

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by GTE Florida Incorporated for waiver of Rule 25-4.115, F.A.C., which prohibits local exchange companies from providing directory assistance service outside Home Numbering Plan Area (HNPA).

DOCKET NO. 982019-TL  
ORDER NO. PSC-99-0659-FOF-TL  
ISSUED: April 6, 1999

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF 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.

I. BACKGROUND

On December 31, 1998, GTE Florida Incorporated (GTE) filed a petition with this Commission for waiver of Rule 25-4.115, Florida Administrative Code, in order to provide National Directory Assistance (NDA) service. Rule 25-4.115, Florida Administrative Code, prohibits GTE in its current capacity as a local exchange company (LEC) from providing directory assistance (DA) listings for subscribers whose telephone numbers are outside the caller's home numbering plan area (HNPA). GTE's proposed NDA service offering will allow a customer who calls 411 or 1+411 to obtain not only local telephone listings, but out-of-franchise, national number listings and customer names and addresses within the United States.

DOCUMENT NUMBER-DATE

04344 APR-58

FPSC-RECORDS/REPORTING

The Notice of Petition for Waiver was submitted to the Secretary of State for publication in the Florida Administrative Weekly on February 3, 1999. No comments were received in response to the published notice.

We have addressed several NDA waiver petitions in the past and have approved the petitions. In Order No. PSC-96-1434-FOF-TP, issued November 25, 1996, in Docket 960876-TP, we granted BellSouth Telecommunications, Inc.'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 split. In Proposed Agency Action Order No. PSC 98-0362-FOF-TL, issued March 5, 1998, in Docket No. 971560-TL, we granted BellSouth a waiver of Rule 25-4.115, Florida Administrative Code, to enable BellSouth to provide NDA service. This decision was reaffirmed in Order No. PSC-98-1757-FOF-TL, issued December 23, 1998. In Order No. PSC-98-0665-FOF-TL, issued May 14, 1998, in Docket No. 980231-TL, we granted a petition for waiver filed by Sprint-Florida, Inc. In Order No. PSC-1378-FOF-TL, issued October 13, 1998, in Docket No. 980716-TL, we granted a similar waiver to Northeast Florida Telephone Company.

## II. DISCUSSION

### 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 principals of fairness. For purposes of this section, "substantial hardship" mean a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principals 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.

GTE seeks a waiver of Rule 25-4.115, Florida Administrative Code, which prohibits GTE as a local exchange carrier from providing directory assistance outside of the caller's HNPA. 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 GTE as a price regulated local exchange carrier. 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.

We believe that GTE has satisfied the requirements of Section 120.542, Florida Statutes. GTE has demonstrated that the purpose of the underlying statute will not be disserved by granting the waiver. Section 364.04, Florida Statutes requires telecommunications companies to file with the Commission and keep open to public inspection schedules showing the rates and charges for their services. The purpose is to assure public access to the tariffs of telecommunications companies, as well as to require this Commission to regulate in the public interest and to promote competition in the telecommunications market. Since GTE's NDA service will be tariffed, public access will be assured. GTE states that the waiver will benefit its customers and promote competition in the telecommunications market. Thus, the waiver petition appears to be consistent with the underlying statute.



No comments were filed in response to the notice of this rule waiver petition, which was published in the Florida Administrative Weekly.

#### National Directory Assistance

In its petition, GTE states that its proposed NDA service will be available from residence, business, and coin telephone lines. GTE asserts that its systems are capable of differentiating local DA telephone listings from national telephone listing requests, which will ensure the appropriate call record is created for billing purposes. GTE states that local DA charges and call allowances will not be affected with the proposed offering of NDA service. GTE proposes to charge \$0.95 for NDA service for up to two (2) telephone listings requests per call, with no call allowance. Similarly, GTE indicates it will charge \$0.95 for up to two (2) customer name and address requests per call, from local or national directory listings. Customers who want more than two listings per call must hang up and redial to obtain more listings. Where a customer requests one local DA listing and one NDA listing, the customer will be billed \$0.95 as though the customer requested only NDA listings, and these calls will not count toward the customer's local DA call allowance.

GTE's proposed NDA offering will enable customers to obtain both local and national telephone listings with a single call to 411 or 1+411. With the current arrangement, GTE contends, a customer must place two calls, and thus incur two charges for unknown area codes. GTE argues that this process is time consuming and costly for the customer compared to GTE's proposed NDA service. GTE argues that granting its rule waiver request is in the public interest since it furthers consumer choice of competitive services.

GTE contends that interchange carriers (IXCs) and other ILECs are currently providing this service; thus, a strict application of the rule will harm GTE and violate the principle of fairness. Since GTE will tariff its proposed NDA service with this Commission, thus ensuring public access, GTE asserts that granting the requested rule waiver will not disserve the purpose of Section 364.04, Florida Statutes. GTE argues that in granting its request for rule waiver, the Commission will be consistent with Section 364.01, Florida Statutes, and its prior decisions regarding NDA service rule waivers.

GTE requests implementation of its NDA service, if approved, to be effective upon the date of approval by this Commission at the agenda conference. This request is made with the understanding that GTE will assume the risk of protest during the 21-day protest period, including the possibility of refund of all revenues generated under the new NDA tariff.

### III. CONCLUSION

We believe that GTE has satisfied the requirements of Section 120.542, Florida Statutes. GTE has demonstrated that the purpose of the underlying statute, section 364.04, Florida Statutes, will be served by granting the waiver. The purpose is to assure public access to the tariffs of telecommunications companies, as well as to require this Commission to regulate in the public interest and to promote competition in the telecommunications market. Since GTE's NDA service will be tariffed, public access will be assured. GTE states that the waiver will benefit its customers and promote competition in the telecommunications market. Thus, the waiver request is consistent with the underlying statutes.

By granting this relief, our decision is consistent with earlier decisions in Order Nos. PSC-98-0362-FOF-TP (BellSouth), PSC-98-0665-FOF-TP (Sprint), PSC-98-1378-FOF-TL (Northeast) and PSC-99-0381-FOF-TL (Vista-United). In these Orders, the Commission granted waivers of Rule 25-4.115, Florida Administrative Code, to BellSouth, Sprint, Northeast and Vista-United, respectively, allowing them to provide NDA service. We agree that the proposed NDA service will increase customers' choice of a competitive service. We believe that customers will benefit from the convenience of a single call to either 411 or 1+411 compared to two (2) separate calls -- first to the LEC, then to an IXC. We believe that granting GTE this relief is consistent with the provisions of Chapter 364.01, Florida Statutes, wherein we are directed to promulgate rules and policies that will promote competition and eliminate unnecessary regulatory restraints.

Based on the above, we hereby grant GTE's petition to waive Rule 25-4.115, Florida Administrative Code, allowing GTE to offer its proposed NDA service. GTE shall file a tariff amendment for the provision of NDA.

Based on the foregoing, it is

ORDER NO. PSC-99-0659-FOF-TL  
DOCKET NO. 982019-TL  
PAGE 7

ORDERED by the Florida Public Service Commission that GTE Florida Incorporated's petition for waiver of Rule 25-4.115, Florida Administrative Code, to allow the company to provide National Directory Assistance under its tariff is granted. It is further

ORDERED that GTE Florida Incorporated shall file a tariff amendment for the provision of National Directory Assistance. It is further

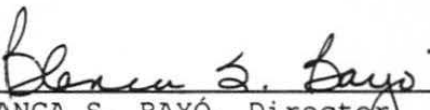
ORDERED that the effective date for implementation of GTE Florida Incorporated's tariffed National Directory Assistance service is March 16, 1999. All revenues generated under the tariff will be subject to refund in the event a formal protest is filed in accordance with Rule 28-106.201, Florida Administrative Code, which results in a final disapproval of GTE Florida Incorporated's Petition for Waiver of Rule 25-4.115, Florida Administrative Code. 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 28-106.201, 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.

ORDER NO. PSC-99-0659-FOF-TL  
DOCKET NO. 982019-TL  
PAGE 8

By ORDER of the Florida Public Service Commission this 5th day of April, 1999.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

JAM

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 is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, 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 April 27, 1999.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it



ORDER NO. PSC-99-0659-FOF-TL  
DOCKET NO. 982019-TL  
PAGE 9

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.