

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: PETITION OF SPRINT-FLORIDA, INCORPORATED FOR WAIVER OF RULE 25-4.115, FLORIDA ADMINISTRATIVE CODE, WHICH PROHIBITS LOCAL EXCHANGE COMPANIES FROM PROVIDING DIRECTORY ASSISTANCE SERVICE OUTSIDE HOME NUMBERING PLAN AREA (HPNA).

DOCKET NO. 980231-TL
ORDER NO. PSC-98-0665-FOF-TL
ISSUED: May 14, 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.

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING RULE WAIVER

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein related to the rule waiver request 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.

BACKGROUND

On February 12, 1998, Sprint-Florida, Incorporated (Sprint) filed a petition requesting a waiver of Rule 25-4.115, Florida Administrative Code. In its petition, Sprint states that Rule 25-4.115, Florida Administrative Code, appears to prohibit Sprint in its present capacity as a local exchange company (LEC) from providing directory assistance (DA) listings for subscribers whose telephone numbers are outside the Home Numbering Plan Area (HNPA)

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FPSC-RECORDS/REPORTING

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of the caller. Sprint proposes to provide National Directory Assistance (NDA) to its Florida customers.

In Order No. PSC-96-1434-FOF-TP, issued November 25, 1996, in Docket No. 960876-TP, we granted BellSouth Telecommunications, Inc.'s (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. In Proposed Agency Action Order No. PSC-98-0362-FOF-TL, issued March 5, 1998, in Docket No. 971560-TL, we again granted BellSouth a waiver of Rule 25-4.115, Florida Administrative Code, this time to enable BellSouth to provide NDA service. On March 26, 1998, MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., (MCI) filed a protest of Order No. PSC-98-0362-FOF-TL and requested a formal hearing. A hearing has been set for August 10-11, 1998.

At our agenda conference on February 17, 1998, we directed our staff to initiate rulemaking for purposes of revising Rule 25-4.115, Florida Administrative Code. Staff is awaiting our resolution of the protest in Docket No. 971560-TL before proceeding.

Pursuant to Section 120.542(6), Florida Statutes, notice of Sprint's petition for waiver was submitted to the Secretary of State on February 25, 1998. Notice was published in the Florida Administrative Weekly on March 6, 1998. No comments were submitted during the comment period, which ended on March 20, 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. Sprint seeks a waiver of Rule 25-4.115, Florida Administrative Code. The rule prohibits Sprint as a LEC from providing directory assistance outside of the caller's HNPA.

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.

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 Sprint as a price regulated LEC. 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.

Sprint states that it has developed an NDA service that it wishes to provide to its customers in Florida on a HNPA basis. With NDA service, Sprint'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 on which Sprint's waiver request is based is that Rule 25-4.115, Florida Administrative Code, limits Sprint to providing DA services within the caller's local calling area or HNPA; only interexchange carriers are permitted to provide DA services elsewhere. Sprint asserts that nothing else operates to prohibit it from offering NDA service. Sprint 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 Sprint is prepared to launch must be tariffed. Sprint 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, Sprint argues that it is not prohibited from provisioning NDA service by any applicable law. Sprint argues that the provision of NDA service is not prohibited by the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act). Sprint further argues that the provision of NDA service is neither an enhanced service nor an information service; rather NDA service is an adjunct-to-basic service as determined by the FCC.¹ Sprint contends that adjunct-to-basic services meet the literal definition of enhanced services, but are otherwise "basic" in purpose and use.² Sprint further contends that adjunct-to-basic services facilitate the use of the basic network without changing the nature of the basic telephone service. Sprint argues that as an adjunct-to-basic offering, the provision of NDA service via the 411 code does not trigger any obligations under the FCC's N11 Order, which provides that the "local 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

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).

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.

Sprint argues that its proposed NDA service will enable customers to obtain telephone listings for unknown or distant area codes with a single call either to 411 or HNPA-555-1212. Sprint further argues 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 Sprint-Florida Traffic Operator's Position Switch (TOPS) location within Sprint's serving area for the originating line." Sprint explains that with the proposed NDA service, a customer would call in with the state, city and name of the desired telephone listing. Sprint would query and return the result of the query to the requesting customer. The query would include telephone listings within and outside the originating HNPA of the originating customer.

By dialing either 411 or HNPA 555-1212, customers would be prompted by an automated announcement which asks, "What State?", then "What City?" and then "What listing?" If the customer requests a listing in Sprint's local or HNPA serving area of the originating line, the call would be routed to the same DA operator center that currently provides service on such DA listing requests. Rates and charges for this call would be the same as they are today.

For customers requesting listings that are outside Sprint's local and HNPA serving area of the originating line, the call would be routed to Sprint's NDA operator center, where Sprint's database would be queried if the listing is in Sprint's operating territory. For listings outside Sprint's region, Sprint's NDA operator would query a third-party database. Sprint asserts that with either request, customers would be entitled to receive two listings per call.

Sprint argues that with waiver of Rule 25-4.115, Florida Administrative Code, to enable its NDA service, Florida customers would be the beneficiaries. Sprint argues that currently 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 telephone listing. If the desired telephone listing is different from the caller's HNPA, often the caller has to call an interexchange carrier (IXC) operator in order to obtain the listing. Sprint argues that the caller incurs two DA charges, one from Sprint and the other from the IXC. Sprint argues that NDA is therefore less costly for customers. It asserts that customers will continue to receive service at the current rates and

call allowance levels for local calling area requests when the customers dial 411 or 1-HNPA-555-1212.

Sprint argues that by granting this rule waiver, the Commission would be promoting competition. Sprint contends that that would be consistent with the underlying mandate in Section 364.01, Florida Statutes, which encourages competition through flexible regulatory treatment. Sprint further argues that a waiver of Rule 25-4.115, Florida Administrative Code, would allow a telecommunications provider other than an IXC to provide directory listings outside the NPA of the originating line, thus promoting competition and conferring a benefit on Florida customers.

We find that Rule 25-4.115, Florida Administrative Code, indeed prohibits Sprint from providing DA service outside the HNPA of a caller. We also find that Sprint is not otherwise prohibited from providing NDA service. Since Sprint is not a Bell Operating Company, it is not subject to the requirements of Section 271 of the Act. We find further that the provision of NDA service does not make NDA service an enhanced or information service, since NDA service is simply directory assistance service on a larger geographic scope. NDA is an adjunct-to-basic service, not an enhanced service. NDA does not alter the nature of the basic telephone service. We agree therefore with Sprint's conclusion that provisioning of NDA by means of the 411 code does not evoke an obligation under the FCC's N11 Order.

We note that in the Non-Accounting Safeguards Order, supra, at ¶107, the FCC found that adjunct-to-basic services are to be treated as telecommunications services for the purposes of the Act. We further note that in the NATA/Centrex Order, supra, at ¶27, the FCC stated that adjunct-to-basic services are telecommunications services or features that facilitate the provision of basic services without altering their fundamental character. Hence, we agree that while NDA meets the literal definition of an enhanced service, it is "basic" in purpose and use.

We find that with NDA service, the call originating points would be at the requesting customer's location and the call terminating points would be at Sprint's TOPS location within Sprint's HNPA serving area for the originating line. We find further that in using NDA, the caller would be dialing an intra-HNPA call, just as with conventional DA. Sprint would execute any query outside the HNPA over its official network.

Sprint's proposed NDA service would provide customers with a new service option. It would allow a telecommunications provider other than an IXC to provide long distance DA. Customers would benefit from the convenience of a single call to either 411 or HNPA-555-1212, rather than making two separate calls, first to the LEC and then to an IXC. With appropriate pricing, NDA may indeed be a less costly service for Florida customers. We find that a waiver of Rule 25-4.115, Florida Administrative Code, in this instance 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.

Based on the above, we grant Sprint's petition to waive Rule 25-4.115, Florida Administrative Code, allowing Sprint to offer its proposed NDA service.⁴

PROTEST PERIOD

Sprint requests that, should we grant its request for rule waiver, we act as expeditiously as possible to issue our decision as proposed agency action and, furthermore, that we reduce the protest period from 21 days to 14 days as permitted by Rule 25-22.029(2), Florida Administrative Code. Rule 25-22.029(2), Florida Administrative Code, authorizes the Commission to reduce the time for requesting a Section 120.57, Florida Statutes, hearing to 14 days for good cause shown.

In support of its request, Sprint submits that it is "ready to bring [NDA] service to its customers so that they can receive the benefits of the marketplace." It argues that this constitutes good cause shown. We disagree. We have permitted the protest period to be shortened in exigent or other wise unusual circumstances.⁵

⁴Sprint filed a new service tariff for NDA on May 4, 1998.

⁵Order No. PSC-98-0242-FOF-WS (external circumstances jeopardized timely establishment of the price index pursuant to Section 367.081(4), Florida Statutes); Order No. PSC-96-1048-FOF-EI (shortened protest period necessary to ensure that environmental cost recovery factors would be included, absent a protest, in an upcoming fuel/Environmental Cost Recovery Clause hearing); Order No. PSC-93-1580-FOF-EI (imminent hearing date in jeopardy and next available hearing date unreasonably distant); Order No. PSC-93-1283-FOF-EI (hearing date prior to requested effective date for statutory recovery of environmental costs had to be protected); Order No. PSC-96-1543-FOF-TL (where

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Sprint makes no showing that circumstances of that kind exist. Sprint's wish to turn up NDA service at the earliest permissible moment is not the kind of circumstance that can reasonably be considered good cause. We believe that shortening the protest period as Sprint requests would be to diminish the purpose of the exception.

Therefore, we deny Sprint's request for a shortened protest period.

Based on the foregoing, it is, therefore,

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

ORDERED that Sprint-Florida, Incorporated is hereby permitted to offer National Directory Service as a tariffed offering. It is further

ORDERED that Sprint-Florida, Incorporated's request for a shortened protest period is denied. It is further

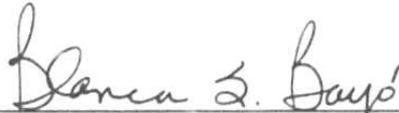
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, 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 14th day of May, 1998.

important that order approving transfer of control became final prior to date of a proposed merger); Order No. PSC-95-0969-FOF-TL (elimination of an additive was to be implemented prior to an exchange service area boundary change).

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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.

The action proposed herein with respect to the rule waiver 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 June 4, 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.

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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.