



Public Service Commission

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DATE: SEPTEMBER 10, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (AUDU) *SAS for JWA*
DIVISION OF LEGAL SERVICES (OTTINOT) *ALOMB*

RE: DOCKET NO. 980716-TL - PETITION BY NORTHEAST FLORIDA TELEPHONE COMPANY, INC. FOR A PARTIAL WAIVER OF RULE 25-4.115, FLORIDA ADMINISTRATIVE CODE, REGARDING NATIONAL DIRECTORY ASSISTANCE.

AGENDA: SEPTEMBER 22, 1998 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\980716.RCM

CASE BACKGROUND

On June 4, 1998, Northeast Florida Telephone Company, Inc. (Northeast) filed a petition with this Commission requesting a partial waiver of Rule 25-4.115, Florida Administrative Code, regarding National Directory Assistance (NDA). NDA allows Florida customers to obtain telephone listings from unknown and/or distant area codes with a single call to 411. In its petition, Northeast states that Rule 25-4.115, Florida Administrative Code, requires a local exchange carrier to provide directory assistance (DA) service to its customers within a customer's Home Numbering Plan Area (HNPA) and that interexchange carriers provide DA outside a customer's HNPA. Northeast also states that it does not provide DA services to its customers using its own operators. Northeast has contracted with BellSouth for operator services, including DA services.

The Notice for Petition of Waiver was submitted to the Secretary of State for publication in the Florida Administrative

DOCUMENT NUMBER DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 980716-TL

DATE: September 10, 1998

Weekly on June 17, 1998. The comment period ended on July 10, 1998, and no comments were submitted.

The Commission has addressed several NDA waiver petitions in the past and has approved the petitions. In Order No. PSC 96-1434-FOF-TP, issued November 25, 1996, in Docket No. 960876-TP, the Commission granted BellSouth Telecommunications, Inc. (BellSouth's) petition for waiver of Rule 25-4.115, Florida Administrative Code, with respect to interexchange routing of DA calls within the Southeast LATA following the 305 area code split. In Proposed Agency Action Order No. 98-0362-FOF-TL, issued March 5, 1998, in Docket No. 971560-TL, the Commission granted BellSouth a waiver of Rule 25-4.115, Florida Administrative Code, to enable BellSouth to provide NDA service. This docket is still pending before the Commission because MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. filed a protest of the Commission's order and requested a formal hearing on March 26, 1998. A recommendation from this proceeding is scheduled for the November 3, 1998, Agenda Conference. At the February 17, 1998, Agenda Conference, the Commission directed staff to initiate rulemaking to revise Rule 25-4.115, Florida Administrative Code. Staff is awaiting the Commission's resolution of the protest in Docket No. 971560-TL before beginning the rulemaking process.

This recommendation will address Northeast's petition for waiver of Rule 25-4.115, Florida Administrative Code.

DISCUSSION OF ISSUES

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

RECOMMENDATION: Yes. The Commission should grant Northeast's petition for partial waiver of Rule 25-4.115, Florida Administrative Code, allowing Northeast to provide National Directory Assistance under its tariff. (AUDU, OTTINOT)

STAFF ANALYSIS:

Rule 25-4.115, Florida Administrative Code, requires that a local exchange carrier provide directory assistance (DA) to its customers within a customer's home numbering plan (HNPA) and that interexchange carriers provide DA service outside a customer's HNPA. Northeast has requested that the Commission grant it a partial waiver of the aforementioned rule. To obtain a waiver of a rule, a petitioner must meet the requirements of Section 120.542, Florida Statutes. Under this statutory requirement, a petitioner must first demonstrate that the purpose of the underlying statute will otherwise be served if waiver of the rule is granted. Secondly, the petitioner must demonstrate that the enforcement of the rule would result in substantial hardship for the petitioner or violate principles of fairness. The term substantial hardship means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.

In its petition, Northeast states that it is a small local exchange carrier (LEC) with fewer than 100,000 access lines and has not elected price regulation under Section 364.052(1), Florida Statutes. Northeast also states that it does not provide DA service to its customers using its own operators. Instead, Northeast has contracted with BellSouth to provide operator services, including DA, to Northeast's customers. Northeast contends that BellSouth is acting as an operator service provider (OSP) and not as a LEC. Northeast states that BellSouth's NDA service is an integral part of the operator services that it receives from BellSouth. Thus, it will be expensive and difficult for Northeast to purchase operator services from BellSouth without the NDA service. Northeast also contends that it will likewise be expensive and disruptive for it to contract with someone else or to provide such services using its own operators.

Northeast points to the Commission's past decisions regarding similar waiver petitions to support its petition. Specifically, Northeast states that its petition is similar to those filed by

DATE: September 10, 1998

BellSouth and Sprint in Docket Nos. 971560-TL and 980231-TL, respectively. Northeast argues that granting this partial rule waiver will not offend the underlying statutory framework of Chapter 364, Florida Statutes. Northeast also argues that the application of the rule will cause the company to suffer a substantial hardship. Specifically, Northeast states that the application of the rule will require the company to make alternative arrangements with a different OSP or to provide blocking of the NDA service from its current OSP. In either case, Northeast contends that application of this rule will subject it to additional costs, and deprive its customers from benefitting from a customer-friendly service. Additionally, Northeast states that since NDA is part of the package of operator services it gets from BellSouth under its OSP contract, Northeast has filed an amendatory tariff with the Commission on April 27, 1998 to reflect the new NDA service it gets from BellSouth under its OSP contract.

Finally, Northeast argues that competition in the telecommunications market will be promoted if the Commission grants its waiver request. Specifically, Northeast states that a partial waiver of Rule 25-4.115, Florida Administrative Code, will allow a telecommunications provider other than an interexchange carrier to provide directory listings outside the NPA of the originating line, thus promoting competition and conferring a beneficial advantage on Florida customers.

For reasons stated below, staff believes that Northeast's petition has satisfied the requirements of Section 120.542, Florida Statutes. Northeast has demonstrated that the purpose of the underlying statute will be served by granting the waiver. The underlying statutes in this case are Sections 364.03 and 364.04, Florida Statutes. These sections require the Commission to regulate in the public interest and to promote competition in the telecommunications market. Northeast has stated that the waiver request will benefit its customers and promote competition in the telecommunications market. Staff agrees with Northeast. Thus, the waiver request is consistent with the underlying statutes.

Staff also believes that Northeast has demonstrated that the application of the rule would be an economic hardship. Rule 25-4.115, Florida Administrative Code, prohibits Northeast from providing DA service outside the HNPA of a caller. Northeast argues that it will be expensive and difficult for the company to receive operator services from BellSouth without the NDA service provided by BellSouth. Northeast has contracted with BellSouth so that BellSouth provides operator services, including DA, to Northeast's local exchange customers. Thus, BellSouth's NDA service is part and parcel of the operator services BellSouth provides to Northeast. Staff agrees that it would be expensive and disruptive for Northeast to receive operator services from another

DOCKET NO. 980716-TL

DATE: September 10, 1998

company other than BellSouth or to provide such services using its own operators.

Staff recommendation in this docket is consistent with the Commission's earlier decisions in the protested Order No. PSC-98-0362-FOF-TP, and in Order No. PSC-98-0665-FOF-TP. In these Orders the Commission granted waivers of Rule 25-4.115, Florida Administrative Code, to BellSouth and Sprint, respectively, allowing them to provide NDA service. The economic hardship is even more apparent in this docket because Northeast is a small LEC and because Northeast has an OSP contract with BellSouth regarding operator services, including DA services.

Based on the above, staff recommends that the Commission grant Northeast's petition for partial waiver of Rule 25-4.115, Florida Administrative Code, allowing Northeast to offer NDA service under its tariff. Staff notes that Northeast has filed an amendatory tariff to reflect the proposed NDA service included in its OSP contract with BellSouth.

DOCKET NO. 980716-TL

DATE: September 10, 1998

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendations 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. (OTTINOT)

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 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.