State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: February 2, 1998

TO: BLANCA BAYO, DIRECTOR OF RECORDS AND REPORTING

FROM: DIANA W. CALDWELL, DIVISION OF APPEALS DWC

RE: DOCKET NO. 970882-TI

39 pgs

98-0200-PHO-TI

FILE NAME: SLAMPHO.DWC

Attached is an order to be issued as soon as possible.

DWC
Attachment

See 1, 2

cc: Wanda Terrell

MUST GO TODAY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Rule 25-24.845, F.A.C., Customer Relations; Rules Incorporated; and proposed amendments to Rule 25-4.003, F.A.C., Definitions; Rule 25-4.110, F.A.C., Customer Billing; Rule 25-4.118, F.A.C., Interexchange Carrier Selection; and Rule 25-24.490, F.A.C., Customer Relations; Rules Incorporated.	DOCKET NO. 970882-TI ORDER NO. PSC-98-0200-PHO-TI ISSUED: February 2, 1998

PREHEARING ORDER

Pursuant to Notice, a Prehearing Conference was held on January 23, 1998, in Tallahassee, Florida, before Commissioner Julia L. Johnson, as Prehearing Officer.

APPEARANCES:

Charles J. Beck, Esquire, Deputy Public Counsel, Office of Public Counsel, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida.

Michael Gross, Office of Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050
On behalf of the Office of the Attorney General.

Nancy B. White, Esquire, c/o Nancy Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301 and
John R. Marks, Esquire, Katz, Kutter, Haigler, Alderman, Bryant and Yon, P.A., 106 East College Avenue, Tallahassee, Florida
On behalf of BellSouth Telecommunications.

Benjamin Fincher, Esquire, and Monica Barone, Esquire, 3100 Cumberland Circle, Atlanta, Georgia, 30399 and
Everett Boyd, Esquire, Ervin, Varn, Jacobs & Ervin, 305 South Gadsden Street, Tallahassee, Florida

On behalf of Sprint Communications Company, Limited Partnership.

Charles Rehwinkel, Esquire, 1313 Blairstone Road, Tallahassee, Florida 32302
On behalf of Sprint Florida, Incorporated.

J. Jeffry Wahlen, Esquire, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302
On behalf of AllTel Florida.

Marsha E. Rule, Esquire, 101 East College Avenue, Suite 700, Tallahassee, Florida 32301-1509
On behalf of AT&T Communications of the Southern States, Inc.

Richard D. Melson, Esquire, Hopping Green Sams and Smith, Post Office Box 6526, Tallahassee, Florida 32314, and
Marsha Ward, Esquire, 780 Johnson Ferry Road, Suite 700, Atlanta, Georgia 30342
On behalf of MCI Telecommunications Corporation.

Donna Canzano, Esquire, Wiggins & Villacorta, P. A., Post Office Drawer 1657, Tallahassee, Florida 32302
On behalf of Intermedia Communications.

Vicki Gordon Kaufman, Esquire, McWhirter, Reeves, McGlothlin, Davidson, Rief and Bakas, 117 South Gadsden Street, Tallahassee, Florida 32301
On behalf of the Florida Competitive Carriers Association.

Suzanne Summerlin, Esquire, 1311-B Paul Russell Road, Tallahassee, Florida
On behalf of the Furst Group, Inc.

Kim Caswell, Esquire, One Tampa City Center, Tampa, Florida 33601
On behalf of GTE Florida Incorporated.

Diana Caldwell, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0862
On behalf of the Commission staff.

I. CASE BACKGROUND

The Florida Public Service Commission has proposed Rule 25-24.845, Florida Administrative Code, and proposed amendments to Rules 25-4.003, 25-4.110, 25-4.118, and 25-24.490, Florida Administrative Code, to significantly reduce or eliminate the occurrences of "slamming," which is the unauthorized switching of a customer's preferred carrier for local, local toll, and toll services.

The Commission voted to propose the amendments and the new rule on December 16, 1997. The rules were published in the Florida Administrative Weekly on January 2, 1998.

II. RULEMAKING HEARING

A rulemaking hearing is scheduled before the full Commission at the following time and place:

9:30 a.m., February 6, 1998
Room 148, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida

The rulemaking hearing shall be governed by Section 120.54, Florida Statues, and by Chapter 25-22, Florida Administrative Code.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has

been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting confidential files.

IV. HEARING PROCEDURES

A. The Commission staff will present a summary of the statement of estimated regulatory cost and the rules.

B. The first exhibit introduced into the record will be a composite exhibit prepared by staff, which will consist of the following documents: FAW notice and proposed rules; materials provided to the Joint Administrative Procedures Committee in connection with the proposed rules, which include the statement of facts and circumstances justifying rules, statement on federal standards, statement of impact on small business, and statement of estimated regulatory cost; notice of rulemaking; and any material, including prefiled comments and attachments, that may be submitted pursuant to Section 120.54(3)(a), Florida Statues. It shall not be necessary for participants to insert their prefiled comments into the record at the hearing.

Due to the length of the first exhibit, copies will not be distributed at the hearing. However, there will be several copies available for inspection.

C. Following the staff presentation, affected persons will have the opportunity to present evidence and argument may be necessary to impose time limits for presentations, depending upon the number of participants. Persons with similar presentations should combine to make one presentation. If time permits, persons making presentations will be subject to questioning by other persons. Such questions shall be limited only to those necessary to clarify and understand the presenter's position.

Persons who wish to participate at the hearing must register at the beginning of the hearing. The general order of presentation will be as follows:

Members of the public
Staff
Office of Public Counsel and Attorney General
Utilities
Special interest groups

The specific order of presentation will be determined by the presiding officer the first morning of the hearing.

V. POST-HEARING PROCEDURES

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 100 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 100 words, it must be reduced to no more than 100 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

VI. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness's testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

VII. ORDER OF WITNESSES

WITNESS	APPEARING FOR	ISSUE NO.
DIRECT AND REBUTTAL		
Jennifer Erdman-Bridges	Staff	Issues 1-5
J. Alan Taylor	Staff	Issues 1-5
R. Earl Poucher	Attorney General and the Citizens of the State of Florida	Issues 1-5
Jerry W. Watts	AT&T	Issues 1-5
Jerry Hendrix	BellSouth	Issues 1-5
Charles M. Scobie	GTEFL	Issues 1-5
Jane King	MCI	Issues 1-5
Sandee Buysse-Baker	Sprint	Issues 1-5
Dwane Arnold	Sprint-Florida	Issues 1-5

VIII. BASIC POSITIONS

ATTORNEY GENERAL AND THE CITIZENS OF THE STATE OF FLORIDA (AG AND CITIZENS):

The testimony received by the Commission at public hearings, as well as the number of complaints received at the Commission, reflect substantial, wide-ranging problems from the unauthorized switching of customers' presubscribed interexchange carriers. The Commission should adopt the rule changes proposed by the AG and the Citizens.

ALLTEL FLORIDA INC. (ALLTEL):

ALLTEL is in favor of reasonable safeguards to prevent slamming and cramming. However, the Commission should carefully weigh the costs of additional safeguards against the potential benefits of those safeguards to ensure that the safeguards ultimately implemented are cost-effective.

AT&T COMMUNICATIONS OF THE SOUTHERN STATES (AT&T):

AT&T does not believe that additional restrictions should be imposed on the PIC change process because the continuing slamming problems experienced by Florida consumers are largely the result of non-compliance with the existing rules. Rather, the Commission can best deter slamming by enforcement of slamming regulations which are not unduly confusing to consumers or burdensome to telecommunication carriers. AT&T supports state regulations which mirror the existing and forthcoming FCC rules. This will ensure consistency in application, implementation, and enforcement. If states adopt separate requirements, consumers would be confused, and national and regional carriers would face huge financial and administrative burdens in dealing with up to 51 different sets of regulations. These additional costs would ultimately be borne by consumers and the important goal of promoting robust competition in telecommunication markets would be undermined.

BELLSOUTH TELECOMMUNICATIONS, INC. (BELLSOUTH):

BellSouth is opposed to slamming and cramming and believes every reasonable effort should be taken to resolve this problem. The response of regulatory agencies should focus on severely and quickly punishing willful and repeated offenders; effectively removing offenders' economic incentive to slam customers. BellSouth also recommends that one set of rules across all jurisdictions be established in order to minimize confusion and implementation costs. As competition continues to evolve in the remaining markets, local and local exchange service, slamming will become more pervasive without proper rules and strict enforcement. BellSouth supports the need for uniform rules. Uniform rules for authorization and verification are more cost effective and more easily administered. Uniform rules are also easier for customers to understand.

Questionable marketing tactics by some carriers have brought slamming to the forefront of concern for customers and the

industry. BellSouth supports rules that would prohibit the authorization of a change of provider being combined with inducements. Also, rules that prohibit deceptive marketing practices should be enacted. BellSouth also supports answer time requirements for all providers, so that customers can obtain assistance for their concerns. Rules to eliminate slamming should not, however, create additional and costly burdens on those carriers, including local exchange companies, who choose to operate in a fair and reasonable manner.

BellSouth also supports the need to eliminate the practice of adding unwanted additional services and charges, commonly referred to as "cramming," to a customer's bill. However, BellSouth does not support the use of a billing block with personal identification numbers. Cost issues for this service, with nationwide implications, have not been sufficiently addressed.

BellSouth believes that the most effective methods of preventing slamming and cramming is the application of significant penalties for those carriers who willfully and repeatedly use these tactics. Heavy financial penalties and or suspension and withdrawal of certification of willful offenders as authorized by Chapter 264.285 [s.c] of the Florida Statutes will reduce, if not eliminate, slamming and cramming while not imposing undue burden on those carriers who operate within the rules.

Strict enforcement of existing rules along with the changes that BellSouth supports would preclude the need for rules which will add cost to the companies that operate within the existing guidelines. The cost for imposing unnecessary new rules will inevitably be paid by the end user in the form of higher prices. Simply stated, heavy financial penalties will remove the financial incentives to build market share by willfully slamming and cramming customers. When the financial incentive is removed, there should be a drastic decrease in occurrence.

FLORIDA COMPETITIVE CARRIERS ASSOCIATION (FCCA):

It is FCCA's basic position that there are lower cost regulatory alternatives than the rules proposed by the Commission available to address the slamming issue. Two lower cost regulatory alternatives are attached to FCCA's Prehearing

Statement and have been filed separately with the Commission pursuant to § 120.541(1)(a), Florida Statutes. Either of these two alternatives will allow the Commission to take action on issues related to unauthorized changes of carriers while imposing significantly fewer economic and regulatory burdens on the industry to the detriment of competition.

Lower cost alternative #1 involves the Commission's adoption of the Federal Communications Commission's (FCC) soon-to-be promulgated rules on the subject. Adoption of the FCC's rules would ensure that carriers who do business on a nationwide basis are not subject to differing and expensive requirements in each of the 50 states, requiring costly adjustments to billing and operations systems. National uniformity will result in much lower costs to carriers (and ultimately the public) and should be adopted by the Commission in this instance.

Lower cost alternative #2 takes the rules as proposed by the Commission and makes modifications which do not interfere with its efficacy but which significantly reduce the cost of implementation. These modifications are set out in FCCA's suggested changes to the Commission's proposed rules and include:

(1) A rule implementation date of January 1, 1999, or six months after rule adoption, whichever is later, to allow carriers time to make the changes to their systems necessary to implement the rule.

(2) Clarification that the scope of the rule does not encompass unregulated services.

(3) Notification of the availability of a PIC freeze mechanism, via bill or letter; and, requirement of separate forms for a local provider PIC freeze and for a local toll or toll PIC freeze (this will require changes to the proposed PIC freeze form).

(4) No later than January 1, 1999, or six months after rule adoption, whichever is later, a requirement that a carrier notify a customer of a provider change on or within the bill.

(5) Notification of proposed third party verification requirements, including period of retention.

(6) Modifications to the provisions governing the credit to be received by customers.

(7) Deletion of live operator requirements.

(8) Some language was simply added or deleted for clarification.

Changing the proposed rule in these ways will reduce regulatory costs while accomplishing the Commission's objectives.

FURST GROUP, INC. (FURST):

Furst generally supports the basic positions of the major interexchange carriers in this proceeding. The Commission's proposed rule changes will put a greater burden on the carriers and will not eliminate the problem of "slamming." The Commission's rules in this matter should mirror the FCC's rules.

GTE FLORIDA INCORPORATED (GTEFL):

GTEFL believes more vigilant use of existing Commission sanctions, including substantial fines and certificate revocation, will be the best way to curb slamming, which is caused, for the most part, by a very small group of bad actors. It is much more efficient and effective to better use existing mechanisms directed to the core of the problem than to impose complex and costly regulations on all companies in the industry. The Commission should keep in mind that slamming complaints are a very small percentage of total primary interexchange carrier (PIC) changes. It is, moreover, unrealistic to expect complete eradication of the slamming problem and unreasonable to proposed rules based on this goal. The Commission should keep in mind that the expense of system changes and other activities associated with any new rules will ultimately be passed on to the customer. This public interest in this case demands a balancing of these costs against the potential benefits of the proposed rules. GTEFL believes that, in this case, the detriments of the recommended rules outweigh their benefits. GTEFL believes that there should be a consistent set of federal and state rules relative to slamming. If states establish different requirements, consumers would face potentially confusing state-specific

rules and national and regional carriers, including multi-state ILECs, would face costly administrative processes in dealing with different sets of state rules. The economic costs of these rules will ultimately be borne by consumers.

INTERMEDIA COMMUNICATIONS INC. (INTERMEDIA):

Intermedia concurs in and adopts the basic position of the Florida Competitive Carriers Association (FCCA).

MCI TELECOMMUNICATIONS CORPORATION (MCI):

The Commission has proposed amendments to various sections of the Commission's rules relating to consumer changes of their long distance carrier of choice and the staff and Public counsel have suggested additional changes to those rules. The proposed amendments and suggested changes go too far in regulating the activity of changing a consumers preferred interexchange carrier (PIC) and will stifle the competitive long distance market and negatively impact consumers' ability to easily and simply change their carrier of choice. MCI believes that adoption of rules consistent with the FCC rules will make for more consistent and effective enforcement and protect the interest of consumers. Additionally the Commission should adopt third party verification as a requirement for all carrier switches as an effective and consumer-friendly way to deter slamming.

SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP (SPRINT):

Sprint agrees that unauthorized changes in a subscriber's carrier selection, a practice commonly known as "slamming," is a significant consumer problem. Slamming clearly impacts all participants in the competitive interexchange market. What is not yet certain, however, is how best to address the problem. Sprint believes the Commission's proposed rules are unnecessary as the current rules are adequate and, when adhered to, have the capability to control the slamming problem. Sprint believes, however, that the Commission should avoid the indiscriminate application of its rules to all carriers. Finally, should the Commission adopt additional rules, Sprint recommends that it adopt rules that are consistent with federal rules. Since the federal rules have

not been finalized to date, however, Sprint recommends that the Commission delay implementing any new rules at this time.

SPRINT-FLORIDA, INCORPORATED (SPRINT-FLORIDA):

Sprint-Florida's basic position in this docket is that we support the FPSC's initiative in attacking the issues of slamming and cramming. The FPSC has proposed some solutions that have potential to be effective. Proposals to eliminate deceptive and misleading LOAs (letters of authorization) and to educate the public on PIC freeze options will serve the customers and help stem the tide of slamming.

Some billing system revision proposals, on the other hand, probably need more consideration regarding feasibility and cost-effectiveness. Specifically, the bill block option and bill information proposals need further evaluation. Also, proposals to give up to 90 days free service may have the unintended effect of creating fraudulent claims of slamming from customers.

Because the opportunity to evaluate the cost impact of the proposals voted on by the Commission on December 16 has been limited, Sprint cannot make a meaningful determination of which aspects of the rule proposals can be supported and which cannot. Sprint does not believe it is reasonable to expect the Company to develop costs in less than 30 days for proposed rules which would have significant impacts on this company's operations and operating support and billing systems. This task is made even more difficult when the proposal is not accompanied by reasonably detailed technical specifications or implementation criteria.

STAFF:

Staff supports the new and amended rules as proposed by the Commission. It does recommend additional changes to the billing block option to move its placement within the rules to clarify that the rule applies to both regulated and unregulated services and to revise the language for clarity. Staff also suggests additional language be added to the service requirements provision to assure customer calls are answered within 60 seconds after the last digit is dialed.

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

IX. ISSUES AND POSITIONS

The following issues will be determined at the hearing.

ISSUE 1: Should the Commission adopt new rule 25-24.845, Florida Administrative Code, as proposed by the Commission at the December 16, 1997, agenda conference?

POSITION:

AG AND THE CITIZENS: Yes.

ALLTEL: No. The Commission should not adopt the proposed new rule unless it finds that it is consistent with the related FCC rules and is the least cost alternative that substantially accomplishes the objective.

AT&T: Yes. AT&T does not oppose the proposed changes.

BELLSOUTH: Yes. Any rules applicable to local exchange companies should be applicable to ALECs.

FCCA: No position.

FURST: No. Furst generally supports the position on this one issue that has been presented by the major interexchange carriers.

GTEFL: Yes. As a rule, GTEFL believes regulatory requirements should be imposed on all local providers in a nondiscriminatory manner, so the extension of at least these customer relations rules to ALECs is a positive step.

INTERMEDIA: Concurs in and adopts the position of the FCCA.

MCI: Other than the specific objections that MCI has stated in its testimony and pre-hearing statements, MCI does not generally

object to customer billing requirements and provider selection rules applying to ALECs.

SPRINT: No. Should the Commission determine that additional rules are necessary, the Commission should delay adopting any new rules until federal rules are implemented. Sprint believes any additional rules the Commission adopts should be consistent with those federal rules.

SPRINT-FLORIDA: Sprint-Florida, Incorporated, does not oppose adoption of these [sic] proposed rule if it is determined by the Commission that additional rules are necessary; however, as stated above, Sprint-Florida believes that consistency in rulemaking across jurisdictions is beneficial and allows for consistent and effective enforcement of the rules.

STAFF: Yes. The rule should be adopted as proposed.

ISSUE 2: Should the Commission adopt the proposed amendments to Rule 25-4.003, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

POSITION:

AG AND THE CITIZENS: Yes.

ALLTEL: The Commission should not adopt the portion of the proposed rule that would require a free billing block option with PIN from the LEC.

AT&T: No. Instead, the Commission should make the following changes to the proposed rule:

(1) Subsection (10) should be effective no sooner than six months after the rule is formally adopted and becomes effective, rather than retroactively. Changes to billing systems will require time for programming and implementation.

(2) Delete the requirement in Subsection (10) that each provider's certificate number be printed on the customer bill. This would impose costs without accomplishing additional consumer protection or impose costs that are unreasonable in view of the ability substantially to accomplish the objective of the rule at a lower cost. The correct certificated name is all that is necessary to "track" the provider.

(3) Delete Subsection (10) 3.[sic], which requires a billing block option to be validated by a customer-specific PIN number. This requirement would impose massive implementation and operational costs without accomplishing additional consumer protection, since the rules currently prohibit disconnection of services for nonpayment of nonregulated charges. Further, there is no competent, substantial evidence available that such an option is available, can be developed, or that it would offer a reasonable solution to the problem of "cramming." Requiring non-regulated charges to be billed on pages separate from regulated charges would adequately address this issue, since customers could readily identify such charges and in any event are not subject to loss of service for failure to pay such charges.

Requiring that the PIN be transmitted from the LEC to the IXC, from the IXC to the third-party billing entity and from the third-party billing entity back to the LEC would require major revisions to already complex systems and would not provide any additional security to consumers. In fact, sharing the consumer's PIN among many different entities would reduce, rather than enhance, security.

Additionally, unless third party providers have a means to determine if there is a billing block option and then validate a PIN prior to providing a service, the rule will encourage fraud in an industry whose consumers already bear the costs of high toll fraud losses.

The following scenarios are all probable under this rule: a member of a household is not able to accept a collect call because s/he doesn't know the PIN; a consumer accepts a collect call or requests that a service be billed on his or her LEC bill, but provides an incorrect PIN and thereafter refuses to pay the charges; an unscrupulous provider obtains the customer's PIN in connection with a valid transaction and then proceeds to use the PIN to "cram" other items on the bill.

(4) Subsection (12) should be revised to allow companies to notify customers of the PIC freeze option either by letter or on their bill, and should additionally be revised to allow companies the option of providing to customers their own form that includes the information found on Form PSC/CAF 2, rather than the form itself. AT&T has thousands of customer service representatives who deal with customers from all over the country. Imposition of a specific form unique to one state is burdensome from a process

management and training perspective and thus reduces, rather than increases, AT&T's ability to provide quick, accurate, and effective customer service.

Additionally, the rule is seriously deficient unless it also requires the carrier that applies a PIC freeze to send written notification to that effect, separate from the customer's bill.

(5) Subsection (13) should be revised to allow companies to notify customers of a change in provider either by placing the notice on the bill or providing a bill insert. Companies should be allowed a minimum of six months to implement this requirement.

BELLSOUTH: Yes, with the exception of 25-4.003(41). Rule 25-4.003(41) should be modified to include the option of accepting a PIC freeze from the customer directly over the phone. Paper PIC freeze forms should not be required.

FCCA: No position.

FURST: No. Furst generally supports the position on this one issue that has been presented by the major interexchange carriers.

GTEFL: At this time, GTEFL does not specifically oppose the proposed definitional revisions.

INTERMEDIA: Intermedia concurs in and adopts the position of the FCCA.

MCI: MCI does not oppose the definitions proposed by the Commission. One very important definition is missing, however, and should be added. Nowhere in the Commission's proposed definitions is "unauthorized provider change" defined. MCI suggests that an unauthorized carrier change be defined as the conversion of a consumer's local or toll provider without the consumer's consent obtained through appropriate verification.

SPRINT: Sprint does not oppose the proposed rule changes.

SPRINT-FLORIDA: Sprint-Florida does not oppose adoption of these proposed rule amendments if it is determined by the Commission that additional rules are necessary. Sprint-Florida believes the proposed changes to definitions of telecommunications terms can be beneficial.

STAFF: Yes. The rule should be adopted as proposed.

ISSUE 3: Should the Commission adopt the proposed amendments to Rule 25-24.110, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

POSITION:

AG AND THE CITIZENS: Yes, but with the following underlined wording:

> 25-4.110 Customer Billing for Local Exchange Telecommunications Companies
>
> (10) After January 1, 1998, all bills produced shall clearly and conspicuously display the name of the customer's local provider, local toll provider, and toll provider within the first two pages of the bill and clearly and conspicuously display the following information for each service billed in regard to each company claiming to be the customer's presubscribed provider for local, local toll, or toll service:
> . . .

ALLTEL: The Commission should not adopt the proposed changes unless it finds that they are consistent with the related FCC rules and are the least cost alternative that substantially accomplishes the objective.

AT&T: No. Instead, the Commission should make the following changes to the proposed rule:

(1) Subsection (2)(b): Delete the requirement that the customer make an individual inbound call on each line that s/he wants to have switched, which increases the number of telephone calls that must be made to switch providers, and prevents customers from making such phone calls from other locations, such as work. Additionally, the ANI would not be captured for customers transferred from one service center to another.

(2) Subsection (2)(d): This section essentially requires a customer to make a PIC change twice. First the customer makes the change request, after which s/he receives an informational package, and then the customer must again request the change via the postcard. There is no evidence that the current process (allowing

the customer to change his mind and 'deselect' a company via postcard) is insufficient or that customers desire this change.

(3) Subsection (4): The rule should not prohibit companies from using clearly identifiable, non-deceptive LOAs that also include a check. FCC rules clearly allow use of such inducements.

(4) Subsection (5): This section should be amended to require the provider either to receive the signed LOA or have obtained third party verification prior to the change.

(5) Subsection (8): The Commission should require companies to rerate charges for up to 30 days after the customer receives his first bill.

There are several problems with the requirement that companies provide consumers with 90 days' free service. First, by doing more than making customers whole, the provision constitutes an award of damages, which is beyond the Commission's jurisdiction. Second, rather than encouraging customers to be alert to unauthorized charges, it encourages the opposite. Customers have a legal obligation to examine their bank and credit card statements in a timely manner in order to be entitled to a remedy, and there is no reason to provide an exception for telephone bills. Third, the requirement will substantially increase regulatory costs by encouraging frivolous complaints.

(6) Subsection (11): The requirement that customers be notified of PIC freeze availability during both telemarketing and verification is redundant and increases costs. All such notification should be handled in the first instance by customer service personnel; third party verifiers should be limited to verifying customer acceptance of the PIC freeze option.

(7) Subsection (12): The requirement that providers send a letter notifying the customer that it will be providing his service is duplicative; particularly so in cases where the company has completed third party verification or has sent the informational package referenced in Rule 25-4.118(2)(d).

(8) Subsection (13): The requirement that companies provide the customer a copy of the authorization relied upon within 15 days should be modified to require that companies provide a copy of any written authorization within 30 days.

(9) Subsection (14): This section imposes a number of requirements modeled on LEC customer service rules. These requirements are unnecessary in a competitive environment, where customers may switch providers when they believe they are receiving poor service. The Commission can better serve customers by facilitating selection and de-selection of providers, which will allow immediate redress for perceived poor service.

BELLSOUTH: Yes, with the exception of Rule 25-4.110(10), (11)(a)3., (12), and (13). These subsections should be modified due to the space limitations of BellSouth's bill, the cost involved, whether BellSouth will have such information in its possession, and technical obstacles.

FCCA: No. There [are] lower cost regulatory alternatives to the rule proposed by the Commission. The Commission should either adopt the soon-to-be-proposed FCC rules on slamming (FCCA Alternative #1) or incorporate the modifications to the proposed rule filed by FCCA (FCCA Alternative #2). Either of these alternatives will accomplish the purpose of the Commission while imposing lower regulatory costs on the carriers than the rules as proposed.

FURST: No. Furst generally supports the position on this one issue that has been presented by the major interexchange carriers.

GTEFL: GTEFL opposes the subsection (10)(a) requirement to include each provider's certificate number on the bill. The certificate number would provide no useful information to the customer; in fact, it would likely add confusing detail to the bill from the customer's perspective. GTEFL believes Staff can get this information relatively easily from either the billing LEC or the carrier which passed the charges to the LEC, as appropriate.

GTEFL also opposes (11)(a)3., the billing block option requirement. GTEFL believes this proposal could create more problems than it solves. Beyond the obvious costs of establishing and maintaining a PIN system for over 1.5 million customers, a PIN-based approach lends itself to fraudulent manipulation, possibly by the same providers which engage in intentional slamming today.

Finally, while GTEFL does not necessarily oppose the subsection (13) requirement to give a customer notice of a PIC change on his next bill, GTEFL would need to modify its system to accommodate the particular message, type and placement requirements

of this information. The Commission should thus consider whether the addition of this information would be of sufficient value to pass the associated costs on to consumers.

INTERMEDIA: Intermedia concurs in and adopts the position of the FCCA.

MCI: No. The requirement of including the carrier's certificate number on the customer bill should be eliminated as redundant and unnecessary.

Revisions to the proposal to block third party billing on LEC invoices are necessary so that national billing processes currently observed throughout the telecommunications industry are not adversely impacted in Florida.

SPRINT: No. Should the Commission determine that additional rules are necessary, the Commission should delay implementation of any new rules until federal rules are implemented. Sprint believes any additional rules the Commission adopts should be consistent with those federal rules.

SPRINT-FLORIDA: Sprint-Florida does not oppose adoption of these rule amendments as proposed except for Sprint-Florida's position with respect to the following items: Sprint-Florida believes that addition of the certificate number (Rule 25-4.110(10)(a)) and type of service notification to the bill (Rule 25-4.110(10)(b)) will provide little if any value, while adding significant cost. Sprint-Florida further believes that implementation of the bill block option (Rule 25-4.110(11)(a)3.) would be costly, and could be very confusing to end users and may require development of industry standards for the exchange of billing information. If there is a need for developing industry standards, the time required to develop such functionality would factor into the availability of the option to end users. Sprint-Florida has not had sufficient time to evaluate industry-wide standards requirements.

STAFF: Yes, with the following exceptions:

Rule 25-24.110, Florida Administrative Code:

a. Staff suggests that the billing block option language found in subparagraph (11)(a)3. be numbered as a separate

subsection (11), renumbering subsequent subsections and making the appropriate technical reference changes.

b. Staff further suggests the language be modified as follows for clarity and to ensure application to both regulated and unregulated services:

(11) Each LEC shall offer end user/subscribers a free billing block option to block all charges, regulated and unregulated, from a third party other than the subscriber's primary local toll and toll provider. Bills submitted by third parties with the subscriber's LEC-specific personal identification number will validate the subscriber's authorization of the charges and supersede the billing block. The subscriber is responsible for all such charges.

ISSUE 4: Should the Commission adopt the proposed amendments to Rule 25-24.118, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

POSITION:

AG AND THE CITIZENS: Yes, with the following changes and additions as shown in the underlined sections:

25-4.118 Local, Local Toll, or Toll Provider Selection

(1) The provider of a customer shall not be changed without the customer's authorization. When the commission staff determines that a customer's choice of carrier has been changed without authorization or knowledge of the customer and the change was willful and the part of the provider, or when the staff determines that the provider has engaged in unfair or deceptive trade practices, the staff will institute a separate show cause docket to bring the facts before the commission for disposition.

(2) A LEC shall accept a change request from a certificated LP or IXC acting on behalf of the customer. The change request must match the last name of the customer, the customer address and the customer telephone number in order to be processed by the LEC.

(8)(a) Upon receipt of a claim from a customer of an unauthorized change of providers, the local provider shall:

1. Change the customer to the customer's preferred provider;
2. Charge back to the unauthorized provider all billing for 90 days prior to the date of the claim and all charges for unauthorized provider changes;
3. Implement a billing block to stop all further billing by the local provider on behalf of the unauthorized provider; and
4. Advise the customer that all future negotiations regarding the disputed charges will be handled directly between the customer and the unauthorized provider.

The change must be made by the local provider within 24 hours, excepting Saturday, Sunday, and holidays, in which case the change shall be made by the end of the next business day.

(b) Charges for the unauthorized provider changes and all charges billed on behalf of the unauthorized provider for 90 days prior to notification by the customer shall be credited to the customer by the company responsible for the error within 45 days of notification. In the event the carrier determines that the customer's claim was not valid, the carrier shall notify the customer of their right to appeal the decision to the commission and shall not attempt to rebill such charges through the LEC billing system.

(14) Each provider shall comply with standards applicable regarding answer times for incoming calls to the business office as specified in 25-4.073 of the commission rules.

(15) No provider shall engage in any deceptive and unfair practice that intentionally misleads telecommunications customers regarding their choice of providers or that intentionally prevents consumers from being informed of the most economical service arrangements available to them under the provider's filed tariffs.

ALLTEL: The Commission should not adopt the proposed changes unless it finds that they are consistent with the related FCC rules and are the least cost alternative that substantially accomplish the objective.

AT&T: The Commission should not impose the requirements of Rule 25-4.110 (10) - (13) on ALECs because they are unnecessary in a competitive environment. Customers may freely switch providers if they are dissatisfied with ALEC billing practices. The Commission should impose the requirements of Rule 25-4.118 only as modified pursuant to AT&T's suggestions, above.

BELLSOUTH: Yes, with the exception of 25-4.118(8). This section should be modified to eliminate the opportunity for undue financial gain by an unauthorized provider and eliminate the financial loss by the authorized provider, while maintaining the customer's financial responsibility for services rendered.

FCCA: No. There are lower cost regulatory alternatives to the rule proposed by the Commission. The Commission should either adopt the soon-to-be-proposed FCC rules on slamming (FCCA Althernative #1) or incorporate the modifications to the proposed rule filed by FCCA (FCCA Alternative #2). Either of these alternatives will accomplish the purpose of the Commission while imposing lower regulatory costs on the carriers than the rules as proposed.

FURST: No. Furst generally supports the position on this one issue that has been presented by the major interexchange carriers.

GTEFL: GTEFL again suggests that the Commission should be wary of establishing systems and measures that themselves pose a significant potential for fraud. GTEFL believes that the subsection (8) requirement to credit a customer for 90 days' worth of charges upon a claim of slamming could easily be abused by unscrupulous customers, at the expense of the general body of customers who must pay for such credits.

INTERMEDIA: Intermedia concurs in and adopts the position of the FCCA.

MCI: No. The Commission should approve verification methods consistent with the FCC. The Commission should not require TPV [third party verification] to be tape recorded. The Commission should ensure that the TPV provider/vendor is truly independent from the carrier.

LOAs should not be relied upon as a more effective verification method. LECs should not be relied upon to settle PIC disputes. The 90-day credit to any consumer experiencing an "undefined" unauthorized PIC change should be deleted, as well as the additional re-rating of calls up to twelve months. Monthly slamming reports by carriers should not be required. PIC freeze information should not be required to be advocated by carriers to all potential consumers in marketing situations. Modifications to the proposal to require the disassociation of LEC billing for

"unauthorized" service should be made so that legitimate, tariffed and regulated charges incurred may be appropriately billed to the user. The proposal to require a match of the consumer's name, address and telephone number in the transmittal order with that of the LEC should be eliminated.

In a competitive environment, the Commission should not impose requirements on the customer service operations of long distance providers, other than a requirement that customer service should be reasonably available to consumers via toll-free access.

SPRINT: As stated above, should the Commission determine that additional rules are necessary, Sprint recommends that the Commission delay implementing any new rules until federal rules are implemented. Should the Commission, however, proceed with rule-making before the federal rules are established, Sprint takes the following positions:

Rule 25-4.118(2)(b) 1.2; and (2)(c), Florida Administrative Code:

Sprint believes that an audio recording is of no greater value in verifying the validity of a customer's carrier choice than other methods. It is an unnecessary additional step that increases the cost of verification, and adds no additional security for the customer. The 'recording' offers no guarantee that the person authorizing the order is the true customer with the decision-making authority for the telephone service.

Rule 25- 4.118(4), Florida Administrative Code:

This Rule would prohibit inducements of any kind from being combined with the LOA. Sprint supports the proposed rule change. Sprint, however, recommends that the rule be clarified to indicate that negotiable instruments, such as checks, are not to be combined with an LOA.

Rule 25-4.118(2)(d)(5), Florida Administrative Code:

Sprint supports the proposed rule change.

Rule 25-4.118(2)(d)(6), Florida Administrative Code:

Sprint sends new customers a Welcome Package confirming their PIC change order. Substantial additional printing and administrative costs will be incurred if state-specific information

must be included. Any increase in administrative costs could impede competition.

Rule 25-4.118(8), Florida Administrative Code:

Sprint opposes any rule that would relieve customers' responsibility for paying for services they have received. Rule changes of this type would encourage fraud and bad debt for all interexchange carriers.

Rule 25-4.118(10), Florida Administrative Code:

Sprint believes that identification of the independent verifier will only create customer confusion. Sprint's independent verifier now uses the name "Verification." Sprint has not received any customer complaints as the result of this procedure.

SPRINT-FLORIDA: Sprint-Florida does not oppose adoption of the PIC change requirements if the proposed rule should be implemented with the following exceptions:

Rule 25-4.118(2)(b), Florida Administrative Code:

Sprint-Florida believes that this proposal would impose significant costs but fail to effectively address the root cause of slamming. These costs will flow to customers and may prevent other service providers from entering the Florida market.

Rule 25-4.118(2)(b)2., Florida Administrative Code:

Sprint-Florida also opposes the proposal that would require audio recording verification of inbound customer initiated calls because evidence suggests that very few slamming complaints result from inbound customer initiated calls and that the cost of implementing such a requirement would far outweigh the benefits.

Rule 25-4.118(2)(d)5., Florida Administrative Code:

Sprint-Florida does not support the proposed rule that would require the customer to return a signed postcard in the event PIC change verification occurred via the welcome package option. Our experience with this process would indicate that implementation of this rule would result in customer confusion and cause unnecessary delays in the PIC change process. Additionally, the process may result in customer dissatisfaction and make entry into the market

difficult for competitive providers. Sprint-Florida believes that there would be a large percentage of consumers who would not return the postcard for various reasons such as forgetting to send the card or not realizing the card must be returned to effect the change.

Rule 25-4.118(8), Florida Administrative Code:

The proposed rule which states that charges for unauthorized provider changes and all charges for the first 90 days or first three billing cycles, whichever is longer, shall be credited by the company responsible for the error within 45 days of notification is opposed by Sprint-Florida on the basis that customers who claim to have been slammed should not be relieved of the duty to pay for any of the charges for calls or other services that were actually incurred by the customer during the time they were assigned to an unauthorized carrier. Any rule that absolves a customer of their financial responsibility only provides incentives for bogus slamming complaints, thereby increasing the number of customer complaints.

Rule 25-4.118(14), Florida Administrative Code:

Sprint-Florida believes that for LECs there is no evidence in this record that demonstrates that additional answer time requirements would be cost effective in addressing slamming and cramming. Clearly, there is no evidence to support the value of 24-hour mechanized answering.

STAFF: Yes, the rule should be adopted with the following exception.

Rule 25-4.118, Florida Administrative Code:

a. The fourth sentence to Subsection (14) should be amended by adding the following language before the "period":

and be answered within 60 seconds after the last digit is dialed.

ISSUE 5: Should the Commission adopt the proposed amendments to Rule 25-24.490, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

POSITION:

AG AND THE CITIZENS: Yes.

ALLTEL: The Commission should not adopt the proposed changes unless it finds that they are consistent with the related FCC rules and are the least cost alternative that substantially accomplishes the objective.

AT&T. No position.

BELLSOUTH: Yes. These rules should be applicable to interexchange carriers.

FCCA: No. The proposed rule should be modified to delete the reference to subsection (10) under the column captioned "Portions Applicable" to section 25-24.110. AN IXC has no way to identify a customer's local carrier. Therefore, it cannot put this information on its bill as this proposed rule seems to require.

FURST: No. Furst generally supports the position on this one issue that has been presented by the major interexchange carriers.

GTEFL: At this time, GTEFL does not specifically oppose any of the proposed revisions.

INTERMEDIA: Intermedia concurs in and adopts the position of the FCCA.

MCI: Other than the specific objections that MCI has stated in its testimony and pre-hearing statements, MCI does not generally object to the rules applying to IXCs.

SPRINT: No. Should the Commission determine that additional rules are necessary, the Commission should delay adopting any new rules until federal rules are implemented. Sprint believes any additional rules the Commission adopts should be consistent with those federal rules.

SPRINT-FLORIDA: Sprint-Florida takes no position on this issue.

STAFF: Yes. The rule should be adopted as proposed.

X. EXHIBIT LIST

WITNESS	PROFFERED BY	I.D. NUMBER	DESCRIPTION
R. Earl Poucher	Attorney General and Citizens	REP - 1	letters and calls received by the AG & Citizens
R. Earl Poucher	Attorney General and Citizens	REP - 2	Internal report of BellSouth
R. Earl Poucher	Attorney General and Citizens	REP - 3	Internal report of GTEFL
Jerry W. Watts	AT&T	JWW - 1	1995 FCC Complaint ratios for Long Distance Companies
Jane King	MCI	JMK - 1	Making the Best Call - ...
Jane King	MCI	JMK - 2	Countdown to Smart Long Distance Dialing
Jane King	MCI	JMK - 3	Common Carrier Scorecard - ...
Staff	FPSC	Composite Exhibit No. 1	Rules, FAW notice, Orders, Statements to JAPC, Notice, Comments
J. Alan Taylor	Staff	JAT - 1	Letter of complaint
J. Alan Taylor	Staff	JAT - 2	Case on antitrust, Parker v. Brown

J. Alan Taylor	Staff	JAT - 3	Letter on unauthorized PIC changes
J. Alan Taylor	Staff	JAT - 4	FCC Consumer Information
J. Alan Taylor	Staff	JAT - 5	Letter from AG - billing complaint
J. Alan Taylor	Staff	JAT - 6	Petition to FCC - cramming
J. Alan Taylor	Staff	JAT - 7	Comments to FCC - 900 number
J. Alan Taylor	Staff	JAT - 8	Article - pay per call
J. Alan Taylor	Staff	JAT - 9	Complaint - Slamming
J. Alan Taylor	Staff	JAT - 10	Complaint - cramming
J. Alan Taylor	Staff	JAT - 11	FPSC Consumer Alert
J. Alan Taylor	Staff	JAT - 12	FPSC Rules - Toll fraud liability
J. Alan Taylor	Staff	JAT - 13	Article - slamming
J. Alan Taylor	Staff	JAT - 14	Solicitation

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

XI. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XII. PENDING MOTIONS

AT&T's Motion to Accept Prehearing Statement One Day Late filed on January 16, 1998, has been granted.

AT&T's Request for Temporary and Permanent Protective Order filed October 20, 1997, has been denied. In its Motion and at the Prehearing Conference, AT&T argued that the information requested by the Office of Public Counsel, which includes customer account record information, is prohibited from being disclosed under Section 364.24, Florida Statutes. AT&T requested a protective order to specify that Public Counsel may not use customer account record information obtained pursuant to subpoena to contact customers whose identity is revealed by the information produced.

The Office of Public Counsel timely filed its Response and Opposition by Citizens of State of Florida to AT&T's Request for Temporary and Permanent Protective Order on October 28, 1997. In its Response and at the Prehearing Conference, Public Counsel argued that the statute, Section 364.24, Florida Statutes, provided for an exception to allow disclosure of customer information as required or otherwise allowed by law. The information was to be provided in response to a process of law. Public Counsel further argued that the statute did not address the relief requested by AT&T. Finally, Public Counsel argued that, by statute, it represents the citizens of this state in matters before the Public Service Commission. It would be improper for the Commission or any other party to interfere with its responsibility to represent its clients.

Upon consideration, I find that a special exception should be made for Public Counsel as they represent the customers whom they are to protect. While the privacy issue should be given great weight, because the information is being requested by Public Counsel for the purpose of representing those individuals, I believe it is proper for them be able to contact those individuals. The information shall be treated as confidential information and shall not be otherwise disclosed.

It is therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission. It is further

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission. It is further

ORDERED that AT&T's Motion to Accept Prehearing Statement One Day Late filed on January 16, 1998, has been granted. It is further

ORDERED that AT&T's Motion for Protective Order be denied and Public Counsel may contact customers as prescribed in this order.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 2nd day of February, 1998.

JULIA L. JOHNSON, Commissioner
and Prehearing Officer

(S E A L)

DWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida

of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.