

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to Rules 25-4.003, F.A.C., Definitions; 25-4.110, F.A.C., Customer Billing for Local Exchange Telecommunications Companies; 25-4.113, F.A.C., Refusal or Discontinuance of Service by Company; 25-24.490, F.A.C., Customer Relations; Rules Incorporated; and 25-24.845, F.A.C., Customer Relations; Rules Incorporated.

DOCKET NO. 990994-TP
ORDER NO. PSC-01-0229-FOF-TP
ISSUED: January 24, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER

ORDER WITHDRAWING CERTAIN PROPOSED AMENDMENTS TO RULES 25-24.490
AND 25-24.845, FLORIDA ADMINISTRATIVE CODE

With the development of competition for the provision of telecommunications services, customers have filed numerous complaints with the Commission relating to questionable billing practices by some telecommunications companies. In 1998, the Florida Legislature enacted the "Telecommunications Consumer Protection Act", Sections 364.601 through 364.604, Florida Statutes. That year the Legislature also enacted Section 364.0252, Florida Statutes, requiring expanded efforts by the Commission to provide consumer information regarding telecommunications services and to provide assistance to customers in resolving billing and service disputes with telecommunications companies.

Section 364.602, Florida Statutes, provides definitions for the terms "Billing Party;" "Commission;" "Customer;" "Originating party;" and "Information service." Section 364.603, Florida Statutes, provides for the methodology for changing

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telecommunications providers and is considered to be the "anti-slamming" section. Section 364.604, Florida Statutes, regulates telecommunications companies' billing practices. Section 364.0252, Florida Statutes, requires expanded customer information programs and assistance to customers with telecommunications billing and service disputes. It permits the Commission to require long distance and local telecommunications companies to develop and provide information to customers, and it provides that the Commission may specify by rule the types of information to be developed and the manner by which the information will be provided to customers. In 1999, the section was amended to direct the Commission to undertake a comprehensive and ongoing effort to inform consumers regarding how to protect themselves in a competitive telecommunications market. It specifically identified as areas of concern Lifeline and Link-Up Programs for low-income households and alerting consumers to how they can avoid having their service changed or unauthorized charges added to their telephone bills.

We held workshops around the state to gather input from customers about problems customers faced with their telecommunications bills. The workshops were held in West Palm Beach, Ft. Lauderdale, Miami, Tampa, Orlando, Jacksonville, and Tallahassee between February 4 and April 7, 1999. A rule development workshop was held in Tallahassee on September 28, 1999, and post workshop comments were filed. Thereafter, we proposed comprehensive changes to our billing rules to implement the Telecommunications Consumer Protection Act. The majority of the proposed rules were adopted without objection and were effective July 5, 2000. In response, however, to concerns raised by Alternative Local Exchange Companies (ALECs) and Interexchange Carriers (IXCs), the Commission scheduled a rule hearing on whether two subsections of the proposed rules, 25-4.110(2), concerning bill content, and 25-4.110(19), concerning a billing restriction option, should be applied to ALECs and IXCs.

The rule hearing was held on August 21, 2000. The Commission heard presentations and testimony by four staff witnesses and six industry representatives. Post-hearing comments were filed on September 13, 2000. On the basis of the record of the rule hearing and the comments filed, we have decided not to apply the provisions of Rule 25-4.110(2) and (19) to ALECs and IXCs at this time, and

accordingly we have withdrawn the proposed amendments to Rules 25-24.490 and 25-24.845 which incorporated by reference those provisions. We published notice of the withdrawal in the Florida Administrative Weekly on November 2, 2000.

Rule 25-4.110(2), Florida Administrative Code, Customer Billing for Local Exchange Telecommunications Companies

Rule 25-4.110(2) provides:

(2) Six months after the effective date of this rule, each billing party shall set forth on the bill all charges, fees, and taxes which are due and payable.

(a) There shall be a heading for each originating party which is billing to that customer account for that billing period. The heading shall clearly and conspicuously indicate the originating party's name. If the originating party is a certificated telecommunications company, the certificated name must be shown. If the originating party has more than one certificated name, the name appearing in the heading must be the name used to market the service.

(b) The toll-free customer service number for the service provider or its customer service agent must be conspicuously displayed in the heading, immediately below the heading, or immediately following the list of charges for the service provider. For purposes of this subparagraph, the service provider is defined as the company which provided the service to the end user. If the service provider has a customer service agent, the toll-free number must be that of the customer service agent and must be displayed with the service provider's heading or with the customer service agent's heading, if any. For purposes of this subparagraph, a customer service agent is a person or entity that acts for any originating party pursuant to the terms of a written agreement. The scope of such agency shall be limited to the terms of such written agreement.

(c) Each charge shall be described under the applicable originating party heading.

(d) 1. Taxes, fees, and surcharges related to an originating party heading shall be shown immediately

below the charges described under that heading. The terminology for Federal Regulated Service Taxes, Fees, and Surcharges must be consistent with all FCC required terminology.

2. The billing party shall either:

a. Identify Florida taxes and fees applicable to charges on the customer's bill as (including but not limited to) "Florida gross receipts tax," "Franchise fees," "Municipal utility tax," and "Sales tax," and identify the assessment base and rate for each percentage based tax, fee, and surcharge, or

b. (i) Provide a plain language explanation of any line item and applicable tax, fee, and surcharge to any customer who contacts the billing party or customer service agent with a billing question and expresses difficulty in understanding the bill after discussion with a service representative.

(ii) If the customer requests or continues to express difficulty in understanding the explanation of the authority, assessment base or rate of any tax, fee or surcharge, the billing party shall provide an explanation of the state, federal, or local authority for each tax, fee, and surcharge; the line items which comprise the assessment base for each percentage based tax, fee, and surcharge; or the rate of each state, federal, or local tax, fee, and surcharge consistent with the customer's concern. The billing party or customer service agent shall provide this information to the customer in writing upon the customer's request.

(e) If each recurring charge due and payable is not itemized, each bill shall contain the following statement:

"Further written itemization of local billing available upon request."

Section 364.604 and Section 364.0252, Florida Statutes, provide the Commission the specific authority to adopt this rule and apply it to ALECs and IXCs. Section 364.604 states:

(1) Each billing party must clearly identify on its bill the name and toll-free number of the originating party; the telecommunications service or information service

billed; and the specific charges, taxes and fees associated with each telecommunications or information service. The originating party is responsible for providing the billing party with all required information. The toll-free number of the originating party or its agent must be answered by a customer service representative or a voice response unit. If the customer reaches a voice response unit, the originating party or its agent must initiate a response to a customer inquiry within 24 hours, excluding weekends and holidays. Each telecommunications carrier shall have until June 30, 1999, to comply with this subsection.

(2) A customer shall not be liable for any charges for telecommunications or information services that the customer did not order or that were not provided to the customer.

(3) Every billing party shall provide a free blocking option to a customer to block 900 or 976 telephone calls.

(4) A billing party shall not disconnect a customer's Lifeline local service if the charges, taxes, and fees applicable to basic local exchange telecommunications service are paid.

(5) Pursuant to Section 120.536, the Commission may adopt rules to implement this section.

Section 364.0252 states:

The Florida Public Service Commission shall expand its current customer information program to inform consumers of their rights as customers of competitive telecommunications services and shall assist customers in resolving any billing and service disputes that customers are unable to resolve directly with the company. The commission may, pursuant to this program, require all telecommunications companies providing local or long distance telecommunications services to develop and provide information to customers. The commission may specify by rule the types of information to be developed

and the manner by which the information will be provided to the customers. The Florida Public Service Commission shall undertake a comprehensive and ongoing effort to inform consumers regarding how to protect themselves in a competitive telecommunications market. Of specific concern are informing consumers concerning the availability of the Lifeline and Link-Up Programs for low-income households and alerting consumers to how they can avoid having their service changed or unauthorized charges added to their telephone bills.

In their presentations at the hearing and in their written comments the ALECs and IXC's urged the Commission not to apply Rule 25-4.110(2) to them at this time. The ALECs argued that in order to encourage the development of competition in the provision of telecommunications in Florida, Section 364.01, Florida Statutes, directs the Commission to provide to new entrants more flexible regulatory treatment and a lesser level of regulatory oversight than that provided to incumbent providers. They asserted that the bill content rule would not provide them the flexibility to meet their customers' billing requests, and they claimed that it would impose unnecessary costs on a fledgling industry.

The IXC's argued that they were not billing for other entities at present, and when they did bill their own customers they were complying with the FCC's truth-in-billing guidelines. They asserted that the specific formatting and placement requirements of Rule 25-4.110(2) were more restrictive than the FCC's guidelines and would require them to make costly adjustments to their national billing systems.

The ALECs and IXC's asserted that the testimony and exhibits in the record demonstrated that cramming complaints were lessening, and no billing complaints had been filed against ALECs or IXC's. They asserted that this evidence supported their contention that the application of the bill content rule to them at this time would be a "solution in search of a problem." They argued that the specific requirements of Section 364.604, Florida Statutes, would provide the necessary clarity in customers' telephone bills, and no more specificity was needed.

BellSouth argued that all telecommunications providers should be subject to the provisions of Rule 25-4.110(2), in order to provide adequate and equal protection to all telecommunications customers in Florida. BellSouth argued that in a competitive environment all companies should be subject to the same regulation.

While Sections 364.604 and 364.0252, Florida Statutes, (as well as Sections 364.19 and 364.337) clearly provide the Commission the specific authority to regulate by rule the clarity and content of the information contained in all telecommunications companies' bills, we do not believe it is necessary to assert that authority over ALECs and IXC's at this time. There is little, if any, evidence that customers are experiencing problems with ALECs' or IXC's' bills. The record demonstrates that the problems the rule is designed to address -- customer confusion and unauthorized charges -- have occurred primarily with incumbent local exchange companies' (ILEC) bills, because they are the ones who are billing for other entities at this time. The evidence of record indicates that their billing problems, too, although far from eradicated, have been declining recently. The record does not show that ALECs and IXC's are even billing for other entities at present. Further, the sample bills provided as late-filed exhibits by the ALEC and IXC participants, and their presentations at the hearing, indicate that they are presently complying with the statute, and the spirit, if not the letter, of Rule 25-4.110(2), Florida Administrative Code.

In light of these facts, we find that it is premature to apply Rule 25-4.110(2), Florida Administrative Code, to the ALECs and IXC's. While we acknowledge BellSouth's position that generally all telecommunications providers should be subject to the same regulation, Section 364.01, Florida Statutes, recognizes that the policy may not be appropriate in every instance in a developing competitive market. When competitive telecommunications markets in Florida mature more, and we receive evidence that a problem is developing with ALEC or IXC billing practices, we can apply this rule to ALECs and IXC's then. We intend to monitor the market closely in this regard. In the meantime, all telecommunications companies must comply with the requirements of Section 364.604, Florida Statutes, and the Commission has the authority to take appropriate action if they fail to do so.

Rule 25-4.110(19), Florida Administrative Code, Customer Billing for Local Exchange Telecommunications Companies

Rule 25-4.110(19) provides:

(19) (a) Within one year of the effective date of this rule and upon request from any customer, a billing party must restrict charges in its bills to only:

1. Those charges that originate from the following:

- a. Billing party or its affiliates;
- b. A governmental agency;
- c. A customer's presubscribed intraLATA or interLATA interexchange carrier; and

2. Those charges associated with the following types of calls:

- a. Collect calls;
- b. Third party calls;
- c. Customer dialed calls; and
- d. Calls using a 10-10-xxx calling pattern.

(b) Customers must be notified of this right by billing parties annually and at each time a customer notifies a billing party that the customer's bill contained charges for products or services that the customer did not order or that were not provided to the customer.

(c) Small local exchange telecommunications companies as defined in Section 364.052(1), F.S., are exempted from this subsection.

At our June 6, 2000, Agenda Conference, when we adopted the substantive provisions of Rule 25-4.110(19), representatives from the small LECs argued that the cost to implement the billing restrictions required by the rule was prohibitive. The representatives also argued that the rule should not be applied to small LECs because the number of their consumer complaints filed with the Division of Consumer Affairs regarding unauthorized charges on customer's bills were few in number, if any, and therefore a billing restriction option for their customers was

unnecessary. In response to the small LEC's concerns, we exempted them from the provisions of subsection 19.

At our August 21, 2000, rule hearing, several IXC and ALEC industry representatives echoed the same concerns -- cost and necessity -- raised by the small LECs during the June 6, 2000, Agenda Conference. Like the small LECs, representatives of the IXCs and ALECs claimed that the cost to implement the billing restriction option would be so great that it would cost consumers more and impede entrance of new providers into the market. AT&T noted that Chapter 120, Florida Statutes, provides that the Commission must adopt rules that are less costly as long as they substantially accomplish the regulatory objectives. AT&T argued that Subsection 18 of Rule 25-4-110, Florida Administrative Code, which already applies to IXCs and ALECs, is a less costly alternative to the billing restriction and accomplishes the regulatory objective in Section 364.604(2), Florida Statutes, that customers will not be held liable for charges that they did not incur.

The evidence of record shows that of 2,996 cramming complaints identified at the hearing, none involved complaints by customers of ALECs; and although the record is not very complete, it does not appear that ALECs and IXCs are presently billing for other entities. In light of these facts, and the fact that the industry claims the costs to implement a billing restriction are great, we find that it is premature to apply Rule 25-4.110(19), Florida Statutes, to ALECs and IXCs. When competitive telecommunications markets in Florida mature more, and we receive evidence that a problem is developing, we can apply this rule to ALECs and IXCs then. In the meantime, IXCs and ALECs must comply with the requirements of subsection 18 of Rule 25-4.110, Florida Administrative Code, which requires the billing party to remove certain charges from bills upon customer notification that the service billed was not provided, or the item charged was not ordered.

It is therefore,

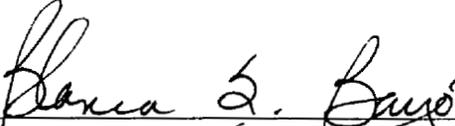
ORDERED by the Florida Public Service Commission that the proposed amendments to Rules 25-24.490 and 25-24.845, Florida Statutes, incorporating by reference subsections (2) and (19) of

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Rule 25-4.110, Florida Statutes, are hereby withdrawn. It is further,

Ordered that this Docket may be closed.

By ORDER of the Florida Public Service Commission this 24th day of January, 2001.



BLANCA S. BAYÓ, Director
Division of Records & Reporting

(S E A L)

MCB

DISSENT

Chairman Jacobs dissents as follows:

I dissent from the decision to expressly exempt ALECs and IXC's from this proposed rule at this time. The evidence indicates that ALECs and IXC's do not presently bill for other entities, and thus are not bound by the proposed rule. The evidence also suggests that they may adopt such billing arrangements in the future. I would give direction now as to reasonable standards which these entities should meet if and when they begin third-party billing rather than waiting to revisit this issue after they provide these services. Nothing in the record suggests that the public policy concerns raised by abusive billing practices are not present when ALECs and IXC's conduct third-party billing. To avoid a disproportionate impact on ALECs and IXC's who conduct third-party billing in an exemplary manner, I would allow such companies to be relieved of the requirements of the rule.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.