (Parks BR p.6)

Mr. Parks also argues that he, as the registered agent, has no responsibility to BellSouth for the phone bills of the corporations. (Parks BR p.5) In his brief, Mr. Parks claims that, as a business, he has offered to be a registered agent for many other corporations in the State of Florida just as Capital Connection and CT Corporation are professional registered agents acting on behalf of other corporations. (Parks BR p.5) Mr. Parks argues that Capital Connection and CT Corporation have had many corporations go under and fail to pay their utility bills, yet



BellSouth has not sought a waiver to excuse BellSouth from its obligation to provide them or their clients permanent service. (Parks BR p.5) Mr. Parks contends that this is discriminatory. (Parks BR pp.5, 9)

Mr. Parks contends that the role of a registered agent is only to act as the official recipient of service of process within the state in case someone sues the corporation, nothing more. (Parks BR p.6) Mr. Parks further asserts that the individual officers of a corporation are exempt personally. Mr. Parks argues that because he is not even an officer of these corporations but only a registered agent, he is personally exempt. Mr. Parks concludes that BellSouth's references to corporations associated with him do not have any bearing on him personally. (Parks BR p.6)

### III. Analysis

Section 120.542, Florida Statutes, authorizes the Commission to grant a waiver if 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. This analysis addresses whether BellSouth, by application of these rules, has suffered a substantial hardship or whether the application of these rules to BellSouth in the instant case violates the principles of fairness. 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 waiver. Section 120.542 (2), Florida Statutes, states that principles 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.

BellSouth has argued that it has suffered a substantial hardship in the application of these rules as applied in the instant case because of the economic losses suffered by the company. (BellSouth BR pp.7-8) Witness Shields testified that BellSouth has determined that at least 25 accounts are related to Mr. Parks. (TR 59) Witnesses Shields and Sims testified that since 1992, Mr. Parks has been linked to both residential and business accounts. (TR 16) The witnesses state that Mr. Parks has used many different avenues to obtain service, and, in every instance, his account has been disconnected for fraudulent practices and/or for

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nonpayment. (TR 16-17) Further, the witnesses testified that Mr. Parks currently owes BellSouth more than \$22,750 in past due billing. (TR 17)

Staff acknowledges Mr. Parks' argument that he should not be held responsible for the nonpayment of his tenants' bills. (Parks BR p.6) Normally, staff would agree that the acts of a tenant should not be held against the landlord. However, staff believes that this case is a unique circumstance. Mr. Parks' actions appear to go beyond what one would expect in a normal landlord/tenant relationship. Hearing Exhibit 1 shows that Mr. Parks personally wrote checks out to cover his tenants' phone bills to BellSouth. In at least one instance, a deposit was received by BellSouth to establish service. After service was established, the deposited check did not clear on a joint bank account held by Mr. Parks and his "tenant." (Shields TR 48-49) Moreover, witness Shields testified that she did not believe that anyone associated with Mr. Parks had ever, after a check had been denied, attempted to make another payment. (TR 64)

Mr. Parks presented three "affidavits" which were admitted as Hearing Exhibit 2. These three "affidavits" purport to be from three tenants of Mr. Parks who had their service terminated by BellSouth. (EXH 2) However, staff notes that two of the three "affidavits" are not notarized. The one "affidavit" which is notarized does not indicate that the person presented any identification or was personally known to the notary. Thus, staff questions the authenticity of these "affidavits." None of these "affidavits" meets the minimum requirements of a sworn statement, i.e. a notarized statement with identification and/or personal knowledge that the person signing the document is the one making the statement. In staff's opinion, these "affidavits" do not exculpate Mr. Parks from an association with the accounts BellSouth alleges he had others open on his behalf. To the contrary, since Mr. Parks produced these alleged "affidavits," it strengthens BellSouth's argument that Mr. Parks at the very least had these people establish accounts on his behalf.

Mr. Parks also argues that he should not be responsible for the failure of the corporations for which he is a registered agent to pay its phone bills to BellSouth. (Parks BR p.5) Witnesses Shields and Sims testified that Mr. Parks has used false credit information to set up business accounts, including providing BellSouth with the names of businesses that are not recognized by

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the Florida Secretary of State and using the name of a legitimate corporation without permission. (TR 17) If, as Mr. Parks asserts, a registered agent only acts to receive service of process within a state, then staff finds Mr. Parks' contention that he was only a registered agent of these corporations, which he did not corroborate with evidence, without merit and incredible. The evidence demonstrates that Mr. Parks was involved with these corporations' telephone accounts as evidenced by his writing checks on his own account to cover the expenses associated with the corporations' telephone service. (Shields TR 61-63)

Staff believes that the evidence demonstrates that Mr. Park has systematically obtained service from BellSouth either by using other people to set up accounts on his behalf, or by using false corporate information. Staff is convinced by the evidence in the record that application of the subject rules to BellSouth will allow Mr. Parks to continue to game the system to obtain service under false pretenses. Staff is further convinced that BellSouth has suffered an economic hardship due to the application of rules in the instant case.

For the foregoing reasons, staff recommends that the Commission should find that the application of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, as set forth in BellSouth's petition, creates a substantial hardship for BellSouth in this limited circumstance.

**ISSUE 3:** Should BellSouth Telecommunications, Inc. be granted a waiver of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, as set forth in its petition?

**RECOMMENDATION:** Yes. The Commission should grant BellSouth Telecommunications, Inc.'s petition for waiver of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, with the condition that BellSouth will make a determination whether an applicant is attempting to obtain service on Mr. Parks' behalf prior to denying service based on the location's association with Mr. Parks. (CHRISTENSEN, M. WATTS)

**POSITION OF THE PARTIES**

**BELLSOUTH:** Yes. Mr. Parks has been linked to at least twenty-five separate accounts with BellSouth. He has used many avenues to obtain service, and, in every instance his account has been disconnected for fraudulent practices and/or for nonpayment. Mr. Parks currently owes BellSouth more than \$22,750 in past due billing.

**PARKS:** Mr. Parks failed to address this issue as set forth in the Prehearing Order in his post-hearing brief.

**STAFF ANALYSIS:**

This issue addresses whether BellSouth's waiver request of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, as set forth in its petition should be granted. As noted previously, Mr. Parks did not specifically address this issue as written; however, staff will address the arguments he raised in his post-hearing brief which appear to relate to this issue.

I. **BellSouth's Argument**

BellSouth contends that Mr. Parks has been linked to at least twenty-five separate accounts with BellSouth. He has used many avenues to obtain service, and, in every instance, his account has been disconnected for fraudulent practices and/or for nonpayment. The past due billings on these accounts totals \$22,750. (TR 16-17)

BellSouth states that the underlying purpose of the applicable rules will be fulfilled if its waiver request is granted because Mr. Parks and any persons residing at properties owned, leased, or

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otherwise associated with Mr. Parks can obtain service from several ALECs or wireless carriers. (BellSouth BR p.8; TR 21) Further, BellSouth asserts that to require BellSouth to continue to provide service to Mr. Parks and to properties owned, leased, or associated with Mr. Parks will subject BellSouth to an undue burden and violate principles of fairness. (BellSouth BR p.8) BellSouth should not be forced to provide service to a person who has repeatedly gamed the system and Commission rules, while at the same time failing to pay over \$22,000 in past due balances. (BellSouth BR p.8)

BellSouth argues that Mr. Parks has presented no evidence to refute any of BellSouth's claims. In fact, the only evidence presented by Mr. Parks at the hearing, although suspect in nature, was a set of affidavits that establish without question Mr. Parks' association with accounts established in the name of others at properties owned or leased by Mr. Parks. (BellSouth BR pp.8-9; EXH 2) Accordingly, BellSouth contends that the Commission should grant BellSouth's waiver request.

## II. Mr. Parks' Argument

Mr. Parks did not directly address this issue in his post-hearing brief. However, Mr. Parks has presented several arguments laid out in the previous issues that he relies on to argue that BellSouth's waiver request should not be granted.

Mr. Parks argues that the Commission does not have jurisdiction to address BellSouth's petition because he was not allowed to testify at the hearing. Mr. Parks contends that under the laws of the land no court or agency has the right to bar a person from providing testimony on his own behalf in order to defend himself. Mr. Parks argues that the Commission's Order which requires that a witness be identified before hearing only applies to public hearings and does not apply to him. Mr. Parks contends that there is a difference between himself and a witness. Mr. Parks acknowledges that a court may bar a witness from testifying if the witness is not disclosed but argues that a defendant may not be prevented from testifying himself. Mr. Parks asserts that a defendant's right to testify is governed by the Constitution. (Parks BR p.8)

Mr. Parks also contends that the Commission cannot enforce the waiver against individuals or corporations that were not notified

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or served with the petition since those individuals are actively BellSouth customers. Mr. Parks asserts that this violates the Fourteenth Amendment because of a respondent's civil and due process rights. (Parks BR p.9)

Mr. Parks contends that BellSouth has not acted in good faith by not cashing checks that were properly tendered, simply because BellSouth did not think the checks were good. Further, Mr. Parks asserts that BellSouth has not demonstrated that he has acted in bad faith against BellSouth. (Parks BR p.9)

Mr. Parks further argues that no connection has been made to these outstanding ten year old bills at issue other than Mr. Parks is a landlord and/or registered agent. Mr. Parks argues that granting BellSouth's petition would be discriminatory because BellSouth has not gone against other corporations' registered agents. (Parks BR p.9) Mr. Parks argues that based on these reasons the Commission should deny BellSouth's petition in its entirety.

### III. Analysis

As noted previously, Section 120.542, Florida Statutes, authorizes the Commission to grant a waiver to its rules if 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. For the reasons set forth in Issues 1 and 2, staff believes that BellSouth will meet the underlying purpose of the statute and that the application of Rules 25-4.107, 25-4.108, and 25-4.113, Florida Administrative Code, in this case has created a substantial hardship on BellSouth.

Staff believes that the record supports that Mr. Parks has been associated with at least twenty-five residential and business accounts that have a total outstanding balance of \$22,750. (Sims/Shields TR 16-17; EXH 1) Staff is further convinced that Mr. Parks' association with these accounts is established by evidence that he has used other people and corporations to obtain phone service from BellSouth. (Sims/Shields TR 16-17; EXH 1) Staff is not persuaded by Mr. Parks' argument that he is merely a landlord and registered agent and has no other relation to the accounts at issue. (Parks BR pp.5-6)

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Mr. Parks has argued that he should have been allowed to testify on his own behalf as a constitutional matter. However, as Mr. Parks acknowledges himself, the Commission may disallow a witness from testifying if that witness has not been disclosed. (Parks BR p.8) In this case, Mr. Parks did not disclose prior to the hearing that he intended to be a witness in this case. Therefore, he was not permitted to testify at the hearing. Staff notes that Mr. Parks is not a defendant in a criminal matter, but rather a civil litigant in an administrative proceeding. Further, staff notes that Mr. Parks was given the opportunity to cross-examine witnesses in this matter. Moreover, granting this rule waiver will only determine whether BellSouth has to provide telecommunication service. As stated by witnesses Sims and Shields, Mr. Parks can obtain telecommunications services through ALECs or wireless carriers in the area. (TR 21-22)

However, staff has concerns about granting BellSouth's petition regarding the locations that have been associated with Mr. Parks without the imposition of conditions. There may be people who rent from Mr. Parks who are unaware of his history with BellSouth and who are not attempting to obtain service on his behalf. Staff believes that if the rule waiver is granted, BellSouth should determine whether the applicant is applying on Mr. Parks' behalf before denying service based on the location's association with Mr. Parks. Staff believes that as to the locations which Mr. Parks owns or leases there is a rebuttable presumption that anyone trying to obtain telephone service from BellSouth is acting on Mr. Parks' behalf to obtain phone service. However, to the extent that a person can demonstrate to BellSouth's satisfaction that Mr. Parks is no longer associated with the property (i.e. Mr. Parks sold the property or no longer leases the property) or the person is not acting on Mr. Parks behalf, then that person should be afforded all of the rules' protections.

Therefore, staff recommends that BellSouth's petition be granted with the condition that BellSouth will make a determination whether an applicant is attempting to obtain service on Mr. Parks' behalf prior to denying service based on the location's association with Mr. Parks.

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**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** Yes, this docket should be closed. (CHRISTENSEN)

**STAFF ANALYSIS:** Yes, this docket should be closed.