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February 5, 2002

BY HAND DELIVERY

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

Re: Docket No. 010774-TP

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Joint Comments of ALLTEL Florida, Inc., Northeast Telephone Company Inc. and Smart City Telecommunications.

We are also submitting the Joint Comments on a 3.5" high-density diskette using Microsoft Word 97 format, Rich Text.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Sincerely,


J. Jeffrey Wahlen

Enclosures

cc: All parties of record

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:)
)
Petition of the Citizens of the State of Florida) Docket No. 010774-TP
to Initiate Rulemaking Which Will Require) Filed: 02/05/02
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)
_____)

**COMMENTS OF ALLTEL FLORIDA, INC.,
NORTHEAST TELEPHONE COMPANY, INC. AND
SMART CITY TELECOMMUNICATIONS**

ALLTEL Florida, Inc. ("ALLTEL"), Northeast Florida Telephone Company, Inc. ("Northeast") and Smart City Telecommunications ("Smart City") jointly submit the following comments on Staff's Draft Rule No. 25-4.1105 ("Staff's Draft") and the draft rule proposal submitted by the Office of Public Counsel ("OPC's Draft").

Introduction

1. ALLTEL, Northeast and Smart City (collectively "Small LECs") are small incumbent local exchange companies within the meaning of Section 364.052(1), Florida Statutes. They also qualify as "rural telephone companies" within the meaning of 47 U.S.C. § 153(47). The Small LECs are regulated under the Florida Public Service Commission's ("FPSC" or "Commission") price regulation method of regulation.

2. Although the Commission has voted to initiate the rulemaking process, the Small LECs question whether the Commission should adopt a rule prescribing advance notice at this time for at least three reasons. First, based on the evidence presented during the rule workshops thus far, lack of advance notice by the incumbent LECs in

Florida does not appear to be a problem. In fact, none of the complaints discussed during the workshops related to lack or adequacy of notice by any of the incumbent LECs. Likewise, ALLTEL, Northeast and Smart City are not aware of any complaints from any of their customers relating to lack or adequacy of notice of price changes. Second, the Small LECs understand that the Federal Communications Commission (“FCC”) is in the process of considering a nationwide rule that, if adopted, could preempt any inconsistent state rule on the same subject.¹ Third, adopting a rule on this subject is arguably inconsistent with the development of a telecommunications market governed by competitive forces.

3. That being said, the Small LECs understand that the Commission may elect to proceed with rulemaking in this docket. Without conceding that a rule is needed at this time, the Small LECs find Staff’s Draft far less objectionable than OPC’s Draft and would support the Staff’s Draft over OPC’s Draft if this rulemaking proceeds. The reasons are explained below.

4. First, without conceding that there is a real problem to be addressed in a rule, the data presented during the workshops shows that there may be a small number of carriers that have made price increases without any advance notice to customers. The data presented during the workshops show that the incumbent LECs generally have provided advance notice of price increases in some manner, *i.e.*, via bill message,

¹ See *Joint Petition for Expedited Rulemaking Establishing Minimum Notice Requirements for Detariffed Services*, CC Docket No. 96-61. A group of interested parties filed a joint petition seeking rulemaking on October 29, 2001. The joint petitioners included AARP, Consumer Action, Consumer Federation of America, Consumers Union, the Massachusetts Union on Public Housing Tenants, the National Association of Regulatory Commissioners, the National Association of Consumer Agency Administrators, the National Association of State Utility Consumer Advocates and the National Consumers League. A copy of the Joint Petition was filed in this docket on November 2, 2001, by the Office of Public Counsel.

bill insert, or separate first class mail, and that customers have not complained about the wording, type size, typeface, location, etc. of such notice. Thus, the issue to be addressed in this rule is the small number of carriers that have given no advance notice of price increases, not the manner in which notice has been given by the carriers that have given notice. Having a rule that requires reasonable notice of any intrastate price increase would address the “problem” identified during the workshops and would be consistent with the general business practices of most incumbent LECs, but would not unreasonably restrict carriers to one specific approach to giving notice.

5. Second, the extent of the “problem” Public Counsel seeks to cure via its proposed rule is unclear. While the participants in this docket have heard and seen anecdotal evidence suggesting that a small number of carriers are not giving any advanced notice at all, none of the participants in the process have compiled or submitted reliable evidence gathered through a systematic complaint gathering process showing that there is a real problem to be solved in Florida. Absent substantial evidence of a bona fide problem that crosses all segments of the telecommunications industry, the FPSC should proceed in a deliberate manner to ensure that the “cure” memorialized in a rule goes no further than necessary to solve whatever problem that may exist in the marketplace.

6. Third, since the problem to be solved by the rule, if any, is lack of *any* advance notice by a small number of carriers, a reasonable first step would be to adopt a rule requiring reasonable notice without specifying in great detail the precise manner in which notice must be given. OPC’s draft goes far beyond requiring advance notice of price increases by prescribing the precise manner (method, timing, font size, typeface,

wording) in which notice must be given. Staff's draft strikes a reasonable balance between requiring advance notice and OPC's draft which restrictively prescribes the only manner in which notice can be given.

7. Fourth, the Staff's Draft establishes specific safe harbor provisions that reflect the manner in which most ILECs currently give notice, while giving all telecommunications companies an opportunity to experiment with new and different (but reasonable) methods of giving notice as market conditions and customer expectations evolve over time. This approach recognizes that reasonable notice can be given in a variety of ways, but gives the Commission a mechanism for dealing with carriers that have not given any advance notice. Stated another way, Staff's Draft, if adopted, would put parties on notice that reasonable advance notice is required in Florida, but does so in a manner that projects a flexible, practical, non-restrictive approach to regulation and consumer protection.

8. Fifth, Staff's Draft would allow the Small LECs to provide reasonable notice of rate changes to their customers without the significant compliance expense associated with the rule proposed in OPC's Draft. While precise estimates have not yet been prepared, notice by separate first class mail using special envelopes with uniform wording, font size and type-face would be significantly more expensive than providing reasonable notice via a bill message or a bill insert. The Small LECs believe that Staff's Draft is a lower cost regulatory alternative that would substantially accomplish the objective of this rulemaking proceeding. The Small LECs expect that this point will be proved when statements of estimated regulatory costs are requested and submitted.

9. Sixth, the font size and typeface requirements in OPC's Draft are unnecessarily restrictive and expensive to implement. While the ILEC's generally provide advance notice via bill message or bill inserts, the typeface and font size used in the advance notice already being provided differs from ILEC to ILEC. Requiring uniform font size and typeface across all telecommunication carriers would cause some carriers to make costly computer programming changes without significantly imposing the quality of the notice being given. Staff's Draft avoids this problem by prescribing reasonable notice and allowing carriers to retain their existing method and approach to notice if reasonable.

10. Seventh, while it is not an issue for all of the carriers that would be subject to this rule, some carriers that would be subject to the rule operate in more than one state ("multi-state carriers"). The manner in which some billing systems operate make it difficult, if not impossible, to create and mail a Florida specific notice without great expense. For example, ALLTEL's preliminary investigation reveals that its current billing system cannot, without substantial cost, send an on-envelope bill message (e.g., "Notice of Price Increase Enclosed") to Florida customers only. Another ILEC has advised the participants that its billing system uses a variable font approach that limits ability to capitalize all of the words in a message. Staff's Draft better accommodates multi-state carriers by allowing reasonable notice and not prescribing detailed notice requirements that would likely be unique to Florida.

11. In conclusion, the Small LECs question whether a notice rule is necessary. However, if a rule is necessary, the Staff's Draft meets the regulatory objective of requiring reasonable advance notice of a price increase at a much lower

cost than the proposal advanced by the Office of Public Counsel. If the Commission decides to proceed further, the Small LECs prefer Staff's Draft over Public Counsel's Draft.

Respectfully submitted this 5th day of February, 2002.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail or hand delivery (*) this 5th day of February 2002, to the following:

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