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: 2/16/98

AT&T's POST-HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS

Pursuant to Order No. PSC-98-0200-PHO-TI and Rule 25-22.056,Florida Administrative Code, AT&T Communications of the Southern States, Inc. ("AT&T") hereby files its posthearing brief and statement of issues and positions.

Introduction

Slamming is an industry and consumer problem which is currently receiving a great deal of public attention. Although the financial impact on customers is relatively small, the cumulative expense of investigating and resolving these complaints is substantial as is the irritation and inconvenience experienced by consumers. As shown at hearing by Mr. Watts, AT&T's witness, AT&T loses customers and substantial revenue to slamming by other carriers and thus has a direct financial interest in preventing slamming. (Tr. 325)

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Although it is tempting to impose strict limitations on the processes used by providers to solicit customers and switch their service, such limitations have the corresponding detrimental effects of making it more difficult for consumers to change providers while increasing business costs that ultimately must be borne by Florida consumers. The Commission must therefore craft a balanced approach to slamming in order to resolve existing problems in a way that serves, rather than penalizes, consumers. The Commission can best do this by vigorously enforcing its existing rules, imposing identified lower cost regulatory alternatives to the proposed rules and implementing further reforms only if proven necessary after these measures have had time to take effect.

The Commission also must weigh the extent of the slamming problem when crafting a solution.1 As pointed out at hearing, raw numbers of slamming complaints, taken alone, can be misleading. Mr. Watts estimated that approximately 2.75 million customer carrier changes occurred in Florida in 1997. (Tr. 326) Only a small fraction of one percent of those PIC changes resulted in complaints to the Commission - despite extensive publicity of slamming issues including television announcements,

[1] Although he was not able to quantify an amount, staff witness Mr. Taylor agreed that some degree of slamming errors might be deemed acceptable, and that the quantify of PIC changes processed could be considered in connection with this determination. (Tr. 187, 188) Mr. Taylor also agreed that costs should be taken into consideration when developing anti-slamming measures. (Tr. 147)

news reporting, and a series of well-publicized public hearings.[2] As Mr. Watts pointed out, all but a fraction of one percent of customers who switched providers did so because they found a better deal - not because they were slammed.

Customers want the ability to change carriers quickly and easily to take advantage of competition in the industry. AT&T supports cost-effective anti-slamming requirements, but the rules imposed by the Commission should not increase customer costs or needlessly hinder customer choice.

AT&T's Positions on Issues

ISSUE 1: Should the Commission adopt new rule 24-24.845, Florida Administrative Code, as proposed by the commission at the December 16, 1997, agenda conference?

AT&T's Position: ** No. The new rule would impose upon ALECs the customer billing requirements of Rule 25-4.110 (10)-13) and the carrier selection requirements of Rule 25-4.118. The Commission should not impose the new customer billing requirements on ALECs because they are unnecessary in a competitive environment. Customers may freely switch providers if they are dissatisfied with ALEC billing practices. The new carrier selection Commission be imposed on ALECs only if modified pursuant to AT&T's suggestions, as shown in Issue 4, below. **

Billing requirements were imposed upon LECs in a monopoly environment because customers could not express their dissatisfaction by changing providers. ALECs enjoy no monopoly;

[2] Staff witness Ms. Erdman-Bridges stated that for 1997, the Division of Consumer Affairs made an initial determination that 1,457 complaints involved an unauthorized carrier change, and that no determination had yet been made regarding an additional 1,531 inquiries. Even if all of these complaints were ultimately determined to be valid, they would constitute less than one tenth of one percent of the 2.75 million PICs estimated to have taken place in Florida in 1997.

if they cannot satisfy their customers with clear, understandable bills which offer the information customers desire, they will lose those customers. The billing requirements are thus unnecessary.

AT&T agrees, however, that all providers should operate under the same fair set of rules when it comes to soliciting customers. Accordingly, if Rule 25-4.118 is changed as noted above, it should apply equally to all LECs, ALECs and IXCs.

25-24.845 Customer Relations; Rules Incorporated.

The following rules are incorporated herein by reference and apply to ALECs. In the following rule, the acronym 'LEC' should be omitted or interpreted as 'ALEC'.

Section	Title	Portions Applicable
~~25-4.110~~	~~Customer Billing~~	~~Subsections (10), (11),~~ ~~(12), and (13)~~
24-4.118	Local, Local Toll, or Toll Provider Selection	All

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?

AT&T's POSITION: ** AT&T does not oppose the proposed changes. **

ISSUE 3: Should the Commission adopt the proposed changes to Rule 25-4.110, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

AT&T's Position: ** No. Instead, the Commission should make changes to the proposed rule in order to clarify that telecommunications companies may use the d/b/a name authorized in their certification; clarify the "pay per call" rule to differentiate between 900/976 calls and other pay per call services; modify the PIC freeze requirement t: require further customer information; and modify the provision requiring notification of provider change to allow bill inserts and specify an implementation date. **

A. Information On Customer Bills

AT&T proposes that the rule be modified to delete the requirement that customer bills include certificate numbers and to add a provision that would allow the use of d/b/a names duly authorized and shown on the provider's certificate.

AT&T agrees with the new requirement that the name of the provider be shown on customer bills. AT&T is well aware of the customer confusion that can result when customer bills do not clearly indicate the identity of the customer's service provider. As AT&T has indicated to the Commission and staff, possible customer confusion is the reason for discontinuance of AT&T's former practice of allowing certain of its resellers to make limited use of AT&T's name and logo - a practice that staff used at hearing as justification for the new requirement that certificated names and certificate numbers be included on customer bills. (Ex. 1, JAT 1, pages 1-11)

AT&T believes the problem of the unknown provider will be solved by requiring customer bills to include the name of the certificated company, and that inclusion of certificate numbers is expensive overkill. As was made clear at the hearing, this requirement would not aid most customers, may provide confusing, is costly to impose and would require expensive modification of the billing systems of companies using nationwide billing. Since the cost of regulatory requirements must inevitably be borne by customers, AT&T believes that only those requirements that will aid customers should be imposed by the Commission. The limited utility to customers of the provider's certificate number cannot justify the price they eventually would pay for this information. According to the Revised Statement of Estimated Regulatory Costs (SERC) prepared by Staff, the aggregate cost of providing the Florida certificate number on customer bills will be extremely costly: BellSouth alone estimated annual recurring costs between $2 million and $2.5 million.

The solution to carrier branding confusion is to require the correct name of the provider to appear on customer bills, a solution to which no party objected and one that can be inexpensively implemented.

Additionally, the Commission should allow providers to use their duly approved and certificated d/b/a name on customer bills. In some cases the d/b/a name would be more familiar to customers than the certificated name, and would thus contribute to ensuring that customers easily can determine the identity of their service providers. For example, "AT&T" is a d/b/a name that is better known to consumers than the company's certificated name of "AT&T Communications of the Southern States, Inc."

This approach recently was found acceptable by the commission when it approved rules relating to prepaid calling services, a telecommunications service in which the consumer's ability to identify the provider has greatly concerned the Commission. In Order No. PSC-98-0373-FOF-TI, the Commission adopted rules that allow providers of prepaid calling services to issue cards using only their authorized and registered d/b/a name, rather than their certificated name. Nor did the Commission require providers of prepaid services to list their certificate number on debit cards. The record in this case reveals no reason to impose upon providers of presubscribed telecommunications services requirements that are more onerous and costly than those imposed on providers of prepaid service. AT&T therefore requests that the Commission modify Rule 25-4.110 (10) to delete the requirement that customer bills show certificate numbers and to allow providers to use duly authorized and certificated d/b/a names.

AT&T's requested changes are shown below in bold type:

(10) After January 1, 1998, all bills produced shall clearly

and conspicuously display the following information for each service billed in regard to each company claiming to be the customer's presubscribed provider for local, local toll, or toll service:

(a) The name of the certificated company *or its authorized d/b/a name as shown on its certificate.[delete requirement that certificate number be shown on bill]*

(b) Type of service provided, i.e., local, local toll, or toll; and

(c) A toll-free customer service number.

B. Pay-Per-Call Billing Requirements

The Commission has proposed rule language that would regulate "miscellaneous charges" as pay-per-call services. While AT&T has no objection to this proposal, it necessitates further revisions to ensure clarity.

First, AT&T requests that the rule be clarified to specify that the "miscellaneous charges" referred to are nonregulated. Not only do customers have remedies available regarding provision and billing of regulated charges, but it would be confusing to lump nonregulated and regulated charges together in the same billing category. For example, paragraph (11)(a)1. requires notification to customers that their service may not be disconnected for nonpayment of pay per call service. Lumping regulated charges in with nonregulated charges would require customers to determine which charges were regulated (and thus should be paid in order to avoid service disconnection) and which were nonregulated (and thus need not be paid to avoid disconnection). Staff agreed with this suggestion in its Revised Statement of Estimated Regulatory Costs dated February 6, 1998.

More importantly, AT&T requests that the Commission clarify which requirements apply to all pay per call services, and which requirements apply only to 900 and 976 services. Currently, paragraph (11) of Rule 25-4.110 refers to "pay per call" and "900/976" services interchangably, such that the entire rule refers to and governs 900/976 services. Broadening the definition and scope of the rule beyond 900/976 services requires an examination of each rule requirement to determine whether it makes sense to apply it to services other than 900/976 calls.

AT&T believes that the billing disclosure requirements of paragraph (11)(a) should be applied to all pay per call services: all nonregulated miscellaneous charges as well as 900/976 charges should be segregated on customer bills; customers should be advised that their service may not be disconnected for nonpayment of these charges, and other mandated disclosures should be made. Paragraphs (11)(b)-(g), on the other hand, should be clarified to specify that they apply only to 900/976 calls. These paragraphs include requirements such as a recorded preamble, an 18-second billing grace period and 900/976 service blocking that are specifically designed to regulate provision and billing of 900/976 services and are totally inapplicable to other types of miscellaneous service.

The changes suggested by AT&T are shown below in bold type:

(11)~~(10)~~ This section applies to LECs ~~local exchange companies and interexchange carriers~~ that provide transmission services or bill and collect on behalf of other ~~Pay Per Call~~ providers including pay per call providers. Pay Per Call services are defined as switched telecommunications services between locations within the State of Florida which permit communications between an end use customer and an information provider's program at a per call charge to the end user/customer. Pay Per Call services include 976 services provided by the LECs, ~~local exchange companies and~~ 900 services provided by IXCs, and other **nonregulated** miscellaneous charges on behalf of other providers ~~interexchange carriers~~.

(a) Charges for Pay Per Call and other **nonregulated** services, ~~service (900 or 976)~~ shall be segregated from charges for regular long distance or local charges by appearing separately under a heading that reads as follows: "Pay Per Call and other ~~(900 or 976)~~ nonregulated charges."~~,~~ The following information shall be clearly and conspicuously disclosed on each section of the bill containing **charges for** Pay Per Call ~~**service**~~

~~(900 or 976)~~ ***and other nonregulated service***:

1. Nonpayment of Pay Per Call service ***or other nonregulated service*** ~~(900 or 976)~~ charges will not result in disconnection of local service;

2. End users/customers can obtain free blocking of ~~Pay Per Call service (~~900 or 976 ~~calls)~~ from the LEC ~~local exchange telephone company;~~

[This section removed from consideration at this time by order of the Commission] 3. End Users/customers can obtain a free billing block option from the LEC to block all charges from a third party. Bills submitted by third parties with the subscriber's LEC-specific personal identification number will validate the subscribers authorization of the charges and supersede the billing block option. The subscriber is responsible for all such charges.

4.~~3.~~ The local or toll-free number the end user/customer can call to dispute charges;

5.~~4.~~ The ~~With 900 service, the~~ name of ***the provider of each service*** ~~the IXC interexchange carrier providing 900 service~~; and

6.~~5.~~ The ~~Pay Per Call service (~~900 or 976~~)~~ program name.

(b) ~~Pay Per Call service (~~900 or 976~~)~~ Billing. LECs and IXCs ~~Local exchange companies and interexchange carriers~~ who have a tariff or contractual relationship with a ~~Pay Per Call (~~900 or

976~~)~~ provider shall not provide ~~Pay-Per-Call~~ transmission service or billing services, unless the provider does each of the following:

1. Provides a preamble to the program which states the per minute and total minimum charges for the ~~Pay Per Call~~ service ~~(900 and 976)~~; child's parental notification requirement is announced on preambles for all programs where there is a potential for minors to be attracted to the program; child's parental notification requirement in any preamble to a program targeted to children must be in language easily understandable to children; and programs that do not exceed $3.00 in total charges may omit the preamble, except as provided in Section (11)~~(10)~~(b)3.;

2. Provides an 18-second billing grace period in which the end user/customer can disconnect the call without incurring a charge; from the time the call is answered at the ~~Pay Per Call~~ *900 or 976* provider's premises, the preamble message must be no longer than 15 seconds. The program may allow an end user/customer to affirmatively bypass a preamble;

3. Provides on each program promotion targeted at children (defined as younger than 18 years of age) clear and conspicuous notification, in language understandable to children, of the requirement to obtain parental permission before placing or continuing with the call. The parental consent notification shall

appear prominently in all advertising and promotional materials, and in the program preamble. Children's programs shall not have rates in excess of $5.00 per call and shall not include the enticement of a gift or premium;

4. Promotes its services without the use of an autodialer or broadcasting of tones that dial a ~~Pay-Per-Call (~~900 and 976~~)~~ number;

5. Prominently discloses the additional cost per minute or per call for any other telephone number that an end user/customer is referred to either directly or indirectly;

6. In all advertising and promotional materials, displays charges immediately above, below, or next to the *900 or 976* ~~Pay-Per-Call~~ number, in type size that can be seen as clearly and conspicuously at a glance as the *900 or 976* ~~Pay-Per-Call~~ number. Broadcast television advertising charges, in Arabic numerals, must be shown on the screen for the same duration as the *900 or 976* ~~Pay-Per-Call~~ number is shown, each time the *900 or 976* ~~Pay-Per-Call~~ number is shown. Oral representations shall be equally as clear;

7. Provides on *900 or 976* ~~Pay-Per-Call~~ services that involve sales of products or merchandise clear preamble notification of the price that will be incurred if the end user/customer stays on the line, and a local or toll free number for consumer complaints; and

8. Meets internal standards established by the LEC or IXC ~~local exchange company or the interexchange carrier~~ as defined in the applicable tariffs or contractual agreement between the LEC and the IXC; or between the LEC/IXC and the 900 or 976 ~~Pay-Per Call~~ provider which when violated, would result in the termination of a transmission or billing arrangement.

(c) ~~Pay-Per-Call (~~900 and 976~~)~~ Blocking. Each LEC ~~local exchange company~~ shall provide blocking where technically feasible of ~~Pay-Per-Call (~~900 and 976~~)~~ service at the request of the end user/customer at no charge. Each LEC or IXC ~~local exchange company or interexchange carrier~~ must implement a bill adjustment tracking system to aid its efforts in adjusting and sustaining 900 and 976 ~~Pay-Per-Call~~ charges. The LEC or IXC ~~carrier~~ will adjust the first bill containing 900 and 976 ~~Pay-Per Call~~ charges upon the end user's/ customer's stated lack of knowledge that 900 and 976 ~~Pay-Per-Call~~ service has a charge. A second adjustment will be made if necessary to reflect calls billed in the following month which were placed prior to the 900 and 976 ~~Pay-Per-Call~~ service inquiry. At the time the charge is removed, the end user/customer may agree to free blocking of 900 and 976 ~~Pay-Per-Call~~ service.

(d) Dispute resolution for 900 and 976 ~~Pay-Per-Call~~ service. Charges for 900 and 976 ~~Pay-Per-Call~~ service shall be automatically adjusted upon complaint that:

1. The end user/customer did not receive a price advertisement, the price of the call was misrepresented to the consumer, or the price advertisement received by the consumer was false, misleading, or deceptive;

2. The end user/customer was misled, deceived, or confused by the *900 or 976* ~~Pay-Per-Call~~ advertisement;

3. The *900 or 976* ~~Pay-Per-Call~~ program was incomplete, garbled, or of such quality as to render it inaudible or unintelligible, or the end user/customer was disconnected or cut off from the service;

4. The *900 or 976* ~~Pay-Per-Call~~ service provided out-of-date information; or

5. The end user/customer terminated the call during the preamble described in 25-4.110(11)~~(10)~~(b)2., but was charged for the *900 or 976* ~~Pay-Per-Call~~ service;

(e) If the end user/customer refuses to pay a disputed *900 or 976* ~~Pay-Per-Call~~ charge which is subsequently determined by the LEC to be valid, the LEC or IXC may implement *900 or 976* ~~Pay Per-Call~~ blocking on that line.

(f) Credit and Collection. LECs and IXCs ~~Local exchange companies and interexchange carriers~~ billing *900 or 976* ~~Pay-Per Call~~ charges to an end user/customer in Florida shall not:

1. Collect or attempt to collect ***900 or 976*** ~~**Pay-Per-Call**~~ charges which are being disputed or which have been removed from an end user's/customer's bill; or

2. Report the end user/customer to a credit bureau or collection agency solely for non-payment of ***900 or 976*** ~~**Pay-Per Call**~~ charges.

(g) LECs and IXCs ~~**Local exchange companies and interexchange carriers**~~ billing ***900 or 976*** ~~**Pay-Per-Call**~~ charges to end users/customers in Florida shall implement safeguards to prevent the disconnection of phone service for non-payment of ***900 or 976*** ~~**Pay-Per-Call**~~ charges.

C. PIC Freeze Requirement

AT&T favors customers' ability to freeze their interLATA, intraLATA and local services independent of each other, to ensure that a customer's carrier of choice cannot be changed without consent. AT&T requests that the proposed rule be changed to require confirmation of PIC freezes and prohibit providers from requiring their own internal forms in order to override a PIC freeze.

Customer notification: The purpose of informing consumers of PIC freeze availability can be fulfilled whether consumers receive this information in a bill or via separate letter. Companies should be allowed the flexibility to provide PIC freeze information to consumers by either method, thus allowing for possible cost reduction. Staff agreed with this alternative in its Revised SERC.

In requiring local providers to notify customers of the availability of PIC freezes, the Commission has recognized that PIC freezes are relatively unfamiliar to most consumers. In order to ensure that customers understand the PIC freeze process, the Commission should require local providers to confirm to customers that a PIC freeze has been applied, explain its effect, and provide instructions for overriding the PIC freeze if they decide to change carriers. The PIC freeze process is intended to protect consumer choice, not to limit it, but it easily could be used as an anticompetitive tool. The Commission should impose the additional informational requirements as shown below that will ensure customers receive full and fair information about the effect of their PIC freeze choice without unduly advantaging the incumbent provider.

Use of specific form: Providers should be prohibited from requiring their own internal forms in order to override a PIC freeze because this practice could tend to inhibit customer choice.

AT&T suggests the following changes, shown in bold type:

(12) The customer must be notified on his first bill ***or by letter*** and annually thereafter that a PIC Freeze is available and

that the customer may contact the provider to obtain FORM PSC/CAF 2 (XX/XX). A copy of FORM PSC/CAF 2 (XX/XX), which is incorporated into this rule by reference, may be obtained from the Commission's Division of Consumer Affairs. Existing customers must be notified by January 1, 1999, and annually thereafter that a PIC Freeze form is available and **that they** may contact the provider to obtain FORM PSC/CAF 2 (XX/XX). ***Within 10 days of implementation of a PIC freeze and at least annually thereafter, the local service provider must send a confirmation letter to the customer, stating at a minimum that the PIC freeze has been applied, the type of service(s) to which it has been applied, the identity of the carrier(s) to which the freeze applies, and instructions for removing the freeze or changing carriers. Local providers may not require forms specific to or prepared by that local provider in order to remove a PIC freeze.***

D. Notification of Provider Change

AT&T requests that companies be given the option of notifying customers of provider changes by bill insert or by notification on the bill itself, which will allow companies the flexibility to select the lower cost option while still providing timely information to consumers. Additionally, the Commission should allow additional time before this rule requirement goes into effect, so that providers may make necessary modifications to their billing systems.

Staff agreed with a delayed implementation date in its Revised SERC but disagreed with the option of notifying customers of provider changes using a bill insert because customers do not always read bill inserts. Staff stated that it is reasonable to expect that customers seeking information will first consult their bills. By virtue of the new requirement in Rule 25-4.110 (10)(a), however, customer bills clearly will state the certificated name of the provider and thus customers seeking information easily will be able to identify the providers of their service. Thus there is no reason to deny companies the opportunity to reduce costs by notifying customers of provider changes by bill insert. Accordingly, AT&T requests the Commission to make the following changes to its proposed rule:

(13) The customer must be given notice ***either in a bill insert or*** on the first or second page of his next bill in conspicuous bold fact type when his provider of local, local toll, or toll service has changed, ***beginning no later than January 1, 1999 or six months after the date this rule adoption becomes final, whichever is later.***

ISSUE 4: Should the Commission adopt the proposed changes to Rule 25-4.118, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

AT&T's Position: ** No. The Commission can achieve its regulatory purpose at a substantially lower cost to Florida consumers by reviewing and adopting the FCC's upcoming slamming rule. Alternatively, the Commission should limit costs that will be imposed on Florida consumers by modifying or deleting requirements that do not provide cost-effective consumer protection. In particular, the requirement that companies provide free service to customers who allege they have been slammed is counterproductive and beyond the Commission's jurisdiction. Further, the Commission take vigorous action to enforce its present rules before it imposes increased regulatory costs upon Florida consumers. **

Pursuant to section 120.541(1)(a), Florida Statutes, the Commission is required to adopt or justify its failure to adopt lower cost regulatory alternatives to proposed rules that are proffered in good faith by substantially affected persons. On January 15, 1998, two lower cost alternatives were filed by FCCA, of which AT&T is a member. AT&T believes that Alternative No. 1, adoption of the Federal Communications Commission's soon-to-be adopted slamming rule, accomplishes the objectives of sections 364.01, 364.19 and 364.285, the laws being implemented by the Commission while greatly decreasing costs of compliance.

Adoption of the FCC's rules would ensure that carriers that do business on a nationwide basis are not subject to differing and expensive requirements in each state, which would necessitate costly adjustments to billing and operations systems. There has been no showing that the slamming problems experienced by Florida consumers differ from those experienced by consumers in other states, and no showing that a solution specific to Florida is required to alleviate those problems.

National uniformity will result in much lower costs to carriers, and ultimately to their customers. The Florida Commission should not unnecessarily impose costs when it can achieve substantially the same consumer benefits at a much lower cost by reviewing and adopting the FCC's upcoming slamming rule. Failure to do so will only contribute to "balkanization" of slamming rules and the resultant customer confusion, and will ensure that Florida consumers bear the increased costs incurred by providers who seek to serve them.

Although review and adoption of rules of nationwide applicability clearly is the preferable alternative for consumers as well as providers, AT&T hereby also submits specific changes to the rules proposed by the Commission. During the public hearings held in this docket, consumers made it clear that they wish the Commission to protect their choice of service providers. It was also perfectly clear, however, that they value the right to change providers. The Commission should strive to ensure that its rules protect against slamming without limiting customers' ability to change providers quickly and easily in order to take advantage of competition in the industry. As presently configured, however, the proposed rules fail to strike an appropriate balance.

Finally, the Commission should not simply assume that its present rules are ineffective and thus require revision. The current slamming problems result from violations of the present rules and there was no evidence developed at hearing that changing the rules will increase compliance. The only way to increase compliance is through vigorous enforcement, which is a great deal less expensive than the measures now proposed by the Commission.

A. Method of Carrier Selection

The proposed rules require providers to prove that a customer requested its service in one of four ways: a letter of agency, audio recording of customer-initiated calls, third party verification, or a signed postcard from an informational package. As proposed, the rules would impose excessive costs on telecommunications companies without providing consumers with proportionate benefit. Accordingly, AT&T suggests the following modifications to Rule 25-4.118(2).

(a) LOA requirement: no changes

(b) Verification of customer-initiated calls: the proposed rule would require audio recording of customer-initiated, or inbound, calls in which the customer seeks to select a telecommunications provider. As shown in Staff's Revised SERC, audio recording is prohibitively expensive. BellSouth alone estimated that it would cost $15 million to develop a complete audio recording system, with an additional $6.3 million in annual recurring costs. Estimates provided by other companies are similarly high: although implementation difficulties and costs were so extreme that AT&T believes it will never be feasible to fulfill the requirements, it estimated recurring expenses of at least $6 million annually. It is patently unreasonable to impose such a requirement on companies and their customers in the absence of any showing that expenditure of millions of dollars will solve - or even alleviate -- the slamming problem identified in this proceeding.

Audio recording is intended to provide a method of proof that a customer requested a particular service provider. It should not be the only acceptable method, however. Instead, companies should be given the option of obtaining independent third-party verification of the customer's request in lieu of audio recording, whether the call is generated or received by the provider. In either case, the customer's choice is confirmed.

In addition, the Commission should delete the requirement that customers make an individual inbound call on each line that s/he wants to have switched. This requirement increases the number of telephone calls that customers with multiple lines must make in order to switch providers, and would require customers to place individual calls from their data and fax lines. The requirement also prevents customers from making such phone calls from other locations, such as their place of work. Additionally, the ANI would not be captured for customers transferred from one service center to another, and thus these customers would be unable to switch providers simply by calling their chosen provider. Ironically, this rule is intended to protect consumer choice but instead has the effect of limiting it. Accordingly, given the absence of any showing that ANI capture is necessary or helpful, the requirement should be deleted. Staff agreed with this revision in its Revised SERC.

Finally, the Commission should retain the option of customer signup via 800 number and electronic confirmation. There has been no showing that this method is misleading, confusing, or results in slamming complaints, and thus there is no reason to further limit signup options available to companies and their customers.

(c) Third party verification: AT&T supports independent third party verification as an optional method of verifying customer choice, but believes that the audio recording requirement unnecessarily increases costs without providing an increased benefit to consumers. Third party verification is intended to confirm or substantiate the consumer's choice; requiring further confirmation by audio recording of the verification process obviates the purpose of independent verification and increases transaction costs.

Unrecorded third party verification can increase consumer protection simply because the independent verifier has no financial stake in the outcome of the transaction. There has been no showing that third party verification is inadequate or ineffective in the absence of audio recording.3 Thus, the Commission should not at this time impose upon companies and their Florida customers the substantial costs associated with audio recording of third party verification.

(d) Signed postcard from an informational package: This section essentially requires a customer to make a PIC change twice: first the customer makes the change request which generates the informational package, and then the customer must again request the change via the postcard. There was no evidence developed at hearing that the current process (allowing the customer to change his mind and "deselect" a company via postcard) is insufficient, confusing, or otherwise is in need of modification. The proposed amendment thus has not been shown to be either necessary or desirable.

AT&T's proposed changes to Rule 25-4.118(2) are shown below in bold type:

[3] Although staff witness Ms. Erdman-Bridges cited deceptive third party verification as a problem, she admitted that recording third party verification did not prevent slamming from taking place. (Tr. 57, 85) Deceptive third party verification is a separate issue that can and should be targeted – at much lower cost -- by requiring that verification scripts be clear and not misleading.

25-4.118 Local, Local Toll, or Toll Provider ~~Interexchange Carrier~~ Selection.

(1) The provider ~~primary interexchange company (PIC)~~ of a customer shall not be changed without the customer's authorization. A LEC ~~local exchange company (LEC)~~ shall accept a provider ~~PIC~~ change request~~s~~ by telephone call or letter directly from its customers; or~~.~~

(2) A LEC shall ~~also~~ accept a ~~PIC~~ change request~~s~~ from a certificated LP or IXC ~~interexchange company (IXC)~~ acting on behalf of the customer. A certificated LP or IXC ~~certified IXC that will be billing customers in its name~~ shall ~~may~~ submit a ~~PIC~~ change request~~, other than a customer-initiated PIC change, directly or through another IXC, to a LEC~~ only if it has first certified to the LEC that at least one of the following actions has occurred ~~prior to the PIC change request~~:

(a) the company ~~IXC~~ has a letter of agency (LOA), as described in (3), ~~on hand a ballot or letter~~ from the customer requesting the ~~such~~ change;

(b) the company has ***initiated a call or has*** received a customer-initiated call, and has obtained ***independent third party verification of the customer's choice as specified below or has obtained*** the following:

1. The customer's consent to record the requested change;

2. An audio recording of the information set forth in (3)a. through e.~~; and~~

~~**3. A recording of the originating telephone number on which the provider is to be changed via automatic number identification.**~~ ***[The following option of automated carrier selection should be retained]*** ~~the customer initiates a call to an automated 800 number and through a sequence of prompts, confirms the customer's requested change; or~~

(c) **An** independent, unaffiliated firm has verified the customer's requested change by obtaining ***the information stated in subsection (3)a. through e.*** ~~the following:~~

~~***1. The customer's consent to record the requested change; and***~~

~~***2. An audio recording of the information stated in subsection (3)a. through e. is verified through a qualified, independent firm which is unaffiliated with the company claiming the subscriber any IXC; or***~~

(d) The company ~~the IXC~~ has received a customer's change ~~customer~~ request, ~~to change his PIC~~ and has responded ~~within three days~~ by mailing ~~of~~ an informational package that shall include the following: ~~includes a prepaid, returnable postcard and an additional 14 days have past before the IXC submits the PIC change to the LEC. The information package should contain any~~

~~information required by Rule 25-4.118(3).~~

1. A notice that the information is being sent to confirm that a telemarketer obtained a customer's request to change the customer's telecommunications provider;

2. A description of any terms, conditions, or charges that will be incurred;

3. The name, address, and telephone number of both the customer and the soliciting company;

4. A postcard which the customer can use to confirm ***or rescind*** a change request;

5. A clear statement that the customer's local, local toll, or toll provider will be changed to the soliciting company ***14 days after the customer's receipt of the informational package unless*** ~~only if~~ the customer signs and returns the postcard ***rescinding*** ~~confirming~~ the change; and

6. A notice that the customer may contact by writing the Commission's Division of Consumer Affairs 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 or calling, toll-free (TDD & Voice) 1-800-342-3552 for consumer complaints.

The soliciting company shall ***not*** submit the change request to the LP ~~only~~ ***if the customer has rescinded the change request by returning the postcard within 14 days*** ~~if it has first received the postcard that must be signed by the customer~~.

B. Inducements

Rule 25-4.118(4), as amended, would prohibit AT&T's current practice of offering clearly identifiable, non-deceptive LOAs that also include checks. Staff admitted at hearing that checks combined with LOAs had not been a "significant" source of complaints, could only quantify the amount as "at least one" complaint. (Tr. 169) AT&T applauds the Commission's vigilance against misleading or deceptive LOAs, but its check-LOAs have not caused a problem and therefore should not be outlawed. FCC rules plainly allow use of such inducements. In the absence of an identified problem, the Commission's rules also should allow check-LOAs. As identified by staff, sweepstakes-entry LOAs, not checks, are the real source of problem. (Tr. 63, 167) Accordingly, AT&T proposes the following revision to the proposed rule:

(4) The LOA shall not be combined with inducements of any kind on the same document. The ~~If any such document is not used solely for the purpose of requesting a PIC change, then the~~ document as a whole must not be misleading or deceptive. For purposes of this rule, the terms "misleading or deceptive" mean that, because of the style, format or content of the document or oral statements, it would not be readily apparent to the person signing the document or providing oral authorization that the purpose of the signature or the oral authorization was to

authorize a provider ~~PIC~~ change, or it would be unclear to the customer who the new ~~long distance service~~ provider would be; that the customer's selection would apply only to the number listed and there could only be one provider for that number; or that the customer's LP ~~local exchange company~~ might charge a fee to switch service providers. If any part of the LOA ~~document~~ is written in a language other than English, then it ~~the document~~ must contain all relevant information in each ~~the same~~ language. ***Notwithstanding the above, the letter of agency may be combined with checks that contain only the required letter of agency language and the information necessary to make the check a negotiable instrument.***

C. Record Retention

In addition to LOAs and audio recordings, parties should retain records of third party verification in order to respond to consumer and staff inquiries.

(6) LOAs, ~~and~~ audio recordings ***and records of third party verification*** shall ~~(d) Ballots or letters will~~ be maintained by the provider ~~IXC~~ for a period of one year.

D. Rebate/Rerate of Customer Charges

The proposed rule would require unauthorized providers to credit to customers with all charges billed for the first 90 days or first three billing cycles, whichever is longer, and to rerate charges for up to an additional 9 months. There are several problems with this requirement.

First, by doing more than making customers whole, the provision constitutes an award of damages which is clearly beyond the Commission's jurisdiction.[4] Second, rather than encouraging customers to be alert to unauthorized changes, it encourages the opposite. Customers have a legal obligation to examine their bank and credit card statements in a timely manner in order to be entitled to a remedy, and there is no reason to provide an exception for telephone bills. Third, the requirement will substantially increase regulatory costs by encouraging frivolous complaints and increasing the necessity for companies to pursue administrative litigation of customer complaints.[5] Like all business costs, they eventually must be passed on to consumers.

None of these results is desirable. AT&T agrees that customers shouldn't suffer financially if they are switched to another carrier without their consent. But the best remedy is an immediate switch to their chosen carrier, along with a prompt

[4] Staff witness Ms. Erdman-Bridges intimated that the purpose of the requirement is to reimburse customers for inconvenience experienced as a result of an unauthorized provider switch – in other words, to award customers with a form of liquidated damages. Although required to do so by section 120.54(3)(a)1., the proposed rules cite to no specific provision of law being implemented that allows or even contemplates an award of monetary damages to consumers.

[5] Staff was unable to quantify the cost of this requirement, but Ms. Lewis, who prepared the Statements of Estimated Regulatory Cost, stated that it has the "potential to be extremely costly". (Tr. 46)

rerate to make them whole.[6]

AT&T's changes are shown in bold type below:

(8) ~~(5)~~ Charges for unauthorized provider ~~PIC~~ changes and ~~**all charges billed on behalf of the unauthorized provider for the first 90 days or first three billing cycles, which ever is longer,**~~ ***[rerate requirement should be reinstated]*** ~~higher usage rates, if any, over the rates of the preferred company~~ shall be credited to the customer by the company ~~IXC~~ responsible for the error within 45 days of notification. ~~**After the first 90 days up to 12 months, charges over the rates of the preferred company will 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 ~~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.~~

[6] The proposal by OPC to require LECs to credit customers with long distance charges upon complaint of slamming also suffers from all these infirmities. In addition, it constitutes yet another attempt to achieve in this docket a result that the Commission declined to implement in Docket No. 951123-TP – prohibition of LEC ability to deny local service for non-payment of long distance charges.

E. PIC Freeze Information

The requirement that customers be notified of PIC freeze availability during both telemarketing and verification is redundant, increases costs, and confuses the purpose of third party verification. Customer inquiries regarding rates and terms of service, including PIC freezes, should be handled in the first instance by the customer representative rather than the third party verifier. Third party verifiers should be limited to verifying customer acceptance or rejection of the service, including the PIC freeze option:

(11) During telemarketing ~~and verification,~~ the customer must be informed that a PIC Freeze is available. ***Third party verification, if used, shall verify the customer's acceptance or rejection of the PIC Freeze option***.

F. Notification Letter

The requirement that companies send a letter notifying the customer that it will be providing his service is duplicative of the requirement in Rule 25-4.110 (13) that customers be given notice in their bills of provider changes. It is particularly duplicative in cases where the company has completed third party verification or has sent the informational package referenced in rule 25-4.118(2)(d). This duplication increases costs without providing corresponding protection to consumers. Accordingly, AT&T suggests the following changes:

~~(12) Upon completion of the verification process outlined in this section, the provider must send a letter notifying the customer that it will be providing his service.~~

G. Service Standards

Rule 25-4.118(14) imposes a number of requirements modeled on LEC customer service rules. These requirements are unnecessary in a competitive environment, where customers may switch providers if they believe they are receiving poor service. Thus, these requirements should not be imposed on IXCs or ALECs. Rather, the Commission can better serve customers by facilitating selection and de-selection of providers, which will allow immediate redress for perceived poor service. Additionally, even the most well-prepared company may find it impossible to meet the standards imposed by this rule if bad weather, equipment failure or other problems cause a "spike" in customer calls. If the Commission believes customer service requirements should be imposed, it should do so in an incremental fashion by first requiring live operators or recording of complaints. Only if these solutions are insufficient should it impose the additional cost of minimum answer time requirements.

AT&T's suggestions are shown in bold type below:

(14) Each company shall provide a live operator to answer incoming calls 24 hours a day, 7 days a week, or shall record end user complaints. A combination of live operators and recorders may be used. If a recorder is used, the company shall attempt to contact each complainant no later than the next business day following the date of recording. ~~A minimum of 95 percent of all call attempts shall be completed to a company's toll-free customer service number. Station busies will not be counted as competed calls. The term "answer" as used in this subsection means more than an acknowledgment that the customer is waiting on the line. It shall meant the provider is ready to render assistance or accept the information necessary to process the call.~~

ISSUE 5: **Should the Commission adopt the proposed changes to Rule 25-24.490, as proposed by the Commission at the December 16, 1997, agenda conference?**

AT&T's Position: ** The Commission should not impose the requirements of Rule 25-4.110 (10) - (13) on IXCs because they are unnecessary in a competitive environment. Customers may freely switch providers if they are dissatisfied with IXC billing practices. The Commission should impose the requirements of Rule 25-4.118 only as modified pursuant to AT&T's suggestions, above. **

Billing requirements were imposed upon LECs in a monopoly environment because customers could not express their dissatisfaction by changing providers. IXCs enjoy no monopoly; if they cannot satisfy their customers with clear, understandable bills which offer the information customers desire, they will lose those customers. The billing requirements are thus unnecessary.

AT&T agrees, however, that all providers should operate under the same fair set of rules when it comes to soliciting customers. Accordingly, if Rule 25-4.118 is changed as noted above, it should apply equally to all LECs, ALECs and IXCs.

AT&T suggests the following changes:

25-24.490 Customer Relations; Rules Incorporated.

(1) The following rules are incorporated herein by reference and apply to IXCs. ~~interexchange companies. In the following rules, the word 'local' should be omitted or interpreted as~~

~~'toll', as they shall apply only to interexchange and not local service.~~

Section	Title	Portions ~~not~~ Applicable
~~25-4.110~~	~~Customer Billing~~	~~Subsections (10), (11), (12), and (13)~~
25-4.111	Customer Complaint and Service Requests	All except Subsection (2)
25-4.112	Termination of Service by Customer	All ~~None~~
25-4.113	Refusal or Discontinuance of Service by Company	All ~~None~~
25-4.114	Refunds	All ~~None~~
25-4.117	800 Service	All ~~None~~
25-4.118	Local, Local Toll, or Toll Provider ~~Interexchange Carrier~~ Selection	All ~~None~~

Conclusion

The Commission can avoid imposing enormous regulatory costs on Florida companies and their customers by reviewing and adopting the FCC's rules upon their release, or at the very least, by adopting the lower cost regulatory alternatives identified by AT&T and other parties to this proceeding. Further, the Commission should take targeted action to reduce slamming that occurs in violation of its present rules, such as vigorous enforcement against offenders, before it imposes increased regulatory costs upon Florida consumers.

Respectfully submitted this 16th day of March, 1998.

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