

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED

APR 16 1998

FPSC - Records/Reporting

M E M O R A N D U M

MARCH 16, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF COMMUNICATIONS (AUDU) *AS*
DIVISION OF LEGAL SERVICES (PELLEGRINI) *CP*

RE: DOCKET NO. 980231-TL - SPRINT'S PETITION TO WAIVE RULE
25-4.115, FLORIDA ADMINISTRATIVE CODE

AGENDA: MARCH 28, 1998 - REGULAR AGENDA - PROPOSED AGENCY ACTION
- INTERESTED PARTIES MAY PARTICIPATE

CRITICAL DATES: MAY 12, 1998

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\980231.RCM

CASE BACKGROUND

On February 12, 1998, Sprint-Florida Incorporated (Sprint) filed a petition with this Commission requesting a waiver of Rule 25-4.115, Florida Administrative Code. In its petition, Sprint states that Rule 25-4.115, Florida Administrative Code, appears to prohibit Sprint in its present capacity as a local exchange company (LEC) from providing directory assistance (DA) listings for subscribers whose telephone numbers are outside the Home Numbering Plan Area (HNPA) of the caller. Sprint proposes to provide National Directory Assistance (NDA) to its Florida customers.

In Order No. PSC-96-1434-FOF-TP, issued November 25, 1996, in Docket No. 960876-TP, the Commission granted BellSouth Telecommunications, Inc.'s (BellSouth's) petition for waiver of Rule 25-4.115, Florida Administrative Code, with respect to interexchange routing of Directory Assistance (DA) calls within the Southeast LATA following the 305 NPA split. In Proposed Agency Action Order No. 98-0362-FOF-TL, issued March 5, 1998, in Docket No. 971560-TL, the Commission again granted BellSouth a waiver of

04340 APR 16 1998

DOCKET NO. 980231-TL
DATE: APRIL 16, 1998

Rule 25-4.115, Florida Administrative Code, this time to enable BellSouth to provide National Directory Assistance (NDA) service. On March 26, 1998, MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., filed a protest of the Commission's order and requested a formal hearing. A hearing has been set for August 10-11, 1998.

At the February 17, 1998, Agenda Conference, the Commission directed staff to initiate rulemaking for purposes of revising Rule 25-4.115, Florida Administrative Code. Staff is awaiting the Commission's resolution of the protest in Docket No. 971560-TL before proceeding.

Pursuant to Section 120.542(6), Florida Statutes, notice of Sprint's petition for waiver was submitted to the Secretary of State on February 25, 1998. Notice was published in the Florida Administrative Weekly on March 6, 1998. No comments were submitted during the comment period, which ended on March 20, 1998.

DOCKET NO. 980231-TL
DATE: APRIL 16, 1998

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Sprint's petition for waiver of Rule 25-4.115, Florida Administrative Code, allowing Sprint to provide National Directory Assistance?

RECOMMENDATION: Yes. The Commission should grant Sprint's petition for waiver of Rule 25-4.115, Florida Administrative Code, allowing Sprint to provide National Directory Assistance. (AUDU, PELLEGRINI)

STAFF ANALYSIS:

Rule Waiver

With the amendments made to the Administrative Procedures Act by the 1996 Legislature, agencies are required to consider requests for variances or waivers from their rules according to the requirements set forth in Section 120.542, Florida Statutes. Sprint seeks a waiver of Rule 25-4.115, Florida Administrative Code. The rule prohibits Sprint as a LEC from providing directory assistance outside of the caller's HNPAs.

Section 120.542, Florida Statutes, provides that:

(1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation....

(2) Variances 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 the rule would create a substantial hardship or would violate principles of fairness. For purposes of this

DOCKET NO. 980231-TL
DATE: APRIL 16, 1998

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.

Rule 25-4.115, Florida Administrative Code, Directory Assistance, provides, in pertinent part, that:

(2) Charges for calls within a local calling area or within a customer's Home Numbering Plan Area (HNPA) shall be at rates prescribed in the general service tariff of the local exchange company originating the call and shall be subject to the following:

* * *

(b) The same charge shall apply for calls within a local calling area and calls within an HNPA.

(3) Charges for intrastate calls to directory assistance outside of the caller's HNPA shall be at rates prescribed in the general services tariff of the interexchange companies
....

The underlying statutes in this case are Sections 364.03 and 364.04, Florida Statutes. Section 364.03, Florida Statutes, is inapplicable to Sprint as a price regulated LEC. Section 364.051, Florida Statutes. Section 364.04, Florida Statutes, in pertinent part, provides that:

(1) Upon order of the commission, every telecommunications company shall

DOCKET NO. 980231-TL
DATE: APRIL 16, 1998

file with the commission, and shall print and keep open to public inspection, schedules showing the rates, tolls, rentals, contracts, and charges of that company for service to be performed within the state.

(2) The schedule, as printed and open to public inspection, shall plainly state the places between which telecommunications service will be rendered and shall also state separately all charges and all privileges or facilities granted or allowed and any rules or regulations or forms of contract which may in anywise change, affect, or determine any of the aggregate of the rates, tolls, rentals, or charges for the service rendered.

Sprint states that it has developed an NDA service that it wishes to provide to its customers in Florida on a HNPA basis. With NDA service, Sprint's customers would be able to obtain telephone numbers in unknown or distant area codes with a single call to either 411 or HNPA-555-1212. The legal hardship on which Sprint's waiver request is based is that Rule 25-4.115, Florida Administrative Code, limits Sprint to providing DA services within the caller's local calling area or HNPA; only interexchange carriers are permitted to provide DA services elsewhere. Sprint asserts that nothing else operates to prohibit it from offering NDA service. Sprint states that waiving Rule 25-4.115, Florida Administrative Code, would enable it to provide DA services outside of the NPA of the originating line, thereby promoting competition and benefitting Florida telecommunications customers.

Staff believes that waiving Rule 25-4.115, Florida Administrative Code, in this instance would not disserve the purpose of the applicable underlying statute, Section 364.04, Florida Statutes. That purpose is to assure public access to the tariffs of telecommunications companies. The NDA service that Sprint is prepared to launch must be tariffed. Sprint cannot, however, launch the service unless the provision of the rule limiting DA services outside of the NPA of the originating line to

interexchange carriers is waived. Granting the requested waiver would be in harmony, moreover, with the Legislature's finding, expressed in Section 364.01, Florida Statutes, that the competitive provision of telecommunications service is in the public interest and will provide consumers with choices arising from new services.

No comments were filed in response to the notice of this rule waiver petition, which was published in the Florida Administrative Weekly.

National Directory Assistance

In its petition, Sprint argues that it is not prohibited from provisioning NDA service by any applicable law. Sprint argues that the provision of NDA service is not prohibited by the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act). Sprint further argues that the provision of NDA service is neither an enhanced service nor an information service; instead NDA service is an "adjunct-to-basic" service as determined by the FCC.¹ Sprint contends that "adjunct-to-basic" services meet the literal definition of enhanced services, but are otherwise "basic" in purpose and use.² Sprint further contends that adjunct-to-basic services facilitate the use of the basic network without changing the nature of the basic telephone service. Sprint argues that as an adjunct-to-basic offering, the provision of NDA service via the 411 code does not trigger any obligations under the FCC's N11 Order, which provides that the "[L]ocal exchange company may not itself offer enhanced services using a 411 code ... unless that LEC offers access to the code on a reasonable,

¹Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, FCC 96-489, (rel. Dec. 24, 1996) (Non-Accounting Safeguards Order), ¶107.

²In the Matter of North American Telecommunications Association Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment, ENF No. 84-2, 101 FCC 2d 349, 359-61 (1985), (NATA Centrex Order) aff'd on rec., Memorandum Opinion and Order, 3 FCC Rcd 4385, FCC 88-221 (rel Jul. 21, 1988).

DOCKET NO. 980231-TL
DATE: APRIL 16, 1998

non-discriminating basis to competing enhanced service providers."

Sprint argues that its proposed NDA service will enable customers to obtain telephone listings for unknown or distant area codes with a single call either to 411 or HNPA-555-1212. Sprint further argues that "[T]he originating points of such calls would be at the requesting customer's location; the terminating points of such calls would be at a Sprint-Florida Traffic Operator's Position Switch (TOPS) location within Sprint's serving area for the originating line." Sprint contends that with the proposed NDA service, a customer calls in with the state, city and name of desired telephone listing, Sprint queries and returns the result of this query to the requesting customer. This query will include telephone listings within and outside the originating HNPA of the originating customer.

By dialing either 411 or HNPA 555-1212, customers are prompted by an automated announcement which asks, "What State?", then "What City?" and then "What listing?" If the customer requests a listing in Sprint's local or HNPA serving area of the originating line, the call will be routed to the same DA operator center that currently provides service on such DA listing requests. Rates and charges for this call will be the same as they are applied today.

For customers requesting listings that are outside Sprint's local and HNPA serving area of the originating line, the call will be routed to Sprint's NDA operator center, where Sprint's database will be queried if the listing is in Sprint's operating territory. For listings outside Sprint's region, a third-party database will be queried by Sprint's NDA operator. Sprint asserts that with either request, customers will be entitled to receive two listings per call.

Sprint argues that with waiver of Rule 25-4.115, Florida Administrative Code, Florida customers will be the beneficiaries. Sprint argues that currently, a customer seeking a number for which the customer does not know the area code, must make two DA calls: one call to find the area code and the second for the specific

³The Use of N11 Codes and Other Abbreviated Dialing Arrangements, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 92-105, FCC 97-51 (rel. Feb. 19, 1997) (petitions for reconsideration or clarifications pending) (N11 Order), ¶2.

DOCKET NO. 980231-TL
DATE: APRIL 16, 1998

telephone listing. If the desired telephone listing is different from the caller's HNPA, often the caller has to call an IXC operator in order to obtain this telephone listing. Sprint argues that in the above scenario, the caller incurs two DA charges: one from Sprint and the other from the IXC. With this, Sprint argues that NDA is more cost effective for the customers, and asserts that customers will continue to receive service at the current rates and call allowance levels for local calling area request types when the customers dial 411 or 1-HNPA-555-1212.

Sprint argues that by granting this rule waiver, the Commission will be promoting competition. Sprint contends that such action is consistent with the underlying statutory mandate in Section 364.01, Florida Statutes, which encourages competition through flexible regulatory treatment. Sprint further argues that a waiver of Rule 25-4.115, Florida Administrative Code, will allow another telecommunications provider other than an IXC to provide directory listings outside the NPA of the originating line, thus promoting competition and conferring a beneficial advantage on Florida customers.

Staff agrees with Sprint that Rule 25-4.115, Florida Administrative Code, prohibits it from providing DA service outside the HNPA of a caller. Also, staff agrees that Sprint is not prohibited from providing NDA service by any applicable law. Since Sprint is not a Bell Operating Company, it is not subject to the requirements of Section 271 of the Telecommunications Act, 1996. Staff agrees that the provision of NDA service does not make NDA service an enhanced or information service, since NDA service is simply directory assistance service on a larger geographic scope. Staff further agrees with Sprint's conclusion that the provision of NDA using the 411 code does not trigger any obligations under the FCC's N11 Order given the fact that NDA is "adjunct-to-basic" and not an enhanced service.

Staff agrees with Sprint's assertion that in CC Docket No. 96-149, FCC 96-489, at ¶107, the FCC found that adjunct-to-basic services are to be treated as telecommunications services for the purposes of the Act. Staff further agrees with Sprint that the NATA/Centrex Order (FCC 85-248) provides that adjunct-to-basic services are telecommunications services or features that facilitate the provision of basic services without altering their fundamental character. Hence, staff agrees with Sprint's

conclusion that NDA meets the literal definition⁴ of an enhanced service, but is "basic" in purpose and use.

Staff agrees with Sprint that in provisioning NDA service, the originating points of such calls would be at the requesting customer's location and the terminating points of such calls would be at Sprint's Traffic Operator's Position Switch (TOPS) location within Sprint's HNPA serving area for the originating line. Staff believes that by using the NDA service in this configuration, the caller is still dialing an intra-HNPA call just as with conventional DA; however, any query outside the HNPA will be performed by Sprint over its official network.

Staff believes that the proposed NDA service is an "adjunct-to-basic" and not an "enhanced" service. Staff agrees with Sprint that the provision of NDA does not alter the nature of the basic telephone service; hence, NDA service is not an "information" service. Staff further agrees with Sprint that by granting this relief, the Commission's decision will be consistent with its earlier decision in the protested Order No. PSC-98-0362-FOF-TP, where the Commission granted a waiver of Rule 25-4.115, Florida Administrative Code, to BellSouth allowing it to provide NDA service. Staff agrees that the proposed NDA service will provide customers with an option as regards DA service and will allow another telecommunications provider other than IXCs to provide long distance DA service. Staff believes that customers will benefit from the convenience of a single call to either 411 or HNPA-555-1212 compared to two separate calls -- first to the LEC, then to an IXC. Staff agrees that with appropriate pricing, NDA service will be cost effective and may be a cheaper service for Florida customers. Staff agrees with Sprint that granting this relief is consistent with the provisions of Chapter 364.01, Florida Statutes,

⁴In 47 C.F.R. §64.702(a), enhanced services are defined as services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information.

DOCKET NO. 980231-TL
DATE: APRIL 16, 1998

whereby the Commission is called upon to promulgate rules and policies that will promote competition and eliminate unnecessary regulatory restraints.

Based on the above, staff recommends that the Commission grant Sprint's petition to waive Rule 25-4.115, Florida Administrative Code, allowing Sprint to offer its proposed NDA service. Staff notes, however, that Sprint has yet to file its proposed NDA tariff and would need to do that before offering the service.

DOCKET NO. 980231-TL
DATE: APRIL 16, 1998

ISSUE 2: Should the Commission grant Sprint's request for a reduced protest period pursuant to Rule 25-22.029(2), Florida Administrative Code?

RECOMMENDATION: No. The Commission should not grant Sprint's request to shorten the 21 day protest period. Sprint has not made the requisite showing. (PELLEGRINI, AUDU)

STAFF ANALYSIS: Sprint requests that the Commission, should it grant the company's request for rule waiver, act as expeditiously as possible to issue its decision and, furthermore, reduce the protest period from 21 days to 14 days as permitted by Rule 25-22.029(2), Florida Administrative Code. Rule 25-22.029(2), Florida Administrative Code, authorizes the Commission to reduce the time for requesting a Section 120.57, Florida Statutes, hearing to 14 days for good cause shown.

In support of its request, Sprint submits that it is "ready to bring [NDA] service to its customers so that they can receive the benefits of the marketplace." It argues that this constitutes good cause shown. Staff disagrees. Sprint makes no showing that exigent or otherwise unusual circumstances exist. The Commission has permitted the protest period to be shortened, for example, when, external circumstances jeopardized the timely establishment of the price index pursuant to Section 367.081(4), Florida Statutes,⁵ or when a shortened protest period was necessary to ensure that environmental cost recovery factors would be included, absent a protest, in an upcoming fuel/Environmental Cost Recovery Clause hearing,⁶ or when an imminent hearing date was in jeopardy and the next available hearing date was unreasonably distant,⁷ or when a hearing date prior to a requested effective date for statutory recovery of environmental costs had to be protected,⁸ or when it was important that an order approving transfer of

⁵Order No. PSC-98-0242-POF-WS

⁶Order No. PSC-96-1048-POF-EI.

⁷Order No. PSC-93-1580-POF-EI

⁸Order No. PSC-93-1283-POF-EI

DOCKET NO. 980231-TL
DATE: APRIL 16, 1998

control became final prior to the date of a proposed merger,⁹ or when the elimination of an additive was to be implemented prior to an exchange service area boundary change.¹⁰ Sprint's wish to turn up NDA service at the earliest permissible moment is not the kind of circumstance that can reasonably be considered good cause. Staff believes that shortening the protest period as Sprint requests would be to water the purpose of the exception.

Staff recommends, therefore, that the Commission deny Sprint's request for a shortened protest period.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendations in Issues 1 and 2, this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. (PELLEGRINI)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. If the Commission denies staff's recommendation in Issue 2, then this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 14 days of the issuance of the Commission's Proposed Agency Action Order.

⁹Order No. PSC-96-1543-FOF-TL

¹⁰Order No. PSC-95-0969-FOF-TL