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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amendment of Rule 25-4.110, F.A.C., Pertaining to Customer Billing.	))))	**Docket No. 910060-TP**

REQUEST FOR HEARING AND COMMENTS OF FAX INTERACTIVE, INC. ICN CORP. AND RYDER COMMUNICATIONS, INC.

Fax Interactive, Inc., ICN Corp. and Ryder Communications, Inc., Florida corporations engaged in the provision of information services (hereafter Florida Information Providers), respectfully submit this joint request for hearing and comments. Florida Information Providers actively participated in the workshop phase of this proceeding and are each members of the National Association for Information Services (NAIS).

INTRODUCTION

Valuable information services that benefit consumers can most readily be developed here in Florida if reasonable rules and regulations are implemented and enforced. With that goal paramount, a diverse group of industry participants met in a workshop, and hammered out in a consensus a workable set of rules. In balancing the rights of consumers, carriers and information providers at the workshop two principles emerged:

1. Regulations should be crafted that allow valuable information services to be provided to consumers without burdening the programs with unnecessary inconvenience or cost.

2. Regulations here in Florida should be drawn with a clear appreciation and awareness of benchmarks developed in other states and at the federal level, otherwise Florida information providers would be at a disadvantage in competing nationally and in creating business opportunity here in the state.

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The consensus draft regulations, true to these and other principles developed at the workshop remained almost entirely intact. These comments primarily address the few revisions that were inserted at Commission agenda. Developed below are the reasons why these provisions do not serve the public interest.

1. While it is good policy not to disconnect local service for nonpayment of unregulated charges, singling out pay per call charges on the bill for such treatment hampers collections efforts and invites fraud on information providers.

Florida Information Providers support the policy that local service should not be disconnected for nonpayment of unregulated charges, including pay per call charges. The underlying rationale

correctly assumes that local service is vital and should not be threatened by overzealous efforts of carriers to collect a steadily increasing variety of unregulated charges. However, the singling out of pay per call charges as the only category of unregulated charges that must carry such a bill disclosure is discriminatory and counterproductive. Overzealous carrier collection policies must be dealt with directly, yet on the basis of evidence to date, there is no indication that Florida carriers have disconnected local service for nonpayment of pay per call charges. The disclosure on each bill that "nonpayment of pay per call charges will not result in disconnection of local service" has the effect of stimulating fraud on information providers. The rule also relegates pay per call charges to a second class status among other unregulated charges. Florida Information Providers suggest that section 10 (a) (1) be revised to read: "Nonpayment of unregulated charges will not result in disconnection of local service;". This modified bill disclosure coupled with the other provision of Rule section 10 (a) that requires pay per call charges to appear separately under a heading that reads "Pay Per Call (900 or 976) nonregulated charges" should give adequate notice to the public of the no disconnection policy, while minimizing the degree of fraud on reputable information providers and alleviating some of the unfair discrimination that exists among unregulated services.

2. Preambles should be of sufficient length to provide introductory information disclosures, but the regulation should delete the "18 seconds or longer" technical standard.

Florida Information Providers are supportive of the provisions of the Rules that establish a preamble requirement. However the regulation goes too far in specifying language that identifies an "18 second or longer" preamble. On its face the regulation is ambiguous and it has already been read by some information providers not involved in the workshop as establishing a Commission mandate that preambles must be 18 seconds or longer. There was consensus at the workshop that preambles should be concise and declarative and of a length sufficient to clearly communicate the name and pricing of the program. For some programs this can be accomplished in less than 6 seconds. The underlying rationale that led to the inclusion of "18 seconds" in the draft rule was the disclosure by all interexchange carriers at the workshop that each of them did not bill for pay per call calls that were terminated shortly after the initiation of the call. Some carriers initially identified a 6 second preamble billing screen, while most others identified an 18 second billing screen. The Commission's apparent objective attempts to make clear that if the preamble takes longer than 18 seconds then no charge should be rendered if a caller has hung up during **the longer than 18 second preamble**. However, the insertion of this language added unnecessary literal ambiguity. In addition, it added nothing since subsection (b) (2) already clearly states that the "end user/customer [has] the ability to disconnect the call during or at the conclusion of the preamble

without incurring a charge." The goal here should be to have carriers clearly communicate their technical standards to the information providers they serve. In addition, carriers should strive over time to tailor their billing screen performed to the specific program so as to take into account the variable preamble lengths that may exist. The specification of the **18 second or longer** language invites imprecise interpretation and application and therefore should be deleted.

3. A parental notification requirement should be limited to programs targeted to children.

Florida Information Providers took an active role in formulating the provisions addressing children's programming and are supportive of the unique protections applied in the context of programs targeted at children. However the rule provision that now requires a parental notification requirement on all programs is strenuously opposed by Florida Information Providers. Preambles by their nature create a delay in the time in which a caller accesses a program. Preambles in turn create additional costs that are paid directly by an information provider to a carrier, and these costs put upward price pressure on rates to consumers. Preambles that become unwieldy and cumbersome directly and negatively impact consumer satisfaction. The result of this regulation is to impose a requirement that will bloat preambles and increase costs to consumers. Moreover, such a parental notification would be out of place and incongruous in the vast majority of programs that are not promoted on broadcast TV and find no children within their potential audience. Furthermore, pending legislation in the U.S. Senate would outlaw all children's programming, with the exception of educational programs, perhaps leading to the unusual result that there would be no children's programs by federal mandate, but a parental notification on all remaining programs by State mandate. Even without this outcome, Florida-based providers could be severely handicapped. Florida is the only state known to have implemented a parental notification on all programs, a fact that will render programs offered by Florida-based providers less attractive and therefore less competitive in the national market for 900 services. The range of beneficial 900 programs is expanding and a substantial percentage of programs by their very nature would never come to the attention of, much less be of interest to children. An example would be business to business type offerings of Fax Interactive, where the content might be business listings, stock market information or other niche or arcane information.

4. Regulations calling for clear and conspicuous disclosure of the price in pay per call advertising is sufficient to insure public awareness; regulations should not micro-manage advertising presentation details.

"Clear and conspicuous disclosure" constitutes a workable but flexible legal standard by which to judge the adequacy of information service promotions. The regulation that dictates disclosure of price in the same print size as the 900 telephone number simply goes too far. Such a regulation unduly inhibits individual expressions of speech and straightjackets creativity. There is simply no parallel provisions in other area of trade or commerce notwithstanding fully developed bodies of law concerning truth in advertising and the establishment of packaged goods labeling requirements. Matters relating to advertising presentation are best left to the industry and the exercise of common sense. Publishers and broadcasters have and can be further relied upon to develop disclosure standards of their own. Moreover, the National Association for Information Services has adopted voluntary guidelines which provide detailed guidance for price disclosure sizing in both print and broadcast media--but in no event have the recommended guidelines insisted on a **same type size** disclosure standard. Emphasis is instead placed of proportionality of sizing, frequency of price disclosures, voiceover articulations and the like. Micro management by the state of Florida on the size of price disclosures is simply not in the public interest and constitutes a serious infringement in the area of freedom of commercial speech.

CONCLUSION

Florida Information Providers believe that adoption of the revisions discussed above will serve the public interest, enhance consumer welfare and nurture the growth of reputable information services in Florida.

Respectfully submitted,

Fax Interactive, Inc.
ICN Corp.

Albert J. Angel, Esq.

By: Albert J. Angel, Esq.

Ryder Communications, Inc.

David Ryder

By: David Ryder

cc: Service List

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SERVICE LIST

Richard Bellak
Associate General Counsel
Division of Appeals
Florida Public Service Commission
101 E. Gaines Street, Room 212

Charles Beck
Associate General Counsel
Office of Public Counsel
c/o the Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400

Ann Shelfer
Division of Communications
Florida Public Service Commission
101 E. Gaines Street, Room 212
Tallahassee, FL 32399-0861

The Honorable Robert A. Butterworth
Attorney General
State of Florida
Department of Legal Affairs
The Capitol
Tallahassee, FL 32399-1050

Harris R. Anthony, Esq.
c/o Marshall M. Criser, III
Southern Bell Telephone & Telegraph Company
150 S. Monroe Street, #400
Tallahassee, FL 32301

Jean Kiddoo
Telesphere Limited, Inc.
Swidler & Berlin
3000 K Street, N. W. #300
Washington, D. C. 20007

Jerry Johns, Esq.
Alan Berg, Esq.
United Telephone Company of Fla.
P. O. Box 5000
Tallahassee, FL 32399-0861

Joseph Gillan
Fla. Interexchange Carriers Ass'n.
Post Office Box 547276
Orlando, FL 32854-7276
Altamonte Springs, FL 32716-5000

Kenric E. Port, Esq.
Michael J. Henry, Esq.
MCI Telecommunications Corp.
MCI Center
Three Ravinia Drive
Atlanta, GA 30346-2102

Richard D. Melson, Esq.
Hopping Boyd Green & Sams
P. O. Box 6526
Tallahassee, FL 32314

Patrick K. Wiggins, Esq.
Wiggins & Villacorta
Intermedia Communications, Inc.
501 E. Tennessee Street
Tallahassee, FL 32308

Lynn Hall
Vista-United Telecommunications
P. O. Box 10180
Lake Buena Vista, FL 32830

Carol Brennan
Phone Programs
919 Third Avenue
New York, N. Y. 10022

Craig Dingwall
US Telecom, Inc. d/b/a
Sprint Gateways
2002 Edmund Halley Drive
Reston, Virginia 22091

Michael Twomey
Department of Legal Services
Attorney General's Office
The Capital, Suite 1502
Tallahassee, FL 32399-1050

Lee Willis
Central Telephone of Florida
Ausley Law Firm
P. O. Box 391
Tallahassee, FL 32302

A. Dewayne Lanier
Gulf Telephone Company
115 W. Drew Street
Perry, FL 32347

Lynda Bordelon
St. Joseph Telephone & Telegraph Co.
502 Fifth Street
Port St. Joe, FL 32456

Floyd Self, Esq.
US Telecom, Inc. d/b/a
Sprint Gateways
Messer Law Firm
P. O. Box 1876
Tallahassee, FL 32302-1876

Albert Angel, Esq.
Fax Interactive, Inc.
3500 Magellan Circle, #717
Aventura, FL 33180

Bruce May
Holland & Knight Law Firm
P. O. Box 810
Tallahassee, FL 32302

John Carroll
NorthEast Florida Telephone
Company, Inc.
130 N. Fourth Street
MacClenny, FL 32063-0485

David Erwin
Mason Law Firm
1311-A Paul Russell Road, #101
Tallahassee, FL 32301

910060tp.cos

Michael W. Tye, Esq.
AT&T Communications, Inc.
106 East College Avenue, Suite 1410
Tallahassee, FL 32301

Harriet Eudy
ALLTELL Florida, Inc.
206 White Avenue, S. E.
Live Oak, FL 32060

Ferrin Seay
The Florala Telephone Co.
522 North Fifth Street
Florala, FL 36442

Thomas E. Wolfe
Southland Telephone Co.
201 S. Pensacola Avenue
Atmore, AL 36504

Lee Willis
227 South Calhoun Street
P. O. Box 91
Tallahassee, FL 32302

Howard Levin
Interactive TeleMedia
14651 Ventura Blvd., Suite 300
Sherman Oaks, CA 91403

Dean Kurtz
Central Telephone Co.
P. O. Box 2214
Tallahassee, FL 32316

Jodi Del Vecchio
Nycom Information Services, Inc.
5 High Ridge Park
Stamford, CT 06905

Judith Grytdahl
The 900 Source
5905 E. 42nd Avenue
Denver, CO 80216-4613

Thomas R. Parker, Esq.
GTE Florida, Inc.
P. O. Box 110 MC 7
Tampa, FL 33601

Lily Corbin
Quincy Telephone Co.
P. O. Box 189
Quincy, FL 32351

A. Dewayne Lanier
Gulf Telephone Company
P. O. Box 1120
Perry, FL 32347

Charles L. Dennis
Indiantown Telephone
15925 S. W. Warfield Blvd.
Indiantown, FL 34956

Joseph McGlothlin
Lawson, McWhirter, Grandoff
& Reeves
522 E. Park Avenue, Suite 200
Tallahassee, FL 32301

Frank Levin
Hall, Dickler, Lawler, Kent
& Friedman
460 Park Avenue
New York, N. Y. 10022

Linda Goldstein
Interactive TeleMedia, Inc.
Hall, Dickler, Lawler, Kent
& Friedman
11 Martine Avenue
White Plains, N. Y. 10606

David Ryder
Ryder Communications, Inc.
3111 University Drive, Suite 406
Coral Springs, FL 33065

Barry Goldstein
125 Moccasin Trail South
Jupiter, FL 33458