Andrew Isar, *Director - Industry Relations*

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Via Overnight Delivery

19 June 1997

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

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In re: Undocketed, 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; 25-24.490 F.A.C.,Customer Relations; Rules Incorporated

Dear Ms. Bayo,

Enclosed are an original and 10 (ten) copies of the *Comments of the Telecommunication Resellers Association* regarding the above-referenced matter, pursuant to the Commission's May 21, 1997 Notice of Proposed Rule Development and the Commission's May 27, 1997 Amended Notice of Proposed Rule Development.

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Questions may be directed to me.

Sincerely,

Telecommunications Resellers Association

Andrew O. Isar

Andrew O. Isar

Enclosure

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)
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COMMENTS OF
THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA")[1], on behalf of its members and pursuant to the Florida Public Service Commission's ("Commission") May 21, 1997 Notice of Proposed Rule Development, amended by the Commission's May 27, 1997 Amended Notice of Proposed Rule Development, hereby comments on proposed amendments to the Commission's Customer Relations; Rule Incorporated, Definitions, Customer Billing, and Interexchange Carrier Selection rules, rules 25-24.845 and 25-490, 25-4.003, 25-4.110, and 25-4.118 F.A.C. TRA's comments focus on those proposed amendments contained in the Commission's Customer Billing and Local, Local Toll, or Local Provider Selection rules.

I. INTRODUCTION

TRA commends the Commission for maintaining comprehensive customer billing rules and primary local and intrastate interexchange carrier selection rules which are generally consistent with

[1]TRA is a national organization representing more than 500 telecommunications service providers and their suppliers, who offer a variety of competitive telecommunications services throughout the U.S. The Association's members play a vital role in providing desirable, competitive, value-added telecommunications services. Many Association members offer presubscribed interexchange and local services in the State of Florida.

concomitant federal regulation.[2] The carrier selection rules, in particular, clearly recognize the importance of maintaining close control over the primary carrier selection process in order to protect the public from the acts of an unscrupulous few. By basing state regulation on the Federal Communications Commission's current carrier selection rules, the Commission succeeds in its objective of maintaining effective rules which protect the public without adversely burdening service providers or precluding their entry into a competitive market.

However, several proposed amendments impose new requirements which are not contained in Federal regulation, and which will disproportionately affect smaller service providers, such as many TRA members, with with little, if any, countervailing public benefit. While TRA generally supports the Commission's proposed customer billing and interexchange carrier selection rule amendments, it urges the Commission to eliminate or revise those proposed requirements, as discussed herein, which impose onerous burdens on service providers while negligibly contributing toward the public interest.

II. A CERTIFICATED SERVICE PROVIDER'S CERTIFICATE NUMBER SHOULD NOT BE REQUIRED ON BILLS.

Proposed amendments to rule 25-4.110(10) would require each carrier *inter alia* to conspicuously display Florida certificate numbers on their bills. At face value, the requirement may not appear to be particularly burdensome. The reality is that for many smaller companies who depend on contract billing companies to provide nationwide billing, such a seemingly minor change would represent a costly requirement which could be difficult to implement, as programming and administrative expenses

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[2] 47 C.F.R. §§ 64.1100 and 64.1150.

associated with creating a state-specific bill could be significant and involve extensive coordination efforts. Moreover, the public would not necessarily be better served by knowing the service provider's certificate number since the service provider would still be identified by name and its regulatory compliance could be confirmed by the Commission.

As long as the service provider is required to reflect its certificated corporate name on customer bills, the public gains little by the Commission's requiring service providers to disclose Florida certificate number. The proposed amendment to rule 25-4.110(10)(a) should be revised to delete the certificate number requirement.

III. AMENDMENTS TO THE COMMISSION'S LOCAL, LOCAL TOLL, OR TOLL PROVIDER SELECTION SIGNIFICANTLY EXCEED, AND SHOULD BE MADE FULLY CONSISTENT WITH, FEDERAL GUIDELINES.

Proposed amendments to Rule 25-4.118, Local, Local Toll, or Toll Provider Selection exceed current Federal carrier selection rules[3] by imposing additional requirements not contemplated in the Federal rules. These proposed amendments contribute significantly to a provider's compliance burdens or neutralize the advantages of utilizing certain verification procedures, with little additional public benefit. These proposed amendments should be revised or deleted.

A. A Customer's Consent to Have Customer Initiated Carrier Selection Calls Recorded Should be Implicit.

The proposed amendment to rule 25-4.118(b) F.A.C. would require customer consent to an audio recording of a change in primary carrier and would require the recording inclusion of such information as is

[3]47 C.F.R. §§ 64.1100 and 64.1150. Although § 64.1100 pertains specifically to verification of orders generated by telemarketing, these rules offer effective verification procedures for presubscribed services marketed through other methods, pending new Federal primary carrier verification rules.

listed in the proposed amendments to Rule 25-4.118(3)(a) through (f). Such consent should be considered implicit on all customer-initiated calls, so long as customers are clearly informed at the time they are connected with the service provider's electronic carrier selection verification system that their election will automatically be recorded. As the caller is in full control of the call, the caller can determine whether to proceed with the carrier selection recording. By proceeding, the caller demonstrates both a recognition that the call will be recorded and that the caller's actions constitute a consent to be recorded. No other formal consent process should be necessary.

B. Provisions Requiring That Carrier Selections Be Recorded When Third Party Verification is Used Impose an Unnecessary Requirement Which Should be Eliminated.

The proposed amendment to Rule 25-4.118(c) F.A.C. would require third party verification to be accomplished exclusively through an audio recording of a subscriber's primary carrier selection. While TRA does not object to the use of such recordings, which are already frequently utilized by third party verifiers, such a requirement precludes use of other equally effective confirmation media and cancels any benefit of utilizing third party verification as a viable option for carrier selection verification.

Under 47 C.F.R. Section 64.1100(c), an appropriately qualified and independent third party may verify the subscriber's verbal authorization to change carriers and retains the flexibility to use other media to record validating data. The rule does not specify the medium in which such information must be retained.

An audio recording will provide no greater assurance of the validity of the subscriber's primary carrier election than will other forms of

documented evidence employed by a appropriately qualified third party verifier. By limiting the medium that may be used, and adding the requirement that the subscriber confirm the information proposed in the amendments to Rule 25-4.118(3)(a) through (f) F.A.C., the Commission effectively limits the utility and flexibility of third party verification as a viable option to Florida service providers. The audio recording requirements proposed section 25-4.118(c) should be deleted, to maintain consistency with Federal Rules.

C. Requirements that Customers be Provided Commission Division of Consumer Affairs Contact Information Through Information Packages Is Costly to Implement, Duplicates Available Information, and Should be Eliminated.

While TRA certainly does not object to providing customers with the address and telephone number of the Commission's Division of Consumer Affairs, the Commission should not adopt amendments that would require such information to appear in confirming information packages. The proposed requirement may be costly for service providers to implement, will be limited to information packages only, and moreover, will duplicate information already widely available to consumers.

To implement the proposed notice requirement, service providers will have to prepare state-specific information packages. Printing and administrative expenses associated with preparation of Florida information packages alone, like those associated with preparation of state-specific billing information, will act to dissuade service providers from considering use of information packages to confirm new customer subscriptions, particularly since no other confirmation method imposes a similar requirement.

There is little to be gained by imposing new notice requirements because contact information is already widely available to the public through telephone directories, the provider's own customer service representatives, and the Commission. Information package contact information would duplicate readily available contact information, serve limited group of customers and place an unnecessary financial burden on service providers. No additional contact information notice requirements should be imposed under the information package verification option.

D. Service Providers Should Not Have to Indicate Whether the Facilities of Another Company Are Used in Letters of Agency.

Under proposed amendment to Rule 25-4.118(3)(b) F.A.C., service provider letters of agency must indicate whether the provider utilizes the facilities of another company. Whether a service provider utilizes the facilities of another carrier is meaningless to virtually all customers. Moreover, the requirement to disclose a provider's use of other company facilities to customers in letters of agency will create customer confusion, is overly broad and discriminatory, exceeds Federal regulation, and contributes little toward protecting the public.

When a customer subscribes to a provider's services, the customer expects that the service provider assumes full responsibility for providing reliable and reasonably priced service, regardless of the method the provider uses to transport customer calls. Customer problems and inquiries will be directed to the service provider, not its underlying carrier. The fact that the provider uses facilities and network services of other carriers is of little interest to customers and has no impact on the customer's ability to utilize the service. Any relationship between a service

provider and its underlying carrier is, and should remain, entirely transparent to the customer.

Disclosing the use of underlying carrier facilities would only confuse customers and further create customer misperceptions over the level of service support customers could expect from their service provider, or in extreme cases, over the capability of a reseller to adequately serve the customer, simply because the provider does not own facilities. The creation of such misperceptions is unfair and unwarranted.

Notwithstanding the foregoing, the proposed facilities disclosure rule amendment is unclear as to which service providers must inform customers of the use of another company's facilities. Taken to its logical conclusion, such an overly broad requirement would apply to nearly all carriers and service providers as few, if any, carriers are able to offer services exclusively over their own stand-alone networks. However, establishing criteria for determining which service providers would be subject to the disclosure requirement would be problematic as well. Any such criteria would be largely subjective and applicable to an ever-moving target, as many service providers may change the level of their reliance on underlying carrier facilities over time. This would give rise to the need for ongoing Commission oversight of service provider compliance and use of valuable Commission resources.

Most troublesome is the discriminatory nature of the disclosure requirement which appears to single out non-facilities-based resellers simply because they use other carriers' facilities. The basis for requiring non-facilities-based providers to disclose the use of other carrier's facilities to customers is unclear. Service providers who use other company facilities are not more prone market failure and do not place

customers at a greater risk than those companies who own their facilities. The proposed requirement is apparently based on an unsubstantiated perception that non-facilities-based service provider subscribers are at greater risk and will somehow be better protected by knowing that their service provider does not own its facilities. This is a fallacy. The proposed amendment does little more than impose another regulatory burden on non-facilities-based providers which other types of providers are not subject to.

The proposed disclosure requirement ostensibly creates a competitive disadvantage for non-facilities-based providers by fostering misperceptions about the provider's ability to serve customers. By adopting the proposed disclosure requirement the Commission opens a Pandora's box to customer confusion, ambiguity in application, misperception, and ultimately unfair discrimination between service providers without concomitant assurances that the public will be better protected. This requirement should be deleted and the Commission's proposed letter of agency rule amendments in 25-4.118 F.A.C.(3) should remain fully consistent with Federal guidelines.

IV. THE EXISTING REQUIREMENT THAT SERVICE PROVIDERS CREDIT THE DIFFERENCE BETWEEN THEIR USAGE RATES AND A PREFERRED COMPANY'S RATES SHOULD BE RETAINED IN INSTANCES WHERE CUSTOMERS ARE ERRONEOUS TRANSFERRED.

TRA supports the proposed amendment to rule 25-4.118(8) F.A.C. which would require that all charges billed by a service provider which intentionally initiated unauthorized customer subscriptions be credited to the service user. Those entities which willfully abuse the public by engaging in the practice of transferring accounts without authority

should not be allowed to realize any financial gain for their actions and should be appropriately penalized.

Yet as competition continues to proliferate and changes in primary service providers become more frequent, the potential for unintentional customer transfers caused by legitimate errors such as telephone number transpositions, mis-read or mis-copied telephone numbers, and other processing errors, increases as well. When unauthorized carrier transfers are caused by legitimate, demonstrable errors, the service provider should be allowed to bill for any service used by the transferred customer under the current provisions of rule 25-4.118(5) F.A.C.[4] while remaining responsible for all costs associated with returning the customer to the customer's preferred carrier. Service providers have a duty to exercise care in processing customer carrier selection requests and should assume responsibility for the costs of correcting errors, but providers should not be penalized by foregoing all usage charges if an unauthorized change in accounts resulted from honest error. Such a penalty would be punitive.

The proposed amendment to credit all charges billed on behalf of the unauthorized provider, without regard to legitimate errors, further creates an unintended incentive for potential abuse of legitimate service providers. Individuals wishing to defraud legitimate providers could change service providers frequently, alleging that their account had been changed without authority after making hundreds of dollars worth of "free" calls. Service providers who were the victims of these scams would have little recourse under the proposed amendment to recoup their losses.

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[4]New proposed rule 25-4.118(8) F.A.C.

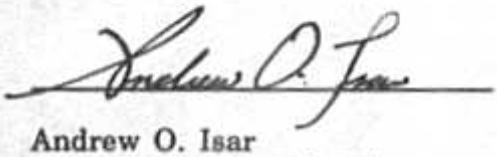
To mitigate the potential for abuse and financial impact of unintended customer account transfers due to legitimate processing errors, proposed amendment to rule 25-4.118(5) F.A.C. should be revised to retain the existing requirement that service providers credit the difference in usage rates between their rates and those of the preferred provider when legitimate processing errors have occurred. The proposed requirement that all charges billed by the unauthorized provider should, however, be incorporated into the amended rule to apply in all other circumstances.

V. CONCLUSION.

TRA supports the Commission's efforts to incorporate additional requirements to its billing and customer and carrier selection rules in an effort to better protect the public. Several proposed amendments would, however, impose significant financial and operational burdens on service providers with negligible improvement in public protection. TRA urges the Commission to revise its proposed amendments as addressed above, to protect the public without unduly harming legitimate carriers who share the Board's desire to serve the public responsibly.

Respectfully submitted,

Telecommunications Resellers Association

By: 

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