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February 5, 2002

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.: 010774-TP

Dear Ms. Bayo:

On behalf of the Florida Competitive Carriers Association (FCCA), enclosed for filing and distribution are the original and 15 copies of the following:

- Comments of the Florida Competitive Carriers Association.

Please acknowledge receipt of the above on the extra copy and return the stamped copies to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

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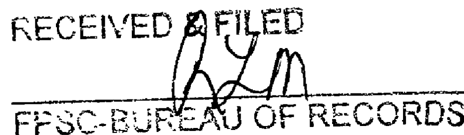

DOCUMENT NUMBER-DATE
01398 FEB-5 02
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Citizens of the State of Florida to initiate rulemaking which will require telephone companies to give customers reasonable notice before customers incur higher charges or change in services, and allow them to evaluate offers for service from competing alternative providers.
______________________________/

Docket No. 010774-TP

Filed: February 5, 2002

Comments of the Florida Competitive Carriers Association

Pursuant to the request of Staff at the last workshop held in this matter, the Florida Competitive Carriers Association (FCCA), files these comments regarding proposals for a rule which would require advance notice of rate changes.

Introduction

This proceeding was initiated by the Office of Public Counsel (OPC). OPC, with little support for his proposal, requested that the Commission adopt a rule that would set forth in great detail how, when and by what means carriers would be required to notify customers in the event of a rate increase or decrease. Such a rule would impose great expense on carriers, which would ultimately be passed on to consumers. After OPC filed its petition and the Commission decided to proceed to rulemaking, a small working group met several times to discuss alternatives.

No Rule is Needed

Chapter 120, Florida Statutes, governs the Commission's rulemaking process. It is clear that the agency may not adopt a rule which imposes excessive costs on the industry in relation to the goal

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which the agency is attempting to accomplish.[1] In this case, there has been absolutely no demonstration that any type of rule is needed. This appears to be a "solution in search of a problem." The proposals would impose unnecessary costs upon an industry that is already in great financial distress.

During numerous meetings with Commission Staff and OPC, questions were invariably raised as to the magnitude of any perceived problem. Staff furnished a "list of complaints" it had received. A brief review of this document clearly shows that any problem is "minuscule" at best. In a three month period, 19 complaints were listed. In at least one case, notice was given and the customer still complained. Other complaints deal with services (such as calling cards) that would not even be covered by the rule proposals. Still others don't even give enough information to discern whether the complaint is legitimate. But regardless of the legitimacy of a complaint, 19 complaints is a scant number to use as a basis to impose expensive regulation on the entire telecommunications industry. But most important is Staff's comment that: "No complaints in this regard have been received since August 10, 2001." Clearly, no rule is justified based on current facts and circumstances.[2]

For the few customers who are unhappy with the type or timing of notice they receive from their current carrier regarding rate changes, they may simply exercise the prerogative of the competitive marketplace and *change* providers. This is how the competitive marketplace should

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[1]Section 120.52(8)(g), provides that an agency has engaged in an "invalid exercise of delegated legislative authority" when it adopts a rule which "imposes regulatory costs on the regulated person . . .which could be reduced by the adoption of less costly alternatives...." See also, §§ 120.54(1)(d), 120.541(1)(b).

[2]FCCA also suggests that such a rule may contradict and be inconsistent with the Commission's tariffing requirements.

work. Rather than the imposition of costly regulation which would require changes to billing systems and other processes and procedures already in place, an unhappy consumer can simply find a provider who provides notice in the manner and time that the customer wants.

OPC's Proposed Rule Should Be Rejected

FCCA submits that under no circumstances should the Commission adopt the rule proposed by OPC. The rule is incredibly prescriptive–detailing exactly the time and manner in which information regarding a rate change must be given. In addition, it is so prescriptive as to require each carrier to use identical language and a particular font size. As the Commission is well aware, innovation and carriers' ability to differentiate themselves from others is the life blood of the competitive process. Requiring all carriers to provide notice in a certain way is unnecessary and stifles innovation. The rule proposed by OPC would be exorbitantly expensive in relation to the perceived problem it seeks to correct. It is a draconian measure without basis in law or fact and must be rejected.

Staff's Draft Rule Is Moving in the Right Direction

FCCA reiterates its position that **no** rule is needed in this situation. However, if the Commission goes forward with a rule, it should ensure that any such rule is highly flexible and permits innovation. Carriers need to keep costs as low as possible and allow for consumer preference. Any rule should not interfering with a carrier's ability to serve a particular market segment as certain customers may wish (such as giving notice via email or a website). To that end, the Staff draft rule is far preferable to that proposed by OPC. Staff's proposal, which takes the approach of a "safe harbor," is similar to the approach taken by the Commission's slamming and cramming rules. It prescribes certain measures, which if followed by the carrier, guarantee compliance with the rule. In

addition, it permits other approaches to be taken as well. This approach is far superior to the prescriptive approach of the OPC rule.

However, even the Staff's approach is too broad and should be narrowed. To that end, FCCA suggests that the rule be limited to "residential subscribers" not "affected subscribers" (see line 5 of the draft rule). It is FCCA's understanding that generally it is the residential consumer that this rule is aimed at and therefore, any such rule should be so limited.[3] FCCA looks forward to continuing to work with Staff and OPC in this docket in a cooperative manner to reach a mutually satisfactory resolution.

CONCLUSION

No justification has been put forward for the type of rule under consideration in this docket. FCCA maintains that no rule is needed. However, to the extent that the Commission does go forward with a rule, it should be as flexible as possible allowing carriers to be innovative and differentiate themselves in the market.

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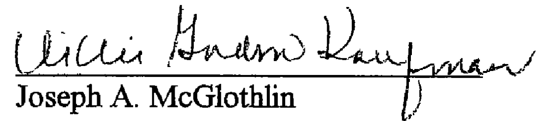
[3]The Telecommunications Consumer Protection Act defines a "customer" as a residential subscriber. §364.602(3).

WHEREFORE, the FCCA submits these comments on the two rule proposals and requests that the Commission adopt no rule in this matter and close this docket.



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Attorneys for the Florida Competitive Carriers Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing the Comments of the Florida Competitive Carriers Association has been furnished by (*) hand delivery or by U. S. Mail on this 5th day of February, 2002, to the following:

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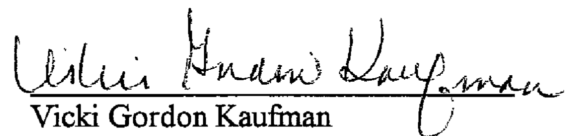

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