

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for emergency temporary waiver of Rules 25-4.066(2) and (3); 25-4.070(3)(a), (3)(b), and (5); 25-4.073(1)(a), (1)(c), and (1)(d); 25-4.0770(2); 25-4.040(5); and 25-4.111, F.A.C., by BellSouth Telecommunications, Inc.

DOCKET NO. 010973-TL
ORDER NO. PSC-01-1583-PAA-TL
ISSUED: July 31, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION ORDER
GRANTING TEMPORARY RULE WAIVER

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.

CASE BACKGROUND

BellSouth is an incumbent local exchange telecommunications services provider in Florida. The CWA represents a significant number of BellSouth's craft employees. Currently, BellSouth and the CWA are in negotiations to secure a new agreement for the represented workers. If BellSouth fails to negotiate a new

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agreement before the expiration of the current agreement at 11:59 p.m. on August 4, 2001, the CWA may initiate a work stoppage.

On July 17, 2001, pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, BellSouth Telecommunications, Inc. (BellSouth), filed a Petition for Emergency Temporary Rule Waiver (Petition) (Attachment A). In its Petition, BellSouth seeks a temporary waiver of Rules Nos. 25-4.066(2) and (3); 25-4.070(3)(a), (3)(b), and (5); 25-4.073(1)(a), (1)(c), and (1)(d); 25-4.0770(2); 25-4.040(5); and 25-4.111, Florida Administrative Code.

BellSouth requested in its petition that the duration of the temporary waiver initially be for 30 days and an extension would be granted if the work stoppage extended beyond 30 days. We believe that a more efficient approach would be to grant the waiver for the duration of the work stoppage, should one occur, which would eliminate the need for us to address extensions to the waiver. This approach also eliminates BellSouth being granted a waiver for any length of time after the work stoppage has ceased.

BellSouth further explains that its waiver request meets the standards of Section 120.542, Florida Statutes. Further, BellSouth explains that the purpose of the underlying statutes, Sections 364.01(4), 364.025, 364.051, 364.15 and 364.19, Florida Statutes, will not be undermined by the request for waiver. However, we believe that the applicable underlying statute for the request for waiver is Section 364.03, Florida Statutes.

To briefly summarize, BellSouth requested expedited handling of its Petition because the Agreement between the Communications Workers of America (CWA) and BellSouth will expire at 11:59 p.m. on August 4, 2001. Should BellSouth and the CWA fail to reach an agreement, the CWA may initiate a work stoppage. A work stoppage by the CWA would affect BellSouth's ability to comply with the Commission's rules identified in the Petition. If BellSouth and the CWA successfully negotiate an agreement before expiration of the current agreement, the temporary waiver of the rules identified in the Petition will be moot.

In this Order we address each rule individually for which BellSouth seeks an emergency temporary waiver.

We have authority over these matters pursuant to Section 120.542, Florida Administrative Code and Sections 364.01(4), 364.025, 364.051, 364.15 and 364.19, Florida Statutes.

RULE 24-066(2) AND (3), FLORIDA ADMINISTRATIVE CODE

Rules 25-4.066(2) and (3), Florida Administrative Code, Availability of Service, provide:

(2) Where central office and outside plant facilities are readily available, at least 90 percent of all requests for primary service in any calendar month shall normally be satisfied in each exchange or service center within an interval of three working days after receipt of application when all tariff requirements relating thereto have been complied with, except those instances where a later installation date is requested by the applicant or where special equipment or services are involved.

(3) Each telecommunications company shall establish as its objective the satisfaction of at least 95 percent of all applications for new service in each exchange within a 30 day maximum interval and, further, shall have as its objective the capability of furnishing service within each of its exchanges to applicants within 60 days after date of application; except those instances where a later installation date is requested by the applicant or where special equipment or services are involved.

If the CWA initiates a work stoppage, a significant number of BellSouth craft employees that perform installation services will not report to work. BellSouth will assign management personnel with the intent to fulfill its obligations to provide service to the areas it serves.

In order to be granted a waiver, BellSouth's petition must meet the requirements of Section 120.542, Florida Statutes. Under this statutory requirement, a petitioner requesting a waiver of a Commission rule must first demonstrate that the purpose of the underlying statute will otherwise be served if the waiver of the rule is granted. Secondly, the petitioner must demonstrate that continued enforcement of the rule would result in substantial

hardship for the petitioner or violate principles of fairness. Pursuant to 120.542 (2), Florida Statutes, "substantial hardship means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver."

We believe that BellSouth's petition meets the requirements of Section 120.542, Florida Statutes. First, BellSouth has demonstrated that if we grant the waiver request, to the extent possible, suitable and proper telecommunications facilities and connections will be provided to persons, who may apply for it, as required by Section 364.03 (3), Florida Statutes. By reassigning management personnel to perform installation services, the public interest will be served because BellSouth has expressed its intent to fulfill its obligations to provide service to the areas it serves.

Secondly, the company has demonstrated that our enforcement of the requirements of Rules 25-4.066(2) and (3), Florida Administrative Code, would result in substantial hardship for the company. BellSouth has committed to an approach whereby it will assign management personnel to perform installation services. However, reality dictates that some delays in installations may occur. Enforcement of our rules would potentially subject BellSouth to significant penalties if customers file complaints and the company was show caused based upon these complaints. BellSouth files quarterly performance reports and will self-report non-compliance with our installation rules. Likewise, BellSouth would potentially be subjected to significant penalties based on the self-reporting of performance that fails to meet our installation rules.

Therefore, we find that BellSouth's Petition meets the requirements for a temporary and emergency waiver of Rules 25-4.066(2) and (3), Florida Administrative Code, and is hereby approved for a period beginning when BellSouth notifies this Commission of the work stoppage, and ending at a time mutually agreed to by BellSouth and our staff. BellSouth shall file notice of any work stoppage with the Division of the Commission Clerk & Administrative Services no later than the first business day after the work stoppage. BellSouth shall also file a notification with this Commission that the work agreement is signed within 24 hours after the signing.

RULES 25-4.070(3)(A), (3)(B), AND (5), FLORIDA ADMINISTRATIVE CODE

Rules 25-4.070(3)(a), (3)(b), and (5), Florida Administrative Code, Customer Trouble Reports, provides:

(3)(a) Service Interruption: Restoration of interrupted service shall be scheduled to insure at least 95 percent shall be cleared within 24 hours of report in each exchange as measured on a monthly basis. For any exchange failing to meet this objective, the company shall provide an explanation with its periodic report to the Commission.

(3)(b) Service Affecting: Clearing of service affecting trouble reports shall be scheduled to insure at least 95 percent of such reports are cleared within 72 hours of the report in each exchange as measured on a monthly basis.

(5) Repeat Trouble: Each telephone company shall establish procedures to insure the prompt investigation and correction of repeat trouble reports such that the percentage of repeat troubles will not exceed 20 percent of the total initial customer reports in each exchange when measured on a monthly basis. A repeat trouble report is another report involving the same item of plant within 30 days of the initial report.

If the CWA initiates a work stoppage, a significant number of BellSouth craft employees assigned to restore interrupted service and clear service affecting trouble reports will not report to work. BellSouth will assign management personnel in an attempt to fulfill its obligations to restore interrupted service and clear service affecting trouble reports. BellSouth will make every effort to continue to give priority restoration to those customers providing emergency services.

We believe that BellSouth's petition meets the requirements of Section 120.542, Florida Statutes. First BellSouth has demonstrated that, if the request for waiver is granted, it will, to the extent possible, maintain suitable and adequate telecommunications facilities in good condition and repair as

required by Section 364.03(2) and (3), Florida Statutes, which underlies Rules 25-4.070(3)(a), (3)(b), and (5), Florida Administrative Code. By reassigning management personnel to perform restoration of interrupted service and clearing of service affecting trouble reports, BellSouth demonstrates its intention to fulfill its obligations to provide service. BellSouth's approach, of prioritizing restoration of interrupted service to those customers providing emergency services, is in the best interest for the safety and welfare of the public.

Secondly, the company has demonstrated that our enforcement of the requirements of Rules 25-4.070(3)(a), (3)(b), and (5), Florida Administrative Code, would result in substantial hardship for the company. BellSouth has committed to an approach whereby it will assign management personnel to perform restoration of interrupted services and clearing of trouble reports affecting service. However, with limited staff and resources some delays in restorations and clearing of trouble reports are imminent if a work stoppage occurs. Enforcement of our repair rules would potentially subject BellSouth to significant monetary penalties if customers file complaints and the company was show caused based upon these complaints.

Therefore, we find that BellSouth's Petition for a temporary and emergency waiver of Rules 25-4.070(3)(a), (3)(b), and (5), Florida Administrative Code, is approved for the duration of the work stoppage beginning when BellSouth notifies the Commission of the work stoppage and ending at a time mutually agreed to by BellSouth and our staff. BellSouth shall file notice of any work stoppage with the Division of the Commission Clerk & Administrative Services no later than the first day after the work stoppage. BellSouth shall also file a notification with this Commission that the work agreement is signed within 24 hours after the signing.

RULES 25-4.073(1)(A), (1)(C), AND (1)(D), FLORIDA ADMINISTRATIVE CODE

Rules 25-4.073(1)(a), (1)(c), and (1)(d), Florida Administrative Code, Answering Time, provides:

(1)(a) If emergency services for the LEC's total serving area is currently answered by the 911 system, at

least ninety (90%) percent of the calls offered to the LEC provided operator shall be answered within thirty (30) seconds after zero only is dialed.

(1)(c) At least ninety (90%) percent of all calls directed to intercept, directory assistance and repair services and eighty (80%) percent of all calls to business offices shall be answered within thirty (30) seconds after the last digit is dialed.

(1)(d) Notwithstanding (c) above, when a company utilizes a menu driven, automated, interactive answering system (referred to as the system), at least (95%) percent of the calls offered shall be answered within 15 seconds after the last digit is dialed. The initial recorded message presented by the system to the customer shall only identify the company and the general options available to the customer. The option of transferring to a live attendant shall be included in the initial message. For subscribers electing the option of transferring to a live assistant, except for business office calls, at least ninety-five (95%) percent of all calls shall be transferred by the system to a live attendant prepared to give immediate assistance within fifty-five (55) seconds after the last digit of the telephone number listed in the directory for the company's service(s) was dialed. Eighty-five (85%) percent of all such calls directed to any business office shall be transferred by the system to a live attendant within fifty-five (55) seconds after the last digit is dialed. At any time during the call, the customer shall be transferred to live assistance if the customer fails to interact with the system for a time period of ten (10) seconds following any prompt. For the purposes of this section, interaction means responding to a customer prompt offered by the system by keying (pressing) a number or character of a Dual-Tone Multiple-Frequency (DTMF) keypad associated with a telephone.

We find that BellSouth's petition meets the requirements of Section 120.542, Florida Statutes. First BellSouth has demonstrated that, if the request for waiver is granted, it will

continue to provide telecommunications services, to the extent possible, in an adequate, efficient and reasonable manner as required by Section 364.03 (1), Florida Statutes, underlying Rules 25-4.073(1)(a), (1)(c) and (1)(d), Florida Administrative Code. Through the reassignment of office-type personnel to perform other functions, BellSouth will be able to provide telecommunications services to its consumers.

Secondly, the company has demonstrated that our enforcement of the requirements of Rule 25-4.073(1)(a), (1)(c) and (1)(d), Florida Administrative Code, would result in substantial hardship for the company. BellSouth has stated that it will reassign management personnel to perform other duties in the event of a work stoppage. Due to limited staffing, consumers will probably experience some delays when placing calls to directory assistance, repair and the business offices. Enforcement of our answer time rules, Rules 25-4.073(1)(a), (1)(c) and (1)(d), Florida Administrative Code, would potentially subject BellSouth to significant monetary penalties if customers file complaints and the company was show caused based upon these complaints.

Therefore, BellSouth's Petition for a temporary and emergency waiver of Rules 25-4.073(1)(a), (1)(c), and (1)(d), Florida Administrative Code, is approved for the duration of the work stoppage, should one occur, beginning when BellSouth notifies this Commission of the work stoppage, and ending at a time mutually agreed by BellSouth and our staff. BellSouth shall file notice of any work stoppage with the Division of the Commission Clerk & Administrative Services no later than the first business day after the work stoppage. BellSouth shall also file a notification that the work agreement is signed within 24 hours after the signing.

Rule 25-4.0770(2), FLORIDA ADMINISTRATIVE CODE

Rule 25-4.0770(2), Florida Administrative Code, Customer Appointments, provides:

Each company shall keep at least 95 percent of all appointments each month. Where appointments cannot be kept by the company, the customer shall be notified by telephone call prior to the beginning of the appointment period if a can-be-reached number is obtained from the customer and a new appointment shall be scheduled. No appointment cancelled in this manner shall constitute a kept or missed appointment by the company.

If the CWA initiates a work stoppage, a significant number of BellSouth craft employees that fulfill customer appointments will not report to work. BellSouth will assign management personnel with the intent to fulfill its obligations to meet customer appointments.

We believe that BellSouth's petition meets the requirements of Section 120.542, Florida Statutes. First, BellSouth has demonstrated that telecommunications services will be rendered, to the extent possible, in a prompt, expeditious and efficient manner as required by Section 364.03, Florida Statutes, which underlies Rule 25-4.0770(2), Florida Administrative Code. Thus the purpose of the underlying statute will be served if we grant the waiver request. By reassigning management personnel to fulfill customer appointments, BellSouth will be able to provide consumers with service in as expeditious and efficient manner as possible.

Secondly, the company has demonstrated that the enforcement of the requirements of Rule 25-4.0770(2), Florida Administrative Code, would result in substantial hardship for the company. If a work stoppage occurs, BellSouth will be significantly limited in staffing. BellSouth has committed to an approach whereby it will assign management personnel to assist in meeting customer appointments. However, some delays in meeting customer appointments may occur. Enforcement of our customer appointments rules would potentially subject BellSouth to significant monetary penalties if customers file complaints and the company was show caused based upon these complaints.

Therefore, BellSouth's Petition for a temporary and emergency waiver of Rule 25-4.0770(2), Florida Administrative Code, is approved for the duration of the work stoppage, should one occur, beginning when BellSouth notifies the Commission of the work stoppage, and ending at a time mutually agreed by BellSouth and staff. BellSouth shall also file a notification after the work agreement is signed within 24 hours after the signing.

Rule 25-4.040(5), FLORIDA ADMINISTRATIVE CODE

Rule 25-4.040(5), Florida Administrative Code, Telephone Directories; Directory Assistance, provides:

Directory assistance operators shall maintain records of all telephone numbers (except for non-published telephone numbers) in the area for which they have the responsibility of furnishing service. Directory assistance records must also contain listings for "Poison Information Center" and the local telephone number, where the area served by the directory assistance operator has local calling to a Poison Information Center. If no local telephone number exists, then the toll-free telephone number of a Poison Information Center shall be listed. All new or changed listings shall be provided to directory assistance operators within 48 hours after connection of service, excluding Saturdays, Sundays and holidays.

If the CWA initiates a work stoppage, BellSouth may reassign a significant number of its non-represented employees to other more critical functions. BellSouth will assign functions to non-represented employees with the intent to fulfill its obligations to provide service to the areas it serves.

In part, Rule 25-4.040(5), Florida Administrative Code, requires BellSouth to maintain listings on "Poison Information Centers". We believe that maintenance of the "Poison Information Center" listings is a vital function directly related to the health and welfare of Florida's citizens. In addition, we believe that maintenance of the poison control listings is an insignificant workload. The maintenance of the "Poison Information Center" listings shall not be part of the waiver. The other requirements

in Rule 25-4.040(5), Florida Administrative Code, shall be included in the waiver.

We believe that BellSouth's petition meets the requirements of Section 120.542, Florida Statutes. First, BellSouth has demonstrated its commitment to protect the public health, safety and welfare of consumers by committing to continue to provide telecommunications services, to the extent possible, as required by Section 364.01, Florida Statutes, underlying Rule 25-4.040(5), Florida Administrative Code. Thus the purpose of the underlying statute will be served if we grant the waiver request. BellSouth has expressed its intent to fulfill its obligations to provide service to the areas it serves.

Secondly, the company has demonstrated that the enforcement of the requirements of Rule 25-4.040(5), Florida Administrative Code, exclusive of the requirement to maintain listings for "Poison Information Center", would result in substantial hardship for the company. Due to limited staffing, BellSouth has defined an approach, whereby it will continue to provide services to consumers by reassigning management personnel to perform services as needed. However, some delays in updating telephone directories may occur. Enforcement of our telephone directories rules would potentially subject BellSouth to significant monetary penalties if customers file complaints and the company was show caused based upon these complaints.

Therefore, BellSouth's Petition for a temporary and emergency waiver of Rule 25-4.040(5), Florida Administrative Code, exclusive of the requirement to maintain listings for "Poison Information Center", is approved for the duration of the work stoppage, should one occur, beginning when BellSouth notifies the Commission of the work stoppage, and ending at a time mutually agreed to by BellSouth and staff. BellSouth shall file notice of any work stoppage with the Division of the Commission Clerk & Administrative Services no later than the first business day after the work stoppage. BellSouth shall also file a notification after the work agreement is signed within 24 hours after the signing.

Rule 25-4.111(1), FLORIDA ADMINISTRATIVE CODE

Rule 25-4.111, Florida Administrative Code, Customer

Complaints and Service Requests, provides:

(1) Each telephone utility shall make a full and prompt investigation of all complaints and service requests made by its customers, either directly to it or through the Commission and respond to the initiating party within fifteen (15) days. The term "complaint" as used in this rule shall be construed to mean any oral or written report from a subscriber or user of telephone service relating to a physical defect, difficulty or dissatisfaction with the operation of telephone facilities, errors in billing or the quality of service rendered.

(2) Arrangements shall be made by each telephone company to receive customer trouble reports twenty-four (24) hours daily and to clear trouble of an emergency nature at all hours, consistent with the bona fide needs of the customer and personal safety of utility personnel.

(3) If the use of service by any subscriber interferes unreasonably with the necessary service of other customers, such subscribers may be required to take service in sufficient quantity or of a different class or grade.

If the CWA initiates a work stoppage, BellSouth may assign management personnel, normally assigned to complaint resolution, to other functions, such as installation and repair. BellSouth will assign functions to management employees with the intent to fulfill its obligations to provide service to the areas it serves. We support BellSouth's objective of prioritizing dial tone service as its primary objective.

In its Petition, BellSouth requested a waiver of Rule 25-4.111, Florida Administrative Code, in its entirety. However, at the July 24, 2001 Agenda Conference, BellSouth stated that it only meant to request a waiver of Section (1) of Rule 25-4.111, Florida Administrative Code.

We believe that BellSouth's petition meets the requirements of Section 120.542, Florida Statutes. First, BellSouth has

demonstrated that telecommunications services shall be provided, to the extent possible, in an expeditious and efficient manner as required by Section 364.03, Florida Statutes, underlying Rule 25-4.111(1), Florida Administrative Code. By reassigning management personnel to perform other functions, BellSouth will be able to continue to provide services to its consumers in an expedited and efficient manner. Thus the purpose of the underlying statute will be met.

Secondly, the company has demonstrated that the enforcement of the requirements of Rule 25-4.111(1), Florida Administrative Code, would result in substantial hardship for the company. BellSouth has committed to an approach whereby it will assign management personnel to perform functions involving the delivery of basic local service. However, some delays in resolving consumer complaints may occur. Enforcement of the consumer complaints rules would potentially subject BellSouth to significant monetary penalties if customers file complaints and the company was shown to be caused based upon non-resolution of these complaints.

Therefore, BellSouth's Petition for a temporary and emergency waiver of Rule 25-4.111(1), Florida Administrative Code, is approved for the duration of the work stoppage, should one occur, beginning when BellSouth notifies the Commission of the work stoppage, and ending at a time mutually agreed to by BellSouth and staff. BellSouth shall resolve all backlogged complaints, if any, within 15 days after an agreement is reached between BellSouth and the CWA. BellSouth shall file notice of any work stoppage with the Division of the Commission Clerk & Administrative Services no later than the first business day after the work stoppage. BellSouth shall also file a notification after the work agreement is signed within 24 hours after the signing.

PUBLICATION OF DELAYS IN SERVICE

We find it appropriate to give existing and potential customers information regarding any work stoppages that may cause a degradation in the quality of service and support provided by BellSouth. Informed consumers will be better equipped to deal with potential service delays.

Therefore, BellSouth shall publicize, through radio,

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television, and newspaper advertisements, the potential of delays in service and support to customers, if there is a work stoppage by the CWA. BellSouth shall prepare announcements in advance and immediately release the prepared announcements if a work stoppage occurs.

CONCLUSION

We find that BellSouth's petition meets the requirements of Section 120.542, Florida Statutes. If no timely protest to the this proposed agency action is filed within 21 days of the date of the issuance of this Order, this decision shall be final and effective upon issuance of the consummating order. This docket shall remain open pending notification that an agreement has been reached by BellSouth and the CWA. Thereafter, this docket shall be closed administratively if no further action from the Commission is required.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Petition for Emergency Temporary Rule Waiver is hereby approved as set forth in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc. shall file notice of any work stoppage with the Division of the Commission Clerk and Administrative Services no later than the first business day after the work stoppage. It is further

ORDERED that BellSouth Telecommunications, Inc. shall publicize, through radio, television, and newspaper advertisements, the potential of delays in service and support to customers, if there is a work stoppage by the CWA. BellSouth shall also prepare announcements in advance and immediately release the prepared announcements if a work stoppage occurs.

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 the Commission Clerk and

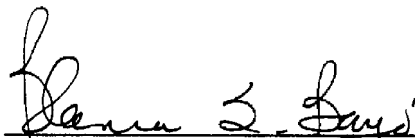
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Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that docket shall remain open pending notification of an agreement between BellSouth Telecommunications, Inc. and Communications Workers of America. It is further

ORDERED that in the event that BellSouth Telecommunications, Inc. files the agreement between BellSouth Telecommunications, Inc. and Communications Workers of America and this Order becomes final, that this docket shall be closed. It is further

By ORDER of the Florida Public Service Commission this 31st day of July, 2001.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 21, 2001.

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.