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January 22, 1998

VIA OVERNIGHT DELIVERY

Ms. Blanca Bayo
Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0670

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

ACK _____ Dear Ms. Bayo:

AFA _____
APP Calderon On behalf of LCI International Telecom Corp, ("LCI") I enclose for filing the original and 15 copies of LCI's comments in the above-captioned proceeding.

CAF 3
CMU 2 Please stamp as "received" the enclosed additional copy of this letter in the self-addressed, stamped envelope indicated for such use.

CTR _____
EAG _____ Should you have any questions or desire additional information, I may be contacted at 703-287-4321.

LEG _____
LIT 5

OPR _____ Sincerely,

R: 1
SEL 1
WAS _____ Kim Logue
OTH _____ Regulatory Analyst

DOCUMENT NUMBER-DATE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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. [REDACTED]

Filed: January 23, 1998

COMMENTS OF LCI INTERNATIONAL TELECOM CORP.

LCI International Telecom Corp. ("LCI") herein files its Comments in the above-referenced docket currently before the Florida Public Service Commission ("FPSC"). According to the FPSC, the purpose of the proposed rule amendments is to incorporate local, local toll, and toll service provider change requirements and 47.C.F.R. Sections 64.1100 and 64.1150 to provide more stringent change requirements than the Commission's current rules. Further, according to the FPSC, the proposed amendments also provide for greater consumer protection.

I. BACKGROUND

The FPSC amendments to the existing FPSC rules applicable to changes in customers' underlying service providers at the request of the Office of Peoples Counsel and the Office of the Attorney General ("OPC" and "AG," respectively). After the initial FPSC rules were proposed, the FPSC scheduled workshops throughout the state requesting that the public "comment" on its proposed rules. LCI supports the FPSC's desire to implement rules which protect consumers within the state of Florida. However,

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as will be discussed below, many of the proposed rules impose significant economic costs on LCI, and other carriers, imposing state-specific requirements which are unduly burdensome and difficult for nationwide carriers to implement and administer. As a result of the proposed rule modifications, many carriers may elect to forego the additional costs necessary to comply with the stringent rules and not continue to offer services to the citizens of the State of Florida. For those carriers who do not discontinue offering service, the additional regulatory costs incurred to implement and comply with these rules will likely be passed on to consumers in the form of increased rates. These alternatives are clearly disingenuous to the FPSC's goals of encouraging competition in the toll, and local telecommunications markets within Florida.

In these comments, LCI suggests that the FPSC adopt the current Federal Communications Commission ("FCC") rules by reference, as the majority of states currently do, which will also by incorporation, adopt the pending FCC rules in Docket No. CC 94-129, In the Matter of Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996. LCI believes that the current and proposed FCC rules are suitable for controlling unauthorized conversions. LCI believes the real challenge is for the FPSC to establish significant fines and penalties (up to and including forfeiture of operating authority) on carriers that have established a pattern of willful and blatant unauthorized conversions.¹ Unauthorized conversions will occur even with the best set of regulations.

¹ LCI does not agree with the testimony of J. Alan Taylor and his conclusions that increasing penalties will lead to an acceptable reduction in slamming. (Page 7 of Pre-Filed Testimony) In many states, carriers that have continued to violate PSC rules regarding slamming have literally been forced out of business as a result of fines and legal proceedings brought against the carrier by the PSC.

No rules can eliminate errors by data entry personnel, or stop a renegade sales agent from forging an LOA for short term personal gain.

In a legitimate effort to control the illegal slamming activities of a small number of companies, the FPSC needs to consider the economic costs of those rules on companies that are not engaged in those activities. Furthermore, LCI believes the FPSC should adopt enforcement provisions allowing it to impose substantial penalties in a swift manner when a company is found to be willfully and knowingly violating existing FPSC (or FCC-mirrored) rules.

Should the FPSC determine that carriers must incur additional costs to operate within Florida, then LCI proposes modifications to certain proposed rules.

I. THE FPSC SHOULD MIRROR THE FCC'S SLAMMING RULES

LCI suggests that, in lieu of the FPSC's proposed rules, it should mirror the existing FCC rules applicable to changes in a customer's service provider. The FPSC acknowledges that it must weigh the "compliance" costs to implement the proposed rules against the present "situation" in Florida. LCI is supportive of the FPSC's desire to protect the interests of consumers in Florida and is not opposed to modifications which protect the interests of consumers, and are not administratively and economically burdensome to carriers. As LCI has indicated in its response to two separate data requests, LCI will incur well over \$4,000,000 in non-recurring costs, and annual costs in excess of \$75,000 to implement and comply with the proposed rules.

These estimates do not include additional costs which LCI was unable to quantify due to the need for clarity in the proposed rules. The FPSC may argue that these estimated costs to LCI are justified to protect Floridians, however, LCI is subject to regulations of all 50 states. Thus, LCI and other nationwide providers could (if every state modifies their rules) be faced with state-specific rules and FCC interstate rules which clearly are not cost-justified or rational. It is clear the FPSC does not fully understand the difficulty carriers face while operating under one billing system or sales and distribution system, and then having to modify the applicable systems to comply with state-specific regulations.

Many states already mirror the FCC rules. (See for example, Alabama, Arizona, Colorado, Connecticut, D.C., Delaware, Idaho, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Pennsylvania, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming). Several states currently have pending before their respective Commissions modifications to existing rules so that they will mirror the FCC's rules (Maryland, for example). Further, other Commissions are implementing more stringent penalties for non-compliance (See Docket No. 6872-U, Amendment of Chapter 515-12-1 Telephone Service Rules, before the Georgia Public Service Commission, proposing fines of up to \$15,000 for violations).

Accordingly, LCI strongly recommends that the FPSC either (1) modify their existing rules to fine carriers who violate the current rules, or (2) modify the rules to mirror the existing and future FCC rules along with adding new enforcement provisions. If the FPSC does not believe that it has the statutory authority to strengthen its

enforcement rules, then the FPSC should request that the Florida Legislature empower the FPSC with such authority. On the other hand, adopting the FCC rules, which is the preferred method to address unauthorized conversions among many state Commissions, protects customers and is less costly to carriers such as LCI than the state-specific rules proposed by the FPSC.

I. IN THE ALTERNATIVE, THE FPSC SHOULD MODIFY THE PROPOSED RULES TO REDUCE THE ADMINISTRATIVE AND ECONOMIC IMPACT ON CARRIERS AS OUTLINED BELOW

Should the FPSC choose not to adopt the FCC rules, LCI suggests that the FPSC modify its proposed rules as outlined below. LCI's proposed modifications are consistent with its comments detailing economic impacts on LCI to implement the proposed rules.

- A. **25-4.003 (41)** would establish the definition of "PIC-Freeze" as expressed on Form FPSC/CAF 2 (XX/98)." LCI suggests that the FPSC modify this rule to remove any reference to a FPSC-mandated form. It is an administrative nightmare for carriers to have to maintain, copy, distribute and ensure that current versions of state-specific forms are in use. LCI believes that carriers who wish to freeze their customers' accounts will, or already have, implemented similar requests of their customers. In the alternative, LCI supports the Florida Competitive Carrier's Associations' ("FCCA") comments which suggest that if the form is retained, it be separated into two forms: one for a local service PIC freeze and one for a toll service PIC-freeze. The use of two forms would attempt to control ILEC abuse of PIC-freezes which are already a concern in several states as cited by the FCCA in its comments.

- B. 25-4.110(10)** would require that customer bills contain specific information such as the certificate number and the type of service provided. As LCI indicated in its filing on economic costs, the costs to modify the LCI billing system to add the applicable certificate number and specific type of service category to Florida-billed customers is extremely prohibitive. LCI is not certain what the FPSC accomplishes by requiring a certificate number on the bill and not the carrier's operating name and customer service phone number(s), even though the testimony of Mr. J. Alan Taylor states that he "believe[s]" this will provide faster and easier identification of resellers.
- C. 25-4.110(11)** would modify the existing rules to include other charges (or miscellaneous charges billed on behalf of other providers) to the pay-per-call section of the FPSC rules. LCI states that as a reseller ALEC, it will incur additional costs to incorporate the proposed items on customer billing statements. Such costs would be incurred because LCI presently provides blocking to all customers for access to 900/976 services. LCI recommends that the only alternative to avoid an increase in costs would be to eliminate any modifications to the existing rule.
- D. 25-4.110(a)(3)** would require that customers be allowed to obtain a free blocking option from the LEC to block all charges from a third party to an end user of a LEC. 25-4.110(a)(3) also would require that bills submitted by third parties with a subscriber's LEC-specific personal identification number ("PIN") would validate other charges and override the billing block.

LCI is confused by the proposed rule modification. LCI presently offers all local customers the blocking of charges for 900/976 and pay-per-call services consistent with current FCC and FPSC rules. It is not clear what other charges from a third party the FPSC would require LCI to block as an ALEC. However, for consistency, the FPSC should modify the rule to insert the word "non-regulated" after the word "all" and before the word "charges." Further, it is not clear from the FPSC rules that the billing block option is to block outbound (900/976) calls only, inbound (LIDB type calls e.g., collect calls) only, or both.

With respect to the implementation of a customer-specific, LEC-provided PIN to validate charges for third party billed calls authorized by the customer, LCI has indicated that it would incur substantial costs to implement this modification. It is not clear how the FPSC intends to assign the PINs, nor how the charges would be validated by customers to allow third-parties to place charges on a customers' bill. LCI's estimation of costs is based on its interpretation of how it would comply with what LCI believes to be the FPSC's intention. LCI believes the FPSC's proposed PIN validation will not function as desired. While it is possible to put a "physical" block on all outbound calls (e.g., 900/976), it is not possible to put a block on all outbound AND inbound (e.g., LIDB type) calls that can be validated by a customer PIN. It may be possible to use a PIN to validate inbound blocked calls (since the block would be established in the national LIDB database, and thus override these charges), however, it is not possible to use a PIN to override a physical block on the outbound 900/976 calls. In any event, LCI is

dependant upon the ILEC for capturing billing for all LCI local customers and then providing LCI with the billing detail so as to permit LCI to bill its end users.

LCI suggests that in the alternative, the FPSC prescribe rules consistent with the FCC rules which provides for the free blocking of outbound 900/976 calls. Additionally, as with the FCC rules, the FPSC would need to specify that the free blocking option is applicable only to the first request, and that each additional request to block or unblock access to pay per call services may be assessed a reasonable tariffed charge. This alternative is already available to LCI and by default, is a lower cost alternative to having to develop a personal identification number system (which would include systems development, customer service training, and billing system modifications). If a customer has incurred charges for 900/976 services and subsequently requests the block, calls would be allowed only after the block is removed. LCI is not convinced by the testimony of J. Alan Taylor (page 10) that this is really a problem requiring such drastic rule modifications. Mr. Taylor simply states that he "believes" that fraud [with respect to 900/976 services] is common on local exchange carrier bills. A "belief" is not justification for imposing such enormous costs on carriers. Assignment of a PIN number by the LEC does not necessarily fulfill the FPSC goals, as PIN numbers are easily passed from one family member to another. The most effective block is a block for all calls, not a partial block, which is applied in a PIN-based method, and in this case may not properly function from a technical standpoint.

- E. **25-4.110(12)** would require the customer be notified on the first bill and annually thereafter that a PIC-freeze is available and the customer may contact LCI for a copy of the FPSC-mandated form. LCI addressed its concerns regarding the use of any FPSC mandated form and requiring a carrier to administer the form for the FPSC in (A) above. In order to reduce the impact, both administratively and economically, on carriers, the FPSC should modify the proposed rule to make notification of a PIC-freeze either in writing or orally, and not mandate a specific form for PIC-freezes. If the FPSC should mandate a form, then the carriers should be able to refer the customer to the FPSC internet site, fax-back service or the Consumer Division for copies of the current form.
- F. **25-4.110(13)** would require notice to the customer on the first or second page of the bill that a provider of service has changed. It is not clear from the FPSC rule if the notice should explicitly state that a carrier has changed from carrier "X" to carrier "Y," or, if simply listing the current carrier on the bill satisfies the proposed rule. LCI suggests that the proposed rule require that only the current provider name be listed, and revised when the current provider changes. The FPSC should clarify the proposed rule to state that this "notice" of a change in the carrier (i.e., the customer's presubscribed carrier of choice) is applicable only to ALECs and ILECs. This clarification is necessary because many carrier's directly bill their end users and as such would not need to comply with this proposed rule because a new carrier will be sending a direct bill to the end user.
- G. **Section 25-4.110(1)** should be modified to allow the use of a three-way call between the LEC, the customer and the IXC to change a customer's PIC. This

rule modification would allow for a more timely change in a customer's PIC, and also would permit IXCs to remain on a call to ensure that the ILEC is not engaging in any anti-competitive behavior during the PIC change process. LCI is concerned about the presubscription practices of the ILECs. The FPSC modification to its proposed rules to permit 3-way calls to change PICs would address concerns that other state Commissions have also raised regarding the presubscription practices of the ILECs. The New York Public Service Commission is currently investigating the presubscription practices of NYNEX in Case Nos. 28425, 92-C-0665, 95-C-0154, 95-C-0650 and 96-C-104, in which LCI has filed formal comments. Additionally, LCI has a complaint pending before the Georgia PSC regarding the presubscription practices of BellSouth in Georgia and is requesting that the Georgia PSC reopen its investigation of the presubscription practices of BellSouth as a result of the LCI complaint.

- H. **25-4.118(2) (All Sections)** would require a provider comply with certain obligations prior to submitting a change request to the LEC. The proposed rules would require that a provider certify that it has either (1) an LOA or (2) received a customer initiated call and captured certain information via audio recording and electronically captured the ANI to be changed and has verified the call through third-party verification by also capturing the information via recording or delivers an information package to the customer. LCI believes that these requirements unnecessarily require carriers only to use an LOA to obtain permission to switch providers. The proposed rule modifications are clearly inconsistent with the existing FCC rules which allow a provider change to be made if a carrier complies

with one of the following (note the use of "one" or the word "or" versus the FPSC rules which use "and") (1) LOA; or (2) capture the ANI; or (3) verify the change through an independent unaffiliated third-party; or (4) use a welcome package to send information and requests that a postcard be returned prior to submitting the change. Further, the FPSC rules are inconsistent with the testimony of Mr. J. Alan Taylor (pages 17 and 18). In his testimony, Mr. Taylor clearly states that providers would use an LOA (line 4, page 17), or that the next option is to record the customer-initiated call (line 20, page 17), or a third option of third-party verification (line 24, page 17) with the final option being an informational package (line 10, page 18). Clearly, Mr. Taylor's testimony supports the ability to use ONE of the FOUR options in the proposed rules in contrast to the proposed rules. Unless the FPSC modifies the proposed rules to mirror the FCC rules, the FPSC is unfairly forcing carriers (due to the hoops needed to be jumped through) to use written LOAs. Such a requirement eliminates lower cost alternatives for certain carriers, such as third-party verification of telemarketing sales, and is inconsistent with the FCC rules allowing such options.

- I. **25-4-118(8)** would require the unauthorized provider to credit all charges for the first 90 days to the customer, and after the first 90 days, up to 12 months, require charges to be rerated at rates not to exceed the customer's previous provider. The proposed requirement that a carrier refund the entire amount of charges to the customer for up to 90 days is inconsistent with proposed FCC rules, which would require that the slamming carrier refund all monies collected to the customer's original carrier. If the FCC rules are adopted as written, the proposed FPSC rules

would require a refund process different from the federally mandated rules. Specifically, it would require that refunds be made via one method for interstate charges and via another method for intrastate charges. By default, having to implement a state-specific refund mechanism would be more costly to LCI than maintaining a single FCC-specific refund mechanism to carriers versus customers. The proposed rules also would require a period from 90 days up to 12 months that charges be rerated and credited to the customer. LCI currently rerates charges (as an DXC) as necessary, however, LCI does not believe the FPSC should mandate rerating past 90 days. Most billing disputes are resolved within this time frame. Under the proposed rules, LCI would incur additional costs to the extent that it had to maintain active billing files (versus archiving the records) for a longer period of time. LCI suggests that the FPSC revise its rules to require rerating of calls not to exceed 90 days (the current FCC rules only require rerating of calls, not refunds).

- J. **25-4.118(11)** would require that, during the telemarketing and verification process, the customer be informed of the availability of a PIC freeze. See LCI's discussion in (E) above. LCI does not believe that the FPSC should mandate oral or written notice to customers of the availability of PIC-freezes. The FPSC should make notification to customers optional in either written or oral format.
- K. **25-4.118(13)** would require a carrier provide the customer with a copy of the authorization it relies upon for making a carrier switch within 15 days of request. LCI does not object to this rule modification. However, LCI requests that the FPSC clarify as to whether the 15 days are business days or calendar days, as

often times it takes time to recover authorizations from archived files. The FPSC also should clarify that the request should be "from a customer."

- L. **25.4.118(14)** would require all companies to employ live operators 24 hours/7 days a week, and that all end user complaints be recorded. LCI concurs with the comments of FCCA and believes that imposing this requirement on smaller carriers would dramatically increase costs of doing business and is inconsistent with the FPSC goals of encouraging competition.

II. CONCLUSION

For the reasons set forth herein, and incorporating comments and economic costs filed by LCI, the FPSC should modify the proposed rules to more extensively adopt and implement the FCC rules, and also adopt more stringent state enforcement mechanisms (fines and forfeitures) in lieu of adopting the proposed rules as drafted. If, however, the FPSC choose to adopt the proposed rules as currently drafted, it should be noted that these rules, unless modified as suggested, will clearly require LCI and other carriers to incur substantial costs to implement and continue to administer for compliance.

Respectfully submitted,



**J. Scott Nicholls
Sr. Manager, State Affairs**

Dated: January 23, 1998