

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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., Definitions; 25-4.110, )  
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. 970882-TI  
Filed: March 16, 1998

INTERMEDIA COMMUNICATIONS INC.'S  
POST-HEARING BRIEF

Intermedia Communications Inc. (Intermedia) hereby files this  
its post-hearing brief.

INTRODUCTION

On December 16, 1997, the Commission proposed rules to  
significantly reduce or eliminate unauthorized switching of a  
customer's preferred carrier for local, intraLATA toll, and toll  
services, commonly referred to as "slamming." This is an important  
and commendable goal, one that the Commission and the majority of  
the industry seek to accomplish.

ACK \_\_\_\_\_ In the process of developing rules that will achieve this  
AFA \_\_\_\_\_ worthwhile goal, it is essential that the Commission weigh the cost  
APP 2 of implementing each section of the proposed rule against the  
CAF 2 actual benefits produced. If carriers incur substantial costs to  
CMU \_\_\_\_\_ implement the rules, those costs will be passed to consumers. To  
CTR \_\_\_\_\_ be most beneficial to consumers, the Commission should implement  
EAG \_\_\_\_\_ rules that accomplish its objectives at the least regulatory cost.  
LEG 5  
LIN \_\_\_\_\_  
OPC \_\_\_\_\_

RCH 1 In evaluating the magnitude of unauthorized provider changes,  
SEC 1 it is important to put the problem in perspective, especially when  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

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FPSC-RECORDS/REPORTING

implementing rules that will impose tremendous costs and greater restrictions. Although it appears that the number of complaints has risen in the last few years, without comparing the number of complaints to the number of PIC changes, there is little evidence that the problem of slamming has in fact increased over time. If every allegation of slamming filed at the Commission were found to be a slam, that would be approximately 3,000 slams for 1997, compared to an estimated 1 million PIC changes in Florida for the same period - that would be approximately .3%, which is statistically insignificant. (TR 61-62, 242)

Moreover, Exhibit 4 shows BellSouth's Unauthorized/Expedited PIC Dispute Report for 1997. Allegations of slamming account for only a portion of these numbers - other significant reasons include buyer's remorse, household disputes, and system errors. (TR 298, 300) There are no categories specifically provided - "[a]s no investigation is conducted when a carrier has subscribed to Expedited PIC Swichback [sic] service, it would not be apparent whether or not the change was valid." (EXH 4) Such a system is to the consumer's benefit, because the consumer would not incur the costs to switch to another carrier in instances as buyer's remorse, and household disputes.

So long as human beings are part of the system, it will be extremely difficult to eliminate the problem. The goal should be to eliminate intentional slamming and substantially reduce unintentional slamming. If the purpose of these rules is to

significantly reduce slamming at the least regulatory cost possible, the Commission must weigh the benefit gained against the cost incurred to implement these rules.

#### **BASIC POSITION**

Because there are lower regulatory cost alternatives available to accomplish the same goal, the Commission should adopt the soon-to-be promulgated rules of the FCC. Alternatively, the Commission should adopt the FCCA's Alternative 2, except that: 1) Proposed Rule 25-4.110(12) should require the use of three separate forms for the presubscribed local, local toll, and toll providers; and 2) Proposed Rule 25-118(8) should be modified to require only re-rating of calls. Intermedia supports FCCA's modification to Proposed Rule 25-4.110(10)(a) to delete the requirement of displaying the certificate number of the bill; instead, a workshop should be conducted to reach a consensus on the most efficient, least-cost means of providing certificate numbers to staff upon request.

#### **ISSUES**

**ISSUE 1:** Should the Commission adopt the new Rule 25-24.845, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

**INTERMEDIA'S POSITION:** \*\* No. Because there are lower regulatory cost alternatives available to accomplish the same goal, the specific rules that apply to ALECs should be the soon-to-be promulgated rules of the FCC or the FCCA's Alternative 2, except as modified for Proposed Rules 25-4.110(12), and 25-4.118(8). \*\*

**ARGUMENT**

Please see discussion under Issues 3 and 4.

**ISSUE 2:** Should the Commission adopt the amendments to Rule 25-4.003, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

**INTERMEDIA'S POSITION:** \*\* Yes, except that there should be three, separate PIC-Freeze Forms, as discussed in Issue 3. \*\*

**ARGUMENT**

Please see discussion under Issue 3.

**ISSUE 3:** Should the Commission adopt the amendments to Rule 25-24.110, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

**INTERMEDIA'S POSITION:** \*\* No. Because there are lower regulatory cost alternatives available to accomplish the same goal, the Commission should adopt the soon-to-be promulgated rules of the FCC. Alternatively, the Commission should adopt the FCCA's Alternative 2, except that Proposed Rule 25-4.110(12) should require the use of three, separate forms for the presubscribed local, local toll, and toll providers. Intermedia supports FCCA's modification to Proposed Rule 25-4.110(10)(a) to delete the requirement of displaying the certificate number of the bill; instead, a workshop should be conducted to reach consensus on the most efficient, least-cost means of providing certificate numbers to staff upon request.\*\*

**ARGUMENT**

**FPC SHOULD MIRROR SOON-TO-BE PROMULGATED FCC RULES**

The most cost-effective way to significantly reduce slamming is to adopt the Federal Communications Commission's (FCC's) soon-to-be promulgated rules. If each state implements its own rules, the costs for preventing slamming would have a significant impact on the carriers trying to provide services at reasonable rates for

consumers. Companies would have to develop costly adjustments to billing and operations systems to incorporate varying state-specific requirements. These costs would ultimately be borne by the consumers.

**IN THE ALTERNATIVE, THE FPSC SHOULD ADOPT FCCA'S ALTERNATIVE 2, AS MODIFIED**

If the Commission determines that it is important to develop state-specific rules, Intermedia urges the Commission to adopt the Florida Competitive Carriers Association (FCCA) Least Cost Alternative 2, with Intermedia's modifications of Proposed Rule 25-4.110(12), to require three separate PIC-Freeze forms, and Proposed Rule 25-Rule 25-24.110(8), to require only re-rating of calls for the specific period incurred. FCCA's proposal is intended to retain those sections of the Commission's proposed rules that will strengthen the effort to curb abuse, while modifying those sections that impose unreasonable costs on carriers without accomplishing additional consumer protection or achieving corresponding benefits at lower costs.

**PROPOSED RULE 25-4.110(10) (A) - UNWARRANTED TO REQUIRE CERTIFICATE NUMBER BE DISPLAYED ON BILL**

Proposed Rule 25-4.110(10) (a), would require that each company claiming to be the customer's presubscribed provider for local, local toll, and toll place its certificate number on the bill in addition to its name and toll-free customer service number. Intermedia does not object to the requirement of the name and toll-free customer service number; however, Intermedia opposes the

requirement that certificate numbers be placed on the bill. Staff witness Alan Taylor asserts that this requirement will help ensure that underlying carriers do not provide their services to reseller companies that are not certificated, thereby reducing the number of slams facilitated by carriers at a third-party request. (TR at 105-106) He also asserts that it will assist the Commission in identifying the carrier when it receives a complaint. (TR at 106)

There are several reasons why the proposed requirement is unwarranted. First, it is extremely expensive, because it would necessitate Florida-specific billing. The Revised Statement of Regulatory Costs indicates that "providing the Florida certificate number on the bill was identified as being costly by almost all respondents, both for implementation and on a going-forward basis." (EXH 1, SERC at 4) The reason provided was due primarily to companies' use of a national billing system. "Because this cost is specific to Florida, it may be passed on to Florida consumers." (SERC at 5)

Second, adding the certificate number to the bill would have little meaning to the customers and may cause customer confusion. (TR 446, 481, and 547)

Third, staff witness Alan Taylor testifies that this rule is "aimed not at BellSouth or at GTE but at the long distance industry. . . (TR 135) Rule 25-24.4701(2), Florida Administrative Code, already requires each IXC to implement procedures to identify and report those customers whom it believes are reselling or

rebilling IXC service on an intrastate basis in Florida, and to submit, within thirty days of a written staff request, a complete list of such customer's names and addresses to the Commission. Although admittedly this rule only applies to IXC customers, it also assists staff in achieving its goal.

Fourth, it is essential to distinguish between the requirement of underlying carriers to verify the existence of a reseller's certificate number from the requirement that the certificate number be displayed on the bill. If the objective is to assist staff in identifying the entity accused of slamming, there are other least-cost means of achieving that goal. Staff witness Alan Taylor concedes that if the companies would agree, it would be possible to look at an alternative, which would accomplish the same objective, to the requirement that the certificate number requirement be displayed on the bill. (TR 161) Examples of alternatives could include a requirement that the certificate number be kept in the records of the carrier/aggregator, or in billing contracts between the involved entities. (TR 140-141)

Accordingly, the certificate number should not be required to be displayed on the bill. The benefits of implementing this rule are minuscule compared to the costs incurred by the carriers and do not justify the tremendous expense involved when there are other least-cost ways to achieve the same objective. Intermedia suggests that workshops be conducted so that staff and the industry reach consensus on the most efficient, least-cost means of providing the

certificate numbers to staff when requested.

**PROPOSED RULE 25-4.110(12) - THREE SEPARATE FORMS SHOULD BE REQUIRED FOR PIC-FREEZE**

Proposed Rule 25-4.110(12) requires that a customer must be notified on his first bill and annually thereafter that a PIC Freeze is available and may contact the provider to obtain FORM PSC/CAF 2 (XX/XX). The form allows the customer to authorize a PIC-Freeze for the presubscribed local, local toll, and toll providers. Intermedia objects only to inclusion of all three presubscribed carriers on the same form.

Instead, if a customer would like to obtain a PIC-Freeze, Intermedia advocates the use of three, separate forms for the presubscribed local, local toll, and toll providers. Although Intermedia has no reason to believe that any ILECs are currently involved in anti-competitive behavior by "locking-up" customers through the use of the PIC-Freeze, the potential for abuse would exist if the proposed PIC-Freeze Form is used. To alleviate that potential, Intermedia recommends the use of separate PIC-Freeze forms. The Staff analysis of the SERC supports this view:

. . . if the PIC Freeze requirements are implemented, it would be more competitively neutral to use a separate PIC Freeze form for each of the three types of service (local, local toll, and toll) because customers may choose a separate provider for each. (EXH 1, SERC at 16)

In summary, the Commission should adopt the soon-to-be promulgated rules of the FCC. Alternatively, the Commission should adopt the FCCA's Alternative 2, except that Proposed Rule 25-



4.110(12) should require the use of three separate forms for the presubscribed local, local toll, and toll providers. Proposed Rule 25-4.110(10)(a) should be modified to delete the requirement of displaying the certificate number of the bill; instead, a workshop should be conducted to reach a consensus on the most efficient, least-cost means of providing certificate numbers to staff upon request.

**ISSUE 4:** Should the Commission adopt the amendments to Rule 25-4.118, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

**INTERMEDIA'S POSITION:** \*\* No. Because there are lower cost alternatives available to accomplish the same goal, the Commission should adopt the soon-to-be promulgated rules of the FCC. In the alternative, the Commission should adopt the FCCA's Alternative 2, except that Proposed Rule 25-118(8) should be modified to require only re-rating of calls. \*\*

#### **ARGUMENT**

For the reasons discussed in Issue 3, the Commission should adopt the FCC's soon-to-be promulgated rules regarding slamming. In the alternative, the Commission should adopt FCCA's Alternative 2, except as modified by Intermedia for Rule 25-4.118(8).

#### **PROPOSED RULE 25-118(8) - UNAUTHORIZED CALLS SHOULD BE RE-RATED - 90 DAYS "FREE SERVICE" IS BEYOND COMMISSION'S JURISDICTION**

Intermedia understands and supports the Commission's concern that customers be treated fairly when they have been slammed. Also, it adversely affects a carrier's business to have unauthorized switches, even inadvertent ones. Moreover, telecommunications carriers lose revenues when customers are

slammed away from them.

The proposed rules, however, take drastic measures that are costly and will not necessarily achieve the goal of reducing slamming at the least regulatory cost. As proposed, Rule 25-4.118(8) would require that charges for unauthorized changes billed on behalf of the unauthorized provider for the first 90 days or first three billing cycles, whichever is longer, be credited to the customer. After the first 90 days, charges over the rates of the preferred carrier would be credited to the customer for a period up to twelve months, a procedure commonly referred to as "re-rating."

The procedure proposed by the Commission contrasts with that under Section 258 of the Telecommunications Act of 1996. Section 258, requires any telecommunications carrier, including those providing telephone exchange service and toll, that violates the verification procedures promulgated by the FCC pursuant to Section 258(a), and collects charges from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation. In other words, under the Federal Act, the carrier is liable to the previously selected carrier; under the proposed Florida rules, the carrier is liable to the customer. In essence, the carrier may be "punished twice" for the same event by requiring a different refund process under the state law than under the federal law. If the "purpose of the proposed rule is to prevent a company that has slammed a customer from receiving revenues based upon unauthorized

charges it billed to that customer" as the SERC suggests, then adopting the soon-to-be promulgated FCC rules will accomplish that purpose at the lowest regulatory cost. (SERC at 18)

The first problem with the Commission's requirement that companies provide 90 days "free service" rather than re-rating the calls, is that provision constitutes an award of damages if the amount is greater than the re-rated amount. Staff witness Jennifer Erdman-Bridges concedes that in certain circumstances the consumer could actually receive more money than the direct cost he or she incurred to rectify the situation. (TR 73) If the customer were a business customer, the charges for 90 days could be thousands of dollars, but Staff insists that the service be provided "free." (TR 74-75) By doing more than making the customers whole, the Commission is awarding damages which is beyond its jurisdiction.

Second, the Commission's proposal to require up to 90 days "free-service" would impose enormous costs, to the extent they can be quantified, upon telecommunications carriers. (SERC at 10) The reasons provided by the companies for these costs, in addition to the refunds themselves, include increased costs to investigate and defend themselves against false slamming accusations, as well as the systems to be set up and maintained by some companies to verify or refute slamming claims. (SERC at 10)

Third, such a rule would encourage consumer fraud. Under the proposed rule, customers have no duty to report an alleged slam as soon as it is discovered. Staff witness Jennifer Erdman-Bridges

admits that someone could know they were slammed and just wait 90 days to report it. (TR 75) Business customers may incur large monthly bills, as do some residential customers. Savvy customers may take advantage of the system and incur substantial charges and delay reporting the slams to get the most for their "free service." Customers also have the responsibility to pay for the charges they incurred. Re-rating charges places the customer in the position he or she would have been had there been no unauthorized switch from the presubscribed carrier.

The proposed rules also allow for re-rating of calls up to 12 months from the occurrence of the unauthorized switch. Although the current rule does not address a time certain, the issue of customer responsibility should be factored into the equation. Customers should review their bills and notify carriers in a timely manner if there are errors.

Thus, if the Commission believes that the presubscribed carrier is the one to receive payment, then the Commission should mirror the FCC's soon-to-be promulgated rules so that the charges are re-rated and paid to the presubscribed carrier. Mirroring the FCC's rules would be the least regulatory cost method for the Commission to reach its goal.

In the alternative, the Commission should adopt Proposed Rule 25-4.118(8) as modified below to require that charges be re-rated for unauthorized provider changes:

25-4.118(8) - Charges for unauthorized

provider changes and all charges billed on behalf of the unauthorized provider, and higher usage rates, if any, over the rates of the preferred company shall be credited to the customer by the company responsible for the error within 45 days of notification. Upon notice from the customer of an unauthorized provider change, the LEC shall change the customer back to the preferred company. The change must be made within 24 hours excepting Saturday, Sunday, and holidays, in which case the change shall be made by the end of the next business day.

**ISSUE 5:** Should the Commission adopt the amendments to Rule 25-24.490, F.A.C., as proposed by the Commission at the December 16, 1998, agenda conference?

**INTERMEDIA'S POSITION:** \*\* No. Because there are lower regulatory cost alternatives available to accomplish the same goal, the specific rules that apply to IXC's should be the soon-to-be promulgated rules of the FCC or the FCCA's Alternative 2, as modified for Proposed Rules 25-4.110(12), and 25-4.118(8). \*\*

#### **ARGUMENT**

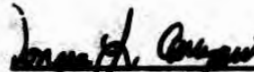
Please see discussion under Issues 3 and 4.

Docket No. 970882-TI  
Intermedia Communications Inc.  
Post-Hearing Brief  
Page 14

**CONCLUSION**

For the reasons stated above, Intermedia urges the Commission to adopt rules that mirror the FCC's or in the alternative, to adopt the FCCA's Least-Cost Alternative 2 as modified.

Respectfully submitted this 16th day of March, 1998.



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**CERTIFICATE OF SERVICE**

**DOCKET NO. 970882-TI**

**NOTICE IS HEREBY GIVEN** that the foregoing was furnished by hand delivery (\*) or U.S. Mail this 16th day of March 1998 to the following:

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