

MEMORANDUM

March 5, 1998

RECEIVED

MAR 05 1998
9:45
FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *MB*

RE: DOCKET NO. 971560-TL - PETITION BY BELLSOUTH
TELECOMMUNICATIONS, INC. FOR WAIVER OF RULE 25-4.115,
F.A.C., DIRECTORY ASSISTANCE, AND FOR AUTHORIZATION TO
PROVIDE NATIONAL DIRECTORY ASSISTANCE (NDA) IN FLORIDA.

98-0362-FDF-TL

Attached is a PROPOSED AGENCY ACTION ORDER GRANTING AUTHORITY
TO PROVIDE NATIONAL DIRECTORY ASSISTANCE, to be issued in the above
referenced docket. (Number of pages in order - 10)

CJP/anr

Attachment

cc: Division of Communications

I: 971560o1.cjp

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for waiver of Rule 25-4.115, F.A.C., Directory Assistance, and for authorization to provide National Directory Assistance (NDA) in Florida.

DOCKET NO. 971560-TL
ORDER NO. PSC-98-0362-FOF-TL
ISSUED: March 5, 1998

The following Commissioners participated in the disposition of this matter:

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

PROPOSED AGENCY ACTION ORDER GRANTING AUTHORITY
TO PROVIDE NATIONAL DIRECTORY ASSISTANCE

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.

On November 26, 1997, BellSouth Telecommunications, Inc., (BellSouth) filed a petition with the Commission requesting a waiver of Rule 25-4.115, Florida Administrative Code. In its petition, BellSouth states that Rule 25-4.115, Florida Administrative Code, prohibits BellSouth in its present capacity as a local exchange company from providing directory assistance (DA) listings for subscribers whose telephone numbers are outside the Home Numbering Plan Area (HNPA) of the caller. BellSouth proposes to provide National Directory Assistance (NDA) to its Florida customers.

DOCUMENT NUMBER-DATE

02885 MAR-58

FPS-C-RECORDS/REPORTING

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In Order No. PSC-96-1434-FOF-TP, issued November 25, 1996, in Docket No. 960876-TP, we granted 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 (NPA) split.

Pursuant to Section 120.542(6), Florida Statutes, notice of BellSouth's petition for waiver was submitted to the Secretary of State on December 10, 1997, for publication in the Florida Administrative Weekly on December 19, 1998. No comments were submitted during the comment period, which ended on January 2, 1998.

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 principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "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 seeks a waiver of Rule 25-4.115, Florida Administrative Code, Directory Assistance. The rule prohibits BellSouth as a local exchange carrier from providing directory assistance outside of the caller's HNPA. Specifically, it 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 BellSouth as a price regulated local exchange carrier. See 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.

(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.

BellSouth states that it has developed an NDA service that it wishes to provide to its customers in Florida on a HNPA basis as it does elsewhere in its region. With NDA services, BellSouth's customers would be able to obtain telephone numbers in unknown or distant area codes with a single call to either 411 or HNPA-555-1212. The legal hardship asserted by BellSouth, which prompts this rule waiver request, is that Rule 25-4.115, Florida Administrative Code, limits BellSouth to providing DA services within the caller's local calling area or HNPA. Only interexchange carriers are permitted to provide DA services elsewhere. BellSouth states that waiving Rule 25-4.115, Florida Administrative Code, would enable it to provide DA services outside of the NPA of the originating line, thereby promoting competition and benefitting Florida telecommunications customers.

We find that waiving Rule 25-4.115, Florida Administrative Code, in this instance would not disserve the purpose of the applicable underlying statute, Section 364.04, Florida Statutes. That purpose is to assure public access to the tariffs of telecommunications companies. The NDA service that BellSouth is prepared to launch must be tariffed. BellSouth cannot, however, launch the service unless the provision of the rule limiting DA services outside of the NPA of the originating line to interexchange carriers is waived. Granting the requested waiver would be in harmony, moreover, with the Legislature's finding, expressed in Section 364.01, Florida Statutes, that the competitive provision of telecommunications service is in the public interest and will provide consumers with choices arising from new services.

NATIONAL DIRECTORY ASSISTANCE

In its petition, BellSouth argues that the provision of NDA service by a Bell Operating Company (BOC) is not prohibited under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act). BellSouth further argues that NDA is an "adjunct-to-basic" service as determined by the FCC, and not an "enhanced" service. BellSouth contends that adjunct-to-

basic services facilitate the use of the basic network without changing the nature of the basic telephone service. BellSouth concludes that "nothing in the statutory construction of the Act supports a reading that Section 271 applies to NDA service."

BellSouth explains that a customer seeking a number for which the customer does not know the area code, must make two DA calls: one call to find the area code and the second for the specific number the customer desires. If the desired telephone number is outside the caller's HNPA, the caller often has to reach an interexchange carrier operator in order to obtain this telephone listing. In this case, the customer incurs two DA charges, one from BellSouth as the customer gets the area code and another from the interexchange carrier as the customer dials 1-NPA-555-1212 for the desired telephone number.

With the proposed NDA service, BellSouth's Florida customers will obtain telephone numbers of unknown or distant area codes by dialing either 411 or HNPA-555-1212. Upon dialing 411 or HNPA-555-1212, customers will be prompted by an automated announcement which asks, "What State?", then "What City?" and then "What listing?" If the customer requests a listing in BellSouth's local serving area or the HNPA serving area of the originating line, the call will be routed to the same DA operator center that currently provides service on such DA listing requests. The applicable rates and charges for this call will be the same as today. If the customer requests a listing that is outside BellSouth's local serving area and the HNPA serving area of the originating line, the call will be routed to BellSouth's NDA operator center. At the NDA operator center, BellSouth's database will be queried if the listing is in the nine-state BellSouth region. For requested listings which are outside the BellSouth region, a third-party database will be queried by BellSouth's NDA operator. With either a traditional DA or NDA call, customers will be entitled to request two listings per call.

In its petition, BellSouth states that customers dialing 411 or 1-HNPA-555-1212 and requesting listings within their local or HNPA serving area will continue to receive service at the current rates and call allowance levels for traditional DA service. Calls for listings outside the HNPA will be treated differently. They will not count toward the call allowance for traditional DA service, but will cost less than the interexchange carriers charge for a 1-NPA-555-1212 call inquiry. BellSouth argues that the NDA service is the most cost effective option for customers.

In its response to a staff data request, BellSouth argues that it has long been permitted to provide DA services on a centralized basis using its internal "official service" networks, which have interLATA components. BellSouth further argues that NDA is simply DA service, and that DA service falls within the "official services" category of services that were preserved for the BOCs at divestiture. BellSouth argues that it is the expanded range of telephone numbers available through the NDA service that differentiates it from traditional DA service. Thus, BellSouth contends that NDA is functionally indistinguishable from the traditional DA service the company has always offered.

BellSouth argues that NDA is permitted under the Modified Final Judgment, and was saved by the grandfathering provisions of Section 271(f) of the Act. BellSouth further argues in its response to staff's data request that the only reference to DA service in Section 271 appears in the enumeration of checklist items in Section 271(c)(2)(B). BellSouth contends that this reference only requires BOCs to provide other telecommunications carriers non-discriminatory access to directory assistance services. We agree. BellSouth further contends that NDA will be offered through its local exchange company tariffs and thus will be available for resale at appropriate discounts. BellSouth argues that "[C]ongress imposed no qualifications or limitations on either the 'directory assistance services' or the 'telephone numbers' to which this obligation attaches, nor sought to distinguish between types of directory assistance services or geographic scope of telephone numbers provided." BellSouth concludes that NDA is not an "incidental" interLATA service under Section 271, since the Act provides no basis for distinguishing between a DA offering that is inclusive of national listings and one that is not. BellSouth further concludes that nothing in the Act prohibits BOCs from providing NDA service with their existing DA offerings.

Further in its response to staff's data request, BellSouth points out that in the NATA/Centrex Order, FCC 85-248, the FCC determined that adjunct-to-basic services are telecommunications services or features that facilitate the provision of basic services without altering their fundamental character. In BellSouth's comments to the FCC in CC Docket No. 97-172, Petition of US West Communications, Inc. for Declaratory Ruling Regarding the Provision of National Directory Assistance, BellSouth argued that NDA service is neither an enhanced service nor an information service. It is, instead, an adjunct-to-basic service which is not different from the BOCs' existing DA offerings. BellSouth asserts

that in CC Docket No. 96-149, FCC 96-489, at ¶107, the FCC concluded that adjunct-to-basic services are to be treated as telecommunications services for the purposes of the Act. BellSouth further asserts that the FCC adopted this regulatory classification in order to capture these services that, while meeting the literal definition of enhanced services, were otherwise "basic in purpose and use." BellSouth contends that services in this category are those that "facilitate the use of the basic network without changing the nature of basic telephone service." BellSouth asserts that the FCC found that the significance of this determination "is perhaps most clear in the case of directory assistance." Thus, BellSouth argues that the FCC's assessment of DA as the "most clear" example of adjunct-to-basic service does not rely on any geographic characteristics of the service or on the identity of the service provider.

Although the FCC determined that adjunct-to-basic services are telecommunications services, supra, BellSouth notes that the Act requires the BOCs to obtain Section 271 authority prior to originating any interLATA telecommunications services. In provisioning the NDA service, BellSouth states that "the originating points of such calls would be at the requesting customer's location; the terminating points of such calls would be at a BellSouth Traffic Operator's Position Switch location within BellSouth's HNPA serving area for the originating line." With this set up, we find that in using the NDA service, the caller is still dialing an intra-HNPA call just as with traditional DA and any query outside the HNPA will be performed by BellSouth over its network. We agree with BellSouth's characterization of NDA service as simply DA service. The bigger geographic reach appears to be the only differentiating factor between NDA service and traditional DA.

We find today that NDA is an adjunct-to-basic service. We believe, however, that a reasonable argument can be made that NDA is an "incidental" service. Pursuant to Section 271(b)(3) of the Act, BellSouth is permitted to provide incidental interLATA services as defined in Section 271(g)(4). Section 271(g)(4) defines incidental services to include "a service that permits a customer that is located in one LATA to retrieve stored information from, or file information from storage in, information storage facilities of such companies that are located in another LATA." NDA would appear to fit the definition of incidental service.

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We find that whether the proposed NDA service is viewed as "adjunct-to-basic" or an "incidental" service, the originating call will always be an intraLATA call terminating within the HNPA. We further find that by granting the relief urged by BellSouth, our decision will be consistent with Order No. PSC-96-1434-FOF-TP where we granted BellSouth a waiver of Rule 25-4.115 Florida Administrative Code, to provide intraLATA inter-NPA DA service in conjunction with the 305 and 954 NPA split. NDA service will provide customers with an option relative to DA service. With BellSouth's NDA, there will be a telecommunications provider other than interexchange carriers providing DA service. This would support the provisions of Chapter 364, Florida Statutes, that require us to promulgate rules and policies that will promote competition in Florida. Customers will benefit from the convenience of a single call to either 411 or HNPA-555-1212 compared to two separate calls, first to the local exchange company, then to an interexchange carrier. With appropriate pricing, NDA service may indeed be a less expensive service for Florida customers.

As we have noted above, Rule 25-4.115, Florida Administrative Code, prohibits BellSouth from providing DA service outside the HNPA of the caller. Upon consideration, we find it appropriate to grant BellSouth's petition to waive Rule 25-4.115, Florida Administrative Code. With this waiver, BellSouth is free to offer its proposed NDA service as a tariffed offering. We note, however, that BellSouth has yet to file its proposed NDA tariff.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the petition of BellSouth Telecommunications, Inc., for a waiver of Rule 25-4.115, Florida Administrative Code, is hereby granted. It is further

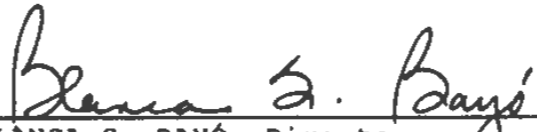
ORDERED that BellSouth Telecommunications, Inc., is hereby permitted to offer National Directory Service as a tariffed offering. It is further

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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 25-22.036, 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 5th day of March, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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.

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The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), 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 26, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.