

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: August 3, 2006

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

FROM: Office of the General Counsel (Tan)
Division of Competitive Markets & Enforcement (Casey, Moses)

RE: Docket No. 060430-TL – Petition for waiver of Rule 25-4.079(5), F.A.C., regarding provision of specialized Customer Premises Equipment (CPE) for lease or sale to hearing/speech impaired persons, by BellSouth Telecommunications, Inc.

AGENDA: 08/15/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES:

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060430.RCM.DOC

Case Background

On June 1, 2006 BellSouth Telecommunications, Inc. (BellSouth), filed a petition to waive the requirements of Rule 25-4.079(5), Florida Administrative Code, regarding the provision of specialized Customer Premises Equipment (CPE) for lease or sale to hearing/speech impaired persons. Notice of the rule waiver request was published in the June 16, 2006, Florida Administrative Weekly. No comments on the rule waiver petition have been filed. This recommendation addresses the company's request for a rule waiver.

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The Commission has jurisdiction over this matter through Sections 350.127(2), 364.01(4) and 120.542, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant BellSouth Telecommunications, Inc.'s Petition for waiver of Rule 25-4.079(5), Florida Administrative Code?

Recommendation: Yes, the Commission should grant BellSouth Telecommunications, Inc.'s Petition for waiver of Rule 25-4.079(5), Florida Administrative Code. (Tan, R. Moses, Casey)

Staff Analysis: The rule provisions in question require incumbent local exchange companies (ILECS) to provide equal telecommunications options to all consumers.

Rule 25-4.079(5), Florida Administrative Code, states that "Each LEC shall, pursuant to tariff, provide specialized customer premises equipment (CPE), for lease or sale, to hearing/speech impaired persons. This specialized CPE shall be priced to cover fully allocated costs without inclusion of a rate of return on investment component. Each LEC shall provide at least one type of each of the following categories of specialized CPE:

- (a) Audible ring signalers;
- (b) Visual ring signalers;
- (c) TDDs;
- (d) Volume control handsets.

When Rule 25-4.079(5) was promulgated in 1988, the state of Florida did not have a state funded relay program. Since that time the Florida Legislature passed the Telecommunications Access System Act (TASA) in 1991 to provide access to basic telecommunications services for the hard of hearing, deaf, and speech impaired individuals of Florida. Additionally, the Florida Telecommunications Relay, Inc. (FTRI) was formed for the purpose of distributing equipment.

Section 120.542, Florida Statutes, authorizes the Commission:

to grant variances or waivers to the requirements of its rules where the person subject to the rules has demonstrated the underlying purpose of the statute has been or will be achieved by other means, and that the strict application of the rules would cause the person substantial hardship or would violate principles of fairness.

BellSouth has demonstrated in its petition that the underlying purpose of the statute has been and will be achieved by other means, where the public has the opportunity to receive specialized customer premise equipment through the FTRI's equipment distribution program which is funded through the TASA surcharge billed to all landline telephone customers in Florida.

Qualified permanent residents of Florida are loaned one specialized telecommunications device at no charge through this program from regional distribution centers. Other individuals

have access to purchase from FTRI the many different specialized telecommunications devices and ring signaling devices. The public is also able to purchase CPEs through Internet vendors, catalogs and FTRI's regional distribution centers.

“Substantial hardship” as defined in this section is a demonstrated economic, technological, legal or other hardship. BellSouth has stated that due to limited interest from the hearing/speech impaired customers in purchasing the specialized CPE equipment, it has experienced a financial burden in complying with Rule 25-4.079(4), F.A.C. with increased administrative costs and being limited to the provision of CPE at the equipment's cost. BellSouth has included in its petition numerous websites that charge competitive prices for the same equipment. In addition, BellSouth has filed a tariff that states that the company retains less than 250 pieces of lease equipment. If the waiver is granted, BellSouth plans to give the CPEs to the current leasing customers.

The purpose of Rule of 25-4.079(5) is to ensure that the deaf, hard of hearing and speech impaired persons of Florida have the opportunity to access telecommunications services on an equal basis as any other resident of Florida.

Due to the circumstances described by BellSouth in its petition, as set forth above, the provision of CPE equipment for lease or purchase at cost as set forth in Rule 25-4.079(5), Florida Administrative Code, would create a substantial hardship to BellSouth. The Commission should find that a waiver of the requirement for the sale of CPE by BellSouth does not invalidate the rule, and the purpose of Section 350.127(2) will be fulfilled. Therefore, staff recommends that the Commission approve the petition for waiver of Rule 25-4.079(5), Florida Administrative Code.

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Issue 2: Should this docket be closed?

Recommendation: The Order issued in the recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested, this docket should be closed administratively upon issuance of the Consummating Order. (Tan)

Staff Analysis: Staff recommends that the Commission take action as set forth in the above staff recommendation.