

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for extension and modification of existing Service Guarantee Program and for limited waiver of Rules 25-4.066(2), 25-4.070(1)(b), 25-4.070(3)(a), and 25-4.073(1)(d), F.A.C., by BellSouth Telecommunications, Inc.

DOCKET NO. 050095-TL
ORDER NO. PSC-05-0440-PAA-TL
ISSUED: April 25, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING BELL SOUTH TELECOMMUNICATIONS, INC.'S
PETITION FOR EXTENSION AND MODIFICATION OF
BELL SOUTH'S EXISTING SERVICE GUARANTEE PLAN AND
FOR LIMITED WAIVER OF SERVICE QUALITY RULES

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 (F.A.C.).

I. Case Background

On August 13, 2001, and February 13, 2002, we issued Order Nos. PSC-01-1643-AS-TL and PSC-02-0197-PAA-TL, respectively, approving the Settlement Agreement between the Office of Public Counsel and BellSouth Telecommunications, Inc. (BellSouth), addressing BellSouth's quality of service and granting a limited waiver of certain service quality rules. The Service Guarantee Program (SGP) operates as an exemption from certain quality of service rules. The existing SGP and the rules waiver expired at midnight on February 28, 2005.

On February 2, 2005, BellSouth filed a Petition for Extension and Modification of BellSouth's Existing Service Guarantee Program and for Relief from Rules 25-4.066(2); 25-4.070(1)(b); 25-4.070(3)(a); and 25-4.073(1)(d), F.A.C. (Petition). Subsequently, on March 22, 2005, BellSouth sent a letter modifying its proposal.

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

In accordance with Section 120.542, Florida Statutes (F.S.), notice of the request for a limited rule waiver was published in the February 18, 2005, Florida Administrative Weekly. The notice provided that responses to the Petition be filed by March 4, 2005; none were received.

II. Analysis

A. Extension of the Existing Limited Waiver of Rule Nos. 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), F.A.C.

In Order No. PSC-02-0197-PAA-TL, issued February 13, 2002, Docket No. 010097-TL, In Re: Compliance Investigation of BellSouth Communications, Inc. for violation of service standards, we approved BellSouth's Petition for limited waiver of Rule Nos. 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), F.A.C. The limited rule waiver expired on February 28, 2005.

The extended waiver of the rules would be in effect until Rule 25-4.085, F.A.C., Service Guarantee Program, becomes effective. We addressed modification to Rule 25-4.085, F.A.C., in Docket No. 991473-TP, In Re: Review and revision of Rules 25-4.002, 4.003, 4.0185, 4.023, 4.038, 4.039, 4.066, 4.070, 4.072, 4.073, 4.0770, 4.080, and 4.085, F.A.C., at the April 5, 2005, Agenda Conference. Rule 25-4.085, F.A.C., permits companies to petition for approval of a SGP, which relieves the company from the rule requirement related to each service standard addressed in the approved SGP. Once Rule 25-4.085, F.A.C., becomes effective, the waiver of Rules 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), F.A.C., would be rendered moot since BellSouth would be operating under a SGP.

Rule Nos. 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), F.A.C., pertain to the establishment of primary service and repair of interrupted service within specific time frames.

Rule 25-4.066(2), F.A.C., provides:

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.

Rule 25-4.070(3)(a), F.A.C., provides:

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.

Rule 25-4.070(1)(b), F.A.C., provides:

In the event a subscriber's service is interrupted other than by a negligent or willful act of the subscriber and it remains out of service in excess of 24 hours after being reported to the company, an appropriate adjustment or refund shall be made to the subscriber automatically, pursuant to Rule 25-4.110 (Customer Billing). Service interruption time will be computed on a continuous basis, Sundays and holidays included. Also, if the company finds that it is the customer's responsibility to correct the trouble, it must notify or attempt to notify the customer within 24 hours after the trouble was reported.

In order to receive a waiver of the rules, BellSouth must demonstrate that its SGP will achieve the purpose of the statutes underlying the rules. Section 120.542(2), F.S., states:

Variations 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. For the 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's SGP has been in effect since March 1, 2002, and meets the quality of service provisions of Chapter 364, F.S., by giving immediate and direct compensation to customers. Additionally, it imposes similar penalties to BellSouth for not meeting objectives that are consistent with our service rules. Further, the additional application of our rules would result in duplicative penalties, unfairly imposing an economic hardship.

We are vested with jurisdiction over this matter pursuant to Sections 120.542, 364.01, 364.03, 364.17, and 364.183, F.S. Upon consideration, we approve an extension of the existing limited waiver of the applicability of Rule Nos. 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), F.A.C., approved in Docket No. 010097-TL.

B. Extension and Modification of BellSouth's Existing Service Guarantee Program and Relief from Rules 25-4.066(2); 25-4.070(1)(b); 25-4.070(3)(a); and 25-4.073(1)(d), F.A.C.

BellSouth's proposed modified SGP is similar to its existing SGP, which we approved in Order No. PSC-02-0197-PAA-TL, issued February 13, 2002, Docket No. 010097-TL, In Re: Compliance Investigation of BellSouth Communications, Inc. for violation of service standards, with the exception of the changes summarized in Table 1 below.

Table 1

Repair – Out-of-Service (Restoration of Interrupted Service)	
Existing SGP	Proposed Modified SGP
Where BellSouth fails to complete a repair within 24 hours from the time an order is received; The customer will receive an automatic credit on the bill in the amount of \$4.00, plus 3 times the daily local service charge, up to \$35.00 and no less than \$10.00. Saturdays and Sundays are included in calculating service credits. The SGP only applies to residential and single line business customers.	Identical except that the minimum amount of automatic credit a customer will receive increases from \$10 to \$11, and the maximum credit increases from \$35 to \$40. The SGP for single line business will be eliminated upon the effective date of the rules approved in Docket No. 991473-TP.
Primary Service Installation	
Existing SGP	Proposed Modified SGP
Where BellSouth fails to install a customer's primary or additional local or single line business service on the date which the customer and BellSouth agree, BellSouth will give the customer an automatic credit of \$25.00. Where BellSouth is offering a commitment date greater than 3 days and the customer requests an earlier date, the commitment credit will be based on the customer requested date, or on 3 days, whichever is greater.	Identical, except that the SGP for single line business will be eliminated upon the effective date of the rules approved in Docket No. 991473-TP.
Lifeline Tariff Filing	
Existing SGP	Proposed Modified SGP
File a tariff for an income eligibility test at 125% of the Federal poverty income guidelines for Lifeline.	File a tariff adding the National School Lunch Program as an eligible Lifeline criterion to augment the current eligibility guidelines.
Term	
Existing SGP	Proposed Modified SGP
Expires on February 28, 2005.	No expiration date. The SGP may be terminated by either the Commission or the company at any time. The current SGP will remain in effect until Rule 25-4.085, F.A.C., becomes effective. At that time, the SGP will operate until that rule and the waivers become moot with no further Commission action.
Force Majeure	
Existing SGP	Proposed Modified SGP
In the event of an emergency, BellSouth will operate under Force Majeure and when it is reasonable to expect that the company will be unable to meet its installation and repair commitments, it shall be	Identical, except when under Force Majeure, BellSouth will also suspend payments into the Lifeline Community Service Fund for missed answer time measurements within the affected

relieved of its obligations to provide credits for failure to meet the objectives for installation and repair within the affected areas.	areas.
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Answer Time	
Existing SGP	Proposed Modified SGP
<p>A measurement for answer time was not included.</p> <p>BellSouth established the Community Service Fund in the form of a corporate undertaking.</p> <p>BellSouth contributed \$250,000 to the fund in 2002 and \$150,000 in 2003.</p>	<p>A new answer time measurement applies to customers who call the residential business and repair offices and who do not interact with the automated answer system.</p> <p>Where BellSouth fails to meet the answer time measurement, it will credit the Lifeline Community Service Fund.</p> <p>The measurement will require at least 90% of the calls to the Business office and repair office to be answered by the live attendant prepared to give immediate assistance within 55 seconds of being transferred to the attendant. BellSouth will maintain 100% accessibility.</p> <p>The amount of the payment of credits shall be calculated separately for the business and repair offices and shall be applied based on BellSouth's performance in accordance with the following parameters:</p> <p>Less than 90%, but greater or equal to 80% - \$2,000 Less than 80%, but greater or equal to 70% - \$5,000 Less than 70% - \$7,000</p>

BellSouth estimates that the increase in the minimum (\$10 to \$11) and maximum (\$35 to \$40) automatic credits for missing out-of-service repair objectives equates to approximately \$140,000 additional customer credits as compared to the existing SGP. BellSouth was not able to provide an estimate for the increase in cost to add the National School Lunch Program as an eligible Lifeline criterion. BellSouth claims that the programming to implement the increased amount of the automatic credits for out-of-service would not be completed until August 2005.

III. Conclusion

We find that BellSouth's proposed modified SGP benefits the customers and is in the public interest. Accordingly, we approve BellSouth Telecommunications, Inc.'s Petition for Extension and Modification of its Existing Service Guarantee Program and for relief from Rules 25-4.066(2); 25-4.070(1)(b); 25-4.070(3)(a); and 25-4.073(1)(d), F.A.C., and extend the existing limited waiver of the applicability of Rule Nos. 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), F.A.C.

Based on the foregoing, it is

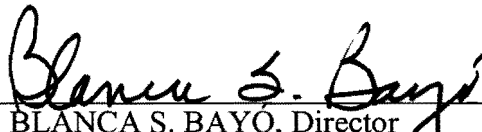
ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Petition for Extension and Modification of BellSouth's Existing Service Guarantee Program and for Relief from Rules 25-4.066(2); 25-4.070(1)(b); 25-4.070(3)(a); and 25-4.073(1)(d), Florida Administrative Code is hereby approved. It is further

ORDERED that the existing limited waiver of the applicability of Rule Nos. 25-4.066(2), 25-4.070(3)(a), and 25-4.070(1)(b), Florida Administrative Code shall be extended. 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 the Commission Clerk and 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 in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 25th day of April, 2005.



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

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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 May 16, 2005.

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/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.