FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

May 7, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF APPEALS (CALDWELL)
DIVISION OF COMMUNICATIONS (MOSES, BIRGALSKI)
DIVISION OF CONSUMER AFFAIRS (DURBIN, JOHNSON)
DIVISION OF RESEARCH & REGULATORY REVIEW (LEWIS)

RE: DOCKET NO. 970882-TI - PROPOSED RULE 25-24.845, F.A.C., CUSTOMER RELATIONS; RULES INCORPORATE, AND PROPOSED AMENDMENTS TO RULES 25-4.003, F.A.C., DEFINITIONS; 25-4.110, F.A.C., CUSTOMER BILLING; 25-4.118, F.A.C., INTEREXCHANGE CARRIER SELECTION; 25-24.490, F.A.C., CUSTOMER RELATION; RULES INCORPORATED.

AGENDA: MAY 19, 1998 - REGULAR AGENDA - RULE ADOPTION - INTERESTED PERSONS MAY NOT PARTICIPATE

RULE STATUS: ADOPTION SHOULD NOT BE DEFERRED

SPECIAL INSTRUCTIONS: S:\PSC\APP\WP\970882.RCM

CASE BACKGROUND

Since the provision of long distance service became competitive, the Commission has received complaints about "slamming" which is the unauthorized switching of a customer's long distance carrier from the carrier chosen by the customer. In 1992, the Commission adopted rules which were intended to eliminate or reduce the level of slamming complaints in Florida. At that time, the Commission had received 195 complaints. However, beginning in 1995, the Commission saw a significant increase in complaints and in 1996, 2,393 justified complaints were filed with the Commission. These figures do not include complaints filed only with the telecommunications providers nor with the Federal Communications Commission (FCC). As a result, Commission staff initiated rulemaking.

On July 15, 1997, the State Attorney General's Office and the Citizens of the State of Florida by and through the Office of Public Counsel filed a joint petition for initiation of formal proceedings to investigate slamming with the Florida Public Service

Commission. By Order No. PSC-97-1071-PCO-TI issued September 12, 1997, the Commission granted the Petition. The Commission ordered the formal investigation to be a part of the rulemaking. To this end, rule development workshops were held by the Commissioners around the state taking sworn testimony of customers that were slammed. In addition, a full Commission rule hearing consisting of sworn testimony and witness cross-examination was held on February 6, 1998, and continued on February 16, 1998. To facilitate efficiency at the hearing, each proposed or amended rule was treated as a separate issue.

The FCC's Title 47, Parts 64.1100 and 64.1150, Code of Federal Regulations, provide more stringent change requirements than what is currently reflected in Commission Rule 25-4.118, Florida Administrative Code. In addition, the FCC has issued a Notice of Proposed Rulemaking through which it intends to amend its current rules.

In 1995, the Legislature provided for competition in the local exchange market. In 1996, Congress passed the Telecommunications Act of 1996 which provided for the deregulation of the local and intra-LATA toll markets. With the deregulation of these markets, the opportunity for slamming has increased as those markets will be vulnerable to the same types of practices.

On December 16, 1997, the Commission proposed Rule 25-24.845, Florida Administrative Code, and proposed amendments to Rules 25-4.003, 25-4.110, 25-4.118, and 25-24.490, Florida Administrative Code, to significantly reduce or eliminate the occurrences of "slamming." The rules were published in the Florida Administrative Weekly on January 2, 1998.

DISCUSSION OF ISSUES

Statement of Estimated Regulatory Cost:

There are two portions of the proposed rule amendments that almost all companies identify as imposing significant (though often unquantified) costs. These are: the requirement to place the certificate number on the customer's bill [Rule 25-4.110(10)]; and the requirement that all charges resulting from an unauthorized carrier change be refunded or credited to the customer for 90 days or one billing cycle, whichever is greater [Rule 25-4.118(8)]. Most companies provide services in many states and rules that would make it difficult to standardize billing or refund practices are viewed by them as costly. Costs imposed by regulations specific to Florida may be passed on to Florida customers through higher rates. Finally, costs that negatively impact expected revenues may reduce the number of companies offering services in Florida by causing fewer providers to enter the market or existing providers to leave.

The annual recurring costs of audio recording inbound calls [Rule 25-4.118(2)(b)] and third party verification procedures [Rule 24-4.118(2)(c)] were identified as costly both in total dollars and as a percentage of each company's intrastate operating revenues. One of the areas with the highest non-recurring costs in total dollars is the proposed customer service standards [Rule 25-4.118(14)], due primarily to MCI's projected cost. The proposed rules with the highest non-recurring costs expressed as a percentage of intrastate operating revenues are audio recording inbound calls and third-party verification.

It is important to note that many companies stated dollar figures for the proposed rules could not be provided due to the difficulty of projecting compliance costs. Furthermore, even when relatively high costs have been identified for a specific proposed rule, other companies identified minimal or no costs for the same proposed rule (See Attachment to SERC).

A statement of regulatory cost (SERC) was prepared to address the cost of changes to the rule recommended by staff. Where conclusions were reached that a company's suggestion merited further consideration by staff, such consideration was given and generally the rule was modified to accommodate the suggestion. Otherwise, staff relies upon the SERC for maintaining its position on certain provisions.

Authority and Other Related Proceedings:

The Federal Telecommunications Act of 1996 addresses slamming in Section 258 of the Act. 47 U.S.C. § 258 provides:

> (a) PROHIBITION.--No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.
>
> (b) LIABILITY FOR CHARGES.--Any telecommunications carrier that violates the verification procedures prescribed in subsection (a) and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the Commission may prescribe. The remedies provided by this subsection are in addition to any other remedies available by law.

The Federal Communications Commission (FCC) responded to this change by issuing a Notice of Proposed Rule Making and subsequently issued a Further Notice of Proposed Rule Making and Memorandum Opinion and Order or Reconsideration issued July 15, 1997. At this time, it is not known if or when these rules will actually become effective.

The FCC's proposed rules and the Commission's proposed rules are similar to the extent that the methods by which a customer's preferred carrier may be changed (i.e. by written letter of agency (LOA) customer initiated call, third party verification, or subsequent informational package). The rules differ as to the specific manner or information necessary to implement each of the methods. Commission and FCC rules both eliminate the use of sweepstakes but allow for "check" inducements. The Commission's proposed rules, as modified by staff, further require record retention of the authority used to effectuate a change. Other requirements of the staff's recommended rules that are not contained in the FCC's proposed rules include (but are not limited to):

- Expanded information on the LOA;

- No negative option for the informational package return post card;
- Full refund to the customer of all charges up to 90 days;
- Display requirement of the names and certificate number of each provider of service on the customer's local exchange bill

The 1998 Legislature passed HB 4785 relating to telecommunications services. Section 7 of the bill adopts the "Telecommunications Consumer Protection Act" which includes new Section 364.603, Florida Statutes, Methodology for changing telecommunications provider. While the bill has not yet become law, staff believes these rules are consistent with its provisions as well as current law.

ISSUE 1: Should the Commission adopt new rule 25-24.845, Florida Administrative Code, as proposed by the Commission at the December 16, 1997, agenda conference?

RECOMMENDATION: Yes. New rule 25-24.845, Florida Administrative Code, should be adopted with no changes.

STAFF ANALYSIS: Proposed Rule 25-24.845, Florida Administrative Code, incorporates by reference Subsections (10) through (13) of Rule 25-4.110 relating to customer billing and all of Rule 25-4.118 which relates to the selection of a local, local toll or toll provider.

The position of the participants related to the proposed rule are as follows:

Attorney General & the Citizens of the State of Florida - Yes. All providers of telecommunications services in the state of Florida should be required to abide by the basic provisions of service regarding billing and collection for regulated services and for the selection and change of local, local toll, and toll providers.

ALLTEL Florida, Inc. - Yes. Any rule applicable to incumbent local exchange companies should be applicable to ALECs or CLECs.

AT&T'S Communications of the Southern States, Inc. - No. The new rule would impose upon ALECs the customer billing requirements of Rule 25-4.110 (10)-(13) and the carrier selection requirements of Rule 25-4.118. The Commission should not impose the new customer billing requirements on ALECs because they are unnecessary in a competitive environment. Customers may freely switch providers if they are dissatisfied with ALEC billing practices. The new carrier selection [should] be imposed on ALECs only if modified pursuant to AT&T's suggestions, as shown in Issue 4, below.

Brittan Communications International, Inc. - No. There are lower regulatory costs alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alterative 2.

BellSouth Telecommunications, Inc. - Yes. Any rules applicable to local exchange companies should be applicable to ALECS.

Excel Telecommunications, Inc. - No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alternative 2.

Florida Competitive Carriers Association - No position.

GTE Florida Incorporated - Yes. Regulatory requirements should be imposed on all carriers in a nondiscriminatory fashion, so the extension of these customer relations rules to alternative local exchange carriers is a positive step.

Intermedia Communications, Inc. - No. Because there are lower regulatory cost alternatives available to accomplish the same goal, the specific rules that apply to ALECs should be the soon-to-be promulgated rules of the FCC or the FCCA's Alternative 2, except as modified for proposed Rules 25-4.110(12), and 25-4.118(8).

MCI Te'ecommunications Corporation - MCI has specific objections to the proposed customer billing rules (25-4.110) and to the proposed provider selection rules (25-4.118). It is appropriate, however, for whatever customer billing and provider selection rules are finally approved to apply to ALECs as well as other carriers.

Sprint Communications Company Limited Partnership - Generally, Sprint does not oppose this rule. As stated above, Sprint does not believe additional substantive rules are necessary. Sprint, however, does not oppose a rule that seeks to apply the current rules to ALECs.

Sprint-Florida, Incorporated - Sprint-Florida, does not oppose adoption of these proposed rule amendments if it is determined by

the Commission that additional rules are necessary; however, as stated above, Sprint-Florida, Inc., believes that consistency in rulemaking across jurisdictions would be preferable.

State Communications, Inc. - SCI does not oppose the proposed changes.

Telecommunications Resellers Association - No position.

Most participants do not object to this rule, stating that while it may have specific objections to the underlying rules, it does not object to the requirement that ALECs be subject to the same requirements. Others that objected to the billing and provider change requirements failed to present adequate testimony other than to argue the competitive market place will dictate ALEC behavior. Staff believes the injury to the customer is too great prior to market forces taking effect to eliminate the requirement that ALECs be subject to rules 25-4.110 and 25-4.118. Brittan, Excel, and Intermedia state objections but refer to FCCA's lower cost alternative for this issue. FCCA, however, took "no position." Staff recommends this rule be adopted as proposed by the Commission.

ISSUE 2: Should the Commission adopt the proposed amendments to Rule 25-4.003, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

RECOMMENDATION: No. The Commission should adopt the proposed amendments to Rule 25-4.003, F.A.C., with certain exceptions.

STAFF ANALYSIS: Rule 25-4.003 providing definition for the Chapter, is amended to provide definitions for the terms: "alternative local exchange telecommunications company (ALEC);" "local provider;" "local toll provider;" "PC-freeze;" "provider;" and "toll provider."

The position of the participants related to the proposed amendments to this rule are as follows:

Attorney General & the Citizens of the State of Florida - Yes. The Commission should define a "P.C.-Freeze" and it should identify a slam or slamming as the change of a customer's local, local toll or toll provider without the knowledge or consent of the subscriber.

ALLTEL Florida, Inc. - ALLTEL does not object to the definitional changes in this rule as proposed by the Commission.

AT&T'S Communications of the Southern States, Inc. - AT&T does not oppose the proposed changes.

Brittan Communications International, Inc. - Yes, except that the definition of "P.C.-Freeze" in proposed Rule 25-4.003(11), should be modified to allow the use of third party verification for both freezing and unfreezing PICs.

BellSouth Telecommunications, Inc. - Yes, with two exceptions. First, there should be a definition of slamming. Second, Rule 25-4.003(41) should be modified to include the option of accepting a P.C.-Freeze from the customer directly over the phone. Paper P.C. freezes should not be required.

Excel Telecommunications, Inc. - Yes, except that the definition of "P.C.-Freeze" in proposed Rule 25-4.003(11), should be modified to allow the use of three separate P.C.-Freeze forms and to provide for an additional review to ensure objectivity by LEC is promoting P.C. freezes.

Florida Competitive Carriers Association - No position.

GTE Florida Incorporated - GTEFL does not oppose these definitional revisions.

Intermedia Communications, Inc. - Yes, except that there should be three, separate P.C.-Freeze Forms, as discussed in Issue 3.

MCI Telecommunications Corporation - The Commission should adopt the definitions proposed. Additionally, MCI recommends the Commission adopt a definition for "unauthorized provider change".

Sprint Communications Company Limited Partnership - Sprint does not oppose the rule changes.

Sprint-Florida, Incorporated - Sprint-Florida, does not oppose adoption of these proposed rule amendments if it is determined by the Commission that additional rules are necessary; however, as stated above, Sprint-Florida, Inc. believes that consistency in rulemaking across jurisdictions would be preferable.

State Communications, Inc. - SCI does not oppose the proposed changes but urges the Commission to add a definition of "unauthorized provider change".

Telecommunications Resellers Association - TRA does not oppose the definition of "P.C.-Freeze" in proposed Rule 25-4.003(41), so long as it is made clear that a carrier is required to offer a P.C.-Freeze only when it is technically feasible to do so. Generally, non-facilities-based resellers cannot offer a P.C.-Freeze because they are not assigned Carrier Identification Codes.

The participants generally do not oppose the amendments with the exception of the definition for "PC-freeze." Staff recommends revising the definition to allow the customer and the company to design the P.C.-freeze restriction to be placed on the account and how the restriction is to be removed. Staff recommends removing the provision providing for a standard Commission P.C.-freeze form. Finally, staff recommends a technical change. The acronym "P.C." should be revised to "PC." P.C. means preferred interexchange carrier and "PC" means preferred carrier. "PC" is consistent with the broad scope of this rules. Since the exchange of information is between the customer and the company, staff believes a universal form is unnecessary. GTE witness Scobie testified that individual companies should have the ability to implement PC freezes in a manner that best meets the needs of the company and its customers (Hearing TR 498, Vol. 2) Staff agrees. Each company should know what information is necessary to implement the changes for its system. Staff believes that where the service is not technically feasible, it cannot be offered.

SCI urges the term "unauthorized provider change" also be defined. Staff believes the definition is unnecessary as the term is self explanatory. An "unauthorized provider change" would be any change that is not implemented consistent with the Commission's rules. In addition, staff believes that the ambiguity is eliminated should staff's recommended changes in Rule 25-4.118(1) be adopted. That amendment provides for who is authorized to make a change in residential and business service.

ISSUE 3: Should the Commission adopt the proposed amendments to Rule 25-4.110, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

RECOMMENDATION: No. The Commission should adopt the proposed amendments to Rule 25-4.110, F.A.C., with certain changes recommended by staff.

STAFF ANALYSIS: Rule 25-4.110, F.A.C., specifies requirements telecommunications companies must meet in order to bill customers.

The position of the participants related to the proposed amendments to this rule are as follows:

Attorney General & the Citizens of the State of Florida - Yes. AG/OPC supports the rule changes proposed by staff in addition to the changes proposed by AG/OPC witness Poucher. The Commission should require all providers to provide notice to customers of the availability of the P.C.-Freeze option, upon ordering of service and annually through billing notification. The proposed rule requires conspicuous notice to the customer when a customer's provider has been changed. The additional proposal by AG/OPC would locate this notice on the first two pages of the bill where the customer could find the listing of all providers. Both staff and AG/OPC proposals should be adopted in order to adequately inform consumers.

ALLTEL Florida, Inc. - No. The requirement to include certificate numbers on customers bills should be deleted as redundant and unnecessary.

AT&T'S Communications of the Southern States, Inc. - No. Instead, the Commission should make changes to the proposed rule in order to clarify that telecommunications companies may use the d/b/a name authorized in their certification; clarify the "pay per call" rule to differentiate between 900/976 calls and other pay per call services; modify the P.C.-Freeze requirement to require further notification of provider change to allow bill inserts and specify an implementation date.

Brittan Communications International, Inc.- No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alterative 2.

BellSouth Telecommunications, Inc. - Yes, with the exception of Rule 25-4.110(10), (11)(a)3., (12) and (13). These subsections should be modified due to the space limitations of BellSouth's bill, the cost involved, whether BellSouth will have such information in its possession, and technical obstacles.

Excel Telecommunications, Inc. - No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alternative 2.

Florida Competitive Carriers Association - No. There are lower cost regulatory alternatives to the rule proposed by the

Commission. The Commission should either adopt the soon-to-be-proposed FCC rules on slamming (FCCA Alternative #1) or incorporate the modifications to the proposed rule filed by FCCA (FCCA Alternative #2). Either of these alternatives will accomplish the purpose of the Commission while imposing lower regulatory costs on the carriers than the rule as proposed.

GTE Florida Incorporated - The Commission should not require certificate numbers on the bill. The high costs of this proposal are not justified by any benefits; indeed, customers are likely to be confused by this information, which is meaningless to them. In addition, the Commission should allow companies to determine the typeface and placement of the notice that a customer's provider has changed.

Intermedia Communications, Inc. - No. Because there are lower regulatory cost alternatives available to accomplish the same goal, the Commission should adopt the soon-to-be promulgated rules of the FCC. Alternatively, the Commission should adopt the FCCA's Alternative 2, except that proposed Rule 25-4.110(12) should require the use of three, separate forms for the presubscribed local, local toll, and toll providers. Intermedia supports FCCA's modification to proposed Rule 25-4.110(1)(a) to delete the requirement of displaying the certificate number of the bill; instead, a workshop should be conducted to reach consensus on the most efficient, least-cost means of providing certificate numbers to staff upon request.

MCI Telecommunications Corporation - No. The Commission was presented no viable reason to impose the costly requirement of having the carrier's certificate number on the customer bill. MCI also opposes the requirement for annual notification of the availability of a P.C.-Freeze option.

Sprint Communications Company Limited Partnership - No. Should the Commission determine that additional rules are necessary, the Commission should delay implementation of any new rules until federal rules are implemented. Sprint believes any additional rules the Commission adopts should be consistent with those federal rules.

Sprint-Florida, Incorporated - Sprint-Florida, Inc., does not oppose adoption of these rule amendments as proposed except that addition of the certificate number (proposed Rule 25-4.110(10)(a)) and type of service notification to the bill (proposed Rule 25-4.110(10)(b)) will provide little if any value, while adding significant cost. Technical corrections are needed.

State Communications, Inc. - SCI does not oppose the proposed changes that are still included in this proceeding, but urges the Commission to consider the positions and comments of other carriers (such as AT&T, MCI, and BellSouth, to name a few) who have done cost and feasibility analyses of the proposed changes.

Telecommunications Resellers Association - No. The Commission should not require the certificate number on the bill. It should allow alternative ways to inform customers of the P.C.-Freeze option. Notice of provider change should not be required on an individual bill; rather verification procedures already in place should be employed.

Rule 25-4.110, F.A.C., requires the certificated name and certificate number be displayed for each service provided on the telephone bill. No participant expressed a concern of displaying the certificated name on the bill. However, many parties expressed concern over displaying the certificate number stating that it was expensive, could cause customer confusion, and would be redundant since the certificated name is required to be displayed. Staff Witness Taylor testified that the certificate number requirement should be kept because often bills are rendered by companies who are not certificated. (Hearing TR 135, Vol. 1) Staff agrees with Witness Taylor that by requiring the certificate number on the bill, it will ensure that downstream resellers are certificated prior to charging for their service being placed on a LEC bill. Staff also agrees with Witness Taylor that if a company placed its name and telephone number on the bill and a person was not satisfied with the response from the company, the Commission staff would otherwise have no record of the company and would, therefore, be unable to contact that company. (Hearing TR 136, Vol. 1)

A concern was raised that the certificate number may cause customer confusion (Hearing TR 137, Vol. 1) Mr. Taylor explained that the customer would have information that the company was certificated and, as a certificated company would know the rules and have rates on file with the Commission. Mr. Taylor believed this would provide built-in customer protection. Witness Taylor was also asked about the relative significance of the certificate number if the certificated name of each of the types of providers was also provided on the bill. Mr. Taylor explained that it would inform the subscriber that the carrier was authorized to be a carrier. (Hearing TR 157, Vol. 2) Mr. Taylor was also questioned about what recourse the Commission has against a local exchange company if it bills for an uncertificated entity. (Hearing TR 200, Vol. 2) He responded if the certificate number is not on the bill, the LEC would be violating the rule requirement, and the Commission would have recourse against the LEC. (Hearing TR 200, Vol. 2)

Staff doubts that customers will be confused by the appearance of the certificate number. Staff believes that most customers are concerned about charges on the bills and if improperly charged, want to be able to have the charges corrected. The certificate number may not have a meaning to the customer initially, but through customer education, it should provide the customer the knowledge that the company is certificated to do business in the State of Florida.

Staff recommends revising the date in Subsection (10) to read: "January 1, 1999, or six months after the effective date of the rule, whichever is later." This delay provides companies sufficient time to make the necessary changes in their system before compliance is required and is consistent with the suggested changes by several companies.

The Attorney General (AG) and Citizens of the State of Florida (Citizens) proposed several additional notice requirements. The suggestions have been incorporated into the proposed rule except for the requirement that the list of providers for each of the services be placed on the first or second page of the customer's bill. Staff believes that this requirement may not be practical due to current requirements limiting the space. Staff believes that once customers become accustomed to the location of the listing, they will be well enough informed.

Subsection (11) was revised to delete the "cramming" language. Because the "cramming" issue was severed from this proceeding, all language related to the issue was deleted and the rule was reverted to its original language. (Hearing TR 43, Vol. 1)

Rule 25-4.110(12) requires customers to be notified of the PC Freeze option. During the public workshops, numerous consumers were asked if they were aware of the PC-freeze option. It became very apparent that the majority of consumers were not aware that a PC freeze was available until they had already been slammed. Staff believes that this rule amendment will make consumers aware that a PC freeze option is available before they are slammed and should reduce the number of slamming instances. Witness Gordy testified that he had never heard of a PC freeze form prior to being slammed and asked why the public is never informed that such a form exists. (Tallahassee Workshop, TR 53) Witness Avila also testified that he was not aware of a PC freeze option until he had been slammed. (Miami Workshop, TR 43)

Although many of the participants have opposed the PC freeze notification requirement, it is obvious through the public testimony that the average consumer is not aware of a PC freeze

option and does not learn of its existence until after a slam has occurred.

Staff recommends subsection (12) be revised to delete references to the Commission PC-Freeze form. Staff does not believe a universal form is necessary and may place undue cost on a company. Staff recommends the provision be further revised to provide an option for the company to notify its customer of the PC-freeze on the billing statement or by separate letter. The company must continue to notify the customer on his first bill and annually thereafter. Staff believes that so long as the customers are informed, the method should be up to the company. Staff recommends modifying the date the company must notify existing customers, to allow for a maximum of 6 months. Staff further recommends adoption of the grammatical changes to subsection (13).

ISSUE 4: Should the Commission adopt the proposed amendments to Rule 25-4.118, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

RECOMMENDATION: No. Staff recommends adoption of proposed amended Rule 25-4.118, F.A.C., with certain changes.

STAFF ANALYSIS: Rule 25-4.118, F.A.C., provides requirements for the selection of a customer's local, local toll, or toll provider.

The position of the participants related to the proposed amendments to this rule are as follows:

Attorney General & the Citizens of the State of Florida - Yes. The Commission should adopt the proposed rules of Staff and in addition, should incorporate the proposed additional rules of AG/OPC.

ALLTEL Florida, Inc. - The Commission should not adopt the proposed changes unless it finds that they are consistent with the related FCC rules and are the least cost alternative that substantially accomplish the objective.

AT&T'S Communications of the Southern States, Inc. - No. The Commission can achieve its regulatory purpose at a substantially lower cost to Florida consumers by reviewing and adopting the FCC's upcoming slamming rule. Alternatively, the Commission should limit

costs that will be imposed on Florida consumers by modifying or deleting requirements that do not provide cost-effective consumer protection. In particular, the requirement that companies provide free service to customers who allege they have been slammed is counterproductive and beyond the Commission's jurisdiction. Further, the Commission [should] take vigorous action to enforce its present rules before it imposes increased regulatory cots upon Florida consumers.

Brittan Communications International, Inc.- No. Because there are lower cost alternatives available to accomplish the same goal, the Commission should adopt the soon-to-be promulgated rules of the Federal Communications Commission. In the alternative, the commission should adopt the FCCA's Alternative 2, except that proposed rule 25-4.118(8) should be modified to require only re-rating of calls.

BellSouth Telecommunications, Inc. - Yes, with the exception of 25-4.118(8). This section should be modified to eliminate the opportunity for undue financial gain by an unauthorized provider and eliminate the financial loss by the authorized provider, while maintaining the customer's financial responsibility for services rendered.

Excel Telecommunications, Inc. - No. Because there are lower cost alternatives available to accomplish the same goal, the Commission should adopt the soon-to-be promulgated rules of the Federal Communications Commission. In the alternative, the Commission should adopt the FCCA's Alternative 2, except that proposed Rule 25-118(8) should be modified to require only re-rating of calls.

Florida Competitive Carriers Association - No. There are lower cost regulatory alternatives to the rule proposed by the Commission. The Commission should either adopt the soon-to-be-proposed FCC rules on slamming (FCCA Alternative #1) or incorporate the modifications to the proposed rule filed by FCCA (FCCA Alternative #2). Either of these alternatives will accomplish the purpose of the Commission while imposing lower regulatory costs on the carriers than the rule as proposed.

GTE Florida Incorporated - GTEFL specifically opposes that portion of the proposed rule that would credit a customer for 90 days' worth of charges upon a claimed slam. This rule would encourage fraudulent and delayed claims, at the expense of the general customer body.

Intermedia Communications, Inc. - No. Because there are lower cost alternatives available to accomplish the same goal, the Commission

should adopt the soon-to-be promulgated rules of the FCC. In the alternative, the Commission should adopt the FCCA's Alternative 2, except that proposed Rule 25-118(8) should be modified to require only re-rating of calls.

MCI Telecommunications Corporation - No. The Commission should approve rules and verification methods consistent with the FCC. The Commission should adopt the recommendations of MCI, including those relating to the 90-day charge back, and use of P.C.-Freeze information in marketing situations, and customer service answer times, among others. The Commission should not consider the additional unreasonable proposals of the Office of the Public Counsel.

Sprint Communications Company Limited Partnership - Sprint supports the change to Rule 25-4.118(4), F.A.C. Sprint recommends, however, that the rule be clarified to indicate that negotiable instruments such as checks are not to be combined with an LOA. Sprint also supports proposed Rule 25-4.118(4), F.A.C.

Sprint does not support audio recording of third party verification. It will not increase consumer protection; it will only increase cost of verification. Additionally, Sprint does not support proposed Rule 25-4.118, F.A.C. Substantial additional printing and administrative costs will be incurred if state-specific information must be included. Sprint also does not support Rule 25-4.118(8), or any rule that would relieve customer responsibility for paying for services received. Finally, Sprint does not support Rule 25-4.118(10). Sprint believes requiring companies to identify third party verifiers is unnecessary and will only create customer confusion.

Sprint-Florida, Incorporated - Sprint-Florida does not oppose adoption of the P.C. change requirements in the proposed rule which should be implemented with the following exceptions: Rule 25-4.118(2)(b)(2) - Sprint-Florida also opposes the proposal that would require audio recording verification of inbound customer initiated calls because evidence suggests that very few slamming complaints result these calls. The cost of implementing such a requirement would far outweigh the benefits; Rule 25-4.118(2)(d)(5) - Sprint-Florida does not support the proposed rule that would require the customer to return a signed postcard in the event P.C. change verification occurred via the welcome package option; Rule 25-4.118(8) - Slamming claimants should only be relieved paying for that portion of the charges exceeding the rates of their previous carrier for calls actually incurred by the customer during the time they were assigned to an unauthorized

carrier. As proposed the rule is unlawful and provides incentives for bogus slamming complaints.

State Communications, Inc. - No, instead the Commission should make the following changes - 25-4.118(4) the Commission should not prohibit carriers from using non-deceptive LOAs combined with checks. The Commission should adopt language that largely mirrors the FCC's rules (47 C.F.R. §64.1150(d) to ensure proper disclosure; 25-4.118(5)(a) the Commission should require carriers to re-rate charges.

Telecommunications Resellers Association - No. The Commission should not adopt that portion of the rule which requires the crediting of all charges for 90 days and charges in excess of the preferred carrier for up to 12 months. This does much more than make the customer whole and encourages "gaming" of the system. The Commission should not require an additional letter notifying a customer of a service change nor should it require the receipt of a written LOA before a change can be instituted. Finally, in a competitive environment, the Commission should not impose service standards on carriers.

Staff recommends adding language in Subsection (1) to clarify who is authorized to change residential and business accounts. Discussion between staff witness Taylor and Commissioner Clark illustrated the problem the companies may have if this point is not clarified. (Hearing TR 133 - 136, Vol. 1) Because additional persons within a household or a business answer the phone, it becomes difficult for the soliciting company to know who can make the change. Staff and the participants recognize that a slam can occur if the person is not authorized to change service. If it is clear who is authorized to make a change, presumably it is also clear when an unauthorized change occurs. For residential accounts, staff believes that the person who is the customer of record with the local telecommunications company and their spouse should be the only persons allowed to make the change. For business accounts, a contact person is generally established for the local service by the business with the local service provider. That person, and the officers or owners of the company, should be the persons authorized to change the accounts.

The AG and the Citizens proposed that the Commission open a separate show cause preceding if a willful change or an unfair or deceptive trade practice occurred. Staff does not believe that the AG or the Citizens' sufficiently justified the necessity of a rule requiring the opening of separate dockets. Furthermore, staff is not precluded from doing so if circumstances so dictate.

The requirement of audio recording the rule requirement information has been cited as being a high cost to the industry. The SERC describes some of the associated costs. Staff realizes this requirement is costly to the industry, however, slamming should be reduced as a result. The audio recording provides protection for both the customer and company when a dispute arises.

The proposed amendments to rule 25-4.118 modify the four conditions under which a local provider or IXC may change a person's telecommunications service. Subsection (2)(a) requires audio recording of the information required to be obtained by the rule. The companies stated in the response to the SERC that this requirement is both costly to install and costly on a going forward basis.

An example of why this requirement was proposed is illustrated in Staff witness Bridges' testimony which included a transcript of a verification call of a provider change (Hearing TR 57-58, Vol. 1) that clearly describes some of the deceptive practices that take place during conversations between the companies and customers. Without the audio recording of the conversation described in Ms. Bridges testimony, it is doubtful that the Consumer Affairs' staff would have been able to assist the complainant. It would have been the word of the company against the customer. Witness Bridges further agreed that recording the information helps in resolving complaints and protects the companies from fraud. (Hearing TR 96, Vol. 1)

According to the Telecommunications Act of 1996, the slamming company will be liable to the carrier previously selected by the consumer in an amount equal to all charges paid by the subscriber after such violation. (Hearing TR 332, Vol. 3) MCI Witness King testified that "It will obviously be in the interest of the alleged "unauthorized carrier" to refute the charge of slamming by proving that a legitimate verification of the sale occurred." (Hearing TR 530, Vol. 4) Without audio recording the information, staff does not know how witness King could prove that the change was authorized without obtaining the change request in writing from the customer. If the company performs the audio recording as required by the rule, staff believes the company will have evidence to refute the slam and retain the revenue if appropriate. (Hearing TR 584, Vol. 4)

Staff recommends deleting subparagraph (2)(b)3. which requires a recording of the ANI. Staff agrees with AT&T witness Watts and believes that requiring the ANI recording would unnecessarily restrict a customer from changing providers. (Hearing TR 330, Vol. 3) Staff further recommends adoption of technical changes in

paragraph (2)(c) and grammatical changes recommended by the Joint Legislative Management Committee (JAPC) in subparagraph (2)(d)6.

AT&T states that check inducements should not be eliminated. Staff witness Taylor agreed that the use of inducement checks has not been an issue with Division of Consumer Affairs as a major cause of complaints. (Hearing TR 169, 188, Vol. 2) Therefore, staff recommends allowing the combining of an LOA with checks so long as the checks contain the required LOA language and the information necessary to make the check a negotiable instrument modified the rule language to include the use of check inducements.

Rule 25-4.118(2)(d) requires the service provider to obtain the customer's signature and return the signed notice prior to service being changed. This option does not conform to the proposed rules of the FCC. Many of the participants argue that the PSC should adopt the FCC's proposed rules. However, in the discussion of the FCC proposed rules, the FCC stated in paragraph 18 of FCC 97-248 that "we tentatively conclude that the "welcome package" verification option should be eliminated, and seek comment on this tentative conclusion". Therefore, staff believes the FCC will ultimately eliminate this option and it will then conform to the Commission's rules.

Staff witness Taylor expressed his concern that the negative option postcard essentially appears to be junk mail, making it very likely that the customer will not review the materials sufficiently. (Hearing TR 119-120, Vol. 1) Mr. Taylor further testified that based on his experience and review of complaints, the proposed rule amendments to Rule 25-4.118 were necessary (Hearing TR 120, Vol. 1).

The amendments in subsection (3) were not controversial during the hearing. Subsection (3)(f) was amended to be sure the customer was aware of the purpose of the LOA and that it would be located in an area on the LOA that would be obvious during the signature process. Many customers testified during the public workshops that they had signed a sweepstakes entry form and did not realize they were authorizing their long distance service to be changed. The amendment to subsection (3)(f) will assist customers in making an educated decision prior to signing a LOA. MCI witness King supports staff's proposed LOA format rules. (Hearing TR 528, Vol. 4) However, witness King takes exception to the type size and alludes to the requirement making the LOAs not fit a number 10 envelope without a fold. (Hearing TR 529, Vol. 4) Staff believes this argument is without support. The benefit of having the

statement as large as any other text on the document far outweighs the possibility of the document having to be folded.

The amendment to subsection (4) eliminates the combination of an LOA with inducements of any kind. Public testimony supports that fact that sweepstakes entries cause a large percentage of the slamming complaints. Witness Mikell testified that his underage granddaughter filled out a sweepstakes form which resulted in Mr. Mikell's long distance service being changed. (Miami, TR 86) Staff witness Taylor also supports this amendment. Mr. Taylor's testimony cites sweepstakes forms as a significant problem. (Hearing TR 168, Vol. 2) Because there is no verification procedure required if a signed LOA is obtained, staff believes this type of LOA should be eliminated.

The amendment to subsection (5) requires the LOA to be received by the service provider from the telemarketer prior to making the service change. In the past, the marketing agents retained the LOAs. Public witnesses testified that they requested a copy of the LOA that resulted in their service being changed. Many of the companies could not produce a copy of the LOA. Staff believes many of the companies that could not produce the LOA simply did not have it. This rule amendment, coupled with the amendment to subsection (11) should provide the customers with added protection of being able to view their signatures on the document used to change their service provider. Under the current and proposed rules, no verification is required if an LOA is used. Therefore, signature fraud is still possible. This amendment will allow the customer to refute the signature obtained by the service provider.

The amendment to subsection (6) requires the retention of audio recordings and LOAs for a minimum of one year. Without this rule amendment, the amendment to subsection (2) would not make sense. If the companies are required to audio record information required by subsection (2), but the recording is soon after destroyed, the recording would not offer protection to the company against customer fraud if a dispute arises. Therefore, retention as required in subsection (6) provides proof for dismissal of charges under subsection (8).

The Office of Public Counsel's witness Poucher agrees that the rule amendment would relieve the ongoing burdens of having to deal with months of improper and incorrect billing that inevitably result from a slam. (Hearing TR 224-225, Vol. 2) Witness Poucher further testified that the companies unauthorized to provide service to a customer should not be allowed to bill or collect for the service up to 90 days. (Hearing TR 221, Vol. 2) Public

witness Van Arsdel testified that by rerating the calls the customer is still supporting the slamming company and believes it is very unfair to the customer. (Pensacola TR 56) Staff witness Bridges stated that in her experience with customer complaints that the complainant that has been slammed is reluctant to pay a company for services the customer did not request. (Hearing TR 60, Vol. 1) Staff believes the rule amendment is supported by Witness Poucher's testimony as well as other public witnesses. Furthermore, staff disagrees with the participants' arguments that consumer fraud against the companies would be significant. Staff believes that so long as the companies follow the rules, they will be protected from any customer who tries to "game the system." Therefore, staff concludes that the harm to the company is outweighed by the protection of the consumer.

The industry opposes this rule amendment for obvious reasons. AT&T's witness Watts believes that this amendment will discourage enforcement efforts by the slammed carriers to obtain the lost revenues under the Telecommunications Act of 1996. (Hearing TR 350, Vol. 3) However, staff believes that this provision provides protection for the customer that is not apparent in the 1996 Act. The Act allows carriers to collect charges from the violating carrier, but does not provide any relief for the customer.

In subsection (8), staff recommends modifying the provision "first three billing cycles" to "first billing cycle" to limit the amount of refund to cover a maximum of 90 days or at least the first time notice.[1] The exposure to the company is somewhat limited by this revision while affording the customer ample opportunity to recognize a change of his provider has occurred .

Staff recommends deleting Subsections (11) and (12) and renumbering subsequent subsections. These two provisions required a telemarketer or verifier to inform the customer during the call that a PC-freeze is available (Subsection (11)) and that the new provider must notify the customer that it will be providing service (Subsection (12)). Staff agrees with the companies that the telemarketer is not the entity that should inform the customer a PC-freeze is available. Staff further believes that notice of a change on the first bill is sufficient considering the verification requirements and other prohibitions in the rule (such as the elimination of sweepstakes). Furthermore, neither the new provider

[1] The billing cycle provision eliminates the hazard of a company using fewer billing cycles in a year to get around the refund provision.

is prohibited from sending a "welcome" letter, nor is the previous provider prohibited from sending a "regrets" letter.

Staff recommends Subsection (11) (formerly subsection (13)) be clarified to provide for 15 calendar days in which the company must provide the requested copy of authorization to the customer. Further, staff agrees with Sprint-Florida that the phrase "for the switch" be changed to "in submitting the change request." (Hearing TR 178, Vol. 2)

Subsection (12) requires the company to provide a live operator or recorder to answer incoming calls 24 hours a day, 7 days a week. Public testimony supports this proposal. Public witness Brown (Pensacola Workshop, TR 23) testified that there was never an answer at the 800 number listed on the invoice. There was just a recording or nobody was in the office. Witness Kennedy (Tallahassee Workshop, TR 45) testified that he called the company on several occasions and could never receive an answer. Witness Furman (Ft. Lauderdale Workshop, TR 15) testified that he attempted to reach the company several times and got no response. In addition, witness Anderson (Ft. Lauderdale Workshop, TR 39) testified that she spent a lot of hours trying to talk to someone other than a machine or holding the phone or just waiting. Based on this testimony, staff believes the amendment to subsection (12) will provide the customers' with the ability to speak with someone in a timely fashion in order to resolve their complaint.

Staff recommends subsection (12) be adopted with an amendment to include the phrase "and be answered within 60 seconds after the last digit dialed." This language was suggested by staff in its position statement. This language was not specifically opposed, however, several companies objected to the service requirements generally stating that competition would create the better incentive for better service requirements (i.e., the customer could change providers). However, this argument misses the point for the service standard. The standard is being required because some companies do not provide customer service. If the company does not answer the call, it does not have to provide refunds, or correct a problem which may be costly to the customer. Just switching companies does not necessarily make the customer whole.

ISSUE 5: Should the Commission adopt the proposed amendments to Rule 25-24.490, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

RECOMMENDATION: Yes. Staff recommends amendments to Rule 25-24.490, F.A.C., be adopted as proposed.

STAFF ANALYSIS: Rule 25-24.490, F.A.C., relates to IXCs and incorporates other Commission rules by reference to pertain to the IXCs. The proposed amendments incorporate subsections (10) - (13) of Rules 25-4.110, F.A.C., relating to customer billing.

The position of the participants related to the proposed amendments to this rule are as follows:

Attorney General & the Citizens of the State of Florida - Yes. The Commission should require all companies to meet the minimum standards that now apply to LECs regarding response to incoming calls to the business office. In addition, carrier selection rules, handling of customer complaints and rules regarding Discontinuance of Service, refunds and 800 service should apply to all providers.

ALLTEL Florida, Inc. - ALLTEL does not object to the proposed changes.

AT&T'S Communications of the Southern States, Inc. - The Commission should not impose the requirements of Rule 25-4.110(10) - (13) on IXCs because they are unnecessary in a competitive environment. Customers may freely switch providers if they are dissatisfied with IXC billing practices. The Commission should impose the requirements of Rule 25-4.118 only as modified pursuant to AT&T's suggestions, above.

Brittan Communications International, Inc. - No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alternative 2.

BellSouth Telecommunications, Inc. - Yes. These rules should be applicable to interexchange carriers.

Excel Telecommunications, Inc. - No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alternative 2.

Florida Competitive Carriers Association - No. The proposed rule should be modified to delete the reference to subsection (10) under

the column captioned "Portions Applicable" to section 24-4.110. 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 seems to require.

GTE Florida Incorporated - Yes. GTEFL believes the Commission should treat all market participants alike. Application to IXCs and ALECs of the existing rules on customer billing and carrier selection will promote this nondiscrimination objective.

Intermedia Communications, Inc. - No. Because there are lower regulatory cost alternatives available to accomplish the same goal, the specific rules that apply to IXCs should be the soon-to-be promulgated rules of the FCC or the FCCA's Alternative 2, as modified for proposed Rules 25-4.110(12) and 25-4.118(8).

MCI Telecommunications Corporation - Assuming the rules are modified to correct the objections that MCI has stated under Issues 2, 3 and 4 above, and in its testimony, MCI does not generally object to the rules applying to IXCs.

Sprint Communications Company Limited Partnership - No. Should the Commission determine that additional rules are necessary, the Commission should delay adopting any new rules until federal rules are implemented. Sprint believes any addition rules the Commission adopts should be consistent with those federal rules.

Sprint-Florida, Incorporated - Sprint-Florida takes no position on this issue.

State Communications, Inc. - SCI does not oppose the proposed changes.

Telecommunications Resellers Association - No position.

Staff recommends adopting the rule as proposed.

ISSUE 6: Should the rule amendments as proposed be filed for adoption with the Secretary of State and the docket be closed?

DOCKET NO. 970882-TI
DATE: May 7, 1998

RECOMMENDATION: Yes. The rule as approved by the Commission should be filed for adoption with the Secretary of State and the docket be closed.

STAFF ANALYSIS: After a Notice of Change is published in the Florida Administrative Weekly, the rule may be filed with the Secretary of State for adoption and the docket may be closed.

DMC

Index of changes to the Proposed rules recommend by staff:

Page 7, lines 20 - 22: revised the definition of PC-Freeze, deleted reference to a PC-Freeze form.

Page 15, lines 18 - 19: changed date to 1999, and added additional time for companies to comply.

Page 16, between lines 3 & 4: deleted "cramming" provision and all conforming language in this subsection. Correctly numbered subsection (11).

Page 16, lines 11 & 12: technical change.

Page 21, lines 9 - 13: Deleted PC-Freeze form requirement; Company given option to notify customer on bill or by letter (bill stuffer included); provided for extension of time to comply with provisions.

Page 21, lines 14 - 15: Provided for extension of time to comply with provisions.

Page 22, lines 20 and 23: changed the term from "company" to "provider" to be consistent with terms used in rule.

Page 23, between lines 4 & 5: deleted subparagraph 3. that required recording of ANI.

Page 23, line 12: changed the term from "company" to "provider" to be consistent with terms used in rule.

Page 26, line 22 through page 27, line 5: Added FCC language allowing for check inducements.

Page 27, line 18: deleted "first three billing cycles" and replaces with "first billing cycle" to allow a maximum of 90 days for refund.

Page 28, between lines 19 & 20: deleted subsection (11) that required telemarketers to inform customer of PC-Freeze availability; deleted subsection (12) that required the new provider to send "welcome" letter after all other procedures were complied with.

Page 28, lines 23 - 24: Rewrote first sentence for clarity.

Page 29, lines 3 - 4: Added phrase "and each subsequent day until the customer is reached."

Page 29, lines 6 - 7: added phrase "and be answered within 60 seconds after the last digit is dialed."

25-4.003 Definitions.

For the purpose of Chapter 25-4, the ~~following~~ definitions to the following terms apply:

(1) "Access Line" or "Subscriber Line." The circuit or channel between the demarcation point at the customer's premises and the serving end or class 5 central office.

(2) "Alternative Local Exchange Telecommunications Company (ALEC)." Any telecommunications company, as defined in Section 364.02(1), Florida Statutes.

(3) ~~(2)~~ "Average Busy Season-Busy Hour Traffic." The average traffic volume for the busy season busy hours.

(4) ~~(3)~~ "Busy Hour." The continuous one-hour period of the day during which the greatest volume of traffic is handled in the office.

(5) ~~(4)~~ "Busy Season." The calendar month or period of the year (preferably 30 days but not to exceed 60 days) during which the greatest volume of traffic is handled in the office.

(6) ~~(5)~~ "Call." An attempted telephone message.

(7) ~~(6)~~ "Central Office." A location where there is an assembly of equipment that establishes the connections between subscriber access lines, trunks, switched access circuits, private line facilities, and special access facilities with the rest of the telephone network.

(8) ~~(7)~~ "Commission." The Florida Public Service Commission.

(9) ~~(8)~~ "Company," "Telecommunications Company," "Telephone

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Company," or "Utility." These terms may be used interchangeably herein and shall mean "telecommunications company" as defined in Section 364.02(12), Florida Statutes.

(10) ~~(9)~~ "Completed call." A call which has been switched through an established path so that two-way conversation or data transmission is possible.

(11) ~~(10)~~ "Disconnect" or "Disconnection." The dissociation or release of a circuit. In the case of a billable call, the end of the billable time for the call whether intentionally terminated or terminated due to a service interruption.

(12) ~~(11)~~ "Drop or Service Wire." The connecting link that extends from the local distribution service terminal to the protector or telephone network interface device on the customer's premises.

(13) ~~(12)~~ "Exchange." The entire telephone plant and facilities used in providing telephone service to subscribers located in an exchange area. An exchange may include more than one central office unit.

(14) ~~(13)~~ "Exchange (Service) Area." The territory of a local exchange company (LEC) within which local telephone service is furnished at the exchange rates applicable within that area.

(15) ~~(14)~~ "Extended Area Service." A type of telephone service whereby subscribers of a given exchange or area may complete calls to, and receive messages from, one or more other exchanges or areas without toll charges, or complete calls to one or more other

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exchanges or areas without toll message charges.

(16)~~(15)~~ "Extension Station." An additional station connected on the same circuit as the main station and subsidiary thereto.

(17)~~(16)~~ "Foreign Exchange Service." A classification of LEC ~~local exchange telecommunications company~~ exchange service furnished under tariff provisions whereby a subscriber may be provided telephone service from an exchange other than the one from which he would normally be served.

(18)~~(17)~~ "Intercept Service." A service arrangement provided by the telecommunications company whereby calls placed to an unequipped non-working, disconnected, or discontinued telephone number are intercepted by operator, recorder, or audio response computer and the calling party informed that the called telephone number is not in service, has been disconnected, discontinued, or changed to another number, or that calls are received by another telephone. This service is also provided in certain central offices and switching centers to inform the calling party of conditions such as system blockages, inability of the system to complete a call as dialed, no such office code, and all circuits busy.

(19)~~(18)~~ "Interexchange Company (IXC)." Any telecommunications company, as defined in Section 364.02(12), Florida Statutes, which provides telecommunications ~~telecommunication~~ service between local calling areas as those areas are described in the approved tariffs of individual LECs

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~~local exchange companies~~. IXC ~~"Interexchange Company"~~ includes, but is not limited to, MLDAs ~~Multiple Location Discount Aggregators (MLDA)~~ as defined in subsection (35) ~~(30)~~ of these definitions.

(20) ~~(19)~~ "Inter-office Call." A telephone call originating in one central office but terminating in another central office, both of which are in the same designated exchange area.

(21) ~~(20)~~ "Interstate Toll Message." Those toll messages which do not originate and terminate within the same state.

(22) ~~(21)~~ "Intertoll Trunk." A line or circuit between two toll offices, two end offices, or between an end office and toll office, over which toll calls are passed.

(23) ~~(22)~~ "Intra-office Call." A telephone call originating and terminating within the same central office.

(24) ~~(23)~~ "Intra-state Toll Message." Those toll messages which originate and terminate within the same state.

(25) ~~(24)~~ "Invalid Number." A number comprised of an unassigned area code number or a non-working central office code (NXX).

(26) ~~(25)~~ "Large LEC." A LEC ~~local exchange telecommunications company~~ certificated by the Commission prior to July 1, 1995, that had in excess of 100,000 access lines in service on July 1, 1995.

(27) ~~(26)~~ "Local Access and Transport Area (LATA)" or "Market Area." A geographical area, which is loosely based on standard metropolitan statistical areas (SMSAs), within which a LEC ~~local exchange company~~ may transport telecommunication signals.

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(28)~~(27)~~ "Local Exchange Telecommunications Company (LEC)." Any telecommunications company, as defined in Section 364.02(6), Florida Statutes.

(29) "Local Provider (LP)." Any telecommunications company providing local telecommunications service, excluding pay telephone providers and call aggregators.

(30)~~(28)~~ "Local Service Area" or "Local Calling Area." The area within which telephone service is furnished subscribers under a specific schedule of rates and without toll charges. A LEC's ~~local exchange telecommunications company's~~ local service area may include one or more exchange areas or portions of exchange areas.

(31) "Local Toll Provider (LTP)." Any telecommunications company providing intraLATA or intramarket area long distance telecommunications service.

(32)~~(29)~~ "Main Station." The principal telephone associated with each service to which a telephone number is assigned and which is connected to the central office equipment by an individual or party line circuit or channel.

(33)~~(30)~~ "Message." A completed telephone call.

(34)~~(31)~~ "Mileage Charge." A tariff charge for circuits and channels connecting other services that are auxiliary to local exchange service such as off premises extensions, foreign exchange and foreign central office services, private line services, and tie lines.

(35)~~(32)~~ "Multiple Location Discount Aggregator (MLDA)." An

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entity that offers discounted long distance telecommunications services from an underlying IXC ~~interexchange company~~ to unaffiliated entities. An entity is a MLDA if one or more of the following criteria applies:

(a) It collects fees related to interexchange telecommunications services directly from subscribers,

(b) It bills for interexchange telecommunications services in its own name,

(c) It is responsible for an end user's unpaid interexchange telecommunications bill, or

(d) A customer's bill cannot be determined by applying the tariff of the underlying IXC ~~interexchange company~~ to the customer's individual usage.

(36) ~~(33)~~ "Normal Working Days." The normal working days for installation and construction shall be all days except Saturdays, Sundays, and holidays. The normal working days for repair service shall be all days except Sundays and holidays. Holidays shall be the days which are observed by each individual telephone utility.

(37) ~~(34)~~ "Optional Calling Plan." An optional service furnished under tariff provisions which recognizes the need of some subscribers for extended area calling without imposing the cost on the entire body of subscribers.

(38) ~~(35)~~ "Out of Service." The inability, as reported by the customer, to complete either incoming or outgoing calls over the subscriber's line. "Out of Service" shall not include:

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(a) Service difficulties such as slow dial tone, circuits busy, or other network or switching capacity shortages;

(b) Interruptions caused by a negligent or willful act of the subscriber; and

(c) Situations in which a company suspends or terminates service because of nonpayment of bills, unlawful or improper use of facilities or service, or any other reason set forth in approved tariffs or Commission rules.

(39) ~~(36)~~ "Outside Plant." The telephone equipment and facilities installed on, along, or under streets, alleys, highways, or on private rights-of-way between the central office and subscribers' locations or between central offices of the same or different exchanges.

(40) ~~(37)~~ "Pay Telephone Service Company." Any telecommunications company ~~that, other than a Local Exchange Company, which~~ provides pay telephone service as defined in Section 364.3375, Florida Statutes.

~~(38) "Primary Interexchange Company." The pre-subscribed toll service provider for a subscriber.~~

(41) "PC-Freeze." (Preferred Carrier Freeze) A service offered that restricts the customer's carrier selection until further notice from the customer.

(42) "Provider." Any telecommunications company providing service, excluding pay telephone providers and call aggregators (i.e. local, local toll, and toll providers).

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(43)~~(39)~~ "Service Objective." A quality of service which is desirable to be achieved under normal conditions.

(44)~~(40)~~ "Service Standard." A level of service which a telecommunications company, under normal conditions, is expected to meet in its certificated territory as representative of adequate services.

(45)~~(41)~~ "Small LEC." A LEC ~~local exchange telecommunications company~~ certificated by the Commission prior to July 1, 1995, which had fewer than 100,000 access lines in service on July 1, 1995.

(46)~~(42)~~ "Station." A telephone instrument consisting of a transmitter, receiver, and associated apparatus so connected as to permit sending or receiving telephone messages.

(47)~~(43)~~ "Subscriber" or "Customer." These terms may be used interchangeably herein and shall mean any person, firm, partnership, corporation, municipality, cooperative organization, or governmental agency supplied with communication service by a telecommunications company.

(48)~~(44)~~ "Subscriber Line." See "Access Line."

(49)~~(45)~~ "Switching Center." Location at which telephone traffic, either local or toll, is switched or connected from one circuit or line to another. A local switching center may be comprised of several central office units.

(50)~~(46)~~ "Toll Connecting Trunk." A trunk which connects a local central office with its toll operating office.

(51)~~(47)~~ "Toll Message." A completed telephone call between

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stations in different exchanges for which message toll charges are applicable.

(52) "Toll Provider (TP)." Any telecommunications company providing interLATA long distance telecommunications service.

~~(51)~~ (53) ~~(48)~~ "Traffic Study." The process of recording usage measurements which can be translated into required quantities of equipment.

~~(52)~~ (54) ~~(49)~~ "Trouble Report." Any oral or written report from a subscriber or user of telephone service to the telephone company indicating improper function or defective conditions with respect to the operation of telephone facilities over which the telephone company has control.

~~(53)~~ (55) ~~(50)~~ "Trunk." A communication channel between central office units or entities, or private branch exchanges.

~~(54)~~ (56) ~~(51)~~ "Valid Number." A number for a specific telephone terminal in an assigned area code and working central office which is equipped to ring and connect a calling party to such terminal number.

Specific Authority: 350.127(2) F.S.

Law Implemented: 364.01, 364.02, 364.32, 364.335, 364.337 F.S.

History: Revised 12/1/68, Amended 3/31/76, formerly 25-4.03, Amended 2/23/87, 3/4/92, 12/21/93, 3/10/96, _____.

25-4.110 Customer Billing for Local Exchange Telecommunications Companies.

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(1) Each company shall issue bills monthly. Each bill shall show the delinquent date, set forth a clear listing of all charges due and payable, and contain the following statement:

"Written itemization of local billing available upon request."

(a) Each LEC ~~local exchange company~~ shall provide an itemized bill for local service:

1. With the first bill rendered after local exchange service to a customer is initiated or changed; and

2. To every customer at least once each twelve months.

(b) The annual itemized bill shall be accompanied by a bill stuffer which explains the itemization and advises the customer to verify the items and charges on the itemized bill. This bill stuffer shall be submitted to the Commission's Division of Communications for prior approval. The itemized bill provided to residential customers and to business customers with less than 10 access lines per service location shall be in easily understood language. The itemized bill provided to business customers with 10 or more access lines per service location may be stated in service order code, provided that it contains a statement that, upon request, an easily understood translation is available in written form without charge. An itemized bill shall include, but not be limited to the following information, separately stated:

1. Number and types of access lines;

2. Charges for access to the system, by type of line;

3. Touch tone service charges;

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4. Charges for custom calling features, separated by feature;

5. Unlisted number charges;

6. Local directory assistance charges;

7. Other tariff charges; and

8. Other nontariffed, regulated charges contained in the bill.

(c) Each bill rendered by a local exchange company shall:

1. Separately state the following items:

a. Any discount or penalty, if applicable;

b. Past due balance;

c. Unregulated charges, identified as unregulated;

d. Long-distance charges, if included in the bill;

e. Franchise fee, if applicable; and

f. Taxes, as applicable on purchases of local and long distance service; and

2. Contain a statement that nonpayment of regulated charges may result in discontinuance of service and that the customer may contact the business office (at a stated number) to determine the amount of regulated charges in the bill.

(2) Each company shall make appropriate adjustments or refunds where the subscriber's service is interrupted by other than the subscriber's negligent or willful act, and remains out of order in excess of 24 hours after the subscriber notifies the company of the interruption. The refund to the subscriber shall be the pro rata part of the month's charge for the period of days and that portion of the service and facilities rendered useless or inoperative;

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except that the refund shall not be applicable for the time that the company stands ready to repair the service and the subscriber does not provide access to the company for such restoration work. The refund may be accomplished by a credit on a subsequent bill for telephone service.

(3)(a) Bills shall not be considered delinquent prior to the expiration of 15 days from the date of mailing or delivery by the utility. However, the company may demand immediate payment under the following circumstances:

1. Where service is terminated or abandoned;

2. Where toll service is two times greater than the subscriber's average usage as reflected on the monthly bills for the three months prior to the current bill, or, in the case of a new customer who has been receiving service for less than four months, where the toll service is twice the estimated monthly toll service; or

3. Where the company has reason to believe that a business subscriber is about to go out of business or that bankruptcy is imminent for that subscriber.

(b) The demand for immediate payment shall be accompanied by a bill which itemizes the charges for which payment is demanded, or, if the demand is made orally, an itemized bill shall be mailed or delivered to the customer within three days after the demand is made.

(c) If the company cannot present an itemized bill, it may

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present a summarized bill which includes the customer's name and address and the total amount due. However, a customer may refuse to make payment until an itemized bill is presented. The company shall inform the customer that he may refuse payment until an itemized bill is presented.

(4) Each telephone company shall include a bill insert advising each subscriber of the directory closing date and of the subscriber's opportunity to correct any error or make changes as the subscriber deems necessary in advance of the closing date. It shall also state that at no additional charge and upon the request of any residential subscriber, the exchange company shall list an additional first name or initial under the same address, telephone number, and surname of the subscriber. The Such notice shall be included in the billing cycle closest to 60 days preceding the directory closing date.

(5) Annually, each telephone company shall include a bill insert advising each residential subscriber of the option to have the subscriber's name placed on the "No Sales Solicitation" list maintained by the Department of Agriculture and Consumer Services, Division of Consumer Services, and the 800 number to contact to receive more information.

(6) Where any undercharge in billing of a customer is the result of a company mistake, the company may not backbill in excess of 12 months. Nor may the company recover in a ratemaking proceeding, any lost revenue which inures to the company's

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detriment on account of this provision.

(7) Franchise fees and municipal telecommunications taxes.

(a) When a municipality charges a company any franchise fee, or municipal telecommunications tax authorized by Section 166.231, Florida Statutes, the company may collect that fee only from its subscribers receiving service within that municipality. When a county charges a company any franchise fee, the company may collect that fee only from its subscribers receiving service within that county.

(b) A company may not incorporate any franchise fee or municipal telecommunications tax into its other rates for service.

(c) This subsection shall not be construed as granting a municipality or county the authority to charge a franchise fee or municipal telecommunications tax. This subsection only specifies the method of collection of a franchise fee, if a municipality or county, having authority to do so, charges a franchise fee or municipal telecommunications tax.

(8)(a) When a company elects to add the Gross Receipts Tax onto the customer's bill as a separately stated component of that bill, the company must first remove from the tariffed rates any embedded provisions for the Gross Receipts Tax.

(b) If the tariffed rates in effect have a provision for gross receipts tax, the rates must be reduced by an amount equal to the gross receipts tax liability imposed by Chapter 203, Florida Statutes, thereby rendering the customer's bill unaffected by the

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election to add the Gross Receipts Tax as a separately stated tax.

(c) This subsection shall not be construed as a mandate to elect to separately state the Gross Receipts Tax. This subsection only specifies the method of applying such an election.

(d) All services sold to another telecommunications vendor, provided that the applicable rules of the Department of Revenue are satisfied, must be reduced by an amount equal to the gross receipts tax liability imposed by Chapter 203, Florida Statutes, unless those services have been adjusted by some other Commission action.

(e) When a nonrate base regulated telecommunications company exercises the option of adding the gross receipts tax as a separately stated component on the customer's bill then that company must file a tariff indicating such.

(9) Each LEC ~~local exchange company~~ shall apply partial payment of an end user/customer bill first towards satisfying any unpaid regulated charges. The remaining portion of the payment, if any, shall be applied to nonregulated charges.

(10) After January 1, 1999, or six months after the effective date of this rule, 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;

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(b) Type of service provided, i.e., local, local toll, or toll; and

(c) A toll-free customer service number.

(11)~~(10)~~ This section applies to LECs ~~local exchange companies and interexchange carriers~~ that provide transmission services or bill and collect on behalf of Pay Per Call providers. Pay Per Call services are defined as switched telecommunications services between locations within the State of Florida 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 ~~local exchange companies~~ and 900 services provided by interexchange carriers.

(a) Charges for Pay Per Call service (900 or 976) 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 (900 or 976) 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:

1. Nonpayment of Pay Per Call service (900 or 976) charges will not result in disconnection of local service;

2. End users/customers can obtain free blocking of Pay Per Call service (900 or 976) from the LEC ~~local exchange telephone company~~;

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3. The local or toll-free number the end user/customer can call to dispute charges;

4. ~~With 900 service, the~~ The name of the IXC ~~interexchange carrier~~ providing 900 service; and

5. The Pay Per Call service (900 or 976) program name.

(b) Pay Per Call Service (900 and 976) Billing. ~~Local exchange companies and interexchange carriers~~ LECs and IXCs who have a tariff or contractual relationship with a Pay Per Call (900 or 976) provider shall not provide Pay Per Call transmission service or billing services, unless the provider does each of the following:

1. Provides a preamble to the program which states the per minute and total minimum charges for the Pay Per Call service (900 and 976); child's parental notification requirement is announced on preambles for all programs where there is a potential for minors to be attracted to the program; child's parental notification requirement in any preamble to a program targeted to children must be in language easily understandable to children; and programs that do not exceed $3.00 in total charges may omit the preamble, except as provided in Section ~~(11)~~ ~~(10)~~ (b)3.;

2. Provides an 18-second billing grace period in which the end user/customer can disconnect the call without incurring a charge; from the time the call is answered at the Pay Per Call provider's premises, the preamble message must be no longer than 15 seconds. The program may allow an end user/customer to affirmatively bypass a preamble;

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3. Provides on each program promotion targeted at children (defined as younger than 18 years of age) clear and conspicuous notification, in language understandable to children, of the requirement to obtain parental permission before placing or continuing with the call. The parental consent notification shall appear prominently in all advertising and promotional materials, and in the program preamble. Children's programs shall not have rates in excess of $5.00 per call and shall not include the enticement of a gift or premium;

4. Promotes its services without the use of an autodialer or broadcasting of tones that dial a Pay Per Call (900 and 976) number;

5. Prominently discloses the additional cost per minute or per call for any other telephone number that an end user/customer is referred to either directly or indirectly;

6. In all advertising and promotional materials, displays charges immediately above, below, or next to the Pay Per Call number, in type size that can be seen as clearly and conspicuously at a glance as the Pay Per Call number. Broadcast television advertising charges, in Arabic numerals, must be shown on the screen for the same duration as the Pay Per Call number is shown, each time the Pay Per Call number is shown. Oral representations shall be equally as clear;

7. Provides on Pay Per Call services that involve sales of products or merchandise clear preamble notification of the price

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that will be incurred if the end user/customer stays on the line, and a local or toll free number for consumer complaints; and

8. Meets internal standards established by the LEC or IXC ~~local exchange company or the interexchange carrier~~ as defined in the applicable tariffs or contractual agreement between the LEC and the IXC; or between the LEC/IXC and the Pay Per Call (900 or 976) provider which when violated, would result in the termination of a transmission or billing arrangement.

(c) Pay Per Call (900 and 976) Blocking. Each LEC ~~local exchange company~~ shall provide blocking where technically feasible of Pay Per Call service (900 and 976), at the request of the end user/customer at no charge. Each LEC or IXC ~~local exchange company or interexchange carrier~~ must implement a bill adjustment tracking system to aid its efforts in adjusting and sustaining Pay Per Call charges. The LEC or IXC ~~carrier~~ will adjust the first bill containing Pay Per Call charges upon the end user's/ customer's stated lack of knowledge that Pay Per Call service (900 and 976) has a charge. A second adjustment will be made if necessary to reflect calls billed in the following month which were placed prior to the Pay Per Call service inquiry. At the time the charge is removed, the end user/customer may agree to free blocking of Pay Per Call service (900 and 976).

(d) Dispute resolution for Pay Per Call service (900 and 976). Charges for Pay Per Call service (900 and 976) shall be automatically adjusted upon complaint that:

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1. The end user/customer did not receive a price advertisement, the price of the call was misrepresented to the consumer, or the price advertisement received by the consumer was false, misleading, or deceptive;

2. The end user/customer was misled, deceived, or confused by the Pay Per Call (900 or 976) advertisement;

3. The Pay Per Call (900 or 976) program was incomplete, garbled, or of such quality as to render it inaudible or unintelligible, or the end user/customer was disconnected or cut off from the service;

4. The Pay Per Call (900 and/or 976) service provided out-of-date information; or

5. The end user/customer terminated the call during the preamble described in 25-4.110(11)~~(10)~~(b)2., but was charged for the Pay Per Call service (900 or 976).

(e) If the end user/customer refuses to pay a disputed Pay Per Call service (900 or 976) charge which is subsequently determined by the LEC to be valid, the LEC or IXC may implement Pay Per Call (900 and 976) blocking on that line.

(f) Credit and Collection. LECs and IXCs ~~local exchange companies and interexchange carriers~~ billing Pay Per Call (900 and 976) charges to an end user/customer in Florida shall not:

1. Collect or attempt to collect Pay Per Call service (900 or 976) charges which are being disputed or which have been removed from an end user's/customer's bill; or

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2. Report the end user/customer to a credit bureau or collection agency solely for non-payment of Pay Per Call (900 or 976) charges.

(g) LECs and IXCs ~~local exchange companies and interexchange carriers~~ billing Pay Per Call service (900 and 976) charges to end users/customers in Florida shall implement safeguards to prevent the disconnection of phone service for non-payment of Pay Per Call (900 or 976) charges.

(12) The customer must be notified via letter or on the customer's first bill and annually thereafter that a PC Freeze is available. Existing customers must be notified by January 1, 1999, or six months after the effective date of this rule, whichever is later, and annually thereafter that a PC Freeze is available.

(13) By January 1, 1999, or six months after the effective date of this rule, whichever is later, the customer must be given notice on the first or second page of the customer's next bill in conspicuous bold face type when the customer's provider of local, local toll, or toll service has changed.

Specific Authority: 350.127 F.S.

Law Implemented: 364.17, 350.113, 364.03, 364.04, 364.05, 364.19, F.S.

History: New 12/1/68, Amended 3/31/76, 12/31/78, 1/17/79, 7/28/81, 9/8/81, 5/3/82, 11/21/82, 4/13/86, 10/30/86, 11/28/89, 3/31/91, 11/11/91, 3/10/96, _____.

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25-4.118 Local, Local Toll, or Toll Provider ~~Interexchange Carrier~~ Selection.

(1) The provider ~~primary interexchange company (PIC)~~ of a customer shall not be changed without the customer's authorization. The customer or the customer's spouse are the authorized person to change residential service. The person designated as the contact for the local telecommunications company, an officer of the company, or the owner of the company is the person authorized to change business service. A LEC ~~local exchange company (LEC)~~ shall accept a provider ~~PIC~~ change requests by telephone call or letter directly from its customers; or.

(2) A LEC shall also accept a ~~PIC~~ change requests from a certificated LP or IXC ~~interexchange company (IXC)~~ acting on behalf of the customer. A certificated LP or IXC ~~certified IXC that will be billing customers in its name~~ shall may submit a ~~PIC~~ change request, ~~other than a customer initiated PIC change, directly or through another IXC, to a LEC~~ only if it has first certified to the LEC that at least one of the following actions has occurred ~~prior to the PIC change request~~:

(a) The provider ~~IXC~~ has a letter of agency (LOA), as described in (3), ~~on hand a ballot or letter~~ from the customer requesting the ~~such~~ change;

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

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

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2. An audio recording of the information set forth in (3)(a) through (e); ~~the customer initiates a call to an automated 800 number and through a sequence of prompts, confirms the customer's requested change, or~~

(c) A firm that is independent and unaffiliated with the provider claiming the subscriber has verified the customer's requested change by obtaining the following:

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

2. An audio recording of the information stated in subsection (3)(a) through (e); ~~is verified through a qualified, independent firm which is unaffiliated with,~~ or

(d) The provider ~~the IXC~~ has received a customer's change ~~customer~~ request, ~~to change his PIC~~ and has responded ~~within three~~ days by mailing of an informational package that shall include the following; ~~includes a prepaid, returnable postcard and an additional 14 days have past before the IXC submits the PIC change to the LEC. The information package should contain any information required by Rule 25-4.118(3).~~

1. A notice that the information is being sent to confirm that a telemarketer obtained a customer's request to change the customer's telecommunications provider;

2. A description of any terms, conditions, or charges that will be incurred;

3. The name, address, and telephone number of both the customer and the soliciting company;

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4. A postcard which the customer can use to confirm a change request;

5. A clear statement that the customer's local, local toll, or toll provider will be changed to the soliciting company only if the customer signs and returns the postcard confirming the change; and

6. A notice that the customer may contact by writing the Commission's Division of Consumer Affairs, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, or by calling, toll-free (TDD & Voice) 1-800-342-3552, for consumer complaints.

The soliciting company shall submit the change request to the LP only if it has first received the postcard that must be signed by the customer.

(3) ~~(c)~~ The LOA ~~ballot or letter~~ submitted to the ~~interexchange~~ company requesting a provider ~~PIC~~ change shall include, ~~but not be limited to,~~ the following information (each shall be separately stated):

(a) ~~1.~~ Customer's billing name, ~~phone/account number and~~ address, and each telephone number to be changed;

(b) Statement clearly identifying the certificated name of the provider ~~2. Company~~ and the service to which the customer wishes to subscribe, whether or not it uses the facilities of another company;

(c) ~~3.~~ Statement that the person requesting the change is authorized to request the ~~PIC~~ change; and

(d) Statement that the customer's change request will apply

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only to the number on the request and there must only be one presubscribed local, one presubscribed local toll, and one presubscribed toll provider for each number;

(e) Statement that the LEC may charge a fee for each provider change;

(f) ~~4.~~ Customer's signature~~.~~ and a statement that the customer's signature or endorsement on the document will result in a change of the customer's provider.

The soliciting company's provider change fee statement, as described in (e) above, shall be legible, printed in boldface at least as large as any other text on the page, and located directly above the signature line.

The soliciting company's provider change statement, as described in (f) above, shall be legible, printed in boldface at least as large as any other text on the page, and located directly below the signature line.

~~(b) Every written document by means of which a customer can request a PIC change shall clearly identify the certificated telecommunications company to which the service is being changed, whether or not that company uses the facilities of another carrier. The page of the document containing the customer's signature shall contain a statement that the customer's signature or endorsement on the document will result in a change of the customer's long distance service provider and explain that only one long distance service provider may be designated for the telephone number listed,~~

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~~that the customer's selection will apply only to that number, and that the customer's local exchange company may charge a fee to switch service providers. Such statement shall be clearly legible and printed in type at least as large as any other text on the page.~~

(4) The LOA shall not be combined with inducements of any kind on the same document. The ~~If any such document is not used solely for the purpose of requesting a PIC change, then the~~ document as a whole must not be misleading or deceptive. For purposes of this rule, the terms "misleading or deceptive" mean that, because of the style, format or content of the document or oral statements, it would not be readily apparent to the person signing the document or providing oral authorization that the purpose of the signature or the oral authorization was to authorize a provider ~~PIC~~ change, or it would be unclear to the customer who the new ~~long distance~~ service provider would be; that the customer's selection would apply only to the number listed and there could only be one provider for that number; or that the customer's LP ~~local exchange company~~ might charge a fee to switch service providers. If any part of the LOA document is written in a language other than English, then it ~~the document~~ must contain all relevant information in each ~~the same~~ language. Notwithstanding the above, the LOA may be combined with checks that contain only the required LOA language as prescribed in subsection (3) of this section and the information necessary to make the check a negotiable instrument. The LOA check

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shall not contain any promotional language or material. The LOA check shall contain in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary carrier change by signing the check. The LOA language shall be placed near the signature line on the back of the check.

~~(c) If a PIC change request results from either a customer initiated call or a request verified by an independent third party, the information set forth in (3)(c)1. - 3. above shall be obtained from the customer.~~

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

(6) LOAs and audio recordings shall ~~(d) Ballots or letters will~~ be maintained by the provider ~~IXC~~ for a period of one year.

(7) ~~(4)~~ Customer requests for other services, such as travel card service, do not constitute a provider change ~~in PIC~~.

(8) ~~(5)~~ Charges for unauthorized provider ~~PIC~~ changes and all charges billed on behalf of the unauthorized provider for the first 90 days or first billing cycle, whichever is longer, ~~higher usage rates, if any, over the rates of the preferred company~~ shall be credited to the customer by the company ~~IXC~~ 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 ~~PIC change~~, the LEC shall

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change the customer back ~~to the prior IXC~~, 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. ~~In the case where the customer disputes the ballot or letter, the IXC appearing on the ballot/letter will be responsible for any charges incurred to change the PIC of the customer.~~

(9)~~(6)~~ The company ~~IXC~~ shall provide the following disclosures when soliciting a change in service from a customer:

(a) Identification of the company ~~IXC~~;

(b) That the purpose of the visit or call is to solicit a change of the provider ~~PIC~~ of the customer;

(c) That the provider shall not ~~PIC can not~~ be changed unless the customer authorizes the change; and

(d) All ~~Any additional~~ information as referenced in Rule 25-24.490(3)~~(4)~~.

(10) During telemarketing and verification, no misleading or deceptive references shall be made while soliciting for subscribers.

(11) A provider must provide the customer a copy of the authorization it relies upon in submitting the change request within 15 calendar days of request.

(12) Each company shall provide a live operator or shall record end user complaints made to its customer service number 24 hours a day, 7 days a week. A combination of live operators and

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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 and each subsequent day until the customer is reached. A minimum of 95 percent of all call attempts shall be completed to a company's toll-free customer service number and be answered within 60 seconds after the last digit is dialed. 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.

Specific Authority 350.127(2) F.S.

Law Implemented 364.01, 364.19, 364.285 F.S.

History: New 3/4/92, Amended 5/31/95, _____.

25-24.490 Customer Relations; Rules Incorporated.

(1) The following rules are incorporated herein by reference and apply to IXCs. ~~interexchange companies. In the following rules, the word 'local' should be omitted or interpreted as 'toll', as they shall apply only to interexchange and not local service.~~

Section	Title	Portions not Applicable
25-4.110	Customer Billing	Subsections (10), (11), (12), and (13)
25-4.111	Customer Complaint	All except

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		and Service Requests	Subsection (2)
	25-4.112	Termination of Service by Customer	All None
	25-4.113	Refusal or Discontinuance of Service by Company	All None
	25-4.114	Refunds	All None
	25-4.117	800 Service	All None
	25-4.118	Local, Local Toll, or Toll Provider ~~Interexchange Carrier~~ Selection	All None

(2) An IXC ~~interexchange company~~ may require a deposit as a condition of service and may collect advance payments for more than one month of service if it maintains on file with the Commission a bond covering its current balance of deposits and advance payments (for more than one month's service). A company may apply to the Commission for a waiver of the bond requirement by demonstrating that it possesses the financial resources and income to provide assurance of continued operation under its certificate over the long term.

(3) Upon request, each company shall provide verbally or in writing to any person inquiring about the company's service:

(a) any nonrecurring charge,

(b) any monthly service charge or minimum usage charge,

(c) company deposit practices,

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(d) any charges applicable to call attempts not answered,

(e) a statement of when charging for a call begins and ends, and

(f) a statement of billing adjustment practices for wrong numbers or incorrect bills.

In addition, the above information shall be included in the first bill, or in a separate mailing no later than the first bill, to all new customers and to all customers presubscribing on or after the effective date of this rule, and in any information sheet or brochure distributed by the company for the purpose of providing information about the company's services. The above information shall be clearly expressed in simple words, sentences and paragraphs. It must avoid unnecessarily long, complicated or obscure phrases or acronyms.

Specific Authority 350.127(2) F.S.

Law Implemented 364.03, 364.14, 364.15, 364.19, 364.337 F.S.

History: New 2/23/87, Amended 10/31/89, 3/5/90, 3/4/92, 3/13/96, _____.

25-24.845 Customer Relations; Rules Incorporated.

The following rules are incorporated herein by reference and apply to ALECs. In the following rules, the acronym 'LEC' should be omitted or interpreted as 'ALEC'.

Section	Title	Portions Applicable
25-4.110	Customer Billing	Subsections (10), (11),

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			(12), and (13)
24-4.118	Local, Local Toll, or Toll Provider Selection		All

Specific Authority: 350.127(2) and 364.337(2), F.S.

Law Implemented: 364.337(2).

History: New _____.

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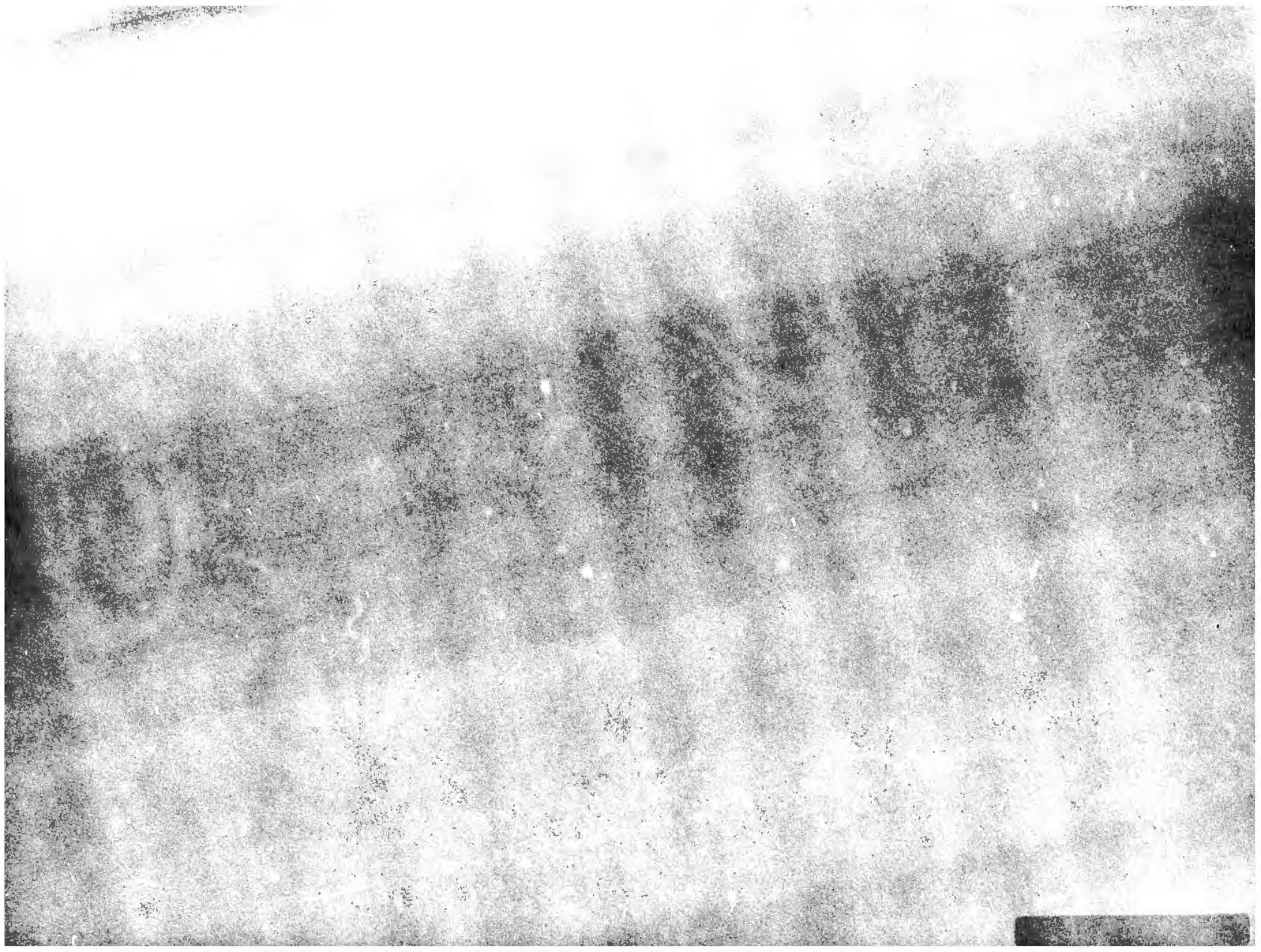

MEMORANDUM

May 6, 1998

TO: DIVISION OF APPEALS (CALDWELL)

FROM: DIVISION OF RESEARCH AND REGULATORY REVIEW (LEWIS)

SUBJECT: SECOND REVISED STATEMENT OF ESTIMATED REGULATORY COSTS, DOCKET NO. 970682-TI, PROPOSED AMENDMENTS TO RULE 25-4.003, F.A.C., DEFINITIONS; RULE 25-4.110, F.A.C., CUSTOMER BILLING; RULE 25-4.118, F.A.C., INTEREXCHANGE CARRIER SELECTION; RULE 25-24.490, F.A.C., CUSTOMER RELATIONS; RULES INCORPORATED. PROPOSED RULE 25-24.845, F.A.C., CUSTOMER RELATIONS; RULES INCORPORATED

SUMMARY OF THE RULE

The proposed rule amendments and proposed new rule would place new requirements on Local Exchange Companies (LECs), Alternative Local Exchange Companies (ALECs), and Interexchange Companies (IXCs) regarding the circumstances under which changes may be made to a customer's provider of local, local toll, or toll service. The terms Alternative Local Exchange Telecommunications Company, Local Provider, Local Toll Provider, PIC Freeze, Provider, and Toll Provider are defined in the proposed rule amendments. The proposed rule amendments and proposed new rule require that certain notices be provided to the customer. For example, customers must be notified on their next bill after their provider of local, local toll, or toll service has changed. All customer bills must display the name of the certificated company as well as its Florida certificate number, type of service provided, and a toll-free customer service number. Also, customers must be notified of the availability of a "PIC-Freeze" that restricts the customer's carrier selection until further notice from the customer.

Under the proposed rule amendments, a LEC shall accept a change request, and a local provider or interexchange carrier (IXC) may submit such a request only after certain conditions have been fulfilled under one of four options. Option (1): the company must have a signed letter of agency (LOA) which contains all of the information required by the rule. Option (2): the company

The original Statement of Estimated Regulatory Costs (SERC) was provided on December 1, 1997, and accompanied the recommendation to propose the rule amendments at the December 16, 1997, agenda conference. A revised SERC was prepared for the Rule Hearing on February 6, 1998, which addressed modifications made to the proposed rule amendments and lower cost regulatory alternatives filed by affected parties. This second revised SERC has been prepared to address modifications made to the proposed rule amendments since the Hearing was held and to address the lower cost regulatory alternative filed by LCI International Telecom Corporation (LCI) which was not considered in the previous SERC.

ESTIMATED NUMBER AND DESCRIPTION OF INDIVIDUALS AND ENTITIES IMPACTED

Any telecommunications company that may solicit, receive, or process changes to a Florida consumer's local, local toll, or toll telecommunications carrier, or that may provide billing is required to comply. In Florida, certificates to provide telecommunications service are held by 10 LECs, approximately 175 ALECs, and approximately 500 IXCs. All of these companies may potentially solicit, receive, or process carrier changes and, therefore, would be required to comply with some, if not all, sections of the proposed rule and proposed rule amendments. The particular services that a company performs or offers will determine whether it must comply with a particular section. In some cases, the section of the proposed rule specifically states the type of provider that must comply (e.g. LEC, ALEC or IXC). Modifications made to the proposed rule and proposed rule amendments since the previous SERCs were completed have not changed the type of entities that would be required to comply. The number of entities that would be required to comply has increased slightly because approximately 50 more ALECs have become certified to operate in Florida since the rule amendments were first proposed.

DIRECT COSTS TO THE AGENCY AND OTHER STATE OR LOCAL GOVERNMENT ENTITIES

The Florida Public Service Commission (Commission) should eventually see a reduction in the number of complaints filed by consumers alleging slamming if the rule achieves its purpose (to reduce the incidence of slamming). However, until the preventive procedures required by the

At least three local governments (Cities of Lakeland, Ocala, and Tallahassee) hold ALEC certificates, although none are currently offering telecommunications services. Local governments operating regulated telecommunications companies (LEC, ALEC or IXC) are expected to face the same compliance costs as other entities. No other direct costs to state or local government entities are foreseen.

ESTIMATED TRANSACTIONAL COSTS
TO INDIVIDUALS AND ENTITIES REQUIRED TO COMPLY

The cost of complying with the proposed rule amendments is described in this section. Staff reviewed data request responses, testimony, and post-hearing comments and has made every effort to include all costs provided by any participating party. Costs are contained in the following discussion for each subsection of the proposed rule amendments. Additionally, Attachment A reflects each company's estimated costs as a percentage of their 1997 intrastate operating revenues. Intrastate operating revenues for the Florida long distance industry in 1997 were $1,044,798,527 (based upon filings of certificated IXCs as of 4/30/98).

Proposed Rule 25-24.845, F.A.C., Customer Relations; Rules Incorporated

Proposed Rule 25-24.845, F.A.C., clarifies that ALECs would be required to comply with proposed subsections (10), (11), (12), and (13) of Rule 25-4.110, F.A.C., Customer Billing. Cost data supplied by ALECs is included in the discussion on each of the proposed amendments. Proposed Rule 25-24.845, F.A.C., also clarifies that ALECs would be required to comply with all portions of Rule 25-4.118, F.A.C. Again, cost data supplied by ALECs is included in the discussion on each of the proposed amendments to Rule 25-4.118, F.A.C. A general observation is that ALEC operations would experience a higher cost per unit than IXC operations as they have less billing infrastructure in place and a lower volume of calls to spread costs over. AT&T stated its ALEC operations would incur greater incremental costs to comply with the proposed rules as compared to current costs under existing rules.

Proposed Amendments to Rule 25-4.003, F.A.C., Definitions

The proposed definitions of ALEC, Local Provider, Local Toll Provider, PIC-Freeze, Provider, and Toll Provider did not appear to impose costs on the regulated entities.

MEMORANDUM

May 6, 1998

TO: DIVISION OF APPEALS (CALDWELL)

FROM: DIVISION OF RESEARCH AND REGULATORY REVIEW (LEWIS)

SUBJECT: SECOND REVISED STATEMENT OF ESTIMATED REGULATORY COSTS, DOCKET NO. 970682-TI, PROPOSED AMENDMENTS TO RULE 25-4.003, F.A.C., DEFINITIONS; RULE 25-4.110, F.A.C., CUSTOMER BILLING; RULE 25-4.118, F.A.C., INTEREXCHANGE CARRIER SELECTION; RULE 25-24.490, F.A.C., CUSTOMER RELATIONS; RULES INCORPORATED. PROPOSED RULE 25-24.845, F.A.C., CUSTOMER RELATIONS; RULES INCORPORATED

SUMMARY OF THE RULE

The proposed rule amendments and proposed new rule would place new requirements on Local Exchange Companies (LECs), Alternative Local Exchange Companies (ALECs), and Interexchange Companies (IXCs) regarding the circumstances under which changes may be made to a customer's provider of local, local toll, or toll service. The terms Alternative Local Exchange Telecommunications Company, Local Provider, Local Toll Provider, PIC Freeze, Provider, and Toll Provider are defined in the proposed rule amendments. The proposed rule amendments and proposed new rule require that certain notices be provided to the customer. For example, customers must be notified on their next bill after their provider of local, local toll, or toll service has changed. All customer bills must display the name of the certificated company as well as its Florida certificate number, type of service provided, and a toll-free customer service number. Also, customers must be notified of the availability of a "PIC-Freeze" that restricts the customer's carrier selection until further notice from the customer.

Under the proposed rule amendments, a LEC shall accept a change request, and a local provider or interexchange carrier (IXC) may submit such a request only after certain conditions have been fulfilled under one of four options. Option (1): the company must have a signed letter of agency (LOA) which contains all of the information required by the rule. Option (2): the company

must receive a customer-initiated call, and obtain an audio recording of specific information required by the rule, as well as a recording of the originating telephone number on which the provider is to be changed via automatic number identification. Option (3): an independent, unaffiliated firm must verify the request by obtaining an audio recording of specific information required by the rule. And finally, option (4): the company must respond to a customer's request for a provider change by mailing an informational package that includes specific information and a postcard which the customer must sign and return before the change request can be processed.

The proposed rule amendments require certain statements to appear on the LOA. Further, the proposed rule amendments prohibit the combining of the LOA with other inducements on the same document except that an LOA may be combined with checks provided the checks only contain the required LOA language and the information necessary to make the check a negotiable instrument. The proposed rule amendments also require providers to maintain LOAs and audio recordings for one year.

The proposed rule amendments require any company that obtains a customer through an unauthorized carrier change to refund all charges to the customer for the first 90 days or first billing cycle, whichever is longer. According to the proposed rule amendments, after the first 90 days and up to 12 months, any charges over the rates of the customer's preferred company must be credited to the customer by the company responsible for the error within 45 days of notification.

Other provisions included in the proposed rule amendments are the prohibition of misleading or deceptive statements during telemarketing or verification and the requirement that a company provide the customer with a copy of the authorization it relies upon for a carrier change within 15 days of request. The proposed rule amendments would also require companies to either provide a live operator 24 hours a day, 7 days a week to answer incoming calls or record end user complaints and attempt to contact each complainant no later than the following business day. Additionally, the proposed rules require that at least 95% of all call attempts to a company's toll-free customer service number must be completed. Finally, the proposed amendment to Rule 24-24.490, F.A.C., incorporates other rules and/or subsections by reference and applies them to IXCs. Proposed new Rule 25-24.845, F.A.C., incorporates other rules and/or subsections by reference and applies them to ALECs.

The original Statement of Estimated Regulatory Costs (SERC) was provided on December 1, 1997, and accompanied the recommendation to propose the rule amendments at the December 16, 1997, agenda conference. A revised SERC was prepared for the Rule Hearing on February 6, 1998, which addressed modifications made to the proposed rule amendments and lower cost regulatory alternatives filed by affected parties. This second revised SERC has been prepared to address modifications made to the proposed rule amendments since the Hearing was held and to address the lower cost regulatory alternative filed by LCI International Telecom Corporation (LCI) which was not considered in the previous SERC.

ESTIMATED NUMBER AND DESCRIPTION OF INDIVIDUALS AND ENTITIES IMPACTED

Any telecommunications company that may solicit, receive, or process changes to a Florida consumer's local, local toll, or toll telecommunications carrier, or that may provide billing is required to comply. In Florida, certificates to provide telecommunications service are held by 10 LECs, approximately 175 ALECs, and approximately 500 IXCs. All of these companies may potentially solicit, receive, or process carrier changes and, therefore, would be required to comply with some, if not all, sections of the proposed rule and proposed rule amendments. The particular services that a company performs or offers will determine whether it must comply with a particular section. In some cases, the section of the proposed rule specifically states the type of provider that must comply (e.g. LEC, ALEC or IXC). Modifications made to the proposed rule and proposed rule amendments since the previous SERCs were completed have not changed the type of entities that would be required to comply. The number of entities that would be required to comply has increased slightly because approximately 50 more ALECs have become certified to operate in Florida since the rule amendments were first proposed.

DIRECT COSTS TO THE AGENCY AND OTHER STATE OR LOCAL GOVERNMENT ENTITIES

The Florida Public Service Commission (Commission) should eventually see a reduction in the number of complaints filed by consumers alleging slamming if the rule achieves its purpose (to reduce the incidence of slamming). However, until the preventive procedures required by the

proposed rule are implemented throughout the industry, there may be a short-term increase in consumer complaints (due to publicity). The proposed rule requires that a company's informational package include the address and toll-free number of the Commission's Division of Consumer Affairs. This may cause an increase in the number of inquiry calls consumers place to the Commission, though it is unknown at this time whether complaints would be filed by these callers. Present staff levels should be adequate if these increases are short term.

Another cost consideration related to consumer complaints is the increased emphasis the industry will likely place on determining the legitimacy of each and every consumer complaint filed. Each complaint could require a company to make refunds for service going back as much as 90 days or one billing cycle, whichever is longer. In addition, after the 90 days has elapsed, the company must refund the customer for the difference between any charges that exceeded the rates of the customer's preferred carrier for up to 12 months. Consequently, companies may shift their focus from simply resolving complaints in the most expedient manner, without assigning blame for the slam, to proving the customer's complaint is unfounded (i.e. company complied with the rule, so no slam occured, hence a refund is not required). An increase in the length of time that complaints are open (unresolved) or more complaints going to hearing would add regulatory costs to the Commission. However, if the proposed rule causes companies to begin to more thoroughly investigate the root cause of each alleged slam, the end result should be a reduction in actual slams, assuming companies take preventative action after determining the cause of slamming complaints. If this is the case, regulatory costs to the Commission may not increase.

As with any complex rule amendments, Commission technical staff should also expect to receive an increased number of questions from the industry for at least a year after the rule takes effect. However adequate technical staff currently exists to field such calls. The Office of Public Counsel and the Office of the Attorney General may also experience similar short-term increases in complaint/inquiry activity, followed by a decrease in such activity after the proposed rule amendments have been in effect long enough to be followed throughout the industry.

Proposed rule amendment 25-4.118(12), F.A.C., would require companies to meet specific standards for rendering customer service. Commission staff would be responsible for monitoring and enforcing those standards. There is presently a Bureau of Service Evaluation within the Division of Communications which should be capable of handling this function.

At least three local governments (Cities of Lakeland, Ocala, and Tallahassee) hold ALEC certificates, although none are currently offering telecommunications services. Local governments operating regulated telecommunications companies (LEC, ALEC or IXC) are expected to incur the same compliance costs as other entities. No other direct costs to state or local government entities are foreseen.

ESTIMATED TRANSACTIONAL COSTS
TO INDIVIDUALS AND ENTITIES REQUIRED TO COMPLY

The cost of complying with the proposed rule amendments is described in this section. Staff reviewed data request responses, testimony, and post-hearing comments and has made every effort to include all costs provided by any participating party. Costs are contained in the following discussion for each subsection of the proposed rule amendments. Additionally, Attachment A reflects each company's estimated costs as a percentage of their 1997 intrastate operating revenues. Intrastate operating revenues for the Florida long distance industry in 1997 were $1,044,798,527 (based upon filings of certificated IXCs as of 4/30/98).

Proposed Rule 25-24.845, F.A.C., Customer Relations; Rules Incorporated

Proposed Rule 25-24.845, F.A.C., clarifies that ALECs would be required to comply with proposed subsections (10), (11), (12), and (13) of Rule 25-4.110, F.A.C., Customer Billing. Cost data supplied by ALECs is included in the discussion on each of the proposed amendments. Proposed Rule 25-24.845, F.A.C., also clarifies that ALECs would be required to comply with all portions of Rule 25-4.118, F.A.C. Again, cost data supplied by ALECs is included in the discussion on each of the proposed amendments to Rule 25-4.118, F.A.C. A general observation is that ALEC operations would experience a higher cost per unit than IXC operations as they have less billing infrastructure in place and a lower volume of calls to spread costs over. AT&T stated its ALEC operations would incur greater incremental costs to comply with the proposed rules as compared to current costs under existing rules.

Proposed Amendments to Rule 25-4.003, F.A.C., Definitions

The proposed definitions of ALEC, Local Provider, Local Toll Provider, PIC-Freeze, Provider, and Toll Provider did not appear to impose costs on the regulated entities.

Proposed Amendments to Rule 25-4.110, F.A.C., Customer Billing for Local Exchange Telecommunications Companies

Existing Rule 25-4.110, F.A.C., applies to LECs and describes what must appear on each customer bill. The proposed amendment at subsection (10)(a)-(c) adds provisions that require specific statements to appear on the bill in regard to each company claiming to be the customer's presubscribed provider for local, local toll, or toll service. It should be noted that subsection 25-4.220(10) would also apply to ALECs and IXCs (proposed new Rule 25-24.845, F.A.C., and proposed amendment to Rule 25-24.490, F.A.C., respectively).

Providing the Florida certificate number on the bill was identified as being costly by almost all respondents, both for implementation and on a going-forward basis. Implementation costs were estimated to be between $80,000 and $100,000 by BellSouth. Other companies estimated implementation costs at $250,000 (LCI) and $610,400 (Sprint-Florida, Inc.). Annual recurring costs were estimated at between $2 and $2.5 million by BellSouth, although BellSouth stated costs could be as high as $4.5 million if the Commission were to require that the certificate number appear on a certain portion of the bill rather than allowing placement to be the company's business decision. Some respondents were unable to quantify implementation costs or the annual recurring costs of maintaining, updating and printing the certificate numbers of Florida carriers, though most expected them to be significant.

The majority of companies that filed comments or responded to staff's data request appeared to believe that printing the carrier name(s), type of service(s) provided, and a toll-free customer service number were reasonable requirements that could be complied with at minimal or no additional cost. However, most were concerned that requiring state specific information, such as Florida certificate numbers, to appear on the bill would be costly to implement as well as maintain due primarily to their use of a national billing system. Because this cost is specific to Florida, it may be passed on to Florida customers.

Proposed rule amendment 25-4.110(12), F.A.C., requires that existing customers be notified of the availability of a PIC Freeze either on their first bill or via letter by January 1, 1999, and annually thereafter. The rule previously proposed by staff required that customers be notified on their bill. It also required companies to provide customers with a PIC-Freeze form. Based on the earlier proposed rule, several companies (Sprint-Florida, BellSouth, AT&T, LCI, and Intermedia)

stated that the requirement to place the notice on the bill would result in costly modifications to their billing systems. Since the proposed rule has been modified to allow the option of providing the notice via letter, programming costs should not be as high as originally estimated. Estimated costs to companies have been further reduced by eliminating the PIC-Freeze form which was previously incorporated into the rule by reference and which companies were required to provide to customers upon request. The proposed rule amendment preserves the PIC-Freeze service (which Florida LECs already provide to their customers upon request) and mandates that customers be routinely notified of its availability by all providers.

Proposed rule amendment 25-4.110(13), F.A.C., requires customers to be given notice on the first or second page of their next bill after a change in local, local toll, or toll service provider. Many respondents felt this requirement was redundant, as proposed rule amendment 25-4.110(10), F.A.C., would already require that the name of the certificated company and the type of service provided be displayed on each bill. Sprint-Florida (LEC) stated it would incur $290,000 in programming costs to implement this change. BellSouth estimated $83,313 in annual recurring costs. LCI (ALEC) stated it would incur a cost of $100,000 to implement and annual recurring charges of $8,000. Intermedia reported a cost of between $50,000 and $100,000 to modify its billing system.

Though there may be costs involved with notifying customers on the next bill after a provider change, companies should also benefit from the timely notification to customers. The sooner that customers learn of an unauthorized carrier change, the sooner it can be corrected which will reduce costs to all parties. Lost revenues are reduced for the preferred carrier because the customer will be more promptly returned, and refunds the unauthorized carrier must make to the customer will be reduced by quickly returning the customer to his preferred carrier.

Proposed Amendments to Rule 25-4.118, F.A.C., Interexchange Carrier Selection

The procedures identified by the respondents as costly to their companies, and indirectly to Florida consumers, are primarily those that would limit their ability to market their services in a consistent manner nationally. Many companies claimed that if the proposed rules become effective, costs for services could be driven up and carrier changes could become more confusing and difficult to implement for both companies and customers. If it becomes significantly more costly to provide telecommunications services in Florida, fewer providers may enter the market, some providers may

leave the market, rates to end-users may increase, and consumers may have fewer choices of providers and services, as well as higher rates.

The proposed amendments to Rule 25-4.118(2)(a)-(d), F.A.C., modify the four conditions under which a local provider or IXC may submit a consumer's carrier change request for processing. For example, the proposed rule amendment at subsection (2)(b) requires an audio recording of a customer-initiated call to request a carrier change (local, local toll, or toll). Providing an audio recording was named as costly by most respondents, both for implementation (equipment, programming, vendor contracts, and staff training) and on a going-forward basis (maintenance, record retrieval, vendor contracts, and increased staff/customer talk time). Most companies stated specific costs would not be known until equipment was purchased and contracts with vendors are negotiated. However, four companies (BellSouth, MCI, AT&T, and Sprint) provided at least partial cost estimates.

BellSouth stated it would cost $15 million to develop a complete system for audio recording carrier change requests. Annual recurring costs to maintain the system are estimated at $6.3 million.

After the hearing, MCI filed cost estimates for the third party verification (TPV) taping costs. MCI filed this cost data as proprietary and stated it should replace its previous cost estimates in this area. To audiotape TPV, non-recurring costs and costs for the first year were identified in the following areas: hardware, installation, cable/electrical, maintenance and retrieval systems, personnel, and training. MCI identified second year and on-going costs in the areas of maintenance, equipment purchases (digital recording tapes, cassette tapes), and posting and shipping costs.

AT&T stated that the implementation difficulties combined with the costs to audio record all inbound (customer initiated) and outbound (company initiated) carrier change calls were so extreme that ". . . AT&T does not feel it will ever be feasible to fulfill these proposed requirements." Therefore, rather than providing cost data for the rule as proposed, AT&T provided costs for performing TPV on inbound calls using the same procedures it presently uses on outbound calls. These procedures do not include an audio recording. One-time implementation costs are estimated at $550,000. Annual ongoing expenses are estimated to be at least $6 million (including costs associated with systems, vendors, staff training, and talk time).

Though the requirement to record inbound calls was cited as being particularly costly by many respondents (LDDS WorldCom, BellSouth, MCI, and Sprint), only Sprint provided cost figures for

recording inbound carrier changes separately. Sprint's costs to purchase and install appropriate recording systems totaled $1.2 million for its IXC operations and $560,000 for its ALEC operations.

The proposed amendment to Rule 25-4.118(2)(b), F.A.C., also requires companies to use automatic number identification (ANI) to record the originating telephone number on which the provider is to be changed when they receive a customer-initiated call. Both AT&T and LDDS WorldCom stated that compliance with this amendment would be impossible in many cases, such as when a customer calls from a number that differs from the one he wants to switch, when he wants to switch multiple lines, or when the ANI is not delivered with the call. Revenues that might be lost as a result were not provided.

The proposed amendment to Rule 25-4.118(2)(c), F.A.C., describes third party verification (TPV) procedures, and requires audio recording of a customer's consent. As stated previously, MCI presently uses TPV (without audio recording) on all its carrier change requests at a cost of approximately $150,000 per year, based on the present number of transactions processed annually in Florida. Audio recording each of these transactions would add between $12,000 and $17,000 to MCI's annual cost. BellSouth estimated its TPV costs would be $8 million for development plus $740,000 in annual recurring costs. Incumbent local service provider, Sprint-Florida, Inc. was unable to quantify its costs at present. Sprint (IXC) stated that its total equipment costs would be $280,000 for its IXC operations and $70,000 for it competitive local exchange operations. AT&T presently uses TPV on outbound calls and reports it could extend this use to inbound calls for a $550,000 one-time set up cost and $6 million per year in ongoing costs (excluding costs for data storage which have not been calculated).

Though there are certainly significant costs associated with audio recording inbound calls and TPV, the proposed rule contains two other methods of processing carrier change requests (LOAs and information packages) that providers may utilize should they find the other methods to be too costly.

The proposed amendment to Rule 25-4.118(2)(d), F.A.C., that would require the Commission's address and toll-free number to appear on the informational package postcard was viewed as costly by several respondents (Telecommunications Resellers Association, LCI International, Sprint, and AT&T). This is because most companies market their services nationally and would incur added expense to design, print, and distribute informational packages specifically for potential Florida

customers. Proposed amendments to Rule 25-4.118 at (2)(d), 5., and 6., F.A.C., clarify that the soliciting company must obtain a signed postcard from the customer indicating his choice, prior to submitting a carrier change request. Sprint indicated it would discontinue use of the information package method if the proposed rule becomes effective. Sprint states its annual revenues would be reduced by $765,000 as a result. However, Sprint would still be able to switch customers using one of the other three procedures provided by the rule and would only lose revenues if the other methods were not effective or more expensive.

Proposed amendments to Rule 25-4.118(3)(a)-(f), F.A.C., describe the information that must appear on the letter of authorization (LOA). Unlike IXCs, most incumbent local exchange companies (ILECs) and ALECs do not already have extensive systems in place to market and process customer carrier change requests. BellSouth was the only ILEC that provided specific costs for developing an LOA and informational package. BellSouth reported $790,000 to develop an LOA and $660,000 annual recurring costs. BellSouth expects to incur costs of $730,000 to develop an information package and $450,000 annual recurring costs. Few companies identified costs for this subsection, as most of the LOAs in use by the responding companies are already substantially in compliance with the proposed rule amendments or should not require modifications that would preclude their use in other states.

The proposed amendments to Rule 25-4.118(4), (5), and (6), F.A.C., deal with how LOAs shall be used by the prospective provider. Subsection (4) clarifies that the LOA shall not be combined with inducements of any kind on the same document, with the exception of checks, and extends the protection from misleading or deceptive written statements to oral statements. No providers supplied specific cost data for this proposed amendment.

Subsection (5) simply clarifies that a prospective provider must have received the signed LOA before initiating the change. No cost data was supplied for this proposed amendment.

Subsection (6) previously required companies to retain LOAs for one year. The proposed amendment would extend this requirement to audio recordings. The limited cost data supplied for this item is discussed on pages 8 and 9 in the discussion on audio recordings

The proposed amendment to Rule 25-4.118(8), F.A.C., would require any company responsible for an unauthorized carrier change to credit all charges billed for the first 90 days or first billing cycle, whichever is longer. Previous versions of the rule had required credit for all charges billed

for the first 90 days or first three billing cycles, whichever is longer. This would have meant that companies who bill quarterly could have been required to refund up to nine months of charges. Though there was agreement that companies who had engaged in willful slamming should not receive revenues, most companies are concerned that customers would attempt to obtain 90 days of "free service" by claiming slamming when none had occurred. As a result, companies stated they would face increased costs to investigate and defend themselves against false slamming accusations (AT&T, Sprint). The cost of providing refunds or investigating slamming allegations will vary for each company, based upon the amount billed and number of customers determined to be slammed. Sprint said the cost to set up and maintain a system to verify/refute slamming claims would likely be greater than the cost of providing actual refunds ($345,000 annually for labor plus an $88,000 one-time investment for office and equipment). Sprint reported it would lose a significant amount of revenue and that long distance rates could be expected to increase as a result. AT&T said potential costs of this proposed amendment are "boundless" and that these increased costs would be borne by all customers.

Intermedia also stated it would pass the cost of paying such claims on to consumers in the form of higher rates. Intermedia stated it is impossible to provide a reasonable cost estimate for this subsection, as the customer controls toll usage (business customer's monthly bills are often over $1,000). LCI estimated $3,000,000 to modify its systems, plus an additional unquantified cost to maintain active billing files for 90 days. Sprint-Florida, Inc. estimated $26,000 annual recurring costs to process credits. Sprint-Florida, Inc. also estimated its cost to investigate and settle customer claims would increase.

MCI estimated over $1,000,000 per year in refunds would be made (based upon LEC reported PIC disputes). MCI's estimate does not include access fees and other out-of-pocket charges incurred to serve the customer. Some companies indicated they would incur litigation costs rather than make refunds they considered to be unwarranted. There is a concern that making unwarranted refunds would ultimately contribute to increased refunds over time, as other customers learned they could be easily obtained. There might also be increased consumer complaints filed at the Commission as consumers attempt to obtain refunds.

Several companies questioned how "charges for unauthorized provider changes" would be determined for purposes of identifying when credit must be given. It appears that defining

"unauthorized provider change" would be helpful to establish when a refund is required for the company, the customer, and the commission staff. Companies could then decide more quickly whether a refund was appropriate, customers who where entitled to receive refunds would receive them quickly, and customers who might be attempting to "game" the system would not be successful. As the Commission staff must monitor refunds, defining "unauthorized provider change" might help the staff more quickly determine whether a refund is appropriate in a particular case. It might also reduce the number of complaints that are formally challenged and thereby avoid costs to the Commission. It is the understanding of RRR staff that the term "unauthorized provider change" used in the proposed rule means any provider change that does not comply with Commission rules.

Subsection (8) clarifies that customers are to receive credit for any charges that exceed the rates of their preferred carrier for up to twelve months after the first 90 days. Several companies saw this language as extending the time period for which customers could obtain credit. However, the current rule language (being stricken) already allows for this credit without stipulating a time limit.

Proposed amendments to subsection (9) are to achieve consistency throughout the rule and do not add any new costs to providers. The proposed amendment to subsection (10) prohibits misleading or deceptive references to be made while soliciting for subscribers. No respondents claimed any cost impacts as a result of this proposed amendment.

The proposed amendment at subsection (11) would require the company to provide the customer with a copy of the authorization it relied upon to make the switch, if requested. Few companies provided costs for this subsection; many stated they were already in compliance with it. MCI estimated it would cost $170,000 annually to provide copies of written LOAs and $95,000 to provide copies of data files. Sprint (IXC) was concerned about how audiotapes would be retrieved and supplied to customers upon request. Sprint identified programming and administrative expenses to set up a process, as well as ongoing expenses based on the number of letters it might send out. Sprint filed its cost data under confidentiality.

The proposed amendment at subsection (12) would set specific standards for customer service for IXCs, ALECs and LECs. There are presently no specific answer time requirements for IXCs or ALECs, and some of the proposed service standards appear to be more stringent than those that currently exist for the LEC business office (Rule 25-4.073, F.A.C.). Sprint-Florida, Inc. (LEC)

stated it would spend $210,000 the first year to install automated answering equipment and increase its workforce and $140,000 annually thereafter to comply. BellSouth identified $77,984 in implementation costs. MCI's concern was that a state-specific threshold on call answer time and call completions was unrealistic. Because MCI already has a complex national customer service system in place, it would face costs of between $16 and $18 million to comply with this proposed subsection. MCI, Sprint (IXCs), and others also stated that consumers making choices in a competitive market should be allowed to drive customer service standards.

Proposed Amendment to Rule 25-24.490, F.A.C., Customer Relations; Rules Incorporated

The proposed amendment to Rule 25-24.490, F.A.C., clarifies that IXCs would be required to comply with proposed subsections (10), (11), (12), and (13) of Rule 25-4.110, F.A.C., Customer Billing. Cost data supplied by IXCs has been included in the previous discussion on each of these proposed amendments. The proposed amendment to Rule 25-24.490, F.A.C., also clarifies that IXCs would be required to comply with all portions of Rule 25-4.118, F.A.C. Again, cost data supplied by IXCs has been included in the previous discussion on each of the proposed amendments to Rule 25-4.118, F.A.C.

IMPACT ON SMALL BUSINESS, SMALL CITIES, OR SMALL COUNTIES

None of the responding telecommunications companies met the statutory definition of a small business. According to the Telecommunications Resellers Association (TRA), many of its members are small providers though it did not state whether or not they met the statutory definition of a small business. TRA stated many of its members depend on contract billing services to bill their calls nationwide. Because of this billing arrangement, TRA said its smaller members would incur significant costs to display state-specific information on the bill. It appears TRA is referring to the greater incremental costs a small company might incur due to the fact that their smaller share of the market provides them with fewer customers to spread costs over. It is presumable that, should the proposed rule become law, companies which provide contract billing could develop a Florida-specific bill in order to meet the needs of both large and small clients.

Small telecommunications companies should also enjoy the same benefits as large ones by not having their customer base reduced through unauthorized carrier changes. Other types of small businesses are expected to experience the same benefits as consumers (i.e. reduced incidents of

unauthorized carrier changes). No additional direct impact on small cities or small counties is foreseen.

REASONABLE ALTERNATIVE METHODS

Section 120.541, F.S., provides for a substantially affected person to submit a good faith written proposal for a lower cost regulatory alternative to a proposed rule and requires the SERC to either adopt the alternative or give a statement of the reasons for rejecting it in favor of the proposed rule. The proposals submitted in accordance with Section 120.541, F.S. are addressed below. In addition, LCI's proposals are also addressed.

The Florida Competitive Carriers Association (FCCA)

On January 15, 1998, FCCA submitted several alternatives to the Commission's proposed rules. The first alternative is to adopt the FCC's soon-to-be-promulgated rules on slamming. The other alternatives contain a number of modifications to staff's proposed rule and rule amendments. FCCA also filed comments supporting its positions on January 23, 1998.

FCCA Alternative No. 1: FCCA suggests the Commission adopt the Federal Communications Commission's (FCC) soon-to-be-promulgated rules on slamming. FCCA states adopting the FCC's slamming rules "... would ensure that carriers who do business on a nationwide basis are not subject to differing and expensive requirements in each of the 50 states, requiring costly adjustments to billing and operations systems." FCCA also states, "National uniformity will result in much lower costs to carriers (and ultimately to the public) ...."

RRR Staff Position on Alternative No. 1: Reject. The FCC has not yet released its final version of the slamming rule. Without knowing exactly what provisions the FCC will include in its rule, RRR staff cannot determine what costs the federal slamming rules will impose on companies or how such costs will compare to the costs of rules that might be adopted by Florida or other states. RRR staff agrees in general that nationally uniform rules on slamming could be complied with at lower costs than state specific rules if the state rules differed substantially from the national rules. However, the existing FCC rules have not curtailed slamming in Florida, and it is unknown whether the pending amendments to the FCC rules will be successful in doing so. Prehearing Order No. PSC-98-0200-PHO-TI states the rule and amendments have been proposed to significantly reduce

or eliminate the occurrences of slamming. It is the opinion of RRR staff that it cannot be determined at this time whether adopting the FCC's rules would successfully accomplish the objective of the rules proposed by staff.

FCCA Alternative No. 2: FCCA also suggested that the Commission make several other modifications to the proposed rule amendments. The FCCA believes these modifications will not interfere with the efficacy of the proposed rule amendments but will significantly reduce the cost of implementation.

FCCA Alternative No. 2 (a)(1) - Rule 25-4.110(10), F.A.C.: Change the rule implementation date to January 1, 1999, or six months after rule adoption, whichever is later, to allow carriers time to make the changes to their systems necessary to implement the rule.

RRR Staff Position on Alternative No. 2 (a)(1) - Rule 25-4.110(10), F.A.C.: Accept. This proposal has been incorporated into the proposed rule amendment as staff recognizes that most providers will need time to implement the modifications necessary to comply with the rule requirements.

FCCA Alternative No. 2 a 2 - Rule 25-4.110(10)(a), F.A.C.: Delete requirement that carrier's certificate number appear on bill.

RRR Staff Position on Alternative No. 2 (a)(2) - Rule 25-4.110(10)(a), F.A.C.: Reject. According to the direct testimony of staff witness, Alan Taylor, this requirement will help ensure that underlying carriers do not provide their services to reseller companies that are not certified, thereby reducing the number of slams facilitated by carriers at a third-party request. Resellers account for a disproportionate share of the slamming complaints filed in Florida. The company responses indicate that this proposal will result in substantial implementation and maintenance costs. However, if staff's proposed rule more substantially accomplishes the objectives to significantly reduce or eliminate slamming and to stop uncertified companies from operating in Florida, then the costs may be warranted.

FCCA Alternative No. 2(b) - Rules 25-4.110(11), 25-4.110(11)(a) and 25-4.110(11)(3), F.A.C.: Add the word "nonregulated" to the noted sections to clarify which services are included within the rules' scope.

RRR Staff Position on Alternative No. 2(b) - Rules 25-4.110(11), 25-4.110(11)(a) and 25-4.110(11)(a)(3), F.A.C.: Reject. As agreed among the parties at the hearing, the substantive proposed amendments to this subsection have been removed and will be taken up at a separate

rulemaking docket if necessary. The only proposed amendments remaining in this subsection are the replacement of words with abbreviations which is being proposed throughout the rule for consistency.

FCCA Alternative No. 2(c) - Rule 25-4.110(12), F.A.C.: Allow notification of availability of PIC-Freeze via bill or letter. Require two separate PIC-Freeze forms, one for local, and one for local toll and toll.

RRR Staff Position on Alternative No. 2(c) - Rule 25-4.110(12), F.A.C.: Accept. The proposed rule has been modified to accept the FCCA's suggestion and would now allow notification via bill or letter. The requirement to use a PIC-Freeze form has been removed from the proposed rule amendments.

FCCA Alternative No. 2(d) - Rule 25-4.110(13), F.A.C.: Provide an implementation date of January 1, 1999, or six months after final rule adoption, whichever is later, to notify customers that there has been a provider change. Allow notification of provider change to be provided either on the bill or with the bill.

RRR Staff Position on Alternative No. 2(d) - Rule 25-4.110(13), F.A.C.: Accept in part, reject in part. The proposed amendment at subsection (13) does not presently include a date by which providers must notify customers that there has been a provider change. However, staff does not object to an implementation date of January 1, 1999, or six months after final rule adoption, whichever is later. The proposed amendment at the preceding subsection (12) provides for a date of January 1, 1999, and annually thereafter, for notification that a PIC-Freeze is available. Cost data filed by the companies indicated that programming changes and other systems modifications would be necessary. Providing a date certain as to when this must be done will be helpful and will also allow companies sufficient time to modify their billing systems.

Reject the alternative that would allow the notification to be provided with the bill instead of on the bill. There is a benefit to customers of having the information displayed on the bill. Customers do not always read bill inserts as they are often ads for unrelated services. However, it is reasonable to expect that if a customer is attempting to gain information about his telecommunications services, he would first consult his bill. Therefore, it appears that the proposed rule would more effectively accomplish the objective of notifying customers of a provider change.

FCCA Alternative No. 2(e) - Rule 25-4.118(2)(b), F.A.C.: Delete subsection (2)(b)(3) and modify subsection (2)(b)(2), to allow the request to be verified by an independent third party in lieu of recording the originating telephone number via ANI.

RRR Staff Position on Alternative No. 2(e) - Rule 25-4.118(2)(b), F.A.C.: Accept. Subsection 25-4.118(2)(b), F.A.C., deals with how a carrier change request received via a customer-initiated call is to be verified. The proposed rule would require an audio recording of all the information the customer would normally provide on an LOA, plus a recording of the originating telephone number on which the provider is to be changed via ANI. According to information supplied to RRR staff by several affected parties, the ANI will not always be delivered with the call. Additionally, customers do not always place calls from the telephone number that they wish to presubscribe, or they wish to subscribe multiple business lines. Therefore, this verification requirement could not be complied with in many cases through no fault of the regulated entities. The purpose of requiring ANI is to supplement the other verification information obtained from the customer. The suggestion made by FCCA, to use TPV instead of ANI, would appear to accomplish this purpose. The proposed rule amendments require audio recording of TPV. It is not known what the costs of the ANI method are, because most parties did not supply costs for this item, as they stated that the proposed requirement in many cases would be impossible to comply with.

FCCA Alternative No. 2(f) - Rule 25-4.118(3)(b), F.A.C.: Delete the phrase "whether or not it uses the facilities of another company."

RRR Staff Position on Alternative No. 2(f) - Rule 25-4.118(3)(b), F.A.C.: Reject. FCCA believes current wording is unclear without modification; however, staff believes rule is sufficient. Sufficient information was not provided to indicate how the proposal would lower regulatory costs.

FCCA Alternative No. 2(g) - Rule 25-4.118(5), F.A.C.: Add language that would allow the LOA to be verified by TPV so that prospective providers could initiate carrier changes after TPV is received rather than waiting for the LOA to be received.

RRR Staff Position on Alternative No. 2(g) - Rule 25-4.118(5), F.A.C.: Reject. This change is not necessary as there is nothing in staff's proposed rule that prohibits a prospective provider from obtaining TPV in lieu of an LOA. However, staff is unclear how FCCA would propose to verify an LOA that has not yet been received. To avoid confusion, the rule should remain as proposed by

staff. Staff's intent is that a prospective provider which relies upon an LOA must receive it before initiating a change.

FCCA Alternative No. 2(h) - Rule 25-4.118(6), F.A.C.: Change the retention period for LOAs and audio recordings from one year to six months.

RRR Staff Position on Alternative No. 2(h) - Rule 25-4.118(6), F.A.C.: Reject. The original rule required LOAs to be retained for one year. Staff's proposed rule adds audio recordings to this requirement to provide additional customer protection. It has not been clearly demonstrated that the costs associated with storing audio recordings are more prohibitive than those for storing LOAs. In addition, staff believes that once the data is stored, the cost savings associated with maintaining the storage for a shorter period of time would be minimal. In addition, although costs might be reduced to some degree by storing the data for a shorter period of time, having the verification data available for the shorter time would not meet the objective of the rule.

FCCA Alternative No. 2(i) - Rule 25-4.118(8), F.A.C.: Require unauthorized charges to be refunded to the customer for "the first 30 days or the first billing cycle" instead of "for the first 90 days or the first three billing cycles, whichever is longer" as proposed by staff. Delete the provision requiring charges to be credited for up to 12 months.

RRR Staff Position on Alternative No. 2(i) - Rule 25-4.118(8), F.A.C.: Reject. The purpose of staff's proposed rule is to prevent a company that has slammed a customer from receiving revenues based upon unauthorized charges it billed to that customer. Most telecommunications bills are rendered monthly. However, some consumers testified at the public workshops that they were billed quarterly. The objective of the proposed rule is to protect those customers who might not know they had been slammed until they receive their first bill. FCCA's proposal does not appear to meet the objective of the proposed rule. Staff's proposed rule intends to ensure that customers who are billed quarterly would be credited for all unauthorized charges billed. To alleviate some of the cost concerns expressed by the industry, the proposed rule has been modified to allow customers to receive refunds for the first 90 days or the first billing cycle, whichever is longer. This preserves the objective of staff's proposed rule.

We also reject FCCA's proposal to delete the provision that requires charges in excess of the preferred carrier's rate to be credited to the customer by the company subsequent to the 90 days.

Staff's proposal might actually be less costly to the industry because it sets a maximum of twelve months for credits where the current rule is silent as to the duration.

FCCA Alternative No. 2(j) - Rule 25-4.118(12), F.A.C.: Clarify the rule to note that the new provider must send a letter notifying the customer that it will be providing service within 30 days.

RRR Staff Position on Alternative No. 2(j) - Rule 25-4.118(12), F.A.C.: Accept. The proposed amendment that would have required such a letter has been removed. It was determined to be unnecessary as the majority of providers already send such a welcome letter to their new customers and customers will receive notice on their bill of any provider change.

FCCA Alternative No. 2(k) - Rule 25-4.118(13), F.A.C.:[1] Delete the requirement that a provider must provide the customer a copy of the authorization it relies upon for the switch within 15 days of request.

RRR Staff Position on Alternative No. 2(k) - Rule 25-4.118(13), F.A.C.: Reject. The FCCA states that staff's proposed rule duplicates the requirement of 25-4.118(12), F.A.C. At the time FCCA proposed its alternative, subsection (12) would have required the provider to advise all new customers in writing that it would be providing service. However, subsection (12) has been removed. Therefore, this subsection, which requires a provider to furnish, upon request, a copy of the authorization it relied upon for making the carrier change, is not duplicative. Furthermore, deleting this requirement would not accomplish the objective of the proposed rule.

FCCA Alternative No. 2(l) - Rule 25-4.118(14), F.A.C.:[2] Delete this subpart in its entirety.

RRR Staff Position on Alternative No. 2(l) - Rule 25-4.118(14), F.A.C.: Reject. One of the purposes of this rule is to provide standards for customer service where there presently are none. The testimony of consumers at the public workshops demonstrated that customers are being harmed by not being able to contact providers to obtain information about unauthorized carrier changes and unauthorized charges. At least two companies (LCI and Intermedia) indicated they would have little or no additional cost to comply with the proposed service provisions. FCCA indicated this could put a very heavy financial burden on smaller companies and increase their cost of doing business

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[1]Subsection (13) has been renumbered Subsection (11).

[2]Subsection (14) has been renumbered Subsection (12).

in the state; however, a customer not having reasonable access to a provider is unacceptable and would not accomplish the objective of the proposed rule. Furthermore, testimony from consumers at the public workshops pointed out that it was often the new or smaller companies that consumers had the most difficulty contacting. A customer's ability to resolve a complaint hinges on the ability to contact a company. Deleting the proposed rule amendment might also negatively impact other provisions of the proposed rules.

FCCA Alternative No. 2(m) - Rule 25-24.490(1), F.A.C.: Delete the reference to Rule 25-4.110(10), F.A.C., under the column entitled "Portions Applicable."

RRR Staff Position on Alternative No. 2(m) - Rule 25-24.490(1), F.A.C.: Reject. This revision is unnecessary. According to the FCCA, an IXC has no way of identifying a customer's local carrier and therefore cannot put this information on the bill. To the best of RRR staff's knowledge, this is true. However, the rule amendments proposed by staff do not require an IXC to identify a customer's local carrier. Staff's proposed amendment at subsection 25-4.110(10) states in pertinent part ". . . all bills produced shall clearly and conspicuously display the following information for each service billed (emphasis supplied) in regard to each company claiming to be the customer's preselected provider . . . ." Unless an IXC is billing for local service, it would not be required to display the information. Therefore, it is not necessary to delete this provision.

Sprint Communications Company Limited Partnership (Sprint)

Sprint submitted two lower cost regulatory alternatives.

Sprint Alternative No. 1: Sprint concurs in and fully supports the FCCA's lower cost alternative number one.

RRR Staff Position on Alternative No. 1: Reject for reasons stated in Staff's post on FCCA's lower cost alternative number one.

Sprint Alternative Rule 24-4.118(14), F.A.C.: Allow companies the option of providing a toll-free slamming number to meet the call completion requirements.

RRR Staff Position on Alternative Rule 24-4.118(14), F.A.C.:[3] Reject. The rule as proposed by staff states, "A minimum of 95 percent of all call attempts shall be completed to a company's toll-

[3]Subsection (14) has been renumbered subsection (12).

free customer service number." Sprint wishes to have the option of providing a toll-free slamming number to meet the call completion requirements. Sprint stated that its proposed modification would enhance customer service. However, RRR staff believes having two numbers for customer service might be confusing to customers who may not understand or be intimidated by the term slammed. Sprint's alternative would not meet the objective of the rule (to resolve customer complaints), as it only proposes to meet the standard on its "slamming" number. Customers with general questions or concerns should receive the same customer service.

LCI International Telecom Corp. (LCI)

LCI Alternative No. 1: The Commission should either modify its existing rules to fine carriers who violate the current rules, or modify the existing rules to mirror the FCC's existing and future slamming rules.

RRR Staff Position on Alternative No. 1: Reject both alternatives. The Commission presently has the authority to fine carriers who violate our current rules as is evidenced by the numerous orders issued requiring carriers to show cause why they should not be fined or have their certificate revoked for violation of the existing slamming rules. A number of these orders have resulted in fines or settlements being paid to the State of Florida General Revenue Trust Fund. Consequently, no amendment to existing rules is needed in order for the Commission to fine carriers who violate the current rules. RRR staff rejects LCI's suggestion to mirror the FCC rules for the same reasons stated in Staff's position on FCCA's lower cost alternative number one.

In its second alternative, LCI suggests that should the Commission choose not to adopt the FCC rules, it should make modifications to the proposed rule amendments as outlined below.

LCI Alternative Rule 25-4.003(41): LCI suggests that the Commission not mandate use of a specific "PIC Freeze" form.

RRR Staff Position on Alternative Rule 24-4.003(41): Accept. The proposed rule amendments have been modified since LCI submitted its lower cost regulatory alternatives. The final version of the proposed rule amendment does not require use of a "PIC Freeze" form or reference such a form in the proposed rule amendments.

LCI Alternative Rule 25-4.118(10): LCI states the costs to modify its billing system to add the certificate number and type of service provided is extremely prohibitive, however, LCI

does not provide any alternative rule language. In its comments, LCI states "LCI is not certain what the Commission accomplishes by requiring the certificate number on the bill and not the carrier's operating name and customer service phone number(s)...."

RRR Staff Position on Alternative Rule 25-4.110(10): Reject. No alternative rule language that would substantially accomplish the objective of the proposed rule has been provided. Contrary to LCI's statement, the Commission's proposed amendment at Rule 25-4.110(10)(a)-(c) does require the carrier's name and customer service phone number to appear on the bill.

LCI Alternative Rule 25-4.110(11): LCI recommends not proposing any amendments to this subsection of the rules dealing with pay per call services.

RRR Staff Position on Alternative Rule 25-4.110(11): Accept. As agreed among the parties at the hearing, the substantive proposed amendments to this subsection have been removed and will be taken up at a separate rulemaking docket if necessary. The only proposed amendments remaining in this subsection are the replacement of words with abbreviations which is being proposed throughout the rule for consistency.

LCI Alternative Rule 25-4.110(12): LCI opposes the requirement to provide a "PIC-Freeze" form mandated by the Commission. In addition, LCI believes it should have the option of notifying customers that a PIC-Freeze is available either in writing or orally.

RRR Staff Position on Alternative Rule 25-4.110(12): Accept in part, reject in part. A "PIC-Freeze" form is no longer required by the proposed amendment. Reject the oral notification of PIC-Freeze availability as an option. Since LCI's alternatives were filed, the proposed rule language has been modified to allow companies to provide notice of the availability of a PIC-Freeze via letter or on the customer's first bill and annually thereafter. Staff believes allowing companies the option of using a letter to provide the notice will alleviate some of the cost concerns of LCI, such as costs for modification of billing systems. However, it is unlikely that companies would provide oral notice annually, therefore, the objective of the rule would not be met by LCI's proposed alternative.

LCI Alternative Rule 25-4.110(13): LCI suggests that the proposed rule be clarified to indicate that it applies only to ALECs and ILECs as many IXCs will be billing their customers directly, and receipt of the bill should be sufficient indication that the carrier has changed.

RRR Staff Position on Alternative Rule 25-4.110(13): Accept. Only a provider that is billing for one of the services (local, local toll, or toll) would know when the carrier for that service has changed. Typically, this would be an ALEC or ILEC. IXCs have no way of knowing when a customer's local provider has changed and therefore cannot notify their customers of such a change on the bill. In the case of toll service, after a carrier change, the prior carrier would probably still render a final bill. Though this would be the "next bill," the prior IXC would have no way of knowing who the customer's new carrier was. The prior carrier could notify the customer that it was no longer providing the service, but would not provide the name of the new carrier. The proposed amendment to subsection (10) of Rule 25-4.110 already requires bills to display certain information for each company claiming to be the customer's preubscribed provider for each service billed. Perhaps similar language would clarify subsection (13).

LCI Alternative Rule 25-4.110(1): LCI suggests allowing the use of a three-way call between the LEC, the customer, and the IXC to change a customer's PIC. LCI is concerned that ILECs will engage in anti-competitive behavior during the PIC change process.

RRR Staff Position on Alternative Rule 25-4.110(1): Reject. LCI has not shown how the proposed alternative would reduce costs while substantially accomplishing the objective of the rule. RRR staff believes that subsection (1) as proposed does not prohibit the use of a three-way call between the LEC, the customer and the IXC.

LCI Alternative Rule 25-4.110(2): LCI objects to this subsection on grounds "... the FPSC is unfairly forcing carriers (due to the hoops needed to be jumped through) to use written LOAs." LCI's understanding of the Commission proposed rule amendment is that it would not allow carriers to choose among the four options for obtaining and verifying carrier change requests and is, therefore, inconsistent with the rules proposed by the FCC. LCI further states that the Commission proposed rule amendments are inconsistent with the testimony of J. Alan Taylor regarding use of the four options. It is unclear what alternative LCI is proposing for this subsection unless it is to adopt the FCC's proposed rules.

RRR Staff Position on LCI Alternative Rule 25-4.110(2): Reject. It is the opinion of RRR staff that the proposed rule amendment allows carriers to submit a change request if it has satisfied one of the four options listed in proposed Rule 25-4.110(2)(a)-(d). RRR staff believes these statements are consistent with Mr. Taylor's testimony and that LCI has misinterpreted the proposed rule

amendments. The rule amendments proposed by Commission staff do not appear to "force" carriers to use the LOA method. Reasons for rejecting adoption of the FCC's proposed rules are discussed previously in this second revised SERC.

LCI Alternative Rule 25-4.118(8): LCI suggests that the Commission and the FCC's proposed refund requirements are inconsistent and that the Commission's proposed rule should be revised to match the FCC's proposed rule. LCI also suggests that carriers should not be required to re-rate a slammed customer's calls beyond 90 days.

RRR Staff Position on Alternative Rule 25-4.118(8): Reject. Under the proposed FCC rules, a company that has slammed a customer is not entitled to earn revenue from that customer. Any charges it collects from the customer must be turned over to the authorized carrier if that carrier requests reimbursement within 10 days of learning of the unauthorized carrier change. Charges for calls the customer made while on the unauthorized carrier's service (which may not have been billed by the carrier or paid by the customer) could be transferred to the authorized carrier for billing subject to private settlement negotiations between the carriers.

The proposed FPSC rules also prevent a company that has slammed a customer from earning revenue from that customer. Under the proposed Commission rules, charges an unauthorized carrier collects from a customer must be returned directly to the customer. Charges for calls the customer made while on the unauthorized carrier's service must be credited (not billed). However, the proposed FPSC rule does not prevent the unauthorized carrier from transferring the calls to the authorized carrier for billing. Only those carriers who obtain customers without complying with the FPSC rules would have to refund charges collected. Therefore, the carrier can control the amount of money it must refund by complying with the Commission's rules. Furthermore, under the FCC's proposed rules, customers may have to pay their authorized carrier for calls made while on the unauthorized carrier's service if the two carriers negotiate such an agreement. Therefore, customers will not be unjustly enriched or be entitled to service without payment. The purpose of the Commission's proposed rule is to deter the number of slamming incidents and prevent carriers who engage in slamming from obtaining revenues from this illegal activity. The proposed rule should be an effective tool for achieving that purpose.

We also reject LCI's proposal to delete the provision that requires charges in excess of the preferred carrier's rate to be credited to the customer by the company subsequent to the 90 days. We agree with LCI's statement, "Most billing disputes are resolved within this time frame." Consequently, there should be few cases where re-rates are required beyond 90 days. Furthermore, staff's proposal might actually be less costly to the industry because it sets a maximum of twelve months for credits where the current rule is silent as to the duration.

LCI Alternative Rule 25-4.110 (12): LCI does not believe the Commission should mandate oral or written notice of the availability of a PIC-Freeze. LCI's comments appear to contain an incorrect reference to Rule 24-4.118(11).

RRR Staff Position on Alternative Rule 25-4.110 (12): Reject. The purpose of the proposed rule is to provide consumers the knowledge that a method for freezing their carrier selection is available. Written notification is the most efficient way to do this in a fair and consistent manner. In an effort to reduce costs, the proposed rule has been revised to allow the written notice to either appear on the bill or be provided via letter once each year. Making the notice optional or allowing oral notice would not achieve the purpose of the rule.

LCI Alternative Rule 25-4.118(11): The proposed rule requires carriers to provide a copy of the authorization it relies upon to make a switch within 15 days of request. LCI suggests two clarifications. Clarify whether the 15 days are calendar days or business days, and clarify that the request be made by a customer. LCI's comments reference proposed Rule 25-24.118(13), however staff modifications to several rules have changed the subsection numbering.

RRR Staff Position on Alternative Rule 25-4.118(11): Accept. RRR staff has no objection to either clarification. However, it should be noted that the proposals are clarifications and do not appear to be Commission staff's ability to obtain a copy of the authorization is preserved in Rule 25-4.043, Response to Commission Staff Inquiries, which is incorporated in the ALEC rules under Rule 25-4.835, F.A.C., and in the IXC rules under Rule 25-24.480, F.A.C.

LCI Alternative Rule 25-4.118(12): LCI states the proposed rule ". . . would require all companies to employ live operators 24 hours/7 days a week, and that all end user complaints be recorded." LCI believes this requirement should not be imposed on smaller carriers as it would dramatically increase the cost of doing business and is inconsistent with the goal of

encouraging competition. LCI's comments reference proposed Rule 25-24.118(14), however staff modifications to several rules have changed the subsection numbering.

RRR Staff Position on Alternative Rule 25-4.118(12): Reject. The proposed rule requires either the use of a live operator to receive customer complaints or the recording of customer complaints, not both, as stated by LCI. The objective of the proposed rule is to provide customers with access to all providers of local, local toll or toll service. Consumers expect to be able to reach a place of business by telephone. As explained in the discussion of FCCA's proposed alternative, the testimony of consumers at the public workshops demonstrated that customers were being harmed by not being able to contact providers to obtain information about unauthorized carrier changes and unauthorized charges. Cost data supplied to staff indicated that this is a very costly proposal. However, if no other recourse is available to the customer, staff's proposed rule may be appropriate. Though compliance with this rule could put a very heavy financial burden on smaller companies and increase their cost of doing business in the state, a customer not having reasonable access to a provider is not acceptable and would not accomplish the objective of the proposed rule. Furthermore, when consumers have difficulty reaching a provider to resolve a complaint, the same is usually true for the staff of the regulatory agency. RRR staff does not believe requiring small companies to provide the same level of access for their customers will be harmful to competition. On the contrary, establishing service standards that apply equally to all providers may enhance competition, as customers may not be reluctant to move freely between providers when they know they can expect to receive at least a minimal level of customer service from all providers.

CONCLUSION

If the proposed rule amendments contain complex or costly provisions that are unnecessary to meet the objectives of the rule, then competition may be unnecessarily reduced. Costs would be driven up for all providers which would cause fewer new competitors to enter the market, or some to leave the market. As a result, fewer service options would be offered, and rates might not be as competitive. Also, customer movement among the different providers within the local, local toll, and toll markets might be reduced or slowed if the proposed amendments cause the process to become cumbersome for customers and companies. Customer choices among services and service providers might also be reduced. However, the testimony of customers, Commission staff, the

Office of Public Counsel, and the Office of the Attorney General all make it clear that additional safeguards are needed to protect customers from unauthorized carrier changes. Such unauthorized changes also have a high cost. Customers bear this cost in the time they lose from work or other productive activities when they must resolve a slam. Customers may also bear the cost of higher rates charged by an unauthorized provider. Companies bear this cost when they lose revenues they would have received if an unauthorized carrier had not stolen their customer. Companies also lose market share when customers are slammed away from them. The Commission bears a cost for processing complaints, pursuing enforcement action against companies, and possibly being perceived by consumers as ineffective in protecting them. Ultimately, consumer confidence in the integrity of the telecommunications industry may be eroded by the deceptive marketing practices and careless procedures that slamming represents. If consumers lose confidence in the integrity of telecommunications providers, competition is not likely to be enhanced. Unauthorized carrier changes give the appearance of an actively competitive market but do not represent real competition. As the local and local toll markets become more competitive, it is crucial to reduce the incidence of slamming so that a truly competitive market can develop.

KDL:tf/e-slam3
Attachment: Transactional Costs of Proposed Rule Amendments as Percentage of Intrastate Operating Revenues

Transactional Costs of Proposed Rule Amendments as Percentage of Intrastate Operating Revenues

(Mid-point is listed where costs were provided as range.)

Posting Certificate Number on Bill, Rule 24-4.110(10), F.A.C.

	Non-Recurring	% of Intrastate OR(1)	Annual Recurring	% of Intrastate OR
AT&T	Not provided	Unknown	Not provided	Unknown
BellSouth	$80,000	0.003%	$2,250,000	0.077%
Intermedia	Not provided	Unknown	Not provided	Unknown
LCI	$280,000	2.273%	Not provided	Unknown
MCI	Not provided	Unknown	Not provided	Unknown
Sprint-FL, Inc.	$810,400	0.089%	Not provided	Unknown
Sprint (ALEC)	Not provided	Unknown	Not provided	Unknown
Sprint (IXC)	Not provided	Unknown	Not provided	Unknown

Post Notice of Provider Change on Bill, Rule 24-4.110(13), F.A.C.

	Non-Recurring	% of Intrastate OR	Annual Recurring	% of Intrastate OR
AT&T	Not provided	Unknown	Not provided	Unknown
BellSouth	Not provided	Unknown	$83,313	0.003%
Intermedia	$75,000	0.250%	Not provided	Unknown
LCI	$100,000	0.909%	$8,000	0.073%
MCI	Not provided	Unknown	Not provided	Unknown
Sprint-FL, Inc.	$290,000	0.032%	Not provided	Unknown
Sprint (ALEC)	Not provided	Unknown	Unknown	Unknown
Sprint (IXC)	Not provided	Unknown	Unknown	Unknown

(1) Intrastate Operating Revenues were taken from each company's 1997 Regulatory Assessment Fee filings, except LCI which was provided directly to staff by LCI. IXC Intrastate Operating Revenues exclude monies paid to LECs for use of local network.

ATTACHMENT

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Transactional Costs of Proposed Rule Amendments as Percentage of Intrastate Operating Revenues

(Mid-point is listed where costs were provided as range.)

Audio Recording Inbound Calls, Rule 25-4.118(2)(b), F.A.C.

	Non-Recurring	% of Intrastate OR	Annual Recurring	% of Intrastate OR
AT&T	Not provided	Unknown	Not provided	Unknown
BellSouth	$15,000,000	0.513%	$6,300,000	0.216%
Intermedia	Not provided	Unknown	Not provided	Unknown
LCI	Not provided	Unknown	Not provided	Unknown
MCI	Confidential	Confidential	Confidential	Confidential
Sprint-FL, Inc.	Not provided	Unknown	Not provided	Unknown
Sprint (ALEC) (2)	$660,000	22.671%	Not provided	Unknown
Sprint (IXC) (2)	$1,200,000	1.254%	Not provided	Unknown

Third-Party Verification, Rule 25-4.118(2)(c), F.A.C.

	Non-Recurring	% of Intrastate OR	Annual Recurring	% of Intrastate OR
AT&T (3)	$600,000	0.128%	$6,000,000	1.387%
BellSouth	$8,000,000	0.274%	$740,000	0.025%
Intermedia	Not provided	Unknown	Not provided	Unknown
LCI	Not provided	Unknown	Not provided	Unknown
MCI	Not provided	Unknown	$160,000	0.090%
Sprint-FL, Inc.	Not provided	Unknown	Not provided	Unknown
Sprint (ALEC)	$70,000	2.859%	Unknown	Unknown
Sprint (IXC)	$280,000	0.293%	Unknown	Unknown

(2) Costs for audio recording of inbound calls only.
(3) Excludes costs for data storage.

ATTACHMENT

Transactional Costs of Proposed Rule Amendments as Percentage of Intrastate Operating Revenues

(Mid-point is listed where costs were provided as range.)

Refunds up to 90 days, Rule 25-4.118(8), F.A.C.

	Non-Recurring	% of Intrastate OR	Annual Recurring	% of Intrastate OR
AT&T	Not provided	Unknown	Not provided	Unknown
BellSouth	Not provided	Unknown	Not provided	Unknown
Intermedia	Not provided	Unknown	Not provided	Unknown
LCI	$3,000,000	27.273%	Not provided	Unknown
MCI (4)	Not provided	Unknown	$1,000,000	0.603%
Sprint-FL, Inc.	Not provided	Unknown	$28,000	0.003%
Sprint (ALEC)	Not provided	Unknown	Not provided	Unknown
Sprint (IXC) (5)	$98,000	0.082%	$345,000	0.380%

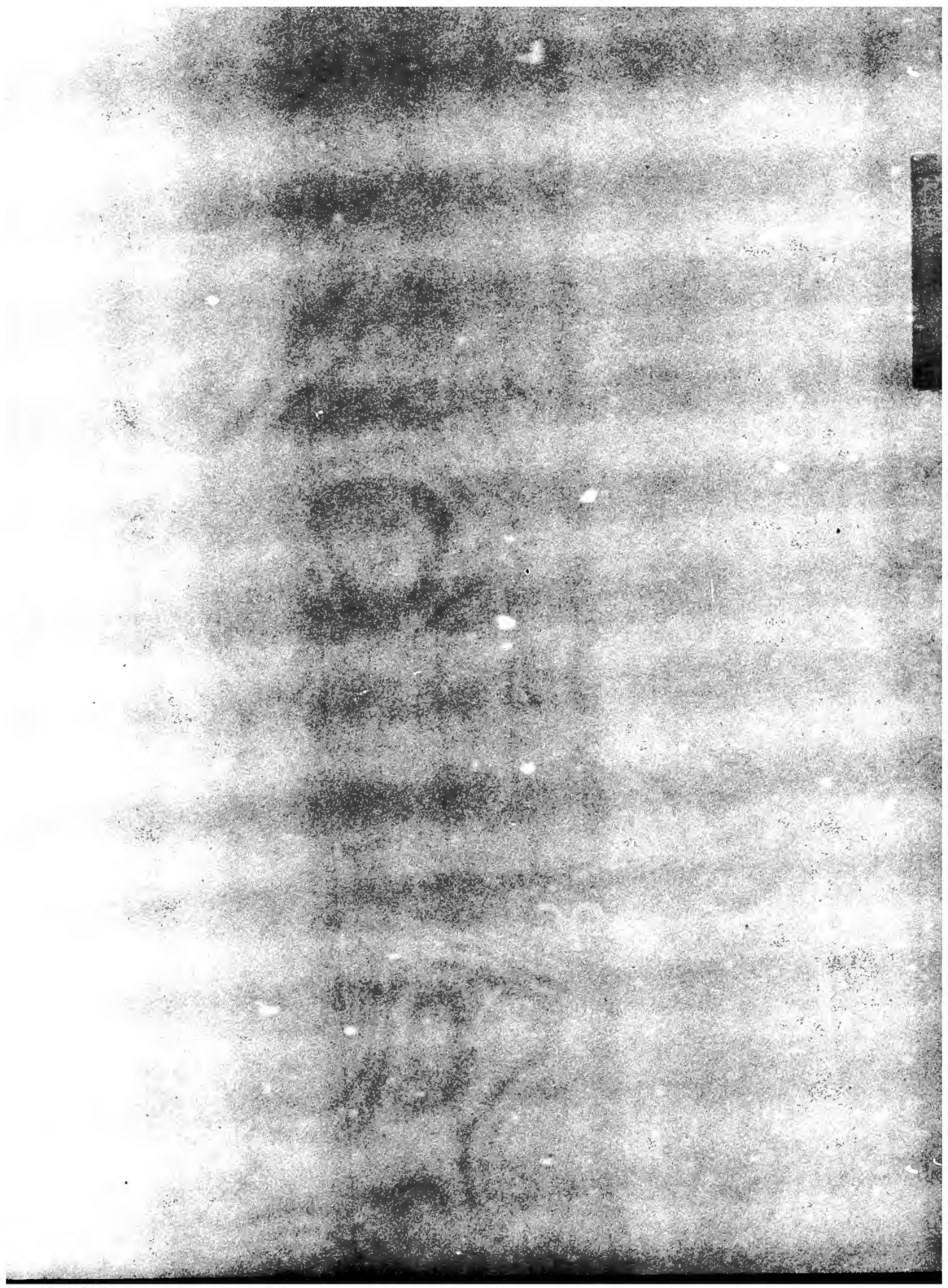
Customer Service Standards, Rule 25-4.118(14), F.A.C.

	Non-Recurring	% of Intrastate OR	Annual Recurring	% of Intrastate OR
AT&T	Not provided	Unknown	Not provided	Unknown
BellSouth	$77,994	0.003%	Not provided	Unknown
Intermedia	Minimal	Unknown	Minimal	Unknown
LCI	$0	0.000%	$0	0.000%
MCI	$17,999,000	10.245%	Not provided	Unknown
Sprint-FL, Inc.	$210,000	0.023%	$140,000	0.016%
Sprint (ALEC)	Not provided	Unknown	Not provided	Unknown
Sprint (IXC)	Not provided	Unknown	Not provided	Unknown

(4) For refunds only, does not include other charges incurred to serve the customer
(5) To investigate claims, does not include refunds

ATTACHMENT

30



ATTACHMENT B

TONI JENNINGS
President

DANIEL WEBSTER
Speaker

THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

98 MAR -3 AM 10:

Representative Jerrold Borrenghe, Chairman
Senator Charles Williams, Vice Chairman
Senator Ginny Brown-Waite
Senator Fred R. Dudley
Representative Adam H. Putnam
Representative Jenny Westerveek

DEBORAH K. KEARNEY, EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
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Telephone (850) 488-9110

February 26, 1998

Ms. Diana W. Caldwell
Associate General Counsel
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Public Service Commission Rule Chapters 25-4 and 25-24

Dear Ms. Caldwell:

I have reviewed the referenced rules and have the following comments:

25-4.110 In subparagraph (11)(a)3. the word "subscribers" should be "subscriber's."

Subsections (12) and (13) should be rewritten to be gender neutral.

25-4.118 The first word in paragraphs (2)(a) and (2)(b) should be capitalized. Also, the references in (2)(b) and (c) should be to (3)(a) through (3)(e).

The structure of subparagraphs (2)(c)2.and (2)(d)6. is grammatically inconsistent.

Subsection (12) should be rewritten to be gender neutral.

25-24.845 The word "rule" should be "rules."

Please call me if you have any questions.

Sincerely,

Susan Stafford

Susan Stafford
Staff Attorney

01

#113644/#113647
SS:CB C:\DATA\WP61\SP25-4.LTR

Agg / Caldwell

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Robert A. Butterworth, Attorney General, and the Citizens of the State of Florida, by and through the Office of Public Counsel, for initiation of formal proceedings pursuant to Section 120.57(1), Florida Statutes, to investigate the practice of "slamming," i.e. the unauthorized change of a customer's presubscribed carrier, and to determine the appropriate remedial measures	)	Docket 970882-TI Filed: March 16, 1998

98 MAR 17 PM 2:01

POST HEARING STATEMENT OF ISSUES AND POSITIONS BY THE ATTORNEY GENERAL AND THE CITIZENS

ISSUE 1: Should the Commission adopt the new rule 25-24.845?

POSITION: Yes. All providers of telecommunications services in the state of Florida should be required to abide by the basic provisions of service regarding billing and collection for regulated services and for the selection and change of local, local toll, and toll providers.

ISSUE 2: Should the Commission adopt the proposed amendments to Rule 25-4.003?

POSITION: Yes. The Commission should define a "PIC Freeze" and it should identify a slam or slamming as the change of a customer's local, local toll or toll provider without the knowledge or consent of the subscriber.

ISSUE 3: Should the Commission adopt the proposed amendments to Rule 25-24.110

POSITION: Yes. AG/OPC supports the rule changes proposed by staff in addition to the changes proposed by AG/OPC witness Poucher. The Commission should require all providers to provide notice to customers of the availability of the PIC Freeze option, upon ordering of service and annually through billing notification. The proposed rule requires conspicuous notice to the customer when a customer's provider has been changed. The additional proposal by AG/OPC would locate this notice on the first two pages of the bill where the customer could find the listing of all providers. Both Staff and AG/OPC proposals should be adopted in order to adequately inform consumers.

ISSUE 4: Should the Commission adopt the amendments to Rule 25-4.118?

POSITION: Yes. The Commission should adopt the proposed rules of Staff and in addition, should incorporate the proposed additional rules of AG/OPC.

DISCUSSION: The Commission should adopt AG/OPC's proposal that when the staff determines that a carrier acted fraudulently in the switching of a customer's provider, the case should be referred separately to the full Commission for disposition. Customers made numerous complaints to the Commission through testimony at the public hearings and from letters received by AG/OPC that they were upset by the fraudulent activities of the companies responsible for slamming. The Commission should refer to the complaints of the following customers as solid evidence that some companies engaged in slamming are also engaged in what consumers believe is fraud:

Adelman, Helen W. (Pg.55-REP-1

Apgar, Dorothy (Pg. 154-REP1)

Baena, Renato (Pg83-REP-1)

Baier, Hans J. (Pg.301-REP-1)

Benway, James (Pg.11-REP-1)

Berg, Stanley S. (Pg. 347-REP-1)

Brandon, Copnnie M. (Pg.92-REP-1)

Bunting, Greta (Pg.26-REP-1)

Cawley-O'Dell Enterprises (Pg.143-REP-1)

Chew, Walter (Pg.21-REPs-1)

Cobb, Warren (Pg.281-REP-1)

Commercial Real Estate Services (Pg. 341-REP-1)

Dalziel, David (Pg. 142-REP-1)

Draher, Helen (Pg.162-REP-1)

Dunphy, Thomas (Pg. 194-REP-1)

Essex Police Department (Pg. 219-REP-1)

Fernald, Frank & Jessamine (Pg.22-REP-1)

Hockaday, Billy S. (Pg.174-REP-1)

Johnson, Mark D. (Pg. 97-REP-1)

Laughter, John H. (Pg. 306-REP-1)

Lust, Robert D. (Pg.233-REP-1)

Mackowski, James A. (Pg.284-REP-1)

Maynard, Robert L. (Pg. 73-REP-1)

Meinert, Katherine J. (Pg.355-REP-1)

Morrell, Henry (Pg. 118-REP-1)

Nat'l Academuy of Scuba Educators (Pg.7-REP-1)

Pallot, Norman S. (Pg.94-REP-1)

Paporn, Thebpanya (Pg.125-REP-1)

Polls, hori (Pg.129-REP-1)

Read, Ethel (Pg.14-REP-1)

Rosen, Irma & Paul (Pg.260-REP-1)

Snell, Barbara P. (Pg.199-REP-1)

Straticzuk, Andy (Pg.165-REP-1)

Texpack (Pg.223-REP-1)

James, Clarence (Miami-Pg.30)

Oscar Botero (Miami-Pg.47)

John Soler (Miami-Pg.115)

James Dunkel (Miami-Pg.155)

Sara Westbrook (Tampa-Pg.85)

Dorothy Apgar complained that her tape was altered. James Benway complained they forged his name. Bow and Arrow called it a "slimy con game". Cawley-O'Dell Enterprises also complained they doctored the tape. Helen Draher complained that the criminals just about ruined her life. Thomas Dunphy complained of forgery. Billy Hockaday also complained of forgery and noted her mental suffering. Robert Lust, James Mackowski, Henry Morrell and John Soler also complained of forgery. James Dunkel was slammed by an LOA signed by his father who died in 1990. Sara Westbrook described falsification of her tape recorded verification call. She spoke of feeling "violated almost to the point of being raped."

The Commission should immediately implement procedures to deal promptly and severely with all carriers who are found to be involved in fraudulent activities.

The Commission should adopt the proposal of Staff and AG/OPC regarding carrier selection and billing and collection procedures. Most importantly, the Commission should adopt the proposals of AG/OPC regarding the charge-back of all billing for the prior 90 days and the implementation of a billing block to prevent future

billing on the customer's regular telephone bill when there has been a complaint of slamming. This proposal was explained by AG/OPC witness Poucher as being a necessity in order deal with slamming complaints in the most economical and expeditious manner. As explained by witness Poucher, "The purpose of that provision is to direct all of the revenues...back to the responsible carrier that made the sale in the first place, or made the slam. The carrier then negotiates with the customer as to whether or not it's a valid bill or not, and collects accordingly." Tr. P263, L3-10).

Witness Poucher maintained that the proposed solution of billing back revenues to the originating carrier upon receipt of a slamming complaint would be more economical than existing practices. "Our plan significantly reduces service rep time dealing with slamming problems, and it pushes that problem over to the IXC which has to resolve it anyway. I see our proposals as much more cost effective for the entire industry than the existing process." (Tr. P268, L23 - P269, L3) In addition, witness Poucher pointed out that the proposed procedures would constitute a strong incentive for carriers not to engage in slamming in the first place. (Tr. P269, L12-15)

Significant portions of the cross-examination and testimony of the LECs and the IXCs dealt with the procedures currently used by the companies today to deal with slamming complaints. The companies maintain that existing procedures are adequate and all that is needed is for the Commission to enforce its existing rules. These positions, however, are countered by the testimony of Witness Poucher, and numerous

public witnesses who described the trauma involved with slamming and the significant delays in resolving the associated billing. Some of the more specific customer testimony regarding the billing trauma, the delays, the frustrations and anger that customers experience under the existing procedures employed by the LECs and the IXCs can be found in the following data:

Adelman, Helen W. (Pg.55-REP-1)

Alene's (Pg.81-REP-1)

At Home Nursing (Pg.147-REP-1)

Atton, Janet (Pg.149-REP-1)

Ault, Richard (Pg.69-REP-1)

Barrera, Pilar (Pg.202-REP-1)

Bawidamann, Shirley (Pg. 221-REP-1)

Bow and Arrow (Pg.63-REP-1)

Cail, Virginia M. (Pg.342-REP-1)

Caribbean Villas (Pg.41-REP-1)

Clauss, Perry (Pg.135-REP-1)

Davis, Henry C. (Pg.280-REP-1)

Deiter, William G. (Pg.211-REP-1)

Dockham, Hazel (Pg.57-REP-1)

Gober, Roberta (Pg.172-REP-1)

Hall's Service Center (Pg.276-REP-1)

Hoffman, Linda (Pg.58-REP-1)

Juchniewic Eva (Pg.110-REP-1)

Lawrence, Vicki (Pg.179-REP-1)

Lerner, Harry (Pg.37-REP-1)

Mackowski, James A. (Pg.284-REP-1)

McCann, Joan (Pg.88-REP-1)

McCleod, Judy (Pg.111-REP-1)

Miami Dade Electric (Pg.170-REP-1)

Montague, Howard (Pg.186-REP-1)

Moring, Rita (Pg.270-REP-1)

Multimedia Marketing Group (Pg.151-REP-1)

Newman, Jack (Pg.15-REP-1)

North Bay Electronics (Pg.229-REP-1)

O'Neil, Ruthann O. (Pg.120-REP-1)

Polcyn, Paul E. (Pg.17-REP-1)

Prado, Francisco A. (Pg.272-REP-1)

Ray Duncan Plumbing (pg.360-REP-1)

Rubin, Faith E. (Pg.89-REP-1)

Sanford, Joseph & Eleanor (Pg.126-REP-1)

Santora, Karen (Pg.214-REP-1)

Sarote, Paul (Pg.312-REP-1)

Schius, Dieter W. (Pg.213-REP-1)

Schneider, Joe & Shirley (Pg.323-REP-1)

Schuman, F. (Pg.216-REP-1)

Sherry Manufacturing (Pg.136-REP-1)

Sir Speedy (Pg.241-REP-1)

Spiegel, Harriette L. (Pg.315-REP-1)

Stolz, Margaret K. (Pg.128-REP-1)

Storer, Russell (Pg.165-REP-1)

Swerdlin Associates Inc. (Pg.313-REP-1)

Tandova Inc. (Pg.168-REP-1)

Unifirst Mortgage (Pg.212-REP-1)

Verbeke, Frank (Pg.54-REP-1)

Wohl, Stewart B. (Pg.187-REP-1)

WSA Systems (Pg.45-REP-1)

Peggy Taylor (Miami-Pg.88)

Mary Thompson(Miami-Pg.142)

Michael Gaiffe (Tampa-Pg.43)

Linda Saliga (Tampa-Pg,64)

Mary Keith (Tampa-Pg.72)

Ahmad Erchid (Tampa-Pg.81)

American Bath & Kitchens maintains that they are still being billed. Connie Brandon had to spend six hours on the phone and 8 months to resolve her problem.

Commercial Real Estate Service complained about MCI's fabricated explanations. Henry Davis complained he is still being billed. Hall's service center complained the slamming carrier would never answer their 800 number. Eva Juchniewicz said she dreaded every telephone bill. Howard Montague complains the ordeal has gone on for 8 months. Rita Moring claims it took 6 months. Mr. Schuman said it took 10 months. Russell Storer is still being billed. Peggy Taylor had to deal with three companies and it took 4 months. Mary Thompson said she was slammed by USBI and disconnected by BellSouth while the bill was in dispute. Michael Gaiffe complained of receiving a disconnect notice on disputed charges from GTE. Linda Saliga said, "So I had to go through this every single month with these people (GTE) and it was like a form of harassment." It took Mary Keith over a year to resolve her billing problems with GTE . Witness Erchid stated he was disconnected by GTE and they reported it to the credit bureau after being slammed by AT&T.

This is just an example of the weighty evidence the Commission should consider when it decides whether the existing billing procedures adequately protect consumers, as the carriers claim, or whether the proposals of Staff and AG/OPC should be adopted. Throughout this proceeding, the carriers essentially ignored the evidence provided at the ten public workshops and the numerous complaints from customers placed in the record of the proceeding.

ISSUE 5: Should the Commission adopt the amendments to rule 25-24.490?

POSITION: Yes. The Commission should require all companies to meet the minimum standards that now apply to LECs regarding response to incoming calls to the business office. In addition, carrier selection rules, handling of customer complaints and rules regarding Discontinuance of Service, refunds and 800 service should apply to all providers.

Respectfully submitted,

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Attorney General

MICHAEL A. GROSS
Assistant Attorney General
Fla. Bar No. 199461

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CERTIFICATE OF SERVICE
Docket No. 970882-TL

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 16th day of March, 1998.

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March 16, 1998

App/Caldwell

98 MAR 17 PM 2:01

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 970882-TI

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of ALLTEL Florida, Inc.'s Posthearing Statement.

We are also submitting the Posthearing Statement on a 3.5" high-density diskette generated on a DOS computer in WordPerfect 5.1 format.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Sincerely,

J. Jeffry Wahlen

Enclosures

cc: All parties of record

all/970882.byo

DOCUMENT NUMBER-DATE
03253 MAR 16 98
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Rule 25-24.845, F.A.C., Customer Relations, Rules Incorporated; and proposed amendments to Rule 25-4.003, F.A.C., Definitions; Rule 25-4.110, F.A.C., Customer Billing; Rule 25-4.118, F.A.C., Interexchange Carrier Selection; and Rule 25-24.490, F.A.C., Customer Relations; Rules Incorporated.	)	DOCKET NO. 970882-TI Filed: March 16, 1998

ALLTEL FLORIDA INC.'S POSTHEARING STATEMENT

Pursuant to Order No. PSC-97-1071-PCO-TP, and Rule 25-22.056, Florida Administrative Code, ALLTEL FLORIDA, INC. ("ALLTEL" or the "Company") submits the following Posthearing Statement:

I.

Introduction

The final hearing in this docket was held on February 6 and 16, 1998. Numerous parties presented testimony and comments on the proposed rule. At the beginning of the hearing, the Commission voted to sever the portions of proposed rule 25-4.110(11)(3)(a), F.A.C., relating to the PIN number bill blocking option from the proceeding. [Tr. 43] In so doing, the Commission eliminated from this proceeding the portion of the proposed rule that was of greatest concern to ALLTEL.

ALLTEL has reviewed the record of the proceeding and the proposals of the parties. This posthearing statement reflects the views of ALLTEL on the proposed rules based on the evidence in the record of the proceeding. ALLTEL's position on the issues and its

arguments in support of those positions are set forth below. Its position for publication in the staff recommendation are indicated with an asterisk (*).

II.

Position on Issues

Issue 1: Should the Commission adopt the new rule 25-24.845, F.A.C., as proposed by the Commission?

Position: * Yes. Any rule applicable to incumbent local exchange companies should be applicable to ALECs or CLECs.

Discussion: Regulatory requirements should be imposed on local providers in a nondiscriminatory manner. Extending these customer relations rules to ALECs and CLECs is consistent with this principle.

Issue 2: Should the Commission adopt the amendments to rule 25-4.003, F.A.C., as proposed by the Commission?

Position: * ALLTEL does not object to the definitional changes in this rule as proposed by the Commission.

Discussion: Rule 25-4.003 contains definitions only, and does not impose restrictions or regulatory requirements. ALLTEL does not object to the changes proposed in the notice of rulemaking, but notes that some of the proposed definitional changes may not be necessary or should be amended if portions of the substantive portions of the proposed rules are not adopted. For example, if BellSouth's proposal to allow a PIC-Freeze based on a telephone call from a customer is accepted, the definition in 25-4.003 (41) would need to be amended.

Issue 3: Should the Commission adopt the amendments to rule 25-4.110, F.A.C., as proposed by the Commission?

Position: * . No. The requirement to include certificate numbers on customers bills should be deleted as redundant and unnecessary.

Discussion: ALLTEL agrees with the LECs and IXC that believe that adding an IXC's certificate number on the customer bill is an unnecessary and redundant requirement that will provide little useful information to customers. [Tr. 481, Scobie; 406, Hendrix; and 533, King] For most consumers, certificate numbers are meaningless and irrelevant, and the requirement to include them on the bill would impose additional costs without a commensurate benefit. [Tr. 534, King; 406, Hendrix; 481, Scobie]

Issue 4: Should the Commission adopt the amendments to rule 25-4.118, F.A.C., as proposed by the Commission?

Position: * The Commission should not adopt the proposed changes unless it finds that they are consistent with the related FCC rules and are the least cost alternative that substantially accomplish the objective.

Discussion: The Commission has been presented with a great deal of evidence about slamming. The evidence shows that most of the major IXCs and the LECs have implemented policies and procedures to safeguard against slamming. The evidence also shows that the bulk of the problem is caused by unscrupulous carriers that are not following existing rules. When adopting any additional safeguards, the Commission should take care to ensure that the additional safeguards are cost effective and narrowly tailored to address the

major offenders and their tactics, not the relatively small number of inadvertent slams attributable to human error or customer confusion.

Issue 5: Should the Commission adopt the amendments to rule 25-24.490, F.A.C., as proposed by the Commission?

Position: * ALLTEL does not object to the proposed changes.

DATED this 16th day of March, 1998.

LEE L. WILLIS
J. JEFFRY WAHLEN
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Post Office Box 391
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(850) 224-9115

ATTORNEYS FOR ALLTEL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail or hand delivery (*) this 16th day of March, 1998, to the following:

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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., Definitions; 25-4.110, 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. 970892-TI Filed: 2/16/98

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AT&T's POST-HEARING BRIEF
AND STATEMENT OF ISSUES AND POSITIONS

Pursuant to Order No. PSC-98-0200-PHO-TI and Rule 25-22.056, Florida Administrative Code, AT&T Communications of the Southern States, Inc. ("AT&T") hereby files its posthearing brief and statement of issues and positions.

Introduction

Slamming is an industry and consumer problem which is currently receiving a great deal of public attention. Although the financial impact on customers is relatively small, the cumulative expense of investigating and resolving these complaints is substantial as is the irritation and inconvenience experienced by consumers. As shown at hearing by Mr. Watts, AT&T's witness, AT&T loses customers and substantial revenue to slamming by other carriers and thus has a direct financial interest in preventing slamming. (Tr. 325)

Although it is tempting to impose strict limitations on the processes used by providers to solicit customers and switch their service, such limitations have the corresponding detrimental effects of making it more difficult for consumers to change providers while increasing business costs that ultimately must be borne by Florida consumers. The Commission must therefore craft a balanced approach to slamming in order to resolve existing problems in a way that serves, rather than penalizes, consumers. The Commission can best do this by vigorously enforcing its existing rules, imposing identified lower cost regulatory alternatives to the proposed rules and implementing further reforms only if proven necessary after these measures have had time to take effect.

The Commission also must weigh the extent of the slamming problem when crafting a solution.1 As pointed out at hearing, raw numbers of slamming complaints, taken alone, can be misleading. Mr. Watts estimated that approximately 2.75 million customer carrier changes occurred in Florida in 1997. (Tr. 326) Only a small fraction of one percent of those PIC changes resulted in complaints to the Commission - despite extensive publicity of slamming issues including television announcements,

1 Although he was not able to quantify an amount, staff witness Mr. Taylor agreed that some degree of slamming errors might be deemed acceptable, and that the quantity of PIC changes processed could be considered in connection with this determination. (Tr. 187, 188) Mr. Taylor also agreed that costs should be taken into consideration when developing anti-slamming measures. (Tr. 147)

news reporting, and a series of well-publicized public hearings.2 As Mr. Watts pointed out, all but a fraction of one percent of customers who switched providers did so because they found a better deal - not because they were slammed.

Customers want the ability to change carriers quickly and easily to take advantage of competition in the industry. AT&T supports cost-effective anti-slamming requirements, but the rules imposed by the Commission should not increase customer costs or needlessly hinder customer choice.

AT&T's Positions on Issues

ISSUE 1: Should the Commission adopt new rule 24-24.845, Florida Administrative Code, as proposed by the commission at the December 16, 1997, agenda conference?

AT&T's Position: ** No. The new rule would impose upon ALECs the customer billing requirements of Rule 25-4.110 (10)-13) and the carrier selection requirements of Rule 25-4.118. The Commission should not impose the new customer billing requirements on ALECs because they are unnecessary in a competitive environment. Customers may freely switch providers if they are dissatisfied with ALEC billing practices. The new carrier selection Commission be imposed on ALECs only if modified pursuant to AT&T's suggestions, as shown in Issue 4, below. **

Billing requirements were imposed upon LECs in a monopoly environment because customers could not express their dissatisfaction by changing providers. ALECs enjoy no monopoly;

2 Staff witness Ms. Erdman-Bridges stated that for 1997, the Division of Consumer Affairs made an initial determination that 1,457 complaints involved an unauthorized carrier change, and that no determination had yet been made regarding an additional 1,531 inquiries. Even if all of these complaints were ultimately determined to be valid, they would constitute less than one tenth of one percent of the 2.75 million PICs estimated to have taken place in Florida in 1997.

if they cannot satisfy their customers with clear, understandable bills which offer the information customers desire, they will lose those customers. The billing requirements are thus unnecessary.

AT&T agrees, however, that all providers should operate under the same fair set of rules when it comes to soliciting customers. Accordingly, if Rule 25-4.118 is changed as noted above, it should apply equally to all LECs, ALECs and IXCs.

25-24.845 Customer Relations; Rules Incorporated.

The following rules are incorporated herein by reference and apply to ALECs. In the following rule, the acronym 'LEC' should be omitted or interpreted as 'ALEC'.

Section	Title	Portions Applicable
~~25-4.110~~	~~Customer Billing~~	~~Subsections (10), (11), (12), and (13)~~
24-4.118	Local, Local Toll, or Toll Provider Selection	All

ISSUE 2: Should the Commission adopt the proposed amendments to Rule 25-4.003, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

AT&T's POSITION: ** AT&T does not oppose the proposed changes. **

ISSUE 3: Should the Commission adopt the proposed changes to Rule 25-4.110, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

AT&T's Position: ** No. Instead, the Commission should make changes to the proposed rule in order to clarify that telecommunications companies may use the d/b/a name authorized in their certification; clarify the "pay per call" rule to differentiate between 900/976 calls and other pay per call services; modify the PIC freeze requirement to require further customer information; and modify the provision requiring notification of provider change to allow bill inserts and specify an implementation date. **

A. Information On Customer Bills

AT&T proposes that the rule be modified to delete the requirement that customer bills include certificate numbers and to add a provision that would allow the use of d/b/a names duly authorized and shown on the provider's certificate.

AT&T agrees with the new requirement that the name of the provider be shown on customer bills. AT&T is well aware of the customer confusion that can result when customer bills do not clearly indicate the identity of the customer's service provider. As AT&T has indicated to the Commission and staff, possible customer confusion is the reason for discontinuance of AT&T's former practice of allowing certain of its resellers to make limited use of AT&T's name and logo - a practice that staff used at hearing as justification for the new requirement that certificated names and certificate numbers be included on customer bills. (Ex. 1, JAT 1, pages 1-11)

AT&T believes the problem of the unknown provider will be solved by requiring customer bills to include the name of the certificated company, and that inclusion of certificate numbers is expensive overkill. As was made clear at the hearing, this requirement would not aid most customers, may provide confusing, is costly to impose and would require expensive modification of the billing systems of companies using nationwide billing. Since the cost of regulatory requirements must inevitably be borne by customers, AT&T believes that only those requirements that will aid customers should be imposed by the Commission. The limited utility to customers of the provider's certificate number cannot justify the price they eventually would pay for this information. According to the Revised Statement of Estimated Regulatory Costs (SERC) prepared by Staff, the aggregate cost of providing the Florida certificate number on customer bills will be extremely costly: BellSouth alone estimated annual recurring costs between $2 million and $2.5 million.

The solution to carrier branding confusion is to require the correct name of the provider to appear on customer bills, a solution to which no party objected and one that can be inexpensively implemented.

Additionally, the Commission should allow providers to use their duly approved and certificated d/b/a name on customer bills. In some cases the d/b/a name would be more familiar to

customers than the certificated name, and would thus contribute to ensuring that customers easily can determine the identity of their service providers. For example, "AT&T" is a d/b/a name that is better known to consumers than the company's certificated name of "AT&T Communications of the Southern States, Inc."

This approach recently was found acceptable by the commission when it approved rules relating to prepaid calling services, a telecommunications service in which the consumer's ability to identify the provider has greatly concerned the Commission. In Order No. PSC-98-0373-FOF-TI, the Commission adopted rules that allow providers of prepaid calling services to issue cards using only their authorized and registered d/b/a name, rather than their certificated name. Nor did the Commission require providers of prepaid services to list their certificate number on debit cards. The record in this case reveals no reason to impose upon providers of presubscribed telecommunications services requirements that are more onerous and costly than those imposed on providers of prepaid service. AT&T therefore requests that the Commission modify Rule 25-4.110 (10) to delete the requirement that customer bills show certificate numbers and to allow providers to use duly authorized and certificated d/b/a names.

AT&T's requested changes are shown below in bold type:

(10) After January 1, 1998, 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 ~~or its authorized d/b/a name as shown on its certificate. [delete requirement that certificate number be shown on bill]~~

(b) Type of service provided, i.e., local, local toll, or toll; and

(c) A toll-free customer service number.

B. Pay-Per-Call Billing Requirements

The Commission has proposed rule language that would regulate "miscellaneous charges" as pay-per-call services. While AT&T has no objection to this proposal, it necessitates further revisions to ensure clarity.

First, AT&T requests that the rule be clarified to specify that the "miscellaneous charges" referred to are nonregulated. Not only do customers have remedies available regarding provision and billing of regulated charges, but it would be confusing to lump nonregulated and regulated charges together in the same billing category. For example, paragraph (11)(a)1. requires notification to customers that their service may not be disconnected for nonpayment of pay per call service. Lumping

regulated charges in with nonregulated charges would require customers to determine which charges were regulated (and thus should be paid in order to avoid service disconnection) and which were nonregulated (and thus need not be paid to avoid disconnection). Staff agreed with this suggestion in its Revised Statement of Estimated Regulatory Costs dated February 6, 1998.

More importantly, AT&T requests that the Commission clarify which requirements apply to all pay per call services, and which requirements apply only to 900 and 976 services. Currently, paragraph (11) of Rule 25-4.110 refers to "pay per call" and "900/976" services interchangably, such that the entire rule refers to and governs 900/976 services. Broadening the definition and scope of the rule beyond 900/976 services requires an examination of each rule requirement to determine whether it makes sense to apply it to services other than 900/976 calls.

AT&T believes that the billing disclosure requirements of paragraph (11)(a) should be applied to all pay per call services: all nonregulated miscellaneous charges as well as 900/976 charges should be segregated on customer bills; customers should be advised that their service may not be disconnected for nonpayment of these charges, and other mandated disclosures should be made. Paragraphs (11)(b)-(g), on the other hand, should be clarified to specify that they apply only to 900/976 calls. These paragraphs include requirements such as a recorded preamble, an 18-second

billing grace period and 900/976 service blocking that are specifically designed to regulate provision and billing of 900/976 services and are totally inapplicable to other types of miscellaneous service.

The changes suggested by AT&T are shown below in bold type:

(11) ~~(10)~~ This section applies to LECs ~~local exchange companies and interexchange carriers~~ that provide transmission services or bill and collect on behalf of other ~~Pay Per Call~~ providers including pay per call providers. Pay Per Call services are defined as switched telecommunications services between locations within the State of Florida 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, ~~local exchange companies and~~ 900 services provided by IXCs, and other ~~nonregulated~~ miscellaneous charges on behalf of other providers ~~interexchange carriers~~.

(a) Charges for Pay Per Call and other ~~nonregulated~~ services, ~~service (900 or 976)~~ 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 ~~(900 or 976)~~ nonregulated charges." The following information shall be clearly and conspicuously disclosed on each section of the bill containing ~~charges for~~ Pay Per Call ~~service~~

~~(900 or 976)~~ and other nonregulated service:

1. Nonpayment of Pay Per Call service or other nonregulated service ~~(900 or 976)~~ charges will not result in disconnection of local service;

2. End users/customers can obtain free blocking of ~~Pay-Per-Call service (~~900 or 976 calls~~)~~ from the LEC ~~local exchange telephone company~~;

[This section removed from consideration at this time by order of the Commission] 3. End Users/customers can obtain a free billing block option from the LEC to block all charges from a third party. Bills submitted by 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.~~3.~~ The local or toll-free number the end user/customer can call to dispute charges;

5.~~4.~~ The ~~With 900 service, the~~ name of *the provider of each service* ~~the IXC interexchange carrier providing 900 service~~; and

6.~~5.~~ The ~~Pay-Per-Call service (~~900 or 976~~)~~ program name.

(b) ~~Pay-Per-Call service (~~900 or 976~~)~~ Billing. LECs and IXCs ~~local exchange companies and interexchange carriers~~ who have a tariff or contractual relationship with a ~~Pay-Per-Call (~~900 or

~~976)~~ provider shall not provide ~~Pay-Per-Call~~ transmission service or billing services, unless the provider does each of the following:

1. Provides a preamble to the program which states the per minute and total minimum charges for the ~~Pay-Per-Call~~ service ~~(900 and 976)~~; child's parental notification requirement is announced on preambles for all programs where there is a potential for minors to be attracted to the program; child's parental notification requirement in any preamble to a program targeted to children must be in language easily understandable to children; and programs that do not exceed $3.00 in total charges may omit the preamble, except as provided in Section (11) ~~(10)~~ (b)3.;

2. Provides an 18-second billing grace period in which the end user/customer can disconnect the call without incurring a charge; from the time the call is answered at the ~~Pay-Per-Call~~ *900 or 976* provider's premises, the preamble message must be no longer than 15 seconds. The program may allow an end user/customer to affirmatively bypass a preamble;

3. Provides on each program promotion targeted at children (defined as younger than 18 years of age) clear and conspicuous notification, in language understandable to children, of the requirement to obtain parental permission before placing or continuing with the call. The parental consent notification shall

appear prominently in all advertising and promotional materials, and in the program preamble. Children's programs shall not have rates in excess of $5.00 per call and shall not include the enticement of a gift or premium;

4. Promotes its services without the use of an autodialer or broadcasting of tones that dial a ~~Pay-Per-Call~~ (900 and 976) number;

5. Prominently discloses the additional cost per minute or per call for any other telephone number that an end user/customer is referred to either directly or indirectly;

6. In all advertising and promotional materials, displays charges immediately above, below, or next to the ***900 or 976*** ~~Pay Per Call~~ number, in type size that can be seen as clearly and conspicuously at a glance as the ***900 or 976*** ~~Pay-Per-Call~~ number. Broadcast television advertising charges, in Arabic numerals, must be shown on the screen for the same duration as the ***900 or 976*** ~~Pay-Per-Call~~ number is shown, each time the ***900 or 976*** ~~Pay-Per-Call~~ number is shown. Oral representations shall be equally as clear;

7. Provides on ***900 or 976*** ~~Pay-Per-Call~~ services that involve sales of products or merchandise clear preamble notification of the price that will be incurred if the end user/customer stays on the line, and a local or toll free number for consumer complaints; and

8. Meets internal standards established by the LEC or IXC ~~local exchange company or the interexchange carrier~~ as defined in the applicable tariffs or contractual agreement between the LEC and the IXC; or between the LEC/IXC and the *900 or 976* ~~Pay-Per-Call~~ provider which. when violated, would result in the termination of a transmission or billing arrangement.

(c) ~~Pay-Per-Call~~ (900 and 976) Blocking. Each LEC ~~local exchange company~~ shall provide blocking where technically feasible of ~~Pay-Per-Call~~ (900 and 976) service at the request of the end user/customer at no charge. Each LEC or IXC ~~local exchange company or interexchange carrier~~ must implement a bill adjustment tracking system to aid its efforts in adjusting and sustaining *900 and 976* ~~Pay-Per-Call~~ charges. The LEC or IXC ~~carrier~~ will adjust the first bill containing *900 and 976* ~~Pay-Per-Call~~ charges upon the end user's/ customer's stated lack of knowledge that *900 and 976* ~~Pay-Per-Call~~ service has a charge. A second adjustment will be made if necessary to reflect calls billed in the following month which were placed prior to the *900 and 976* ~~Pay-Per-Call~~ service inquiry. At the time the charge is removed, the end user/customer may agree to free blocking of *900 and 976* ~~Pay-Per-Call~~ service.

(d) Dispute resolution for *900 and 976* ~~Pay-Per-Call~~ service. Charges for *900 and 976* ~~Pay-Per-Call~~ service shall be

automatically adjusted upon complaint that:

1. The end user/customer did not receive a price advertisement, the price of the call was misrepresented to the consumer, or the price advertisement received by the consumer was false, misleading, or deceptive;

2. The end user/customer was misled, deceived, or confused by the ***900 or 976*** ~~Pay-Per-Call~~ advertisement;

3. The ***900 or 976*** ~~Pay-Per-Call~~ program was incomplete, garbled, or of such quality as to render it inaudible or unintelligible, or the end user/customer was disconnected or cut off from the service;

4. The ***900 or 976*** ~~Pay-Per-Call~~ service provided out-of-date information; or

5. The end user/customer terminated the call during the preamble described in 25-4.110(11) ~~(10)~~(b)2., but was charged for the ***900 or 976*** ~~Pay-Per-Call~~ service;

(e) If the end user/customer refuses to pay a disputed ***900 or 976*** ~~Pay-Per-Call~~ charge which is subsequently determined by the LEC to be valid, the LEC or IXC may implement ***900 or 976*** ~~Pay Per Call~~ blocking on that line.

(f) Credit and Collection. LECs and IXCs ~~local exchange companies and interexchange carriers~~ billing ***900 or 976*** ~~Pay-Per Call~~ charges to an end user/customer in Florida shall not:

1. Collect or attempt to collect ~~900 or 976 Pay-Per-Call~~ charges which are being disputed or which have been removed from an end user's/customer's bill; or

2. Report the end user/customer to a credit bureau or collection agency solely for non-payment of ~~900 or 976 Pay-Per-Call~~ charges.

(g) LECs and IXCs ~~Local exchange companies and interexchange carriers~~ billing ~~900 or 976 Pay-Per-Call~~ charges to end users/customers in Florida shall implement safeguards to prevent the disconnection of phone service for non-payment of ~~900 or 976 Pay-Per-Call~~ charges.

C. PIC Freeze Requirement

AT&T favors customers' ability to freeze their interLATA, intraLATA and local services independent of each other, to ensure that a customer's carrier of choice cannot be changed without consent. AT&T requests that the proposed rule be changed to require confirmation of PIC freezes and prohibit providers from requiring their own internal forms in order to override a PIC freeze.

Customer notification: The purpose of informing consumers of PIC freeze availability can be fulfilled whether consumers receive this information in a bill or via separate letter. Companies should be allowed the flexibility to provide PIC freeze

information to consumers by either method, thus allowing for possible cost reduction. Staff agreed with this alternative in its Revised SERC.

In requiring local providers to notify customers of the availability of PIC freezes, the Commission has recognized that PIC freezes are relatively unfamiliar to most consumers. In order to ensure that customers understand the PIC freeze process, the Commission should require local providers to confirm to customers that a PIC freeze has been applied, explain its effect, and provide instructions for overriding the PIC freeze if they decide to change carriers. The PIC freeze process is intended to protect consumer choice, not to limit it, but it easily could be used as an anticompetitive tool. The Commission should impose the additional informational requirements as shown below that will ensure customers receive full and fair information about the effect of their PIC freeze choice without unduly advantaging the incumbent provider.

Use of specific form: Providers should be prohibited from requiring their own internal forms in order to override a PIC freeze because this practice could tend to inhibit customer choice.

AT&T suggests the following changes, shown in bold type:

(12) The customer must be notified on his first bill ~~or by~~ letter and annually thereafter that a PIC Freeze is available and

that the customer may contact the provider to obtain FORM PSC/CAF 2 (XX/XX). A copy of FORM PSC/CAF 2 (XX/XX), which is incorporated into this rule by reference, may be obtained from the Commission's Division of Consumer Affairs. Existing customers must be notified by January 1, 1999, and annually thereafter that a PIC Freeze form is available and that they may contact the provider to obtain FORM PSC/CAF 2 (XX/XX). Within 10 days of implementation of a PIC freeze and at least annually thereafter, the local service provider must send a confirmation letter to the customer, stating at a minimum that the PIC freeze has been applied, the type of service(s) to which it has been applied, the identity of the carrier(s) to which the freeze applies, and instructions for removing the freeze or changing carriers. Local providers may not require forms specific to or prepared by that local provider in order to remove a PIC freeze.

D. Notification of Provider Change

AT&T requests that companies be given the option of notifying customers of provider changes by bill insert or by notification on the bill itself, which will allow companies the flexibility to select the lower cost option while still providing timely information to consumers. Additionally, the Commission should allow additional time before this rule requirement goes

into effect, so that providers may make necessary modifications to their billing systems.

Staff agreed with a delayed implementation date in its Revised SERC but disagreed with the option of notifying customers of provider changes using a bill insert because customers do not always read bill inserts. Staff stated that it is reasonable to expect that customers seeking information will first consult their bills. By virtue of the new requirement in Rule 25-4.110 (10)(a), however, customer bills clearly will state the certificated name of the provider and thus customers seeking information easily will be able to identify the providers of their service. Thus there is no reason to deny companies the opportunity to reduce costs by notifying customers of provider changes by bill insert. Accordingly, AT&T requests the Commission to make the following changes to its proposed rule:

(13) The customer must be given notice ***either in a bill insert or*** on the first or second page of his next 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 this rule adoption becomes final, whichever is later.***

ISSUE 4: Should the Commission adopt the proposed changes to Rule 25-4.118, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

AT&T's Position: ** No. The Commission can achieve its regulatory purpose at a substantially lower cost to Florida consumers by reviewing and adopting the FCC's upcoming slamming rule. Alternatively, the Commission should limit costs that will be imposed on Florida consumers by modifying or deleting requirements that do not provide cost-effective consumer protection. In particular, the requirement that companies provide free service to customers who allege they have been slammed is counterproductive and beyond the Commission's jurisdiction. Further, the Commission take vigorous action to enforce its present rules before it imposes increased regulatory costs upon Florida consumers. **

Pursuant to section 120.541(1)(a), Florida Statutes, the Commission is required to adopt or justify its failure to adopt lower cost regulatory alternatives to proposed rules that are proffered in good faith by substantially affected persons. On January 15, 1998, two lower cost alternatives were filed by FCCA, of which AT&T is a member. AT&T believes that Alternative No. 1, adoption of the Federal Communications Commission's soon-to-be adopted slamming rule, accomplishes the objectives of sections 364.01, 364.19 and 364.285, the laws being implemented by the Commission while greatly decreasing costs of compliance.

Adoption of the FCC's rules would ensure that carriers that do business on a nationwide basis are not subject to differing and expensive requirements in each state, which would necessitate costly adjustments to billing and operations systems. There has been no showing that the slamming problems experienced by Florida

consumers differ from those experienced by consumers in other states, and no showing that a solution specific to Florida is required to alleviate those problems.

National uniformity will result in much lower costs to carriers, and ultimately to their customers. The Florida Commission should not unnecessarily impose costs when it can achieve substantially the same consumer benefits at a much lower cost by reviewing and adopting the FCC's upcoming slamming rule. Failure to do so will only contribute to "balkanization" of slamming rules and the resultant customer confusion, and will ensure that Florida consumers bear the increased costs incurred by providers who seek to serve them.

Although review and adoption of rules of nationwide applicability clearly is the preferable alternative for consumers as well as providers, AT&T hereby also submits specific changes to the rules proposed by the Commission. During the public hearings held in this docket, consumers made it clear that they wish the Commission to protect their choice of service providers. It was also perfectly clear, however, that they value the right to change providers. The Commission should strive to ensure that its rules protect against slamming without limiting customers' ability to change providers quickly and easily in order to take advantage of competition in the industry. As presently configured, however, the proposed rules fail to strike an

appropriate balance.

Finally, the Commission should not simply assume that its present rules are ineffective and thus require revision. The current slamming problems result from violations of the present rules and there was no evidence developed at hearing that changing the rules will increase compliance. The only way to increase compliance is through vigorous enforcement, which is a great deal less expensive than the measures now proposed by the Commission.

A. Method of Carrier Selection

The proposed rules require providers to prove that a customer requested its service in one of four ways: a letter of agency, audio recording of customer-initiated calls, third party verification, or a signed postcard from an informational package. As proposed, the rules would impose excessive costs on telecommunications companies without providing consumers with proportionate benefit. Accordingly, AT&T suggests the following modifications to Rule 25-4.118(2).

(a) LOA requirement: no changes

(b) Verification of customer-initiated calls: the proposed rule would require audio recording of customer-initiated, or inbound, calls in which the customer seeks to select a telecommunications provider. As shown in Staff's Revised SERC,

audio recording is prohibitively expensive. BellSouth alone estimated that it would cost $15 million to develop a complete audio recording system, with an additional $6.3 million in annual recurring costs. Estimates provided by other companies are similarly high: although implementation difficulties and costs were so extreme that AT&T believes it will never be feasible to fulfill the requirements, it estimated recurring expenses of at least $6 million annually. It is patently unreasonable to impose such a requirement on companies and their customers in the absence of any showing that expenditure of millions of dollars will solve - or even alleviate -- the slamming problem identified in this proceeding.

Audio recording is intended to provide a method of proof that a customer requested a particular service provider. It should not be the only acceptable method, however. Instead, companies should be given the option of obtaining independent third-party verification of the customer's request in lieu of audio recording, whether the call is generated or received by the provider. In either case, the customer's choice is confirmed.

In addition, the Commission should delete the requirement that customers make an individual inbound call on each line that s/he wants to have switched. This requirement increases the number of telephone calls that customers with multiple lines must make in order to switch providers, and would require customers to

place individual calls from their data and fax lines. The requirement also prevents customers from making such phone calls from other locations, such as their place of work. Additionally, the ANI would not be captured for customers transferred from one service center to another, and thus these customers would be unable to switch providers simply by calling their chosen provider. Ironically, this rule is intended to protect consumer choice but instead has the effect of limiting it. Accordingly, given the absence of any showing that ANI capture is necessary or helpful, the requirement should be deleted. Staff agreed with this revision in its Revised SERC.

Finally, the Commission should retain the option of customer signup via 800 number and electronic confirmation. There has been no showing that this method is misleading, confusing, or results in slamming complaints, and thus there is no reason to further limit signup options available to companies and their customers.

(c) Third party verification: AT&T supports independent third party verification as an optional method of verifying customer choice, but believes that the audio recording requirement unnecessarily increases costs without providing an increased benefit to consumers. Third party verification is intended to confirm or substantiate the consumer's choice; requiring further confirmation by audio recording of the

verification process obviates the purpose of independent verification and increases transaction costs.

Unrecorded third party verification can increase consumer protection simply because the independent verifier has no financial stake in the outcome of the transaction. There has been no showing that third party verification is inadequate or ineffective in the absence of audio recording.3 Thus, the Commission should not at this time impose upon companies and their Florida customers the substantial costs associated with audio recording of third party verification.

(d) Signed postcard from an informational package: This section essentially requires a customer to make a PIC change twice: first the customer makes the change request which generates the informational package, and then the customer must again request the change via the postcard. There was no evidence developed at hearing that the current process (allowing the customer to change his mind and "deselect" a company via postcard) is insufficient, confusing, or otherwise is in need of modification. The proposed amendment thus has not been shown to be either necessary or desirable.

AT&T's proposed changes to Rule 25-4.118(2) are shown below in bold type:

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3 Although staff witness Ms. Erdman-Bridges cited deceptive third party verification as a problem, she admitted that recording third party verification did not prevent slamming from taking place. (Tr. 57, 85) Deceptive third party verification is a separate issue that can and should be targeted – at much lower cost – by requiring that verification scripts be clear and not misleading.

25-4.118 Local, Local Toll, or Toll Provider ~~Interexchange Carrier~~ Selection.

(1) The provider ~~primary interexchange company (PIC)~~ of a customer shall not be changed without the customer's authorization. A LEC ~~local exchange company (LEC)~~ shall accept a provider ~~PIC~~ change requests by telephone call or letter directly from its customers; or.

(2) A LEC shall ~~also~~ accept a ~~PIC~~ change requests from a certificated LP or IXC ~~interexchange company (IXC)~~ acting on behalf of the customer. A certificated LP or IXC ~~certified IXC that will be billing customers in its name~~ shall ~~may~~ submit a ~~PIC~~ change request~~, other than a customer-initiated PIC change, directly or through another IXC, to a LEC~~ only if it has first certified to the LEC that at least one of the following actions has occurred ~~prior to the PIC change request~~:

(a) the company ~~IXC~~ has a letter of agency (LOA), as described in (3), ~~on hand a ballot or letter~~ from the customer requesting the ~~such~~ change;

(b) the company has ~~initiated a call or has~~ received a customer-initiated call, and has obtained ~~independent third party verification of the customer's choice as specified below or 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~~

~~3. A recording of the originating telephone number on which the provider is to be changed via automatic number identification. [The following option of automated carrier selection should be retained] the customer initiates a call to an automated 800 number and through a sequence of prompts, confirms the customer's requested change; or~~

(c) An independent, unaffiliated firm has verified the customer's requested change by obtaining ~~the information stated in subsection (3)a. through e. the following:~~

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

~~2. An audio recording of the information stated in subsection (3)a. through e. is verified through a qualified, independent firm which is unaffiliated with the company claiming the subscriber any IXC; or~~

(d) The company ~~the IXC~~ has received a customer's change ~~customer~~ request, ~~to change his PIC~~ and has responded ~~within three days~~ by mailing ~~of~~ an informational package that shall include the following: ~~includes a prepaid, returnable postcard and an additional 14 days have past before the IXC submits the PIC change to the LEC. The information package should contain any~~

~~information required by Rule 25-4.118(3).~~

1. A notice that the information is being sent to confirm that a telemarketer obtained a customer's request to change the customer's telecommunications provider;

2. A description of any terms, conditions, or charges that will be incurred;

3. The name, address, and telephone number of both the customer and the soliciting company;

4. A postcard which the customer can use to confirm ~~or rescind~~ a change request;

5. A clear statement that the customer's local, local toll, or toll provider will be changed to the soliciting company ~~14 days after the customer's receipt of the informational package unless only if~~ the customer signs and returns the postcard ~~rescinding confirming~~ the change; and

6. A notice that the customer may contact by writing the Commission's Division of Consumer Affairs 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 or calling, toll-free (TDD & Voice) 1-800-342-3552 for consumer complaints.

The soliciting company shall ~~not~~ submit the change request to the LP ~~only if the customer has rescinded the change request by returning the postcard within 14 days if it has first received the postcard that must be signed by the customer.~~

B. Inducements

Rule 25-4.118(4), as amended, would prohibit AT&T's current practice of offering clearly identifiable, non-deceptive LOAs that also include checks. Staff admitted at hearing that checks combined with LOAs had not been a "significant" source of complaints, could only quantify the amount as "at least one" complaint. (Tr. 169) AT&T applauds the Commission's vigilance against misleading or deceptive LOAs, but its check-LOAs have not caused a problem and therefore should not be outlawed. FCC rules plainly allow use of such inducements. In the absence of an identified problem, the Commission's rules also should allow check-LOAs. As identified by staff, sweepstakes-entry LOAs, not checks, are the real source of problem. (Tr. 63, 167) Accordingly, AT&T proposes the following revision to the proposed rule:

(4) The LOA shall not be combined with inducements of any kind on the same document. The ~~If any such document is not used solely for the purpose of requesting a PIC change, then the~~ document as a whole must not be misleading or deceptive. For purposes of this rule, the terms "misleading or deceptive" mean that, because of the style, format or content of the document or oral statements, it would not be readily apparent to the person signing the document or providing oral authorization that the purpose of the signature or the oral authorization was to

authorize a provider ~~PIC~~ change, or it would be unclear to the customer who the new ~~long distance service~~ provider would be; that the customer's selection would apply only to the number listed and there could only be one provider for that number; or that the customer's LP ~~local exchange company~~ might charge a fee to switch service providers. If any part of the LOA ~~document~~ is written in a language other than English, then it ~~the document~~ must contain all relevant information in each ~~the same~~ language. ~~Notwithstanding the above, the letter of agency may be combined with checks that contain only the required letter of agency language and the information necessary to make the check a negotiable instrument.~~

C. Record Retention

In addition to LOAs and audio recordings, parties should retain records of third party verification in order to respond to consumer and staff inquiries.

(6) LOAs, ~~and~~ audio recordings ~~and records of third party verification~~ shall ~~(d) Ballots or letters will~~ be maintained by the provider ~~IXC~~ for a period of one year.

D. Rebate/Rerate of Customer Charges

The proposed rule would require unauthorized providers to credit to customers with all charges billed for the first 90 days

or first three billing cycles, whichever is longer, and to rerate charges for up to an additional 9 months. There are several problems with this requirement.

First, by doing more than making customers whole, the provision constitutes an award of damages, which is clearly beyond the Commission's jurisdiction.4 Second, rather than encouraging customers to be alert to unauthorized changes, it encourages the opposite. Customers have a legal obligation to examine their bank and credit card statements in a timely manner in order to be entitled to a remedy, and there is no reason to provide an exception for telephone bills. Third, the requirement will substantially increase regulatory costs by encouraging frivolous complaints and increasing the necessity for companies to pursue administrative litigation of customer complaints.5 Like all business costs, they eventually must be passed on to consumers.

None of these results is desirable. AT&T agrees that customers shouldn't suffer financially if they are switched to another carrier without their consent. But the best remedy is an immediate switch to their chosen carrier, along with a prompt

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4 Staff witness Ms. Erdman-Bridges intimated that the purpose of the requirement is to reimburse customers for inconvenience experienced as a result of an unauthorized provider switch – in other words, to award customers with a form of liquidated damages. Although required to do so by section 120.54(3)(a)1., the proposed rules cite to no specific provision of law being implemented that allows or even contemplates an award of monetary damages to consumers.

5 Staff was unable to quantify the cost of this requirement, but Ms. Lewis, who prepared the Statements of Estimated Regulatory Cost, stated that it has the "potential to be extremely costly". (Tr. 46)

rerate to make them whole.6

AT&T's changes are shown in bold type below:

(8) ~~(5)~~ Charges for unauthorized provider ~~PIC~~ changes and ~~all charges billed on behalf of the unauthorized provider for the first 60 days or first three billing cycles, which ever is longer, [rerate requirement should be reinstated] higher usage rates, if any, over the rates of the preferred company~~ shall be credited to the customer by the company ~~IXC~~ responsible for the error within 45 days of notification. ~~After the first 60 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 ~~PIC change~~, the LEC shall change the customer back ~~to the prior IXC~~, 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. ~~In the case where the customer disputes the ballot or letter, the IXC appearing on the ballot/letter will be responsible for any charges incurred to change the PIC of the customer.~~

6 The proposal by OPC to require LECs to credit customers with long distance charges upon complaint of slamming also suffers from all these infirmities. In addition, it constitutes yet another attempt to achieve in this docket a result that the Commission declined to implement in Docket No. 951123-TP – prohibition of LEC ability to deny local service for non-payment of long distance charges.

E. PIC Freeze Information

The requirement that customers be notified of PIC freeze availability during both telemarketing and verification is redundant, increases costs, and confuses the purpose of third party verification. Customer inquiries regarding rates and terms of service, including PIC freezes, should be handled in the first instance by the customer representative rather than the third party verifier. Third party verifiers should be limited to verifying customer acceptance or rejection of the service, including the PIC freeze option:

(11) During telemarketing ~~and verification,~~ the customer must be informed that a PIC Freeze is available. ~~Third party verification, if used, shall verify the customer's acceptance or rejection of the PIC Freeze option.~~

F. Notification Letter

The requirement that companies send a letter notifying the customer that it will be providing his service is duplicative of the requirement in Rule 25-4.110 (13) that customers be given notice in their bills of provider changes. It is particularly duplicative in cases where the company has completed third party verification or has sent the informational package referenced in

rule 25-4.118(2)(d). This duplication increases costs without providing corresponding protection to consumers. Accordingly, AT&T suggests the following changes:

~~(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.~~

G. Service Standards

Rule 25-4.118(14) imposes a number of requirements modeled on LEC customer service rules. These requirements are unnecessary in a competitive environment, where customers may switch providers if they believe they are receiving poor service. Thus, these requirements should not be imposed on IXCs or ALECs. Rather, the Commission can better serve customers by facilitating selection and de-selection of providers, which will allow immediate redress for perceived poor service. Additionally, even the most well-prepared company may find it impossible to meet the standards imposed by this rule if bad weather, equipment failure or other problems cause a "spike" in customer calls. If the Commission believes customer service requirements should be imposed, it should do so in an incremental fashion by first requiring live operators or recording of complaints. Only if these solutions are insufficient should it impose the additional

cost of minimum answer time requirements.

AT&T's suggestions are shown in bold type below:

(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.~~

ISSUE 8: Should the Commission adopt the proposed changes to Rule 25-24.490, as proposed by the Commission at the December 16, 1997, agenda conference?

AT&T's Position: ** The Commission should not impose the requirements of Rule 25-4.110 (10) - (13) on IXCs because they are unnecessary in a competitive environment. Customers may freely switch providers if they are dissatisfied with IXC billing practices. The Commission should impose the requirements of Rule 25-4.118 only as modified pursuant to AT&T's suggestions, above. **

Billing requirements were imposed upon LECs in a monopoly environment because customers could not express their dissatisfaction by changing providers. IXCs enjoy no monopoly; if they cannot satisfy their customers with clear, understandable bills which offer the information customers desire, they will lose those customers. The billing requirements are thus unnecessary.

AT&T agrees, however, that all providers should operate under the same fair set of rules when it comes to soliciting customers. Accordingly, if Rule 25-4.118 is changed as noted above, it should apply equally to all LECs, ALECs and IXCs.

AT&T suggests the following changes:

25-24.490 Customer Relations; Rules Incorporated.

(1) The following rules are incorporated herein by reference and apply to IXCs. ~~interexchange companies. In the following rules, the word 'local' should be omitted or interpreted so~~

~~'toll', as they shall apply only to interexchange and not local service.~~

Section	Title	Portions not Applicable
~~25-4.110~~	~~Customer Billing~~	~~Subsections (10), (11), (12), and (13)~~
25-4.111	Customer Complaint and Service Requests	All except Subsection (2)
25-4.112	Termination of Service by Customer	All None
25-4.113	Refusal or Discontinuance of Service by Company	All None
25-4.114	Refunds	All None
25-4.117	800 Service	All None
25-4.118	Local, Local Toll, or Toll Provider ~~Interexchange Carrier~~ Selection	All None

Conclusion

The Commission can avoid imposing enormous regulatory costs on Florida companies and their customers by reviewing and adopting the FCC's rules upon their release, or at the very least, by adopting the lower cost regulatory alternatives identified by AT&T and other parties to this proceeding. Further, the Commission should take targeted action to reduce slamming that occurs in violation of its present rules, such as vigorous enforcement against offenders, before it imposes increased regulatory costs upon Florida consumers.

Respectfully submitted this 16th day of March, 1998.

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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., Definitions; 25-4.110, 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-TI Filed: March 16, 1998

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BCI'S POST-HEARING BRIEF AND STATEMENT OF POSITIONS

Brittan Communications International, Inc. d/b/a BCI Corp. (BCI) hereby files this its post-hearing brief and statement of positions.

INTRODUCTION

BCI concurs with the industry consensus that the proposed rules, while directed toward an appropriate goal, are not cost-effective measures particularly when compared to readily available alternatives. In this Brief and Statement of Positions BCI will not reiterate arguments made by other carriers through witnesses and previously filed comments. Rather, BCI will focus on three portions of the proposed rules that warrant additional comment.

BASIC POSITION

There are lower cost regulatory alternatives than the rules proposed by the Commission to accomplish the objectives of promoting and honoring customer choice. Two lower cost alternatives were proposed by FCCA. The first is to simply mirror the FCC's soon to be promulgated rules, and BCI believes this is

the best approach. The second lower cost alternative, FCCA Alternative #2, modifies the proposed rule to reduce the cost of implementation without sacrificing its effectiveness. BCI generally supports this approach as well.

ISSUES

ISSUE 1: Should the Commission adopt the new Rule 25-24.845, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

BCI'S POSITION: ** No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alternative 2. **

ISSUE 2: Should the Commission adopt the amendments to Rule 25-4.003, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

BCI'S POSITION: ** Yes, except that the definition of "PIC-Freeze" in Proposed Rule 25-4.003(11), should be modified to allow the use of third party verification for both freezing and unfreezing PICs. **

DISCUSSION

For PIC freezes to work, customers must fully understand the result of the freeze and how to override it should they later wish to switch carriers. Moreover, the level of formality either freezing or unfreezing one's PIC should be the same as for changing it. Thus the proposed rules should be changed to allow telephonic freezing and/or unfreezing of the PIC as long as there is third party verification of that decision. If the Commission makes unfreezing the PIC unduly cumbersome, it will merely provide the ILEC and the major carriers an unfair competitive advantage.

ISSUE 3: Should the Commission adopt the amendments to Rule 25-24.110, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

BCI'S POSITION: ** No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alternative 2. **

ISSUE 4: Should the Commission adopt the amendments to Rule 25-4.118, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

BCI'S POSITION: ** No. Because there are lower cost alternatives available to accomplish the same goal, the Commission should adopt the soon-to-be promulgated rules of the Federal Communications Commission. In the alternative, the Commission should adopt the FCCA's Alternative 2, except that Proposed Rule 25-4.118(8) should be modified to require only re-rating of calls. **

DISCUSSION

Proposed Rule 25-4.118 addresses the critical area of carrier selection and is the heart of the proposed rules. BCI reiterates that the public interest would be better served if the Commission mirrored the upcoming FCC rules on this matter. As noted by numerous participants in this proceeding, several provisions of this proposed rule are at best suboptimal. There are two provisions, however, that are particularly troublesome to BCI: Rule 25-4.118(4) and Rule 25-4.118(8).

Rule 25-4.118(4)

Proposed Rule 25-4.118(4) provides in pertinent part as follows:

> The LOA shall not be combined with inducements of any kind on the same document. The document as a whole must not be misleading of deceptive. ...

This language may need to be clarified based on the

Commission's intent. Specifically, if the Commission's intent is to prohibit marketing of telecommunication service through sweepstakes, then the proposed rule should state this intention clearly and specifically. If the intent of the rule is only to ensure that inducement marketing is not misleading or deceptive, the language need not be changed; the issuing order, however, should address the legislative intent behind this language.

BCI's interpretation of the rule is that it is intended to prohibit misleading and deceptive marketing specifically, not sweepstakes generally. Thus BCI has read the proposed rule to be consistent with the FCC rules on LOAs (47 C.F.R. § 64.1150), which specifically allows "separable" documents. Thus a separable LOA on a sweepstakes announcement would satisfy this rule, assuming that within the context neither the marketing nor the LOA was not misleading. BCI attempted to clarify this point at hearing in cross-examination of Mr. Taylor, but his testimony is subject to conflicting interpretation. [Tr. 191-192]

If the purpose of the rule is to prohibit sweepstake marketing, then this is a broad move done with little consideration of the legal and policy issues involved. For example, it is not clear that the Commission can even take this action without unconstitutionally impairing a carrier's right to commercial free speech or whether such action is within the authority granted to the Commission under Chapter 364, Florida Statutes. In addition, prohibiting sweepstakes marketing would be anti-competitive because it would protect the larger carriers. Also, such a prohibition

would impair customer choice. The Commission must not forget that there are hundreds of thousands of satisfied customers who chose their respective carriers in response to sweepstakes inducements.

Rule 25-4.118(8)

Proposed Rule 25-118(8), would in effect give a customer 90 days "free service" if he or she complain of having been slammed. This proposed full credits for unauthorized charges would be particularly costly to carriers given the current nature of the long distance industry. Moreover, this proposal could lead to results unfair to the carrier.

For example, BCI has found that consumers will claim that their long distance service change was unauthorized even though there was a valid signed LOA from the household. For example, too often a husband complains that the wife switched long distance service and that he was thus slammed by the long distance company. Under the proposed rules, BCI would be obligated to give the husband a full refund of all long distance services provided even though the company reasonably relied upon the valid LOA of his wife.

BCI believes the proposed rule creates the potential for enormous abuse of the industry. Unfortunately, the adverse effects of this abuse would be worse for small carriers like BCI. Facilities-based carriers can afford to absorb full refunds such as those proposed by the Commission as the only impact is unrealized revenue. Resellers like BCI, however, cannot absorb these full refunds because BCI must pay its underlying carriers for network

time used irrespective of whether BCI bills a call or gives a full refund. Thus for BCI, the proposed rule would not only create lost cash outflows.

The FCCA's Alternative #2 attempts to soften the potential blow of a full refund requirement by limiting it to 30 days. Although this is obviously better than 90 days, the requirement remains subject to abuse, costly to carriers, and unnecessary to address the problems of slamming.

For these and other reasons reflected in the record, the Commission should strike from the proposed rule that the consumer automatically be entitled to a full credit, and further modify Proposed Rule 25-118(8) to require only re-rating of calls.

ISSUE 5: Should the Commission adopt the amendments to Rule 25-24.490, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

BCI'S POSITION: ** No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alternative 2. **

CONCLUSION

For the reasons stated above, the Commission should adopt rules that mirror the FCC's or in the alternative, adopt the FCCA's Least-Cost Alternative 2 with the modification suggested.

Respectfully submitted this 16th day of March, 1998.

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98 MAR 17 PM 2:3

March 16, 1998

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RE: Docket No. 970882-TI (Slamming)

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White (KE)

Nancy B. White

Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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STATEMENT OF THE CASE

On July 15, 1997, the Attorney General and Public Counsel for the Citizens of the State of Florida ("Public Counsel") filed a Joint Petition for the Initiation of Formal proceedings pursuant to Section 120.57, Florida Statutes, to investigate the practice of slamming. Slamming is the charging of a customer's service provider (local, intraLATA toll, interLATA toll) without authorization. The Florida Public Service Commission ("Commission") had already began rulemaking under Section 120.54, Florida Statutes. Commission Staff proposed rules intended to reduce or eliminate slamming.

Public hearings took place throughout the State. The formal hearing in this docket took place on February 6, 1998. BellSouth submitted the direct and rebuttal testimony of Jerry Hendrix, Director - Interconnection Services Pricing. The hearing produced a transcript of 679 pages and 13 exhibits.

This Brief of Evidence is submitted in accordance with the post-hearing procedures of Rule 25-22.056, Florida Administrative Code. A summary of BellSouth's position on each of the issues to be resolved in this docket is delineated in the following pages and marked with an asterisk.

STATEMENT OF BASIC POSITION

BellSouth is opposed to slamming and believes every reasonable effort should be taken to resolve this problem. The response of regulatory agencies should focus on severely and quickly punishing willful and repeated offenders, effectively removing offenders' economic incentive to slam customers. BellSouth also recommends that one set of rules across all

jurisdictions be established in order to minimize confusion and implementation costs. As competition continues to evolve in the remaining markets, local and local exchange service, slamming will become more pervasive without proper rules and strict enforcement. BellSouth supports the need for uniform rules. Uniform rules for authorization and verification are more cost effective and more easily administered. Uniform rules are also easier for customers to understand.

Questionable marketing tactics by some carriers have brought slamming to the forefront of concern for customers and the industry. BellSouth supports rules that would prohibit the authorization of a change of provider being combined with inducements. Rules that prohibit deceptive marketing practices should be enacted. BellSouth also supports answer time requirements for all providers, so that customers can obtain assistance for their concerns. Rules to eliminate slamming should not, however, create additional and costly burdens on those carriers, including local exchange companies, who choose to operate in a fair and reasonable manner.

BellSouth believes that the most effective methods of preventing slamming and cramming is the application of significant penalties for those carriers who willfully and repeatedly use these tactics. Heavy financial penalties and or suspension and withdrawal of certification of willful offenders as authorized by Chapter 264.285, Florida Statutes will reduce, if not eliminate, slamming while not imposing undue burden on those carriers who operate within the rules.

Strict enforcement of existing rules along with the changes that BellSouth supports would preclude the need for rules that will add costs to the companies that operate within the existing

guidelines. The cost for imposing unnecessary new rules will inevitably be paid by the end user in the form of higher prices. Simply stated, heavy financial penalties will remove the financial incentives to build market share by willfully slamming and cramming customers. When the financial incentive is removed, there should be a drastic decrease in occurrence.

STATEMENT OF POSITION ON THE ISSUES

Issue 1: Should the Commission adopt new rule 25-24.845, Florida Administrative Code, as proposed by the Commission at the December 16, 1997, agenda conference?

**Position: Yes. Any rules applicable to local exchange companies should be applicable to ALECS.

Issue 2: Should the Commission adopt the proposed amendments to Rule 25-4.003, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

**Position: Yes, with two exceptions. First, there should be a definition of slamming. Second, Rule 25-4.003(41) should be modified to include the option of accepting a PIC freeze from the customer directly over the phone. Paper PIC freezes should not be required.

BellSouth could support proposed Rule 25-4.003 with two modifications. First, while Proposed Rule 25-4.003 adds various definitions, there is no proposed definition for "Slamming". BellSouth believes that it is imperative the such a definition be formulated and included in the rule. BellSouth supports the following definition: "slamming is the knowing,

unauthorized transfer of a customer's local, local toll, or toll service provider." (Tr. pps. 338-339 and 426-427). It is important that the Commission recognize that a distinction be made between an affirmative, willful action and an incidental or inadvertent action such as a household dispute, buyer's remorse or unintentional error when considering the application of the proposed rules. (Tr. p. 427). The proposed rules should only apply to acts of true slamming and not to errors or changes of heart.

Under the rules as proposed, however, there is no distinction between intentional and unintentional unauthorized changes of a customer's provider. (Tr. p. 124). If a spouse changes the residential provider, and the other spouse is not pleased with this change, then under the proposed rules, it would technically be a slam, even though the Commission Staff testified that they would not count that as a slam. (Tr. p. 125). It is essential that the rules be clear as to what kind of situation results in a slam. (Tr. pp. 127-128).

Second, BellSouth could support proposed Rule 25-4.003(41) with a modification to include the option of accepting a PIC freeze from the customer directly over the phone. In situations where a customer has been slammed, it would best serve the customer to be able to switch them back to their original carrier and immediately implement the PIC freeze on the spot. Such immediate action prevents any delay that would occur in mailing a form to the customer and awaiting its return. (Tr. 438).

BellSouth would prefer to function in a paperless environment in the PIC freeze process; however, if PIC freeze forms were to be a part of the process, we would require that the PIC Freeze form be submitted by the customer rather than the provider. This would ensure that the customer had truly authorized a PIC freeze and that the provider was not unilaterally initiating an

anti-competitive action. (Tr. p. 439). Thus, BellSouth would request that the rule be modified in these respects.

Issue 3: Should the Commission adopt the proposed amendments to Rule 25-24.110, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

**Position: Yes, with the exception of Rule 25-4.110(10), (11)(a)3, (12), and (13). These subsections should be modified due to the space limitations of BellSouth's bill, the cost involved, whether BellSouth will have such information in its possession, and technical obstacles.

BellSouth supports the proposed rule with modifications. Proposed rule 25-4.110(10) specifies that after January 1, 1998, all bills will display for the presubscribed providers of local, local toll and toll service the following information: a) the name of the certificated company and its certificate number; b) they type of service provided (local, local toll or toll); and c) a toll free customer service number. With appropriate billing program modifications and with information provided by external sources, BellSouth could comply with the requirements of the proposed rule within character space limitations of the bill. These modifications would represent a significant project involving coordination with other carriers, specific design requirements and implementation which would not be accomplished without significant lead time. While BellSouth continues to believe that the certificate number has little meaning to the customer, we do appreciate that the certificate number will help the Commission conduct investigations. (Tr. p. 446).

BellSouth provided the cost of including this information on the bill. Implementation costs were estimated between $80,000.00 - $100,000.00 with estimated annual costs of between $2 and $4.5 million if the Commission requires that the certificate number appear on a certain portion of the bill rather than allowing placement to be BellSouth's decision (Exhibit 1, p. 4). It should be noted, however, that the information BellSouth can provide is the name of the carrier associated with the PIC/LPIC code. BellSouth does not have knowledge of customer shifts between the presubscribed carrier and their reseller customers. In order to provide information on the customer's bill as to the reseller carrier and their customers, that information would have to come from external sources, such as the underlying carrier or reseller. (Tr. p. 447). BellSouth would not have that information.

Proposed rule 25-4.110(13) requires that the customer be given notice on the first or second page of their next bill after a change in local, local toll, or toll service provider. BellSouth has concerns with this requirement. If the change involves local service or local toll or toll service and the LPIC or PIC code is changed, then BellSouth will have information about this change and can include this information on the customer's bill.

If the provider change involves local toll or toll service and the LPIC or PIC code is not changed, then BellSouth would have no knowledge of a provider change. In order to fulfill the requirement of this rule, industry-wide procedures would be required to make that information available to BellSouth for inclusion on the customer's bill. No such procedures exist today and Mr. Hendrix estimated that the development of this information interface and exchange would require significant coordination and system development among all participants. (Tr. p. 449).

BellSouth provided the cost for the proposed rule at $83, 313 in annual recurring costs. (Exhibit. p. 6).

Proposed Rule 25-4.110(12) requires that customers be notified of the availability of a PIC freeze on their first bill and annually thereafter. It also states that customers may contact the provider to receive a copy of the PIC freeze form. BellSouth's costs to implement this rule would be $4,569. (Exhibit 1, p. 6). BellSouth's concerns regarding this rule are those discussed in response to Issue 2. In addition, PIC Freeze capability is currently only available for local toll and toll service providers and only against the specific PIC or LPIC codes. In the systems that are used to process change requests, it is these two codes (PIC and LPIC) that are restricted from change. (Tr. p. 439). Currently BellSouth does not have the ability to freeze a provider change to a reseller of local toll or toll service since the PIC and LPIC do not change. (Tr. pp. 439-440). Neither could BellSouth freeze a provider of local service since the switches and support systems do not yet include a code to designate the local service preferred carrier. (Tr. p. 440).

Proposed Rule 25-4.110(1)(a)(3) was severed from this proceeding and will not be discussed herein.

Issue 4: Should the Commission adopt the proposed amendments to Rule 25-24.118, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

**Position: Yes, with the exception of 25-4.118(8). This section should be modified to eliminate the opportunity for undue financial gain by an unauthorized provider and eliminate the financial loss by the authorized provider, while maintaining the customer's financial responsibility for services rendered.

BellSouth supports the proposed rule with modifications to Rule 25-4.118(8). This subsection would require any carrier responsible for a slam to credit all charges billed for the first 90 days or first three billing cycles, whichever is longer. BellSouth proposes changes that will eliminate the opportunity for undue financial gain by an unauthorized provider while maintaining the customer's financial responsibility for services received. Further, BellSouth's proposed language will eliminate the financial loss currently experienced by the authorized provider. (Tr. pp. 430-431).

BellSouth proposes the following changes to rule 25-4.118(8):

(8) ~~(6)~~ Charges for unauthorized provider PIC changes and all charges billed on behalf of the unauthorized provider ~~higher usage rates, if any, over the rates of the preferred company~~ shall be credited to the authorized provider customer by the company IXC responsible for the error within 45 days of notification. Charges over the rates of the customer's preferred company paid by the customer will be credited to the customer by the authorized provider within 45 days of notification. Upon notice from the customer of an unauthorized provider PIC change, the LEC shall change the customer back ~~to the prior IXC~~ 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. ~~In the case where the customer disputes the ballot or letter, the IXC appearing on the ballot/letter will be responsible for any charges incurred to change the PIC of the customer.~~ The only exception to this 24 hour rule would be large multiline business accounts that cannot be physically changed back in 24 hours. In such cases, an expedited schedule will be coordinated with the customer to accomplish the switch back as quickly as possible. (Tr. pp. 431-432).

Issue 5: Should the Commission adopt the proposed amendments to Rule 25-24.490, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

**Position: Yes. These rules should be applicable to interexchange carriers.

CONCLUSION

For the reasons set forth herein, BellSouth requests that the proposed rules be approved as modified by BellSouth.

Respectfully submitted this 16th day of March, 1998.

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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., Definitions; 25-4.110, 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-TI Filed: 3-16-98

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EXCEL TELECOMMUNICATIONS, INC.'S POST-HEARING BRIEF

Excel Telecommunications, Inc. (Excel) hereby files this its post-hearing brief.

INTRODUCTION

Excel supports the Commission's basic policy objective of limiting unauthorized transfers of a customers' local or long distance service (slamming). This policy objective is consistent with the overarching principle of competition that customer choice be maximized and that each customer's choice of carrier or carriers be honored and faithfully implemented. The major concerns Excel has with the proposed rules is not the stated objective of honoring and implementing customer choice, but rather that some provisions of the proposed rule may not advance preservation of customer choice and some provisions are not cost-effective, and consequently they will not serve consumers as well as more cost-effective alternatives.

In this regard, Excel supports the lower cost regulatory alternatives submitted by FCCA. To avoid unnecessary advocacy, Excel will limit its comments in this post-hearing brief to

emphasizing points it believes to be key.

BASIC POSITION

Rules and requirements governing slamming and PIC freezes must be uniform and consistent throughout the nation, otherwise both consumers and carriers will suffer confusion, inaccurate and conflicting advise, and increased costs of service. Because long distance carriers, ILECS, and ALECS typically operate on a national or multistate basis, multiple and inconsistent specifications for documents, notices and procedures can only increase, perhaps substantially, the ultimate cost to consumers of telecommunications services - a result wholly at odds with the consumer welfare goal of these rules.

To achieve uniformity and to avoid the disadvantages of idiosyncratic rules, this Commission should wait and adopt rules that mirror the FCC's upcoming rules. If this lower cost alternative is unacceptable to the Commission, then at the very least it should adopt generally the Florida Competitive Carriers FCCA's Alternative 2.[1]

ISSUES

ISSUE 1: Should the Commission adopt the new Rule 25-24.845, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

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[1] Although Excel generally supports FCCA's Alternative 2 as a second choice to mirroring the FCC's upcoming rules, Excel does not agree with the FCCA that the customer should automatically receive a full credit for his or her service with a carrier that allegedly slammed. The 30 day approach does limit somewhat the mischief that can occur through consumer abuse and fraud and, moreover, many carriers already voluntarily give such credits. Nevertheless, the requiring a full refund for any period remains a bad idea for the reasons given in the discussion under Issue 3.

EXCEL'S POSITION: ** No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alternative 2. **

ARGUMENT

Please see discussion under Issue 3.

ISSUE 2: Should the Commission adopt the amendments to Rule 25-4.003, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

EXCEL'S POSITION: ** Yes, except that the definition of "PIC-Freeze" in Proposed Rule 25-4.003(11), should be modified to allow the use of three separate PIC-Freeze Forms and to provide for an additional review to ensure objectivity by LEC is promoting PIC Freezes. **

ARGUMENT

Please see discussion under Issue 3 with respect to Proposed Rule 25-24.110(12).

ISSUE 3: Should the Commission adopt the amendments to Rule 25-24.110, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

EXCEL'S POSITION: ** No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alternative 2.**

ARGUMENT

As already noted, the most cost effective way to serve the stated goals of the rules is to ensure that the rules are consistent with national standards. Thus, the Commission should wait and adopt rules that mirror the FCC's upcoming rules. Again, if this lower cost alternative is unacceptable to the Commission,

then at the very least it should adopt the FCCA's Alternative 2.[2]

Proposed Rule 25-4.110(10)(a)

Excel agrees generally with the uniform consensus of the industry that certain provisions of this proposed rule are troublesome. For example, Proposed Rule 25-4.110(10)(a), would require that each company claiming to be the customer's presubscribed provider for local, local toll, and toll place its certificate number on the bill in addition to its name and toll-free customer service number. LECs, CLECS and IXCs all agree that requiring the certificate number on the bill would impose significant costs on the industry for a benefit to the consumer that can at best be described as speculative. Excel encourages the Commission to seek an alternative method to accomplish the purpose of this particular rule.

Rule 25-4.118(8)

Even more troubling is Proposed Rule 25-118(8), which would in effect give a customer 90 days "free service" if he or she complain of having been slammed. If the basis of this proposal is to remove the incentive of an IXC to slam, then beyond any reasonable argument it is not a cost-effective measure. Generally stated, under Section 258 of the Telecommunications Act of 1996 a carrier that slams is liable to the customer's previously selected carrier for amounts paid to it by the customer. This, along with other

[2] Except for that part of Proposed Rule 25-118(8) under the Second Alternative that would require a 30 day refund. The rule should only require re-rating of the calls.

remedial costs triggered by a slamming complaint, creates a powerful incentive not to slam. In terms of removing the incentive, or perhaps creating a disincentive, the 90 days of free service proposal is harshly redundant and therefore not a lower cost alternative.

If the purpose of the proposal is to compensate the aggrieved customer, the rule would be an invalid exercise of delegated legislative authority for at least two reasons. First, it would be an award of damages which is beyond the Commission's jurisdiction, such authority being reserved to the courts under Article V of the Florida Constitution. Second, the compensation is not rationally related to any harm endured by the customer. Rather it is simply an arbitrary number that will be higher when the customer is either inattentive or greedy.

There are other problems with this proposal. For example, it potentially imposes substantial costs on the carrier, it invites abuse by consumers, and encourages carriers to be more aggressive toward the consumer in countering claims of slamming. For these many reasons, the Commission should delete this requirement from the proposed rule.

Proposed Rule 25-4.110(12)

Proposed Rule 25-4.110(12) requires that a customer must be notified on his first bill and annually thereafter that a PIC Freeze is available and may contact the provider to obtain FORM PSC/CAF 2 (XX/XX). The form allows the customer to authorize a PIC-Freeze for the presubscribed local, local toll, and toll

providers.

The availability of a "PIC Freeze" option can be a useful means for consumers to protect themselves from slamming. However, the PIC Freeze option can easily be abused if it is solicited by an incumbent local exchange carrier (ILEC) which possesses the sole power to execute *and* block carrier changes *and* at the same time has an inherent conflict of interest as a competitor for the customer's local, intraLATA and/or interLATA service. Accordingly, as competition develops and expands in these markets, in implementing this proposed rule the Commission should ensure that the following principles are followed:

> Customers must be informed fully and neutrally in order that they may fully understand the result of the freeze and how to override it should they later wish to switch carriers.
>
> Access to information concerning whether a customer has selected a PIC freeze must be made available to all carriers on nondiscriminatory terms and conditions.
>
> ILECs should be prohibited from soliciting on enforcing PIC freezes for local and intraLATA services until at least six months after those services become subject to competition in a particular market.
>
> Where a carrier offers PIC freeze options to its own customers, it must offer the same PC freeze options to customers pre-subscribed to other carriers.
>
> PIC freezes should not be applied to a customer's interLATA, intraLATA and local service carrier selection without the consumer's explicit permission as to each service. To this end, customers should have PIC freeze options specific to each type of service to which they subscribe.

With respect to this last principle, the easiest way to ensure that each type of service is individually selected is to require three, separate forms for the presubscribed local, local toll, and

toll providers. This approach was recognized as being more competitively neutral by staff in the SERC:

> . . . if the PIC Freeze requirements are implemented, it would be more competitively neutral to use a separate PIC Freeze form for each of the three types of service (local, local toll, and toll) because customers may choose a separate provider for each. (EXH 1, SERC at 16)

ISSUE 4: Should the Commission adopt the amendments to Rule 25-4.118, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

EXCEL'S POSITION: ** No. Because there are lower cost alternatives available to accomplish the same goal, the Commission should adopt the soon-to-be promulgated rules of the Federal Communications Commission. In the alternative, the Commission should adopt the FCCA's Alternative 2, except that Proposed Rule 25-118(8) should be modified to require only re-rating of calls. **

ARGUMENT

For the reasons discussed in Issue 3, the Commission should adopt the FCC's soon-to-be promulgated rules regarding slamming. In the alternative, the Commission should adopt FCCA's Alternative 2.

ISSUE 5: Should the Commission adopt the amendments to Rule 25-24.490, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

EXCEL'S POSITION: ** No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alternative 2. **

ARGUMENT

Please see discussion under Issues 3 and 4.

CONCLUSION

For the reasons stated above, Excel urges the Commission to adopt rules that mirror the FCC's or in the alternative, to adopt the FCCA's Least-Cost Alternative 2 as modified.

Respectfully submitted this 16th day of March, 1998.

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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-TI Filed: March 16, 1998

THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS

1. ISSUE: Should the Commission adopt the new rule 25-24.845, F.A.C.?

   FCCA: "No position."

2. ISSUE: Should the Commission adopt amendments to rule 25-4.003, F.A.C.?

   FCCA: "No position."

3. ISSUE: Should the Commission adopt amendments to rule 25-24.110, F.A.C.?

   FCCA: "No. There lower cost regulatory alternatives to the rule proposed by the Commission. The Commission should either adopt the soon-to-be-proposed FCC rules on slamming (FCCA Alternative #1) or incorporate the modifications to the proposed rule filed by FCCA (FCCA Alternative #2). Either of these alternatives will accomplish the purpose of the Commission while imposing lower regulatory costs on the carriers than the rule as proposed."

4. ISSUE: Should the Commission adopt amendments to rule 25-4.118, F.A.C.?

   FCCA: "No. There are lower cost regulatory alternatives to the rule proposed by the Commission. The Commission should either adopt the soon-to-be-proposed FCC rules on slamming (FCCA Alternative #1) or incorporate the modifications to the proposed rule filed by FCCA (FCCA Alternative #2). Either of these

alternatives will accomplish the purpose of the Commission while imposing lower regulatory costs on the carriers than the rule as proposed."

5. ISSUE: Should the Commission adopt amendments to rule 25-24.490, F.A.C.?

FCCA: "No. The proposed rule should be modified to delete the reference to subsection (10) under the column captioned "Portions Applicable" to section 24-4.110. 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 seems to require."

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98 MAR 17 PM 2:01

Ms. Blanca S. Bayo, Director
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Florida Public Service Commission
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Tallahassee, FL 32399-0850

March 16, 1998

Re: Docket No. 970982-TI
Joint Petition of Robert A. Butterworth, Attorney General, and the Citizens of the State of Florida, by and through the Office of Public Counsel, for initiation of formal proceedings pursuant to Section 120.57(1), Florida Statutes, to investigate the practice of "slamming," i.e. the unauthorized change of a customer's preeubscribed carrier, and to determine the appropriate remedial measures

Dear Ms. Bayo:

Please find enclosed an original and fifteen copies of GTE Florida Incorporated's Postheering Statement and Comments for filing in the above matter. Also enclosed is a diskette with a copy of the Postheering Statement in WordPerfect 6.1 format. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at (813) 483-2617.

Very truly yours,

Kimberly Caswell/dm

Kimberly Caswell

KC:tas
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of Proposed Rule 25-24.845, F.A.C., Customer Relations; Rules Incorporated, and Proposed Amendments to Rules 25-4.003, F.A.C., Definitions, 25-4.110, F.A.C., Customer Billing; 25-4.118, F.A.C., Interexchange Carrier Selection; and 25-24.490, F.A.C. Customer Relations; Rules Incorporated	)	Docket No. 970662-TI Filed: March 16, 1998

GTE FLORIDA INCORPORATED'S POSTHEARING STATEMENT AND COMMENTS

GTE Florida Incorporated (GTEFL) files it posthearing brief and comments in accordance with Commission Rule 25-22.056(3) and the Prehearing Order in this case (Order no. PSC-98-0200-PHO-TI).

GTEFL's Basic Position

GTEFL agrees that slamming is a problem that should be addressed. The best way to do so is through more vigilant use of existing mechanisms, such as substantial fines and certificate revocation. If the Commission believes, however, additional rules are warranted, they should be in keeping with the nature and scope of the problem. Only a very tiny fraction (GTEFL estimates six-tenths of 1%) of the annual primary interexchange carrier (PIC) changes in Florida are slams, and slamming, properly defined, is mostly the result of intentional, fraudulent behavior on the part of just a few bad actors. There is, moreover, consensus among all the parties that slamming can probably never be completely stopped.

Given these considerations, the Commission should institute measures that are narrowly tailored to curb deliberately fraudulent activity, but avoid imposing rules whose

costs don't justify their potential benefits. These costs will, in the end, be passed on to the vast majority of consumers who are never slammed.

As discussed below, two proposed rules in particular that cannot be justified in terms of consumer benefits are (1) the requirement to print each carrier's certificate number on the end user's bill; and (2) a customer entitlement to 90 days' worth of service credit after claiming a slam.

GTEFL's Specific Positions

Issue 1: Should the Commission adopt new rule 25-24.845, Florida Administrative Code, as proposed by the Commission at the December 16, 1997, agenda conference?

Summary of Position: ** Yes. Regulatory requirements should be imposed on all carriers in a nondiscriminatory fashion, so the extension of these customer relations rules to alternative local exchange carriers is a positive step. **

This rule revision, if adopted, would require alternative local exchange carriers (ALECs) as well as interexchange carriers (IXCs) to abide by the Commission's rules relating to customer billing and local and toll provider selection. In general, GTEFL believes regulatory requirements should be imposed upon all local providers in a nondiscriminatory manner. Otherwise, efficient competition will never develop. Extension of these requirements to ALECs is thus a step in the right direction.

Issue 2: Should the Commission adopt the proposed amendments to Rule 25-4.003, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

GTEFL's Position ** GTEFL does not oppose these definitional revisions. **

Issue 2: Should the Commission adopt the proposed amendments to Rule 25-24.110, F.A.C., as proposed by the Commission at the December 16, 1997 , agenda conference?

GTEFL's Position: " The Commission should not require certificate numbers on the bill. The high costs of this proposal are not justified by any benefits; indeed, customers are likely to be confused by this information, which is meaningless to them. In addition, the Commission should allow companies to determine the typeface and placement of the notice that a customer's provider has changed. "

GTEFL believes there is no need for additional rules regarding slamming. Most slamming is caused by a relatively small number of carriers who willfully and repeatedly engage in fraudulent tactics. (Scobie, Tr. 489.) The Commission's primary goal should be to reduce the incidence of slamming resulting from this deliberate conduct. (Scobie Direct Testimony (DT) at 2.)

The Commission must also recognize that while slamming is a very serious problem for the slammed individual, slams are an extremely tiny fraction of the millions of PIC changes annually in Florida, probably only about six-tenths of 1% (Scobie, Tr. 490; see also Watts, Tr. 326; Buysse-Baker (Sprint processed 99.991% of PIC changes without complaint in 1997.)). A serious gap in the presentations of OPC and Staff was their lack of investigation to determine how many PIC changes take place in Florida annually. (Taylor, Tr. 166; Poucher, Tr. 243.) It is impossible to draw meaningful conclusions about the severity of the slamming problem without knowing the proportion of slams to total PIC changes. It is, moreover, unrealistic to expect that slamming can be entirely eliminated. (Scobie DT at 2; Watts DT at 7.)

With these facts in mind, the most effective way to address slamming is through already existing sanctions. It is far more desirable, from a policy and competitive efficiency

perspective, to make better use of existing regulations than to adopt costly new ones. (Scobie DT at 3, Tr. 460; Hendrix, Tr. 459.) The Commission already has at its disposal the ultimate tools to address slamming abuses--including heavy fines and certificate revocation. (Scobie DT at 2-3; Watts, Tr. 329-30.) These measures will take away any financial incentive to slam Florida customers and can even put dishonest companies out of business. Once the financial incentive to slam is removed, slamming should drastically decrease. (Hendrix Direct Testimony (DT) at 3-4.)

The Commission seems to agree that more vigilant use of current regulations could ease the slamming problem. As such, it has in recent months stepped up its anti-slamming enforcement activity. (Taylor, Tr. 145.) The Commission should wait for a few months longer to assess the effect this new policy, as well as the outcome of the FCC rulemaking on slamming. To avoid customer confusion, undue cost increases and administrative complications, the Commission should avoid rules that are inconsistent with the federal scheme. (Hendrix DT at 4; Scobie DT at 10; Watts, Tr. 334; Green, Tr. 587)

If, despite these considerations, the Commission feels compelled to adopt rules now, GTEFL does not oppose adoption of most of the revisions proposed for Rule 25-24.110. The certificate number requirement of subsection (10)(a), however, is entirely unreasonable and unjustified. GTEFL would also suggest revising subsection (13) to allow carriers leeway in determining the typeface and placement of the notice of a provider change. (GTEFL will not comment here on the billing block, which it also opposes, because GTEFL understands that proposal is not subject to decision in this phase of the proceeding.) GTEFL's specific criticisms are set forth in the sections below.

In no event should the Commission add any rules that Staff did not propose in the rulemaking notice. Aside from the questionable legality of such action (for instance, the requisite economic analysis was not performed for Mr. Poucher's rule recommendations), there is no demonstrated need for any of these additional proposals. In particular, the Commission should reject any suggestion that the incumbent local exchange carriers' (ILECs') processes need to be revised. In fact, Ms. Buysse-Baker, initially the most vocal critic of the ILECs, later deleted most of her prefiled testimony discussing the ILECs' motivation to use the PIC change process for anticompetitive ends. (Buysse-Baker, Tr 594-96.) She agreed there was no evidence that any Florida ILEC was manipulating the PIC change process to its benefit. (Buysse-Baker, Tr. 629.) MCI's witness King similarly acknowledged that her statements about the ILECs "self-interest in mischaracterizing consumer inquiries as slams" were not well-founded as to any Florida ILEC. (King, Tr. 566-67.) And although both Ms. Buysse-Baker and Ms. King discussed transferring PIC change administration from the ILECs to a third party, neither recommended that measure specifically for Florida. (King, Tr. 567; Buysse-Baker, Tr. 629.)

Likewise, Mr. Poucher could not credibly criticize GTEFL's business office practices for responding to slamming complaints, because he admittedly didn't know what those practices are. (Poucher, Tr. 246.) He was unable to give any examples of ILEC processes that "abused" the customer when a slam has occurred. (Tr. 249.) His suggestion for the ILEC to remove the billed amounts from the customer's bill and charge them back to the allegedly slamming IXC (Poucher DT at 6) ignores the fact that GTEFL (or, to GTEFL's knowledge, any other carrier) does not disconnect local service for

disputed charges, including slamming-related amounts. (Scobie, Tr. 510.) In fact, they cannot do so if a customer disputes a bill to the Commission. (Erdman-Bridges, Tr. 94; Rule 25-4.113.) Furthermore, under the no-fault dispute policy to which the IXCs in this proceeding subscribe, ILECs will change a customer back to his preferred carrier, no questions asked. (Hendrix, Tr. 460-61.) So, contrary to Mr. Poucher's understanding, the ILEC does not remain in the middle of the dispute between the customer and the IXC, and the customer's local telephone service will not be impaired while the slamming inquiry is underway.

A. Certificate Numbers on the Bill Will Not Benefit Customers, So This Proposal is Unjustified.

Proposed Rule 25-4.110(10)(a) would require all bills to display the Florida certificate number of each provider of each service billed. This requirement, if adopted, is more likely to confuse than help customers. Its significant expense is unjustified, especially when there are other, relatively costless, methods to achieve Staff's objectives.

The certificate number is not necessary from the viewpoint of a customer trying to resolve a slamming or cramming issue. Under the proposed rule, the bill will already reflect the name of the certificated company, the type of service provided, and a toll-free customer service number. The name and number of the company (which GTEFL already prints on its bills) are all that the consumer needs to contact the relevant provider to question a charge for any service. Placing the certificate number on the bill will only tend to confuse him because it is highly unlikely that the vast majority of customers know what a certificate number is. (Scobie DT at 4.) The objective in billing is to concisely convey

all information the customer needs to understand what he has been billed for and who billed him. Adding the certificate number will, if anything, undermine the goal of simplifying the bill, as the consumer would be forced to sift through meaningless certificate numbers before identifying the contact information for the company he wishes to reach.

GTEFL today prints the name and telephone number of each provider in a yellow margin to the left of the bill page. This contact information thus can be easily identified. Adding the certificate number here will increase crowding in this limited space and make it harder to distinguish the contact information the customer truly needs.

Staff witness Taylor, who sponsored the certificate proposal, was unable to articulate any real need for the certificate number on the bill. Mr. Taylor cited the following reasons for his certificate proposal: (1) it "will help reduce consumer confusion"; (2) it will "encourage the industry to help us weed out uncertificated providers and reduce the number of slams facilitated by carriers at a third party's request"; and (3) it will "assist the Commission in identifying the carrier when we receive consumer bills without the certificated name of the carrier on the bill." (Taylor DT at 5; Taylor, Tr. 139-40.) In the course of cross-examination of Mr. Taylor, it became clear that the certificate number proposal is not necessary to meet any of these objectives.

As GTEFL explained above, there is no evidence or rationale to indicate that printing the certificate number on the bill will satisfy Mr. Taylor's first objective of reducing customer confusion. To the contrary, this information--meaningless to the customer--will only increase clutter on the bill and confusion for the customer.

Mr. Taylor's second goal of weeding out uncertificated providers who may facilitate slams can be met in more direct and less expensive ways than printing the certificate number on the bill. If there exists a problem with underlying carriers providing service to uncertificated entities (Mr. Taylor did not give any indication as to the size of this purported problem, although he noted that the provision is not aimed at BellSouth or GTEFL, Taylor, Tr. 135), the obvious solution would be to require them not to. This Commission has the jurisdiction to require aggregators and IXCs (as well as local exchange carriers) to obtain certificate numbers of resellers or other carriers with which they do business.

In fact, Mr. Taylor admitted that adding the certificate number to the bill would be unnecessary if the underlying providers simply collected the certificate information: "if they did do it, no, I wouldn't have any complaints that resulted from it and I wouldn't need this rule." (Tr. 159-61.) He added that if underlying carriers would agree to obtaining the certificate numbers, "that's fine with me." (Tr. 161.) Requiring carriers to collect the certificate information thus obviates Mr. Taylor's perceived need for printing the certificate number on the bill. There is no reason to believe that carriers would not comply with the data collection requirement, especially since the Commission has the ability to impose severe sanctions--including certificate revocation--for any violations.

Finally, the certificate number on the bill is not necessary to fulfill Mr. Taylor's third objective of assisting the Staff in researching slamming problems. The Commission has records of all certificated providers, so Staff can ascertain the certificate number of a particular provider based on those records. (Taylor, Tr. 164.) In the event billing for an uncertificated carrier should occur, Staff would also know that because the provider's

name would not appear on the Commission's list of certificated carriers. And if Staff could not understand an abbreviated carrier name on the bill, it could just call the listed contact number for the company to inquire about certificate or other information. (Tr. 204.) GTEFL assumes that Staff will need to contact the provider anyway, in order to investigate the customer's complaint. Of course, if the Commission directs the billing LECs and underlying carriers to collect certificate information, the Staff could also contact these carriers for certificate and provider information.

There is almost no cost to the ILECs or IXCs (and thus to the customers) associated with a system where these companies collect and record certificate numbers. Mr. Taylor's recommendation to go one step further and print the certificate number on the bill would, on the other hand, entail substantial expense. As Mr. Hendrix explained, there would be costs to develop and administer comprehensive databases to maintain the certificate numbers, certified names, and "doing business as" names. Mechanisms for transporting such information would also be needed, along with the development of an interface between the PIC database and the carrier billing process. (Hendrix DT at 7.),

These changes present obvious, large expenses for carriers and their customers. BellSouth's costs alone would likely run into the millions. (Hendrix DT 8.) LCI, a relatively small IXC, estimates the nonrecurring cost of this proposal, if adopted, to be $250,000. (Nicholls, Tr. 309-10.) Staff member Lewis confirmed that the proposal to place the certificate number on the bill was an example of one of the most expensive aspects of the rules. (Lewis, Tr. 46.)

But Mr. Taylor appears to have given no consideration at all to the costs of this or any other proposal, (see generally Taylor DT; Scobie DT at 11.) despite acknowledging that "you have to balance the savings against the added costs" that the rules might cause, (Tr. 147-48), and that consumers will ultimately pay for these costs. (Taylor, Tr. 143.)

Given a choice between a relatively cost-free measure and an expensive one that will meet the same objective, GTEFL believes the Commission is obliged to choose the former--if the Commission even believes any action is needed.

In regard to the question of need for any rules, the Commission should recognize that, contrary to Mr. Taylor's suggestions that the ILECs aren't very interested in addressing slamming and cramming problems, carriers have voluntarily instituted measures to curb these abuses. GTEFL, for instance, has acted on the recognition that although it may not be the root cause of a customer's complaint, it is the first customer interface for slamming, cramming and other complaints. As such, in the last half of 1997, it implemented a program that it believes will significantly reduce these complaints. (Scobie DT at 6, Tr. 491.) For each carrier with which GTEFL has a billing contract, GTEFL establishes a complaint threshold. If the threshold is exceeded for three consecutive months, carriers are put on notice to take steps to reduce complaints below the threshold. (The nationwide objective is two billing complaints per 100,000 bills rendered. Scobie, Tr. 505.) If complaints continue to exceed the designated standard, GTEFL has the option to terminate its billing contract with that carrier. Although the program has been in place only a few months, complaints have already dropped by half. (Scobie DT at 6-7.) In addition, 13 carriers are on notice that their contracts will be

terminated if their complaints do not decrease. (Scobie, Tr. 506-08.) This program is concrete proof that carriers will listen to the marketplace to develop effective solutions to customer problems without the need for regulatory intervention.

B. Carriers Should Have Some Discretion to Choose Typeface and Placement of PIC Change Notifications.

Subsection (13) of Rule 25-4.110 would require the billing company to give the customer notice of any change of local or toll providers on the first or second page of his next bill after the change "in conspicuous bold face type." GTEFL does not oppose, in concept, a PIC change notification rule. However, carriers should be free to determine the placement and typeface that is most appropriate within the context of the entire bill. In a particular instance, placing the notice on the first or second page or using particular type may make the bill more confusing, depending on the information surrounding the PIC change notification. In addition, in a competitive, open-market environment, consumers must be expected to take some responsibility for knowing their service choices and providers. (Scobie DT at 5.) Even consumer advocates agree that one of the best ways for customers to protect themselves from unauthorized PIC changes and service charges is to read their bills--their entire bills. (See King, Tr. 558, citing President, National Consumers League.) This rule encourages the misguided notion that the most important information is near the front, so there is no need to carefully review the rest of the bill. The billing entity should thus be able to choose the placement and type that is most appropriate, consistent with the rule's intent to clearly notify the customer of a PIC change.

Issue 4: Should the Commission adopt the proposed amendments to Rule 25-24.118, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

GTEFL's Position: " GTEFL specifically opposes that portion of the proposed rule that would credit a customer for 90 days' worth of charges upon a claimed slam. This rule would encourage fraudulent and delayed claims, at the expense of the general customer body. "

The Commission should be wary of adopting any new measures that would tend to introduce even greater fraud into the PIC change process. GTEFL believes subsection (8) of the proposed rule is such a measure.

The proposed rule entitles a customer, upon a claim of a slam, to receive 90 days' credit of charges assessed by the purportedly unauthorized provider. Thus, a customer could switch carriers, wait 90 days, then falsely claim he had been slammed. Or, even if a customer has really been slammed, he could deliberately delay reporting that slam for the 90-day period for which he can receive free service. (Watts, Tr. 331-32; King, Tr. 555.)

Just as there are unscrupulous companies, there are unscrupulous customers. Ms. Erdman-Bridges' opinion that there is only a small percentage of people who would take advantage of the credit provision, (Erdman-Bridges, Tr. 76-77), is little comfort. The facts point to the opposite conclusion. One need only look at the $4 billion in toll uncollectibles per year (Tr. 92) to know that a certain customer segment will quickly learn how to take advantage of the system if an opportunity arises.

There are scores of certificated IXCs in Florida, so customers could exploit the "free service" provision over and over. Commission records would have no effect on this

behavior, because the incident wouldn't even be reported to the Commission. A customer determined to defraud a carrier certainly won't contact the Commission--and there would be no need to under the rule, which simply requires the carrier to issue the credit. The defrauded carrier will have no way of knowing it is dealing with a "repeat offender" since it is not privy to other carriers' records.

Losses due to deliberate fraud (as well as just customer inattention to their bills, King, Tr. 555) would be compounded by the fact that the proposed rule does not even make clear what kind of situation will be deemed a slam. For instance, it is not clear as to who can authorize a change of PIC--whether it is anyone in the household or just any non-minor. (Tr. 127-28.) So if, for instance, a PIC change was authorized by the wife of the subscriber of record, that subscriber could easily argue it was a slam because he did not authorize the change. Although the carrier acted reasonably (and in accordance with customary practice today), it would have no legal basis to contest the customer's claim because the rule does not adequately define the scope of behavior that is considered a slam. Even Mr. Taylor agrees that if this aspect of the rules is not clear (and it is not), then it should be changed. (Taylor, Tr. 128, 131-32.) As Commissioner Clark pointed out, "If you are going to apply sanctions, I think you have to be extremely careful as to whether or not the rule has been violated and it can't be left to discretion." (Tr. 133; see also King, Tr. 578.)

This proposed rule has much more potential to harm customers in the end than help them. As the Commission heard time and again in this proceeding, it is the customers who will pay the costs of new regulatory measures. They will be the source of recovery for the

higher uncollectibles this rule is sure to cause. (King, Tr. 584.) In addition, carriers will be forced into an adversarial role with their customers because this rule would necessarily lead to replacement of the current no fault approach with one in which every PIC dispute would need to be thoroughly investigated. (King, Tr. 565-66.)

To avoid these anti-consumer outcomes, GTEFL recommends the Commission adopt BellSouth's proposed language for subsection (8). This language would limit the customer's financial responsibility to the charges that would have occurred had the unauthorized change not taken place. (Hendrix DT at 22-23.)

Issue 6: Should the Commission adopt the proposed amendments to Rule 25-24.490, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

GTEFL's Position: " Yes. GTEFL believes the Commission should treat all market participants alike. Application to IXCs and ALECs of the existing rules on customer billing and carrier selection will promote this nondiscrimination objective. "

As explained above, efficient competition will never develop as long as some providers are treated more favorably than others under the regulatory scheme. It is thus a step in the right direction to extend the billing and carrier selection rules to IXCs and ALECs.

Respectfully submitted on March 16, 1998.

By: Kimberly Caswell/dm

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Postheering Statement and Comments in Docket No. 970662-TI were sent via U.S. mail on March 16, 1998, to the parties on the attached list.

Kimberly Caswell

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

98 MAR 17 PM 3:12

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., Definitions; 25-4.110, 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-TI Filed: March 16, 1998

INTERMEDIA COMMUNICATIONS INC.'S POST-HEARING BRIEF

Intermedia Communications Inc. (Intermedia) hereby files this its post-hearing brief.

INTRODUCTION

On December 16, 1997, the Commission proposed rules to significantly reduce or eliminate unauthorized switching of a customer's preferred carrier for local, intraLATA toll, and toll services, commonly referred to as "slamming." This is an important and commendable goal, one that the Commission and the majority of the industry seek to accomplish.

In the process of developing rules that will achieve this worthwhile goal, it is essential that the Commission weigh the cost of implementing each section of the proposed rule against the actual benefits produced. If carriers incur substantial costs to implement the rules, those costs will be passed to consumers. To be most beneficial to consumers, the Commission should implement rules that accomplish its objectives at the least regulatory cost.

In evaluating the magnitude of unauthorized provider changes, it is important to put the problem in perspective, especially when

implementing rules that will impose tremendous costs and greater restrictions. Although it appears that the number of complaints has risen in the last few years, without comparing the number of complaints to the number of PIC changes, there is little evidence that the problem of slamming has in fact increased over time. If every allegation of slamming filed at the Commission were found to be a slam, that would be approximately 3,000 slams for 1997, compared to an estimated 1 million PIC changes in Florida for the same period - that would be approximately .3%, which is statistically insignificant. (TR 61-62, 242)

Moreover, Exhibit 4 shows BellSouth's Unauthorized/Expedited PIC Dispute Report for 1997. Allegations of slamming account for only a portion of these numbers - other significant reasons include buyer's remorse, household disputes, and system errors. (TR 298, 300) There are no categories specifically provided - "[a]s no investigation is conducted when a carrier has subscribed to Expedited PIC Swichback [sic] service, it would not be apparent whether or not the change was valid." (EXH 4) Such a system is to the consumer's benefit, because the consumer would not incur the costs to switch to another carrier in instances as buyer's remorse, and household disputes.

So long as human beings are part of the system, it will be extremely difficult to eliminate the problem. The goal should be to eliminate intentional slamming and substantially reduce unintentional slamming. If the purpose of these rules is to

significantly reduce slamming at the least regulatory cost possible, the Commission must weigh the benefit gained against the cost incurred to implement these rules.

BASIC POSITION

Because there are lower regulatory cost alternatives available to accomplish the same goal, the Commission should adopt the soon-to-be promulgated rules of the FCC. Alternatively, the Commission should adopt the FCCA's Alternative 2, except that: 1) Proposed Rule 25-4.110(12) should require the use of three separate forms for the presubscribed local, local toll, and toll providers; and 2) Proposed Rule 25-118(8) should be modified to require only re-rating of calls. Intermedia supports FCCA's modification to Proposed Rule 25-4.110(10)(a) to delete the requirement of displaying the certificate number of the bill; instead, a workshop should be conducted to reach a consensus on the most efficient, least-cost means of providing certificate numbers to staff upon request.

ISSUES

ISSUE 1: Should the Commission adopt the new Rule 25-24.845, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

INTERMEDIA'S POSITION: ** No. Because there are lower regulatory cost alternatives available to accomplish the same goal, the specific rules that apply to ALECs should be the soon-to-be promulgated rules of the FCC or the FCCA's Alternative 2, except as modified for Proposed Rules 25-4.110(12), and 25-4.118(8). **

ARGUMENT

Please see discussion under Issues 3 and 4.

ISSUE 2: Should the Commission adopt the amendments to Rule 25-4.003, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

INTERMEDIA'S POSITION: ** Yes, except that there should be three, separate PIC-Freeze Forms, as discussed in Issue 3. **

ARGUMENT

Please see discussion under Issue 3.

ISSUE 3: Should the Commission adopt the amendments to Rule 25-24.110, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

INTERMEDIA'S POSITION: ** No. Because there are lower regulatory cost alternatives available to accomplish the same goal, the Commission should adopt the soon-to-be promulgated rules of the FCC. Alternatively, the Commission should adopt the FCCA's Alternative 2, except that Proposed Rule 25-4.110(12) should require the use of three, separate forms for the presubscribed local, local toll, and toll providers. Intermedia supports FCCA's modification to Proposed Rule 25-4.110(10)(a) to delete the requirement of displaying the certificate number of the bill; instead, a workshop should be conducted to reach consensus on the most efficient, least-cost means of providing certificate numbers to staff upon request.**

ARGUMENT

FPSC SHOULD MIRROR SOON-TO-BE PROMULGATED FCC RULES

The most cost-effective way to significantly reduce slamming is to adopt the Federal Communications Commission's (FCC's) soon-to-be promulgated rules. If each state implements its own rules, the costs for preventing slamming would have a significant impact on the carriers trying to provide services at reasonable rates for

consumers. Companies would have to develop costly adjustments to billing and operations systems to incorporate varying state-specific requirements. These costs would ultimately be borne by the consumers.

IN THE ALTERNATIVE, THE FPSC SHOULD ADOPT FCCA'S ALTERNATIVE 2, AS MODIFIED

If the Commission determines that it is important to develop state-specific rules, Intermedia urges the Commission to adopt the Florida Competitive Carriers Association (FCCA) Least Cost Alternative 2, with Intermedia's modifications of Proposed Rule 25-4.110(12), to require three separate PIC-Freeze forms, and Proposed Rule 25-Rule 25-24.118(8), to require only re-rating of calls for the specific period incurred. FCCA's proposal is intended to retain those sections of the Commission's proposed rules that will strengthen the effort to curb abuse, while modifying those sections that impose unreasonable costs on carriers without accomplishing additional consumer protection or achieving corresponding benefits at lower costs.

PROPOSED RULE 25-4.110(10)(A) - UNWARRANTED TO REQUIRE CERTIFICATE NUMBER BE DISPLAYED ON BILL

Proposed Rule 25-4.110(10)(a), would require that each company claiming to be the customer's presubscribed provider for local, local toll, and toll place its certificate number on the bill in addition to its name and toll-free customer service number. Intermedia does not object to the requirement of the name and toll-free customer service number; however, Intermedia opposes the

requirement that certificate numbers be placed on the bill. Staff witness Alan Taylor asserts that this requirement will help ensure that underlying carriers do not provide their services to reseller companies that are not certificated, thereby reducing the number of slams facilitated by carriers at a third-party request. (TR at 105-106) He also asserts that it will assist the Commission in identifying the carrier when it receives a complaint. (TR at 106)

There are several reasons why the proposed requirement is unwarranted. First, it is extremely expensive, because it would necessitate Florida-specific billing. The Revised Statement of Regulatory Costs indicates that "providing the Florida certificate number on the bill was identified as being costly by almost all respondents, both for implementation and on a going-forward basis." (EXH 1, SERC at 4) The reason provided was due primarily to companies' use of a national billing system. "Because this cost is specific to Florida, it may be passed on to Florida consumers." (SERC at 5)

Second, adding the certificate number to the bill would have little meaning to the customers and may cause customer confusion. (TR 446, 481, and 547)

Third, staff witness Alan Taylor testifies that this rule is "aimed not at BellSouth or at GTE but at the long distance industry. . . (TR 135) Rule 25-24.4701(2), Florida Administrative Code, already requires each IXC to implement procedures to identify and report those customers whom it believes are reselling or

rebilling IXC service on an intrastate basis in Florida, and to submit, within thirty days of a written staff request, a complete list of such customer's names and addresses to the Commission. Although admittedly this rule only applies to IXC customers, it also assists staff in achieving its goal.

Fourth, it is essential to distinguish between the requirement of underlying carriers to verify the existence of a reseller's certificate number from the requirement that the certificate number be displayed on the bill. If the objective is to assist staff in identifying the entity accused of slamming, there are other least-cost means of achieving that goal. Staff witness Alan Taylor concedes that if the companies would agree, it would be possible to look at an alternative, which would accomplish the same objective, to the requirement that the certificate number requirement be displayed on the bill. (TR 161) Examples of alternatives could include a requirement that the certificate number be kept in the records of the carrier/aggregator, or in billing contracts between the involved entities. (TR 140-141)

Accordingly, the certificate number should not be required to be displayed on the bill. The benefits of implementing this rule are minuscule compared to the costs incurred by the carriers and do not justify the tremendous expense involved when there are other least-cost ways to achieve the same objective. Intermedia suggests that workshops be conducted so that staff and the industry reach consensus on the most efficient, least-cost means of providing the

certificate numbers to staff when requested.

PROPOSED RULE 25-4.110(12) - THREE, SEPARATE FORMS SHOULD BE REQUIRED FOR PIC-FREEZE

Proposed Rule 25-4.110(12) requires that a customer must be notified on his first bill and annually thereafter that a PIC Freeze is available and may contact the provider to obtain FORM PSC/CAF 2 (XX/XX). The form allows the customer to authorize a PIC-Freeze for the presubscribed local, local toll, and toll providers. Intermedia objects only to inclusion of all three presubscribed carriers on the same form.

Instead, if a customer would like to obtain a PIC-Freeze, Intermedia advocates the use of three, separate forms for the presubscribed local, local toll, and toll providers. Although Intermedia has no reason to believe that any ILECs are currently involved in anti-competitive behavior by "locking-up" customers through the use of the PIC-Freeze, the potential for abuse would exist if the proposed PIC-Freeze Form is used. To alleviate that potential, Intermedia recommends the use of separate PIC-Freeze forms. The Staff analysis of the SERC supports this view:

> . . . if the PIC Freeze requirements are implemented, it would be more competitively neutral to use a separate PIC Freeze form for each of the three types of service (local, local toll, and toll) because customers may choose a separate provider for each. (EXH 1, SERC at 16)

In summary, the Commission should adopt the soon-to-be promulgated rules of the FCC. Alternatively, the Commission should adopt the PCCA's Alternative 2, except that Proposed Rule 25-

4.110(12) should require the use of three separate forms for the presubscribed local, local toll, and toll providers. Proposed Rule 25-4.110(10)(a) should be modified to delete the requirement of displaying the certificate number of the bill; instead, a workshop should be conducted to reach a consensus on the most efficient, least-cost means of providing certificate numbers to staff upon request.

ISSUE 4: Should the Commission adopt the amendments to Rule 25-4.118, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

INTERMEDIA'S POSITION: ** No. Because there are lower cost alternatives available to accomplish the same goal, the Commission should adopt the soon-to-be promulgated rules of the FCC. In the alternative, the Commission should adopt the FCCA's Alternative 2, except that Proposed Rule 25-118(8) should be modified to require only re-rating of calls. **

ARGUMENT

For the reasons discussed in Issue 3, the Commission should adopt the FCC's soon-to-be promulgated rules regarding slamming. In the alternative, the Commission should adopt FCCA's Alternative 2, except as modified by Intermedia for Rule 25-4.118(8).

PROPOSED RULE 25-118(8) - UNAUTHORIZED CALLS SHOULD BE RE-RATED - 90 DAYS "FREE SERVICE" IS BEYOND COMMISSION'S JURISDICTION

Intermedia understands and supports the Commission's concern that customers be treated fairly when they have been slammed. Also, it adversely affects a carrier's business to have unauthorized switches, even inadvertent ones. Moreover, telecommunications carriers lose revenues when customers are

slammed away from them.

The proposed rules, however, take drastic measures that are costly and will not necessarily achieve the goal of reducing slamming at the least regulatory cost. As proposed, Rule 25-4.118(8) would require that charges for unauthorized changes billed on behalf of the unauthorized provider for the first 90 days or first three billing cycles, whichever is longer, be credited to the customer. After the first 90 days, charges over the rates of the preferred carrier would be credited to the customer for a period up to twelve months, a procedure commonly referred to as "re-rating."

The procedure proposed by the Commission contrasts with that under Section 258 of the Telecommunications Act of 1996. Section 258, requires any telecommunications carrier, including those providing telephone exchange service and toll, that violates the verification procedures promulgated by the FCC pursuant to Section 258(a), and collects charges from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation. In other words, under the Federal Act, the carrier is liable to the previously selected carrier: under the proposed Florida rules, the carrier is liable to the customer. In essence, the carrier may be "punished twice" for the same event by requiring a different refund process under the state law than under the federal law. If the "purpose of the proposed rule is to prevent a company that has slammed a customer from receiving revenues based upon unauthorized

charges it billed to that customer" as the SERC suggests, then adopting the soon-to-be promulgated FCC rules will accomplish that purpose at the lowest regulatory cost. (SERC at 18)

The first problem with the Commission's requirement that companies provide 90 days "free service" rather than re-rating the calls, is that provision constitutes an award of damages if the amount is greater than the re-rated amount. Staff witness Jennifer Erdman-Bridges concedes that in certain circumstances the consumer could actually receive more money than the direct cost he or she incurred to rectify the situation. (TR 73) If the customer were a business customer, the charges for 90 days could be thousands of dollars, but Staff insists that the service be provided "free." (TR 74-75) By doing more than making the customers whole, the Commission is awarding damages which is beyond its jurisdiction.

Second, the Commission's proposal to require up to 90 days "free-service" would impose enormous costs, to the extent they can be quantified, upon telecommunications carriers. (SERC at 10) The reasons provided by the companies for these costs, in addition to the refunds themselves, include increased costs to investigate and defend themselves against false slamming accusations, as well as the systems to be set up and maintained by some companies to verify or refute slamming claims. (SERC at 10)

Third, such a rule would encourage consumer fraud. Under the proposed rule, customers have no duty to report an alleged slam as soon as it is discovered. Staff witness Jennifer Erdman-Bridges

admits that someone could know they were slammed and just wait 90 days to report it. (TR 75) Business customers may incur large monthly bills, as do some residential customers. Savvy customers may take advantage of the system and incur substantial charges and delay reporting the slams to get the most for their "free service." Customers also have the responsibility to pay for the charges they incurred. Re-rating charges places the customer in the position he or she would have been had there been no unauthorized switch from the presubscribed carrier.

The proposed rules also allow for re-rating of calls up to 12 months from the occurrence of the unauthorized switch. Although the current rule does not address a time certain, the issue of customer responsibility should be factored into the equation. Customers should review their bills and notify carriers in a timely manner if there are errors.

Thus, if the Commission believes that the presubscribed carrier is the one to receive payment, then the Commission should mirror the FCC's soon-to-be promulgated rules so that the charges are re-rated and paid to the presubscribed carrier. Mirroring the FCC's rules would be the least regulatory cost method for the Commission to reach its goal.

In the alternative, the Commission should adopt Proposed Rule 25-4.118(8) as modified below to require that charges be re-rated for unauthorized provider changes:

25-4.118(8) - Charges for unauthorized

> provider changes and all charges billed on behalf of the unauthorized provider, and higher usage rates, if any, over the rates of the preferred company shall 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 to the preferred company. 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.

ISSUE 5: Should the Commission adopt the amendments to Rule 25-24.490, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

INTERMEDIA'S POSITION: ** No. Because there are lower regulatory cost alternatives available to accomplish the same goal, the specific rules that apply to IXCs should be the soon-to-be promulgated rules of the FCC or the FCCA's Alternative 2, as modified for Proposed Rules 25-4.110(12), and 25-4.118(8). **

ARGUMENT

Please see discussion under Issues 3 and 4.

CONCLUSION

For the reasons stated above, Intermedia urges the Commission to adopt rules that mirror the FCC's or in the alternative, to adopt the FCCA's Least-Cost Alternative 2 as modified.

Respectfully submitted this 16th day of March, 1998.

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CERTIFICATE OF SERVICE

DOCKET NO. 970882-TI

NOTICE IS HEREBY GIVEN that the foregoing was furnished by hand delivery (*) or U.S. Mail this 16th day of March 1998 to the following:

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March 16, 1998

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

Re: Docket No. 970882-TI

Dear Ms. Bayó:

On behalf of MCI Telecommunications Corporation, enclosed for filing in the above referenced docket, are the original and 15 copies of MCI's Post Hearing Brief, together with a WordPerfect 7.0 diskette.

By copy of this letter this document has been provided to the parties on the attached service list.

Very truly yours,

Richard D. Melson

RDM/clp
Enclosures

cc: Per Certificate of Service

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., Definitions; 25-4.110, 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. 970822-TI March 16, 1998

MCI'S POST-HEARING BRIEF AND COMMENTS

MCI Telecommunications Corporation (MCI) hereby submits its Post-Hearing Brief to the Florida Public Service Commission (PSC or the Commission). The rulemaking under consideration by the Commission seeks to substantially change the current practices in place today in Florida for changing a consumer's long distance provider and adds new provisions to include local telecommunications provider changes within the scope of the rule.

SUMMARY OF MCI'S POSITION

As more fully explained below, MCI urges the Commission to balance the necessary protections for consumers against the costs imposed on the telecommunications industry and costs of delay and inconvenience imposed on consumers in order to curb the phenomenon of unauthorized carrier changes, known in the vernacular as "slamming." MCI urges the Commission to empower consumers to take steps to protect themselves from or to lessen the harm from slamming by reviewing their monthly telephone bills, expeditiously questioning any unfamiliar carrier billings, and taking prompt action to request a change back to their

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previous carrier. Telecommunications providers should take steps to ensure rule compliance, but should there be a change in carrier without the consumer's consent, there should be a means to quickly and easily switch the consumer back to his previous carrier. Requiring carriers to subscribe to expedited PIC switch-back services of local exchange companies (LECs) so that consumers may be easily and quickly switched back to their previous carrier is one such step that could be taken.

Similarly, the Commission should vigorously enforce its rules and take pointed action against violating carriers. Imposing broad-brush rules only serves to stifle competition among the responsible carriers and to hamper consumers' ability to easily and simply change their carrier of choice.

The rules adopted by the FPSC should be clear, precise and uniformly enforced. Moreover, to the extent consistency can be kept between the requirements of the FPSC and that of the FCC and other jurisdictions, carriers will be better able to comply with federal and state jurisdictional requirements, to the benefit of consumers and consumer protections.

DISCUSSION AND CITATION TO RECORD AND AUTHORITY

Issue 1: Should the Commission adopt the new Rule 25-24.845, FAC as proposed by the Commission at the December 16, 1998, agenda conference?

MCI: MCI has specific objections to the proposed customer billing rules (25-4.110) and to the proposed provider selection rules (25-4-118). It is appropriate, however, for whatever customer billing and provider selection rules are finally approved to apply to ALECs as well as other carriers.

Issue 2: Should the Commission amend Rule 25-4.003 as proposed by the Commission at the December 16, 1998, agenda conference?

****MCI: The Commission should adopt the definitions proposed. Additionally, MCI recommends the Commission adopt a definition for "unauthorized provider change."****

Several new definitions are proposed in the rules. Nowhere, however, is there a definition of what this rulemaking is all about: the unauthorized change of a customer's telecommunications provider. There was much discussion during the hearing regarding the leeway granted to staff in interpreting the proposed rules and the discretion the rules may provide.

Commissioner Clark made a pertinent observation during the cross-examination of staff witness Taylor that should be the hallmark of this proceeding:

> . . .the fact that we're going to impose sanctions, and the fact we're going to, I hope, be very vigorous in our enforcement of the rule requires us to be precise.
>
> (Tr. 134)

It is this need for precision that requires a definition of unauthorized carrier change. Otherwise, no carrier can be sure what standard the staff or the Commission will apply to consumer complaints.[1] MCI recommends that the following definition be added to Rule 25-4.003:

> (X) "Unauthorized carrier change." The conversion of a customer's local or toll provider with willful disregard for the verification requirements of Rule 25-24.118. For purposes of this rule, "customer" includes both the party responsible for paying local or toll charges and any party whom the carrier, in

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[1] See SERC at 11. "It appears that defining 'unauthorized provider change' would be helpful. . .for the company, the customer, and the commission staff."

reliance on the verification requirements of Rule 25-24.118, believes in good faith to have authority to authorize the conversion.

This definition establishes clear parameters within which carriers must operate in order to avoid charges of unauthorized carrier changes by consumers or the Commission. If a carrier obtains the customer's consent to change his telecommunications provider using the appropriate verification methods, then there should be no violation of the Commission's rules.

This proposed definition also addresses the question of whether the "customer" must be the "subscriber of record" in order to give presumptively valid consent to make the change. This too, was part of the debate before the Commission and is an area that requires precision and consistency.[2] Based on the discussion on the record, the definition proposed by MCI would address the typical situations where household members other than the subscriber of record should have the authority to make the carrier change.

Currently, the Commission has rules dealing with carrier changes that are consistent with the FCC's rules, and the Commission's enforcement has been consistent with FCC's interpretations and practices. This consistency is beneficial to multi-jurisdictional carriers, like MCI and others, who operate nationwide and in Florida. If the Florida Commission were to establish a different set of rules as to what constitutes

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[2] As Commissioner Clark stated: "I think my phone is in my husband's name, and I would get pretty aggravated if they said, 'You're not the customer of record and you can't change it.' . . .But I think it does need to be clearly stated who can authorize a PIC change and who can't." (Tr. 132-33)

appropriate authorization and by whom, it would become very difficult for spouses and other responsible adults living in the same household to conduct the family business. It would also cause carriers to adhere to a different set of rules for Florida, thereby increasing the chance of mistakenly violating the rules.

Having the "subscriber of record" be the only person who can authorize a change in carrier is contrary to the way many households conduct business today and would impose burdens on consumers instead of protecting them. Both the proposed rules relating to Letter of Authorization (LOA) requirements (25.24-118(3)(c)) and third party verification (TPV) require the party making the change to state that they are authorized to make the switch. Additionally, MCI's TPV scripts inquire into the person's age and if they are not 18 or older, the change is not made. This type of inquiry and the information collected is required to be retained by the carrier and should be sufficient to protect consumers, yet allow consumers and carriers to conduct business easily and efficiently.

Issue 3: Should the Commission amend Rule 25-24.110 as proposed by the Commission at the December 16, 1998, agenda conference?

MCI: No. The Commission was presented no viable reason to impose the costly requirement of having the carrier's certificate number on the customer bill. MCI also opposes the requirement for annual notification of the availability of a PIC-freeze option.

Rule 25-24.110(11) relating to billing consumers for services not ordered or agreed to (known as "cramming") and the billing block option to block such charges from third parties by

the LEC was removed from this docket and is to be determined in a separate rulemaking proceeding.

The primary point of contention by MCI in this section is one shared by every single carrier participating in this docket: the proposed requirement to include the provider's certificate number on the customer's monthly bill. Every carrier cited the high costs this proposal would impose on them relative to the small benefit, if any to the consumer. (Nicholls, Tr. 309-310; Hendrix, Tr. 405-409; Scobie, Tr. 481; King, Tr. 533, 547; Arnold, Tr. 658-660)

The purpose of the proposal, as espoused by staff witness Taylor, is to help ensure that only certificated providers are operating in Florida. Witness Taylor admitted that staff would be willing to consider alternatives to this requirement. (See, Tr. 161) BellSouth witness Hendrix testified that before BellSouth will provide intrastate billing services to a carrier in Florida, BellSouth requires the carrier to provide a copy of its PSC certificate of authority. (Hendrix, Tr. 407) This appears to be a viable means of achieving the Commission's goal of ensuring that charges are billed only for authorized carriers, without imposing unnecessary costs on the industry.

Placing the certificate number on a consumer's bill adds little or no value to the consumer, and in fact may cause confusion by having unnecessary information on the bill. (Hendrix, Tr. 406; King, Tr. 547) Staff would be better served by requiring the LEC or other billing agent to obtain a copy of the carrier's certificate issued by the FPSC before billing

consumers in Florida. This way, staff could be assured that carriers operating in the state of Florida are certificated, and can take appropriate action should there be any violation of a statute, rule or Commission requirement.

MCI also opposes Proposed Rule 25-4.110(12) which requires annual notification of the availability of a PIC freeze option. See the discussion of related Rule 25-4.118(11), below, for a statement of MCI's concerns.

Issue 4: Should the Commission amend Rule 25-24.118 as proposed by the Commission at the December 16, 1998, agenda conference?

**MCI: No. The Commission should approve rules and verification methods consistent with the FCC. The Commission should adopt the recommendations of MCI, including those relating to the 90-day charge back, the use of PIC freeze information in marketing situations, and customer service answer times, among others. The Commission should not consider the additional unreasonable proposals of the Office of Public Counsel.

GENERAL OVERVIEW OF 25-24-118

The Commission and its staff have shown great sensitivity to concerns of the consumers of Florida in fashioning proposed rules regarding the changing of a consumer's long distance and local provider. Conducting public hearings around the state to listen to the concerns of consumers shows that the Commission and its staff desired public input and participation in order to fashion rules that would address those concerns.

MCI, too, is sensitive to concerns of consumers, as they are our customers or potential customers. How MCI treats a consumer in a competitive market directly impacts our bottom line. Good conduct, professional sales and superior service are rewarded by

consumers choosing MCI and staying with us; inappropriate behavior, inappropriate sales tactics and inadequate service are punished by consumers "voting with their feet" and choosing another provider. MCI has every incentive to avoid consumer complaints about how we conduct our business. This includes how we avoid slamming complaints. MCI has been at the forefront of the industry for several years in implementing means to reduce or eliminate consumer complaints about slamming.

MCI's primary sales channel to consumers is via telemarketing, and MCI uses TPV to confirm virtually every telemarketed sale, including inbound calls initiated by the consumer. MCI appreciates the Commission's recognition of TPV as a valid means to verify a consumer's change in carrier. It has certainly proved successful for MCI and has eliminated many of the types of complaints from consumers MCI had in the past. The Commission should consider TPV, with a truly independent TPV provider, as the preferred means of verification and the one with the fewest opportunities to mislead and confuse consumers. (King, Tr. 523-524, 553) MCI's research shows that with increased TPV for sales in Florida, a slamming complaint (not necessarily determined to be an actual slam) directed to the FPSC in 1997 occurred only once in 90,000 sales calls. (King, Tr. 553)

MCI has a few, albeit major, concerns regarding the Commission's proposed rules. MCI takes issue with all of the additional proposals of the Attorney General and Office of Public Counsel (OPC). The proposals of the OPC would severely hinder competition in Florida and -- while it may not be the intention

of OPC -- the proposals would ultimately harm consumers. The proposals of the OPC have not been examined in terms of a cost/benefit or economic impact analysis, but at first blush, the proposals of the OPC impose significant burdens on the Commission and its staff, the telecommunications industry and consumers. MCI addresses both the Commission's proposals and those of the OPC below:

25-24.118(1) - OPC Proposal

The OPC proposes an addition to Rule 25-24.118(1) that would require the staff to initiate a separate show cause docket for each individual situation in which the staff determines that a carrier has willfully changed a customer's carrier without the customer's authorization or knowledge. While MCI agrees that willful violations of the Commission's verification requirements should be vigorously prosecuted, OPC's proposal would leave the staff no discretion but to prosecute every alleged violation as a separate offense. This would impose tremendous administrative burdens on the Commission and the staff and would appear to prevent the Commission from dealing with multiple alleged offenses in a single proceeding.

In addition, OPC's proposed language makes the act of changing the consumer's carrier - not the violation of the Commission's rule -- the "willful" activity to be punished. Under the OPC's language, an innocent mistake of transposing numbers or other human error could be interpreted as a "willful" act.

Since OPC has not shown that the Commission's current practices for prosecuting rule violations are inadequate or inappropriate in any way, and has not provided any analysis of the fiscal impact of its proposal on the Commission, this proposal should be rejected as unnecessary and administratively burdensome. Even if this proposal were considered, the language should be clarified to provide that only "unauthorized carrier changes," as set forth in MCI's proposed definition above, are actionable offenses.

25-4.118(2) and 25.4-118(6) - Proposed Rule

The proposed rules would require carriers to make audio recordings of customer-initiated calls (i.e. inbound telemarketing) or the TPV portion of a telemarketed sale. While audio recording may provide a basis to resolve some "he said/she said" disputes between carriers and customers, there are several potential drawbacks to audio recording which have not been adequately addressed in the record or in the Statement of Estimated Regulatory Costs (SERC). These include: (a) the cost of recording, (b) the cost of retrieval, and (c) the chilling effect on PIC changes by customers who for some reason are reluctant to have their conversations tape-recorded. (See, King, Tr. 527-528; Taylor, Tr. 170) While the SERC attempted to quantify some of these costs, the cost estimates were incomplete at best, and there was NO analysis of the economic benefit of such recording. Although such recording provides a different type of verification information, and may make it easier to resolve disputes that do

arise, there is no evidence in the record that it would reduce the number of disputes in the first instance.

MCI acknowledges that audio recording may ultimately prove to be a viable alternative for some carriers. Indeed, some carriers have implemented audio recording today and some, like MCI, are testing or planning to test such recording. However, there is insufficient basis in the current record for the Commission to impose a blanket recording requirement at this time. If future experience shows that the other changes to the rules do not have their desired effect of reducing the incidence of unauthorized PIC changes, then the Commission could reconsider the proposed audio recording requirement at that time. As more carriers have gained experience, good or bad, with voluntary audio recording, the Commission will be in a better position to evaluate the costs and benefits of that technique.

25-4.118(2) - OPC Proposal

MCI takes grave exception to OPC's proposal to require every PIC change request to match the last name of the customer, the customer address and the customer telephone number before the LEC is required to process the change. This proposal has not had the benefit of an economic impact inquiry, but evidence presented at the hearing shows that such a requirement would have significant impact on the vast majority of customers whose PIC changes proceed without problems.

Sprint's witness, Dwane Arnold, testified when Centel implemented this type of Billing Name and Address (BNA) and

telephone number matching requirement in 1993, the process resulted in the rejection of more than 50% of the valid PIC change requests. (Tr. 662, 667-8) This means that majority of PIC change orders were stalled because of mismatches that had no bearing on the validity of the sale. Customers were inconvenienced by having to be contacted again to obtain precisely matching information, and carriers incurred additional costs in making these unnecessary contacts.

In addition to the customer inconvenience and unnecessary carrier costs that would result from OPC's proposal, it is patently unfair to require BNA/telephone number matching when competitive carriers are not allowed to use the LECs' BNA information for marketing purposes. There simply is no way for a competitive carrier to know precisely how an account is listed, nor should the LEC's account information be considered superior to information taken by the IXC directly from the consumer. (King, Tr. 549) The current edit system is working today between ILECs and other carriers. There is no need to impose the additional burden of a BNA/telephone number matching requirement on consumers or carriers.

25-4.118(4) - PSC Proposed Rule

The Commission has proposed a requirement that prohibits the combination of an LOA with an inducement of any kind on the same document. Testimony adduced at the hearing indicates that the Commission has dealt with many complaints involving sweepstakes and the proposed rule was designed to ban this marketing

practice. (Taylor, Tr. 169) Unfortunately, the rule is overly broad. As written, the rule would prohibit MCI from offering inducements such as its Sky Miles Program and would prohibit other carriers from using other marketing strategies such as check LOAs. As Mr. Taylor testified, he could recall no consumer complaints based on MCI's Sky Miles Program and only one complaint regarding check LOAs. (Tr. 169-170) Ms. Erdman-Bridges was similarly unfamiliar with any complaints associated with these types of activities. (Tr. 79-80) There simply is no factual basis in the record to outlaw these marketing techniques.

MCI suggests the rule be narrowed to address the specific problem of sweepstakes or box entries. However the Commission should not throw the baby out with the bathwater and should not prohibit incentive programs and other marketing strategies that provide consumer benefits and have not been the subject of significant slamming complaints.

25-24.118(8) - Proposed Rule

MCI strongly objects to the proposed requirement to forgive up to 90 days of toll charges when a customer claims that there has been an unauthorized change in his or her carrier.

Today MCI and the other major carriers subscribe to a "no fault" policy under which a customer who raises a PIC dispute is returned at no charge to his prior carrier and charges over the rates of the preferred company are credited to the customer on request. (King, Tr. 559; Hendrix, Tr. 460-462) Under this procedure, customers are made whole and are returned promptly to

their carrier of choice. Because of the "no fault" nature of the process, the process is consumer friendly, and no adversarial or costly investigation is made to determine whether the customer was actually changed without his consent, or whether the initial transfer was valid, but is being revisited because of buyers' remorse, a spousal dispute, or any other reason. (Hendrix, Tr. 462-463)

The proposed rule would have several undesirable effects. First, the proposed 90-day credit unnecessarily enriches the customer by making him more than whole. While this feature of the proposed rule was justified as representing rough compensation for the time that a consumer must spend to deal with a PIC dispute, there is no estimate either in the testimony or in the SERC of the costs borne by consumers in resolving PIC disputes, only an unquantified assertion that such costs exist. (See, SERC at 20) Further, the record shows that under the current "no fault" practice, the vast majority of such disputes are resolved promptly to the satisfaction of the consumer. (Hendrix, Tr. 461-462) If, as evidenced at the public hearings, there are situations where some companies do not resolve these complaints promptly, the better solution would be to craft a rule to deal harshly with those companies who adopt a practice of delay. Additionally, MCI's witness King provided a means to deal with this issue:

By Mr. Marks:

Q. I've just got one question, Ms. King. In your summary you express some fairly strong

concerns about the 90-day rule and providing service for that. Do you have any specific changes that you would make or consider with regards to the rule itself?

A. The one thing that we suggest in here is that if the complaint is resolved quickly, expeditiously and fairly, that that could go into effect in lieu of the 90-day charge back.

I think we heard here today that the LEC can make that switch or switch back to the original carrier in most cases within 24 hours, which would be appropriate; and then something on the order of an arrangement that would allow the carrier and the consumer to take care of all such things as credit for the PIC switch fee, for rerates and so forth within a 45-day window.

Tr. 559.

Second, the rule is an open invitation to consumer fraud. One can expect that some fraction of consumers will discover that by claiming their carrier has been changed without their consent, they can receive up to 90 days of free toll service. (Nicholls, Tr. 305; Watts, Tr. 331-332; Hendrix, Tr. 423; King, Tr. 555; Arnold, Tr. 656) And even an honest customer who has actually had his PIC changed without his consent may pause to consider whether to delay reporting in order to take advantage of one more free call to his friends in Europe. MCI alone estimated that this rule could require over $1,000,000 a year in refunds based on LEC-reported PIC disputes. (SERC at 10)

Third, the proposed rule has the effect of automatically imposing a penalty on the carrier without a specific Commission finding of fault. This penalty aspect is particularly troublesome since, under federal law, an offending carrier can be forced to disgorge to the customer's preferred carrier all

revenues earned during the period of an unauthorized PIC change. By requiring a carrier to credit the same monies to the customer, the proposed Florida scheme is fundamentally inconsistent with the structure of the federal act. Finally, because the consumer fraud and penalty aspects of the rule, "no fault" resolution of PIC disputes may become a thing of the past. A carrier faced with having to credit substantial sums in a case that may be no more than buyer's remorse will be compelled to investigate every PIC dispute to protect itself against fraudulent claims. This will not only increase costs to all consumers, it will turn what has been a consumer-friendly practice into an adversarial one. (King, Tr. 555; SERC at 2-3)

25-4.118(8) - OPC Proposal

OPC's proposal to not only require a 90-day credit, but also to prohibit the LEC from billing any charges on behalf of the IXC would simply multiply the opportunity for consumer fraud. A consumer who fraudulently took advantage of the Commission's proposed rule to try to obtain 90 days of free toll calling would - even if discovered - be protected from having his local service disconnected for non-payment of the valid toll charges. OPC's proposal to leave the means of collection up to the carrier once the change has adjudged valid, leaves the carrier with the option of "writing off" the charge as bad debt or suing the consumer to recover any amounts the consumer refuses to pay.

This provision is unnecessary to protect honest consumers, since the LECs have a policy of not pursuing payment of any IXC

charges while such charges are in dispute. (Hendrix, Tr. 434) OPC's proposal would simply raise costs to all consumers with no real consumer benefit and would create a hostile environment between carriers and consumers.

24-4.118(11) - Proposed Rule

MCI strongly opposes this proposed rule, which would require MCI and its independent third party verifier to inform potential customers of the availability of a PIC freeze option during every telemarketing and every verification call. At a fundamental level, PIC-freezes can be anti-competitive, since they lock customers into their existing providers. This is a particular concern as local exchange markets are just beginning to be opened to competition.

The FCC has incorporated the PIC freeze issue into its pending rulemaking concerning unauthorized changes of consumers' long distance carriers.[3] The FCC recognized that PIC freezes "...are designed to offer consumers protection against slamming by preventing carriers from effecting changes on their behalves. The may also, however, have the effect of limiting competition among carriers."[4] There is a great incentive for the monopoly incumbent to use scare tactics to encourage its customers to elect a PIC-freeze, thereby enhancing the incumbent's competitive position.

[3] See, FCC CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, adopted July 14, 1997.
[4] Id, p. 15, para. 22.

MCI therefore opposes the requirement in Proposed Rule 25-4.110(12) that every carrier notify every customer of the availability of a PIC freeze option at least annually. (King, Tr. 545,553-554)

Further, MCI's experience is that many customers who have made a PIC-freeze election and make a subsequent decision to change their carrier either (a) do not recall that they consented to a PIC freeze, or (b) assume that their new choice will override that PIC freeze. (King, Tr. 554)

> With a PC freeze in place, a carrier cannot submit the request on the consumer's behalf. The consumer must advise the carrier from whom he or she requested the freeze to lift the freeze before the change can be effected. Not all consumers are willing to take this additional, affirmative step, even when they have agreed to take a competing carrier's service. Hence, PC freezes may increase the burden of competing carriers in securing new customers.[5]

For this reason, it is essential that the rules recognize that a PIC freeze can be overridden by the customer's choice as evidenced by a properly conducted TPV process. (King, Tr. 554)

Even if the written notice requirement in Rule 25-4.110 were to remain, however, the proposed requirement to advise customers of the availability of a PIC freeze option during every telemarketing call and every TPV call is unwarranted and likely to create customer confusion or resentment.

In the telemarketing context, once a customer has made a decision to change carriers, the customer could well perceive information regarding the PIC freeze option as an unfriendly

[5] Id.

attempt by his newly chosen carrier to limit his future choices. Thus merely providing this information could cause customers to back-away from a previously agreed change.

In the TPV context, the problems are even more critical. The TPV call is supposed to be a neutral verification of the customer's wishes. The required reference to a PIC-freeze option introduces a sales element into the call which is totally inappropriate in this context. (See SERC at 11-12)

Importantly, there is no staff testimony in the record to support this provision of the rule and therefore no record basis for its adoption by the Commission.

25-4.118(14) - Proposed Rule

MCI supports having a toll-free number available for customer service calls 24 hours a day, seven days a week. (King, Tr. 552, 557) MCI objects, however, to the proposed requirement that a company who uses live operators must answer 95% of all calls and be ready to render assistance immediately when the call is answered.[6] MCI also opposes OPC's proposal to expand this requirement even further to incorporate various answer time requirements applicable today to the LECs.

First, MCI provides customer service on a nationwide basis through a number of customer service centers. While MCI makes

[6] MCI notes that the rule imposes more stringent requirements on companies, like MCI, that use live operators than on companies who simply record customer service calls. MCI would have to be prepared have its operator render assistance as soon as the call was answered. A company that utilizes the recording option would merely have to attempt to contact the complainant on the next business day. The record provides no rationale for this disparate treatment.

every effort to match its available resources to anticipated call volumes, it experiences wide fluctuations, some of which are outside of MCI's control, which would make it impossible to comply with a particular call completion percentage and answer time requirement. (King, Tr. 557) For example, when an advertisement for "5 Cent Sundays" airs on Saturday evening, that advertisement may almost instantaneously generate a large volume of calls from existing customers inquiring about the program or prospective customers who want to sign up immediately to take advantage of the program the next day. Additionally, a competitor can introduce a new program or issue a slew of check LOAs and MCI will experience higher call volumes from customers seeking a match. (See, King, Tr. 557) This wide variation in call volumes is a function of the competitive market, and is a phenomenon the Commission has not had to face in its regulation of local telephone companies who have operated in a monopoly environment.

More importantly, so long as customer service is available 24 hours a day, seven days a week and toll free access is provided, the competitive market will be a better regulator of customer service and responsiveness than any Commission-imposed rule. (King, Tr. 552, 557) Customers who are dissatisfied with their experiences with MCI, or any other long distance carrier, have many competitive choices and can simply "vote with their feet."

Issue 5: Should the Commission amend Rule 25-24.490 as proposed by the Commission at the December 16, 1998, agenda conference?

MCI: Assuming the rules are modified to correct the objections that MCI has stated under Issues 2, 3 and 4 above, and in its testimony, MCI does not generally object to the rules applying to IXCs.

RESPECTFULLY SUBMITTED this 16th day of March, 1998.

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition of Robert A. Butterworth, Attorney General, and the Citizens of the State of Florida, by and through the Office of Public Counsel, for Initiation of Formal Proceedings, Pursuant to Section 120.57, F.S., to Investigate the Practice of Slamming and to Determine the Appropriate Remedial Measures	Docket No. 970882-TI Filed: March 16, 1998

SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP POSTHEARING STATEMENT OF ISSUES AND POSITIONS

COMES NOW Sprint Communications Company Limited Partnership ("Sprint") submits its Posthearing Statement of the Issues and Positions in the above-captioned docket.

ISSUES AND POSITIONS

SPRINT'S BASIC POSITION:

Sprint agrees that unauthorized changes in a subscriber's carrier selection, a practice commonly known as "slamming," is a significant consumer problem. Slamming clearly impacts all participants in the competitive interexchange market. What is not yet certain, however, is how best to address the problem. Sprint believes the Commission's proposed rules are unnecessary as the current rules are adequate and, when adhered to, have the capability to control the slamming problem. Should the Commission adopt additional rules, however, Sprint respectively urges the Commission to consider its position and brief of the evidence on the rules contained herein.

Issue 1: Should the Commission adopt new rule 25-4.845, Florida Administrative Code, as proposed by the new Rule 25-24.845, Florida Administrative Code, as proposed by the Commission at the December 16, 1997, Agenda Conference?

* Sprint's Position: Generally, Sprint does not oppose this rule. As stated above, Sprint does not believe additional substantive rules are necessary. Sprint, however, does not oppose a rule that seeks to apply the current rules to ALECs.

Issue 2: Should the Commission adopt the proposed amendments to Rule 25-4.003, Florida Administrative Code, as proposed by the Commission at the December 16, 1997, Agenda Conference?

* Sprint's Position: Sprint does not oppose the rule changes.

Issue 3: Should the Commission adopt the proposed amendments to Rule 25-24.110, Florida Administrative Code, as proposed by the Commission at the December 16, 1997, Agenda Conference?

* Sprint's Position: No. Should the Commission determine that additional rules are necessary, the Commission should delay implementation of any new rules until federal rules are implemented. Sprint believes any additional rules the Commission adopts should be consistent with those federal rules.

Issue 4: Should the Commission adopt the proposed amendments to Rule 25-24.118, Florida Administrative Code, as proposed by the Commission at the December 16, 1997, Agenda Conference?

* Sprint's Position: Sprint supports the change to Rule 25-4.118(4), F.A.C. Sprint recommends, however, that the rule be clarified to indicate that negotiable instruments such as checks are not to be combined with an LOA. Sprint also supports proposed Rule 25-4.118(4), F.A.C.

Sprint does not support audio recording of third party verification. It will not increase consumer protection; it will only increase cost of verification. Additionally, Sprint does not support proposed Rule 25-4.118, F.A.C. Substantial additional printing and administrative costs will be incurred if state-specific information must be included. Sprint also does not support Rule 25-4.118(8), or any rule that would relieve customer responsibility for paying for services received. Finally, Sprint does not support Rule 25-4.118(10). Sprint believes requiring companies to identify third party verifiers is unnecessary and will only create customer confusion.

Issue 5: Should the Commission adopt the proposed amendments to Rule 25-24.490, Florida Administrative Code as proposed by the Commission at the December 16, 197, Agenda Conference?

• Sprint's Position: No. Should the Commission determine that additional rules are necessary, the Commission should delay adopting any new rules until federal rules are implemented. Sprint believes any addition rules the Commission adopts should be consistent with those federal rules.

Respectfully submitted this 16th day of March, 1998.

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Company Limited Partnership

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I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. mail on this 16th day of March 1998, to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

98 MAR 17 PM 2:00

In Re: Joint Petition of Robert A. Butterworth, Attorney General, and the Citizens of the State of Florida, by and through the Office of Public Counsel, for Initiation of Formal Proceedings, Pursuant to Section 120.57, F.S., to Investigate the Practice of Slamming and to Determine the Appropriate Remedial Measures

Docket No. 970082-TI

Filed: March 16, 1998

POST-HEARING BRIEF
OF
SPRINT COMUNICATIONS COMPANY LIMITED PARTNERSHIP

Comes now Sprint Communications Company Limited Partnership ("Sprint"), pursuant to Rule 25-24.056, Florida Administrative Code, and submits this its post-hearing brief of the evidence presented to the Florida Public Service Commission ("Commission") in this proceeding.

PRELIMINARY STATEMENT

Sprint will address all issues, numbered 1-5, as set out in the Commission's Prehearing Order No. PSC-98-0200-PHO-TI, issued February 2, 1998.

References to testimony in the record transcript will be designated as ("Tr. Vol.___, Page_____."). References to Exhibits in the record will be designated ("Exhibit_____, {with farther reference to transcript page number}).

INTRODUCTION

The instant rulemaking proceeding is the Commission's consideration of its proposed Rule 25-24.845, Florida Administrative Code, and proposed amendments to Rules 25-4.003, 25-4.110, 25-4.118 and 25-24.490, Florida Administrative Code. The proposed rule and rule amendments would impose new requirements on the incumbent local exchange companies ("ILECs"), the alternative local exchange

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companies ("ALECs") and the interexchange companies ("IXCs") with respect to the circumstances under which changes may be made in a customer's presubscribed carrier. The proposed rule and rule amendments would apply to local, local toll or "intraLATA", and toll service providers. Further, such providers must be certificated by the Commission. The effect the Commission seeks to achieve from the proposed new rule and rule amendments is to reduce the possibility of "slamming".[1] "Slamming" is the unauthorized change of the primary local, local toll or toll provider of a customer.

Sprint supports efforts of the Commission to address the issue of unauthorized carrier changes. It should be recognized, however, that there are efficiencies to be realized through one set of uniform requirements that are mandatory for telecommunications carriers in all jurisdictions. The Federal Communications Commission ("FCC") issued a Notice of Proposed Rulemaking on July 15, 1997 in which it stated that it intended to adopt rules to reduce or eliminate "slamming", the practice of changing a customer's telephone service provider without his or her knowledge or consent.[2] The rules the FCC will adopt will govern the manner in which local and long distance companies will be required to verify changes in a subscriber's selection of a service provider. Sprint believes it would be premature for the Commission to adopt new requirements relating to verification of changes in subscriber carrier selection until the FCC concludes its Rulemaking.

Accordingly, Sprint would urge the Commission to refrain from adopting additional rules at this time. Any additional rules the Commission adopts should be consistent with the FCC rules to ensure that carriers are successful in implementing their verification process. There is no basis for differing rules, and in order to maximize effectiveness in reducing the incidence of PIC disputes and slamming

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[1] Order No. PSC-97-1615-NOR-TI, issued 12/24/97.
[2] CC Docket No. 94-129.

companies ("ALECs") and the interexchange companies ("IXCs") with respect to the circumstances under which changes may be made in a customer's presubscribed carrier. The proposed rule and rule amendments would apply to local, local toll or 'intraLATA', and toll service providers. Further, such providers must be certificated by the Commission. The effect the Commission seeks to achieve from the proposed new rule and rule amendments is to reduce the possibility of "slamming".[1] "Slamming" is the unauthorized change of the primary local, local toll or toll provider of a customer.

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ILEC, avoid new change fees incurred in switching to another carrier, or, under the Commission's proposed rules in this proceeding, obtain free service from the allegedly unauthorized carrier. (Tr. Vol. 4, page 611; Sprint witness Buysse-Baker.)

However, in the face of such overwhelming evidence in this proceeding that there are many causes for PIC disputes and slamming,[3] it appears that the Attorney General ("AG") and Office of Public Counsel ("OPC") take the position that the cause of an alleged "slam" is not relevant. This is made vividly clear by witness R. Earl Poucher, testifying on behalf of the Attorney General and Office of Public Counsel. Witness Poucher stated that a slam occurs when the customer says "I've been slammed", without regard to the circumstances. (Tr. Vol. 2, page 239; A.G. and OPC witness Poucher) To further confuse the issue, witness Poucher makes no distinction between a legitimate PIC dispute and slamming. As AT&T witness Watts testified, not all PIC disputes are caused by slams but may arise from causes other than slamming. (Tr. Vol. 3, page 337; AT&T witness Watts).

Clearly, if the Commission ignores the cause of a PIC dispute or an alleged slam, as suggested by witness Poucher, and adopts the proposed rules herein, it places the Commission in the position of imposing "strict liability" upon the carriers with respect to PIC disputes and slamming complaints. Witness Poucher furnished no justification or authority for the imposition of a "strict liability" standard upon telecommunications carriers. Moreover, such a standard would raise serious constitutional concerns.

Sprint would urge the Commission, at this time, to refrain from adopting any rules that do not address the cause of PIC disputes and slamming. Until the Commission gathers the information necessary to develop a complete understanding as to why a slam occurs, and only the Commission has the ability to conduct such analysis on an industry wide basis, there is no way that it will be able to engage in

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[3] See also Tr. Vol. 3, page 337; AT&T witness Watts.

ILEC, avoid new change fees incurred in switching to another carrier, or, under the Commission's proposed rules in this proceeding, obtain free service from the allegedly unauthorized carrier. (Tr. Vol. 4, page 611; Sprint witness Buysse-Baker.)

However, in the face of such overwhelming evidence in this proceeding that there are many causes for PIC disputes and slamming,[3] it appears that the Attorney General ("AG") and Office of Public Counsel ("OPC") take the position that the cause of an alleged "slam" is not relevant. This is made vividly clear by witness R. Earl Poucher, testifying on behalf of the Attorney General and Office of Public Counsel. Witness Poucher stated that a slam occurs when the customer says "I've been slammed", without regard to the circumstances. (Tr. Vol. 2, page 239; A.G. and OPC witness Poucher) To further confuse the issue, witness Poucher makes no distinction between a legitimate PIC dispute and slamming. As AT&T witness Watts testified, not all PIC disputes are caused by slams but may arise from causes other than slamming. (Tr. Vol. 3, page 337; AT&T witness Watts).

Clearly, if the Commission ignores the cause of a PIC dispute or an alleged slam, as suggested by witness Poucher, and adopts the proposed rules herein, it places the Commission in the position of imposing "strict liability" upon the carriers with respect to PIC disputes and slamming complaints. Witness Poucher furnished no justification or authority for the imposition of a "strict liability" standard upon telecommunications carriers. Moreover, such a standard would raise serious constitutional concerns.

Sprint would urge the Commission, at this time, to refrain from adopting any rules that do not address the cause of PIC disputes and slamming. Until the Commission gathers the information necessary to develop a complete understanding as to why a slam occurs, and only the Commission has the ability to conduct such analysis on an industry wide basis, there is no way that it will be able to engage in

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[3] See also Tr. Vol. 3, page 337; AT&T witness Watts.

reasoned decision making. This Commission cannot regulate in a vacuum. It must identify the specific problems to be addressed and then it must weigh the likely effectiveness of any rule or regulation in eliminating the problems, against the cost of the regulation and its impact on competition. Specifically, without a cost/benefit or least cost analysis, the Commission may adopt rules that will be ineffective in reducing the number of slamming complaints while, at the same time, increase the costs of those carriers that do comply with the rules. In addition, such rules will make it more difficult for end users to switch carriers or make it more expensive for carriers to market to subscribers. This will have a negative impact on the development of competition.

Sprint would support any effort by this Commission to conduct an investigation to determine why a PIC dispute or slamming complaint occurs. It is only after the cause of the PIC dispute or slamming has been determined, and responsibility placed, that the Commission can implement appropriate rules to effectively reduce the number of PIC disputes and slamming complaints and penalize the responsible party. (Tr. Vol. 4, page 611; Sprint witness Buyse-Baker)

III. Any proposed rule to reduce PIC disputes and slamming complaints must address unauthorized changes caused by mistakes or errors in the order entry process.

As Sprint witness Buyse-Baker pointed out, one factor contributing to PIC disputes and slamming complaints is innocent and inadvertent mistakes or errors at the point of order execution. (Tr. Vol. 4, page 602; Sprint witness Buyse-Baker). Individual IXCs and ILECs process thousands of PIC changes monthly and with most of the order entry process being entirely manual, there is always a probability of human error. It is reasonable to expect that errors will occur. Specifically, a data entry error may be made when switching carriers pursuant to a valid request. (Tr. Vol. 3, page 337; AT&T witness Watts).

However, it should be noted that there are important distinctions between IXCs and ILECs with respect to incentives to reduce these mistakes. The competitive market already provides the necessary motivation for an IXC that has substantial fixed investment and is in the market for the long term to minimize order processing errors. In contrast, the ILECs are not now subject to the same competitive pressures and their control over the PIC change process gives them the opportunity to shift blame.

As an example, if a customer complains about being assigned to the wrong IXC or ALEC, the ILEC need only make the change and is free to blame the mistaken assignment to slamming by the IXC or ALEC. It is extremely difficult for an IXC or ALEC to dispute the source of the error with a subscriber that does not want its services. Under these circumstances, what is needed to ensure that the order entry process is as free from errors as possible is to relieve he ILECs of the responsibility to execute PIC change orders and assign it to a neutral third party. Neutral third party administration would ensure equal treatment of all carriers and avoid any appearance of impropriety or anti-competitive behavior. While Sprint recognizes it would take some time to accomplish this transition, Sprint would recommend that the Commission include in its proposed rules conditions that would minimize ILEC involvement in administering the PIC change process. (Tr. Vol. 4, page 605-606; Sprint witness Buysse-Baker).

As indicated above, it makes no sense, either from a business or economic point of view, for any IXC or ALEC to deliberately engage in slamming. Slamming makes it harder for IXCs to compete in the marketplace because it will quickly destroy valued customer goodwill. Slamming also increases a carrier's customer service costs associated with handling customer and PSC complaints. Further, slamming has no permanent revenue impact as slammed customers are eventually returned to their carrier of choice.

However, even those IXCs that recognize that slamming is not a rational business or economic strategy have, at one time or another, been accused of

switching customers without authorization. As discussed above, there is no doubt but that some of these complaints were due to such causes as "buyer's remorse", an allegedly improper decision maker, inadvertent mistakes by the IXC's personnel, miscommunication between the IXC's sales agents and respective customers about a request for service, a spouse or other household member may change carriers without express authorization from the account holder, a new customer may run up a larger than usual bill and have second thoughts about the validly selected carrier, a person who frequently changes carriers ("spinner") may wish to avoid PIC change charges, or a data entry error. (Tr. Vol. 4, page 605; Sprint witness Buysse-Baker); (Tr. Vol 3, page 337; AT&T witness Watts).

Sprint recognizes that even though an inadvertent IXC mistake may have caused the slam, the customer is, nevertheless, seriously inconvenienced. For this reason, Sprint has adopted a "no-fault" policy of not challenging customers' claims that they were switched to Sprint without proper authorization even though Sprint may have a signed LOA from the complaining customer or has otherwise verified the customer's choice of Sprint. Therefore, when Sprint receives a PIC dispute from the customer's ILEC, it instructs such ILEC to return the complaining customer to his previous carrier and reimburses the customer for all carrier change charges incurred. (Tr. Vol. 4, page 605; Sprint witness Buysse-Baker)

Additional and more stringent rules, purporting to reduce the slamming problem, will only have a negligible effect.

IV. Any proposed rules to reduce PIC disputes and slamming must recognize that any carrier that intentionally seeks to convert customers without authorization is committing fraud.

The proposed rules herein are unlikely to have any impact on those carriers that engage in fraudulent and illegal practices in order to convert customers to their network. These carriers currently do not comply with the Commission's rules and there is no reason to believe that imposing additional and more stringent rules will

correct that problem. What is needed is not more rules and regulations but stricter enforcement of existing rules with appropriate sanctions against those carriers that deliberately engage in this activity. (Tr. Page 606; Sprint witness Buysse-Baker).

Sprint believes that the only way to deter slamming by those companies that intentionally engage in misleading and illegal practices to obtain revenues is for this Commission, to the extent of its authority, seek criminal prosecution and perhaps imprisonment of the principals involved. In other words, the Commission should "slam the slammers." Sprint recognizes that such a recommendation is extreme. However, intentional slamming is theft. Slamming robs customers of money both in terms of higher rates paid to the slamming carriers and the loss of any premiums. It deprives customers of the use of their chosen carriers' calling cards in emergencies or when traveling. It costs customers the time they must devote to ensuring that they are returned to their chosen carriers. Further, it is obviously a cause of great aggravation. In the final analysis, slamming deprives customers of the primary benefit of competition: the right to be served by carriers of their own choosing.

Therefore, Sprint recommends that the Commission investigate all slamming complaints it receives against each and every carrier to determine whether such complaints establish a pattern of deceptive and illegal activities. If so, the Commission should submit its findings to the appropriate agency.

V. ILECs, as competitors or soon to be competitors, have economic incentive to exploit their status as gatekeepers in order to impede competition.

Slamming is not always the result of an error on the part of the IXC. ILECs maintain control of the carrier change process. IXCs do not, and cannot, perform the switch changes necessary to convert customers to their services. That responsibility has thus far fallen to the ILECs which execute the carrier change orders they receive either from the IXCs or directly from customers who call the ILEC's business office to request a change in IXCs or to select an IXC for the first time. The ILECs, however, do not always properly execute such orders, and

their errors contribute to the slamming problem or, at least to customers' perceptions that they have been slammed.

As an example, under the ILECs' order entry process, a customer's selection of an IXC must be recorded in the ILEC's billing or subscription records as well as well as in the ILEC's switch. If the ILEC fails to change a customer's billing or subscription record to reflect a newly chosen IXC, the customer will be informed upon calling the ILEC's business office that he is the customer of his previous IXC. The customer, therefore, may assume, or perhaps even be advised by the IIEC, that they had been slammed by the previous IXC. Further, ILECs must pass PIC information to IXCs so IXCs know that the customer has selected them for long distance. If that is not done promptly and correctly, the IXCs will "see" trafic on their network, but will not know that the telephone number should be a 1+ pic'd customer. This ILEC/IXC data interchange must work correctly entered every time or slams could occur.

If this Commission is to minimize mistakes in the execution of these PIC changes, it must relieve the ILEC of their control of the PIC change process. The carrier change order process should be assigned to a neutral third party. Neutral third party administration would ensure equal treatment of all carriers and avoid any appearance of improprieties or anti-competitive behavior. (Tr. Vol. 4, page 605; Sprint witness Buysse--Baker).

The problem of ILEC order processing errors will substantially worsen as the ILECs become direct competitors of the IXCs. Under such circumstances, it is difficult to expect hat the IIECs will devote sufficient resources to minimize their mistakes or administer the order process in a competitively neutral process.

VI. SUMMARY

Sprint strongly supports the efforts of the Commission to address the issue of unauthorized carrier changes. Sprint does not believe, however, that additional rules and regulations are the answer at this time. Nor does the record support such changes at this time. The Commission must look at the root causes of slamming, then and only then should the Commission proceed with rules should they be deemed necessary. Those rules should be fashioned specifically to address the root causes. Moreover, there are efficiencies to be realized through one set of uniform rules and regulations. Accordingly, Sprint urges the Commission to adopt rules that are consistent with the FCC rules. The record in this proceeding shows no basis for varying state and federal rules.

The evidence of record in this proceeding does not support, at this time, the proposed substantive changes to the Commission's existing rules. As an example, the Commission's proposed rules do not address the root causes of slamming complaints. Further, no evidence has been presented to support claims that slamming complaints will be reduced by recording third party verification or filing monthly reports; and no evidence has been presented to address the issue of order entry errors or mistakes. To the contrary, evidence was presented to show that customers can receive free telecommunications service simply by claiming to be slammed.

Control of the carrier change process must be taken from the ILECs and reassigned to a neutral third party. This will minimize mistakes in the execution of PIC changes. Neutral third party administration will assure equal treatment of all carriers.

The record in this proceeding clearly shows that simply implementing the proposed rules herein will not, in any way, reduce the number of slamming complaints. To the contrary, the proposed rules will provide incentives for false claims of slamming and impede competition.

VI. CONCLUSION

Sprint respectfully suggests that any Commission effort to reduce the incidence of slamming complaints must proceed along the lines Sprint recommended herein.

Respectfully submitted this 16th day of March, 1998.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. mail on this 11th day of March 1998, to the following:

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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., Definitions; Rules 25-4.110 F.A.C., Customer Billing; Rules 25-4.118, F.A.C., Interexchange Carrier Selection; Rules 25-24.490 F.A.C., Customer Relations; Rules Incorporated.	Docket No. 970882-TI Filed: March 16, 1998

POSTHEARING COMMENTS OF SPRINT-FLORIDA

COMES NOW Sprint-Florida, Incorporated ("Sprint-Florida") and files these post hearing comments in the above styled matter.

I. Introduction.

After considering the presentations at the hearing held in this docket, Sprint-Florida, files these comments. The company's basic position in this rulemaking remains that a single nationwide regime of "slamming" rules would provide the most efficient manner of attacking a problem that has existed in the Florida marketplace as well as in every other state. Sprint-Florida nevertheless recognizes that the Commission is likely to adopt some

additional rules to curb slamming[1].

Sprint-Florida's comments fall into two categories. One addresses non-controversial technical adjustments to the proposals. These were discussed at hearing. These adjustments would accomplish the stated intent of the proposed rules, yet allay concerns about unintended interpretations The second category involves changes to the proposal that should be made for more substantive reasons. Sprint-Florida's primary focus there is on the so-called "90 day credit back" proposal in rule 25-4.118(8). As to the other areas of concern to Sprint-Florida, the company offered the testimony of Dwane Arnold. Mr. Arnold's original testimony was limited to a few areas of concern -- the largest of which was the bill block option which the Commissioners deleted from consideration in this docket. Sprint-Florida's position on the areas other than the 90 day credit back provision remains as stated in Mr. Arnold's testimony the prehearing filings of January 15, 1998 and January 28, 1998 and two data request responses. Sprint-Florida still stands behind the positions and factual representations of those filings.

The rule proposals and associated issues are addressed as follows.

II. Specific FPSC Rule Proposals.

Issue 1. Should the Commission adopt Rule 25-24.845, Florida Administrative Code?

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[1]In these comments, Sprint-Florida uses the term "unauthorized carrier change" or "UCC" to denote the phenomenon that the Commission seeks to address.

Position: Sprint-Florida, does not oppose adoption of these proposed rule amendments if it is determined by the Commission that additional rules are necessary; however, as stated above, Sprint-Florida, Inc. believes that consistency in rulemaking across jurisdictions would be preferable.

Issue 2. Should the Commission adopt the proposed amendments to Rule 24-4.003, Florida Administrative Code?

Position: Sprint-Florida, does not oppose adoption of these proposed rule amendments if it is determined by the Commission that additional rules are necessary; however, as stated above, Sprint-Florida, Inc. believes that consistency in rulemaking across jurisdictions would be preferable.

Issue 3. Should the Commission adopt the proposed amendments to Rule 25-4.110, Florida Administrative Code?

Position: Sprint-Florida, Inc. does not oppose adoption of these rule amendments as proposed except that addition of the certificate number (Proposed rule 25-4.110 (10) (a)) and type of service notification to the bill (Proposed rule 25-4.110 (10) (b)) will provide little if any value, while adding significant cost. Technical corrections are needed.

Sprint-Florida submitted the testimony of Dwane Arnold on this issue and the Commission heard testimony from other parties that indicated that the cost of the proposal could outweigh the benefit sought to be derived. Sprint-Florida proposes that the option be given for companies to adhere to an FPSC requirement that the certificate number be provided prior to any LEC billing for an interexchange carrier. Mr. Arnold testified that this could be accomplished without having to incur the cost of designing into the bill format the actual printout of the certificate number. (Arnold Tr. 670). So long as the certification is a requirement for billing, the Commission's public protection mission is substantially fulfilled.

Two technical changes are also recommended to the proposed rule 25-4.110 based on discussion at the hearing. First, regardless of the form of the billing presentation changes being considered in proposed rule 25-4.110, the effective date should be changed to give companies time to design, implement and test modifications. At hearing, Staff witness Taylor suggested that six months after adoption would be a reasonable time. (Taylor, Tr. 175) Sprint-Florida would propose that Mr. Taylor's suggestion be adopted. Since the order noticing adoption of the rule is scheduled to be issued on May 29, 1998, the effective date of the rule and upon filing with the Secretary of State, any rules will become effective 20 days thereafter. Under these circumstances January 1, 1999 would be a reasonable deadline for making the billing system changes if ordered in the rule. If the proposed language is adopted, Sprint-Florida recommends the following revision[2]:

> (10) After January 1, 1999, 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:

The second technical change would be to proposed rules 25-4.110(13) to recognize that legitimate timing problems could occur between the physical switching of carriers and the printing of the bill. (Taylor, Tr. 178-179) For this reason, Sprint-Florida proposes that the following adjustments be made to the proposal if the concept of notification is adopted by the Commission. Sprint-Florida recommends the following revision:

> (13) *On the first bill after a change occurs ,if possible, and no*

[2]Changes are redlined; additions are in *italics*.

later than with the second bill. The customer must be given notice on the first or second page of his next bill in conspicuous bold fact type when his provider of local, local toll, or toll service has changed.

This adjustment will insure that a company does not become subject to sanctions if a change occurs prior to a billing cutoff date, but after the time for noticing of a change in providers can be included on the bill.

Issue 4. Should the Commission adopt the proposed amendments to Rule 25-4.118, Florida Administrative Code?

Position: Sprint-Florida, does not oppose adoption of the PIC change requirements in the proposed rule which should be implemented with the following exceptions:

Proposed rule 25-4.118 (2) (b) (2), Florida Administrative Code:

Position: Sprint-Florida also opposes the proposal that would require audio recording verification of inbound customer initiated calls because evidence suggests that very few slamming complaints result these calls. The cost of implementing such a requirement would far outweigh the benefits.

Proposed rule 25-4.118, (2) (d) 5, Florida Administrative Code:

Position: Sprint-Florida does not support the proposed rule that would require the customer to return a signed postcard in the event PIC change verification occurred via the welcome package option.

As testified to by Mr. Arnold, Sprint's experience with this process would indicate that implementation of this proposed rule would result in customer confusion and cause unnecessary delays in the PIC change process. Additionally, the process may result in customer dissatisfaction and make entry into the market difficult for competitive providers. Sprint-Florida believes that there would be a large percentage of consumers who would

not return the postcard for various reasons such as forgetting to send the card or not realizing the card must be returned to effect the change.

Proposed Rule 25-4.118, (8), Florida Administrative Code:

Position: Slamming claimants should only be relieved paying for that portion of the charges exceeding the rates of their previous carrier for calls actually incurred by the customer during the time they were assigned to an unauthorized carrier. As proposed the rule is unlawful and provides incentives for bogus slamming complaints.

Discussion:

The most troubling aspect of the proposed rules that will still be under consideration post-hearing is the concept that just by complaining, a customer could receive free service for 90 days (or more if billing is less frequently than monthly), when service is provided by an unauthorized provider. This proposal has several deficiencies. First, it is contrary to the concept that the customer making the calls intends to dial the number, complete a toll call and pay for the call. Second, the implementation of the proposed rule would occur with no definition of "slamming" or "customer of record." Third, the Commission is without adequate information to determine whether the proposal is cost-effective. Fourth, the proposed rule would amount to imposition of fines that are not authorized and in a manner that does not afford the accused due process. Fifth, the proposed rules would amount to the prohibited awarding of damages to customers. Finally, the proposal would likely lead to fraud, additional customer complaints before the FPSC and a virtual cottage industry of intercompany dispute resolution before the Commission.

As to the first problem (*quantum meruit* issue), no one has contended that the customer that is the victim of an unauthorized change is induced to make calls that they would not otherwise have made. The calls that would make up the proposed free service are all calls that the customer assumedly intends to make and has every intention to pay for. The existing rules recognize this and require that the incremental difference -- if any -- be absorbed by the offender. This places the customer in a made-whole position as far as the prices he pays for the services that the Commission has authority over. Any windfall enrichment of the customer by fiat of the FPSC would place the Commission in the position of either awarding damages to a customer or in redefining the price (in the form of value of service) for toll service. This damages aspect of the proposed rule was alluded to in staff testimony. (Erdman-Bridges, Tr. 73-74). Either purpose is not lawful. The Commission should refrain from adopting this proposal for this reason alone.

Assuming that it would be otherwise proper to implement the proposal, the lack of key definitions in the proposed rule will deprive parties of notice as to when a compensable UCC occurs. Abundant testimony was given that there is no agreement regarding whom the customer of record is in a household situation. (Taylor, Tr. 123-134; Poucher, Tr. 235-241). At hearing the terms "slam" and "slamming" were used with varying degrees of precision and intent: It is not clear when at is intended by the term. The phrases are not used in the proposed rule, but it is this activity that is sought to be prevented and punished. Sprint-Florida submits that if any penalties are to be provided for a UCC, that the definition provided by

Sprint-Florida witness Arnold is the most reasonable and objective:

> My definition of slamming would be the purposeful and intentional change of a customer's preferred carrier without their knowledge and consent.

(Arnold Tr. 669). This would remove inadvertent slams from creating potential liability. Of course, Sprint-Florida contends that the only authorities the agency has for imposing penalties are those authorized in s. 364.285, Fla. Stat., as discussed below.

Another reason why the 90 day free service proposal should not be adopted is that the agency is without any information regarding the cost to affected companies. The Statement of Estimated Regulatory costs (SERC) filed in the docket candidly indicates that the cost could be substantial, but that it is unquantifiable. The Commission has no record to the contrary. As discussed at hearing and under the proposal, customers who know, but choose to ignore the fact that the wrong carrier is providing service could make toll calls with impunity for free throughout the 90 day period. As drafted, the proposal would make LEC responsible for the unauthorized toll service for <u>both</u> customers if a transposition error occurred in a LEC initiated switch. Each customer would have service with an "unauthorized provider" One for the customer who made the unfulfilled request and one for the unwitting customer who had his provider changed. In no event would a willful or fraudulent UCC have occurred. Yet the LEC could be liable in an open-ended amount for potentially both customers' toll bills. The

Commission cannot quantify this liability and therefore cannot accurately assess the cost effectiveness of the proposal. Lack of such information does not allow the Commission to meet its obligations under s. 120.54(1)(d) to choose the alternative that is the least costly and achieves the regulatory objectives. Since the regulatory objective here is to cut down on UCCs and make customers whole, the proposal cannot be evaluated fairly against the existing rule and other measures that are clearly within the FPSC's authority.

The proposal would constitute an impermissible fine for activity that may not be willful. Staff witness Erdman-Bridges agreed with Commissioner Garcia that the proposed rule could be viewed as punitive, i.e. fines. The following exchange is illustrative:

> COMMISSIONER GARCIA: To see [sic] degree, though, the concept of the rule is sort of to punish the companies also from doing this again.
>
> WITNESS ERDMAN-BRIDGES: That's correct too. That's a good point.

(Tr. 75). Commissioner Clark also recognized that the proposal involved the concept of imposition of sanctions in a discussion of staff discretion to define the "customer of record" on a case-by-case basis:

> COMMISSIONER CLARK: Let me just say that's an important point. *If you are going to apply sanctions*, I think you have to be extremely careful as to whether or not the rule has been violated and it can't be left to discretion. In this one instance we're going to say that the spouse could authorize it, and in another one we're going to say that they can't. But I think you can have

> different requirements for residential and different requirements for business. I think there's nothing wrong with saying to a business you need to indicate to the phone company who has the authority to change -- make any changes to your phone service. And you might have a different standard for residential. But I'm -- *the fact that we're going to impose sanctions*, and the fact we're going to, I hope, be very vigorous in our enforcement of the rule requires us to be precise.

(Tr. 133-134) (Emphasis added). What is clear in the proposal is there are no standards, nor is a hearing contemplated.

Even if the action that results in a UCC were to be willful, the monetary award of free service would not fall within the provisions of s. 364.285, Fla. Stat. which is the only authorization for the Commission to impose fines or sanctions. Such fines can only be imposed after an opportunity for hearing. That statute allows fines to be imposed only if a willful violation occurs. Even if the FPSC concludes that it does have the authority to impose the open-ended "fines" under this section, the question exists as to whether the procedure for imposition comports with due process.

In *Cherry Communications v. Deason*, 652 So. 2d 803 (Fla. 1995) the Florida Supreme Court noted that in a quasi-judicial disciplinary proceeding, that stated that the normal functions of staff must be bifurcated into an advisory and prosecutorial role. Although *Cherry* involved a license revocation, imposition of fines, being disciplinary in nature would seem to fall within the *Cherry* holding. Of course, the exact nature of staff involvement in the determination under proposed rule 25-4.118(8) is not clear. Nevertheless, to the extent that the staff would make determinations of whether the crediting of toll charges occurs within 45 days, the proposed language

would seem to imply an adjudicatory role. This does not seem to comport with the thrust of the *Cherry* holding. If the staff is to have a role, it cannot involve initial determination of customer credits. If the Commissioners are to be involved, the credits cannot be finally imposed within the 45 days, if ever. If nothing else, the Commission will likely be creating hundreds of hearing opportunities.

To the extent that the proposal is intended to provide compensation to customers for their time or inconvenience in straightening out UCC problems, the awarding of damages would be occurring. The record indicates that such compensation is one of the purposes behind the rule proposal. (Erdman-Bridges, Tr. 74). Clearly a purpose of the proposed rule would be to approximate the time -- that admittedly has a value -- spent by the customer. The Commission has consistently recognized that is has no authority to award damages. In the BellSouth arbitration cases (Dockets 960833-TP, 960846-TP and 960916-TP) in Order No. PSC-96-1579-FOF-TP, issued December 31, 1996, the Commission stated:

> We lack the authority to award money damages. *Southern Bell Telephone and Telegraph Company v. Mobile America Corporation*, 291 So.2d 199, 202 (Fla. 1974). If we cannot award money damages directly, we cannot do so indirectly by imposing a liquidated damages arrangement on the parties.

Order No. PSC-96-1579-FOF-TP. Any "damages" that the FPSC does have authority to award would be necessarily limited to the amount of any overcharge. Current rules recognize this.

Virtually every industry commentator expressed grave concerns about the potential for fraud and abuse if the credit back is made to the customer. Sprint-Florida submits that the elimination of one set of problems (slamming complaints) will be replaced (if at all) with a whole new set of disputes regarding claims between companies and customers and companies and companies. This is not to suggest that the Commission should shy away from a solution because the task would be difficult. Although there appeared to be some consensus that the number of complaints could increase rather than decrease. Mr. Taylor did express a hope that the measure would eliminate slamming complaints. (Taylor, Tr. 148). Sprint-Florida would agree that this could occur if the measure was legal and the standards for the credit back could be objectively and fairly spelled out. What's more likely is that the possibility of thousands of dollars in gain to customers could be an overwhelming and powerful incentive for some to game the system.

In sum, Sprint-Florida contends that the legal deficiencies of the 90 days credit back proposal coupled with the enormous potential for fraud should cause the FPSC to be hesitant to attempt to implement this particular provision. There are other proposals in this docket that are on solid legal ground that will go a long way toward reducing UCCs. Implementation of a draconian measure that may ultimately lead to constitutional claims of confiscation will likely entangle the Florida Commission in lengthy proceedings that will detract from the agency's efforts to eliminate slamming problems.

Proposed Rule 25-4.118(13) (technical change)

A technical change is needed to clarify the intent that the documentation to be provided pursuant to a customer inquiry must come from the party that submitted the change request. See discussion by Staff witness Taylor. (Taylor, Tr. 177-178). Sprint-Florida recommends the following revision to proposed rule 25-4.118(13):

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

Proposed Rule 25-4.118 (14), Florida Administrative Code:

Position: Sprint-Florida believes that for LECs there is no evidence in this record that demonstrates that additional answer time requirements would be cost effective in addressing slamming and cramming. Clearly, there is no evidence to support the value of twenty-four hour mechanized answering.

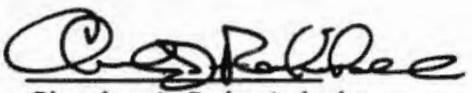
Issue 5. Should the Commission adopt the proposed amendments to Rule 25-24.490, Florida Administrative Code?

Position: Sprint-Florida takes no position on this issue.

III. Public Counsel/Attorney General Proposals.

Sprint-Florida urges this Commission to refrain from adopting the proposals of the Public Counsel and Attorney General except to the extent they are included in the proposals that the Commission has proposed and then only to the extent that the parties have not demonstrated legal or practical problems with the proposed rules. Furthermore, to the extent that the Commission has not performed an SERC on the proposals that are separate and distinct from the FPSC proposals, adoption of these proposals may not meet the requirements of the statute.

Respectfully Submitted,



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DOCKET NO. 970882-TI

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DIVISION OF APPEALS

March 5, 1998

Via Overnight Delivery

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Re: ***Docket No. 970882-TI***

Dear Ms. Bayo:

State Communications, Inc. ("SCI"), by undersigned counsel, respectfully submits its positions on the issues in this docket as stated below.

Statement of Basic Position

State Communications, Inc. ("SCI") joins the Commission in its ongoing commitment to consumer protection, particularly its initiative to curb slamming. SCI submits that part of the solution must be increased prosecution of offenders. SCI also supports the Commission's initiative to create rules that will protect against slamming and define the duties of all parties involved, including consumers. SCI urges the Commission to except checks combined with LOAs from the prohibition against combining LOAs with inducements. LOA/Checks, with proper disclosures, are consumer-friendly, economic and useful marketing tools. The Commission rarely receives complaints due to LOAs combined with checks and has received no evidence in this proceeding to support a finding that checks are anything but acceptable and valuable marketing tools.

Issue 1: Should the Commission adopt new rule 25-24.845, Florida Administrative Code, as proposed by the Commission at the December 16, 1997, agenda conference?

Position: SCI does not oppose the proposed changes.

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Issue 2: Should the Commission adopt the proposed amendments to Rule 25-4.003, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

Position: SCI does not oppose the proposed changes but urges the Commission to add a definition of "unauthorized provider change."

Issue 3: Should the Commission adopt the proposed amendments to Rule 25-24.110, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

Position: SCI does not oppose the proposed changes that are still included in this proceeding, but urges the Commission to consider the positions and comments of other carriers (such as AT&T, MCI, and BellSouth, to name a few) who have done cost and feasibility analyses of the proposed changes.

Issue 4: Should the Commission adopt the proposed amendments to Rule 25-24.118, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

Position: No, instead the Commission should make the following changes:

25-4.118(4) The Commission should not prohibit carriers from using non-deceptive LOAs combined with checks. The Commission should adopt language that largely mirrors the FCC's rules (47 C.F.R. §64.1150(d)) to ensure proper disclosure.

25-4.118 (5)(8) The Commission should require carriers to rerate charges.

Issue 5: Should the Commission adopt the proposed amendments to Rule 25-24.490, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

Position: SCI does not oppose the proposed changes.

Respectfully submitted,

Marcy Greene

Counsel for State Communications, Inc.

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DOCKET NO. 970882-TI

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App/Cellular

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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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., Definitions; 25-4.110, 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-TI Filed: March 16, 1998

BRIEF OF TELECOMMUNICATIONS RESELLERS ASSOCIATION

Pursuant to rule 25-22.056, Florida Administrative Code, the Telecommunications Resellers Association (TRA), files its Post-Hearing Statement of Issues and Positions and its Post-Hearing Brief.

PRELIMINARY STATEMENT

TRA is a national trade association representing more than 650 members, including 29 Florida-based members. TRA members offer a wide variety of interexchange, local, and enhanced competitive telecommunications services and play a vital role in providing desirable, competitive, value-added telecommunications services through Florida. Many of TRA's members are smaller companies that would be disproportionately affected by unnecessary increases in regulatory costs.

TRA applauds the Commission's efforts to minimize unauthorized carrier changes. However, as the record indicates most slamming complaints are caused by a relatively small number of carriers who utilize misleading and fraudulent marketing

practices. (Tr. 489). As the witness for MCI developed during the hearing, many "PIC disputes" of the types that have been discussed in the course of this proceeding are not "slams" at all, but instead relate to household disputes, changes of mind, clerical errors. . . . (Tr. 520-521). According to the witness, typically fewer than half of complaints involve circumstances of unauthorized changes. (Tr. 520-521).

Because customers ultimately bear the costs of regulation, it is crucial to adopt and enforce measures that are designed to address the problem effectively, without increasing costs unnecessarily or creating problems that would be detrimental to customers' interests. To that end, TRA filed Comments on June 18, 1997, and again on January 23, 1998. The purpose of TRA's Comments was to identify particular measures, which, while well intended, would serve to dampen competition and raise customers' costs without contributing meaningfully to the attempt to curb the practice of unauthorized carrier changes. In its Comments, TRA emphasized -- and wishes to emphasize again -- that strict enforcement activities directed against unscrupulous carriers who deliberately and knowingly deceive or mislead customers represent the most effective solution to complaints of unauthorized carrier changes.

ENDORSEMENT OF FCCA'S ALTERNATIVE

At the time of the prehearing conference, the Florida Competitive Carriers Association ("FCCA") submitted an alternative rule proposal to the rule proposed by the Commission. TRA, which is a member of FCCA, endorses the FCCA package as an approach that would accomplish the Commission's objectives at lower cost. To be clear, TRA regards the FCCA submission as the <u>minimum</u> changes that should be

made to the proposed rule. In its comments, TRA has identified additional measures not encompassed by the FCCA alternative that would raise costs without adding meaningful protection to customers. In this Brief, TRA will develop its separate points as well as some of those that are encompassed by the FCCA alternative.

SUMMARY OF TRA'S POSITIONS

For reasons set forth in this Brief, the Commission should reach the following conclusions regarding its proposed rules:

1. The requirement of a specific "official" PIC-freeze form that carriers must keep "in inventory" would be counterproductive and should be deleted from the rule.

2. Because implementation of a PIC freeze requires a Carrier Identification Code (CIC), which is not issued to a non-facilities-based reseller, the rule should be clarified to state that PIC freezes are required only when technically feasible.

3. Requiring the carrier's certificate number on the customer's bill would increase costs to carriers and ultimately to customers without achieving any benefits to customers.

4. Requiring a carrier to notify a customer that the customer's carrier has been changed through a letter and/or statement on the bill would require state-specific costs that would be unwarranted in view of separate, earlier verification procedures.

5. The proposed 90-day crediting mechanism is excessive and would create new problems in the form of incentives for customers to game the system.

6. The proposed "mandatory call completion" standards are unnecessary in a competitive environment.

ARGUMENT

ISSUE 1

SHOULD THE COMMISSION ADOPT NEW RULE 25-24.845, F.A.C.?

TRA: "No position."

ISSUE 2

SHOULD THE COMMISSION ADOPT AMENDMENTS TO RULE 25-4.003, F.A.C.?

TRA: "TRA does not oppose the definition of "PIC-freeze" in proposed rule 25-4.003(41), so long as it is made clear that a carrier is required to offer a PIC freeze only when it is technically feasible to do so. Generally, non-facilities-based resellers cannot offer a PIC-freeze because they are not assigned Carrier Identification Codes."

Proposed rule 25-4.003(41) defines "PIC-Freeze" as "the customer authorization to prohibit a change of any selected provider as expressed on Form PSC/CAF 2 (XX/98)." TRA does not oppose this definition, but believes it does require clarification so that it is clear that PIC-freezes are to be made available only where they are technically feasible.[1]

[1] TRA further disagrees with the use of this form, as discussed below.

TRA is concerned that the proposed definition may implicitly suggest that PIC-freezes must be made available in all circumstances, including when doing business with a reseller. The Commission must recognize that a Carrier Identification Codes (CIC) is necessary to implement a PIC-freeze. Because non-facilities-based resellers do not purchase Feature Group D access from local exchange carriers, they are not, nor can they otherwise be, assigned CICs. Therefore, for the most part, these resellers are technically incapable of offering a PIC-freeze. The rule should not explicitly or implicitly require them to do something they cannot do.

ISSUE 3

SHOULD THE COMMISSION ADOPT AMENDMENTS TO RULE 25-4.110, F.A.C.?

TRA: "No. The Commission should not require the certificate number on the bill. It should allow alternative ways to inform customers of the PIC-freeze option. Notice of provider change should not be required on an individual bill; rather, verification procedures already in place should be employed."

TRA will address proposed rule 25-4.110 in the order the disputed items appear in the proposed rule.

Certificate Number on Bill (Rule 25-4.110(10)(a))

As noted in TRA's introductory remarks, customers pay the costs of regulation. Accordingly, the Commission should weigh the cost of additional regulation against any consumer benefit associated with the additional regulation. Such an analysis must be applied to the proposal contained in rule 25-4.110(10)(a), which would require all bills to display the company's certificate number.

There seems to be no dispute that this requirement would impose significant costs on the industry. Carriers noted that they would have to segregate Florida customers and write separate programs with additional coding to put the certificate number on the Florida bill (Tr. 309) -- all at high expense. The Commission's own Staff recognized that "this proposal will result in substantial cost to implement and maintain."[2] For smaller carriers (such as many TRA members), who depend on contract billing companies for nationwide billing, this would be an especially costly and difficult requirement.

The Staff states that if this proposal reduces or eliminates slamming, the additional costs may be warranted. The problem is that the inclusion of the certificate number, at a substantial cost to carriers, will accomplish absolutely nothing for the consumer.[3] It would require costly system modifications, but would not add any information that would be meaningful to a consumer. (Tr. 491, 509).

If the bill has the carrier's name on it, the consumer (and the Commission, if it receives a complaint), can easily identify the carrier and proceed with a complaint, if warranted. Also, if the bill (or a complaint) contains the name of the carrier, the Commission Staff can readily ascertain whether the provider has an existing certificate. (Tr. 165). To require the carriers to place certificate numbers on the bills

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[2] Revised Statement of Estimated Regulatory Costs, p. 15.

[3] Staff witness Taylor admitted that he does not even know if most consumers know what a certificate number is. (Tr. 142). Mr. Taylor also admitted that ultimately the consumers would pay for the costs of putting this information on the bill. (Tr. 143, 154).

would merely create, at high cost, a redundant and therefore unnecessary means of locating the certificate numbers or establishing that the carrier has no certificate.

Written Notice of PIC-Freeze Availability and Form Retention (Rule 25-4.110(12))

This proposed rule would required the customer to be notified on the customer's first bill and annually thereafter that a PIC-freeze is available. If the customer is interested, he/she would be required to get the PIC-freeze form from the carrier. These two requirements would impose costs on carriers which far exceed any benefit to consumers. The proposal would require carriers to institute programming changes necessary to first isolate Florida customer bills and then include a notice on the bill itself. The proposal creates a highly state-specific requirement which will disproportionately impact carriers with more limited intrastate operations. It is possible that programming costs might exceed total Florida intrastate revenues for some carriers. The use of billing inserts would be an even greater expense. All these costs are unnecessary when alternative disclosure methods are available.

As an alternative, the Commission should permit carriers to inform customers orally or in writing that PIC-freezes are available at the time the new customer subscribes to the carrier. Customers could also be reminded of the PIC-freeze option when they contact a carrier's customer service representative. PIC-freeze authorization could be incorporated into the LOA, or it could be communicated and verified in ways consistent with other methods of presubscription verifications. Carrier-developed forms could also be used. These options would eliminate the need

to reprogram billing systems while still letting customers know that a PIC-freeze is available.

The proposed requirement that carriers retain certain Florida-specific PIC-freeze forms would also impose a financial and operational burden on carriers. The cost of distributing, verifying and retaining the forms could be substantial. Any time a carrier must maintain forms and ensure it has a current version of the forms, administrative costs increase. (Tr. 304). While the use of such a form may be one way to institute a PIC-freeze, alternatives should be permitted.

Inflexible PIC-freeze confirmation procedures are expensive and impose unwarranted administrative burdens. These costs could be avoided by giving carriers the other alternatives described above.

Notice of Provider Change (Rule 25-24.110(13))

This proposed rule would require that the customer be given notice on the first or second page of his bill in conspicuous type when his provider of local, local toll or toll service has changed. Like the PIC-freeze requirements discussed above, this requirement would impose state-specific requirements and additional costs. The costs would be heightened by the requirement that individual notices appear on individual bills. Personnel costs associated with identifying customers who must receive the notice, coupled with programming costs to include individual customer disclosure (assuming such individual notices can ever be programmed) could exceed $30.00 per customer.

When this proposal is viewed in concert with the requirements for PIC-change verification in rule 25-4.118, it is unclear why additional disclosure should appear on individual bills. Little is gained by requiring carriers to assume the additional expense and burden of informing subscribers that their service has changed when the Commission is instituting effective selection verification procedures to ensure that customers' subscriptions are verified by procedures which require first-hand customer involvement. The notice of change required in this proposed rule would be duplicative as well as costly to implement and manage. It should be eliminated from the rules.

ISSUE 4

SHOULD THE COMMISSION ADOPT AMENDMENTS TO RULE 25-4.118, F.A.C.?

TRA: "No. The Commission should not adopt that portion of the rule which requires the crediting of all charges for 90 days and charges in excess of the preferred carrier for up to 12 months. This does much more than make the customer whole and encourages "gaming" of the system. The Commission should not require an additional letter notifying a customer of a service change nor should it require the receipt of a written LOA before a change can be instituted. Finally, in a competitive environment, the Commission should not impose service standards on carriers."

TRA opposes several proposals related to rule 25-4.118. TRA will discuss each in turn.

Credit all charges for first 90 days of first three billing cycles and credit charges that exceed rates of preferred company for up to 12 months (Rule 25-4.118(8))

Possibly one of the most controversial proposed revisions is rule 25-4.118(8). This rule would require charges for all unauthorized PIC changes and all charges billed on behalf of the unauthorized provider for the first 90 days or first 3 billing cycles, whichever is longer, to be credited to the customer. It also requires that for up to 12 months charges over the rate of the preferred company be credited.

The record is replete with examples of how such a rule could be used by customers to gain free service. (See, Tr. 76, 89, 90, 332, 555). For example, individuals who want to defraud legitimate carriers could change providers frequently, alleging that their account had been changed without authority after making hundreds of "free" calls. Even Staff recognized that this rule could result in a customer receiving more money than the direct cost incurred to rectify a slamming situation. (Tr. 73). Further, companies faced with the prospect of lost revenue would be forced to vigorously fight every slamming complaint, greatly increasing transaction and regulatory costs. (Tr. 332). The proposed rule would also require detailed research on every dispute (Tr. 555). Currently, carriers use a "no fault" approach, in which the customer is simply switched back to the carrier of choice. The proposed rule would probably end the no fault approach. (Tr. 531).

Additionally, such a rule discourages a consumer from reviewing his/her bill and encoureges delay in reporting PIC disputes. (Tr. 555). Consumers must take some responsibility for knowing their service choices and providers. (Tr. 482).

TRA believes that no provider should enrich itself through willful slamming; however, neither should customers be able to "game" the system to receive free services. The customer should be made whole; he/she should have no incentive to use the system to make money.

Letter notifying customer that service will be provided (Rule 25-4.118(12))

This rule would require that upon completion of the verification process, the provider send a letter notifying the customer that it will be providing service. This second requirement of written notice should be eliminated because it is costly and unnecessary. Such after-the-fact letters will do nothing to prevent slamming but will cause carriers to incur significant cost that customers will ultimately bear.

Provide copy of authorization to customer (Rule 25-4.118(13))

This proposed rule would require the carrier to provide the switching customer with a copy of the authorization it relies upon for the change. It is unclear how this rule is intended to work when a new customer uses telemarketing or electronically changes providers. What is clear is that the proposed rule will result in delay in quickly making the customer-desired change. (Tr. 557).

If the rule is intended to require written LOAs in <u>all</u> circumstances, it obviates other appropriate confirmation methods. If the rule is supposed to require written confirmation only upon request, it will have the unintended effect of requiring written confirmation and undermining the other types of confirmation provided for in the rules.

To clear up the confusion the proposed rule would cause, the Commission should require evidence of "verification," as opposed to a "copy" of the authorization.

Answering Incoming Calls and Responding to Complaints (Rule 25-4.118(14))

TRA suggests that a mandated call completion requirement, such as that set forth in this proposed rule, is unwarranted in a competitive environment.[4] In a competitive environment, the quality of customer service distinguishes one company from another. Service standards should be market driven. (Tr. 626). If a company is unresponsive, the consumer will find another carrier. This requirement should be eliminated from the rules.

If the Commission does adopt the service standard proposed in this rule, it should be clarified. As currently proposed, there is no indication of the time period over which the 95% call completion standard must be maintained. Is it during highest calling periods, over 24 hours, or is some other standard meant? With no time period included in the rule, the standard is unworkable and unenforceable.

ISSUE 5

SHOULD THE COMMISSION ADOPT AMENDMENTS TO RULE 25-24.490, F.A.C.?

TRA. "No position."

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[4]Additionally, IXC call volumes are subject to extreme fluctuations resulting from activities in the competitive marketplace, (Tr. 557), which make a call completion standard problematic.

CONCLUSION

TRA supports the Commission's effort to bring strong, effective enforcement measures to bear on providers who willfully and knowingly abuse customers in unscrupulous efforts to obtain their business. Adoption of TRA's suggestions discussed above will ensure that any new regulatory requirements do not unnecessarily raise costs to providers (and ultimately end users) without diminishing the effectiveness of the Commission's requirements.

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