

ORIGINAL

LAW OFFICES

McWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, RIEF & BAKAS, P.A.

LYNWOOD F. ARNOLD, JR.
JOHN W. BAKAS, JR.
C. THOMAS DAVIDSON
STEPHEN O. DECKER
LINDA E. JONES
VICKI GORDON KAUFMAN
JOSEPH A. MCGLOTHLIN
JOHN W. MCWHESTER, JR.
RICHARD W. REEVES
FRANK J. RIEF, III
DAVID W. STRAIN
PAUL A. STRASSER

100 NORTH TAMPA STREET, SUITE 2000
TAMPA, FLORIDA 33602-5126
MAILING ADDRESS TAMPA
P.O. BOX 2220, TAMPA, FLORIDA 33601-2220
TELEPHONE (813) 294-0226
FAX (813) 221-1054
CAROL GRANDELOW
PLEASE REPLY TO
TALLAHASSEE

TALLAHASSEE OFFICE
117 N. GARDNER
TALLAHASSEE, FLORIDA 32301
TELEPHONE (904) 222-2525
FAX (904) 222-2508

January 23, 1998

VIA HAND DELIVERY

Ms. Blanca Bayó
Florida Public Service Commission
Division of Records & Reporting
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket N [REDACTED]

Dear Ms. Bayó:

Enclosed are the original and 15 copies of the Comments of the Florida Competitive Carriers Associations On Proposed Slamming Rules in the above docket.

I have enclosed an extra copy of the above document for you to stamp and return to me. Thank you for your assistance.

ACK _____
Sincerely,

AF1 _____
CAF 2 *Vicki Gordon Kaufman*
CM1 2 Vicki Gordon Kaufman

CTR _____ VGK/pw
EAG _____ Encls.

LE1 _____
LIN 5

CHC _____
F1 1

S1 1
WAC _____

OTH _____

DOCUMENT NUMBER-DATE

[REDACTED] 01316 JAN 23 8

FPSC-RECORDS/REPORTING

OFFICIAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Rule 25-24.845,)
F.A.C., Customer Relations;)
Rules Incorporated, and Proposed)
Amendments to Rules 25-4.003,)
F.A.C., Customer Billing; 25-)
4.118, F.A.C. Interexchange)
Carrier Selection; 25-24.490,)
F.A.C., Customer Relations;)
Rules Incorporated)
_____)

Docket No. 970882-EI

Filed: January 23, 1998

**COMMENTS OF THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION
ON PROPOSED SLAMMING RULES**

Pursuant to section 120.54(3), Florida Statutes, the Florida Competitive Carriers Association (FCCA) files its comments on the rules proposed by the Commission in this docket. Such comments consist of two proposed regulatory alternatives¹, either of which will accomplish the Commission's purpose while imposing a lower regulatory cost on the competitive marketplace. Each alternative is discussed below.

Alternative #1

1. Lower cost Alternative #1 involves the Commission's adoption of the Federal Communications Commission's (FCC) soon-to-be-adopted rules on slamming. Adoption of the FCC's rules will ensure that carriers who do business on a nationwide basis will not be subject to differing and expensive requirements in each of the 50 states, requiring costly adjustments to billing and operations systems. National uniformity will result in much lower costs to carriers (and ultimately the public). Therefore, the FCC rules should be adopted by the Commission in this instance.

¹ The two alternatives are attached.

Alternative #2

2. Lower cost Alternative #2 takes the rule as proposed by the Commission and makes modifications which do not interfere with the rule's efficacy but which significantly reduce the cost of implementation. These modifications,² and the reasons for them, are discussed below.

a. **Rule 25-4.110(10) (page 23):**

1. FCCA's modification changes the effective date of this provision from January 1, 1998 to January 1, 1999 or 6 months after final rule adoption, whichever is later. The changes which will be required by the proposed rules, even if one of the FCCA's alternatives is chosen, will be substantial. Carriers must have sufficient time to modify their billing and operations systems so that any rule which is adopted can be accurately and efficiently implemented.

2. FCCA also suggests that the requirement that a carrier's certificate number appear on the bill be deleted. Such a number has no meaning to the average consumer. It would require extensive modifications of carriers' operations systems at great cost with no concomitant benefit to the public.

b. **Rule 25-4.110(11) (page 23), 25-4.110(11)(a) (page 24) and 25-4.110(3) (page 24):**

1. These changes consist of the addition of the word "nonregulated" to the noted sections to clarify which services are included within the rules' scope.

c. **Rule 25-4.110(12) (page 30):**

² FCCA's modifications are keyed to the version of the rule attached to Order No. PSC-97-1615-NOR-TI, issued on December 24, 1997.

1. This portion of the proposed rule requires that customers be notified of the PIC freeze option. FCCA suggests that the carrier should have the options of providing such notification on the bill (as the proposed rule would require) or via letter to the consumer. This gives the carriers the flexibility to provide this information in the most cost-effective manner for them while still giving the same information to consumers.

2. Additionally, two separate forms should be required to implement a PIC freeze—one for toll or local toll and a separate form for a local PIC freeze. Differentiating between the types of PIC freezes will help consumers understand the different types of services and the PIC freeze process. It will also help diminish the potential for abuse of the PIC freeze process by the incumbent, who will have more opportunity to solicit a PIC freeze on all traffic if only one form is required from the consumer.

FCCA is extremely concerned about the potential for PIC freeze abuse. This potential is illustrated by the following examples from other jurisdictions. The Public Utilities Commission of Ohio addressed across-the-board PIC freezes in In the Matter of the Complaint of Sprint Communications, L.P.V. Ameritech Ohio, Case No. 96-142-TP-CSS, Opinion and Order entered September 11, 1997. In that case, the Ohio Commission found that Ameritech sent bill inserts regarding PIC freezes which were "less than accurate and improper." The inserts failed to make it clear that the freeze would apply to local and long distance service. The Ohio Commission found that Ameritech's actions were directly related to its attempt to retain market share.

The State of New York Department of Public Service is investigating New York

Telephone Company's (NYT) PIC freeze actions as to allegations that it is being used in an anticompetitive manner. Ordinary tariff filing of New York Telephone Company to revise its IntraLATA Presubscription (ILP) tariff, Case 98-C-1041.

Thus, FCCA urges the Commission to carefully consider the anticompetitive potential of the PIC freeze process when administered by the incumbent.

d. **Rule 25-4.110(13) (page 30):**

1. The proposed rule requires that the customer be given notice on the bill of a change of provider. Like the change recommended to rule 25-4.110(12), FCCA suggests that the carrier have the option of providing the notice of carrier change on the bill or with the bill. This will allow the carrier to choose the most cost-effective method and avoid the necessity of making expensive software and hardware modifications to its billing system due to the requirement of placing the notice on the bill itself.

2. FCCA also suggests that it be made clear that this change would become effective on January 1, 1999 or 6 months after final rule adoption, whichever is later.

e. **Rule 25-4.110(2)(b) (page 31):**

1. This section deals with verification of PIC changes. As proposed, it requires the provider to record the originating telephone number to be changed via automatic number identification. FCCA suggests that this requirement be deleted and that the request be verified by an independent third party. Such verification will be more efficient and less costly but still accomplish the purpose of ensuring that a legitimate PIC change request has been made.

f. Rule 25-4.118(3)(b) (page 33):

1. FCCA suggests deleting the phrase "whether or not it uses the facilities of another company." This phrase makes the provision ambiguous. It could erroneously be construed to require a reseller to identify its underlying carrier -- which is far from the Commission's intent. FCCA's modification will clarify that the intent is to require the LOA to disclose the name of the certificated provider.

g. Rule 25-4.118(5) (page 36):

1. The proposed rule would require the carrier to receive the signed LOA before changing a customer. In some situations, this may result in a delay in making a change requested by the customer. Consumers are accustomed to rapid PIC changes; delay should not be introduced into the process. Therefore, FCCA suggests that the rule should allow the LOA to also be verified by third party verification, which may be more efficient and cost-effective.

h. Rule 25-4.118(6) (page 36):

1. The rule as now proposed requires LOAs and audio recordings to be retained by the provider for one year. FCCA believes that a period of six months is sufficient. Six months is certainly sufficient to enable a consumer to investigate and determine whether there has been an unauthorized PIC change and to resolve it. Requiring providers to retain these types of records for one year would greatly increase the cost of doing business in Florida but would provide little corresponding benefit to consumers.

i. Rule 25-4.118(8) (page 36):

1. FCCA suggests that this portion of the rule be changed so that

charges for unauthorized changes and any charges billed for the first 30 days or the first billing cycle are credited to the customer. Crediting charges for 90 days or three billing cycles is punitive and not related to any harm accruing to the consumer. FCCA's change will compensate the customer for the unauthorized change while not resulting in an excessive fine or penalty.

2. The proposed provision requiring charges to be credited for up to 12 months should be deleted. Such a provision goes far beyond remedying any harm caused by an unauthorized PIC change. Further, the proposed provision invites some consumers to "game" the system so as to receive free service to which they are not entitled at great expense to the carriers (and ultimately, to all consumers).

j. **Rule 25-4.118(12) (page 38):**

1. This rule should be clarified to note that the verification letter must be sent within 30 days.

k. **Rule 25-4.118(13) (page 38):**

1. This proposed rule requires the provider to send the customer a copy of the LOA. It is duplicative of the requirement of 25-4.118(12). In essence, a carrier would be required to send two notifications to the consumer regarding a change of service. This duplication is expensive and unnecessary. This requirement should be eliminated from the proposed rule.

l. **Rule 25-4.118(14) (page 38):**

1. The requirement that all companies employ live operators 7 days a week, 24 hours a day or that all end user complaints be recorded should be deleted

from the proposed rule. Such a requirement would place a very heavy financial burden on small companies and dramatically increase their cost of doing business in the state. It would deter companies from entering the Florida market and is therefore inconsistent with the goal of encouraging competition.

If it is important to a consumer to do business with a company that fulfills the requirements that this section seeks to impose, the consumer can choose such a company in the competitive marketplace. The Commission should not impose that choice on all consumers via this proposed rule.

m. **Rule 25-24.400(1) (page 43):**

1. The proposed rule should be modified to delete the reference to subsection (10) under the column captioned "Portions Applicable" to section 25-4.110. An IXC has no way to identify a customer's local carrier. Therefore, it cannot put this information on its bill as this proposed rule appears to require.

3. Changing the rule proposed by the Commission in the ways described above will reduce regulatory costs and burdens while still accomplishing the Commission's objectives.


Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bekas, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301

Attorneys for the Florida Competitive
Carriers Association

**FLORIDA COMPETITIVE CARRIERS ASSOCIATION
ALTERNATIVE 1**

To accomplish the objectives of the rule proposed by the Commission in Order No. PSC-97-1615-NOR-TI issued on December 24, 1997, through means that would impose lower regulatory costs, the Florida Competitive Carriers Association (FCCA) proposes an alternative to the proposed rule language. That alternative is adoption of the Federal Communications Commission's (FCC) soon-to-be adopted slamming rule.

**FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S
ALTERNATIVE 2**

To accomplish the objectives of the rule proposed by the Commission in Order No. PSC-97-1615-NOR-TI, issued on December 24, 1997, through means that would impose lower regulatory costs, the Florida Competitive Carriers Association (FCCA) proposes an alternative to the proposed rule language. FCCA's alternative is intended to retain those measures of the proposed rule that will effectively strengthen the effort to curb abuse, while eliminating or modifying the measures which would (a) impose costs without accomplishing additional consumer protection or (b) impose costs that would be unreasonable in view of the ability to achieve corresponding benefits at lower cost. In written comments to be filed on January 23, 1998, FCCA will explain the deficiency or excess FCCA sees in each provision of the proposed rule it seeks to modify and elaborate on why its alternative will serve the Commission's purpose at lower cost.

FCCA's Alternative 2 consists of the Commission's proposed rule, modified as

follows (in the rule language that follows, the Commission's proposed rule is the baseline version; FCCA's suggested alternative to the proposed rule is shown in the form of strike-throughs and additions)¹. Any rule revisions should become effective on January 1, 1999, or six months after rule adoption, whichever is later.

1. Beginning at page 23, modify proposed rule 25-4.110(10) as follows:

(10) After January 1, ~~1999~~ 1998, or six months after the date the adoption of this rule becomes final, whichever is later, all bills produced shall clearly and conspicuously display the following information for each service billed in regard to each company claiming to be the customer's presubscribed provider for local, local toll, or toll service:

(a) The name of the certificated company, ~~and its certificate number;~~

2. Beginning at page 23, modify proposed rule 25-4.110(11) as follows:

(11) This section applies to LECs that provide transmission services or bill and collect on behalf of other providers including pay per call providers. Pay Per Call services are defined as switched telecommunications services between locations within the State of Florida

¹FCCA's proposed modifications are keyed to the rule as proposed in Order No. PSC-97-1615-NOR-TI, issued December 24, 1997.

which permit communications between an end use customer and an information provider's program at a per call charge to the end user/customer. Pay Per Call services include 976 services provided by the LECs, 900 services provided by IXCs, and other miscellaneous non-regulated charges on behalf of other providers.

(a) Charges for Pay Per Call and other non-regulated services, shall be segregated from charges for regular long distance or local charges by appearing separately under a heading that reads as follows: "Pay Per Call and other nonregulated charges." The following information shall be clearly and conspicuously disclosed on each section of the bill containing Pay Per Call service (900 or 976) charges:

3. Beginning at page 24, modify proposed rule 25-4.110(11)3 as follows:

3. End Users/customers can obtain a free billing block option from the LEC to block all charges from a non-regulated third party. Bills submitted by non-regulated third parties with the subscriber's LEC-specific personal identification number will validate the subscribers authorization of the charges and supersede the billing block option. The subscriber is responsible for all such charges.

4. Beginning at page 30, modify proposed rule 25-4.110(12) as follows:

(12) The customer must be noticed in on his first bill or letter and annually thereafter that a PIC Freeze is available and may contact the provider to obtain the form for freezing the local exchange service choice (FORM -----) or the form for freezing the toll and/or local toll provider (FORM -----). ~~These two forms are FORM-PSC/CAF-2 (XX/XX). A copy of FORM-PSC/CAF-2 (XX/XX),~~ which is incorporated into this rule by reference, and may be obtained from the Commission's Division of Consumer Affairs. Existing customers must be notified by January 1, 1999, and annually thereafter that the two e PIC Freeze forms are ~~is~~ available and may contact the provider to obtain FORM ----- and/or FORM ----- FORM-PSC/CAF-2 (XX/XX).

5. Beginning at page 30, modify proposed rule 25-4.110(13) as follows:

(13) The customer must be given notice on the first or second page of his next bill or with the bill in conspicuous bold fact type when his provider of local, local toll, or toll service has changed beginning no later than January 1, 1999, or six months after the date the adoption of this rule becomes final, whichever is later.

6. Beginning at page 31, modify proposed rule 25-4.118(2)(b) as follows:

(b) the company has received a customer-initiated call, and has obtained the following:

1. The customer's consent to record the requested change;

2. An audio recording of the information set forth in (3)a. through e. and is verified through a qualified, independent firm which is unaffiliated with the company claiming the subscriber; and

7. Beginning at page 31, modify proposed rule 225-4.118(2)(b)(3) by deleting subpart (3) in its entirety, as follows:

~~3. A recording of the originating telephone number on which the provider is to be changed via automatic number identification.~~

8. Beginning at page 33, modify proposed rule 25-4.118(3)(b) as follows:

(b) Statement clearly identifying the certificated name of the provider and the service to which the customer wishes to subscribe, ~~whether or not it uses the facilities of another company.~~

9. Beginning at page 36, modify proposed rule 25-4.118(5) as follows:

(5) A prospective provider must have received the signed LOA or third party verification before initiating the change.

10. Beginning at page 36, modify proposed rule 25-4.118(6) as follows:

(6) LOAs and audio recordings shall be maintained by the provider for a period of six months ~~one year~~.

11. Beginning at page 36, modify proposed rule 25-4.118(8) as follows:

(8) Charges for unauthorized provider changes and all charges billed on behalf of the unauthorized provider for the first 30 ~~60~~ days or first three billing cycles, whichever is longer, shall be credited to the customer by the company responsible for the error within 45 days of notification. ~~After the first 90 days up to 12 months, charges over the rates of the preferred company will be credited to the customer by the company responsible for the error within 45 days of notification.~~ Upon notice from the customer of an unauthorized provider change, the LEC shall change the customer back, or to another company of the customer's choice. The change must be made within 24 hours excepting Saturday, Sunday, and holidays, in which case the change shall be made by the end of the next business day.

12. Beginning at page 38, modify proposed rule 25-4.118(12) as follows:

(12) Upon completion of the verification process outlined in this section, the provider must send a letter notifying the customer that it will be providing his service

within 15 days.

13. Beginning at page 38, modify proposed rule 25-4.118(13) by deleting subpart (13) in its entirety, as follows:

~~(13) A provider must provide the customer a copy of the authorization it relies upon for the switch within 15 days of request.~~

14. Beginning at page 38, modify proposed rule 25-4.118(14) by deleting subpart (14) in its entirety, as follows:

~~(14) Each company shall provide a live operator to answer incoming calls 24 hours a day, 7 days a week, or shall record end-user complaints. A combination of live operators and recorders may be used. If a recorder is used, the company shall attempt to contact each complainant no later than the next business day following the date of recording. A minimum of 95 percent of all call attempts shall be completed to a company's toll free customer service number. Station busies will not be counted as completed calls. The term "answer" as used in this subsection means more than an acknowledgment that the customer is waiting on the line. It shall mean the provider is ready to render assistance or accept the information necessary to process the call.~~

15. Beginning at page 43, modify proposed rule 25-24.490(1) by deleting the

reference to Subsection (10) under the column captioned "Portions Applicable" to
Section 25-4.110.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Comments of the Florida Competitive Carriers Association on Proposed Streaming Rules has been provided by (*) hand delivery or U. S. Mail this 23rd day of January, 1998 to the following:

Diana Caldwell*
Florida Public Service Commission
Division of Appeals
2540 Shumard Oak Boulevard
Room 301D
Tallahassee, Florida 32399-085

Charles J. Beck
Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

Michael A. Gross
Assistant Attorney General
Department of Legal Affairs
The Capitol, PL-01
Tallahassee, Florida 32399-1050

Nancy White
c/o Nancy Sims
BellSouth Telecommunications
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301

Marsha Rule
Tracy Hatch
A-T Communications of the
Southern States, Inc.
101 North Monroe Street, Suite 700
Tallahassee, Florida 32301

C. Everett Boyd, Jr.
Ervin, Varn, Jacobs & Ervin
305 South Gadsden Street
Post Office Drawer 1170
Tallahassee, Florida 32302

Benjamin W. Fincher
Sprint Communications Company
3100 Cumberland Circle
Atlanta, Georgia 30339
Mailstop: GAATLN0802

Patrick K. Wiggins
Wiggins & Villacorta, P.A.
501 East Tennessee Street, Suite B
Post Office Drawer 1657
Tallahassee, Florida 32302

Ky E. B. Kirby
Warren A. Fitch
Don W. Blevins
Swidler & Berlin, Chtd.
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007-5116

Richard D. Nelson
Hopping Green Sams & Smith
123 South Calhoun Street
Post Office Box 6526
Tallahassee, Florida 32314

Thomas K. Bond
MCI Telecommunications
Corporation
780 Johnson Ferry Road
Suite 700
Atlanta, Georgia 30342

Charles Rehwinkel
Sprint/United Florida
Sprint/Centel Florida
Post Office Box 2214
Tallahassee, Florida 32316

Suzanne Fannon Summerlin
1311-B Paul Russell Road
Suite 201
Tallahassee, Florida 32301

Michael L. Glaser
Canora T. Podd
Halgiman and Lottner, P.C.
First Interstates Tower North
633 Seventeenth Street, Suite 2700
Denver, Colorado 80202-3635

Greg L. Eriksen
Levine & Eriksen
2560 North Santiago Boulevard
Orange, California 92667

Andrew O. Isar
Director, Industry Relations
Telecommunications Resellers
Association
4312 92nd Avenue, N.W.
Gig Harbor, Washington 98335-4461

Amy Gross
AMNEX
100 West Lucerne Circle
Suite 100
Orlando, Florida 32801

Jill Butler
Cox Communications
4585 Village Avenue
Norfolk, Virginia 23502

Brandon Peters
Dean, Mead Law Firm
800 North Magnolia Avenue
Suite 1500
Orlando, Florida 32803

Benjamin Ochshorn
Florida Legal Services, Inc.
2121 Delta Boulevard
Tallahassee, Florida 32303

Angela Green
Florida Public Telecommunications
Association
125 South Gadsden Street
Suite 200
Tallahassee, Florida 32301-1525

Bruce May
Holland & Knight
315 South Calhoun Street
Post Office Drawer 810
Tallahassee, Florida 32302

R. Scheffel Wright
Landers & Parsons
310 West College Avenue
Post Office Box 271
Tallahassee, Florida 32308

Floyd Self
Messer, Caparelo & Self
215 South Monroe Street, Suite 701
Post Office Drawer 1876
Tallahassee, Florida 32302-1876

Kenneth A. Hoffman
Rutledge, Ecken, Underwood,
Purnell & Hoffman, P.A.
215 South Monroe Street
Suite 420
Post Office Box 551
Tallahassee, Florida 32302-0551

Technologies Management, Inc.
Post Office Drawer 200
Winter Park, Florida 32790-0200

Vicki Gordon Kaufman
Vicki Gordon Kaufman