



Public Service Commission

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RECORDS AND REPORTING

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DATE: JUNE 24, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (BIEGALSKI) *CB*
DIVISION OF LEGAL SERVICES (CALDWELL) *CB*

RE: DOCKET NO. 990547-TL - PETITION BY GTE FLORIDA INCORPORATED FOR WAIVER OF RULE 25-4.110(13), F.A.C.

AGENDA: 07/06/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: STATUTORY DEADLINE - AUGUST 1, 1999

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\990547.RCM

CASE BACKGROUND

- July 15, 1997 - Office of Public Counsel and Attorney General filed a Joint Petition for Initiation of Formal Proceedings to Investigate the Practice of Slamming (the unauthorized change of a customer's service provider).
- December 4, 1997 - Agenda Conference on proposed slamming rules.
- February 6, 1998 and February 16, 1998 - Hearing on proposed slamming rules.
- May 27, 1998 - Slamming rules adopted and filed with Secretary of State.
- May 28, 1998 - Rule challenge filed by parties.
- October 22, 1998 - Staff recommendation to accept proposed settlement offer.

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- December 28, 1998 - Rule 25-4.110, Florida Administrative Code, Customer Billing for Local Exchange Telecommunications Companies, became effective, with delayed implementation dates for certain billing requirements.
- May 3, 1999 - GTE filed a Petition for Waiver of Rule 25-4.110(13), Florida Administrative Code, which pertains to the notice on the bill regarding service provider change. This rule will become effective June 28, 1999. (Attachment A, Pages 5-12)
- May 21, 1999 - Notice was published in the Florida Administrative Weekly that GTE was seeking a Waiver of Commission Rules.
- June 4, 1999 - Due date for filing comments. No comments were filed.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant GTE Florida Incorporated's request for waiver of Rule 25-4.110(13), Florida Administrative Code?

RECOMMENDATION: No. (Biegalski)

STAFF ANALYSIS: Rule 25-4.110(13), Florida Administrative Code, states:

(13) By January 1, 1999, or six months after the effective date of this rule, whichever is later, the customer must be given notice on the first or second page of the customer's next bill in conspicuous bold face type when the customer's provider of local, local toll, or toll service has changed.

For the past year, GTE has placed the message regarding the change of service providers where the other carriers' billing and related information begins. GTE argues that simply placing the message at the front of the bill will not assure maximum

DATE: June 17, 1999

effectiveness. GTE also states that changing the placement of the carrier change notice from the other carriers' bill section to a new location would increase the likelihood of customer questions and confusion. In addition, GTE argues that if it has to move the notice, the carrier change information currently provided on the bill will likely become shorter and less informative. Moreover, according to GTE if the notice is moved, it will most likely be moved to page 2 of the bill, which, in GTE's opinion, is the most ignored section of the bill. Finally, GTE does not believe this notice, required by the rule, accommodates the multi-line, multi-provider situation.

The waiver is being requested in accordance with the requirements of Section 120.542, Florida Statutes. Subsection (2) provides that variance and waivers shall be granted:

When the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

Rule 25-4.110(13), Florida Administrative Code, was recently amended as part of a rule revision to address the problems created by companies that switched customers' telephone numbers without their authorization (slamming). The specific provision was added after customers testified in ten workshops around the state that they wanted some notification on the first or second page of their bill that their carrier had changed. The customers also admitted that they had failed to read their bill carefully and, therefore, had not noticed the change.

Rule development for the slamming rules started in 1997 and the rules were proposed in 1998. During the rule development process, GTE was on notice that the provision would become a requirement if the proposed rules were adopted by the Commission. Staff believes that the rule development process was the appropriate time to raise these concerns and GTE had ample opportunity at that time to bring its concerns to the Commission.

In response to GTE's concerns, staff believes that GTE can continue to provide the informative customer-provider information in its current location. All that is needed on the first or second page of the customer's bill is a simple sentence stating that one of the customer's service providers has changed. Customer testimony provided during the slamming workshops showed that customers usually do not read their entire telephone bill and,

therefore, the Commission concluded that putting the notice on the first or second page of the customer's telephone bill would alert the customer to review the entire bill to ensure its accuracy. For this reason, we believe GTE's argument that the customers won't read the second page of the telephone bill is irrelevant.

Based on the foregoing, GTE has failed to demonstrate that the purpose of the rule will be achieved by any other means. In addition, GTE has not demonstrated any economic, technological, legal or other hardship caused to it by the application of the rule; nor has GTE shown that application of the rule would affect it in a significantly different manner from the way it affects other carriers. Further, GTE has failed to establish that application of the rule creates a substantial hardship or violates principles of fairness. Accordingly, staff believes that the purpose of the rule would not be met by granting the waiver because some notice must be on the first or second page of the telephone bill in order to alert customers that a change in service has occurred and, therefore, staff recommends that the waiver requested in this docket be denied.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed upon the issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action. **(Caldwell)**

STAFF ANALYSIS: Whether staff's recommendation in Issue 1 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon issuance of a Consummating Order.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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; and 25-24.490, F.A.C., Customer Relations; Rules Incorporated)	Docket No. 970882-TI
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GTE FLORIDA INCORPORATED'S PETITION FOR WAIVER

GTE Florida Incorporated (GTE) asks the Commission to waive the notice placement provision of Rule 25-24.110(13) because strict compliance with this aspect of the Rule would likely diminish customers' ability to identify their service providers.

Rule 25-4.110(13) states:

By January 1, 1999, or six months after the effective date of this rule, whichever is later, the customer must be given notice on the first or second page of the customer's next bill in conspicuous bold face type when the customer's provider of local, local toll, or toll service has changed.

This Rule took effect on December 28, 1998. In the absence of a waiver, its provisions must be implemented by June 28, 1999.

GTE already complies with the Rule's directive to notify a customer of any change in his local or toll provider(s). In fact, GTE's current bill message gives the customer even more information than the Rule requires. For each service changed (local, intraLATA toll and/or interLATA toll), it tells the customer who his former provider was, who his current provider is, when the change occurred, and the cost of the change. GTE began, voluntarily, to provide this notice in February of last year. While the message does not today appear in bold, as the Rule requires, GTE will implement this change by June.

GTE's change notice does not, however, appear on page 1 or 2, as the Rule requires. Instead, GTE places the notice right after the "Total GTE charges" notation, where the other carriers' bill sections start. In other words, the message that a carrier has changed would appear right at the beginning of the section listing the carrier's charges and related information.

GTE believes that moving its existing change notice to page 1 or 2 will undermine, rather than enhance, the effectiveness of the notice for a number of reasons.

First, GTE, like the Commission, wants the notice to be read and understood. As such, before it undertook to implement the change message, GTE carefully considered the optimum location on the bill. It chose the existing location because: (1) the change notice is associated with the services and provider(s) to which it relates; and 2) in GTE's experience, customers will closely scrutinize this summary portion of the bill, increasing the likelihood that they will notice the provider change message. GTE does not believe that simply placing the message at the front of the bill will assure maximum effectiveness. Rather, one must look at the notice placement in the context of a particular bill format. In the case of GTE's bills, the notice already appears in the most logical place.

Second, GTE's change notice has been in place for well over a year. Customers are used to looking for and seeing it in its current location. Changing it after all this time would increase the likelihood of customer questions and confusion.

Third, if GTE has to move the notice, it will likely become shorter and less informative. As explained, today GTE includes a number of items—such as date of change, previous provider, and cost of change—that are not required by the Rule. If GTE must

squeeze the notice onto page 1 or 2, it will have to exclude this additional, useful information.

Fourth, if GTE is forced to move its existing message to page 1 or 2, the more feasible option would probably be page 2, since page 1 is already typically full or near full with account summary information and half of this page is the payment stub. Page 2 is the "About Your Bill" page. It includes various messages, some mandated by regulators, about how to pay your bill, returned check policies, processing of previous payments, and the like. This section does not change from month to month and so customers are not likely to read it every month. In fact, it is probably the most ignored section of the bill.

Because there is now no room on page 1, trying to place the message there would require unacceptable modifications, in terms of bill clarity. Page 1, as noted, is the account summary information—previous and current charges, totals, amount due, and due date. The margin on page 1 also includes information about late payment charges and provides numbers for GTE repair, GTE billing questions, and GTE's Centro Hispano. Because there is now no space on page 1, moving the notice there would require making the print of the existing information smaller or otherwise squeezing this information into a smaller space, thus reducing the readability of the most important information for the consumer. Such changes would outweigh any potential benefits of placing the change notice on page 1.

Fifth, the Rule does not accommodate multi-line, multi-provider situations. Rather, it contemplates one "provider" for each type of service—local, local toll, and toll. In an increasing number of cases, however, this single-provider scenario no longer holds true.

Customers with several lines can and do presubscribe to toll carriers by line, rather than by account. That is, a customer may have different combinations of intraLATA and interLATA carriers for each line, depending on the calling patterns associated with the line. In these instances, the provider change notice itself may take up several pages because changes are made by line, rather than by account. As such, it will be impossible to put the message on any single page, let alone page 1 or 2. Again, this is something GTE considered when determining the placement of its existing change notice. Most customers do not want to wade through a number of pages listing carrier changes at the very beginning of the bill.

GTE's waiver request meets the standards of Section 120.542, Florida Statutes. The purpose of the underlying statute, 364.604 ("Billing Practices") is, in part, to effectively provide information the consumer can use to better protect himself from being slammed. GTE's waiver will not undermine this purpose. To the contrary, the waiver is necessary to satisfy this objective. As explained above, moving the change notice now, after more than a year, and in the manner specified, would likely decrease the effectiveness of the notice.

A waiver of the Rule's notice placement provision is also necessary to avoid substantial economic and technological hardship. As noted, page 2 placement is the most likely option if GTE is forced to move the existing notice. Page 2 is entirely "hard-coded." That is, there is currently no functionality to allow month-to-month variations in the information presented. GTE estimates that it would need to spend hundreds of thousands of dollars to modify its system to allow for the carrier change notice to print there.

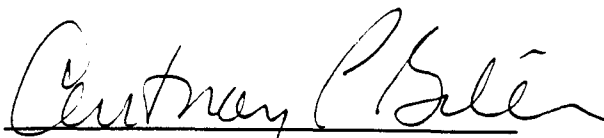
There are other complications besides expense in this case. Extensive billing system and other process modifications necessitated by the Y2K problem are necessarily very urgent and have taken resources from more routine compliance efforts. In addition, GTE, like other carriers, will institute a moratorium on billing system changes later this year to accommodate Y2K compliance efforts. As such, the extensive system modifications needed to change the placement of the change notice could probably not be done this year in any event.

GTE submits that the equities in this case weigh heavily in favor of granting this waiver. GTE has been aggressive in instituting measures to curb slamming and cramming. Again, GTE implemented the provider change notification on its own, without prompting from this Commission. The notice GTE devised contains even more helpful information than the one the Commission has mandated. Forcing GTE to make extremely costly and burdensome system modifications to change the placement of the notice would, in effect, punish GTE for taking a proactive stance against slamming. GTE will be less likely to take the initiative to implement anti-slamming and anti-cramming measures if it is forced to modify these practices without regard to whether they already meet rule objectives.

For all the foregoing reasons, GTE seeks a permanent waiver of the notice placement provision of Rule 25-24.110(13), so that the Company can keep the message in its current place.

ATTACHMENT A
DOCKET NO. 990547-TL
JUNE 24, 1999

Respectfully submitted on May 3, 1999.

By: 
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Attorney for GTE Florida Incorporated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Petition for Waiver in Docket No. 970882-TI were sent via U.S. mail on May 3, 1999, to the parties on the attached list.

Kimberly Caswell
Ba Kimberly Caswell

ATTACHMENT A

DOCKET NO. 990547-TL

Staff Counsel

JUNE 21, 1999

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