

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast for waiver of Rule 25- 4.040(2), Florida Administrative Code.	DOCKET NO. 090082-TL ORDER NO. PSC-09-0492-PAA-TL ISSUED: July 8, 2009
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The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

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.

**I. Case Background**

On February 13, 2009, BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T Florida), an incumbent local exchange telecommunications company (ILEC), filed a request for a permanent rule waiver pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code (F.A.C.). AT&T Florida seeks relief from Rule 25-4.040(2), F.A.C., which requires the ILEC to furnish each subscriber a directory of local residential and business listings.

If the waiver is granted, AT&T Florida subscribers would no longer receive printed copies of the residential listings on an up-front basis. Instead, AT&T Florida would only furnish printed copies of its business yellow pages directory and provide the residential listings via the internet. Subscribers could request printed copies of the residential white pages directory or CD-ROM (where available) free of charge by calling a toll-free number.

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The Florida Administrative Weekly (FAW) notice of AT&T Florida's permanent waiver request was published on March 6, 2009. No written comments were received during the 14-day comment period.

On March 16, 2009, our staff met with representatives of AT&T Florida and the Office of Public Counsel (OPC) to discuss consumer safeguards.

On March 25, 2009, AT&T Florida filed additional information addressing consumer issues and the economic impact of continuing to provide printed residential white pages directories or CD-ROMs on an up-front basis.

On May 19, 2009, AT&T Florida provided, per our staff's request, a mock-up of the yellow pages cover for the Miami-Dade area.<sup>1</sup>

We are vested with jurisdiction in this matter pursuant to Sections 120.542, 350.127, and 364.02(1), Florida Statutes.

## **II. Analysis**

Under Section 120.542, Florida Statutes, and Rule 28-104.002, F.A.C., a person affected by a Commission Rule may petition this Commission for a waiver of that Rule. We have general statutory authority to grant this waiver under Section 120.542(2), Florida Statutes, which states:

\* \* \*

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute<sup>2</sup> will be or has been achieved by other means by the person and when the application of a rule would create a substantial hardship or would violate principles of fairness. For 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.

\* \* \*

Rule 28-104.002, F.A.C., states in part:

\* \* \*

(2) The petition must include the following information:

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<sup>1</sup> Section 120.542(8), Florida Statutes, states, "An agency shall grant or deny a petition for variance or waiver within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition."

<sup>2</sup> Section 364.02(1), Florida Statutes, defines basic local telecommunications service to include an alphabetical directory listing.

(g) The specific facts that demonstrate a substantial hardship or a violation of principles of fairness that would justify a waiver or variance for the petitioner;

(h) The reason why the variance or the waiver requested would serve the purposes of the underlying statute;

\* \* \*

Rule 25-4.040(2), F.A.C., states in part:

\* \* \*

Each subscriber served by a directory shall be furnished one copy of that directory for each access line. Subject to availability, additional directories shall be provided by the local exchange telecommunications company, which may charge a reasonable fee therefor.

\* \* \*

Additionally, we have statutory authority to place terms or conditions upon any waiver that we grant under section 120.542(2), Florida Statutes. Section 120.542(1), Florida Statutes, states in part:

\* \* \*

An agency may limit the duration of any grant of a variance or wavier or otherwise impose conditions on the grant only to the extent necessary for the purpose of the underlying statute to be achieved.

\* \* \*

Rule 25-4.040, F.A.C., requires various information be included in the directory such as: alphabetical list of all local subscribers (except unlisted or unpublished subscribers); description of local calling area; directory publication date; 911 instructions; the number for the Poison Information Center; contact information for this Commission; and information concerning repair service, directory assistance, service disconnection procedures, emergency interrupt, business and payment offices, No Sales Solicitation, and inside wiring policy. AT&T Florida has stated that all information required by the rule will be available on-line in the "traditional directory format" and in the business yellow pages directories.

To be granted a waiver, a Petitioner must meet the statutory threshold by demonstrating that granting the waiver would serve the purpose of the underlying statute, and demonstrating that without the waiver the Petitioner would have a substantial hardship.

We find that the permanent rule waiver request meets the purpose of the underlying statute (Section 364.02(1), Florida Statutes) by providing directory information without compromising consumer access to listed residential numbers. In response to questions from OPC, AT&T Florida asserted that in 2007, confidential statistical studies of markets in the Southeast, including Florida, showed the average customer using the residential and business listings a combined 1.68 times a month and “73% of the customers believed it acceptable to make the TRWP [The Real White Pages] available only by request.” AT&T Florida has already conducted trials in Atlanta, Georgia and Austin, Texas. AT&T Florida stated in its Petition that “less than 1% in Atlanta, [and] just over 1.7% in Austin” requested a residential white pages directory.

AT&T Florida also reported that only four complaints were received from Austin, Texas subscribers concerning the after-hours automated ordering system for the residential white pages directory, and only one complaint had been received about eliminating the up-front delivery of the residential directory. AT&T Florida reported no complaints from Atlanta subscribers.

According to AT&T Florida, other states have provided alternatives to the automatic delivery of printed directories. For example, the Public Utilities Commission of Ohio has approved a similar rule waiver request; in Indiana this matter became a non-issue due to regulatory changes; and the Oklahoma Corporation Commission amended its directory rule, OAC 165:55-7-1, subject to legislative approval, to allow directories to be furnished in a variety of formats.

Adequate notification to subscribers regarding the change in the distribution of residential white pages and how to order a free copy of the directory is crucial. On March 25, 2009, in response to Commission and OPC questions, AT&T Florida filed supplemental information that in addition to three places in and on the Real Yellow Pages Directories (on the cover, in the customer call guide, and on a stiff tab insert), the company would also inform subscribers of the directory distribution change in the “News You Can Use”<sup>3</sup> section of their bills the month preceding and the month a yellow pages directory is issued for a local calling area.

Through discussions with our staff and OPC, AT&T has agreed to make the following modifications to its yellow pages directory to promote subscriber notification:

- For the first year, the words “To obtain a free copy of the residential white pages, please call 1-800-422-1955” will be highlighted on the front cover.
- For subsequent years, the words “For more information on how to obtain a free copy of your residential white pages, please refer to the Customer Guide” will be highlighted on the front cover.
- On the first page of the Customer Guide, the ‘800’ number and the word “free” will be made more prominent by increasing the font and highlighting them in blue.

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<sup>3</sup> In Docket No. 070370-TL we approved AT&T Florida’s new billing format which contained the “News You Can Use” section.

In the Customer Guide section, subscribers will find the toll-free number for ordering a free residential directory or CD-ROM (where available). The guide also provides two websites for accessing residential numbers, [www.RealPagesLive.com](http://www.RealPagesLive.com) and [www.YELLOWPAGES.com](http://www.YELLOWPAGES.com).

### **III. Decision**

AT&T Florida's waiver request recognizes advances in technology while protecting the interests of subscribers who want to continue to receive a free printed residential directory. We find that the rule waiver request meets the purpose of the underlying statute and rule by allowing AT&T Florida to provide directory information without compromising consumer access to listed residential numbers. However, before approving a permanent waiver, we find it imperative to receive customer input and to ensure that consumers are aware that they will no longer be provided an up-front copy of the residential white pages, and that they will have to call to request their free copy of the printed residential directory.

Accordingly, we deny AT&T Florida's request for a permanent rule waiver, but grant AT&T Florida a temporary waiver of Rule 25-4.040(2), F.A.C., which requires the ILEC to furnish each subscriber a directory of local residential and business listings. This rule waiver shall remain in effect for a period of two (2) years from the issuance of the Consummating Order.

In conjunction with the granting of this temporary waiver, both this Commission and AT&T Florida shall engage in public outreach, that is designed to actively engage consumers and seek their input regarding the implementation and effects of this rule waiver. The Commission shall go about public outreach through its regular channels of public interaction which might include, but are not limited to, public service announcements, news releases, questionnaires, or on our website. Our staff shall determine the most appropriate and effective methods of notifying consumers and seeking their input. AT&T Florida shall go about public outreach through its own regular channels of public interaction.

Additionally, AT&T Florida shall increase the size of the highlighted words, "To obtain a free copy of the residential white pages, please call 1-800-422-1955," on the front cover of its yellow pages directory, to a minimum of fourteen-point (14) type font. These words shall remain on the cover for the first year of the waiver. The second year of the waiver, AT&T Florida may change the highlighted words to refer consumers to the yellow pages' Customer Guide pages.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast's (AT&T Florida) request for a permanent rule waiver pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code (F.A.C.) of Rule 25-4.040(2), F.A.C., is denied. It is further

ORDERED that AT&T Florida is granted a temporary rule waiver of the residential directory requirements of Rule 25-4.040(2), F.A.C. This temporary rule waiver shall remain in effect for a period of two (2) years from the issuance of the Consummating Order. It is further

ORDERED that during the two (2) years this rule waiver remains in effect, both this Commission and AT&T Florida shall engage in public outreach designed to seek input from consumers regarding the implementation and effect of the rule waiver. It is further

ORDERED that AT&T Florida shall increase the size of the highlighted words, "To obtain a free copy of the residential white pages, please call 1-800-422-1955," on the front cover of its yellow pages directory, to a minimum of fourteen-point (14) type font. These words shall remain on the cover for the first year of the waiver. The second year of the waiver, AT&T Florida may change the highlighted words to refer consumers to the yellow pages' Customer Guide pages. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 8th day of July, 2009.



ANN COLE  
Commission Clerk

(SEAL)

JLM

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.

ORDER NO. PSC-09-0492-PAA-TL

DOCKET NO. 090082-TL

PAGE 7

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 29, 2009.

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.