

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Verizon
Florida Inc. and Verizon Select
Services Inc. for limited waiver
of Rule 25-4.118, F.A.C.

DOCKET NO. 010030-TP
ORDER NO. PSC-01-0812-PAA-TP
ISSUED: March 28, 2001

The following Commissioners participated in the disposition of
this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION

ORDER GRANTING LIMITED WAIVER OF RULE 25-4.118, FLORIDA
ADMINISTRATIVE CODE, DENYING REQUEST TO ORDER COMPANIES TO
SERVE CUSTOMERS, AND DIRECTING DISCLOSURE OF CUSTOMER ACCOUNT
INFORMATION SUBJECT TO PROTECTIVE AGREEMENT

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. BACKGROUND

On January 8, 2001, Verizon Select Services Inc. (VSSI), an alternative local exchange company (ALEC) and an interexchange company (IXC), submitted a petition seeking a limited waiver of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection. Verizon Select Services Inc. has elected to discontinue provisioning of basic local service in Florida. On January 18, 2001, pursuant to Rule 25-22.039, Florida Administrative Code, BellSouth Telecommunications Inc. (BST) filed a Motion for Leave to Intervene in this proceeding. BST's petition

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is premature, however, because it may file a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code, as set forth above.

On January 24, 2001, the Commission's Division of Competitive Services technical staff notified VSSI that the petition for a limited waiver of Rule 25-4.118, Florida Administrative Code, was flawed. Specifically, our staff advised VSSI that Verizon Florida Inc. (VFI) should be the petitioner for the limited waiver because VFI was identified in the petition as the company to which customers' basic local service will be switched. On January 25, 2001, counsel for VSSI and VFI filed a letter with the Division of Records and Reporting to include VFI as a party to the petition.

On January 31, 2001, we submitted the Notice of Petition of Waiver of Rule 25-4.118, Florida Administrative Code, to the Secretary of State for publication in the Florida Administrative Weekly (FAW) on February 9, 2001. On February 12, 2001, BST filed comments to the FAW Notice of Petition of Waiver of Rule 25-4.118, Florida Administrative Code. On February 22, 2001, Sprint-Florida Incorporated also filed comments.

VFI's and VSSI's petition for waiver requests, in part, that we order BST and Sprint to provide basic local service to customers, who are currently provided alternative local service by VSSI, in BST's and Sprint's franchise areas. This Order addresses VFI's and VSSI's petition for a limited waiver of Rule 25-4.118, Florida Administrative Code, and VFI's and VSSI's request regarding BST and Sprint.

II. RULE WAIVER

VSSI provides a bundled telecommunications service called OneSource, which includes local dial tone, vertical calling features, and long distance. VSSI provides these services to customers located in local exchange company (LEC) franchise areas served by VFI, BST, and Sprint.

VFI and VSSI have filed a joint petition for a limited waiver of Rule 25-4.118, Florida Administrative Code, because VSSI, as an ALEC, has elected to stop providing local exchange services to its

OneSource residential customers. Although VSSI has apparently provided sufficient notice to its customers that they will need to select another local provider, VFI and VSSI are concerned that some customers will not take the initiative to do so and will ultimately lose their dial tone, leaving them without any telecommunications services. The petitioners have advised us that there are 13,361 customers served by VSSI in VFI's franchise area. Even though VFI and VSSI cannot predict how many VSSI customers may fail to select another local provider, it appears that some customers will fail to arrange for another provider. VFI, an incumbent local exchange carrier, is seeking our approval to initiate a provider change on behalf of, and without the explicit consent of the customer.

Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection, provides in part:

(1) The provider of a customer shall not be changed without the customer's authorization. . . . A LEC shall accept a provider change request by telephone call or letter directly from its customers; or

(2) A LEC shall accept a change request from a certificated LP or IXC acting on behalf of the customer. A certificated LP or IXC shall submit a change request only if it has first certified to the LEC that at least one of the following actions has occurred:

(a) The provider has a letter of agency (LOA), . . .

(b) The provider has received a customer-initiated call, . . .

(c) A firm that is independent and unaffiliated with the provider claiming the subscriber has verified the customer's requested change. . . .

The primary purpose of Rule 25-4.118, Florida Administrative Code, is to ensure that a company only provides service after receiving authorization by the customer. The petitioners correctly state that the authorization methods listed in Rule 25-4.118,

Florida Administrative Code, do not fit VSSI's situation, as neither the customer nor a competing carrier is initiating a provider change. We understand and agree with the petitioners' goals, which are to ensure that customers do not find themselves without dial tone, and that the petitioners are not perceived as violating the directive of Rule 25-4.118, Florida Administrative Code, that the customer's provider shall not be changed without his authorization.

On December 12, 2000, VSSI mailed a letter to its customers within VFI's franchise area advising them to choose a new company to provide local phone service. VSSI also stated in the letter that for those customers failing to choose another provider, VFI will provide basic local service, the vertical features will be removed, and the long distance service will default to VSSI's basic long distance rates provided in the letter. These actions will serve as a safety net for those customers who fail to choose another carrier, thus precluding a total loss of telecommunications services.

In order to be granted a waiver, VFI's and VSSI's petition must meet the requirements of Section 120.542, Florida Statutes. Under this statutory requirement, a petitioner requesting a waiver of a Commission rule 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 continued enforcement of the rule would result in substantial hardship for the petitioner or violate principles of fairness.

VFI's and VSSI's petition meets the requirements of Chapter 120.542, Florida Statutes. First, the petitioners have demonstrated that the pro-consumer, public interest purposes of the underlying statute, Section 364.03, Florida Statutes, will be served if we grant the waiver request. By automatically switching those customers that fail to select another carrier to VFI for dial tone, the public interest will be served, because those customers will not be without telecommunications services.

Secondly, the company has demonstrated that enforcement of the requirements of Rule 25-4.118, Florida Administrative Code, will

result in substantial hardship for the company. Enforcement of the requirement that a customer's local provider not be changed without the customer's authorization would potentially subject VFI to significant penalties if the affected customers filed slamming complaints and the company was ordered to show cause based on the customer's complaints.

Given VFI's and VSSI's goal of ensuring that customers do not find themselves without telecommunications services, we hereby grant the specific portion of Verizon Florida Inc.'s and Verizon Select Services Inc.'s joint petition for a limited waiver of Rule 25-4.118, Florida Administrative Code, regarding the transfer of customers' basic local service from Verizon Select Services Inc. to Verizon Florida Inc. for those customers located within Verizon Florida Inc.'s franchise area. The waiver is limited such that Verizon Florida Inc. acquires only those customers who fail to select another local exchange company prior to Verizon Select Services Inc.'s disconnection deadline. Verizon Florida Inc. shall only provide basic local service without vertical features. The long distance service will continue to be served by Verizon Select Services Inc., but the rates will change to Verizon Select Services Inc.'s basic long distance rates.

III. REQUEST REGARDING BST AND SPRINT

As part of their petition, VSSI and VFI request us to direct BST and Sprint to provide local service to VSSI's customers, outside VFI's franchise area, subject to each carrier's credit policies. On February 12, 2001, BST filed comments in response to the FAW Notice regarding Verizon's Petition for Limited Waiver of Rule 25-4.118, Florida Administrative Code. BST objects to the petitioners' request that we order BST to provide local exchange service to those VSSI customers, in BST's franchise area, that fail to select another carrier.

The following is a summary of BST's concerns:

1. By directing BST to be the default carrier every time an ALEC exits the industry, BST believes this would frustrate the competitive spirit and force BST to be a pseudo-parent to all

ALECs. BST believes this would be contrary to the purpose of the Telecommunications Act of 1996;

2. BST believes that the responsibility for ensuring continuation of service for VSSI's customers lies with VSSI and its customers;

3. BST objects to being forced to accept all of VSSI's former customers regardless of their credit risk. Because the customers failed to select a provider, the switch of the affected customers to BST would be a sudden event, leaving BST with insufficient time, and thus no means of collecting a deposit;

4. Even though VSSI may provide BST a list of customers, BST would not have sufficient time to contact the customers and determine if they satisfy BST's credit policies. BST believes that Section 364.24, Florida Statutes, may prohibit VSSI from providing BST with the customer information; and

5. BST believes it should not be obligated to utilize its efforts and resources in calling customers that failed to obtain local service on their own initiative or be required to take customers subject to the right to terminate at a later date and with proper notice, simply because VSSI unilaterally decided to exit the industry.

BST indicates that it is willing to work with VSSI and the Commission to perfect a solution to the problems associated with VSSI's unilateral decision to stop providing basic local service. BST does not object to accepting any new customer who independently chooses BST to be its carrier; however, BST does not want to be forced to accept all customers of a soon-to-be defunct ALEC, especially those that would not normally be able to receive service.

Sprint filed comments to the FAW Notice on February 22, 2001. Sprint generally concurs in the comments of BST. Sprint's fundamental objection to the waiver is that VSSI's customers must be accepted by Sprint without regard to their credit status or even

whether the customer may have a bad debt to Sprint for prior service. Sprint indicated that it believed that accepting these customers would be a violation of its tariff, and indicated that a waiver request was not appropriate for seeking to have another company's tariff set aside.

VSSI reportedly serves a total of 175 business and residential customers in BST's franchise area and 106 business and residential customers in Sprint's franchise area. The number of customers that will ultimately fail to select a carrier is unknown. Using an old axiom that 10 percent of the people never get the word, possibly as few as 28 customers may fail to select a new service provider. VSSI's customers have until March 6, 2001, to obtain a local service provider.

Each year, several ALECs enter and exit the telecommunications industry in Florida. During the first week of February 2001, for example, our staff received notification from a LEC that two ALECs had not paid their bills. Normally, if the ALECs fail to pay, the LEC will terminate the ALECs' customers' local service. The customers may or may not have been notified by the ALECs of a pending disconnection. Where there is sufficient time to react, our staff contacts the ALEC requesting it to notify all of its customers that their local exchange service will be discontinued and that they will need to find another provider. Our Division of Consumer Affairs is alerted in these cases as well, allowing customers to receive a valid explanation of the problem, should they contact the Commission with a complaint about discontinuance of local service.

We view VSSI's departure from the market in the same light as any other ALEC's departure. In this particular case, VSSI has notified the affected customers. We anticipate that very few customers will be adversely affected, because sufficient notification has been provided. In addition, the bulk of the customers are located in VFI's franchise area. We believe that the relief sought by VSSI and VFI under this issue goes beyond the waiver sought by these petitioners. Further, in a competitive market, we do not order LECs to automatically serve customers each time an ALEC elects to exit the market. To the best of our

knowledge, no significant customer impacts have occurred whenever an ALEC has ceased operations. The affected customers find services elsewhere and select the provider of their own choosing.

We note that we would have supported a request by BST and Sprint to serve the affected customers if they had joined the petition. BST and Sprint, however, have objected to VSSI's and VFI's request that BST and Sprint be ordered to serve the affected customers. Therefore, we deny the petitioners' request that we order BST and Sprint to serve those customers that procrastinate and fail to select a local service provider. In making this decision, however, we are not alleviating BST and Sprint from their carrier of last resort obligations under Chapter 364, Florida Statutes, if the customers contact BST and Sprint for service.

Finally, although we do not find it appropriate to order BST and Sprint to serve VSSI's affected customers, we do note our concern that customers have service. During the March 6, 2001 Agenda Conference, BST and Sprint indicated their willingness to cooperate with Verizon in this matter. As discussed earlier in this Order, a primary concern expressed by both BST and Sprint is the possibility of taking on customers with bad credit ratings. In order to make this determination prior to receipt of any customers, BST and Sprint would need to review customer information from VSSI. This raises a concern regarding whether the release of such information would violate Section 364.24(2), Florida Statutes, which prohibits telecommunications companies from disclosing customer account records, except as authorized by customers, or as necessary for billing purposes, or required by subpoena, court order, other process of court, or as otherwise allowed by law. Under the circumstances in this case, we find that it would be appropriate for VSSI to share this information with BST and Sprint, given the importance of making service available to customers. Therefore, to the extent that BST and Sprint are willing to assist VSSI in this matter, we direct it to release the necessary customer account information to BST and Sprint, subject to protective agreement.

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If no timely protest to this proposed agency action is filed within 21 days of the date of issuance of the 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 the petition by Verizon Florida Inc. and Verizon Select Services Inc. for limited waiver of Rule 25-4.118, Florida Administrative Code, is granted as set forth in the body of this Order. It is further

ORDERED that Verizon Florida Inc.'s and Verizon Select Services Inc.'s request that the Commission order BellSouth Telecommunications, Inc. and Sprint-Florida Incorporated to provide basic local service to customers, who are currently provided alternative local service by Verizon Select Services Inc., in BellSouth's and Sprint's franchise areas, is hereby denied. It is further

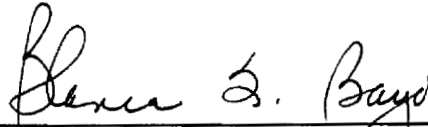
ORDERED that to the extent BellSouth Telecommunications, Inc. and Sprint-Florida Incorporated are willing to assist Verizon Select Services Inc. in this matter, we direct Verizon Select Services Inc. it to release the necessary customer account information to those companies, subject to protective agreement. 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 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" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 28th
day of March, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 18, 2001.

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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.