

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency petition by  
BellSouth Telecommunications,  
Inc. to temporarily waive toll-  
free customer service number  
placement provision of Rule 25-  
4.110(10), F.A.C.

DOCKET NO. 990777-TL  
ORDER NO. PSC-99-1791-PAA-TL  
ISSUED: September 14, 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 TEMPORARY WAIVER OF RULE 25-4.110(10),  
FLORIDA ADMINISTRATIVE CODE  
AND DENYING EMERGENCY TREATMENT

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.

BellSouth Telecommunications, Inc. (BellSouth) filed on June  
16, 1999 an Emergency Petition for Temporary Waiver of Rule 25-  
4.110(10), Florida Administrative Code, which pertains to the toll-  
free customer service number placement provision. Implementation  
of this provision of the rule began June 28, 1999.

On June 24, 1999, pursuant to Rule 28-104.005(1), Florida  
Administrative Code, BellSouth waived the time limit as it relates  
to its Emergency Petition for Temporary Waiver of Rule 25-  
4.110(10), Florida Administrative Code. On July 9, 1999, notice

DOCUMENT NUMBER-DATE

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STATE OF FLORIDA REPORTING

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was published in the Florida Administrative Weekly that BellSouth was seeking a Waiver of a Commission Rule. No comments were filed.

Request for Emergency Relief

A party seeking a temporary waiver on an emergency basis must file a request consistent with Rule 28-104.004, Florida Administrative Code, which provides that a petition for an emergency waiver shall specify, in addition to the other requirements of Section 120.542(5), Florida Statutes, the following:

- (a) The specific facts that make the situation an emergency; and
- (b) The specific facts to show that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in section 120.542, Florida Statutes.

BellSouth's Emergency Petition for Temporary Waiver does not meet the requirements of Rule 28-104.004, Florida Administrative Code, as it does not state specific facts that make the situation an emergency nor does it show an immediate adverse effect unless the waiver is issued more expeditiously. All telecommunications companies had six months after Rule 25-4.110(10), Florida Administrative Code, became effective to comply with the requirements of the rule. The fact that BellSouth did not file its request for waiver sooner than it did does not create an emergency under Rule 25-104.004, Florida Administrative Code. The case pled by BellSouth relates to why it should be granted a temporary waiver, not that the situation was an emergency under the standards set by Rule 25-4.104.004, Florida Administrative Code. Moreover, by letter, BellSouth waived the 30-day time limit set by rule under Rule 28-104.004, Florida Administrative Code. Finally, Rule 28-104.005(2), Florida Administrative Code allows an agency to deny a petition based on its decision that the situation is not an emergency and then requires the agency to review the Petition on a non-emergency basis.

Upon consideration, we deny the Petition for emergency treatment. However, we address the request on a non-emergency basis.

Request for Temporary Waiver

By Petition, BellSouth requested a temporary waiver of Rule 25-4.110(10), Florida Administrative Code, until April 30, 2000. Rule 25-4.110(10), Florida Administrative Code, states:

After January 1, 1999, or six months after the effective date of this rule, whichever is later, all bills produced shall clearly and conspicuously display the following information for each service billed in regard to each company claiming to be the customer's presubscribed provider for local, local toll, or toll service:

- (a) The name of the certificated company;
- (b) Type of service provided, i.e., local, local toll, or toll; and
- (c) A toll-free customer service number.

This rule was recently amended as part of a rule revision to address the problems created by companies that switched customers' telephone numbers without their authorization (slamming). The specific provision in the rule was added after customers testified in ten workshops around the state that they were unable to contact the company to question specific charges. The purpose of this provision was to protect customers from being slammed by providing them a way to contact the specific carrier that is providing telephone service to the customer. Because a customer may be slammed before ever receiving any usage charges on the customer's bill, it is important to have each provider's toll-free customer service number on the telephone bill at all times.

BellSouth argues in its Petition that its request meets the standards of Section 120.542, Florida Statutes. BellSouth states that the purpose of the underlying statute, Section 364.604, Florida Statutes, which relates to billing practices, is, in part, to effectively provide information the consumer can use to better protect himself from being slammed. BellSouth argues that a temporary waiver will not undermine this purpose. BellSouth states that while it will provide the name and service of each type of provider on a summary page of the customer's bill, it currently cannot provide the toll-free customer service number of each provider on that page. BellSouth states that the programming to

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include the toll-free customer service number on the page that summarizes provider information will require at least 1000 hours. BellSouth also states that at this time, it is allocating all its resources to address Y2K conversion issues and, therefore, needs more time to complete the Y2K conversion before addressing the rule compliance. However, BellSouth already lists a toll free number on a carrier's bill page when customers receive carrier specific charges on their bills. Finally, BellSouth states that it would incur substantial economic and technical hardship if it were required to implement the rule requirement during a period critical to Y2K conversion. BellSouth states that it will make every effort to implement this requirement by November 1999, but no later than April 2000.

The waiver is being requested in accordance with the requirements of Section 120.542, Florida Statutes. Subsection (2) provides that variance 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 a rule would create a substantial hardship or would violate principles of fairness.

We believe BellSouth's argument that it cannot implement the rule requirement during a period critical to Y2K conversion is a substantial hardship contemplated by Section 120.542(2), Florida Statutes. Y2K compliance is of utmost importance and, if a conflict arises where a company must choose whether to make changes to implement a rule or changes to implement Y2K compliance because of the time and expense for implementation of either, the Y2K compliance should take precedence.

In addition, we find that because BellSouth currently provides a toll-free customer service number on the carrier specific bill page, the customer is able to contact the carrier should they have questions regarding those specific charges. Customers will not have carrier specific information including the toll free number listed on their bill where they do not have carrier specific charges in a given month. However, the number of those customers should be minimal and because BellSouth will be providing the toll-free customer service number on the page summarizing provider information in the near future, we believe the underlying intent of Section 364.604, Florida Statutes, to protect consumers from being slammed will be adequately addressed on a temporary basis.

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Upon consideration, we find that the purpose of the statute will be adequately addressed until full compliance with the rule is accomplished. In addition, we find BellSouth proved a substantial economic and technical hardship based on the time and expense necessary to implement this change in its billing format in the face of Y2K compliance. Therefore, the temporary waiver requested in this docket is granted with an expiration date of April 30, 2000.

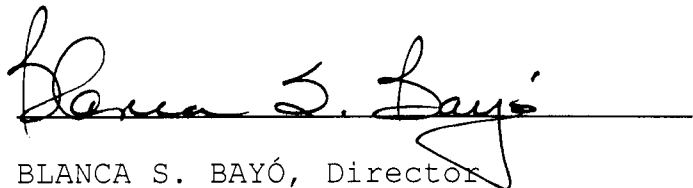
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a temporary waiver of Rule 25-4.110(10), Florida Administrative Code, is granted to BellSouth Telecommunications, Inc. until April 30, 2000. BellSouth shall continue providing the toll-free customer service number on the carrier specific charges portion of their bill. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order 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" 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 September, 1999.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

DWC

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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 that is available under Section 120.57, 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 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 October 5, 1999.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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.

M E M O R A N D U M

September 8, 1999

RECORDED - FPS

SEP 13 PM 2:0

RECORDS AND REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CALDWELL) *DWC* *CD*

RE: DOCKET NO. 990777-TL - EMERGENCY PETITION BY BELLSOUTH TELECOMMUNICATIONS, INC. TO TEMPORARILY WAIVE TOLL-FREE CUSTOMER SERVICE NUMBER PLACEMENT PROVISION OF RULE 25-4.110(10), F.A.C.

*-PAA- 1791*

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING TEMPORARY WAIVER OF RULE 25-4.110(1), FLORIDA ADMINISTRATIVE CODE AND DENYING EMERGENCY TREATMENT, to be issued in the above-referenced docket. (Number of pages in order - 6)

DWC/anc  
Attachment  
cc: Division of Communications  
I: 990777o.dwc

*See 215*

*boxed  
inserted - 1/1*