

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-

DATE: JUNE 6, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (PRUITT)
OFFICE OF THE GENERAL COUNSEL (ELLIOTT) *JAE p12*

RE: DOCKET NO. 020473-TP - EMERGENCY PETITION BY BELLSOUTH
TELECOMMUNICATIONS, INC. FOR TEMPORARY WAIVER OF RULE 25-
4.118, F.A.C. (CARRIER SELECTION REQUIREMENTS) FOR
TRANSFER OF LOCAL BUSINESS CUSTOMER BASE OF ADELPHIA
BUSINESS SOLUTIONS OF JACKSONVILLE, INC. AND ADELPHIA
BUSINESS SOLUTIONS INVESTMENT, LLC.

AGENDA: 06/18/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: DECISION BY JUNE 24, 2002

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020473.RCM

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COMMISSION CLERK
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CASE BACKGROUND

On May 24, 2002, BellSouth Telecommunications, Inc. filed an emergency petition for a temporary waiver of Rule 25-4.118, Florida Administrative Code for the transfer of local business customers from Adelphia Business Solutions of Jacksonville, Inc. and Adelphia Business Solutions Investment, LLC, pursuant to Section 120.542, Florida Statutes, and Rule 28-104.004, Florida Administrative Code. Rule 25-4.118, Florida Administrative Code, requires customer authorization before submitting a preferred carrier change.

This is staff's recommendation regarding BellSouth's request for an emergency waiver of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection.

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The Commission is vested with jurisdiction in this matter pursuant to Sections 364.01 and 364.603, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant BellSouth Telecommunications, Inc.'s emergency petition for a temporary waiver of Rule 25-4.118, Florida Administrative Code, beginning July 11, 2002, and ending July 21, 2002?

RECOMMENDATION: Yes. Staff recommends that the Commission grant BellSouth's emergency petition for a temporary waiver beginning July 11, 2002, and ending July 21, 2002. (Pruitt)

STAFF ANALYSIS: Pursuant to Rule 25-4.118, Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. BellSouth seeks a waiver of this rule, which requires prior to a carrier change:

- (a) The provider has a letter of agency from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service; or
- (c) A third party firm has verified the customer's requested change.

BellSouth filed the emergency petition on May 24, 2002. According to the petition, BellSouth has purchased the right to serve the local business customer base of Adelpia Business Solutions of Jacksonville, Inc. and Adelpia Business Solutions Investment, LLC (collectively "Adelpia"). On June 4, 2002, BellSouth filed a letter amending the conversion date in the petition from July 5 to July 11, 2002. On June 5, 2002, BellSouth filed a letter further amending the conversion period to include an ending date of July 21, 2002.

Adelpia has filed for bankruptcy protection and will no longer be providing service to its business customers. The purchase agreement provides time is of the essence in the transfer

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of the customer base to accommodate Adelphia's business plans. Staff notes that the U.S. Bankruptcy Court for the Southern District of New York has scheduled a June 20, 2002 hearing to review the sale of the affected access lines.

BellSouth asserts that its emergency temporary waiver request meets the standards of Section 120.542, Florida Statutes, and that of the underlying statute 364.01(4), Florida Statutes, "to ensure that basic local telecommunications services are available to all consumers." The petition states that the temporary waiver is necessary to satisfy that objective. Notices will be mailed to all affected customers informing them that Adelphia will no longer be providing local and local toll service and that they will be switched, without carrier change charges or interruption of service, to BellSouth. The notice will also inform them that they may select a carrier other than BellSouth.

If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their local service. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

BellSouth filed its request in accordance with Rule 28-104.004, Florida Administrative Code, Petition for Emergency Variance or Waiver, which provides that persons seeking emergency waivers shall so state in the caption of the petition, shall submit a petition in compliance with Section 120.542(5), Florida Statutes, and shall specifically allege the reasons the situation is an emergency and the waiver is necessary on an expedited time frame. Under Rule 28-104.004, Florida Administrative Code, the notice and comment period provided for in Section 120.542(6), Florida Statutes, are not required. Staff believes that BellSouth has marginally, though sufficiently, alleged that this is an emergency situation that warrants processing the request on an expedited basis.

Furthermore, staff believes that BellSouth has sufficiently demonstrated that the waiver meets the purpose of the underlying statutes and is, in fact, necessary to fulfill the purpose of Sections 364.01, 364.03, and 364.19, Florida Statutes. Staff notes that while it believes BellSouth has sufficiently demonstrated that it will meet the purpose of the underlying statutes, BellSouth failed to correctly cite the pertinent provisions. Accordingly,

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staff recommends that the Commission grant BellSouth's emergency petition for a temporary waiver beginning July 11, 2002, and ending July 21, 2002.

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. (Elliott)

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.