

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

BCI'S POST-HEARING BRIEF  
AND STATEMENT OF POSITIONS

Brittan Communications International, Inc. d/b/a BCI Corp.  
(BCI) hereby files this its post-hearing brief and statement of  
positions.

INTRODUCTION

BCI concurs with the industry consensus that the proposed  
rules, while directed toward an appropriate goal, are not cost-  
effective measures particularly when compared to readily available  
alternatives. In this Brief and Statement of Positions BCI will

not reiterate arguments made by other carriers through witnesses  
and previously filed comments. Rather, BCI will focus on three  
portions of the proposed rules that warrant additional comment.

BASIC POSITION

There are lower cost regulatory alternatives than the rules  
proposed by the Commission to accomplish the objectives of  
promoting and honoring customer choice. Two lower cost  
alternatives were proposed by FCCA. The first is to simply mirror  
the FCC's soon to be promulgated rules, and BCI believes this is

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the best approach. The second lower cost alternative, FCCA Alternative #2, modifies the proposed rule to reduce the cost of implementation without sacrificing its effectiveness. BCI generally supports this approach as well.

#### **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?

**BCI'S POSITION:** \*\* No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alternative 2. \*\*

**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?

**BCI'S POSITION:** \*\* Yes, except that the definition of "PIC-Freeze" in Proposed Rule 25-4.003(11), should be modified to allow the use of third party verification for both freezing and unfreezing PICs. \*\*

#### **DISCUSSION**

For PIC freezes to work, customers must fully understand the result of the freeze and how to override it should they later wish to switch carriers. Moreover, the level of formality either freezing or unfreezing one's PIC should be the same as for changing it. Thus the proposed rules should be changed to allow telephonic freezing and/or unfreezing of the PIC as long as there is third party verification of that decision. If the Commission makes unfreezing the PIC unduly cumbersome, it will merely provide the ILEC and the major carriers an unfair competitive advantage.

**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?

**BCI'S POSITION:** \*\* No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alternative 2. \*\*

**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?

**BCI'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 Federal Communications Commission. In the alternative, the Commission should adopt the FCCA's Alternative 2, except that Proposed Rule 25-4.118(8) should be modified to require only re-rating of calls. \*\*

#### **DISCUSSION**

Proposed Rule 25-4.118 addresses the critical area of carrier selection and is the heart of the proposed rules. BCI reiterates that the public interest would be better served if the Commission mirrored the upcoming FCC rules on this matter. As noted by numerous participants in this proceeding, several provisions of this proposed rule are at best suboptimal. There are two provisions, however, that are particularly troublesome to BCI: Rule 25-4.118(4) and Rule 25-4.118(8).

#### **Rule 25-4.118(4)**

Proposed Rule 25-4.118(4) provides in pertinent part as follows:

The LOA shall not be combined with inducements of any kind on the same document. The document as a whole must not be misleading or deceptive. ...

This language may need to be clarified based on the

Commission's intent. Specifically, if the Commission's intent is to prohibit marketing of telecommunication service through sweepstakes, then the proposed rule should state this intention clearly and specifically. If the intent of the rule is only to ensure that inducement marketing is not misleading or deceptive, the language need not be changed; the issuing order, however, should address the legislative intent behind this language.

BCI's interpretation of the rule is that it is intended to prohibit misleading and deceptive marketing specifically, not sweepstakes generally. Thus BCI has read the proposed rule to be consistent with the FCC rules on LOAs (47 C.F.R. § 64.1150), which specifically allows "separable" documents. Thus a separable LOA on a sweepstakes announcement would satisfy this rule, assuming that within the context neither the marketing nor the LOA was not misleading. BCI attempted to clarify this point at hearing in cross-examination of Mr. Taylor, but his testimony is subject to conflicting interpretation. [Tr. 191-192]

If the purpose of the rule is to prohibit sweepstake marketing, then this is a broad move done with little consideration of the legal and policy issues involved. For example, it is not clear that the Commission can even take this action without unconstitutionally impairing a carrier's right to commercial free speech or whether such action is within the authority granted to the Commission under Chapter 364, Florida Statutes. In addition, prohibiting sweepstakes marketing would be anti-competitive because it would protect the larger carriers. Also, such a prohibition

would impair customer choice. The Commission must not forget that there are hundreds of thousands of satisfied customers who chose their respective carriers in response to sweepstakes inducements.

Rule 25-4.118(8)

Proposed Rule 25-118(8), would in effect give a customer 90 days "free service" if he or she complain of having been slammed. This proposed full credits for unauthorized charges would be particularly costly to carriers given the current nature of the long distance industry. Moreover, this proposal could lead to results unfair to the carrier.

For example, BCI has found that consumers will claim that their long distance service change was unauthorized even though there was a valid signed LOA from the household. For example, too often a husband complains that the wife switched long distance service and that he was thus slammed by the long distance company. Under the proposed rules, BCI would be obligated to give the husband a full refund of all long distance services provided even though the company reasonably relied upon the valid LOA of his wife.

BCI believes the proposed rule creates the potential for enormous abuse of the industry. Unfortunately, the adverse effects of this abuse would be worse for small carriers like BCI. Facilities-based carriers can afford to absorb full refunds such as those proposed by the Commission as the only impact is unrealized revenue. Resellers like BCI, however, cannot absorb these full refunds because BCI must pay its underlying carriers for network

time used irrespective of whether BCI bills a call or gives a full refund. Thus for BCI, the proposed rule would not only create lost cash outflows.

The FCCA's Alternative #2 attempts to soften the potential blow of a full refund requirement by limiting it to 30 days. Although this is obviously better than 90 days, the requirement remains subject to abuse, costly to carriers, and unnecessary to address the problems of slamming.

For these and other reasons reflected in the record, the Commission should strike from the proposed rule that the consumer automatically be entitled to a full credit, and further modify Proposed Rule 25-118(8) to require only re-rating of calls.


**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?

**BCI'S POSITION:** \*\* No. There are lower regulatory cost alternatives available to accomplish the same goal, e.g., the FCCA's upcoming rules and FCCA's Alternative 2. \*\*

#### **CONCLUSION**

For the reasons stated above, the Commission should adopt rules that mirror the FCC's or in the alternative, adopt the FCCA's Least-Cost Alternative 2 with the modification suggested.

Respectfully submitted this 16th day of March, 1998.

  
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**CERTIFICATE OF SERVICE**

**DOCKET NO. 970882-TI**

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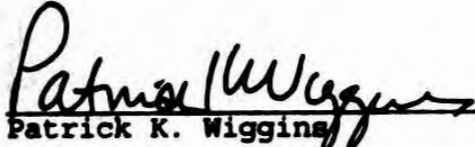
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