

January 22, 1998

**VIA FEDERAL EXPRESS**

Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0870

Re: **Comments of State Communications, Inc. in Docket No. 98022-TT - Proposed Rule Amendments to Reduce the Possibility of Slammering**

Dear Mrs. Bayó:

On behalf of State Communications, Inc. ("SCI") and pursuant to the Commission's December 24, 1997 notice soliciting comments, please find enclosed for filing an original and fifteen (15) copies of SCI's comments to the above referenced proceeding.

Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed, stamped envelope provided herein. Should you have any questions, please do not hesitate to call the undersigned.

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RCH 1 Enclosures

SEC 1 cc: Shay Houser

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OTH

Sincerely,

*Marcy A. Greene*

Marcy A. Greene  
Raquel M. Cheatham

Counsel for State Communications, Inc.

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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 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 )  
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Docket No. 970882-TI

Comments of State Communications, Inc.

State Communications, Inc. ("SCI"), an alternative local exchange and interexchange carrier operating (or in the process of becoming certified) throughout the United States hereby submits the following comments on the Florida Public Service Commission's ("Commission") December 24, 1997 notice soliciting comments in the above-captioned proceeding.

**Introduction and Summary**

SCI commends the Commission for maintaining its commitment to consumer protection. SCI is likewise committed to the cessation of consumer fraud and protection of the public. By basing its proposed regulations on the Federal Communications Commission's ("FCC") current carrier change (47 C.F.R. §64.1100) and Letter of Authorization ("LOA") form and content (47 C.F.R §64.1150) regulations, the Commission succeeds in its objective of maintaining effective rules which protect consumers without adversely burdening service providers. However, one proposed amendment, disallowance of the use of checks as LOAs, imposes a new prohibition - DATE

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which will disproportionately affect smaller service providers and stifle legitimate marketing initiatives, without concomitant public protection benefits. SCI respectfully urges the Commission to allow the use of checks as LOAs, and specifically except those checks from the prohibition against combining the LOA with inducements on the same document.

**I. The Commission Should Exempt Checks from the Severability Requirement of LOAs with Inducements on the Same Document.**

The Commission's proposed rules disallow combining an LOA with inducements on the same document and specifically prohibits the use of checks to serve as LOAs. This is in sharp contrast to the FCC's rules which specifically exempt checks from the prohibition against LOAs being combined with inducements on the same document. See 47 C.F.R. §64.1150(d). SCI is not arguing that the Commission should necessarily adopt, without further analysis, the FCC's acceptance of checks as a legitimate and safe marketing tool; SCI does, however, urge the Commission to recognize that the fact that the FCC has conducted a meaningful cost-benefit analysis and determined that, when used properly, checks are a valid, consumer-friendly marketing avenue that serves the public interest.

SCI endorses the Commission's attempt to ensure that LOAs fulfill mandatory disclosure requirements in a manner that will be readily identifiable and fully comprehensible to customers. However, SCI believes that stringent requirement prohibiting (1) service providers from combining LOAs with any inducement on any document and (2) sending checks to consumers where endorsement is an agreement to switch service is inconsistent with the public interest. The proposed rule surpasses what is necessary to protect telephone consumers from abuses or deception and if implemented would impose unnecessary hardships on both consumers and

service providers.

SCI's understanding is that past problems with checks have centered around instances in which the check itself did not contain the mandatory authorizing language or was in some other way lacking in information needed to meet minimum LOA form and content requirements. It is SCI's position that the proposed rule should be geared toward ensuring that LOAs clearly and unambiguously contain the Commission's prescribed disclosures and authorizing language.

## **II. The Commission's Check Endorsement Rules Should Mirror the FCC's Regulations**

SCI respectfully urges the Commission to adopt a rule which allows the use of checks as LOAs, and recommends that the Commission model that rule on the FCC's regulation of same. By doing so, the Commission recognizes and permits the use of a valid and consumer-friendly marketing tool, while putting in place equally important consumer protections.

In 1995, the FCC investigated this issue extensively in its rule making proceedings. At the conclusion of the proceedings, the FCC decided that the use of checks was clearly in the public interest. Therefore, SCI respectfully refers the Commission to AT&T's favorable experience with combined LOAs and checks payable to customers.<sup>1</sup> AT&T's check program mailed millions of these instruments to customers for approximately two (2) years or more. These instruments made absolutely clear to customers that endorsements of the checks automatically switched them to AT&T. Although the FCC routinely forwarded to AT&T any customer complaints received by the agency regarding services, AT&T did not receive even one informal complaint from the FCC contending that the customer mistakenly endorsed AT&T's

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<sup>1</sup> See *In the Matter of Policies and Rules Concerning Unauthorized Change of Consumers' Long Distance Carriers*, CC Docket No. 94-129, AT&T's January 9, 1995 initial comments to the FCC's proposed rules, pp. 14-15.

check, or believed that it would not result in a primary interexchange carrier ("PIC") change.

In addition, MCI asserted that the FCC's proposed rules were initiated by complaints for deceptive practices in which consumers were induced to sign a form document that did not clearly advise the consumers that they were authorizing a PIC change.<sup>2</sup> Arguing that the Commission failed to demonstrate that a combined LOA/inducement form could not be formatted correctly to inform the consumer of the interexchange transaction, MCI persuasively stated that a total ban on such documents was not the least restrictive alternative, and probably not constitutionally valid. In accordance with AT&T's and MCI's compelling evidence, the FCC allows the use of checks, provided that the inducement check contains only the required LOA language and information necessary to make it a negotiable instrument.<sup>3</sup>

Clearly, the combined check/LOA accompanied by proper disclosures are fully appropriate and in no respect misleading to consumers. Therefore, SCI respectfully submits that absent evidence of consumer complaints for mistaken endorsements on instruments that clearly set forth the conditions of such endorsement, the Commission provides no reasoned basis for its prohibition against sending checks where endorsement by the customer is an agreement to switch service.

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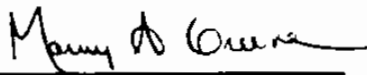
<sup>2</sup> See *In the Matter of Policies and Rules Concerning Unauthorized Change of Consumers' Long Distance Carriers*, CC Docket No. 94-129, MCI's January 9, 1995 initial comments to FCC proposed rules, pp. 7-10.

<sup>3</sup> Such checks can not contain any promotional language or material and the LOA language must be placed "near the signature line on the back of the check." Also the FCC requires that carriers print, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a PIC change by signing the check. See *In the Matter of Policies and Rules Concerning Unauthorized Change of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560 (1995). SCI supports the imposition of similar consumer protection standards in this proceeding.

### **Conclusion**

In short, SCI shares the Commission's objective to curtail slamming offenses against the consumers of the State of Florida. However, SCI respectfully urges the Commission to adopt rules that are narrowly-tailored to target specific deceptive business practices in connection with consumer endorsement of checks. Adoption of the Commission's proposed rule regarding the use of checks would adversely affect legitimate marketing practices of carriers. While SCI supports the Commission's goal to stop instances of slamming before they occur, this proposed rule is overbroad; the Commission's objective would more properly be met through enforcement actions against particular offending carriers if abuses were discovered. Accordingly, SCI respectfully requests that the Commission allow checks to be utilized as a valuable tool to both encourage consumer choice and promote healthy competition.

Respectfully Submitted,

By: 

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Dated: January 22, 1998

\* Admitted in New Jersey only.