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March 16, 1998

VIA HAND DELIVERY

Ms. Blanca Bayó
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 970882-TI - 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

Dear Ms. Bayó:

Enclosed are the original and 15 copies of Telecommunications Resellers Association's Brief in the above docket, together with a WordPerfect 5.1 disk.

I have enclosed an extra copy of the above document for you to stamp and return to me. Please contact me if you have any questions. Thank you for your assistance.

Sincerely,

Joseph A. McGlothlin

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FPSC-RECORDS/REPORTING

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; 25-24.490, F.A.C., Customer Relations; Rules Incorporated.	Docket No. 970882-TI Filed: March 16, 1998

BRIEF OF TELECOMMUNICATIONS RESELLERS ASSOCIATION

Pursuant to rule 25-22.056, Florida Administrative Code, the Telecommunications Resellers Association (TRA), files its Post-Hearing Statement of Issues and Positions and its Post-Hearing Brief.

PRELIMINARY STATEMENT

TRA is a national trade association representing more than 650 members, including 29 Florida-based members. TRA members offer a wide variety of interexchange, local, and enhanced competitive telecommunications services and play a vital role in providing desirable, competitive, value-added telecommunications services through Florida. Many of TRA's members are smaller companies that would be disproportionately affected by unnecessary increases in regulatory costs.

TRA applauds the Commission's efforts to minimize unauthorized carrier changes. However, as the record indicates, most slamming complaints are caused by a relatively small number of carriers who utilize misleading and fraudulent marketing

practices. (Tr. 489). As the witness for MCI developed during the hearing, many "PIC disputes" of the types that have been discussed in the course of this proceeding are not "slams" at all, but instead relate to household disputes, changes of mind, clerical errors. . . . (Tr. 520-521). According to the witness, typically fewer than half of complaints involve circumstances of unauthorized changes. (Tr. 520-521).

Because customers ultimately bear the costs of regulation, it is crucial to adopt and enforce measures that are designed to address the problem effectively, without increasing costs unnecessarily or creating problems that would be detrimental to customers' interests. To that end, TRA filed Comments on June 18, 1997, and again on January 23, 1998. The purpose of TRA's Comments was to identify particular measures, which, while well intended, would serve to dampen competition and raise customers' costs without contributing meaningfully to the attempt to curb the practice of unauthorized carrier changes. In its Comments, TRA emphasized -- and wishes to emphasize again -- that strict enforcement activities directed against unscrupulous carriers who deliberately and knowingly deceive or mislead customers represent the most effective solution to complaints of unauthorized carrier changes.

ENDORSEMENT OF FCCA'S ALTERNATIVE

At the time of the prehearing conference, the Florida Competitive Carriers Association ("FCCA") submitted an alternative rule proposal to the rule proposed by the Commission. TRA, which is a member of FCCA, endorses the FCCA package as an approach that would accomplish the Commission's objectives at lower cost. To be clear, TRA regards the FCCA submission as the minimum changes that should be

made to the proposed rule. In its comments, TRA has identified additional measures not encompassed by the FCCA alternative that would raise costs without adding meaningful protection to customers. In this Brief, TRA will develop its separate points as well as some of those that are encompassed by the FCCA alternative.

SUMMARY OF TRA'S POSITIONS

For reasons set forth in this Brief, the Commission should reach the following conclusions regarding its proposed rules:

1. The requirement of a specific "official" PIC-freeze form that carriers must keep "in inventory" would be counterproductive and should be deleted from the rule.

2. Because implementation of a PIC freeze requires a Carrier Identification Code (CIC), which is not issued to a non-facilities-based reseller, the rule should be clarified to state that PIC freezes are required only when technically feasible.

3. Requiring the carrier's certificate number on the customer's bill would increase costs to carriers and ultimately to customers without achieving any benefits to customers.

4. Requiring a carrier to notify a customer that the customer's carrier has been changed through a letter and/or statement on the bill would require state-specific costs that would be unwarranted in view of separate, earlier verification procedures.

5. The proposed 90-day crediting mechanism is excessive and would create new problems in the form of incentives for customers to game the system.

6. The proposed "mandatory call completion" standards are unnecessary in a competitive environment.

ARGUMENT

ISSUE 1

SHOULD THE COMMISSION ADOPT NEW RULE 25-24.845, F.A.C.?

TRA: "No position."

ISSUE 2

SHOULD THE COMMISSION ADOPT AMENDMENTS TO RULE 25-4.003, F.A.C.?

TRA: "TRA does not oppose the definition of "PIC-freeze" in proposed rule 25-4.003(41), so long as it is made clear that a carrier is required to offer a PIC freeze only when it is technically feasible to do so. Generally, non-facilities-based resellers cannot offer a PIC-freeze because they are not assigned Carrier Identification Codes."

Proposed rule 25-4.003(41) defines "PIC-Freeze" as "the customer authorization to prohibit a change of any selected provider as expressed on Form PSC/CAF 2 (XX/98)." TRA does not oppose this definition, but believes it does require clarification so that it is clear that PIC-freezes are to be made available only where they are technically feasible.[1]

[1] TRA further disagrees with the use of this form, as discussed below.

TRA is concerned that the proposed definition may implicitly suggest that PIC-freezes must be made available in all circumstances, including when doing business with a reseller. The Commission must recognize that a Carrier Identification Codes (CIC) is necessary to implement a PIC-freeze. Because non-facilities-based resellers do not purchase Feature Group D access from local exchange carriers, they are not, nor can they otherwise be, assigned CICs. Therefore, for the most part, these resellers are technically incapable of offering a PIC-freeze. The rule should not explicitly or implicitly require them to do something they cannot do.

ISSUE 3

SHOULD THE COMMISSION ADOPT AMENDMENTS TO RULE 25-4.110, F.A.C.?

TRA: "No. The Commission should not require the certificate number on the bill. It should allow alternative ways to inform customers of the PIC-freeze option. Notice of provider change should not be required on an individual bill; rather, verification procedures already in place should be employed."

TRA will address proposed rule 25-4.110 in the order the disputed items appear in the proposed rule.

Certificate Number on Bill (Rule 25-4.110(10)(a))

As noted in TRA's introductory remarks, customers pay the costs of regulation. Accordingly, the Commission should weigh the cost of additional regulation against any consumer benefit associated with the additional regulation. Such an analysis must be applied to the proposal contained in rule 25-4.110(10)(a), which would require all bills to display the company's certificate number.

There seems to be no dispute that this requirement would impose significant costs on the industry. Carriers noted that they would have to segregate Florida customers and write separate programs with additional coding to put the certificate number on the Florida bill (Tr. 309) -- all at high expense. The Commission's own Staff recognized that "this proposal will result in substantial cost to implement and maintain."[2] For smaller carriers (such as many TRA members), who depend on contract billing companies for nationwide billing, this would be an especially costly and difficult requirement.

The Staff states that if this proposal reduces or eliminates slamming, the additional costs may be warranted. The problem is that the inclusion of the certificate number, at a substantial cost to carriers, will accomplish absolutely nothing for the consumer.[3] It would require costly system modifications, but would not add any information that would be meaningful to a consumer. (Tr. 491, 509).

If the bill has the carrier's name on it, the consumer (and the Commission, if it receives a complaint), can easily identify the carrier and proceed with a complaint, if warranted. Also, if the bill (or a complaint) contains the name of the carrier, the Commission Staff can readily ascertain whether the provider has an existing certificate. (Tr. 165). To require the carriers to place certificate numbers on the bills

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[2] Revised Statement of Estimated Regulatory Costs, p. 15.

[3] Staff witness Taylor admitted that he does not even know if most consumers know what a certificate number is. (Tr. 142). Mr. Taylor also admitted that ultimately the consumers would pay for the costs of putting this information on the bill. (Tr. 143, 154).

would merely create, at high cost, a redundant and therefore unnecessary means of locating the certificate numbers or establishing that the carrier has no certificate.

Written Notice of PIC-Freeze Availability and Form Retention (Rule 25-4.110(12))

This proposed rule would required the customer to be notified on the customer's first bill and annually thereafter that a PIC-freeze is available. If the customer is interested, he/she would be required to get the PIC-freeze form from the carrier. These two requirements would impose costs on carriers which far exceed any benefit to consumers. The proposal would require carriers to institute programming changes necessary to first isolate Florida customer bills and then include a notice on the bill itself. The proposal creates a highly state-specific requirement which will disproportionately impact carriers with more limited intrastate operations. It is possible that programming costs might exceed total Florida intrastate revenues for some carriers. The use of billing inserts would be an even greater expense. All these costs are unnecessary when alternative disclosure methods are available.

As an alternative, the Commission should permit carriers to inform customers orally or in writing that PIC-freezes are available at the time the new customer subscribes to the carrier. Customers could also be reminded of the PIC-freeze option when they contact a carrier's customer service representative. PIC-freeze authorization could be incorporated into the LOA, or it could be communicated and verified in ways consistent with other methods of presubscription verifications. Carrier-developed forms could also be used. These options would eliminate the need

to reprogram billing systems while still letting customers know that a PIC-freeze is available.

The proposed requirement that carriers retain certain Florida-specific PIC-freeze forms would also impose a financial and operational burden on carriers. The cost of distributing, verifying and retaining the forms could be substantial. Any time a carrier must maintain forms and ensure it has a current version of the forms, administrative costs increase. (Tr. 304). While the use of such a form may be one way to institute a PIC-freeze, alternatives should be permitted.

Inflexible PIC-freeze confirmation procedures are expensive and impose unwarranted administrative burdens. These costs could be avoided by giving carriers the other alternatives described above.

Notice of Provider Change (Rule 25-24.110(13))

This proposed rule would require that the customer be given notice on the first or second page of his bill in conspicuous type when his provider of local, local toll or toll service has changed. Like the PIC-freeze requirements discussed above, this requirement would impose state-specific requirements and additional costs. The costs would be heightened by the requirement that individual notices appear on individual bills. Personnel costs associated with identifying customers who must receive the notice, coupled with programming costs to include individual customer disclosure (assuming such individual notices can ever be programmed) could exceed $30.00 per customer.

When this proposal is viewed in concert with the requirements for PIC-change verification in rule 25-4.118, it is unclear why additional disclosure should appear on individual bills. Little is gained by requiring carriers to assume the additional expense and burden of informing subscribers that their service has changed when the Commission is instituting effective selection verification procedures to ensure that customers' subscriptions are verified by procedures which require first-hand customer involvement. The notice of change required in this proposed rule would be duplicative as well as costly to implement and manage. It should be eliminated from the rules.

ISSUE 4

SHOULD THE COMMISSION ADOPT AMENDMENTS TO RULE 25-4.118, F.A.C.?

TRA: "No. The Commission should not adopt that portion of the rule which requires the crediting of all charges for 90 days and charges in excess of the preferred carrier for up to 12 months. This does much more than make the customer whole and encourages "gaming" of the system. The Commission should not require an additional letter notifying a customer of a service change nor should it require the receipt of a written LOA before a change can be instituted. Finally, in a competitive environment, the Commission should not impose service standards on carriers."

TRA opposes several proposals related to rule 25-4.118. TRA will discuss each in turn.

Credit all charges for first 90 days of first three billing cycles and credit charges that exceed rates of preferred company for up to 12 months (Rule 25-4.118(8))

Possibly one of the most controversial proposed revisions is rule 25-4.118(8). This rule would require charges for all unauthorized PIC changes and all charges billed on behalf of the unauthorized provider for the first 90 days or first 3 billing cycles, whichever is longer, to be credited to the customer. It also requires that for up to 12 months charges over the rate of the preferred company be credited.

The record is replete with examples of how such a rule could be used by customers to gain free service. (See, Tr. 76, 89, 90, 332, 555). For example, individuals who want to defraud legitimate carriers could change providers frequently, alleging that their account had been changed without authority after making hundreds of "free" calls. Even Staff recognized that this rule could result in a customer receiving more money than the direct cost incurred to rectify a slamming situation. (Tr. 73). Further, companies faced with the prospect of lost revenue would be forced to vigorously fight every slamming complaint, greatly increasing transaction and regulatory costs. (Tr. 332). The proposed rule would also require detailed research on every dispute (Tr. 555). Currently, carriers use a "no fault" approach, in which the customer is simply switched back to the carrier of choice. The proposed rule would probably end the no fault approach. (Tr. 531).

Additionally, such a rule discourages a consumer from reviewing his/her bill and encourages delay in reporting PIC disputes. (Tr. 555). Consumers must take some responsibility for knowing their service choices and providers. (Tr. 482).

TRA believes that no provider should enrich itself through willful slamming; however, neither should customers be able to "game" the system to receive free services. The customer should be made whole; he/she should have no incentive to use the system to make money.

Letter notifying customer that service will be provided (Rule 25-4.118(12))

This rule would require that upon completion of the verification process, the provider send a letter notifying the customer that it will be providing service. This second requirement of written notice should be eliminated because it is costly and unnecessary. Such after-the-fact letters will do nothing to prevent slamming but will cause carriers to incur significant cost that customers will ultimately bear.

Provide copy of authorization to customer (Rule 25-4.118(13))

This proposed rule would require the carrier to provide the switching customer with a copy of the authorization it relies upon for the change. It is unclear how this rule is intended to work when a new customer uses telemarketing or electronically changes providers. What is clear is that the proposed rule will result in delay in quickly making the customer-desired change. (Tr. 557).

If the rule is intended to require written LOAs in <u>all</u> circumstances, it obviates other appropriate confirmation methods. If the rule is supposed to require written confirmation only upon request, it will have the unintended effect of requiring written confirmation and undermining the other types of confirmation provided for in the rules.

To clear up the confusion the proposed rule would cause, the Commission should require evidence of "verification," as opposed to a "copy" of the authorization.

Answering Incoming Calls and Responding to Complaints (Rule 25-4.118(14))

TRA suggests that a mandated call completion requirement, such as that set forth in this proposed rule, is unwarranted in a competitive environment.[4] In a competitive environment, the quality of customer service distinguishes one company from another. Service standards should be market driven. (Tr. 626). If a company is unresponsive, the consumer will find another carrier. This requirement should be eliminated from the rules.

If the Commission does adopt the service standard proposed in this rule, it should be clarified. As currently proposed, there is no indication of the time period over which the 95% call completion standard must be maintained. Is it during highest calling periods, over 24 hours, or is some other standard meant? With no time period included in the rule, the standard is unworkable and unenforceable.

ISSUE 5

SHOULD THE COMMISSION ADOPT AMENDMENTS TO RULE 25-24.490, F.A.C.?

TRA: "No position."

[4]Additionally, IXC call volumes are subject to extreme fluctuations resulting from activities in the competitive marketplace, (Tr. 557), which make a call completion standard problematic.

CONCLUSION

TRA supports the Commission's effort to bring strong, effective enforcement measures to bear on providers who willfully and knowingly abuse customers in unscrupulous efforts to obtain their business. Adoption of TRA's suggestions discussed above will ensure that any new regulatory requirements do not unnecessarily raise costs to providers (and ultimately end users) without diminishing the effectiveness of the Commission's requirements.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the **Brief of Telecommunications Resellers Association's** has been provided by (*) hand delivery or U. S. Mail this **16th** day of **March, 1998** to the following:

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