ORIGINAL

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January 15, 1998

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

Re: Docke[redacted]

Dear Ms. Bayo

This letter contains comments by the Attorney General and the Office of Public Counsel (AG/OPC) regarding the rule proposals submitted by the staff in this docket.

1. OPC/AG proposed that staff should establish a procedure to refer every case involving fraudulent slamming to the commission on an individual basis for commission determination and appropriate action. The staff has not chosen to add rules that would implement this proposal, but such procedures could easily be implemented without the necessity of an established rule. If the commission determines that additional rules are appropriate, we would recommend the following:

25-4.118 (1) The provider of a customer shall not be changed without the customer's authorization. <u>When the commission staff determines that a customer's choice of carrier has been changed without authorization or knowledge of the customer and the change was willful on the part of the provider, or when the staff determines that the provider has willfully engaged in any other activity that is fraudulent in nature, the staff will institute a separate show cause docket to bring the facts before the commission for final disposition.</u>

2. AG/OPC proposed that upon receipt of a slamming complaint that the LEC would immediately charge back to the slamming IXC all existing billing up to 90 days, credit the customer account with the amount of the charge-back, and block the customer account from future billing from the carrier that caused the slam.

Staff proposals for the credit by the company that caused the slam are on Page 36 (8) of the proposed rules. The proposed rule changes by staff are appropriate and necessary to insure that companies responsible for the unauthorized slamming of customers do not receive any compensation or other incentive that would encourage a company to willfully slam subscribers or to fail to take appropriate action to curtail slamming activities.

Staff proposals, however, do not eliminate the difficulties that customers have in dealing with the problems that arise after the slam has occurred. There is already ample evidence in this docket regarding the drawn-out disputes between IXCs and the customers following a slamming event. Such disputes are time consuming and costly for LECs to resolve, and they are the source of continuing irritation for consumers with each billing cycle following a slam.

The AG/OPC proposals included in the prefiled testimony of Mr. R. Earl Poucher establish a simple criteria for the customers and the local exchange company that will eliminate extensive and time-consuming efforts by the LEC to resolve bills and make adjustments following an unauthorized PIC change.. This proposal takes the LEC out of the middle of the controversy. It protects the customer's basic service from being at risk. It prevents the LEC from intimidating the customer in order to expedite the collection process. And at the same time, it gives the IXC the ability to collect legitimate charges by direct billing to the customer when the IXC is able to determine that a PIC change was authorized by the customer with the customer's knowledge.

The AG/OPC proposals establish a simple criteria for the customers and the LEC, as follows: If the customer claims the PIC change was unauthorized, the LEC will charge back existing charges to the IXC and offer to block the account from future billing by the IXC. This takes the LEC out of the middle and allows the customer and the IXC to resolve the issue expeditiously. For the LECs, this means that a slamming complaint can be resolved by a single telephone call to the LEC business office. For customers, they will need to continue to negotiate with the IXC to reach an agreement regarding the circumstances that created the customer's slamming complaint. As for the IXCs, they will continue to be bound by PSC rules that prevent holding a customer responsible for calls that were generated in the absence of proper authorization.

The following language should be added if the Commission decides to follow the AG/OPC proposal:

> Page 37 (8) Upon notice from the customer of an unauthorized provider, the LEC shall: change the customer back, or to another company of the customer's choice;

> <u>charge back all existing charges on the account up to 90 days prior to notification by the customer; and offer to institute a billing block to stop future billing to the customer account by the IXC.</u>

3. The Staff proposal on Page 37 (10) states "During telemarketing and verification, no misleading or deceptive references shall be made while soliciting for subscribers." In order to insure that companies should refrain from all forms of misleading and deceptive marketing practices, AG/OPC proposes that the following language be added to Page 38 (14):

> (15) No provider shall engage in any deceptive or unfair practice that intentionally misleads telecommunications customers regarding their choices of providers or that intentionally prevents consumers from being informed of the most economical service arrangements available to them under the provider's filed tariffs. (This would require that the heading for this section be revised to: "25-4.118 Local, Local Toll, or Toll Provider Selection <u>and Billing</u>.")

If unfair trade practices are not acceptable during telemarketing activities, it stands to reason that the PSC should not allow unfair or deceptive trade practices for any of the activities of the companies, including face to face, written communication and advertising. It is important that the PSC have rules to deal with unfair and deceptive trade practices of regulated telecommunications companies since these companies are specifically exempted from the Florida Statutes dealing with such practices.

4. AG/OPC proposed that all providers be required to comply with the existing rules for Business Office access that currently apply to LECs. Staff proposals may be construed to actually lower the existing standards for the LECs. Page 38 (14) is a section that applies to all companies, LECs, ALECS, and IXC's alike. It allows all providers to answer their incoming business office lines with recordings and to take call backs for the next day. If adopted, this proposal will substantially degrade the existing business office service of all incumbent LECs in Florida, to the disadvantage of consumers who currently can depend upon a live operator to be available to receive their calls during normal business hours within a specified time frame.

Staff proposals also require that 95% of the calls be answered by either a live operator or a recording, which is appropriate. However, the rule does not specify any standards regarding the delay time that is acceptable for answering the incoming call. Numerous witnesses appeared in this docket complaining that providers either failed to answer calls or that the delays prior to answering were totally unacceptable and unreasonable. Customers who have been subjected to slamming or who have any telecommunications problem with a regulated carrier have a right to expect that their calls will be answered promptly and that their problems will be dealt with expeditiously.

The Commission should adopt the OPC/AG proposal, and require all providers to adhere to the standards applicable for LECs regarding answer times for incoming calls to the business office as specified in 25-4.073 of the PSC

5. Staff proposals fail to include language proposed by OPC/AG to expand the requirements for transmittal of PIC changes to include the last name, address and telephone number on PIC change orders and to require a match by the LEC prior to the implementation of the PIC change. This administrative change will eliminate numerous PIC change requests that are implemented because of an error by the customer, the IXC or the LEC where PIC changes are implemented through the transmission of the telephone number alone. The IXCs have appropriately pointed out that numerous unauthorized PIC changes are due to errors. PSC approval of the AG/OPC proposal will eliminate one of the major sources of error.

Sincerely,

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