

ORIGINAL

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March 16, 1998

Mrs. Blanca S. Bayo  
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RE: Docket No. 970882-TI (Slamming)

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,

*Nancy B. White (w)*

Nancy B. White

ACK \_\_\_\_\_

AFA \_\_\_\_\_

APP 2 *Substantive* Enclosures

CAF 2

CMU 2 cc: All Parties of Record

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OPC \_\_\_\_\_

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SEC 1

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**CERTIFICATE OF SERVICE  
DOCKET NO. 970882-TI**

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*Nancy B. White (ke)*  
Nancy B. White

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
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., Definitions; 25-4.110, )  
F.A.C., Customer Billing; 25-4.118, )  
F.A.C., Interexchange Carrier )  
Selection; 25-4.490, F.A.C., )  
Customer Relations; Rules )  
Incorporated. )

DOCKET NO.: 970882-TI

Filed: March 16, 1998

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**BELLSOUTH TELECOMMUNICATIONS, INC.  
BRIEF OF THE EVIDENCE**

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## **STATEMENT OF THE CASE**

On July 15, 1997, the Attorney General and Public Counsel for the Citizens of the State of Florida ("Public Counsel") filed a Joint Petition for the Initiation of Formal proceedings pursuant to Section 120.57, Florida Statutes, to investigate the practice of slamming. Slamming is the charging of a customer's service provider (local, intraLATA toll, interLATA toll) without authorization. The Florida Public Service Commission ("Commission") had already begun rulemaking under Section 120.54, Florida Statutes. Commission Staff proposed rules intended to reduce or eliminate slamming.

Public hearings took place throughout the State. The formal hearing in this docket took place on February 6, 1998. BellSouth submitted the direct and rebuttal testimony of Jerry Hendrix, Director - Interconnection Services Pricing. The hearing produced a transcript of 679 pages and 13 exhibits.

This Brief of Evidence is submitted in accordance with the post-hearing procedures of Rule 25-22.056, Florida Administrative Code. A summary of BellSouth's position on each of the issues to be resolved in this docket is delineated in the following pages and marked with an asterisk.

## **STATEMENT OF BASIC POSITION**

BellSouth is opposed to slamming and believes every reasonable effort should be taken to resolve this problem. The response of regulatory agencies should focus on severely and quickly punishing willful and repeated offenders, effectively removing offenders' economic incentive to slam customers. BellSouth also recommends that one set of rules across all

jurisdictions be established in order to minimize confusion and implementation costs. As competition continues to evolve in the remaining markets, local and local exchange service, slamming will become more pervasive without proper rules and strict enforcement. BellSouth supports the need for uniform rules. Uniform rules for authorization and verification are more cost effective and more easily administered. Uniform rules are also easier for customers to understand.

Questionable marketing tactics by some carriers have brought slamming to the forefront of concern for customers and the industry. BellSouth supports rules that would prohibit the authorization of a change of provider being combined with inducements. Rules that prohibit deceptive marketing practices should be enacted. BellSouth also supports answer time requirements for all providers, so that customers can obtain assistance for their concerns. Rules to eliminate slamming should not, however, create additional and costly burdens on those carriers, including local exchange companies, who choose to operate in a fair and reasonable manner.

BellSouth believes that the most effective methods of preventing slamming and cramming is the application of significant penalties for those carriers who willfully and repeatedly use these tactics. Heavy financial penalties and or suspension and withdrawal of certification of willful offenders as authorized by Chapter 264.285, Florida Statutes will reduce, if not eliminate, slamming while not imposing undue burden on those carriers who operate within the rules.

Strict enforcement of existing rules along with the changes that BellSouth supports would preclude the need for rules that will add costs to the companies that operate within the existing

guidelines. The cost for imposing unnecessary new rules will inevitably be paid by the end user in the form of higher prices. Simply stated, heavy financial penalties will remove the financial incentives to build market share by willfully slamming and cramming customers. When the financial incentive is removed, there should be a drastic decrease in occurrence.

### **STATEMENT OF POSITION ON THE ISSUES**

**Issue 1:** Should the Commission adopt new rule 25-24.845, Florida Administrative Code, as proposed by the Commission at the December 16, 1997, agenda conference?

**\*\*Position:** Yes. Any rules applicable to local exchange companies should be applicable to ALECS.

**Issue 2:** Should the Commission adopt the proposed amendments to Rule 25-4.003, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

**\*\*Position:** Yes, with two exceptions. First, there should be a definition of slamming. Second, Rule 25-4.003(41) should be modified to include the option of accepting a PIC freeze from the customer directly over the phone. Paper PIC freezes should not be required.

BellSouth could support proposed Rule 25-4.003 with two modifications. First, while Proposed Rule 25-4.003 adds various definitions, there is no proposed definition for "Slamming". BellSouth believes that it is imperative the such a definition be formulated and included in the rule. BellSouth supports the following definition: "slamming is the knowing,



unauthorized transfer of a customer's local, local toll, or toll service provider." (Tr. pp. 338-339 and 426-427). It is important that the Commission recognize that a distinction be made between an affirmative, willful action and an incidental or inadvertent action such as a household dispute, buyer's remorse or unintentional error when considering the application of the proposed rules. (Tr. p. 427). The proposed rules should only apply to acts of true slamming and not to errors or changes of heart.

Under the rules as proposed, however, there is no distinction between intentional and unintentional unauthorized changes of a customer's provider. (Tr. p. 124). If a spouse changes the residential provider, and the other spouse is not pleased with this change, then under the proposed rules, it would technically be a slam, even though the Commission Staff testified that they would not count that as a slam. (Tr. p. 125). It is essential that the rules be clear as to what kind of situation results in a slam. (Tr. pp. 127-128).

Second, BellSouth could support proposed Rule 25-4.003(41) with a modification to include the option of accepting a PIC freeze from the customer directly over the phone. In situations where a customer has been slammed, it would best serve the customer to be able to switch them back to their original carrier and immediately implement the PIC freeze on the spot. Such immediate action prevents any delay that would occur in mailing a form to the customer and awaiting its return. (Tr. 438).

BellSouth would prefer to function in a paperless environment in the PIC freeze process; however, if PIC freeze forms were to be a part of the process, we would require that the PIC Freeze form be submitted by the customer rather than the provider. This would ensure that the customer had truly authorized a PIC freeze and that the provider was not unilaterally initiating an

anti-competitive action. (Tr. p. 439). Thus, BellSouth would request that the rule be modified in these respects.

**Issue 3:** Should the Commission adopt the proposed amendments to Rule 25-24.110, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

**\*\*Position:** Yes, with the exception of Rule 25-4.110(10), (11)(a)3, (12), and (13).

These subsections should be modified due to the space limitations of BellSouth's bill, the cost involved, whether BellSouth will have such information in its possession, and technical obstacles.

BellSouth supports the proposed rule with modifications. Proposed rule 25-4.110(10) specifies that after January 1, 1998, all bills will display for the presubscribed providers of local, local toll and toll service the following information: a) the name of the certificated company and its certificate number; b) the type of service provided (local, local toll or toll); and c) a toll free customer service number. With appropriate billing program modifications and with information provided by external sources, BellSouth could comply with the requirements of the proposed rule within character space limitations of the bill. These modifications would represent a significant project involving coordination with other carriers, specific design requirements and implementation which would not be accomplished without significant lead time. While BellSouth continues to believe that the certificate number has little meaning to the customer, we do appreciate that the certificate number will help the Commission conduct investigations. (Tr. p. 446).

BellSouth provided the cost of including this information on the bill. Implementation costs were estimated between \$80,000.00 - \$100,000.00 with estimated annual costs of between \$2 and \$4.5 million if the Commission requires that the certificate number appear on a certain portion of the bill rather than allowing placement to be BellSouth's decision (Exhibit 1, p. 4). It should be noted, however, that the information BellSouth can provide is the name of the carrier associated with the PIC/LPIC code. BellSouth does not have knowledge of customer shifts between the presubscribed carrier and their reseller customers. In order to provide information on the customer's bill as to the reseller carrier and their customers, that information would have to come from external sources, such as the underlying carrier or reseller. (Tr. p. 447). BellSouth would not have that information.

Proposed rule 25-4.110(13) requires that the customer be given notice on the first or second page of their next bill after a change in local, local toll, or toll service provider. BellSouth has concerns with this requirement. If the change involves local service or local toll or toll service and the LPIC or PIC code is changed, then BellSouth will have information about this change and can include this information on the customer's bill.

If the provider change involves local toll or toll service and the LPIC or PIC code is not changed, then BellSouth would have no knowledge of a provider change. In order to fulfill the requirement of this rule, industry-wide procedures would be required to make that information available to BellSouth for inclusion on the customer's bill. No such procedures exist today and Mr. Hendrix estimated that the development of this information interface and exchange would require significant coordination and system development among all participants. (Tr. p. 449).

BellSouth provided the cost for the proposed rule at \$83, 313 in annual recurring costs. (Exhibit, p. 6).

Proposed Rule 25-4.110(12) requires that customers be notified of the availability of a PIC freeze on their first bill and annually thereafter. It also states that customers may contact the provider to receive a copy of the PIC freeze form. BellSouth's costs to implement this rule would be \$4,569. (Exhibit 1, p. 6). BellSouth's concerns regarding this rule are those discussed in response to Issue 2. In addition, PIC Freeze capability is currently only available for local toll and toll service providers and only against the specific PIC or LPIC codes. In the systems that are used to process change requests, it is these two codes (PIC and LPIC) that are restricted from change. (Tr. p. 439). Currently BellSouth does not have the ability to freeze a provider change to a reseller of local toll or toll service since the PIC and LPIC do not change. (Tr. pp. 439-440). Neither could BellSouth freeze a provider of local service since the switches and support systems do not yet include a code to designate the local service preferred carrier. (Tr. p. 440).

Proposed Rule 25-4.110(1)(a)(3) was severed from this proceeding and will not be discussed herein.

**Issue 4:** Should the Commission adopt the proposed amendments to Rule 25-24.118, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

**\*\*Position:** Yes, with the exception of 25-4.118(8). This section should be modified to eliminate the opportunity for undue financial gain by an unauthorized provider and eliminate the financial loss by the authorized provider, while maintaining the customer's financial responsibility for services rendered.

BellSouth supports the proposed rule with modifications to Rule 25-4.118(8). This subsection would require any carrier responsible for a slam to credit all charges billed for the first 90 days or first three billing cycles, whichever is longer. BellSouth proposes changes that will eliminate the opportunity for undue financial gain by an unauthorized provider while maintaining the customer's financial responsibility for services received. Further, BellSouth's proposed language will eliminate the financial loss currently experienced by the authorized provider. (Tr. pp. 430-431).

BellSouth proposes the following changes to rule 25-4.118(8):

(8) ~~(5)~~ Charges for unauthorized provider PIC changes and all charges billed on behalf of the unauthorized provider higher usage rates, if any, over the rates of the preferred company, shall be credited to the authorized provider ~~customers by the company~~ IXC responsible for the error within 45 days of notification. Charges over the rates of the customer's preferred company paid by the customer will be credited to the customer by the authorized provider within 45 days of notification. Upon notice from the customer of an unauthorized provider PIC change, the LEC shall change the customer back to the prior IXC or to another company of the customer's choice. 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. ~~In the case where the customer disputes the ballot or letter, the IXC appearing on the ballot/letter will be responsible for any charges incurred to change the PIC of the customer.~~ The only exception to this 24 hour rule would be large multiline business accounts that cannot be physically changed back in 24 hours. In such cases, an expedited schedule will be coordinated with the customer to accomplish the switch back as quickly as possible. (Tr. pp. 431-432).

**Issue 5:** Should the Commission adopt the proposed amendments to Rule 25-24.490, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

**\*\*Position:** Yes. These rules should be applicable to interexchange carriers.

**CONCLUSION**

For the reasons set forth herein, BellSouth requests that the proposed rules be approved as modified by BellSouth.

Respectfully submitted this 16th day of March, 1998.

**BELLSOUTH TELECOMMUNICATIONS, INC.**

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