



State of Florida

Public Service Commission

MEMORANDUM

DATE: February 4, 1998
TO: Blanca Bayó, Director, Records and Reporting
FROM: Joy Kelly, Chief, Bureau of Reporting
RE: DOCKET NO. 980254-TI, HEARING HELD 1-30-98

RE: PROPOSED ADOPTION OF RULES RELATING TO PREPAID CALLING SERVICES

DOCUMENT NO: 01680, 2-2-98

The transcript for the above transcribed hearing has been completed and is forwarded for placement in the docket file, including attachments.

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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

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In the Matter of

Proposed Adoption of Rules
25-24.900, 25-24.905, 25-24.910;
25-24.920, 25-24.925, 25-24.930;
25-24.935, 25-24.940, F.A.C.,
et seq., relating to prepaid
calling services.

DOCKET NO. 960254-TI



PROCEEDINGS: HEARING

BEFORE:

**CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JOE GARCIA
COMMISSIONER E. LEON JACOBS, JR.**

DATE: **Friday, January 30, 1998**

TIME: **Commenced at 9:55 a.m.
Concluded at 10:45 a.m.**

PLACE: **Betty Basley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida**

REPORTED BY: **JOY KELLY, CSR, RPR
Chief, Bureau of Reporting**

DOCUMENT # 960254-TI
01600-00-08

1 **APPEARANCES:**

2 **MARSHA E. BULLS, AT&T Communications of the**
3 **Southern States, Inc., 101 East College Avenue,**
4 **Suite 700, Tallahassee, Florida 32301-1509, appearing**
5 **on behalf of AT&T Communications of the Southern**
6 **States, Inc.**

7 **MONICA BARONE, Sprint Communications**
8 **Company, Limited Partnership, 3100 Cumberland Circle,**
9 **Atlanta, Georgia 30339, appearing on behalf of Sprint**
10 **Communications Company, Limited Partnership.**

11 **MARSHA WARD, 788 Johnson Ferry Road,**
12 **Atlanta, Georgia, appearing on behalf of NCI**
13 **Telecommunications.**

14 **DIANA CALDWELL, FPSC Division of Appeals,**
15 **Gerald L. Gunter Building, 2540 Shumard Oak Boulevard,**
16 **Tallahassee, Florida 32399-0850, appearing on behalf**
17 **of the Commission Staff.**

18

19 **ALSO PRESENT:**

20 **RICK MOORE, FPSC Division of Communications.**

21 **ALAN TAYLOR, FPSC Division of**
22 **Communications.**

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P R O C E E D I N G S

(Hearing convened at 9:55 a.m.)

CHAIRMAN JOHNSON: We're going to go on the record. Counsel, are there any preliminary matters?

MS. CALDWELL: Would you like me to read the notice first?

CHAIRMAN JOHNSON: Sure.

MS. CALDWELL: Pursuant to notice published in the Florida Administrative Weekly on June 30, 1997, this hearing is being held at this time and place.

CHAIRMAN JOHNSON: I know there was a preliminary preliminary.

This is being transmitted over the Internet. And I just wanted to make sure all of the parties and interested persons were aware of that before we started the proceeding, that it is being transmitted over the Internet.

COMMISSIONER GARCIA: Only people who have functioning phone cards, though. (Laughter)

CHAIRMAN JOHNSON: We'll take appearances.

MS. BARONE: Monica N. Barone, appearing on behalf of Sprint Communications Company Limited Partnership, 3100 Cumberland Circle, Atlanta, Georgia 30339.

MS. WARD: Good morning, Commissioners.

1 Marsha Ward representing NCI, 780 Johnson Ferry Road,
2 Suite 750, Atlanta, Georgia 30342.

3 MS. RULE: Marsha Rule representing AT&T,
4 101 North Monroe, Suite 700, Tallahassee, Florida.

5 MS. CALDWELL: Diana Caldwell, Florida
6 Public Service Commission, 2540 Shumard Oak Boulevard,
7 Tallahassee, Florida, appearing on behalf of
8 Commission Staff.

9 CHAIRMAN JOHNSON: Okay. Any preliminary
10 matters?

11 MS. CALDWELL: Yes. Staff has a Composite
12 Exhibit 1 they'd like to move into the record. It
13 contains a copy of the proposed rules, the Florida
14 Administrative Weekly Notice and Proposed Rules, the
15 Order Modifying Procedural Schedule, Statement of
16 Facts and Circumstances Justifying the Rule, Statement
17 on Federal Standards, Statement of Economic Impact as
18 provided to the Joint Administrative Committee issued
19 January 20th, 1997, Notice of Rulemaking, Letter to --
20 another letter from JAPC and comments of Sprint,
21 SmartTalk, PhoneTime, Dometel and BellSouth Nobility,
22 and AT&T's request for the hearing.

23 CHAIRMAN JOHNSON: We'll identify that as a
24 Staff Composite Exhibit 1. And is it appropriate to
25 move it into the record at this time?

1 **MS. CALDWELL:** Yes, it is.

2 **CHAIRMAN JOHNSON:** We'll show that then
3 admitted without objection.

4 (Composite Exhibit 1 marked for
5 identification and received in evidence.)

6 **CHAIRMAN JOHNSON:** Any other preliminaries?

7 **MS. CALDWELL:** I think at this time we would
8 like to have Staff review the current proposed rules.

9 **CHAIRMAN JOHNSON:** Okay.

10 **MR. MOSES:** The proposed rules as they were
11 originally proposed would apply to all
12 telecommunications providers, prepaid calling
13 services, except those cards that are used strictly
14 for cellular service. It requires certification prior
15 to providing the prepaid calling services. It
16 requires tariffs or price lists to be filed with this
17 Commission. It provides for standards of service and
18 customer disclosure information, refund policies,
19 adequacy of service, conditions for discontinuance of
20 service and penalties.

21 **CHAIRMAN JOHNSON:** Anything else, Counsel?

22 **MS. CALDWELL:** I think the way we'd like to
23 start off is to explain that on Tuesday, Staff sent a
24 memo around to all of the Commissioners, and also
25 faxed a copy to all of the -- there were parties

1 that -- or interested persons that showed up at the
2 prehearing conference. And as a result -- or after
3 the conference, these people got together, companies
4 got together with Staff and we were able to work out a
5 compromise and some -- a compromise on the rules. The
6 memo included a draft of those compromises and it
7 explained the changes.

8 These changes were a result of NCI's
9 concerns and the reason they requested this hearing.
10 It also incorporated some of the comments that were
11 filed as a result of the FAN notice. The memo -- it
12 explained what changes were being made to the proposed
13 rules that Staff recommended. And then it also
14 addressed the comments that were made and filed and
15 explains Staff's rationale for not including those
16 particular changes in the proposed rule.

17 If you'd like to, at this time I could go
18 over the proposed changes to that, but it's -- and
19 then you would probably like to hear from the parties.
20 But it's our understanding that if the Commission
21 chooses to, they could adopt these changes, or
22 whatever changes they would like to make. They could
23 actually adopt these rules today and go forward and
24 file them for adoption.

25 COMMISSIONER GARCIA: Diana, I thought

1 through reading the memo that it's not that we weaken
2 the rule, we just strengthen the language so that it
3 was more understandable and clear. So I don't know if
4 we necessarily need to look at it unless another
5 Commissioner wants to. And I want to feel comfortable
6 with you all because we've worked on this for so long.

7 You all feel comfortable that all of the
8 changes that were made are simply questions of clarify
9 and efficiency more than jurisdiction and the
10 Commission's ability to get involved?

11 **MS. CALDWELL:** That is correct.

12 I do want to point out one comment that I
13 made on Page 3 of the memo dealing with -- we added
14 two contract provisions. One was in the refusal or
15 discontinuance of service section at the very back.
16 And we -- what we did in the language is essentially
17 clarify that the company's name who provides -- the
18 company who provides the service, their name has to be
19 on the card. And that's the company who the
20 Commission will look to, to be responsible for meeting
21 all of the rule requirements.

22 **COMMISSIONER GARCIA:** That would be for the
23 typical -- let's say NCI sells prepaid phone cards to
24 Wal-Mart. NCI's name would have to be on the back
25 even though the card said Wal-Mart.

1 MS. CALDWELL: If NCI is the provider.

2 COMMISSIONER GARCIA: Right. Is the
3 provider, correct. Not if NCI is the reseller to the
4 provider, Wal-Mart. If that were the case, then
5 Wal-Mart would have to get certificated.

6 MS. CALDWELL: If they were representing
7 themselves out to be the provider, then they have to
8 have their name on the card as the provider.

9 COMMISSIONER GARCIA: It doesn't necessarily
10 have to be the advertised name on the card.

11 MS. CALDWELL: That's correct. So on the
12 back it can say NCI; on the front it says Wal-Mart, it
13 says Superbowl, it says --

14 COMMISSIONER GARCIA: Whatever.

15 MS. CALDWELL: Whatever. That's what we
16 reached and that's what the rules do.

17 I'd like to address the comment clause on
18 Page 4, Lines 13 through 31.

19 COMMISSIONER GARCIA: What page? Oh, okay
20 I'm sorry. Got it.

21 MS. CALDWELL: What we're trying to attempt
22 to do is to the extent that these providers can, by
23 contract, require both the upstream, say the network
24 provider, or the downstream, either retailers or
25 distributors, to follow these rules, we want them to

1 do so by contract.

2 I'm not sure how far we can enforce those
3 contracts or how far we can hold the company to
4 enforcing these contracts, but I feel that this
5 contract provision -- those contract provisions in the
6 rules put on the company a responsibility to sort of
7 police themselves. And I think that's where we want
8 to go. And that way we can do it by contract. And
9 then we, as the Commission, will watch what the
10 industry does with these contract provisions. So that
11 in my mind if MCI or AT&T, or some of the long
12 distance providers as the facility's based provider
13 sells to a reseller, and then the reseller doesn't pay
14 them, or doesn't abide by the contract or the tariffs
15 that these companies have, and then the consumers were
16 hurt, and then if two months down the road they turn
17 around and sold to those companies again, we would go
18 back to the facilities provider to see what they are
19 doing in their contracts. And then on a case-by-case
20 basis really look to see how they enforce those
21 contracts; what provisions were put in the contracts
22 as required by the rules.

23 COMMISSIONER GARCIA: But in -- I'm sorry, I
24 might have missed something. I want to also
25 understand that the facilities providers will be held

1 liable if they are providing service to an
2 uncertificated company.

3 **MS. CALDWELL:** That is correct.

4 **COMMISSIONER GARCIA:** So if -- I'll use
5 Sprint this time -- if Sprint is selling service to a
6 provider, Wal-Mart, and we take away Wal-Mart's
7 certificate because of violations, and next month we
8 find that Wal-Mart is still selling, and Sprint or
9 anyone else is the provider, then we can hold Sprint
10 liable for those.

11 **MS. CALDWELL:** They would be in violation of
12 Rule 25-26.4701.

13 **COMMISSIONER GARCIA:** Okay. I don't know if
14 that was the point you were trying to make, and I'm
15 sorry --

16 **COMMISSIONER CLARK:** Are you saying in that
17 instance Wal-Mart has gotten itself certificated as a
18 provider?

19 **COMMISSIONER GARCIA:** Yeah. In that case
20 Wal-Mart would have been the certificated provider.
21 But if we would have taken away the certificate
22 because we fine them and they didn't appear, whatever,
23 we took away their certificate, then Sprint would be
24 held liable for still providing them resell service.

25 **COMMISSIONER CLARK:** I guess I view that

1 as -- when we do the Show Cause and we tell the long
2 distance providers or the local exchange companies
3 they are not supposed to let a PIC go to them anymore.

4 **COMMISSIONER GARCIA:** Right.

5 **MS. CALDWELL:** I need to make a
6 clarification. On 25-24.4701 that requires IXCs to
7 sell to certificated carriers under their tariffs.

8 **MR. MOSES:** Let me see if I can explain it.

9 In the .4701 rule it requires that the
10 certificated company in its tariff that it's going to
11 be reselling out of have the language in there that a
12 company purchasing out of that tariff must be
13 certificated prior to purchasing it.

14 If Wal-Mart lost its certificate, continued
15 to operate without a certificate, we'd go after
16 Wal-Mart for operating without a certificate; we
17 wouldn't go for the underlying carrier in that
18 instance because the underlying carrier would more
19 than likely have that language in their tariff.

20 **COMMISSIONER GARCIA:** Then that's not right.

21 **COMMISSIONER JACOBS:** We'd go after them
22 because they are violating the tariff.

23 **MR. MOSES:** We'd go after Wal-Mart if it was
24 required that Wal-Mart needed to be certificated and
25 they weren't a distributor or a retailer.

1 **COMMISSIONER GARCIA:** But Susan clarified
2 that.

3 Let's say Wal-Mart was a certificated
4 carrier. And we removed Wal-Mart's certificate
5 because of the violations of our rules. Let's say
6 they are overcharging, whatever; the service they are
7 providing doesn't meet our standards. And we take
8 away their certificate. And Sprint continues to sell
9 them service. Then we can go after Sprint if Sprint
10 is selling service to Wal-Mart as a provider.

11 **MR. MOSES:** If Sprint has in their tariff
12 that you cannot purchase out of this tariff unless you
13 have a certificate, they are protected under the .4701
14 rule. What you would have to do is show cause
15 Wal-Mart, or whoever the uncertificated entity was, to
16 show cause them for failing to be certificated under
17 these rules.

18 **COMMISSIONER GARCIA:** Then those rules are
19 wrong and we need to change them. Because what you're
20 basically saying as soon as I file a tariff, all I
21 have to do is put in -- that's almost as absurd as the
22 slamming rule that we have that says unless you call
23 me to tell me your PIC is changed, I can reslam you.

24 **MR. MOSES:** Well, essentially, though,
25 that's outside of the scope of this rulemaking. That

1 is, unfortunately a provision for all types of
2 interchange carrier provisions.

3 **COMMISSIONER GARCIA:** Yeah. Maybe I had
4 failed to understand how that rule worked, because
5 it's completely absurd.

6 We're basically saying that if you
7 include -- sort of like a clause that is basically
8 holding you harmless. That I must sell -- if I'm not
9 selling to a certificated carrier it's the fault of
10 the noncertificated carrier, not the one who is
11 selling?

12 **MR. MOSES:** We tried to tighten that rule up
13 one time to where it would be a requirement that the
14 companies obtain the certificate number prior to
15 selling out of that tariff and that was voted down.

16 **COMMISSIONER GARCIA:** If it was voted down,
17 it was for a lack of understanding of how it was.
18 Because -- and Diana, correct me if I'm wrong, I think
19 you and I have had this discussion on several
20 occasions -- and this interpretation is completely
21 different from the one I had taken from those
22 discussions.

23 **COMMISSIONER CLARK:** I think there's sort of
24 a mismatch of the comments. Because we do in the show
25 cause instruct -- by analogy we instruct underlying

1 carriers, I guess, not to sell to those carriers whose
2 certificates have been revoked. And it would seem to
3 me we can go after them for violating a rule or order
4 of the Commission if they don't do it.

5 Now, what you have brought up with respect
6 to voting down the notion of getting their certificate
7 number, my recollection was that we didn't want to put
8 that requirement on the front end because we were
9 persuaded that that would slow up the process
10 considerably. But I don't think it was a matter of
11 not holding them responsible for making sure that
12 they, in fact, had a certificate. As I recall
13 Ms. Rule is the one who argued that.

14 MR. MOSES: But what you described is if you
15 have in an order to go and disconnect all service to
16 the uncertificated entity, you've got that in a order.
17 And if they were violating that order we could
18 certainly show cause the underlying carrier for
19 violation of that order. But just looking at
20 25-24.4701 on its face, all it requires that company
21 to do is put in their tariff that particular language.

22 MS. RULE: Commissioners --

23 COMMISSIONER GARCIA: But it is an
24 automatic, then, of this Commission -- excuse me,
25 Ms. Rule.

1 **CHAIRMAN JOHNSON:** Hold on, Ms. Rule. I'll
2 let you speak but hold on a second.

3 **COMMISSIONER GARCIA:** It's an automatic,
4 though, that we then, in our orders, when we remove
5 someone's certificate, we issue an order saying that
6 no one can sell it.

7 **MR. MOSES:** For a while there we had an
8 issue in there where -- we're continuing to do it and
9 we've recently started that -- where we have a
10 separate issue that the Commission orders all
11 companies to discontinue service to them once their
12 certificate has been cancelled.

13 **COMMISSIONER GARCIA:** I think we need to
14 clarify that rule. I don't want this to take forever,
15 but I think we have to start down that road. Because
16 in today's world of electronic communications, it
17 would be easy for us to put a list of all the
18 certificated carriers on the Internet, and AT&T would
19 have no excuse whatsoever if we issued an order to
20 sell to someone who was uncertificated. We could hold
21 them liable.

22 **MR. MOSES:** We can address that in a
23 separate rulemaking, certainly.

24 **COMMISSIONER JACOBS:** Let me ask a question.
25 A consumer has bought a card from Wal-Mart that is not

1 exhausted. Wal-Mart loses its certificate. We issue
2 an order that says no longer sell to them. What
3 happens to that consumer when they try the next time
4 to exhaust the minutes on their card?

5 MR. MOSES: The consumer -- if Wal-Mart was
6 required to be certificated and the provider of the
7 card, the refund policy --

8 COMMISSIONER JACOBS: Will come into play.

9 MR. MOSES: It doesn't really protect the
10 consumer entirely.

11 Let me get back to the refunds.

12 MS. CRISWELL: Commissioner, I think at that
13 time you take a certificate away, one of the things
14 you might be able to require them to do is to either
15 provide refunds to those customers who have
16 outstanding balances on their card, or to require that
17 they transfer accounts to --

18 COMMISSIONER GARCIA: As a general rule,
19 because they want to please us so we don't pull the
20 certificate, as a general rule they try to please
21 their customers. But I think the Commission started
22 talking about the unsavory people who simply disappear
23 and the cards are worthless. I don't know what we can
24 do about these.

25 MR. MOSES: If it was an issue where we were

1 going off the company for show causing them to cancel
2 their certificate, that would certainly be an issue
3 that they would have to make the customers whole in
4 some manner before we would pull the certificate or
5 make it a condition of it. There's various ways we
6 could address that. But the rules won't cover all of
7 that.

8 The company can disappear, which some of
9 them have. We had one that disappeared that a fine
10 was levied and they can't be found anywhere. So it's
11 a little bit difficult sometimes.

12 **COMMISSIONER JACOBS:** These cards have
13 become very prominent in the stream of commerce. And
14 to my understanding most consumers when they buy them
15 have no understanding of that conundrum. They expect
16 they are going to buy however many minutes, that they
17 are going to use them up. They see that as a
18 guarantee, in other words. And what I'm hearing is
19 that it may not be a guarantee.

20 I don't know how -- you could do a
21 disclaimer up front; require a disclaimer up front, do
22 that by rule, or be very clear on our position as to
23 what the responsibilities are of that certificate
24 holder once it is removed, as to making those
25 customers whole. I see one of those that I would

1 propose we do, rather than leaving them kind of in the
2 lurch, if it's not clear. What I'm hearing you say
3 now is that there's not a clear position we take --

4 **COMMISSIONER GARCIA:** I didn't think it's
5 not clear. I just don't think we ever specified
6 because -- I think it's just a condition of someone
7 operating within the state. In other words, obviously
8 I think we voted that out the other day when that
9 issue was before us -- trying to remember, Supra
10 Communications -- not Supra, the other company -- All
11 American, where we took their certificate. They
12 agreed to reimburse all of the customers they had and
13 to leave the state. In many respects -- do I have the
14 right one?

15 **MR. MOSES:** That was Integretel.

16 **MR. TAYLOR:** Integrated Teleservices, I
17 believe.

18 **COMMISSIONER GARCIA:** And in that case we
19 took away their certificate. Pulling the certificate,
20 I guess, is the most that we usually do. It's the
21 worst of all the possible situations, because
22 obviously this is someone who is doing business, has
23 an investment in the state, and to pull a certificate
24 is probably the most aggressive thing we can do. And
25 because they want to avoid that situation, they

1 usually make the customers whole, unless they were
2 closing up shop altogether.

3 MS. CALDWELL: Commissioner Jacobs, in
4 reponse to your question, what we do have in these
5 rules is disclosure requirements to the customer, and
6 also a requirement that the customer have a toll-free
7 service number in order to get a lot of his questions
8 answered. In addition to that, we do have a refund
9 policy that's required.

10 What these rules try and do is -- debit
11 cards are a moving target. And the problem is that
12 the companies that are offering these services to the
13 customers that are legitimate, we don't want to put
14 them under too much constraint. On the other hand,
15 the companies that are the fly-by-night companies,
16 we're trying to get ahold of them and trying to find a
17 way to penalize them; to bring them into the
18 Commission and to make sure that the customers, to the
19 best of our ability, are made whole.

20 So what this is, is sort of a balance
21 between trying to encourage competition, to encourage
22 the small companies in -- and not have too burdensome
23 a requirement so that smaller companies can also enter
24 into this very lucrative debit card market, while on
25 the same side trying to protect the consumers as best

1 we can.

2 And what that rule is really trying to do --
3 and the best way to protect the consumer, is provide
4 them with information. That's what these rules are
5 doing. They are telling the companies to give as much
6 information to the customers so that they can make a
7 knowledgeable decision when they purchase the cards,
8 and as they go through. And at this point until we
9 know a little bit more about the industry, and about
10 the companies that are providing these services, this
11 is about the best that we can do at this time. And
12 then as we see things come down where companies are
13 not legitimate providers, we have the mechanism in
14 order to either make them do the right thing or to put
15 them in a business.

16 **COMMISSIONER JACOBS:** The concern that jumps
17 out at me is most times in the cards I've seen, the
18 name of the INC is prominently marked -- used as a
19 marketing tool, let me put it that way. And yes, they
20 are sold in the Wal-Mart or from the community store
21 outlet. But most average consumers are going to pick
22 up that card and say, "Hey, I've got 20 minutes on
23 NCI. I'm guaranteed." I'm concerned that they may
24 not understand this subtle element that could cause
25 them to lose that service.

1 I'm not suggesting that we undertake some
2 onerous compliance mechanism. I, quite frankly, think
3 a disclaimer up front would be adequate so that they
4 understand: You stand some risk because of where
5 you're purchasing this card from. Not that there's a
6 MCI that exists and will continue to exist. The risk
7 is because this place where you're purchasing this
8 card from has some responsibilities to you as well.
9 If we're comfortable they are on notice of that when
10 they purchase that card, so they understand that risk,
11 then I'm okay.

12 **MR. QUINN:** I think what we're trying to
13 do with these rules is --- and I guess, you know,
14 having something printed on the card that, you know,
15 the company who is the provider may go out of
16 business, might be something that ---

17 **COMMISSIONER GARCIA:** Let me try. Let me
18 give you the philosophy I have. Because originally we
19 went back and forth on this. In fact, in particular I
20 went back and forth on this with --- Beaulieu went back
21 and forth with you all.

22 And this is a national business and there
23 are companies that do business in Florida. And we
24 could, in theory, say "All cards sold in Florida will
25 be red." But that's a cost. We could say you've

1 got -- initially, I think, the discussion was that
2 they had to put the dollar value on the card, which I
3 thought was a great idea. But the problem is that a
4 lot of these cards are printed in mass quantities; you
5 know, you print a million cards and sell them over a
6 period of time because you can change the values on
7 them according to your packaging. Some of them used
8 units as opposed to minutes as opposed to dollars.
9 And because of all of these specific -- not
10 regulations, but the way the business worked, we
11 thought that getting involved in what exactly was
12 there, except for the basics, like having a 1-800
13 number, which is I think the greatest guarantee and
14 the guarantee they have to operational -- someone
15 picking up those calls and things of that nature --
16 allow the consumer to make the decision.

17 I've done a lot of radio shows, in
18 particular in the hispanic community, which is a big
19 user of these. And what you find is that the Staff is
20 quite right, initially getting into this business we
21 want to try to use competition to be the protector of
22 the consumer. Because if we get in there -- while I
23 disagree with Ms. Rule originally said we couldn't get
24 involved and we didn't have jurisdiction over certain
25 areas of this --

1 MS. BULE: That's a different case.

2 COMMISSIONER GARCIA: What?

3 MS. BULE: Different case.

4 COMMISSIONER GARCIA: I tend to feel you're
5 always saying something like that.

6 But anyway, what I do think is that in the
7 broader context, I think competition works because the
8 amounts are generally controlled. In other words,
9 these cards are between \$10, \$25 and \$20. If you get
10 robbed once, you're on notice to be more careful.

11 On the back of these cards you will find
12 that cards that have the Sprint name or the NCI name
13 or the AT&T tend to be more reputable companies. But
14 as a general rule, that's because I think AT&T cares
15 more, or Sprint, or NCI about the value of their own
16 name. So when they give it, there's a premium there,
17 and there's a kind of consumer protection. Just like
18 we've asked AT&T not to have their name on billing
19 statements that aren't theirs because AT&T has a
20 tremendous value. I get a bill from AT&T. I pay it
21 and I don't even have AT&T as a carrier.

22 Our thinking on the card was that by
23 providing that basic information, by requiring what's
24 required in the rule, the consumer has the basic
25 protection to begin with. They always have us to rely

1 on, on the unscrupulous carrier who doesn't have that.
2 And then if we find that a year from now this is
3 simply just not enough, we can always go back and
4 tighten it a bit. But I thought that it wouldn't be
5 to our best interest to make it so tight to begin
6 with, because this is a burgeoning market.

7 There are fascinating -- people who have a
8 shoestring budget, who run relatively large operations
9 and do a good job, because they pick certain targets
10 and they'll say, you know, the "Columbia Card" and the
11 Columbia Card only provides 10 cent per minute calls
12 to Columbia. Now you call the Bahamas and you're in
13 trouble. But if you call Columbia, you're golden.
14 And they have been able to find niches and they have
15 been very successful.

16 And one of the fears that I have when we
17 were drafting this, is getting involved to such a
18 point we start controlling little things on the card,
19 and it makes that guy who buys in volume to be able to
20 be efficient and effective, we don't make him
21 efficient and effective. And we hope at least that
22 these basic parameters of competition will serve as
23 the best regulator.

24 COMMISSIONER JACOBS: You touched on a
25 point, let me just ask this question and this will

1 probably be the extent of my concern.

2 A consumer buys a card, has a problem. And
3 now wants to continue to use prepaid cards but wants
4 to be more careful. Now, he bought the card last time
5 from Convenience Store A, NCI logo, AT&T logo, or
6 whoever. He knows that is a reputable company. Now
7 can he assure on the next go-around that he's now
8 overcome whatever problems --

9 COMMISSIONER GARCIA: I think first off --
10 you know, fool me once, shame on you, fool me twice --
11 and in the case of this card what I found, in Miami
12 where you have a more aggressive market, originally
13 when these things came out, Esherds was carrying all
14 sorts of telecommunication carriers which were not
15 certificated with us. Before we even got into this --
16 people got ripped off. So they'd go back to the
17 Walgreens or Esherds and say, "Hey, I got ripped off."
18 and initially that set off alarms to those companies
19 and so they started being more careful what they
20 offered because they want their customer to be happy.
21 The little grocery store, the corner convenience
22 stores, got a few bad cards. Initially they had a
23 whole selection. They stopped doing it. That's the
24 first protection because you need to get it at retail.

25 Secondly, because we're requiring they

1 provide the 1-800 number, and that they be
2 certificated with us. We can no longer have a card in
3 our state that, for example, you know -- correct me if
4 I'm wrong -- AT&T is providing, let's say, service to
5 someone who is not certificated with us. That can't
6 happen. Joe Garcia can't tomorrow start selling phone
7 cards, buying service from AT&T and selling it out
8 there if I don't have a certificate. Correct?

9 MS. BULL: I'd like to address the issue of
10 certification, if this is a good time for you?

11 There are two separate certification
12 problems that have been kind of mixed up here. One is
13 the never-certificated company.

14 COMMISSIONER GARCIA: The what?

15 MS. BULL: The never-certificated company,
16 as opposed to the company that started out certified
17 and you removed their certificate. Let's talk about
18 the company that didn't have a certificate first,
19 because from your point of view, that's the worst
20 problem. You have the least control over that
21 company.

22 The problem that I've addressed you on
23 before, and that Commissioner Clark recalls, is that
24 if a company comes to AT&T and -- let's say they are
25 certificated in Georgia, and they buy out of our FCC

1 tariff as they are entitled to do, then we sell them
2 the time.

3 Now, if they then come to Florida, and
4 without a certificate break your law, and let's say
5 sign up, presubscribe to customers, they sell
6 debitdebit cards, they do any action that requires
7 certification, they are still buying time out of our
8 FCC tariff. We require them to have all state
9 certifications before they come here. But we cannot
10 determine that they don't go get the right
11 certifications before they start selling.

12 Now, what we want in those cases -- because
13 we have civil liability if we cut them off. We're not
14 allowed to. We want an order from you saying this is
15 an uncertificated company. Don't sell to them. Then
16 we cut them off. We cut them off without business
17 liability.

18 Now, as to the company that has a
19 certificate that runs afoul of your rules and you take
20 back the certificate, you issue the order and that
21 puts us in the same position: We stop selling.

22 But the real problem is that the company
23 that comes to us is legally allowed to purchase out of
24 our FCC tariff, has a certificate somewhere, and then
25 goes somewhere else; does not obtain the

1 certification. They are allowed to go somewhere else,
2 obtained certification and use the minutes.

3 What we try to do is ensure in our tariff
4 that they know they are required to do that. It's
5 their job to go out and fulfill whatever rules any
6 state has, but it is their job.

7 COMMISSIONER BARNSON: Why doesn't the FCC
8 tariff state that if they are going to purchase under
9 that tariff, that they also have to have state
10 certification in any state that they do business?

11 MS. BULL: I believe that's the effect of
12 the tariff we have now.

13 COMMISSIONER BARNSON: So they would be in
14 violation of the FCC tariff if the company that is
15 certificated in Georgia, buys under your FCC tariff
16 and comes to Florida and provides service.

17 MS. BULL: They are using the time in a way
18 that is not authorized by the tariff.

19 COMMISSIONER BARNSON: Okay. So then if that
20 happens they are in violation of the FCC tariff. What
21 do we do in Florida? Do we file a complaint with the
22 FCC, say they are violating your tariff or do we take
23 action on our own?

24 MS. BULL: If they are violating your rules
25 and orders by operating in the state of Florida

1 without a certificate, you do what you normally do:
2 You treat them as an uncertificated carrier; you show
3 cause them. You make them refund or whatever your --

4 **COMMISSIONER GARCIA:** We can tell you to
5 stop selling.

6 **MS. NOLS:** Absolutely. Okay.

7 And if this is a good time, I'd kind of like
8 to recognize Staff for the work they have put in on
9 this rule. They went the extra mile to meet with
10 carriers several times to try and understand the
11 business and work out a workable fashion that doesn't
12 penalize AT&T, Sprint and NCI. You don't get
13 complaints on our cards that they are not good. We do
14 make good on our cards. And these rules attempt to do
15 two things: First make sure the consumer knows what
16 they are getting. Because if the consumer can't look
17 at the card, at the packaging, at the point of sale
18 material and determine what they are going to get and
19 how much they have to pay for it, they have no way to
20 protect themselves. These rules do allow consumers
21 that sort of ability to protect themselves.

22 And second, the rules make sure that
23 providers of the card know what they have to do and
24 have to make good on them. If a provider of a card
25 doesn't make good on the time or on the refund, then

1 you show cause the provider. You have the authority
2 to do so and these rules make it explicit.

3 Now, the rule doesn't cover all aspects of
4 the distribution chain. A lot of the discussion
5 that's been had here this morning talks about the
6 Wal-Marts. Well, if the Wal-Marts are going to
7 provide service, they need to get a certificate. If
8 they are going to sell cards where the service
9 provider is clearly ASEP, or somebody else, then they
10 don't need a certificate. They have a whole different
11 set of obligations, but it's not a set of obligations
12 that can or should be imposed by the PSC.

13 If I buy a bad card from Wal-Mart, I'm
14 probably going to go back to Wal-Mart and complain.
15 They may or may not give me my money back, depending
16 on what their particular refund policy is. If I get
17 my money back from Wal-Mart, I'm made whole. But your
18 rules require that the provider of the card make the
19 consumer whole.

20 Now, there will always be instances where a
21 fly-by-night company can't be found. You've taken
22 steps in these rules to making sure you can at least
23 identify the provider. They are supposed to offer
24 their name on the card so you can identify who they
25 are. Their certificate number is supposed to be

1 provided through customer service. So you've taken
2 steps to make sure that you can find out who these
3 people are.

4 But as to the absolute crooks, or the
5 fly-by-nights, or the people who aren't operating
6 their business in a business-like fashion, no rule is
7 going to make them do that. But this rule is the best
8 thing you can come up with to tell providers what
9 their obligations are, and to enlist their aid in
10 telling consumers what their rights are.

11 COMMISSIONER GARCIA: About what the
12 companies -- It's blatant they are just trying to
13 defraud the public. Is there any avenue for the
14 Attorney General to be involved in that type of
15 situation?

16 MR. MOSES: We have been notifying the
17 Attorney General's Office of these type of companies
18 when we become aware of them. What action they have
19 taken, maybe Alan can fill you in. I'm not sure.
20 He's talked with them.

21 MR. TAYLOR: I'm not sure I can point to any
22 action at this point on prepaid debit cards. But
23 certainly, should the occasion arise, we would
24 communicate with the AG staff and urge them to take
25 whatever action is appropriate, if it's beyond our

1 jurisdiction.

2 **COMMISSIONER GARCIA:** I know that in New
3 York they are very aggressive on this, because they
4 had a prepaid calling card scam that was millions
5 and millions of dollars of cards that were put into
6 retail stores that had no value from the onset. It
7 was a several-day period, and they literally
8 collected millions of dollars and none of the cards
9 worked. And it was traced back to a Mafia family.
10 It's a big story in New York. We haven't had that in
11 Florida yet, any of the -- you were going to say?

12 **MR. TAYLOR:** I was going to say that we did
13 provide materials to the grand jury in White Plains in
14 connection with this story you're talking about.

15 **COMMISSIONER JONES:** I'm prepared to move
16 on, and then proceed with it and see how it works.

17 **COMMISSIONER GARCIA:** I think the company is
18 wanting to say something. By the way, Marsha, you did
19 point that out. And I think Staff has worked very
20 hard on this. And I have sort of been obnoxious with
21 them throughout the process of trying to find out
22 what's going on with this, because it's a big problem
23 in South Florida. But they have been absolutely
24 wonderful and I appreciate the fact they went the
25 extra mile and worked it out with you, because I think

1 in the end -- you stated it so very clearly -- we want
2 the consumer to be informed, and I think competition
3 is the best way to protect the consumer in this. And
4 I think that's what this rule accomplishes. So I want
5 to congratulate you, as well as the companies, for
6 working with Staff on this.

7 **CHAIRMAN JOHNSON:** Ms. Rule, you have some
8 additional comments. Would the other parties like to
9 provide any other comment? I'll start with Ms. Rule
10 and allow her to finish, but if you'd like to provide
11 comments --

12 **COMMISSIONER CLARK:** Can I interrupt? I
13 want to be clear as to what we're doing.

14 Did you indicate that this memo indicates a
15 resolution reached by all of the parties who have
16 participated in this, that if these changes are made
17 then we can agree to the rule as is?

18 **MS. CALDWELL:** That is correct.

19 **COMMISSIONER CLARK:** Great.

20 **MS. WARD:** Chairman Johnson, Commissioners,
21 just for NCI, I appreciate Commissioner Garcia's
22 comments because NCI agrees with those as well, and
23 also appreciates the efforts of the Staff in striking
24 a very reasonable balance between the protection of
25 the consumers and the business needs of the companies

1 involved here. And NCI has fully participated, and we
2 hope we've provided some helpful input and we support
3 these rules and have no objection to them.

4 MS. BARNUM: And Sprint would also like to
5 thank the Staff. We really appreciated the
6 opportunity to get together to discuss some of our
7 concerns. And they listened. And I believe also that
8 this strikes a balance. And we endorse the rules as
9 well. Thank you.

10 MS. BULL: And we certainly endorse the
11 rules. And the only comment I have is not one that is
12 a criticism of the rules.

13 I want to point out the difficulty that
14 Staff and the parties had in coming up with a rule
15 that works for everybody. Because prepaid cards are
16 different, as you know, from the other types of
17 telecommunications services that customers buy. They
18 buy something that represents time on the network.
19 And you're not buying it at your home, where you have
20 an ongoing relationship with your provider. You're
21 not buying it at a payphone, where at least you can
22 get an operator right then and complain you lost your
23 quarter, now your 35 cents. You're buying it from
24 somebody else who isn't, in many cases, a
25 telecommunications provider. That presents problems

1 for regulation.

2 You can't regular the Wal-Marts. And,
3 importantly, AT&T or the other providers can't control
4 the price at which the Wal-Marts or the mini-marts
5 sell these cards. There are important antitrust
6 considerations with trying to control the price of a
7 service.

8 So I want to assure you that it's AT&T's
9 intent to comply with these rules, and, in fact, we
10 already do. And our practices are such that we do not
11 anticipate violations down the road. And competition
12 is such that we think the prices of cards are getting
13 more competitive and the marketplace will control the
14 price. But I do want to caution you that there will
15 probably be instances in the future where retailers or
16 distributors who are not providers may have a problem
17 with a consumer, the consumer interprets that as a
18 problem with the provider, and calls you.

19 For example, the rules require that the
20 price per minute not be more than a tariffed rate.
21 AT&T tariffs its rate. When we sell a card to a
22 consumer we never charge the consumer more than the
23 tariffed rate. When we sell cards to retailers,
24 there's an adequate discount built in that the
25 retailer can sell that card at a competitive rate and

1 there will be no problem with the consumer being
2 charged more than the tariff rate.

3 But the example you're probably all familiar
4 with is those collectible cards. The prices on those
5 could go sky high. Suppose somebody uses it to
6 actually make a call, although I understand like that
7 bottle of Coke that's commemorative; the value goes
8 down if you debit the cards -- I don't know how you
9 can tell. Anyhow, suppose somebody uses that? It
10 could really result in an astronomical price per
11 minute. I don't anticipate that Staff is going to
12 open a show cause against AT&T under those
13 circumstances. But I do want to point out the
14 difficulty Staff had in trying to get ahold of each
15 particular part of the chain and do what is within the
16 jurisdiction, to protect consumers. I think they've
17 done a good job.

18 COMMISSIONER GARCIA: Although, I would
19 point out that one of the things that I think was good
20 was the time frame that was established in the rule.
21 Because I think -- what is it, one year if it's not on
22 the card, the life is one year from the moment of
23 purchase, or from the moment of purchase -- moment
24 of --

25 MS. CALDWELL: First use of the card.

1 **COMMISSIONER CLARK:** I do have a question.
2 I heard an advertisement, AT&T's advertisement, this
3 morning that with some prepaid calling cards, when you
4 begin to call you'll hear there's a 99-cent surcharge.
5 Does that have to do with calling around -- and my
6 question is are there cards out there that -- because
7 of the pay-per-call, does that affect -- are there
8 cards out there, when you use it, you will also get an
9 indication that you have to pay a surcharge in order
10 to use that card?

11 **MS. BULL:** I'm not familiar with that
12 particular advertisement, but Staff did address the
13 issue of surcharges. Surcharges must be tarified and
14 revealed.

15 Yes, I think there are instances and there
16 will be instances where debit card providers will be
17 charging the dial-around surcharge to their customers
18 just as they would any other customer.

19 **COMMISSIONER CLARK:** Let me ask Staff then.
20 Will it allow -- are our rules clear that when you
21 purchase a debit card, will that company -- maybe the
22 payphone -- how do we protect people so they assume
23 they don't need change, they are using the card and
24 they hear they have to deposit 99 cents or whatever
25 for a surcharge in order to use the card. Have you

1 encountered that? Either that, or your advertising is
2 false.

3 **COMMISSIONER GARCIA:** It will take it from
4 your card.

5 **COMMISSIONER CLARK:** Ms. Rule, maybe you
6 could find out what AT&T is advertising and let me
7 know what they are trying to accomplish.

8 **MS. RULE:** I can. I can tell you that on
9 Page 3 of the rules it requires that to be tariffed.
10 That is, if we do intend to charge a surcharge, then
11 we have to tariff it.

12 **COMMISSIONER GARCIA:** And we talked about
13 putting a maximum on the surcharge?

14 **MS. CALDWELL:** The rules require that we
15 understand surcharges do apply and they have to draw
16 them down on the card.

17 **COMMISSIONER CLARK:** Would surcharge include
18 the dial-around compensation that has to be paid for
19 using a payphone? Is it clear that that's intended to
20 include that?

21 **MR. TAYLOR:** Commissioner Clark, that
22 dial-around compensation is paid by the interexchange
23 carrier, and so a consumer at the payphone would not
24 have to deposit that amount.

25 **CHAIRMAN JOHNSON:** But they are starting to

1 pass it on, Alan, aren't they?

2 MR. TAYLOR: They would pass it on and so
3 the debit card provider in that case would absorb the
4 charge and may in turn assess a surcharge.

5 COMMISSIONER CLARK: I'll tell you it was
6 either on Fox or Sunny 107 this morning, so you can
7 find out.

8 CHAIRMAN JOHNSON: This may be an unrelated
9 issue, I know that -- even personally with AT&T on
10 your calling card now, if you use a calling card they
11 tell you there's a surcharge for using the calling
12 card, and additional 38-cent surcharge for -- there's
13 an additional payphone charge for using your calling
14 card at a payphone. You're saying that you wouldn't
15 have those -- AT&T, they let you know that it's two
16 different charges; there's a surcharge and there's a
17 payphone surcharge. Now, are you saying that we
18 wouldn't have those kind of circumstances with the
19 other prepaid cards?

20 MR. TAYLOR: What I'm saying is that the
21 surcharges do apply that you're discussing, but they
22 don't apply to the end user at the point of sale in
23 using the payphone. Do not have to deposit that
24 money.

25 COMMISSIONER CLARK: Well, this

1 advertisement intimated you had to deposit --

2 MS. BULL: I think again we have two
3 separate issues. Is it a direct charge to the
4 consumer? No. Is it a charge that gets passed on to
5 the consumer in one way or another? Yes.

6 COMMISSIONER CLARK: And under this rule
7 will you have to disclose that?

8 MS. BULL: Yes.

9 COMMISSIONER CLARK: Good.

10 COMMISSIONER JACOBS: How does it get passed
11 on to the consumer?

12 MS. BULL: Through a surcharge.

13 COMMISSIONER JACOBS: On the card -- the
14 drawdown on minutes --

15 MS. BULL: Improperly tariffed, yes, the
16 card could be drawn down to cover the surcharge.

17 COMMISSIONER GARCIA: Does the surcharge
18 have to be listed somewhere on the card advertising?

19 MS. CALDWELL: It has to be at the point of
20 sale.

21 COMMISSIONER GARCIA: Okay. Doesn't have to
22 actually be on the card, just has to be some --

23 MS. CALDWELL: It can be on the card, it can
24 be at the point of sale, or on the packaging.

25 COMMISSIONER GARCIA: Okay.

1 **COMMISSIONER CLARK:** Ms. Rule, I would
2 appreciate it if you would follow up -- you know, I
3 may have heard it wrong. But find out.

4 **MS. RULE:** At least you heard it at all and
5 I haven't so I'll check into it and get back to you.

6 **CHAIRMAN JOHNSON:** They are both interesting
7 issues, but the issue that caught my attention -- and
8 I did get an informational mailout from AT&T on the
9 regular calling cards. And I was wondering, I wonder
10 how this is going to apply to prepaid calls. But on
11 regular calling cards they now tell you for each call
12 they have a 30-cent surcharge, but if you make a call
13 from a payphone there's an additional 35 cents.

14 **MS. RULE:** Well, it's a problem for all of
15 the providers because if you don't make the call from
16 the payphone, you don't want to increase all of your
17 rates to cover the surcharge, you only want to capture
18 it from those customers using the payphone. And I
19 know there's been some discussion in the industry
20 maybe we could go do a prepaid card that can only be
21 used at payphones. Or how about a prepaid card that
22 can't be used at payphones? So we're looking at ways
23 to address that. But in the end, just like with all
24 business costs, the attempt will be to pass it on to
25 those customers who are -- who are making us incur the

1 cost and not pass it on to the other customers.

2 CHAIRMAN JOHNSON: Okay. Thank you. Any
3 other questions, Commissioners?

4 COMMISSIONER GARCIA: Do we move Staff on
5 this?

6 MS. CALDWELL: I would say that just
7 recommend the changes that Staff has prepared.

8 COMMISSIONER GARCIA: That's my
9 recommendation.

10 MS. HULL: I would like to put into the
11 record, too, Commissioner, I don't know if your memo
12 is in your Exhibit 1.

13 MS. CALDWELL: It was not. So it would need
14 to be moved into the record.

15 CHAIRMAN JOHNSON: Do we need to --

16 MS. CALDWELL: Exhibit 2.

17 CHAIRMAN JOHNSON: The entire memo?

18 MS. CALDWELL: The entire memo.

19 CHAIRMAN JOHNSON: Okay. We'll mark the
20 January 27th memo from Diana Caldwell as Exhibit 2.
21 And there's no objection to it being admitted, so
22 we'll admit it without objection.

23 (Exhibit 2 marked for identification and
24 received in evidence.)

25 COMMISSIONER CLARK: I just want to be

1 clear. This is not going to come back to agenda.
2 We're voting today to approve the rules as amended and
3 direct you to make the necessary filing to have it
4 become effective.

5 MS. CALDWELL: That is correct. I'll file
6 it with the FAW.

7 COMMISSIONER CLARK: Okay. I second the
8 motion.

9 CHAIRMAN JOHNSON: It's been moved and
10 seconded. All those in favor signify by saying "aye."
11 Aye.

12 COMMISSIONER BERSON: Aye.

13 COMMISSIONER CLARK: Aye.

14 COMMISSIONER JACOBS: Aye.

15 COMMISSIONER GARCIA: Aye.

16 CHAIRMAN JOHNSON: And opposed? Show it
17 approved then unanimously.

18 COMMISSIONER GARCIA: Let me just say I also
19 want to thank some of the companies that are not here
20 because they were helpful in informing me and
21 informing Staff of what's going on.

22 Last year I spoke at one of their
23 conferences and it was quite interesting, the growth
24 of this industry, so thank you. Thank you, Staff,
25 again.

1 **CHAIRMAN JOHNSON:** Thank you all. This
2 hearing is adjourned.

3 **(Thereupon, the hearing concluded at**
4 **10:34 a.m.)**

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1 STATE OF FLORIDA)
 2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
 4 Reporting, Official Commission-Reporter,

5 DO HEREBY CERTIFY that the Rule Hearing in
 6 Docket No. 960254-TI was heard by the Florida Public
 7 Service Commission at the time and place herein
 8 stated; it is further

9 CERTIFIED that I stenographically reported
 10 the said proceedings; that the same has been
 11 transcribed under my direct supervision; and that this
 12 transcript, consisting of 44 pages, constitutes a true
 13 transcription of my notes of said proceedings.

14 DATED this 2nd day of February, 1998.

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 JOY KELLY, CSR, RPR
 Chief, Bureau of Reporting

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