

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth
Telecommunications, Inc. for waiver of Rule
25-4.118(12), F.A.C. | DOCKET NO. 050879-TL
ORDER NO. PSC-06-0087-PAA-TL
ISSUED: February 8, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING WAIVER OF
RULE 25-4.118(12), FLORIDA ADMINISTRATIVE CODE

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. Case Background

On November 16, 2005, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for waiver of Rule 25-4.118(12), Florida Administrative Code (F.A.C.). The waiver applies only to BellSouth, the Incumbent Local Exchange Company, and relieves the company of the requirement to answer calls after its normal business hours regarding unauthorized service provider changes (slamming).

On December 16, 2005, notice of BellSouth's petition was published in the Florida Administrative Weekly as required by Section 120.542, Florida Statutes.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.01 and 364.603, Florida Statutes.

II. Analysis

Rule 25-4.118(12), F.A.C., states:

Each provider shall maintain a toll-free number for accepting complaints regarding unauthorized provider changes, which may be separate from its other customer service numbers, and must be answered 24 hours a day, seven days a

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week. If the number is a separate toll-free number, beginning six months after the effective date of this rule new customers must be notified of the number in the information package provided to new customers or on their first bill. The number shall provide a live operator or shall record end user complaints made to the customer service number to answer incoming calls. A combination of live operators and recorders may be used. If a recorder is used, the company shall attempt to contact each complainant no later than the next business day following the date of recording and for three subsequent days unless the customer is reached. If the customer is not reached, the company shall send a letter to the customer's billing address informing the customer as to the best time the customer should call or provide an address to which correspondence should be sent to the company. Beginning six months after the effective date of this rule, a minimum of 95 percent of all call attempts shall be transferred by the system to a live attendant or recording device prepared to give immediate assistance within 60 seconds after the last digit of the telephone number listed as the customer service number for unauthorized provider change complaints was dialed; provided that if the call is completed within 15 seconds to an interactive, menu-driven, voice response unit, the 60-second answer time shall be measured from the point at which the customer selects a menu option to be connected to a live attendant. Station busies will not be counted as completed calls. The term "answer" as used in this subsection means more than an acknowledgment that the customer is waiting on the line. It shall mean the provider is ready to render assistance or accept the information necessary to process the call.

The rule requires that each company, including BellSouth, maintain a toll-free number for accepting slamming complaints that must be answered 24 hours a day, seven days a week by a live operator or the complainant's call can be recorded. If a recorder is used, BellSouth must attempt to contact each complainant no later than the next business day following the date of recording and for three subsequent days unless the customer is reached.

During normal business hours¹, customers can contact the BellSouth business office with their complaints and speak with a live operator. After business hours, BellSouth utilizes a voice mailbox to record customer complaints regarding slamming. BellSouth is requesting a waiver of the requirement to answer calls regarding slamming complaints after its normal business hours so that it may eliminate using its voice mailbox. BellSouth will still answer calls during its normal business hours at its business office.

When subsection (12) of Rule 25-4.118, F.A.C. was implemented in 1992, and later amended in 1998, slamming was a major problem in the telecommunications industry in Florida. The intent of requiring telecommunications companies to maintain a 24 hour a day, seven day a week toll free slamming hot-line is to ensure that customers have a means to communicate with the company and that the company replies to the customer. In June 1999, to comply with Rule

¹ BellSouth's normal business hours for residential customer service are 8:00 a.m. until 7:00 p.m., Monday through Friday, and 8:00 a.m. until 5:00 p.m. on Saturday. BellSouth's normal business hours for business customer service are 8:00 a.m. until 6:00 p.m. Monday through Friday.

25-4.118(12), F.A.C., BellSouth implemented a toll-free voice mailbox to receive customer calls after its normal business hours.

BellSouth notes in its petition that out of over 23,000 messages left on its voice mailbox from January 2004 through October 2005, only 29 of the messages related to slamming complaints – of which none were confirmed to be slamming complaints against BellSouth. The after-hours voice mailbox is intended to be used only for recording slamming complaints, but customers also use it to leave messages regarding other inquiries. BellSouth reports that one of its representatives spends approximately 92 hours per month monitoring and maintaining the voice mailbox. BellSouth contends that the resources used to maintain and monitor the voice mailbox could be used to better serve its customers in the business office during normal business hours. Customers can still contact BellSouth during its normal business hours regarding slamming complaints. Alternatively, a customer may contact BellSouth after business hours through its website and submit a complaint via email.

BellSouth has met the requirements of Section 120.542, Florida Statutes, and Rule 28-104.002, F.A.C., to justify a waiver of Rule 25-4.118(12), F.A.C. BellSouth has demonstrated that it incurs a substantial hardship by expending resources unnecessarily to comply with the rule requirement to answer calls regarding slamming complaints during non-business hours given that BellSouth receives relatively few slamming complaints. Further, BellSouth will continue to meet the intent of underlying statute and rule through the customers' ability to file a complaint 24 hours a day, seven days a week online via BellSouth's complaint email feature on the BellSouth website. Customers may still contact a live operator during normal business hours.

Accordingly, we find that BellSouth's petition to waive the requirement of Rule 25-4.118(12), Florida Administrative Code, and BellSouth's alternative wherein the toll-free telephone number will only be answered during normal business hours, are hereby approved. Further, if no person whose substantial interests are affected by this proposed agency action files a protest within 21 days issuance of this Order, this docket shall be closed upon issuance of a consummating order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s petition to waive the requirement of Rule 25-4.118(12), Florida Administrative Code, and its alternative wherein the toll-free telephone number will only be answered during normal business hours, are hereby approved. 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 8th day of February, 2006.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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 March 1, 2006.

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.