

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: JANUARY 9, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (BROWN, CIBULA) *SMC. DS*  
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (MOSES) *[Signature]*  
DIVISION OF CONSUMER AFFAIRS (DURBIN) *[Signature]*  
DIVISION OF ECONOMIC REGULATION (HEWITT) *[Signature]*

RE: DOCKET NO. 010774-TP - 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.

AGENDA: 01/21/03 - REGULAR AGENDA - RULE ADOPTION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

RULE STATUS: ADOPTION SHOULD NOT BE DEFERRED

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\010774#2.RCM

CASE BACKGROUND

On May 22, 2001, the Citizens of the State of Florida, through the Office of Public Counsel (OPC), filed a petition to initiate rulemaking. OPC proposed that the Commission adopt rules requiring telephone companies to give customers actual notice before implementing any change in rates or other terms and conditions of service. By Order No. PSC-01-1344-PCO-TP, issued June 19, 2001, the Commission granted OPC's petition and Commission staff proceeded with the rule development process.

Rule development workshops were held on October 24, 2001, and January 15, 2002, and staff also held two small informal group

DOCUMENT NUMBER-DATE

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PSC-COMMISSION CLERK

meetings, on November 28 and December 18, 2001, with the representatives from the different sectors of the telecommunications industry and OPC. Although the workshop participants did not reach a consensus on a draft rule proposal, staff drafted a proposed rule based upon the comments and concerns raised at the meetings. The Commission addressed the staff's draft proposal, as well as OPC's original draft rule proposal at its October 1, 2002, Agenda Conference. After hearing comment from the participants and revising the staff's draft to reflect its response to those comments, the Commission decided to propose Rule 25-24.491, Notice to Customers Prior to Increase in Rates or Charges, to require interexchange telecommunications companies to provide reasonable prior notice to their customers of any increase in price or changes in terms and conditions of service that would increase the customers' cost of service.

The Commission published its Notice of Rulemaking in the October 18, 2002, Florida Administrative Weekly. The Notice required that any comments or requests for hearing must be filed with the Commission by November 8, 2002. While the Commission did not receive any request for a rule hearing on the proposed rule, it did receive written comments from AARP, and a letter from the Joint Administrative Procedures Committee (JAPC) (Attachment B) asking for clarification of the term "material" as used in subsection (1) of the rule. This is staff's recommendation on whether to adopt the proposed rule with changes in response to the comments from AARP and the letter from JAPC. We note that several participants<sup>1</sup> in the rulemaking process filed responses to AARP's comments, but since the responses were not filed by November 8, 2002, as the Commission's Notice of Rulemaking required, and because the Uniform Rules of Procedure do not provide for responses to written comments on proposed rules, staff has not considered those responses in its recommendation.

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<sup>1</sup> Verizon Florida, Inc., Verizon Long Distance and Verizon Select Services collectively filed a response to AARP's comments on November 18, 2002. Sprint, AT&T Communications, MCI Worldcom, and the Florida Competitive Carriers Association joined in Verizon's response. Sprint filed its joinder on November 27, 2002, and the other participants filed their joinder on November 21, 2002.

DOCKET NO. 010774-TP  
DATE: January 9, 2003

The Commission has jurisdiction in this matter under sections 120.54, 364.0252, and 364.19, Florida Statutes.

DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission adopt the changes to proposed Rule 25-24.491, Florida Administrative Code, that AARP has suggested?

**RECOMMENDATION:** No. The Commission should adopt the proposed Rule without the changes suggested by AARP. (BROWN, CIBULA, MOSES, DURBIN, HEWITT)

**STAFF ANALYSIS:** In its comments AARP suggests three changes to the Commission's proposed rule. First, AARP suggests that the rule should apply to all telecommunications carriers, not just interexchange carriers. AARP contends that there may be some local telecommunications providers that do not currently provide notice of price increases, and as local competition continues to develop in the state, customers who switch to new carriers should be provided the same consumer protection that this rule provides for long distance customers. Second, AARP suggests that the time for electronic notification of price increases to customers who receive electronic billing should be increased from 7 to 15 days. AARP believes that the 7-day time period may be too short, because some customers may not read their e-mail over the weekend. AARP contends that those customers might not have sufficient time to make adjustments or changes to their service before the price increase occurred. Third, AARP suggests that the Commission should prescribe one specific format for notification, rather than only requiring that the notice be "clear and conspicuous". AARP contends that the rule's requirement may not be specific enough to catch the attention of customers, and therefore the rule should require minimum font size for the notice language. AARP states that the establishment of reasonable minimum standards is not likely to be cost prohibitive.

The Commission considered these issues at its Agenda Conference in October, when it decided to propose the present rule. The Commission determined that there was no evidence that local exchange companies were raising their prices without prior notice to customers, and therefore no reason to apply this rule to them at this point. AARP has not provided any additional evidence on this point. Its concerns are only speculative. The Commission also considered sufficient the 7-day time period for electronic notice to customers receiving electronic billing; and AARP has not provided any evidence that it will not be sufficient. Again, its concerns are only speculative; and staff would point out that the

DOCKET NO. 010774-TP  
DATE: January 9, 2003

rule only provides that the 7-day electronic notice will be presumed reasonable under the safe-harbor provision of the rule. That presumption can be overcome in cases where the circumstances of the case show otherwise. The Commission also considered the format and font size issue when it proposed the rule. It determined that the "clear and conspicuous" language was definite enough to inform companies that notice must be provided in a manner that customers would see, but flexible enough to accommodate companies' different billing and notice formats. AARP has provided no concrete information to show that the present language will not be adequate or that a required format would not impose additional unnecessary costs on companies, particularly those that are already providing notice of price increases to their customers. When the rule is effective, and the Commission has experience with its operation, the Commission can expand the application of the rule, the notice time periods presumed reasonable, or the format requirements, if experience shows that the provisions of the rule are not accomplishing its purpose. For these reasons, staff recommends that the Commission should adopt proposed Rule 25-24.491, Florida Administrative Code, without the changes AARP proposes.

**ISSUE 2:** Should the Commission adopt a change to proposed Rule 25-24.491, Florida Administrative Code, to address JAPC's letter requesting clarification.

**RECOMMENDATION:** Yes. The Commission should adopt proposed Rule 25-24.491 with changes, deleting the word "material" from subsection (1) of the rule. (BROWN, CIBULA, MOSES, DURBIN, HEWITT)

**STAFF ANALYSIS:** Subsection (1) of Rule 25-24.491, Florida Administrative Code, "Notice to Customers Prior to Increase in Rates or Charges," provides as follows;

(1) All interexchange telecommunications companies shall provide reasonable notice of any increase in intrastate telecommunications rates, or any changes in terms or conditions that would cause a material increase in customer charges, to each of their affected residential and single-line business retail subscribers, prior to implementation of the increase.

In a letter dated November 12, 2002, JAPC asked the Commission staff to describe what would constitute a "material" increase in customer charges that would trigger the notice requirement of proposed Rule 25-24.491. JAPC's question calls to mind the provisions of Florida's Administrative Procedures Act prohibiting the adoption of rules that are vague or arbitrary or fail to establish adequate standards for agency decisions. See in particular section 120.52(8), Florida Statutes, which defines "invalid exercise of delegated legislative authority", in pertinent part, as follows:

(8) 'Invalid exercise of delegated legislative authority' means action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies. . . .

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(e) The rule is arbitrary or capricious;

(f) The rule is not supported by competent substantial evidence. . . .

Staff has reviewed the wording of subsection (1) of Rule 25-24.491, in light of JAPC's letter and section 120.52(8), Florida Statutes, and recommends that the Commission delete the word "material" from that subsection. The rule as a whole clearly intends that any increase in prices or any change in terms or conditions of service that increase the cost of service to a customer should be noticed to customers in advance. The use of the word "material" to qualify changes in terms or conditions that need to be noticed introduces ambiguity into the rule and is difficult to define in this context. While the companies argued at the Commission's October 1, 2002, Agenda Conference that the word "material" should remain in the rule, our review of that discussion does not reveal any evidence of, and we have been unable to identify, any real circumstance where an increase in the overall cost of service to a customer would be "immaterial" to the customer. Further, a change in the cost of service that might not seem "material" to one customer might seem quite "material" to another. Staff therefore believes that the rule is clearer, and the intent of the rule more evident, if the word "material" is removed.

DOCKET NO. 010774-TP  
DATE: January 9, 2003

**ISSUE 3:** Should the rule be filed for adoption with the Secretary of State and the docket be closed?

**RECOMMENDATION:** Yes, a Notice of Change should be published in the Florida Administrative Weekly and the rule filed with the Secretary of State. (BROWN, CIBULA)

**STAFF ANALYSIS:** If the Commission approves the changes to Rule 25-24.491, a notice of change must be published. After the notice is published or if the rule is adopted without changes, the rule may be filed for adoption with the Secretary of State and the docket may then be closed.

Attachments

3  
4 25-24.491 Notice to Customers Prior to Increase in Rates or Charges

5 (1) All interexchange telecommunications companies shall  
6 provide reasonable notice of any increase in intrastate  
7 telecommunications rates, or any changes in terms or  
8 conditions that would cause an an ~~material~~ increase in  
9 customer charges, to each of their affected residential  
10 and single-line business retail subscribers, prior to  
11 implementation of the increase.

12 (2) The notice shall be clear and conspicuous, shall be  
13 identified with the heading: "Notice of Price Increase,"  
14 or "Notice of Price Change," if the change will result in  
15 a price increase for some customers and a price decrease  
16 for some customers, and shall be presumed reasonable if  
17 provided in any of the following manners:

18 a) First class mail postmarked at least 15 days prior  
19 to the effective date of the increase in rates or  
20 charges to the customer;

21 b) A bill insert or bill message mailed to the  
22 customer no later than one billing cycle prior to  
23 the effective date of the increase in rates or  
24 charges to the customer;

25 c) For those customers who have elected to receive

CODING: Words underlined are additions; words in ~~struck~~  
~~through~~ type are deletions from existing law.

1 DOCKET NO. 010774-TP  
2 DATE: JANUARY 9, 2003

ATTACHMENT A

3 electronic billing, an electronic message sent at  
4 least 7 days prior to the effective date of the  
5 increase in rates or charges to the customer; or  
6 d) Pursuant to a written contract that specifically  
7 and conspicuously prescribes a method for notice of  
8 price increases.

9 Specific authority: 350.127; 364.0252; 364.19, F.S.

10 Law implemented: 364.0252; 364.19, F.S.

11 History: New \_\_\_\_\_.

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JOHN M. McKAY  
President



THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**

ATTACHMENT B  
THOMAS FEENEY  
Speaker



Representative Donna Clarke, Chair  
Senator Betty S. Holzendorf, Alternating Chair  
Senator Bill Posey  
Senator Ken Pruitt  
Representative Nancy Argenziano  
Representative Wilbert "Tee" Holloway

CARROLL WEBB, EXECUTIVE DIRECTOR  
AND GENERAL COUNSEL  
Room 120, Holland Building  
Tallahassee, Florida 32399-1300  
Telephone (850) 488-9110

November 12, 2002

Ms. Samantha Cibula  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0862

**Re: Public Service Commission Rule 25-24.491**

Dear Ms. Cibula:

I have completed a review of proposed rule 25-24.491 and prepared the following comments for your consideration and response.

The rule directs interexchange telecommunications companies to provide notice to subscribers of any increase in intrastate rates. However, only notice of matters giving rise to *material* increases in customer charges need be provided. What is meant by a *material* increase?

Sincerely,

A handwritten signature in black ink, appearing to read "John Rosner".

John Rosner  
Chief Attorney

cc: Harold McLean, General Counsel

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