



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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DATE: JULY 21, 1999

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

FROM: DIVISION OF APPEALS (BROWN) *MB DS*
DIVISION OF COMMUNICATIONS (DOWDS)

RE: DOCKET NO. 990869-TL - PETITION BY CHESTER OSHEYACK FOR AMENDMENT OF RULE 25-4.113(1)(f), F.A.C., REFUSAL OR DISCONTINUANCE OF SERVICE.

AGENDA: JULY 27, 1999 - REGULAR AGENDA - PETITION FOR RULEMAKING - PARTIES MAY PARTICIPATE

CRITICAL DATES: AUGUST 15, 1999 - BY STATUTE, THE COMMISSION MUST GRANT OR DENY THE PETITION BY THIS DATE

SPECIAL INSTRUCTIONS: SHOULD NOT BE DEFERRED

FILE NAME AND LOCATION: S:\PSC\APP\WP\990869.RCM

CASE BACKGROUND

On July 1, 1999, Chester Osheyack filed a Petition to Amend Disconnect Authority Rule. In the petition, Mr. Osheyack asks the Commission to amend subsection (1)(f) of Rule 25-4.113, Florida Administrative Code, which permits a local exchange company to disconnect a customer's local telephone service for non-payment of a bill for long distance telephone service.

Pursuant to section 120.536, the Commission must grant or deny Mr. Osheyack's petition within 45 days. This is staff's recommendation to deny the petition.

DOCUMENT NUMBER-DATE

08636 JUL 21 2000010

FPSC-RECORDS/REPORTING

STATEMENT OF ISSUES

ISSUE 1: Should the Commission deny Mr. Osheyack's Petition to Amend Disconnect Authority Rule?

RECOMMENDATION: Yes. The Commission should deny Mr. Osheyack's petition. Rule 25-4.113(1)(f), Florida Administrative Code, satisfies the requirements of Section 120.536, Florida Statutes, because it implements the specific powers granted by Sections 364.03 and 364.19, Florida Statutes.

STAFF ANALYSIS: This petition is Mr. Osheyack's most recent attempt to convince the Commission to change its policy on discontinuance of local phone service for failure to pay long distance charges. In previous cases before the Commission, the Florida Supreme Court, the Division of Administrative Hearings, and the Second District Court of Appeals, Mr Osheyack has attacked the rule on a variety of substantive and procedural grounds. To date he has not been successful.

The rule in question, Rule 25-4.113(1)(f), Florida Administrative Code, provides, in pertinent part:

(1) As applicable, the company may refuse or discontinue telephone service under the following conditions provided that, unless otherwise stated, the customer shall be given notice and allowed a reasonable time to comply with any rule or remedy any deficiency . . .

(f) For nonpayment of bills for telephone service, including the telecommunications access system surcharge referred to in Rule 25-4.160(3), provided that suspension or termination of service shall not be made without 5 working days' written notice to the customer, except in extreme cases. The written notice shall be separate and apart from the regular monthly bill for service. A company shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the company. No company shall discontinue service to any customer for the initial nonpayment of the current bill on a day the company's business office is closed or on a day preceding a day the business office is closed. . .

In this case, Mr. Osheyack contends that Rule 25-4.113(1)(f) does not satisfy the requirements of the Administrative Procedures Act, Section 120.536(1), Florida Statutes, which provides that an agency may only adopt rules that implement or interpret specific powers and duties granted by statute. According to Mr. Osheyack, sections 364.03 and 364.19, Florida Statutes, which the Commission cites as authority for the rule in question, provide broad discretionary powers to regulate the telecommunications industry, but they do not provide specific power to disregard or override existing state and Federal debt collection practices laws, and statutes of limitations relating to them. Thus, Mr. Osheyack contends, the Commission has exceeded its rulemaking authority, and he asks the Commission to amend the rule in question "in a manner consistent with applicable State and Federal debt collection statutes."

Section 364.19, Florida Statutes, "Telecommunications service contracts; regulation by Commission" provides that "[t]he Commission may regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons." Mr. Osheyack acknowledges this broad grant of authority, but contends the rules enacted must be "reasonable." He also contends that since there are no specific standards incorporated in Section 364.19 for discontinuance of service, the rule must incorporate debt collection standards from other existing law. Since the rule does not do that, it is not "reasonable," and since it is not reasonable, it exceeds the specific authority granted in Section 364.19, Florida Statutes.

Rule 25-4.113, Florida Administrative Code, is a rule that governs the terms of telecommunications service contracts between telecommunications companies and their patrons. It implements the specific power over contracts granted by the statute, and the particular type of contract term it addresses is termination of service. It is directly and specifically related to the authority granted by the statute. No more specificity is necessary in either the rule or the statute. Nowhere does the statute require the Commission to comply with Federal or state debt collection statutes in its regulation of telecommunications service contracts between telecommunications companies and their patrons. The Commission is not authorized to enforce or implement those statutes, and in fact, if it did, it might well exceed the authority granted it under Section 364.19. Staff has reviewed those debt collection statutes and does not believe that they would be applicable at all to local exchange company billing and collection arrangements with interexchange carriers.

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Furthermore and finally, Rule 25-4.113, Florida Administrative Code, meets the standard of reasonableness found in section 364.19, Florida Statutes. It clearly is directly related to the terms of a telecommunications service contract and the Commission's long-standing policy that telecommunications consumers should not have to absorb the high costs of bad debt through their telecommunications rates. In Mr. Osheyack's 1996 rule challenge, the Administrative Law Judge specifically upheld Rule 25-4.113 on the grounds that the rule was reasonable, not arbitrary or capricious, and based on competent substantial evidence in the record. See Chester Osheyack v. Public Service Commission, Final Order issued August 11, 1997, Case No. 97-1628RX. That decision was affirmed Per Curiam by the Second District Court of Appeal.

For these reasons, staff recommends that the Commission deny Mr. Osheyack's petition. The rule meets the procedural requirements of Section 120.536, Florida Statutes. Staff notes, however, that it is presently working on two rule projects that address other aspects of Rule 25-4.113. Since the Commission has not reviewed this rule in over three years, staff could incorporate a review of this provision into its projects, if the Commission desires.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed. The docket should remain open if the Commission grants Mr. Osheyack's petition.

MCB