

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 22, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (J. Susac)
Division of Competitive Markets & Enforcement (R. Moses)
Division of Regulatory Compliance & Consumer Assistance (R. Hicks)

RE: Docket No. 040659-TL – Petition for emergency temporary waiver of Rules 25-4.066(2) and (3); 25-4.070(3)(a), (3)(b), and (5); 25-4.073(1)(a), (1)(c), and (1)(d); 25-4.0770(2); 25-4.040(5); 25-4.111; and 25-22.032(4)(b) and (6)(b), F.A.C., by BellSouth Telecommunications, Inc.

AGENDA: 08/03/04 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

CRITICAL DATES: Pursuant to Rule 28-104.005, F.A.C., decision due within 30 days of Petition unless waived; BellSouth has agreed to a limited waiver through August 3, 2004.

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040659.RCM.DOC

Case Background

On June 30, 2004, pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, BellSouth Telecommunications, Inc. (BellSouth), filed a Petition for Emergency Temporary Rule Waiver (Petition) (Attachment A). The waiver is requested in the event that BellSouth experiences a work stoppage by the Communications Workers of America (CWA). In its Petition, BellSouth seeks a temporary waiver of Rules 25-4.066(2) and (3); 25-4.070(3)(a), (3)(b), and (5); 25-4.073(1)(a), (1)(c), and (1)(d); 25-4.0770(2); 25-4.040(5); 25-4.111, Florida Administrative Code. BellSouth further filed an amendment to its Petition on July 8, 2004, to add waiver of Rules 25-22.032(4)(b) and 25-22.032(6)(b), Florida Administrative Code, (Attachment B).

In its Petition requesting a waiver, BellSouth explains that its waiver request meets the standards of Section 120.542, Florida Statutes. Further, BellSouth explains that the purpose of the underlying statutes, Sections 364.01(4), 364.025, 364.051, 364.15 and 364.19, Florida Statutes, will not be undermined by the request for waiver.

BellSouth requests expedited handling of its Petition because the Agreement between the Communications Workers of America (CWA) and BellSouth will expire at 11:59 p.m. on August 7, 2004. Should BellSouth and the CWA fail to reach an agreement, the CWA may initiate a work stoppage. A work stoppage by the CWA would affect BellSouth's ability to comply with the Commission's rules identified in the Petition. If BellSouth and the CWA successfully negotiate an agreement before expiration of the current agreement, the temporary waiver of the rules identified in the Petition will be moot.

In accordance with Section 120.542(6), Florida Statutes, notice of the Petition was sent to the Department of State on July 14, 2004, for publication in the July 23, 2004, Florida Administrative Weekly. Staff will inform the Commission prior to Agenda if any comments were filed.

It should be noted that this recommendation is consistent with Commission precedent. See Docket 010973-TL; Petition for emergency temporary waiver of rules 25-4.066(2) and (3); 25-4.070(3)(a), (3)(b), and (5); 25-4.073(1)(a), (1)(c), and (1)(d); 25-4.0770(2); 25-4.040(5); and 25-4.111, F.A.C., by BellSouth Telecommunications, Inc., PSC-01-1583-PAA-TL, issued on July 31, 2001.

The Commission has authority over these matters pursuant to Sections 120.542, 364.01(4), 364.025, 364.03, 364.051, 364.15 and 364.19, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve BellSouth's Petition for emergency temporary waiver of Rules 25-4.066(2) and (3); 25-4.070(3)(a), (3)(b), and (5); 25-4.073(1)(a), (1)(c), and (1)(d); 25-4.0770(2); 25-4.040(5); 25-4.111; and 25-22.032(4)(b) and (6)(b), F.A.C?

Recommendation: Yes, with the exception of the portion of 25-4.040(5) that requires the company to maintain a listing for Poison Information Centers and Rules 25-4.111(2) and (3), staff recommends that the Commission should approve BellSouth's Petition for a temporary and emergency waiver of Rules 25-4.066(2) and (3); 25-4.070(3)(a), (3)(b), and (5); 25-4.073(1)(a), (1)(c), and (1)(d); 25-4.0770(2); 25-4.040(5); 25-4.111; and 25-22.032(4)(b) and (6)(b), F.A.C, for a period beginning the day work stoppage occurs, and ending the day BellSouth and CWA sign a work agreement. BellSouth should file notice of any work stoppage, or signing of an agreement, with the Division of the Commission Clerk & Administrative Services no later than the next business day after it occurs. **(J. Susac/ R. Moses/R. Hicks)**

Staff Analysis: BellSouth is an incumbent local exchange telecommunications services provider in Florida. The CWA represents a significant number of BellSouth's craft employees. Currently, BellSouth and the CWA are in negotiations to secure a new agreement for the represented workers. If the parties are unsuccessful in negotiating a new agreement before the expiration of the current agreement at 11:59 p.m. on August 7, 2004, the CWA may initiate a work stoppage.

In its Petition, BellSouth requests that the duration of the temporary waiver initially be for 30 days and that an extension be granted if the work stoppage extends beyond 30 days. Staff believes that a more efficient approach would be to grant the waiver for the duration of the work stoppage, should one occur, which would eliminate the need for the Commission to address extensions to the waiver. This approach also eliminates BellSouth being granted a waiver for any length of time after the work stoppage has ceased.

Rules 25-4.066(2) and (3), Florida Administrative Code, Availability of Service, provide:

(2) Where central office and outside plant facilities are readily available, at least 90 percent of all requests for primary service in any calendar month shall normally be satisfied in each exchange or service center within an interval of three working days after receipt of application when all tariff requirements relating thereto have been complied with, except those instances where a later installation date is requested by the applicant or where special equipment or services are involved.

(3) Each telecommunications company shall establish as its objective the satisfaction of at least 95 percent of all applications for new service in each exchange within a 30 day maximum interval and, further, shall have as its objective the capability of furnishing service within each of its exchanges to applicants within 60 days after date of application; except those instances where a later installation date is requested by the applicant or where special equipment or services are involved.

Rules 25-4.070(3)(a), (3)(b), and (5), Florida Administrative Code, Customer Trouble Reports, provide:

(3)(a) Service Interruption: Restoration of interrupted service shall be scheduled to insure at least 95 percent shall be cleared within 24 hours of report in each exchange as measured on a monthly basis. For any exchange failing to meet this objective, the company shall provide an explanation with its periodic report to the Commission.

(3)(b) Service Affecting: Clearing of service affecting trouble reports shall be scheduled to insure at least 95 percent of such reports are cleared within 72 hours of the report in each exchange as measured on a monthly basis.

(5) Repeat Trouble: Each telephone company shall establish procedures to insure the prompt investigation and correction of repeat trouble reports such that the percentage of repeat troubles will not exceed 20 percent of the total initial customer reports in each exchange when measured on a monthly basis. A repeat trouble report is another report involving the same item of plant within 30 days of the initial report.

Rules 25-4.073(1)(a), (1)(c), and (1)(d), Florida Administrative Code, Answering Time, provide:

(1)(a) If emergency services for the LEC's total serving area is currently answered by the 911 system, at least ninety (90%) percent of the calls offered to the LEC provided operator shall be answered within thirty (30) seconds after zero only is dialed.

(1)(c) At least ninety (90%) percent of all calls directed to intercept, directory assistance and repair services and eighty (80%) percent of all calls to business offices shall be answered within thirty (30) seconds after the last digit is dialed.

(1)(d) Notwithstanding (c) above, when a company utilizes a menu driven, automated, interactive answering system (referred to as the system), at least (95%) percent of the calls offered shall be answered within 15 seconds after the last digit is dialed. The initial recorded message presented by the system to the customer shall only identify the company and the general options available to the customer. The option of transferring to a live attendant shall be included in the initial message. For subscribers electing the option of transferring to a live assistant, except for business office calls, at least ninety-five (95%) percent of all calls shall be transferred by the system to a live attendant prepared to give immediate assistance within fifty-five (55) seconds after the last digit of the telephone number listed in the directory for the company's service(s) was dialed. Eighty-five (85%) percent of all such calls directed to any business office shall be transferred by the system to a live attendant within fifty-five (55) seconds after the last digit is dialed. At any time during the call, the customer shall be transferred to live assistance if the customer fails to interact with the system for a time period of ten (10) seconds following any prompt. For the purposes of this

section, interaction means responding to a customer prompt offered by the system by keying (pressing) a number or character of a Dual-Tone Multiple-Frequency (DTMF) keypad associated with a telephone.

Rule 25-4.0770(2), Florida Administrative Code, Customer Appointments, provides:

Each company shall keep at least 95 percent of all appointments each month. Where appointments cannot be kept by the company, the customer shall be notified by telephone call prior to the beginning of the appointment period if a can-be-reached number is obtained from the customer and a new appointment shall be scheduled. No appointment cancelled in this manner shall constitute a kept or missed appointment by the company.

Rule 25-4.040(5), Florida Administrative Code, Telephone Directories; Directory Assistance, provides:

Directory assistance operators shall maintain records of all telephone numbers (except for non-published telephone numbers) in the area for which they have the responsibility of furnishing service. Directory assistance records must also contain listings for "Poison Information Center" and the local telephone number, where the area served by the directory assistance operator has local calling to a Poison Information Center. If no local telephone number exists, then the toll-free telephone number of a Poison Information Center shall be listed. All new or changed listings shall be provided to directory assistance operators within 48 hours after connection of service, excluding Saturdays, Sundays and holidays.

Rule 25-4.111, Florida Administrative Code, Customer Complaints and Service Requests, provides:

(1) Each telephone utility shall make a full and prompt investigation of all complaints and service requests made by its customers, either directly to it or through the Commission and respond to the initiating party within fifteen (15) days. The term "complaint" as used in this rule shall be construed to mean any oral or written report from a subscriber or user of telephone service relating to a physical defect, difficulty or dissatisfaction with the operation of telephone facilities, errors in billing or the quality of service rendered.

(2) Arrangements shall be made by each telephone company to receive customer trouble reports twenty-four (24) hours daily and to clear trouble of an emergency nature at all hours, consistent with the bona fide needs of the customer and personal safety of utility personnel.

(3) If the use of service by any subscriber interferes unreasonably with the necessary service of other customers, such subscribers may be required to take service in sufficient quantity or of a different class or grade.

Rules 25-22.032(4)(b) and (6)(b), Florida Administrative Code, Customer Complaints, provide:

(4)(b) A company may also provide to the Commission an E-mail address by which the customer may directly E-mail a complaint to the company's customer service personnel from the Commission's Internet Web site. The company shall acknowledge the customer's E-mail to the customer by no later than the working day after the date of receipt.

(6)(b) If the customer specifically makes a request to the Commission that he or she not be contacted by the company, Commission staff will request that the company not contact the customer directly. Otherwise, the company shall make direct contact with the customer verbally or in writing and provide to the customer its response to the complaint within 15 working days after the Commission staff sends the complaint to the company. Responses sent by mail must be postmarked within the 15 working day time period. The company shall also provide to the Commission staff, within 15 working days after the commission staff sends the complaint to the company, a written response to the customer's complaint. However, in the case of those complaints where the company has proposed, under the provisions of subsection (5) of this rule (complaints resolved in 3 days), a resolution with which the customer is not satisfied, the company shall respond within twelve (12) working days of the case being resent to the company.

If the CWA initiates a work stoppage, a significant number of BellSouth craft employees that perform the various services involved with the aforementioned rules will not report to work. BellSouth will assign management personnel with the intent to fulfill its obligations to provide service to the areas it serves. However, it is possible that BellSouth will not be able to comply with the rules listed in its petition.

BellSouth has requested waiver of the entire section of Rule 25-4.040(5), Florida Administrative Code, which in part, requires BellSouth to maintain listings on "Poison Information Centers." Staff believes that maintenance of the "Poison Information Center" listing is a vital function directly related to the health and welfare of Florida's citizens. In addition, staff believes that maintenance of the poison control listing is an insignificant workload. Therefore, the maintenance of the "Poison Information Center" listing should not be part of the waiver. The remaining requirements of Rule 25-4.040(5), Florida Administrative Code, should be included in the waiver.

In its Petition, BellSouth also requested a waiver of Rule 25-4.111, Florida Administrative Code in its entirety. In reviewing the text of BellSouth's Petition, staff believes, and confirmed with BellSouth, that BellSouth only meant to request a waiver of Section (1) of Rule 25-4.111, Florida Administrative Code. Section (2) of Rule 25-4.111, Florida Administrative Code, requires that BellSouth receive customer trouble reports 24 hours per day. Staff believes that BellSouth could use an automatic recording device to meet this requirement (during business and non-business hours) and thus, Section (2) should not be included in any waiver approval. Section (3) of Rule 25-4.111, Florida Administrative Code, addresses a subscriber's use of a service that may cause interference with the service of other subscribers. Staff believes that Section (3) of Rule 25-4.111, Florida Administrative Code, should also be excluded from the waiver.

In accordance with Rule 28-104.005, Florida Administrative Code, BellSouth is seeking the waiver on an emergency basis. In addition to the general pleading requirements of Rule 28-104.002, an emergency petition must also comply with Rule 28-104.004, Florida Administrative Code, which requires that the petitioner state in the caption of the petition that it is seeking the waiver or variance on an emergency basis, and that the petitioner must also specify in the petition:

- (a) The specific facts that make the situation an emergency; and
- (b) The specific facts to show that the petitioner will suffer an immediate adverse affect unless the variance or waiver is issued more expeditiously than the time frames provided in Section 120.542, F.S.

Thereafter, pursuant to Rule 28-104.005, Florida Administrative Code, the agency must grant or deny the petition within 30 days of receipt of the petition, unless the time frame is waived by the Petitioner. In this instance, BellSouth has agreed to waive the 30-day requirement to allow the Commission to consider this Petition at the August 3, 2004, Agenda Conference.

BellSouth has made a sufficient showing that this Petition should be addressed on an emergency basis, because the contract termination date is August 7, 2004, and the potential work stoppage would impact BellSouth's ability to comply with the Rules addressed in this recommendation.

In order to be granted a waiver, BellSouth'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 the 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. Pursuant to 120.542 (2), Florida Statutes, "substantial hardship means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver."

BellSouth's Petition meets the requirements of Section 120.542, Florida Statutes. BellSouth has demonstrated that, if the Commission grants the waiver request, to the extent possible, suitable telecommunications service will be provided by reassigning management personnel to perform the various services which the rules require. The public interest will be served because BellSouth has expressed its intent to fulfill its obligations to provide service to the areas it serves.

The company has demonstrated that the Commission's enforcement of the requirements of the rules would result in substantial hardship for the company. BellSouth has committed to an approach whereby it will assign management personnel to perform the various services. However, reality dictates that some delays in service may occur.

Therefore, with the exception of the portion of 25-4.040(5) that requires the company to maintain a listing for Poison Information Centers and Rules 25-4.111(2) and (3), staff recommends that the Commission should approve BellSouth's Petition for a temporary and

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emergency waiver of Rules 25-4.066(2) and (3); 25-4.070(3)(a), (3)(b), and (5); 25-4.073(1)(a), (1)(c), and (1)(d); 25-4.0770(2); 25-4.040(5); 25-4.111; and 25-22.032(4)(b) and (6)(b), F.A.C, for a period beginning the day work stoppage occurs, and ending the day BellSouth and CWA sign a work agreement. BellSouth should file notice of any work stoppage, or signing of an agreement, with the Division of the Commission Clerk & Administrative Services no later than the next business day after it occurs.

Issue 2: Should the Commission acknowledge BellSouth's intention to invoke the provisions of Section 2(D)(1) of the Settlement between the Office of Public Counsel and BellSouth as approved by Order Numbers PSC-01-1643-AS-TL and PSC-02-0197-PAA-TL for a period beginning the day work stoppage occurs, and ending the day BellSouth and CWA sign a work agreement?

Recommendation: Yes. Staff recommends that the Commission should acknowledge BellSouth's intention to invoke the provisions of Section 2(D)(1) of the Settlement between the Office of Public Counsel and BellSouth as approved by Order Numbers PSC-01-1643-AS-TL and PSC-02-0197-PAA-TL for a period beginning the day work stoppage occurs, and ending the day BellSouth and CWA sign a work agreement. BellSouth should file notice of any work stoppage, or signing of an agreement, with the Division of the Commission Clerk & Administrative Services no later than the next business day after it occurs. **(J. Susac/R. Moses/R. Hicks)**

Staff Analysis:

If a work stoppage occurs, BellSouth intends to invoke Section 2(D)(1) of the Stipulated Settlement Agreement which contains the Service Guarantee Program. The agreement allows BellSouth, in the event that it must declare an emergency due to a work stoppage, to make indefinite commitments for installation and repair services, initiate public service announcements to inform customers, and notify the Commission at the time of implementation and termination of the service emergency period. BellSouth, during the work stoppage, will revert to making refunds or adjustments for customers affected by a service emergency for out-of-service conditions as defined by Rule 25-4.070(1)(b), Florida Administrative Code, instead of making refunds or adjustments as outlined in the Service Agreement.

Accordingly, staff recommends that the Commission should acknowledge BellSouth's intention to invoke the provisions of Section 2(D)(1) of the Settlement between the Office of Public Counsel and BellSouth as approved by Order Numbers PSC-01-1643-AS-TL and PSC-02-0197-PAA-TL for a period beginning the day work stoppage occurs, and ending the day BellSouth and CWA sign a work agreement. BellSouth should file notice of any work stoppage, or signing of an agreement, with the Division of the Commission Clerk & Administrative Services no later than the next business day after it occurs.

Issue 3: Should the Commission order BellSouth to publicize, through radio, television, and newspaper advertisements, the potential of delays in service and support to customers, if there is a work stoppage by the CWA?

Recommendation: Yes. Staff recommends that the Commission should order BellSouth to publicize, through radio, television, and newspaper advertisements, the potential of delays in service and support to customers, if there is a work stoppage by the CWA. BellSouth should prepare announcements in advance, for staff review, and immediately release the prepared announcements if a work stoppage occurs. **(J. Susac/ R. Moses/R. Hicks)**

Staff Analysis: Existing and potential customers should be well informed of any work stoppages that may cause degradation in the quality of service and support provided by BellSouth. Informed consumers will be better equipped to deal with potential service delays.

Therefore, staff recommends that the Commission should order BellSouth to publicize, through radio, television, and newspaper advertisements, the potential of delays in service and support to customers, if there is a work stoppage by the CWA. BellSouth should prepare announcements in advance and immediately release the prepared announcements if a work stoppage occurs.

Issue 4: Should this docket be closed?

Recommendation: No. If staff's recommendations are approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of the issuance of the Order, the Commission's decision shall be final and effective upon issuance of the consummating order. This docket shall remain open pending notification that an agreement has been reached by BellSouth and the CWA. Thereafter, this docket shall be closed administratively if no further action from the Commission is required. **(J. Susac)**

Staff Analysis: If staff's recommendations are approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of the issuance of the Order, the Commission's decision shall be final and effective upon issuance of the consummating order. This docket shall remain open pending notification that an agreement has been reached by BellSouth and the CWA. Thereafter, this docket shall be closed administratively if no further action from the Commission is required.