

MEMORANDUM

October 12, 1998

RECEIVED 10/12/98

OCT 12 PM 3:42

REC'D AND  
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (WATTS) *CBW/mcb*

RE: DOCKET NO. 980716-TL - Petition by Northeast Florida Telephone Company, Inc. for partial waiver of Rule 25-4.115, F.A.C., to allow Northeast to provide National Directory Assistance (NDA) under tariff to its local exchange service customers

98-1378-FOF-TL

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING NORTHEAST FLORIDA TELEPHONE COMPANY, INC.'S PETITION FOR PARTIAL WAIVER OF RULE 25-4.115, FLORIDA ADMINISTRATIVE CODE to be issued in the above-referenced docket. (Number of pages in order - 5)

CBW/slh  
Attachment  
cc: Division of Communications  
I:980716.cbw

*See 1, 4*

*2 fax  
1 mail*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Northeast Florida Telephone Company, Inc. for partial waiver of Rule 25-4.115, F.A.C., to allow Northeast to provide National Directory Assistance (NDA) under tariff to its local exchange service customers.

DOCKET NO. 980716-TL  
ORDER NO. PSC-98-1378-FOF-TL  
ISSUED: October 13, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING NORTHEAST FLORIDA TELEPHONE COMPANY, INC.'S  
PETITION FOR PARTIAL WAIVER OF RULE 25-4.115, 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.

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).

As noted in the Petition, Rule 25-4.115, Florida Administrative Code, requires a local exchange carrier to provide

DOCUMENT NUMBER DATE

11398 OCT 13 98

FILED WITH REPORTING

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 states that it does not provide DA services to its customers using its own operators. Northeast has contracted with BellSouth Telecommunications, Inc. (BellSouth) for operator services, including DA services. Therefore, Northeast filed a petition for partial waiver to retain BellSouth's services as an operator service provider and not a local exchange carrier.

#### 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. Northeast seeks waiver of Rule 25-4.115, Florida Administrative Code. The rule prohibits Northeast as a local exchange carrier from providing directory assistance outside of the caller's HPNA.

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 section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver...

Rule 25-4.115, Florida Administrative Code, requires that a local exchange carrier provide directory assistance to its customers within a customer's home numbering plan area and that

ORDER NO. PSC-98-1378-FOF-TL  
DOCKET NO. 980716-TL  
PAGE 3

interexchange carriers provide DA service outside a customer's HNP. Northeast has requested a partial waiver of the aforementioned rule.

Northeast states it is a small local exchange carrier and 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 a local exchange carrier (LEC). Northeast states that BellSouth's NDA service is an integral part of the operator services from BellSouth. Thus, it would 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.

#### DISCUSSION

We find that Northeast has fulfilled the requirements of Section 120.542, Florida Statutes, to obtain a partial waiver of Rule 25-4.115, Florida Administrative Code. Northeast has demonstrated that the purpose of the underlying statutes will be served by granting the partial 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. We believe this partial waiver will benefit Northeast's customers and promote competition in the telecommunications market. Thus, the waiver request is consistent with the underlying statutes.

In addition, application of the rule will cause Northeast substantial economic hardship. We have considered that it would be expensive and difficult for Northeast to receive operator services from BellSouth without the NDA service provided by BellSouth. We agree that it would be expensive and disruptive for Northeast to receive operator services from another company other than BellSouth or to provide such services using its own operators.

We hereby acknowledge this Order 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. We note again the economic

ORDER NO. PSC-98-1378-FOF-TL  
DOCKET NO. 980716-TL  
PAGE 4

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 foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the petition of Northeast Florida Telephone Company, Inc. for a partial waiver of Rule 25-4.115, Florida Administrative Code, to provide National Directory Assistance under tariff to its local exchange service customers, is hereby granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" 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 13th day of October, 1998.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

CBW

ORDER NO. PSC-98-1378-FOF-TL  
DOCKET NO. 980716-TL  
PAGE 5

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 3, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.