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RECORDS AND  
REPORTING

September 13, 2000

Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 990994-TP (Customer Billing Rules)**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Post Hearing Comments on Proposed Amendments to Rules 25-24.490 and 25-24.845, which we ask that you file in the above-captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

*Michael P. Goggin*  
Michael P. Goggin

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cc: All parties of record  
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**CERTIFICATE OF SERVICE**  
**Docket No. 990994-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
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Michael P. Goggin

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Proposed Rule 25-4.119, F.A.C., ) Docket No. 990994-TP  
Information Services; and proposed )  
amendments to Rules 25-4.003, F.A.C., )  
Definitions; 25-4.110, F.A.C., Customer )  
Billing for Local Exchange )  
Telecommunication Companies; 25-4.113, )  
F.A.C., Refusal or Discontinuance of )  
Service by Company; 25-4.114, F.A.C., )  
Refunds; 25-4.490, F.A.C., Customer )  
Relations; Rules Incorporated; and )  
25-24.845, F.A.C., Customer Relations; )  
Rules Incorporated. )

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) Filed: September 13, 2000

**POST HEARING COMMENTS OF**  
**BELLSOUTH TELECOMMUNICATIONS, INC.**  
**ON PROPOSED AMENDMENTS TO RULES 25-24.490 AND 25-24.845**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its post hearing comments on the proposed amendments to Rules 25-24.490 and 25-24.845 set forth in the Commission's Notice of Rulemaking, Order No. PSC-00-0525-NOR-TP (March 10, 2000).

**INTRODUCTION**

On March 10, 2000, the Commission adopted amendments to certain billing disclosure rules designed to protect consumers from cramming and to make telecommunications bills easier to understand. Order No. PSC-00-0525-NOR-TP. It has been suggested, however, that two of these rules should only apply to a few telecommunications companies in Florida, namely, incumbent local exchange companies (ILECs). The Commission is now considering whether to require the majority of local exchange providers (ALECs) and providers of

interexchange service (IXCs) to comply with these key consumer protection rules.

On August 21, 2000, the Commission held a hearing in this matter to consider testimony from members of the Commission staff and comments provided by certain ALECs, IXCs and BellSouth. The comments and testimony make clear that there is no legal or policy justification for excluding the customers of IXCs and ALECs from the protection afforded by the rules. Accordingly, the Commission should adopt the proposed amendments.

### **DISCUSSION**

The two rules at issue are 25-4.110(2) and 25-4.110(19). Rule 25-4.110(2) requires any telecommunications company that bills consumers on its own behalf or on behalf of third parties to set forth on the bill all charges, fees and taxes that are due and payable, to clearly identify third parties whose charges appear on the bill, and provide a means for customers to contact the party responsible for each charge that appears on the bill. The purpose of this rule is to implement the Telecommunications Consumer Protection Act (§§364.601-364.604, Florida Statutes)(“TCPA”). Like the TCPA, this rule applies to all “billing parties,” which is defined by statute to include *any* telecommunications company that bills its customers directly. See § 364.602(1), Florida Statutes; Rule 25-4.003(4). The term “telecommunications company,” by statute, includes ALECs and IXCs. See § 364.02(12), Florida Statutes. Moreover, the “Telecommunications Consumer Protection Act” which this

provision is designed to implement, clearly applies to ALECs and IXC. See § 364.604, Florida Statutes.

Although the statute clearly applies to IXCs and ALECs, the Commission, in adopting these rules, decided to codify the rules under Rule 25-4.110, the heading of which reads “Customer Billing for Local Exchange Telecommunications Companies.” The term “local exchange telecommunications companies” includes only ILECs. See 364.02(6). Nevertheless, this rule was adopted to implement the TCPA, which applies to all telecommunications companies. Accordingly, absent some statutory directive or permission, the Commission would have no authority to exclude any class of “billing parties” or “telecommunications companies” from a rule implementing the TCPA. Amending Rules 25-24.490 and 25-24.845 in the manner proposed would confirm that the Commission did not intend to frustrate the legislature’s intent that the TCPA apply to all telecommunications companies.

The second rule at issue, Rule 25-4.110(19), would require all billing parties, upon request, to limit the charges, fees and taxes on a customer’s bills to telecommunications services only. Like Rule 25-4.110(2), this “billing block” rule is designed to implement the TCPA, which applies to all telecommunications companies. Accordingly, by its terms, and by the terms of the TCPA, this rule also should apply to ALECs and IXCs if they are also “billing parties.” To remove any doubt about this which might arise from the placement of this rule within Rule 25-4.110, the Commission should amend Rules 25-24.490 and 25-24.845 as proposed.

Even if the TCPA (and the rules promulgated to implement it) did not apply to ALECs and IXCs, the policies underlying the statute and the rules would be frustrated if they did not. As the name of the act suggests, the TCPA was intended to protect consumers by imposing certain requirements on telecommunications carriers to ensure that consumers have bills that are clear and include only those charges that relate to services the customer has ordered and used. These objectives would be frustrated if the rules implementing the statute applied only to a handful of telecommunications companies, leaving hundreds of others free to do as they wish. A customer should not be denied the benefits of these consumer protection measures simply because of the telecommunications provider she chooses.

Most of the arguments made by ALECs and IXCs in opposition to extending the benefit of these consumer protection rules to ALEC and IXC customers do not support applying the rules only to ILECs. They amount to arguments that the rules should never have been adopted at all, not that ALECs and IXCs should be exempt from them. For example, Sprint and others have argued that Section 364.604 does not provide authority for the adoption of the billing block rule. If this is true, then it argues for elimination of the rules, not merely for a refusal to apply them to ALECs and IXCs. Similarly, arguments that carriers should remain free to use billing formats and billing blocks as means to differentiate their services from those of other carriers apply with equal force to all competitors in the telecommunications market, not merely to ALECs and

IXCs. If the Commission allows ALECs and IXCs to be free of these rules on these bases, then the rules should be withdrawn altogether.

Absent some statutory directive to the contrary, all telecommunication companies providing local exchange service should be treated the same for regulatory purposes. To do otherwise would be discriminatory and anticompetitive. This is particularly true in the case of consumer protection. In this context, there can be no reason, much less authorization, to require less of ALECs and IXCs than would be required of ILECs. When it comes to the duty to treat customers fairly, all telecommunications carriers are similarly situated—each has the same duties. All should share the same obligations.

The only arguments the ALECs and IXCs have made to justify their demands to be treated differently from other carriers who will comply with the rules are either incorrect or unsupported. First, Sprint and other ALECs and IXCs argue that the statement of legislative intent in Section 364.01(4) mandates a presumption that ALECs be free of regulations that apply to other carriers. On the contrary, Section 364.01(4) does not provide any statutory authority for rulemaking or statutory directive to be carried out in a rule. This section is merely a statement of legislative intent, and describes factors that must be considered by the Commission in exercising its authority. Section 364.01(4) certainly does not prohibit the Commission from applying rules in a manner that is nondiscriminatory. Moreover, in view of the fact that the Telecommunications Consumer Protection Act, by its terms, applies equally to all carriers, the Commission's rules implementing that act must be presumed to apply equally to



all carriers. If the ALECs and IXC believe that they should be free of rules designed to protect their customers, such as those under consideration here, they should bear the burden of demonstrating to the Commission that they should be exempted.

The second reason given by the ALECs and IXCs for discriminating in their favor by exempting them from these rules is that they believe compliance would be costly. None of the ALECs or IXCs, however, produced any testimony or other evidence concerning the amount of such costs. Accordingly, their protestations about costs cannot be given any weight. Indeed, there simply is no support in the record of this matter for the notion that the Commission should exercise its discretion to remove ALEC and IXC customers from the protection of these rules. The ALECs and IXCs simply have not carried the burden of proof that is required.


The rules in question are designed to protect consumers by requiring clear and complete disclosure of all charges on a bill, and by requiring that customers, not carriers, be empowered to decide whether the charges of third parties should appear on their bills. All telecommunications carriers in Florida have the same duties and obligations toward their customers in this regard. All are equally subject to the Telecommunications Consumer Protection Act. All should be equally responsible to comply with the Commission's rules implementing that act.

**CONCLUSION**

For the foregoing reasons, BellSouth respectfully recommends that Rules 25-24.490 and 25-24.845 be amended in the manner proposed.

Respectfully submitted this 13th day of September, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
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