



Public Service Commission

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

DATE: May 15, 1998
TO: JULIA JOHNSON, CHAIRMAN
FROM: DIANA W. CALDWELL, DIVISION OF APPEALS
RE: QUESTIONS RELATING TO DOCKET 970882-TI

In your e-mail dated yesterday, you requested the following:

1. A written analysis addressing general consumer laws relating to products or services received by consumers for which they did not request. Specifically:

If a consumer receives a product or service which he/she did not request, is the consumer required to pay for it? If so, how long is the consumer required to pay?

A. Chapter 501, Florida Statutes, was reviewed for this answer. While other protections exist elsewhere in the statutes for specific situations, this chapter entitled "Consumer Protection" appears to be most comprehensive. Sections 501.201-.213, F.S., is the Florida Deceptive and Unfair Trade Practices Act" (FDUTPA). Sections 501.601-.625, F.S., is the Florida Telemarketing Act. Also discussed are the home solicitation laws (Sections 501.021 through .055, F.S.) and telephone solicitation (501.059, F.S.).

ACK Section 501.204(1), F.S., provides: "unfair methods of
AFA competition, unconscionable acts or practices, and unfair deceptive
APP acts or practices in the conduct of any trade or commerce are
CAF hereby declared unlawful."

CMU Section 501.2075, F.S., provides for civil penalties for
CTR willful violations of the rules or the Act. A willful violation
EAG occurs when a person knew or should have known that his conduct was
unfair or deceptive or prohibited by the rule.

LEG Finally, Section 501.211, F.S., provides for other individual
LIN remedies. Subsection (2) provides that where a person has suffered
OPC a loss as a result in a violation, they may recover actual damages,
plus attorney's fees and court costs.

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FPSC RECORDS/REPORTING

The FDUTPA does not specifically address the question posed. The focus of the Act is the assurance that the consumer received what he paid for and, if not, allow for the return of the product for a refund. However, the Act addresses products and services.

In the Telemarketing Act, Section 501.615, F.S., provides for written contract; cancellation and refund; and states that a purchase of consumer goods or services ordered as a result of a commercial telephone solicitation as defined in the act, if not followed by a signed written contract is not final. The section further provides that if the contract is not made in compliance with the section, it is not valid and enforceable against the purchaser. A statement that must be on the contract is: "You are not obligated to pay any money unless you sign this contract and return it to the commercial telephone seller."

Subsection 501.615(5), F.S., also defines the contract voidable if the seller violates the provision of the Act or fails to deliver the item within 30 days and provides for the return of the goods by the purchaser. The seller must pay any cost of returning the items received, and if the seller does not, the purchaser may keep without further obligation the items received.

Section 501.618, F.S., provides for remedies to the consumer - reimbursement, restitution, or other appropriate relief. Section 501.619 provides for civil penalties which may be waived if full restitution or reimbursement or actual damages are paid to the injured person.

Sections 501.021 through .055, F.S., provides for home solicitation sales. These sections require a home solicitation sale to be evidenced by a writing and allow for a buyer's right to cancel within three days of the signed agreement. If the customer cancels the agreement, "the seller may not keep all or part of the any cash down payment." 501.031(2)(b), F.S. Section 501.045 provides in part: "If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation for such services."

Finally, Section 501.059, F.S., relates to telephone solicitation. This section defines a telephone solicitation call, requires contracts made over the telephone to be reduced to writing and to be signed by the consumer. In addition the contract is required to state "You are not obligated to pay any money unless you sign this contract and return it to the seller."

The provisions of each of these Acts include services within their scope, but fails to affirmatively state that a customer is not obligated to pay for a service if received (except for the home solicitation statute). I believe that a fair reading of these provisions would be that if a seller provided a service prior to

completing the contract or prior to the customers three-day waiting period expired, that the customer would not be obligated for the services received during that time. Once the contract is rescinded, the customer would not be obligated to pay for any further services.

2. Our slamming rule states that if a consumer is slammed, he does not have to pay the bill for three months. Is our slamming rule conservative or liberal?

A. The 90 day provision is probably liberal due to the fact that they actually received service. Understandably it was not the service that they ordered from the provider they selected at the price they expected but the call was completed as expected. Staff has not done a survey of all the states to determine whether they have a similar provision. It is expected that CMU staff will be performing this task at a later date.

3. Confirm language in the Senate Bill which states that if a consumer receives a product or service which he/she did not request, the consumer is not required to pay for it.

A. HB4785 provides in part:

364.604 Billing Practices.-- (new provision)

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

Attachment

C: Commissioner Deason  
Commissioner Clark  
Commissioner Garcia  
Commissioner Jacobs  
Blanca Bayó, Director, Records and Reporting  
Rob Vandiver, General Counsel  
David Smith, Director, Appeals  
Walter D'Haeseleer, Director, Communications  
Rick Moses, Communications

From: Diana Caldwell  
To: \*Commissioners & Staff  
Subject: fwd: Slamming rule rec.

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===URGENT-NOTE=====5/13/98--9:37am--  
Staff on the slamming rule docket (970882)  
is available, at your convenience, to give  
you a "walk-through" of the rule  
provisions and changes and to answer any  
questions you may have about the rule or  
the recommendation. Please contact me to  
schedule a time. Thanks.

Fwd=by:=-Curtis=Willia=5/14/98=10:28am=  
Fwd to: Diana Caldwell

.....  
Chairman Johnson would like to schedule a  
meeting for Monday May 18, 1998, at 11:30  
in the Chairman's conference room to  
discuss the recommendation.

In addition, the Chairman request that you  
provide a written analysis addressing  
general consumer laws relating to products  
or services received by consumers for  
which they did not request. Specifically:

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service which he/she did not request, is  
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Confirm language in the Senate Bill which  
states that if a consumer receives a  
product or service which he/she did not  
request, the consumer is not required to  
pay for it.

Let me know if the 11:30 time works and  
when you can provide the Chairman with the  
analysis. Thanks!

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