

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: ~~September 13, 2007~~ November 7, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Pruitt, King)
Office of the General Counsel (Mann)

RE: Docket No. 070370-TL – Petition for waiver of Rule 25-4.110(5)(c), F.A.C., regarding requirement of local exchange companies to list items for which nonpayment will result in disconnection of customer's basic local service, by BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast.

AGENDA: ~~09/25/07~~ 11/20/07 – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: Statutory Deadline: ~~10/15/07~~ Waived

SPECIAL INSTRUCTIONS: ~~None~~ Attachments Not Available In Word

FILE NAME AND LOCATION: ~~S:\PSC\CMP\WP\070370.RCM.DOC~~
S:\PSC\CMP\WP\070370A.RCM.DOC

Case Background

On June 8, 2007, BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T) filed a request for a rule waiver pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code (F.A.C.). AT&T seeks relief from Rule 25-4.110(5)(c), F.A.C., a customer billing requirement for incumbent local exchange companies.

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On July 16, 2007, AT&T filed a Motion for Leave to File Amended Petition and its Amended Petition to supplement its arguments and information in the original petition. On July 20, 2007, the Commission issued Order No. PSC-07-0595-PCO-TL granting the Motion.

The Florida Administrative Weekly notice of the waiver request was published on August 17, 2007. No written comments were received during the 14-day comment period.

AT&T seeks the waiver in order to use a new bill format that does not have a special identification mark for each separate unregulated charge on a customer's bill. However, all charges are listed on the bill. AT&T is currently using the proposed bill format in 13 states. AT&T intends to use the proposed bill format throughout its 22-state region. With the waiver, AT&T states it would not incur additional costs associated with information technology, customer service training, and paper, printing and postage to generate a Florida-specific bill format.

At the September 25, 2007 Agenda Conference, concerns were raised involving the wording and prominence of the Prevent Disconnect message in the proposed bill. After AT&T waived the statutory deadline, this item was deferred to allow AT&T time to address the concerns raised and present additional information to staff. Attachment B has been revised by AT&T to reflect the changes made since the September 25, 2007 Agenda Conference.

The Commission is vested with jurisdiction in this matter pursuant to Sections 120.542, 350.127, 364.012, 364.10, and 364.604, Florida Statutes.

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Discussion of Issues

Issue 1: Should the Commission approve the request for waiver of the billing requirement of Rule 25-4.110(5)(c), Florida Administrative Code, by BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast?

Recommendation: Yes, the Commission should approve the request for waiver of the billing requirement of Rule 25-4.110(5)(c), Florida Administrative Code. (**Pruitt**)

Staff Analysis: This is a petition for a waiver of Rule 25-4.110(5)(c), Florida Administrative Code. Under Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, a person affected by a Commission Rule may petition the Commission for a waiver of that Rule. The Commission has general statutory authority to grant this waiver under Section 120.542, Florida Statutes, which states:

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 a rule would create a substantial hardship or would violate principles of fairness.

Pursuant to Rule 25-4.110(5)(c), Florida Administrative Code, an incumbent local exchange company (ILEC) must identify the charges which could result in disconnection of service if not paid. The Rule requires all ILECs to clearly state on their bills:

(c) Items for which nonpayment will result in disconnection of the customer's basic local service, including a statement of the consequences of nonpayment;

In order to comply with the Rule, AT&T currently identifies unregulated charges on its bills (**Attachment A**) with a double asterisk ** and an accompanying footnote. The bills also contain on the second page the following statement:

Regulated charges are the minimum you must pay in order to maintain your local telephone service. If you do not pay this amount: your local service may be disconnected, and you may need to pay a charge or deposit to have your service reconnected. The amount of Regulated Charges may be obtained by calling 1 888 757-6500. If you do not pay the rest of your bill, which includes unregulated charges – all of which are identified by ** on your bill: your local phone service will not be disconnected, and you are still responsible for paying these charges.

Under the current bill format customers must either subtract the unregulated charges from the total charges or call customer service to determine the amount that must be paid to maintain local service. AT&T states that the major concern of customers is the total amount that must be paid to avoid disconnection, not the individual charges.

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AT&T currently is using its proposed bill format (~~Attachment B~~) in 13 states and wants to expand its use to the nine AT&T Southeast states. The proposed bill format does not distinguish between regulated and nonregulated charges. However, all of the charges are listed on the bill, ~~which has the following statement:~~

This item was deferred at the September 25, 2007 Agenda conference to allow AT&T time to address the concerns raised involving the wording and prominence of the Prevent Disconnect message in the proposed bill. On October 9, 2007, AT&T informed staff of additional changes the company could make in the "News You Can Use" section of its proposed bill format (**Revised Attachment B**) to address the concerns raised at the September Agenda Conference.¹ These changes include bolding the words, PREVENT DISCONNECT, the title of the message, and capitalizing and bolding the entire sentence which contains the minimum amount to be paid to maintain local service. AT&T also changed the next sentence in the message to include the words "but will not result in disconnection of your local service." The following incorporates AT&T's additional changes:

PREVENT DISCONNECT

Thank you for being a valued customer. Please be aware that all charges must be paid each month to keep your account current and prevent collection activities. We are required to inform you that certain charges ~~MUST~~must be paid in order to prevent interruption of local service. **THESE CHARGES ARE ALREADY INCLUDED IN THE TOTAL AMOUNT DUE AND ARE \$237.72.** Also, neglecting to pay for remaining charges may result in interruption or removal of these remaining services or further collection action, but will not result in disconnection of your local service. A Late Payment Charge of \$3.20 may apply to an unpaid regulated balance and a 1.5% Interest charge may apply to an unpaid unregulated balance. For more information, call the Plans and Services number listed in the Billing Summary section on page 1.

In response to the suggestion that the Prevent Disconnect information be highlighted with a colored background, AT&T explained that it only prints bills in black on preprinted paper with a blue strip at the top and bottom, blue coloring for the words, Monthly Statement, and light blue shading on the first page for Bill-At-A-Glance. AT&T further explained that the Prevent Disconnect message space could not be prehighlighted in blue since the message would not appear in the same space for every customer's bill depending on the services and features unique to each customer. This preprinted paper is used in every state by AT&T and other AT&T affiliates. The paper is ordered quarterly, and the company currently has 25 million preprinted pages in stock which does not include any current production held by the supplier. AT&T uses approximately 500 million preprinted pages a year.

¹ Document Number 09348-07, filed October 12, 2007, in instant docket includes revised proposed bill.

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In addition, it was suggested at the September 25, 2007 Agenda Conference that the Prevent Disconnect information be its own section with a separate banner. AT&T stated currently its billing system places messages in one of two sections: "News You Can Use" or "Terms and Conditions." AT&T does not view Prevent Disconnect as a section but rather as a message under "News You Can Use." AT&T stated that to change the Prevent Disconnect message to a separate section for Florida would be inconsistent with the new bill format for the other states and would be a "significant expense."

AT&T intends to keep Prevent Disconnect as the opening message under "News You Can Use" which will also be the first title under the "News You Can Use Summary" found on the initial page of the proposed bill in Revised Attachment B.² Staff notes that AT&T's proposed approach is consistent with one already sanctioned by the Federal Communications Commission (FCC) as being compliant with federal Truth-in-Billing rules.³

AT&T contends that its proposed bill format meets the Rule's intent and will reduce the number of calls to its customer service centers, increase customer satisfaction, and be more environmentally friendly by reducing the average bill from 4.5 to 2 sheets of paper.

Rule 28-104.002, F.A.C., Petition for Variance or Waiver, asks for specifics regarding what substantial hardship will be incurred if the waiver is not granted. Section 120.542(2), Florida Statutes, defines substantial hardship as ". . . a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver."

In support of its case for substantial hardship, AT&T states that if the waiver is denied the company ". . . would incur (1) information technology costs of \$344,000 (non-recurring) and \$191,000 (recurring yearly) to support a unique bill format for Florida only; (2) training costs of \$130,000 (non-recurring) and \$79,000 (recurring yearly) to train its customer service representatives on two different types of billing methods and procedures; and (3) opportunity costs of missed paper, printing and postage savings totaling \$2,000,000."⁴ The company argues that ". . . to maintain separate bill formats on an ongoing basis, is an inefficient use of resources and would cause a 'substantial hardship' upon AT&T Florida."

Staff believes that in this instance AT&T's proposed bill format meets the underlying purpose of Rule 25-4.110(5)(c), Florida Administrative Code. The new bill format achieves the Rule's intent by providing the customer the total amount required to avoid disconnection of basic service. Staff also believes that AT&T has met the requirement of Section 120.542(2), Florida Statutes, by demonstrating an immediate and ongoing substantial economic hardship. Staff views the proposed bill format compared to AT&T's current bill format as more easily read and consumer friendly.

² Document Number 09503-07, filed October 17, 2007, in instant docket.

³ Re. SNET, *Truth-in-Billing and Billing Format*, Order on Reconsideration, CC Docket No. 98-170, FCC 00-111, at ¶¶ 7-8.

⁴ AT&T states that denial of the petition in Florida would cause a four-month delay in implementing the new billing format in the other eight AT&T Southeast states while a unique Florida bill format was programmed and customer service representatives trained to handle calls for either type of bill format. The proposed new bill format would require less paper, printing, and postage for a monthly cost savings of \$500,000 or \$2,000,000 for four months.

Therefore, staff recommends that the Commission approve the request for waiver of Rule 25-4.110(5)(c), Florida Administrative Code.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. **(Mann)**

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.