McWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

October 17, 2001

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.: 010774-TP

Dear Ms. Bayo:

On behalf of Qwest Communications Corporation (Qwest), enclosed for filing and distribution are the original and 15 copies of the following:

- Comments of Qwest Communications Corporation.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,

Joseph A. McGlothlin

JAM/mls
Enclosure

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of the Citizens of the State of Florida to Initiate Rulemaking Which Will Require Telephone Companies to Give Customers Reasonable Notice Before Customers Incur Higher Charges or Change In Services, and Allow Them to Evaluate Offers for Service From Competing Alternative Providers	)	Docket No. 010774-TP Filed: October 17, 2001

COMMENTS OF QWEST COMMUNICATIONS CORPORATION

Pursuant to the Notice of Staff Rule Development Workshop, issued September 18, 2001, Qwest Communications Corporation ("Qwest") submits the following comments.

INTRODUCTION

The rule proposed by the Office of Public Counsel, mandating 30-day advanced notice to telecommunications customers, via first class mail, of any changes in rates, terms and conditions of service, is not necessary and should be rejected. The proposed rule, which applies uniquely to telecommunications carriers, (1) is inconsistent with national policy favoring deregulation in a competitive environment, the policy favoring the removal of unnecessary regulatory restraint articulated by the Florida Legislature in Chapter 364, Florida Statutes, and the Florida Public Service Commission's ("Commission") own rules favoring relaxed regulation in competitive environments; (2) is overly broad in its applicability to anything other than rate increases for 1+ intrastate, intraLATA services and in fact, is preempted as applied to interstate services; and (3) is unnecessarily restrictive and cost prohibitive in the single method of notice proposed. For these reasons, Qwest suggests that the proposed rule be rejected, or at a minimum, revised substantially with appropriate limiting language.

I. THE PROPOSED RULE IS INCONSISTENT WITH NATIONAL POLICY, THE PROVISIONS OF FLORIDA STATUTES, AND THE COMMISSION'S OWN RULES FAVORING DEREGULATION IN A COMPETITIVE ENVIRONMENT.

The proposed rule would subject telecommunications providers, alone among Florida vendors, to unique notice requirements. There is simply no basis for applying unique notice requirements to the telecommunications industry. Further, the proposed rule makes no distinction between competitive and noncompetitive services, or between interstate and intrastate services. Absent such distinctions, the proposed rule is inconsistent with national policy favoring the deregulation of competitive telecommunications services, and exceeds the Commission's authority at least as applied to interstate services. Moreover, the proposed rule conflicts with the legislative intent expressed in Chapter 364, Florida Statutes.

The Communications Act of 1934, as amended by the Telecommunications Act of 1996,[1] and as administered by the Federal Communications Commission ("FCC"),[2] governs the provision of interstate telecommunications services. In the 1996 Act, Congress established a pro-competitive, "deregulatory" framework for the provision of interstate telecommunications services. Consistent with that framework, the FCC determined that market forces should generally replace pricing and "other regulatory requirements."[3] Thus, the FCC decided to eliminate tariff and notice requirements for interstate interexchange services provided by non-dominant carriers, which requirements had previously been authorized under Section 203 of the 1934 Act. As the FCC explained, customers can choose

[1] 47 U.S.C. 151-52.

[2] 47 U.S.C. 154.

[3] Policy and Rules Concerning the Interstate Interexchange Marketplace ("Detariffing Order"), 11 FCC Rcd. 20,730, para. 4 (1996).

among a plethora of carriers for interexchange services, and are "highly demand elastic." Accordingly, "any attempt" by carriers to charge unreasonable rates, or impose unreasonable terms and conditions, "would cause their customers to switch to different carriers."[4] The same is true with respect to notice of price changes. If Florida consumers are dissatisfied with notices of price changes for competitive interexchange services, they can and will switch to different carriers.

Similarly, the Florida Legislature directed the Commission to encourage competition through flexible regulatory treatment, in order to ensure the availability of the widest possible range of consumer choice. Section 364.01(4)(b), Florida Statutes. The Legislature explicitly admonished the Commission to avoid unnecessary regulatory restraints. Sections 364.01(4)(e); 364.01(5), Florida Statutes. The Florida Public Service Commission recognized these principles over five years ago in Docket No. 951315-TI, where it proposed, and subsequently adopted, amendment and repeal of various rules that previously distinguished between "major" and "minor" interexchange carriers. In its Notice of Rulemaking, Order No. PSC-95-1497-NOR-TI, issued December 1, 1995, the Commission set forth the purpose and effect of the newly proposed rules as follows:

> The purpose of the amendments and repeal of certain rules relating to interexchange carriers is to eliminate the distinction between major and minor carriers. The elimination of this distinction reflects the trends in Commission policy, Florida law, and federal regulation that the interexchange marketplace has become more competitive. Other amendments were made to the rules to relax the Commission's regulation of this service to allow for greater competition.

[4] Id., para. 21.

It is not a coincidence that one of the rules amended in this 1995 rulemaking was Rule 25-24.485(2)(b) governing the "effective date" of tariff filings for interexchange carriers. That rule, which previously required a 30-day waiting period prior to a new tariff taking effect, was amended to require a waiting period of only one day. This important change, eliminating the lengthy waiting period for effecting a change in the price, terms and conditions of service, was a recognition of the fact that in a competitive environment, where consumers have a multitude of providers to choose from, the ability to respond immediately to a competitors' changes in price, terms and conditions could mean all the difference in a company's ability to retain its own customers, as well as compete for new customers. It also reflected an understanding that in a competitive environment, if customers are dissatisfied with their provider of choice for any reason, they have a multitude of other carriers to choose from. For over six years, interexchange companies, and more importantly their customers, have been operating (i.e., revising rates, terms and conditions of service) under this one-day time frame for tariff effectiveness.

While there has been no showing that Rule 25-24.485(2)(b), allowing for tariff changes on one-day notice, requires revision, there can be no doubt that the newly proposed 30-day advanced notice to customers requirement would effectively turn back the clock on that rule and the pro-competitive spirit with which it was adopted. Requiring 30-day advanced notice of changes to prices, terms and conditions would virtually eliminate the ability to respond effectively to competitors' price and term changes, which in turn will limit viable choices for consumers.

Although Qwest submits that market forces are sufficient to deter abuses to which the proposed rule is addressed, as an additional safeguard, Florida consumers can invoke, as

appropriate, any remedies available to them under state contract and consumer protection laws. In these circumstances, the administrative and other costs imposed on the Commission and carriers by the proposed rule outweigh any tangential benefit that its supporters claim it would achieve. The soundest course as a matter of policy would be to reject the proposed rule, and rely instead on market forces supplemented by existing provisions of Florida law. In this way, telecommunication carriers "will be subject to the same incentives and rewards that firms in other competitive markets confront.[5]

II. THE PROPOSED RULE IS OVERLY BROAD AND IS PREEMPTED AS APPLIED TO INTERSTATE SERVICES.

In no event should the Commission adopt and then attempt to apply the proposed rule to interstate services governed by the Communications Act subject to the jurisdiction of the FCC. The Florida Commission lacks jurisdiction to apply its rules to interstate services, and to do so in the case of this proposed rule would be contrary to Congress' national policy of deregulation, and the FCC's determination to rely on market forces in lieu of regulation with respect to notice of price changes and other terms and conditions associated with the provision of interstate services.[6] Indeed, as the FCC explained, a state commission may not adopt and enforce as to interstate services tariff and notice requirements from which the FCC

---

[5] Id., para. 4; see also id. At para. 56 (FCC's goal is to establish "market conditions that more closely resemble an unregulated environment").

[6] See 47 U.S.C. 160(b).

has chosen to forbear.[7] At a minimum, therefore, the Florida Commission should clarify that any "notice" rule it adopts applies solely to intrastate services.

Similarly, there is no justification for applying a "notice" rule to intrastate services which are subject to robust competition. As mentioned, the Florida Commission determined long ago that interexchange services were subject to sufficient competition to warrant relaxed regulation. Qwest agrees with comments filed by other providers suggesting that notice requirements are not necessary for services such as collect calling services, directory assistance services and calling card transactions. Each of these services is highly competitive, affording consumers their choice of a variety of providers. It is the competitive reality that customers can vote with their feet, which the Commission should rely on to curb any potential abuse.

III. THE RULE IS UNNECESSARILY RESTRICTIVE AND COST PROHIBITIVE.

When considering any newly proposed rule, the Commission should consider not only the purported need for the rule, but also the consequences of the rule and whether the purported need can be met by less restrictive means. In this instance, the purported need for the proposed rule is protection for consumers who are "substantially and adversely affected by the failure of the telephone companies to provide reasonable notice directly to each customer prior to any changes in rates or other terms and conditions of service that may

---

[7] Detariffing Order, para. 40, citing 47 U.S.C. 160(e). That the FCC has approved the application of state contract and consumer protection law to notice and other issues of contract formation in connection with interstate services does not justify the adoption and application by state commissions of special regulatory rules applicable to telecommunications. That is the very antithesis of the FCC's deregulatory objectives, which is to make telecommunications carriers subject to the same incentives and rewards that firms in other competitive markets confront. Detariffing Order, para.4.

increase the cost of service to the customers."[8] Notwithstanding this stated purpose, in addition to requiring advanced written notice of price *increases*, the proposed rule appears to require written notice to customers by direct mail (albeit after the fact) of price *decreases*. Surely no legitimate purpose can be served by requiring telecommunication companies to provide written notice to customers of price decreases. Contrary to the claims by the Office of Public Counsel that such notices will serve to provide customers information necessary to evaluate offers for service from competing alternative providers, in fact, such a requirement will serve to limit the competitive offers they may receive from all providers, including their own.

Not only is the proposed rule overly inclusive because it requires written notice of price *decreases*, the rule is overly restrictive and consequently cost prohibitive because it requires notice by the most expensive, most administratively burdensome method available. As other companies have noted in their comments, there are a variety of methods available for providing "notice" to customers, including bill insert, electronic notice, newspaper notice, bill message notice, and of course, direct mail. Direct mail is the most expensive means of notification. Each direct mail letter, with first class postage, costs a minimum of $.34. For a company with only 100,000 customers, the postage alone for notification of one rate change would cost $34,000. Qwest estimates that the notification letter and envelope (which would have to be specially designed for these Florida requirements) would cost between $.75 and $1.00 per piece. Assuming the low end of that range, the combined cost for the letter, envelope and postage for a company with 100,000 customers would be over $100,000 per notice. As with other costs incurred by sellers in competitive industries, these costs would

---

[8] See, *Petition to Initiate Rulemaking*, ¶ 3, (emphasis added).

be passed on to consumers. The amount of any price increase would be greater to account for increased administrative costs, and the amount of any price decrease would be reduced, assuming the carrier decided to proceed with a decrease at all. If the Commission determines that additional regulation of the competitive telecommunications industry is necessary, it should consider allowing carriers to utilize less costly and restrictive means of notice than individual, direct mail pieces.

CONCLUSION

Requiring telecommunications carriers, especially interexchange carriers, to provide 30-day advanced notice to customers, via first class mail, of any changes in rates, terms and conditions of service, is contrary to both national policy and the policy of the State of Florida favoring the elimination of unnecessary regulatory requirements in a competitive environment. The rule, as written, is overly broad in scope and unduly burdensome in practicality. The proposed rule would be preempted if applied to interstate services, and if such a rule is deemed necessary for intrastate services, it should only be applicable to intrastate services that are not yet competitive. Finally, the proposed rule is unnecessarily restrictive in mandating notice via direct, first class mail, and consequently, is also cost prohibitive. For these reasons, Qwest recommends the Commission reject the proposed rule and continue to allow competitive market forces to dictate how companies interact with and take care of their customers. At a minimum, to reduce the costs that ultimately will be borne by customers, the Commission should redraft the rule to narrowly tailor its applicable scope, while broadening the allowed methods of compliance.

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525 Telephone
(850) 222-5606 Telefax

Kathryn E. Ford
Associate General Counsel
Qwest Communications Corporation
1801 California Street, 49th Floor
Denver CO 80202
(303) 672-2776 Telephone
(303) 296-4576 Telefax

Attorneys for the Qwest Communications
Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing the Comments of Qwest Communications Corporation has been furnished by (*) hand delivery or by U. S. Mail on this 17th day of October, 2001, to the following:

(*) Martha Brown
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

ALLTEL Florida, Inc.
c/o Ausley Law Firm
Jeffrey Wahlen
P.O. Box 391
Tallahassee, FL 32302

Jim Lamoureux, Esq.
1200 Peachtree St., NE
Suite 8100
Atlanta, GA 30309

Andrew O. Isar
1401 K Street, N.W., Suite 600
Washington, DC 20005

BellSouth Telecommunications, Inc.
Nancy B. White/James Meza III
c/o Ms. Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Michael A. Gross
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32303

Florida Public Telecommunications Assoc.
Angela Green, General Counsel
2292 Wednesday Street
Suite 1
Tallahassee, FL 32308-4334

Holland Law Firm
Bruce May
P.O. Drawer 810
Tallahassee, FL 32302-0810

MCI WorldCom Network Services, Inc.
Ms. Donna C. McNulty
325 John Knox Road, Suite 105
Tallahassee, FL 32303-4131

Messer Law Firm
Norman H. Horton, Jr.
P.O. Box 1876
Tallahassee, FL 32302-1876

Northeast Florida Telephone Company, Inc.
Ms. Deborah (Debi) L. Nobles
P.O. Box 544
Macclenny, FL 32063-0544

Office of Public Counsel
Stephen M. Presnell
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400

Pennington Law Firm
Peter Dunbar/Karen Camechis
P.O. Box 10095
Tallahassee, FL 32302-2095

Sprint
Mr. F. B. (Ben) Poag
% Sprint-Florida, Incorporated
P. O. Box 2214 (MC FLTLHO0107)
Tallahassee, FL 32316-2214

State Technology Office
Carolyn Mason/Winston Pierce
4030 Esplanade Way, Suite 235
Tallahassee, FL 32399-0950

Time Warner Telecom of Florida, L.P.
Ms. Carolyn Marek
% Time Warner Telecom
233 Bramerton Court
Franklin, TN 37069-4002

Verizon
Michelle A. Robinson/Linda Rossy
One Tampa City Center
P. O. Box 110, FLTC0616
Tampa, FL 33601-0110

Joseph A. McGlothlin