

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: 3-16-98

EXCEL TELECOMMUNICATIONS, INC.'S
POST-HEARING BRIEF

Excel Telecommunications, Inc. (Excel) hereby files this its
post-hearing brief.

INTRODUCTION

Excel supports the Commission's basic policy objective of
limiting unauthorized transfers of a customers' local or long
distance service (slamming). This policy objective is consistent
with the overarching principle of competition that customer choice
be maximized and that each customer's choice of carrier or carriers
be honored and faithfully implemented. The major concerns Excel
has with the proposed rules is not the stated objective of honoring

ACK _____ and implementing customer choice, but rather that some provisions
AFA _____ of the proposed rule may not advance preservation of customer
APP Caldwell
CAF 2 choice and some provisions are not cost-effective, and consequently
CMU _____ they will not serve consumers as well as more cost-effective
CTR _____ alternatives.
EAG _____

LEG _____ In this regard, Excel supports the lower cost regulatory
LIN 5 alternatives submitted by FCCA. To avoid unnecessary advocacy,
OPC _____ Excel will limit its comments in this post-hearing brief to
RCH _____ DOCUMENT NUMBER-DATE

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emphasizing points it believes to be key.

BASIC POSITION

Rules and requirements governing slamming and PIC freezes must be uniform and consistent throughout the nation, otherwise both consumers and carriers will suffer confusion, inaccurate and conflicting advice, and increased costs of service. Because long distance carriers, ILECS, and ALECS typically operate on a national or multistate basis, multiple and inconsistent specifications for documents, notices and procedures can only increase, perhaps substantially, the ultimate cost to consumers of telecommunications services - a result wholly at odds with the consumer welfare goal of these rules.

To achieve uniformity and to avoid the disadvantages of idiosyncratic rules, this Commission should wait and adopt rules that mirror the FCC's upcoming rules. If this lower cost alternative is unacceptable to the Commission, then at the very least it should adopt generally the Florida Competitive Carriers FCCA's Alternative 2.¹

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?

¹ Although Excel generally supports FCCA's Alternative 2 as a second choice to mirroring the FCC's upcoming rules, Excel does not agree with the FCCA that the customer should automatically receive a full credit for his or her service with a carrier that allegedly slammed. The 30 day approach does limit somewhat the mischief that can occur through consumer abuse and fraud and, moreover, many carriers already voluntarily give such credits. Nevertheless, the requiring a full refund for any period remains a bad idea for the reasons given in the discussion under Issue 3.

EXCEL'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. **

ARGUMENT

Please see discussion under Issue 3.

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?

EXCEL'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 three separate PIC-Freeze Forms and to provide for an additional review to ensure objectivity by LEC is promoting PIC Freezes. **

ARGUMENT

Please see discussion under Issue 3 with respect to Proposed Rule 25-24.110(12).

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?

EXCEL'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.**

ARGUMENT

As already noted, the most cost effective way to serve the stated goals of the rules is to ensure that the rules are consistent with national standards. Thus, the Commission should wait and adopt rules that mirror the FCC's upcoming rules. Again, if this lower cost alternative is unacceptable to the Commission,

then at the very least it should adopt the FCCA's Alternative 2.²

Proposed Rule 25-4.110(10)(a)

Excel agrees generally with the uniform consensus of the industry that certain provisions of this proposed rule are troublesome. For example, Proposed Rule 25-4.110(10)(a), would require that each company claiming to be the customer's presubscribed provider for local, local toll, and toll place its certificate number on the bill in addition to its name and toll-free customer service number. LECs, CLECS and IXC's all agree that requiring the certificate number on the bill would impose significant costs on the industry for a benefit to the consumer that can at best be described as speculative. Excel encourages the Commission to seek an alternative method to accomplish the purpose of this particular rule.

Rule 25-4.118(8)

Even more troubling is Proposed Rule 25-118(8), which would in effect give a customer 90 days "free service" if he or she complain of having been slammed. If the basis of this proposal is to remove the incentive of an IXC to slam, then beyond any reasonable argument it is not a cost-effective measure. Generally stated, under Section 258 of the Telecommunications Act of 1996 a carrier that slams is liable to the customer's previously selected carrier for amounts paid to it by the customer. This, along with other

² Except for that part of Proposed Rule 25-118(8) under the Second Alternative that would require a 30 day refund. The rule should only require re-rating of the calls.

remedial costs triggered by a slamming complaint, creates a powerful incentive not to slam. In terms of removing the incentive, or perhaps creating a disincentive, the 90 days of free service proposal is harshly redundant and therefore not a lower cost alternative.

If the purpose of the proposal is to compensate the aggrieved customer, the rule would be an invalid exercise of delegated legislative authority for at least two reasons. First, it would be an award of damages which is beyond the Commission's jurisdiction, such authority being reserved to the courts under Article V of the Florida Constitution. Second, the compensation is not rationally related to any harm endured by the customer. Rather it is simply an arbitrary number that will be higher when the customer is either inattentive or greedy.

There are other problems with this proposal. For example, it potentially imposes substantial costs on the carrier, it invites abuse by consumers, and encourages carriers to be more aggressive toward the consumer in countering claims of slamming. For these many reasons, the Commission should delete this requirement from the proposed rule.

Proposed Rule 25-4.110(12)

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

providers.

The availability of a "PIC Freeze" option can be a useful means for consumers to protect themselves from slamming. However, the PIC Freeze option can easily be abused if it is solicited by an incumbent local exchange carrier (ILEC) which possesses the sole power to execute and block carrier changes and at the same time has an inherent conflict of interest as a competitor for the customer's local, intraLATA and/or interLATA service. Accordingly, as competition develops and expands in these markets, in implementing this proposed rule the Commission should ensure that the following principles are followed:

Customers must be informed fully and neutrally in order that they may fully understand the result of the freeze and how to override it should they later wish to switch carriers.

Access to information concerning whether a customer has selected a PIC freeze must be made available to all carriers on nondiscriminatory terms and conditions.

ILECs should be prohibited from soliciting or enforcing PIC freezes for local and intraLATA services until at least six months after those services become subject to competition in a particular market.

Where a carrier offers PIC freeze options to its own customers, it must offer the same PIC freeze options to customers pre-subscribed to other carriers.

PIC freezes should not be applied to a customer's interLATA, intraLATA and local service carrier selection without the consumer's explicit permission as to each service. To this end, customers should have PIC freeze options specific to each type of service to which they subscribe.

With respect to this last principle, the easiest way to ensure that each type of service is individually selected is to require three, separate forms for the presubscribed local, local toll, and

toll providers. This approach was recognized as being more competitively neutral by staff in the SERC:

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

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?

EXCEL'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 25-118(8) should be modified to require only re-rating of calls. **

ARGUMENT

For the reasons discussed in Issue 3, the Commission should adopt the FCC's soon-to-be promulgated rules regarding slamming. In the alternative, the Commission should adopt FCCA's Alternative 2.

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?

EXCEL'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. **

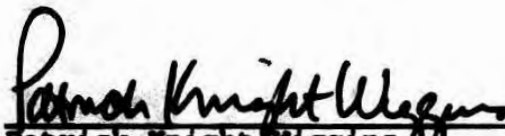
ARGUMENT

Please see discussion under Issues 3 and 4.

CONCLUSION

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

Respectfully submitted this 16th day of March, 1998.


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CERTIFICATE OF SERVICE

DOCKET NO. 970882-TI

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