

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED

MEMORANDUM

APRIL 16, 1998

APR 16 1998

FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF COMMUNICATIONS (BATES) *JB*
DIVISION OF LEGAL SERVICES (COX) *WRC BK for MCB PD*

RE: DOCKET NO. 980272-TL - QUINCY TELEPHONE COMPANY d/b/a TDS
TELECOM/QUINCY TELEPHONE PETITION TO WAIVE RULE 25-
4.110(4), FLORIDA ADMINISTRATIVE CODE

AGENDA: APRIL 28, 1998 - REGULAR AGENDA - PROPOSED AGENCY ACTION
- INTERESTED PARTIES MAY PARTICIPATE

CRITICAL DATES: MAY 24, 1998 - 60 DAY STATUTORY DEADLINE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\980272.RCM

CASE BACKGROUND

On February 23, 1998, Quincy Telephone Company d/b/a TDS Telecom/Quincy Telephone (Quincy or the Company) filed a petition with this Commission requesting a waiver of Rule 25-4.110(4), Florida Administrative Code. In its petition, Quincy indicates that Rule 25-4.110(4), Florida Administrative Code, requires Quincy in its present capacity as a local exchange company to include a bill insert advising each subscriber of the directory closing date and the subscriber's opportunity to correct any error or make changes as the subscriber deems necessary in advance of the closing date. Quincy proposes to inform its customers of the requirements of Rule 25-4.110(4), Florida Administrative Code, by means of a bill message instead of a bill insert.

Pursuant to Section 120.542(6), Florida Statutes, notice of Quincy's petition for waiver was submitted to the Secretary of State on March 4, 1998, for publication in the Florida Administrative Weekly on March 13, 1998. No comments were submitted during the comment period, which ended March 27, 1998.

DOCUMENT CONTROL
04339 APR 16 1998

DOCKET NO. 980272-TL
DATE: April 16, 1998

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Quincy's petition for waiver of Rule 25-4.110(4), Florida Administrative Code, allowing Quincy to inform its customers of said requirements by means of a bill message instead of through a bill insert?

RECOMMENDATION: Yes. The Commission should grant Quincy's petition for waiver of Rule 25-4.110(4), Florida Administrative Code, allowing Quincy to inform its customers of said requirements by means of a bill message instead of through a bill insert.
(BATES, COX)

STAFF ANALYSIS:

Rule Waiver

With the amendments made to the Administrative Procedures Act by the 1996 Legislature, agencies are required to consider requests for variances or waivers from their rules according to the requirements set forth in Section 120.542, Florida Statutes. Quincy seeks a waiver of Rule 25-4.110(4), Florida Administrative Code. The rule requires Quincy as a local exchange carrier to notify its customers by bill insert of the directory closing date and the subscriber's opportunity to correct any error or make changes as the subscriber deems necessary in advance of the closing date.

Section 120.542, Florida Statutes, provides that:

(1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has

DOCKET NO. 980272-TL
DATE: April 16, 1998

been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Rule 25-4.110(4), Florida Administrative Code, Customer Billing for Local Exchange Telecommunications Companies, provides that:

(4) Each telephone company shall include a bill insert advising each subscriber of the directory closing date and the subscriber's opportunity to correct any error or make changes as the subscriber deems necessary in advance of the closing date. It shall also state that at no additional charge and upon the request of any residential subscriber, the exchange company shall list an additional first name or initial under the same address, telephone number, and surname of the subscriber. Such notice shall be included in the billing cycle closest to 60 days preceding the directory closing date.

The underlying statute in this case is Section 364.03, Florida Statutes. Section 364.03, Florida Statutes, is applicable to Quincy as a rate-of-return regulated local exchange carrier. Section 364.03, Florida Statutes, provides that:

DOCKET NO. 980272-TL
DATE: April 16, 1998

(1) All rates, tolls, contracts, and charges of, and all rules and regulations of, telecommunications companies for messages, conversations, services rendered, and equipment and facilities supplied, whether such message, conversation, or service is to be performed over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable, and sufficient, and the service rendered to any person by any telecommunications company shall be rendered and performed in a prompt, expeditious, and efficient manner. The telecommunications facilities furnished by a telecommunications company shall be safe and kept in good condition and repair; and its service shall be modern, adequate, sufficient, and efficient.

Quincy states that it operates local exchange telephone companies in many states. In an effort to keep costs as low as possible, Quincy has attempted to standardize procedures. In other states where the company operates, the company is permitted to inform its customers of the information (or similar information) contained in Rule 25-4.110(4), Florida Administrative Code, through the use of a bill message. Alabama and Florida are the only states where Quincy operates that require the use of bill inserts.

Staff believes that waiving Rule 25-4.110(4), Florida Administrative Code, in this instance, would not disserve the purpose of the applicable underlying statute, Section 364.03, Florida Statutes. That purpose is to assure that its service shall be modern, adequate, sufficient, and efficient. Granting the requested waiver would allow the use of modern technology in that the information contained in Rule 25-4.110(4), Florida Administrative Code, would be in the form of a bill message. Further, the use of a bill message in this case would save the Company approximately \$400.00. The essence of Section 364.03, Florida Statutes, is that service shall be modern and efficient. Use of a bill message in lieu of a bill insert will accomplish both.

DOCKET NO. 980272-TL
DATE: April 16, 1998

Quincy contends that to deny the requested waiver would create a "substantial hardship." Staff finds that providing the information contained in Rule 25-4.110(4), Florida Administrative Code, by way of a bill message would be in the best interest of the customers served by Quincy and fulfill the intent of Section 364.03, Florida Statutes, because it would be "modern, adequate, sufficient, and efficient."

Further, staff believes that use of bill inserts places undue burden on the customer. The customer must review each page of a bill and then each bill insert to determine whether said bill insert is an advertisement or a message related to the customer's existing service.

Based on the above, staff recommends that the Commission grant Quincy's petition to waive Rule 25-4.110(4), Florida Administrative Code, allowing Quincy to inform its customers of Rule 25-4.110(4), Florida Administrative Code, by means of a bill message instead of a bill insert.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves or denies staff's recommendation in Issue 1, this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order. (BATES, COX)

STAFF ANALYSIS: If the Commission approves or denies staff's recommendation in Issue 1, this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Commission's Proposed Agency Action Order.