

-State of Florida



Public Service Commission

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

DATE: June 4, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Pruitt)
Office of the General Counsel (Morrow)

RE: Docket No. 090082-TL – Petition by BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast for waiver of Rule 25-4.040(2), Florida Administrative Code.

AGENDA: 06/16/09 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: Statutory Deadline: 08/17/09

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RCP\WP\090082.RCM.DOC

Case Background

On February 13, 2009, BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T Florida), an incumbent local exchange telecommunications company (ILEC), filed a request for a permanent rule waiver pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code (F.A.C.). AT&T Florida seeks relief from Rule 25-4.040(2), F.A.C., which requires the ILEC to furnish each subscriber a directory of local residential and business listings.

If the waiver is granted, AT&T Florida subscribers would no longer receive printed copies of the residential listings on an up-front basis. Instead, AT&T Florida would only furnish

printed copies of its business yellow pages directory and provide the residential listings via the internet. Subscribers could request printed copies of the residential white pages directory or CD-ROM (where available) free of charge by calling a toll-free number. Independent of this Petition, AT&T Florida plans to furnish a directory of business listings with yellow pages and a CD-ROM of residential listings to subscribers in four market areas this year and other areas later.

The Florida Administrative Weekly (FAW) notice of AT&T Florida's permanent waiver request was published on March 6, 2009. No written comments were received during the 14-day comment period.

On March 16, 2009, Commission staff met with representatives of AT&T Florida and the Office of Public Counsel (OPC) to discuss consumer safeguards.

On March 25, 2009, AT&T Florida filed additional information addressing consumer issues and the economic impact of continuing to provide printed residential white pages directories or CD-ROMs on an up-front basis.

On May 19, 2009, AT&T Florida provided, per staff's request, a mock-up of the yellow pages cover for the Miami-Dade area.¹

The Commission is vested with jurisdiction in this matter pursuant to Sections 120.542, 350.127, and 364.02(1), Florida Statutes.

¹ Section 120.542(8), Florida Statutes, states, "An agency shall grant or deny a petition for variance or waiver within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition."

Discussion of Issues

Issue 1: Should the Commission approve the request for the permanent waiver of the residential directory requirement of Rule 25-4.040(2), F.A.C., by AT&T Florida?

Recommendation: No, the Commission should not approve AT&T Florida's request for waiver of the residential directory requirement of Rule 25-4.040(2), F.A.C.. (Pruitt, Morrow)

Staff Analysis: Under Section 120.542, Florida Statutes, and Rule 28-104.002, F.A.C., 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(2), Florida Statutes, which states:

* * *

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute² will be or has been achieved by other means by the person and when the application of a 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 28-104.002, F.A.C., states in part:

* * *

(2) The petition must include the following information:

(g) The specific facts that demonstrate a substantial hardship or a violation of principles of fairness that would justify a waiver or variance for the petitioner;

(h) The reason why the variance or the waiver requested would serve the purposes of the underlying statute;

* * *

² Section 364.02(1), Florida Statutes, defines basic local telecommunications service to include an alphabetical directory listing.

Rule 25-4.040(2), F.A.C., states in part:

* * *

Each subscriber served by a directory shall be furnished one copy of that directory for each access line. Subject to availability, additional directories shall be provided by the local exchange telecommunications company, which may charge a reasonable fee therefor.

* * *

Rule 25-4.040, F.A.C., requires various information be included in the directory such as: alphabetical list of all local subscribers (except unlisted or unpublished subscribers); description of local calling area; directory publication date; 911 instructions; the number for the Poison Information Center; contact information for this Commission; and information concerning repair service, directory assistance, service disconnection procedures, emergency interrupt, business and payment offices, No Sales Solicitation, and inside wiring policy. AT&T Florida has stated that all information required by the rule will be available on-line in the “traditional directory format” and in the business yellow pages directories.

To be granted a waiver a Petitioner must meet the statutory threshold by demonstrating that granting the waiver would serve the purpose of the underlying statute, and demonstrating that without the waiver the Petitioner would have a substantial hardship.

Purpose of Underlying Statute

Staff believes the permanent rule waiver request meets the purpose of the underlying statute (Section 364.02(1), Florida Statutes) by providing directory information without compromising consumer access to listed residential numbers. In response to questions from OPC, AT&T Florida asserted that in 2007, confidential statistical studies of markets in the Southeast, including Florida, showed the average customer using the residential and business listings a combined 1.68 times a month and “73% of the customers believed it acceptable to make the TRWP [The Real White Pages] available only by request.” AT&T Florida has already conducted trials in Atlanta, Georgia and Austin, Texas. AT&T Florida stated in its Petition that “less than 1% in Atlanta, [and] just over 1.7% in Austin” requested a residential white pages directory.

AT&T Florida also reported that only four complaints were received from Austin, Texas subscribers concerning the after-hours automated ordering system for the residential white pages directory, and only one complaint had been received about eliminating the up-front delivery of the residential directory. AT&T Florida reported no complaints from Atlanta subscribers.

According to AT&T Florida, other states have provided alternatives to the automatic delivery of printed directories. For example, the Public Utilities Commission of Ohio has approved a similar rule waiver request; in Indiana this matter became a non-issue due to regulatory changes; and the Oklahoma Corporation Commission amended its directory rule,

OAC 165:55-7-1, subject to legislative approval, to allow directories to be furnished in a variety of formats.

Staff believes adequate notification to subscribers regarding the change in the distribution of residential white pages and how to order a free copy of the directory is crucial. On March 25, 2009, in response to staff and OPC questions, AT&T Florida filed supplemental information that in addition to three places in and on the Real Yellow Pages Directories (on the cover, in the customer call guide, and on a stiff tab insert), the company would also inform subscribers of the directory distribution change in the “News You Can Use”³ section of their bills the month preceding and the month a yellow pages directory is issued for a local calling area.

AT&T Florida also provided mock-ups of the yellow pages directory cover. Staff did not think the mock-ups adequately drew a subscriber’s attention to the notice for a free printed residential directory and requested that the wording on the cover be highlighted. AT&T Florida and OPC have agreed that the cover (Attachment A), with the highlighted words, “To obtain a free copy of the residential white pages, please call 1-800-422-1955,” will be used the first year the waiver is applied in a market area. In subsequent years the highlighted words will read, “For more information on how to obtain a free copy of your residential white pages, please refer to the Customer Guide.” Agreement to modifications on the first page of the Customer Guide was also reached (Attachment B) which includes making the 800 number more prominent for a “FREE” residential directory by increasing the font and highlighting in blue the 800 number and the word “free” throughout the information section.

In the Customer Guide section, subscribers will find the toll-free number for ordering a free residential directory or CD-ROM (where available). The guide also provides two websites for accessing residential numbers, www.RealPagesLive.com and www.YELLOWPAGES.com.

Substantial Hardship

AT&T Florida asserts that eliminating the automatic distribution of the residential white pages is an environmentally green endeavor and a cost saving measure. According to AT&T Florida, “[t]his obligation to provide residential white pages on an up-front basis is an ongoing burden upon AT&T Florida, is an inefficient use of resources in these tough economic times, restricts AT&T Florida from operating in an environmentally friendly manner and imposes a ‘substantial hardship’ upon AT&T Florida.”⁴

In response to staff’s inquiry, on March 25, 2009 AT&T Florida filed confidentially the dollar amount that would be saved by not providing up front the residential white pages directories in printed format or CD-ROMs in four markets. In response to staff’s questions, it was established that AT&T Florida’s directory affiliate would have cost savings, not AT&T Florida. Staff does not believe AT&T Florida has provided “[t]he specific facts that demonstrate a substantial hardship” necessary to meet the requirements of Section 120.542(2), Florida Statutes, or Section 28-104.002(2)(g), F.A.C.

³ In Docket No. 070370-TL the Commission approved AT&T Florida’s new billing format which contained the “News You Can Use” section.

⁴ Petition p. 7, ¶ 17.

Conclusion

The permanent waiver request recognizes advances in technology while protecting the interests of subscribers who want to continue to receive a free printed residential directory. Staff believes the permanent rule waiver request meets the purpose of the underlying statute and rule by allowing AT&T Florida to provide directory information without compromising consumer access to listed residential numbers. While there may be merit to the waiver request, AT&T Florida will have little, if any, cost savings. AT&T Florida's directory affiliate would achieve some savings.

Although staff believes the alternative directory plan offered by AT&T Florida meets the purpose of Rule 25-4.040(2), F.A.C., and its underlying statutes, staff does not believe that AT&T Florida has established that application of the rule would create a substantial hardship or violate principles of fairness. 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." Upon review of AT&T Florida's Petition, staff does not believe that AT&T Florida has demonstrated that it would in fact suffer a substantial hardship. Rather, staff believes that any economic hardship would be borne by affiliates of AT&T Florida. Therefore, staff recommends that the Commission should not approve AT&T Florida's request for waiver of the residential directory requirement of Rule 25-4.040(2), F.A.C.

As noted in the background, AT&T Florida has begun a program to furnish a directory of business listings with yellow pages and a CD-ROM of residential listings to subscribers (a paper copy would be provided upon request) in certain areas of Florida. Staff notes that a large majority of the cost savings will be realized by making this change and no waiver of Rule 25-4.040(2), F.A.C., is necessary. If the Commission deems it appropriate, staff could be directed to explore additional directory delivery alternatives to be included in the rule.

Docket No. 090082-TL

Date: June 4, 2009

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 and notice of disposition in the FAW. (Morrow)

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 and notice of disposition in the FAW.

 at&t

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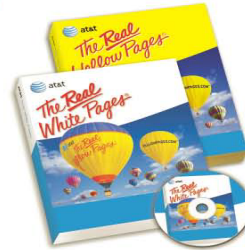
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AT&T is committed to meeting and exceeding the needs of our customers by providing you with choices as to how you can access **free** residential white pages listings in the West Palm Beach area.

You have the option of using the enclosed CD-ROM, which also includes the Business White Pages and the AT&T Real Yellow Pages for West Palm Beach, using one of AT&T's two online offerings, www.RealPagesLive.com or YELLOWPAGES.COM, or requesting a printed version of the Residential White Pages. You will continue to automatically receive printed copies of the AT&T Real Yellow Pages and the Business White & Government Pages.

The following four options are available to provide you with **free** access to West Palm Beach Residential White Pages listings:

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