

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

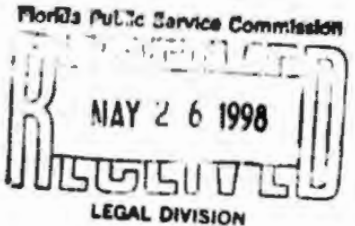
FLORIDA COMPETITIVE CARRIERS ASSOCIATION, )  
INC.; TELECOMMUNICATIONS RESELLERS )  
ASSOCIATION, INC.; AT&T COMMUNICATIONS OF )  
THE SOUTHERN STATES, INC.; MCI )  
TELECOMMUNICATIONS CORPORATION; and SPRINT )  
COMMUNICATIONS COMPANY LIMITED )  
PARTNERSHIP, )

Petitioners, )

vs. )

FLORIDA PUBLIC SERVICE COMMISSION, )

Respondent. )



Case No. \_\_\_\_\_

ORIGINAL

PETITION FOR ADMINISTRATIVE  
DETERMINATION OF THE INVALIDITY OF PROPOSED RULES

Florida Competitive Carriers Association, Inc., Telecommunications Resellers Association, Inc., AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation and Sprint Communications Company Limited Partnership ("Petitioners"), by and through their undersigned attorneys, pursuant to Section 120.56(2), Florida Statutes, hereby petition for an administrative determination of the invalidity of Proposed

Rules 25-4.118(2), 25-4.118(8), 25-4.118(12), 25-24.490(1), and 25-24.845 of the Florida Public Service Commission ("Commission"). In support of this petition, Petitioners state:

Parties

I. Petitioner Florida Competitive Carriers Association, Inc. ("FCCA") is a nonprofit association of twelve competitive telecommunications carriers and one national association of

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telecommunications carriers. FCCA is a Florida corporation whose business address is P.O. Box 10967, Tallahassee, Florida 32302.

2. Petitioner Telecommunications Resellers Association, Inc. ("TRA") is a national trade association representing the interests of service providers who offer a variety of services. TRA is a Delaware corporation whose business address is P.O. Box 2461, Gig Harbor, Washington, 98335.

3. Petitioner AT&T Communications of the Southern States, Inc. ("AT&T") is a New York corporation authorized to do business in Florida. AT&T's business address for Florida operations is 101 North Monroe Street, Suite 700, Tallahassee, Florida 32301. AT&T holds certificates of authority from the Commission authorizing it to provide interexchange service (commonly known as long distance or toll service) and alternative local exchange service in Florida.

4. Petitioner MCI Telecommunications Corporation ("MCI") is a Delaware corporation authorized to do business in Florida. MCI's business address for Florida operations is Suite 700, 780 Johnson Ferry Road, Atlanta, Georgia 30342. MCI holds certificates of authority from the Commission authorizing it to provide interexchange service and alternative local exchange service in Florida.

5. Petitioner Sprint Communications Company Limited Partnership ("Sprint") is a Delaware limited partnership authorized to do business in Florida. Sprint's business address is 3100 Cumberland Circle, Atlanta, GA 30339. Sprint holds certificates of authority from the Commission authorizing it to provide interexchange service and alternative local exchange service in Florida.

6. The affected agency is the Florida Public Service Commission ("Commission"). The Commission's address is 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. The Commission has general responsibility for the administration of Chapter 364, Florida Statutes. The rulemaking proceedings before the Commission were conducted in Docket No. 970882-TI.

#### **Identification of Challenged Rules**

7. The proposed rules subject to this rule-challenge petition are the proposed revisions to Rules 25-4.118(2), 25-4.118(8), 25-4.118(12), 25-24.490(1), and 25-24.845, Florida Administrative Code, published by the Commission in the Florida Administrative Weekly on January 2, 1998, as changed by the Commission at the final public hearing on the proposed rules held on May 19, 1998. Copies of the proposed rules being challenged, together with related proposed rules which were included in the same rulemaking proceeding, are attached as Exhibit A and incorporated herein by this reference.<sup>1</sup>

8. The proposed rules place new or amended requirements on companies providing telecommunications services, including local exchange companies ("LECs"), alternative local exchange companies ("ALECs") and interexchange companies ("IXCs"). Among other things, the proposed rules establish more stringent requirements related to the change of a customer's provider of local, local toll, or toll service. The amendments are intended in part to reduce the

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<sup>1</sup> Exhibit A is the version of the proposed rules included with the Commission staff's May 7, 1998 recommendation for adoption. At its agenda conference, the Commission made three additional changes which are not yet reflected in any publicly available document. Only the first of these changes affects any of the challenged rules. These additional changes are as follows: (i) page 27, lines 18 and 21, change "90 days" to "30 days"; (ii) page 15, lines 24-25, delete the phrase "and its certificate number"; and (iii) page 22, line 5, substitute "or other person authorized" for "or the customer's spouse".

incidence of unauthorized changes in a customer's telecommunications provider, a practice which, if intentional, is sometimes referred to as "slamming."

9. Petitioners recognize that unauthorized carrier changes are an industry problem and generally support the Commission's efforts to address this area of concern. However, it is imperative that the rules be within the authority of the Commission to promulgate and be designed to implement appropriate protective measures at the lowest cost. As set forth in more detail below, the proposed rules being challenged improperly enlarge, modify or contravene the specific provisions of law being implemented; are not supported by competent substantial evidence; are arbitrary and capricious; are vague and fail to establish adequate standards for Commission decisions; do not represent the least cost regulatory alternative; were adopted in a proceeding in which the Commission materially failed to follow the applicable rulemaking procedures and requirements of Chapter 120, Florida Statutes; and are inconsistent with the federal Telecommunications Act of 1996 and therefore are preempted by federal law.

10. The specific portions of the proposed rules which Petitioners challenge are:

a. Proposed Rule 25-4.118(2). This rule requires carriers to make audio recordings of inbound calls and audio recordings of independent third-party verification ("TPV") calls, as a condition to using such methods to document that a customer has authorized a change in telecommunications carrier.<sup>2</sup> The pertinent portion of the text of the proposed rule, as changed by the Commission at its May 19, 1998 agenda conference, is as follows:

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<sup>2</sup> MCI does not join the challenge to Proposed Rule 25-4.118(2). While MCI agrees with the other Petitioners that such rule is an invalid exercise of delegated legislative authority, MCI has recently agreed with the Commission to implement such audio recording for three years and therefore does not have an immediate interest in this portion of the proposed rules.

(2) A LEC shall accept a change request from a certified LP or IXC acting on behalf of the customer. A certificated LP or IXC shall submit a change request only if it has first certified to the LEC that at least one of the following actions has occurred:

• • •

(b) The provider has received a customer-initiated call and has obtained the following:

1. The customer's consent to record the requested change and
2. An audio recording of the information set forth in (3)(a) through (e);

(c) A firm that is independent and unaffiliated with the provider claiming the subscriber has verified the customer's requested change by obtaining the following:

1. The customer's consent to record the requested change; and
2. An audio recording of the information set forth in (3)(a) through (e);. . . .

b. Proposed Rule 25-4.118(8). This rule requires billing credits and call re-rating to customers in certain circumstances. The pertinent portion of the text of that proposed rule, as changed by the Commission at its May 19, 1998 agenda conference, is as follows:

(8) Charges for unauthorized provider changes and all charges billed on behalf of the unauthorized provider for the first 30 days or first billing cycle, whichever is longer, shall be credited to the customer by the company responsible for the error within 45 days of notification. After the first 30 days up to 12 months, charges over the rates of the preferred company will be credited to the customer by the company responsible for the error within 45 days of notification. ...

c. Proposed Rule 25-4.118(12). This rule establishes standards for customer service. The text of that proposed rule, as changed by the Commission at its May 19, 1998 agenda conference, is as follows:

(12) Each company shall provide a live operator or shall record end user complaints made to its customer service number 24 hours a day, 7 days a week. A combination of live operators and recorders may be used. If a recorder is used, the company shall attempt to contact each complainant no later than the next business day following the date of recording and each subsequent day until the customer is reached. A minimum of 95 percent of all call attempts shall be completed to a company's toll-free customer service number and be answered within 60 seconds after the last digit is dialed. Station busies will not be counted as completed calls. The term "answer" as used in this subsection means more than an acknowledgment that the customer is waiting on the line. It shall mean that the provider is ready to render assistance or accept the information necessary to process the call.

d. Proposed Rules 25-24.490(1) and 25-24.845. These rules incorporate the foregoing subsections by reference and apply them to interexchange carriers and alternative local exchange companies, respectively. Petitioners do not challenge the Commission's attempt to incorporate and apply valid rules to interexchange carriers and alternative local exchange companies; however, Proposed Rules 25-24.490(1) and 25-24.845 must be declared invalid to the extent they incorporate the challenged provisions of Rules 25-4.118(2), (8), and (12).

#### **Procedural History of Commission Rulemaking Proceedings**

11. The Commission published a notice of proposed rule development, together with a copy of draft rules, in the June 6, 1997 issue of the Florida Administrative Weekly. Following receipt of several requests for a rule development workshop, an initial workshop was held on July 23, 1997.

12. On July 15, 1997, the Attorney General of Florida ("Attorney General") and the Citizens of Florida by and through the Office of Public Counsel ("Public Counsel") filed a petition asking the Commission to institute a formal proceeding under Section 120.57(1), Florida

Statutes, to investigate the practice of slamming and to determine the appropriate remedial measures.

13. On September 12, 1997, the Commission entered a procedural order granting in part the petition of the Attorney General and Public Counsel. Order No. PSC-97-1071-PCO-TI. The Commission determined that it would address concerns regarding slamming through its ongoing rulemaking proceeding pursuant to Section 120.54, Florida Statutes, but that it would incorporate into the rulemaking process certain procedural features typically associated with Section 120.57(1) hearings, including discovery, sworn testimony, and cross-examination.

14. The Commission subsequently held a series of rule development workshops throughout Florida in October and November, 1997 at which sworn consumer testimony was taken. Notice of these workshops was published in the September 19, 1997 issue of the Florida Administrative Weekly.

15. On or about December 4, 1997, the staff of the Commission filed a written recommendation that the Commission formally propose rules for adoption. That recommendation contained an abbreviated Statement of Estimated Regulatory Costs (the "initial SERC"). The Commission considered that recommendation at a public agenda conference held on December 16, 1997, and voted to propose for adoption a version of the rules which differed in some respects from that contained in its staff's recommendation. The proposed rules were published in the January 2, 1998 issue of the Florida Administrative Weekly.

16. In response to the Notice of Rulemaking, a number of parties submitted written comments and three parties, FCCA, Sprint, and LCI International Telecom Corp. ("LCI"), filed proposals for lower cost regulatory alternatives.

17. A formal rulemaking hearing was conducted by the Commission on February 6, 1998 and continued on February 16, 1998. At the hearing, the staff of the Commission testified in support of the rules as proposed, with certain changes. A revised statement of estimated regulatory costs dated February 6, 1998 (the "first revised SERC") was distributed at the hearing and made part of the record. The first revised SERC addressed the lower cost regulatory alternatives proposed by FCCA and Sprint, but it failed to address the alternatives proposed by LCI.

18. On May 7, 1998, the staff of the Commission filed a written recommendation that the Commission formally adopt the proposed rules, with certain changes. That recommendation included a second revised statement of estimated regulatory costs (the "second revised SERC") which addressed for the first time the lower cost regulatory alternatives proposed by LCI.

19. The Commission considered that recommendation at a public agenda conference held on May 19, 1998, and voted to adopt the proposed rules with changes, some of which had been recommended by staff and some of which were discussed for the first time at the agenda conference. On information and belief, the Commission intends to publish a Notice of Changes pursuant to Section 120.54(3)(d), Florida Statutes, in the June 5, 1998 issue of the Florida Administrative Weekly.

#### **Burden of Proof**

20. In this proceeding, the Commission has the burden to prove that the proposed rules are not invalid exercises of delegated legislative authority. §120.56(2)(a), Fla. Stat.



## **Jurisdiction**

21. **The Division of Administrative Hearings ("DOAH") has jurisdiction over petitions seeking an administrative determination of the invalidity of proposed rules. §120.56, Fla. Stat.**

22. **The second revised SERC for the proposed rules was dated May 6, 1998 and first became publicly available on May 7, 1998 as part of the staff recommendation that the Commission adopt the proposed rules with changes.**

23. **Any substantially affected person may file an administrative challenge to the proposed rules within 20 days after the preparation of the second revised SERC. §120.56(2)(a), Fla. Stat. This Petition is filed with DOAH within this 20-day period.**

24. **The final public hearing on the proposed rules was held on May 19, 1998, at which time the Commission voted to adopt the proposed rules with changes.**

25. **Any substantially affected person may file an administrative challenge to the proposed rules within 10 days after the final public hearing. This Petition is filed with DOAH within this 10-day period.**

26. **On information and belief, the Commission will cause of a Notice of Changes pursuant to Section 120.54(3)(d), Florida Statutes, to be published in the June 5, 1998 issue of the Florida Administrative Weekly.**

27. **Any substantially affected person may file an administrative challenge to the proposed rules within 20 days after the publication of such notice. This Petition is filed with DOAH prior to the end of this 20-day period.**

### **Standing of the Petitioners**

28. The interests of the Petitioners are substantially affected by the proposed rules as follows:

a. Each Petitioner, other than FCCA and TRA, holds certificates of authority from the Commission authorizing it to provide interexchange service and alternative local exchange service in Florida. As such, these Petitioners will be subject to the requirements of the proposed rules with regard to audio recordings, billing credits in the event of unauthorized provider changes, and standards for customer service. These proposed rules will place substantial additional costs on Petitioners and will affect their day-to-day operations in Florida.

b. Petitioner FCCA is a nonprofit association whose purpose is to promote and advocate a regulatory framework that will foster a vibrant and competitive telecommunications industry in Florida. Each of its members is either authorized to provide interexchange service in Florida, or is another association having members who are authorized to provide interexchange service in Florida. The FCCA represents the interests of its members in telecommunications policy and rule development proceedings affecting the telecommunications industry in Florida. The subject matter of the proposed rules is within the FCCA's general scope of interest and activities, since the proposed rules will place substantial additional costs on its members and will affect their day-to-day operations in Florida.

c. Petitioner TRA is trade association whose members provide value-added interexchange, local, wireless, Internet and enhanced telecommunications services. TRA members are typically small to medium-sized service providers. A number of its members are

authorized to provide interexchange service in Florida. The subject matter of the proposed rules is within TRA's general scope of interest and activities.

d. Each of the Petitioners participated in the rulemaking proceedings before the Commission.

29. Because their interests are substantially affected as set forth above, each of the Petitioners has standing to challenge the proposed rules.

#### **Facts Demonstrating the Invalidity of the Proposed Rules**

30. The proposed rules are invalid exercises of delegated legislative authority as defined in Section 120.52(8), Florida Statutes, for the reasons set forth below.

31. The proposed rules enlarge, modify or contravene the specific provisions of the law purported to be implemented. §§120.52(8)(c), 120.52(8) last paragraph, Fla. Stat.

a. Section 120.52(8), Florida Statutes, places significant limitations on an agency's ability to adopt rules:

...An agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory authority granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the statute.

(emphasis added)

b. The Commission cites Sections 364.01, 364.19 and 364.285, Florida Statutes, as the "law implemented" by Proposed Rule 25-4.118. Although the Commission does

not indicate which statutory provision(s) it relies on as authority for which particular subsections of the proposed rules, none of these laws constitute authority for any of the challenged rules.

c. Section 364.01 cannot be a basis for any of the proposed rules. That section simply sets forth "general legislative intent or policy," §§364.01(2)-(3), or "generally describ[es] the powers and functions" of the Commission, §364.01(1),(4). Under Section 120.52(8), quoted above, none of these provisions can be construed to provide authority for rules that go beyond the particular powers and duties prescribed by other sections of the statute.

d. The challenged rules also purport to implement Section 364.19, Florida Statutes, which provides in its entirety that:

The commission may regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons.

The challenged rules impermissibly expand Section 364.19 by extending their reach beyond the regulation of the "terms of telecommunications service contracts between telecommunications companies and their patrons."

e. Proposed Rule 25-4.118(2) seeks to impose audio recording requirements on inbound calls during which consumers request telecommunications service and on third party verification calls. These requirements do not regulate the "terms" on a "telecommunications service contract" as authorized by Section 364.19. Rather, they enlarge the statute to regulate the method by which consumers may choose service providers as well as the type of records to be maintained by telecommunications companies.<sup>3</sup>

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<sup>3</sup> Prior to the 1995 amendments to Chapter 364, the Commission may have had authority to prescribe the form and content of records to be kept by certain telecommunications companies, pursuant to Section 364.17, which allows the agency to "prescribe the forms of any

f. Proposed Rule 25-24.118(8) attempts to regulate the relationship between a company and a person who claims that he is not a patron of the company. This is a clear enlargement of the statute.

g. Proposed Rule 25-24.118(12) seeks to impose customer service standards, including answer-time requirements and call-back requirements, on calls to a telecommunications company's customer service number. These requirements do not regulate the "terms" of a "telecommunications service contract" as authorized by Section 364.19. They instead enlarge the statute to regulate the quality of a provider's customer service.<sup>4</sup>

h. The Commission also relies on Section 364.285, Florida Statutes as authority for Proposed Rule 25-4.118. Subsection (1) of Section 364.285 prescribes penalties for refusal to comply with, or for willful violation of, a provision of Chapter 364 or a lawful rule or order of the Commission. Subsection (2) permits the Commission to institute certain actions in a court of competent jurisdiction. This section has no apparent relationship to the audio recording, customer service answer-time, or call-back requirements, and provides no statutory basis for those rules.

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and all reports, accounts, records, and memoranda to be furnished and kept" by certain telecommunications companies. However, interexchange companies and alternative local exchange providers specifically were exempted from the operation of this statute by Section 364.337(2),(4), Fla. Stat.

<sup>4</sup> Prior to the 1995 amendments to Chapter 364, the Commission may have had authority to adopt customer service standards pursuant to Section 364.03, which requires that "the service rendered to any person by any telecommunications company shall be rendered and performed in a prompt, expeditious, and efficient manner." However, interexchange carriers and alternative local exchange carriers were exempted from the operation of this statute by the 1995 amendments to Chapter 364. §364.337(2),(4), Fla. Stat.

i. Presumably the Commission contends that its statutory authority to impose penalties on telecommunications carriers who willfully violate its statutes, rules or orders impliedly gives it the authority to craft remedies -- such as requirement in Proposed Rule 25-4.118(8) to forgive 30 days or more of charges billed by an unauthorized provider -- when a consumer's carrier has been changed without the authorization required by the Commission's rules. However, the fact that the Commission has authority to impose penalties payable to the State of Florida as the result of an adjudicatory proceeding does not give it rulemaking authority to adopt rules that give consumers automatic remedies in the nature of money damages.

j. The Commission cites Sections 364.03, 364.14, 364.15, 364.19, and 364.337 as the laws implemented by Proposed Rule 25-24.490(1) which makes the requirements of Rule 25-4.118 applicable to interexchange carriers. Under Section 364.337(4), however, interexchange carriers are not subject to the requirements of Section 364.03 or 364.14, so these sections cannot provide authority for the rule. As discussed above, Section 364.19 does not support the rules to be incorporated by reference. Section 364.15 relates only to extensions, repairs or improvements to a "telecommunications facility" and provides no support for the challenged rules. Finally, there is nothing in Section 364.337 which can properly be construed as support for the challenged rules.

k. The Commission cites only Section 364.337(2) as the law implemented by Proposed Rule 25-24.845. This section is devoid of anything to support the challenged rules, other than the general statement that "[r]ules adopted by the commission governing the provision of alternative local exchange service shall be consistent with section 364.01." Yet Section 364.01 contains only statements of general legislative intent and policy and language generally

describing the powers and functions of the Commission. Under Section 120.52(8), nothing in Section 364.01 can breathe life into rules that do not implement particular powers and duties found in other sections of the statute.

32. The proposed rules are not supported by competent substantial evidence. §120.52(8)(f), Fla. Stat.

a. There is no competent substantial evidence to demonstrate that the audio recording requirements in Proposed Rule 25-24.118(2) will accomplish any purpose for which the Commission has statutory rulemaking authority nor is there competent substantial evidence to establish a need for audio recording of either type of call. The record fails to demonstrate any significant problems associated with inbound telemarketing calls. Further, the record shows that (i) third-party verification, without audio recording, has worked effectively to reduce the incidence of slamming complaints; (ii) some consumers object to being recorded and thus will be frustrated in their legitimate attempt to change telecommunications providers; and (iii) the implementation of audio recording is very costly. Finally, the record shows that where some carriers have voluntarily engaged in audio recording, that practice has not eliminated unauthorized carrier changes. Given the high cost of audio recording and the lack of evidence to demonstrate its effectiveness, this requirement is not supported by competent, substantial evidence.

b. There is no competent substantial evidence to demonstrate that either the 30-day credit/refund requirement or the requirement to re-rate calls for up to 12 months will accomplish any statutorily-authorized purpose. While there is some testimony that customers who believe they have been slammed may desire to avoid paying for service that they have used,

this is not competent substantial evidence to support the challenged rule. The rulemaking record shows that (i) today most carriers employ a "no fault" procedure under which a customer who claims that service was changed without his authorization is switched back to his preferred carrier at no charge, with no investigation to determine whether there was in fact an unauthorized change or only a case of "buyer's remorse"; (ii) the credit/refund requirement would result in customers obtaining a windfall in the form of free service which is not needed to make them whole and which bears no relationship to any harm that they may have suffered; (iii) the possibility of a carrier having to provide free service in the event of an unauthorized carrier change means that carriers will not be able to afford to continue their "no fault" policies, but will be forced to adopt an adversarial posture which would decrease customer satisfaction and increase regulatory costs; and (iv) the ability for a customer to obtain free service will result in increased customer fraud and fraud-related costs that will ultimately be passed on to all consumers in the form of higher rates.

c. There is no competent substantial evidence to support the requirement that calls to a carrier's customer service center must be answered within 60 seconds, and that a carrier who records calls must make call-back attempts every day until the customer is reached. Both of these requirements were changes to the rule as originally proposed. Petitioners are not aware of any evidentiary basis in the record to support the call-back attempt requirement. While a witness for the Office of Public Counsel did testify in favor of a 30-second answer time requirement, there is insufficient evidence of problems in communicating with carriers to justify the costs that would be imposed by this requirement, estimated by one carrier alone at \$16 to \$18 million.



33. The proposed rules are arbitrary and capricious. §120.52(8)(e), Fla. Stat.

a. A rule is arbitrary and capricious unless the agency (1) has considered all relevant factors; (2) has given actual, good faith consideration to those factors; and (3) has used reason, rather than whim, to progress from consideration of these factors to its final decision. Adam Smith Enterprises Inc. v. Dept. of Environmental Regulation, 553 So.2d 1260 at 1274, n. 23.

b. As discussed above in relationship to competent substantial evidence, the Commission had ample evidence of numerous factors that are relevant to a determination of whether the proposed rules are appropriate to address the problem of unauthorized carrier changes. Yet in its desire to protect consumers at any cost, and to reward consumers who claim to have been slammed, the Commission failed to give actual, good faith consideration to the problems created and costs imposed by the challenged rules. In short, the Commission failed to properly consider all relevant factors in making its final decision.

c. Additionally, the Commission failed to consider the relative magnitude of the problem it was attempting to solve. The rulemaking record shows even if all slamming complaints pending at the time of the hearing were found to be rule infractions, the total slamming violations alleged by the Commission staff in 1997 would be only about 1/10 of one percent of the estimated 2.75 million provider changes executed in Florida during that time period. Although a Commission staff member testified that there might be "an acceptable level" of slamming complaints, the Commission arbitrarily failed to give actual, good faith consideration to the costs imposed by the proposed rules in relation to the magnitude of the problem to be solved.

34. The proposed rules are vague and fail to establish adequate standards for agency decisions. §120.52(8)(d), Fla. Stat.

a. Proposed Rule 25-24.118(8) would require a telecommunications company to give credits (refunds) for service provided for up to 30 days, or until the end of the first billing cycle, whichever is longer, in the event of an "unauthorized provider change." They further require re-rating of calls for up to 12 months. Despite (i) concerns expressed in the rulemaking hearing about the ambiguity in this rule, (ii) specific suggestions to define what constitutes an unauthorized provider change, and (iii) a conclusion in the second revised SERC that such a definition would be helpful to the companies, consumers and Commission staff to establish when a refund is required, the Commission failed to adopt any such definition. As a result, telecommunications companies are left to guess what will be held to constitute an "unauthorized provider change."<sup>5</sup> State v. Cummings, 365 So.2d 153 (Fla. 1978) (wildlife permit rules vague for failing to define key words). This ambiguity also means that there are inadequate standards for case-by-case agency decisions on the question of what constitutes an unauthorized change.

b. Proposed Rule 25-24.118(12) is also ambiguous as to the extent of the call-back requirement in the event a customer service call is answered by a recording. The proposed rule states that the company "shall attempt to contact each complainant no later than the next business day following the date of recording and each subsequent day until the customer is

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<sup>5</sup> Other proposed rules provide four alternative procedures by which a telecommunications company can document a customer's desire to change his preferred carrier. It is unclear, for example, whether or not good faith compliance with these procedures creates a "safe harbor" against a charge that a particular change was "unauthorized" within the meaning of Proposed Rule 25-4.118(8).

reached." At the final agenda conference at which the underlined language was added to the proposed rule, some of the Commissioners stated that the rule should not require indefinite attempts to contact a customer. The Commission voted to adopt this change only after being assured by its staff that a company could comply with the rule by making some reasonable number of call attempts followed, if unsuccessful, by a letter to the customer. That, however, is not what the rule says. If the proposed rule is susceptible to that interpretation, then is it impermissibly vague. If not, then it is arbitrary and capricious.

35. The proposed rules impose regulatory costs on Petitioners which could be reduced by the adoption of less costly alternatives that substantially accomplish the same statutory objectives. §120.52(8)(g), Fla. Stat.

a. The Commission prepared three statements of estimated regulatory cost for the proposed rules: an initial SERC included in the staff recommendation at the time the rules were proposed; a revised SERC dated the first day of the rulemaking hearing; and a second revised SERC included with the staff's final recommendation that the rules be adopted with changes.

b. Three interested parties, FCCA, Sprint, and LCI provided the Commission with good faith lower cost regulatory alternatives to the proposed rules.

c. The primary alternative proposed by FCCA and Sprint was to mirror at the state level the Federal Communications Commission's ("FCC") soon-to-be-promulgated rules on slamming. Every interexchange company that carries interstate traffic will be required to comply with the FCC slamming rules. Given the national character of many of the interexchange carriers doing business in Florida, compliance with a single set of national

standards is obviously much less costly than compliance with standards which apply only in Florida.

d. The primary alternative proposed by LCI was either to modify the Commission's rules to provide fines for carriers who violate the current anti-slamming rules, or to mirror the FCC's existing and current rules.

e. FCCA and LCI also suggested additional alternatives to specific sections of the proposed rules. With respect to Proposed Rule 25-4.118(8), LCI suggested that the proposed refund provisions be modified to match the FCC's proposed requirements under which charges billed by an unauthorized carrier are payable to the consumer's authorized carrier, and not to the customer. (See paragraph 37 below for further discussion of the inconsistency between the Commission's proposed rules and the requirements of the Telecommunications Act of 1996 which the FCC rules would implement.) With respect to Proposed Rule 25-4.118(12) on answer-time and call-back requirements, FCCA suggested deleting this provision in its entirety.

f. The second revised SERC recommended rejecting the primary lower cost alternative of mirroring the FCC's rules on the grounds that "it cannot be determined at this time whether adopting the FCC's rules would successfully accomplish the objective of the rules proposed by staff." Second Revised SERC at 15 (emphasis added). This is an insufficient basis for rejecting a proposed lower cost alternative. Section 120.541(1)(a), Florida Statutes, requires only that the alternative "substantially accomplish the objectives of the law being implemented" (emphasis added). Where, as here, the Commission's proposed rules have no statutory basis, the "objectives of the rules proposed" are irrelevant in determining the sufficiency of a proposed lower cost regulatory alternative.

**g.** As discussed above, the interests of the Petitioners are substantially affected by the Commission's failure to adopt the lower cost regulatory alternative of mirroring the impending FCC rules on slamming.

**36.** The Commission's economic analysis of the proposed rules and proposed lower cost regulatory alternatives does not meet the requirements of Section 120.541, Florida Statutes, and constitutes a material failure to follow the applicable rulemaking procedures and requirements of Chapter 120. §120.52(8)(a), Fla. Stat.

**a.** As a result of the submission of several lower cost regulatory alternatives, the Commission was required to prepare a SERC. The failure to prepare a SERC is a material failure to follow the applicable rulemaking procedures or requirements set forth in Chapter 120. §120.541(1)(b), Fla. Stat. The required contents of a SERC are set forth in Section 120.541(2), Florida Statutes. The SERC must, among other things, include a good faith estimate of the transactional costs likely to be incurred by individuals and entities required to comply with the requirements of the rule. §120.541(2)(c), Fla. Stat. It must also provide the reasons for rejecting any lower cost alternative in favor of the proposed rule. §120.541(2)(f), Fla. Stat. The second revised SERC does not comply with these requirements.

**b.** The second revised SERC prepared by the Commission does not contain a good faith estimate of the transactional costs likely to be incurred by entities required to comply with the proposed rule. The SERC reveals that at approximately 500 interexchange carriers ("IXCs") and approximately 225 alternative local exchange companies ("ALECs") would be required to comply with the proposed rules. SERC at 3. The SERC, however, contains no estimate of the total transactional costs to these 725 entities. Instead, the SERC merely

summarizes cost estimates provided by a handful of affected parties. As the SERC itself reveals, the Commission staff "reviewed data request responses, testimony, and post-hearing comments and has made every effort to include all costs provided by any participating party."<sup>6</sup> SERC at 5 (emphasis added). The SERC fails, however, to use this limited information to estimate the overall transactional costs to the industry, or to any affected member of the industry.

c. The SERC also does not contain a sufficient statement of reasons for rejecting the lower cost alternatives submitted by several parties. For example, the SERC summarizes estimates which demonstrate that Proposed Rule 25-4.118(8) would impose significant costs on carriers,<sup>7</sup> yet it does not even attempt to estimate the cost savings that would result from the lower cost alternative of mirroring the FCC's upcoming rules on slamming. SERC at 14. In rejecting suggested lower cost alternatives to Proposed Rule 25-4.118(12), the SERC states in part that:

Cost data supplied to staff indicated that this [proposed rule 25-4.118(12)] is a very costly proposal. However, if no other recourse is available to the customer, staff's proposed rule may be appropriate. Though compliance with this rule could put a very heavy financial burden on smaller companies and increase their cost of doing business in this state, a customer not having reasonable access to a provider is not acceptable and would not accomplish the objective of the proposed rule.

SERC at 26.

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<sup>6</sup> In fact, the SERC wholly fails to address the costs of the answer-time and call-back requirements.

<sup>7</sup> Sprint estimated a one-time investment of \$88,000 and an annual recurring cost of \$345,000; LCI estimated a cost of \$3,000,000 to modify its systems; and MCI estimated over \$1,000,000 per year in refunds. SERC at 10-11.

With no analysis, and based on the faulty premise that the proposed alternatives "would not accomplish the objectives of the proposed rule," the SERC sweeps aside information that this rule is estimated to cost a single national carrier between \$16 and \$18 million to comply with this subsection, SERC at 13, and rejects alternatives which would delete this subsection in its entirety, SERC at 19, or exempt small carriers from its requirements, SERC at 25-26.

d. Finally, the second revised SERC fails to provide a good faith estimate of the cost to the agency of implementing and enforcing the rules as required by Section 120.52(2)(b). The SERC includes a general discussion of the types, but not the amount, of costs that the agency may expect.

e. The Commission did not conduct any serious economic analysis of the difference between adopting the proposed rules versus adopting the suggested lower cost regulatory alternatives. The Commission's failure to prepare a SERC which meets the standards of Section 120.541 is a material failure to follow rulemaking procedures, and is sufficient to invalidate the challenged rules.

37. The proposed rules are inconsistent with the provisions of the Telecommunications Act of 1996 and are therefore preempted by federal law.

a. Section 258 of the Telecommunications Act of 1996 (codified at 47 U.S.C. §258) prohibits a telecommunications carrier from changing a customer's selection of telephone service provider except in accordance with verification procedures prescribed by the FCC. It further provides that any carrier who violates such verification procedures and collects charges for telephone service from a subscriber shall be liable "to the carrier previously selected by such

subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the [FCC] may prescribe."

b. The remedy for such unauthorized changes in Proposed Rule 25-4.118(8) is totally inconsistent with this federal statute. Under federal law, charges by the carrier who made the unauthorized change must be paid to the customer's prior carrier. Under the Proposed Rule, the same charges must be paid to the customer. This results in a carrier having to pay the same money twice. Even if the Proposed Rule were valid under Florida law, which it is not, the remedy it creates cannot be reconciled with the different remedy established by Congress. Thus, the proposed rule is preempted by the operation of the federal statute, and cannot stand.

38. For the reasons set forth above, the proposed rules also exceed the Commission's rulemaking authority and exceed the scope of the law purportedly being implemented in violation of Section 120.536, Florida Statutes.

#### **Disputed Issues of Material Fact and/or Law**

39. The disputed issues of material fact and/or law raised in this Petition include the following:

- a. Whether the proposed rules are invalid exercises of delegated legislative authority.
- b. Whether the proposed rules enlarge, modify, or contravene the specific provisions of the law implemented.
- c. Whether the proposed rules are based on competent substantial evidence.
- d. Whether the proposed rules are arbitrary and capricious.



e. Whether the proposed rules are vague or fail to establish adequate standards for agency decisions.

f. Whether the proposed rules impose regulatory costs on Petitioners which could be reduced by the adoption of less costly alternatives that substantially accomplish the same statutory objectives and whether the Commission improperly rejected the lower cost regulatory alternatives offered by FCCA, Sprint and LCI.

g. Whether the Commission materially failed to follow the applicable rulemaking procedures or requirements set forth in Chapter 120 in connection with the proposed rules.

h. Whether the rules exceed the Commission's authority and exceed the scope of the law purportedly being implemented in violation of Section 120.536, Florida Statutes.

i. Whether the rules are inconsistent with the provisions of the federal Telecommunications Act of 1996 and are preempted by the provisions of that Act.

WHEREFORE, Petitioners respectfully request:

1. that this Petition be assigned to an Administrative Law Judge ("ALJ") from the Division of Administrative Hearings, and that a formal hearing on this Petition be held by the ALJ pursuant to Sections 120.56(2), 120.569, and 120.57(1), Florida Statutes;

2. that the ALJ enter a final order determining that the proposed rules are invalid exercises of delegated legislative authority; and

3. that the ALJ grant Petitioners such other relief as may be deemed appropriate.

RESPECTFULLY SUBMITTED this 26th day of May, 1998.

*Vicki Gordon Kaufman*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing was served by Hand Delivery on the following, this  
26th day of May, 1998.

**Rob Vandiver  
General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
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**Diana Caldwell  
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Florida Public Service Commission  
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**ATTORNEY**

1 25-4.003 Definitions.

2 For the purpose of Chapter 25-4, the following definitions to the  
3 following terms apply:

4 (1) "Access Line" or "Subscriber Line." The circuit or  
5 channel between the demarcation point at the customer's premises  
6 and the serving end or class 5 central office.

7 (2) "Alternative Local Exchange Telecommunications Company  
8 (ALEC)." Any telecommunications company, as defined in Section  
9 364.02(1), Florida Statutes.

10 (3)-~~(3)~~ "Average Busy Season-Busy Hour Traffic." The average  
11 traffic volume for the busy season busy hours.

12 (4)-~~(3)~~ "Busy Hour." The continuous one-hour period of the day  
13 during which the greatest volume of traffic is handled in the  
14 office.

15 (5)-~~(4)~~ "Busy Season." The calendar month or period of the  
16 year (preferably 30 days but not to exceed 60 days) during which  
17 the greatest volume of traffic is handled in the office.

18 (6)-~~(5)~~ "Call." An attempted telephone message.

19 (7)-~~(6)~~ "Central Office." A location where there is an  
20 assembly of equipment that establishes the connections between  
21 subscriber access lines, trunks, switched access circuits, private  
22 line facilities, and special access facilities with the rest of the  
23 telephone network.

24 (8)-~~(7)~~ "Commission." The Florida Public Service Commission.

25 (9)-~~(8)~~ "Company," "Telecommunications Company," "Telephone

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~~struck-through~~ type are deletions from existing law.

1 Company," or "Utility." These terms may be used interchangeably  
2 herein and shall mean "telecommunications company" as defined in  
3 Section 364.02(12), Florida Statutes.

4 ~~(10)-(9)~~ "Completed call." A call which has been switched  
5 through an established path so that two-way conversation or data  
6 transmission is possible.

7 ~~(11)-(10)~~ "Disconnect" or "Disconnection." The dissociation or  
8 release of a circuit. In the case of a billable call, the end of  
9 the billable time for the call whether intentionally terminated or  
10 terminated due to a service interruption.

11 ~~(12)-(11)~~ "Drop or Service Wire." The connecting link that  
12 extends from the local distribution service terminal to the  
13 protector or telephone network interface device on the customer's  
14 premises.

15 ~~(13)-(12)~~ "Exchange." The entire telephone plant and  
16 facilities used in providing telephone service to subscribers  
17 located in an exchange area. An exchange may include more than one  
18 central office unit.

19 ~~(14)-(13)~~ "Exchange (Service) Area." The territory of a local  
20 exchange company (LEC) within which local telephone service is  
21 furnished at the exchange rates applicable within that area.

22 ~~(15)-(14)~~ "Extended Area Service." A type of telephone service  
23 whereby subscribers of a given exchange or area may complete calls  
24 to, and receive messages from, one or more other exchanges or areas  
25 without toll charges, or complete calls to one or more other

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1 exchanges or areas without toll message charges.

2       (16)~~(15)~~ "Extension Station." An additional station connected  
3 on the same circuit as the main station and subsidiary thereto.

4       (17)~~(16)~~ "Foreign Exchange Service." A classification of LEC  
5 ~~local exchange telecommunications company~~ exchange service  
6 furnished under tariff provisions whereby a subscriber may be  
7 provided telephone service from an exchange other than the one from  
8 which he would normally be served.

9       (18)~~(17)~~ "Intercept Service." A service arrangement provided  
10 by the telecommunications company whereby calls placed to an  
11 unequipped non-working, disconnected, or discontinued telephone  
12 number are intercepted by operator, recorder, or audio response  
13 computer and the calling party informed that the called telephone  
14 number is not in service, has been disconnected, discontinued, or  
15 changed to another number, or that calls are received by another  
16 telephone. This service is also provided in certain central  
17 offices and switching centers to inform the calling party of  
18 conditions such as system blockages, inability of the system to  
19 complete a call as dialed, no such office code, and all circuits  
20 busy.

21       (19)~~(18)~~ "Interexchange Company (IXC)."  
22 Any telecommunications company, as defined in Section 364.02(12),  
23 Florida Statutes, which provides telecommunications  
24 ~~telecommunication~~ service between local calling areas as those  
25 areas are described in the approved tariffs of individual LECs

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1 ~~local exchange companies.~~ IXC "Interexchange Company" includes,  
2 but is not limited to, MLDAs ~~Multiple Location Discount Aggregators~~  
3 ~~(MLDA)~~ as defined in subsection (35) ~~(33)~~ of these definitions.

4 (20)~~(19)~~ "Inter-office Call." A telephone call originating in  
5 one central office but terminating in another central office, both  
6 of which are in the same designated exchange area.

7 (21)~~(20)~~ "Interstate Toll Message." Those toll messages which  
8 do not originate and terminate within the same state.

9 (22)~~(21)~~ "Intertoll Trunk." A line or circuit between two  
10 toll offices, two end offices, or between an end office and toll  
11 office, over which toll calls are passed.

12 (23)~~(22)~~ "Intra-office Call." A telephone call originating  
13 and terminating within the same central office.

14 (24)~~(23)~~ "Intra-state Toll Message." Those toll messages  
15 which originate and terminate within the same state.

16 (25)~~(24)~~ "Invalid Number." A number comprised of an  
17 unassigned area code number or a non-working central office code  
18 (NXX).

19 (26)~~(25)~~ "Large LEC." A LEC ~~local exchange telecommunications~~  
20 ~~company~~ certificated by the Commission prior to July 1, 1995, that  
21 had in excess of 100,000 access lines in service on July 1, 1995.

22 (27)~~(26)~~ "Local Access and Transport Area (LATA)" or "Market  
23 Area." A geographical area, which is loosely based on standard  
24 metropolitan statistical areas (SMSAs), within which a LEC ~~local~~  
25 ~~exchange company~~ may transport telecommunication signals.

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1        ~~(28)~~<sup>(27)</sup> "Local Exchange Telecommunications Company (LEC)."  
2 Any telecommunications company, as defined in Section 364.02(6),  
3 Florida Statutes.

4        (29) "Local Provider (LP)." Any telecommunications company  
5 providing local telecommunications service, excluding pay telephone  
6 providers and call aggregators.

7        ~~(30)~~<sup>(28)</sup> "Local Service Area" or "Local Calling Area." The  
8 area within which telephone service is furnished subscribers under  
9 a specific schedule of rates and without toll charges. A LEC's  
10 ~~local exchange telecommunications company's~~ local service area may  
11 include one or more exchange areas or portions of exchange areas.

12        (31) "Local Toll Provider (LTP)." Any telecommunications  
13 company providing intraLATA or intramarket area long distance  
14 telecommunications service.

15        ~~(32)~~<sup>(29)</sup> "Main Station." The principal telephone associated  
16 with each service to which a telephone number is assigned and which  
17 is connected to the central office equipment by an individual or  
18 party line circuit or channel.

19        ~~(33)~~<sup>(30)</sup> "Message." A completed telephone call.

20        ~~(34)~~<sup>(31)</sup> "Mileage Charge." A tariff charge for circuits and  
21 channels connecting other services that are auxiliary to local  
22 exchange service such as off premises extensions, foreign exchange  
23 and foreign central office services, private line services, and tie  
24 lines.

25        ~~(35)~~<sup>(32)</sup> "Multiple Location Discount Aggregator (MLDA)." An

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1 | entity that offers discounted long distance telecommunications  
2 | services from an underlying IXC ~~interexchange company~~ to  
3 | unaffiliated entities. An entity is a MLDA if one or more of the  
4 | following criteria applies:

5 |       (a) It collects fees related to interexchange  
6 | telecommunications services directly from subscribers,

7 |       (b) It bills for interexchange telecommunications services in  
8 | its own name,

9 |       (c) It is responsible for an end user's unpaid interexchange  
10 | telecommunications bill, or

11 |       (d) A customer's bill cannot be determined by applying the  
12 | tariff of the underlying IXC ~~interexchange company~~ to the  
13 | customer's individual usage.

14 |       (36)~~(33)~~ "Normal Working Days." The normal working days for  
15 | installation and construction shall be all days except Saturdays,  
16 | Sundays, and holidays. The normal working days for repair service  
17 | shall be all days except Sundays and holidays. Holidays shall be  
18 | the days which are observed by each individual telephone utility.

19 |       (37)~~(34)~~ "Optional Calling Plan." An optional service  
20 | furnished under tariff provisions which recognizes the need of some  
21 | subscribers for extended area calling without imposing the cost on  
22 | the entire body of subscribers.

23 |       (38)~~(35)~~ "Out of Service." The inability, as reported by the  
24 | customer, to complete either incoming or outgoing calls over the  
25 | subscriber's line. "Out of Service" shall not include:

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1 (a) Service difficulties such as slow dial tone, circuits  
2 busy, or other network or switching capacity shortages;

3 (b) Interruptions caused by a negligent or willful act of the  
4 subscriber; and

5 (c) Situations in which a company suspends or terminates  
6 service because of nonpayment of bills, unlawful or improper use of  
7 facilities or service, or any other reason set forth in approved  
8 tariffs or Commission rules.

9 ~~(39)-(36)~~ "Outside Plant." The telephone equipment and  
10 facilities installed on, along, or under streets, alleys, highways,  
11 or on private rights-of-way between the central office and  
12 subscribers' locations or between central offices of the same or  
13 different exchanges.

14 ~~(40)-(37)~~ "Pay Telephone Service Company." Any  
15 telecommunications company ~~that, other than a Local Exchange~~  
16 ~~Company, which~~ provides pay telephone service as defined in Section  
17 364.3375, Florida Statutes.

18 ~~(38) "Primary Interexchange Company," The pre-subscribed toll~~  
19 ~~service provider for a subscriber.~~

20 (41) "PC-Freeze." (Preferred Carrier Freeze) A service offered  
21 that restricts the customer's carrier selection until further  
22 notice from the customer.

23 (42) "Provider." Any telecommunications company providing  
24 service, excluding pay telephone providers and call aggregators  
25 (i.e. local, local toll, and toll providers).

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1        (43)~~(39)~~ "Service Objective." A quality of service which is  
2 desirable to be achieved under normal conditions.

3        (44)~~(40)~~ "Service Standard." A level of service which a  
4 telecommunications company, under normal conditions, is expected to  
5 meet in its certificated territory as representative of adequate  
6 services.

7        (45)~~(41)~~ "Small LEC." A LEC ~~local-exchange-telecommunications~~  
8 ~~company~~ certificated by the Commission prior to July 1, 1995, which  
9 had fewer than 100,000 access lines in service on July 1, 1995.

10       (46)~~(42)~~ "Station." A telephone instrument consisting of a  
11 transmitter, receiver, and associated apparatus so connected as to  
12 permit sending or receiving telephone messages.

13       (47)~~(43)~~ "Subscriber" or "Customer." These terms may be used  
14 interchangeably herein and shall mean any person, firm,  
15 partnership, corporation, municipality, cooperative organization,  
16 or governmental agency supplied with communication service by a  
17 telecommunications company.

18       (48)~~(44)~~ "Subscriber Line." See "Access Line."

19       (49)~~(45)~~ "Switching Center." Location at which telephone  
20 traffic, either local or toll, is switched or connected from one  
21 circuit or line to another. A local switching center may be  
22 comprised of several central office units.

23       (50)~~(46)~~ "Toll Connecting Trunk." A trunk which connects a  
24 local central office with its toll operating office.

25       (51)~~(47)~~ "Toll Message." A completed telephone call between

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1 stations in different exchanges for which message toll charges are  
2 applicable.

3 (52) "Toll Provider (TP)." Any telecommunications company  
4 providing interLATA long distance telecommunications service.

5 ~~(53)(48)~~ "Traffic Study." The process of recording usage  
6 measurements which can be translated into required quantities of  
7 equipment.

8 ~~(54)(49)~~ "Trouble Report." Any oral or written report from a  
9 subscriber or user of telephone service to the telephone company  
10 indicating improper function or defective conditions with respect  
11 to the operation of telephone facilities over which the telephone  
12 company has control. :.

13 ~~(55)(50)~~ "Trunk." A communication channel between central  
14 office units or entities, or private branch exchanges.

15 ~~(56)(51)~~ "Valid Number." A number for a specific telephone  
16 terminal in an assigned area code and working central office which  
17 is equipped to ring and connect a calling party to such terminal  
18 number.

19 Specific Authority: 350.127(2) F.S.

20 Law Implemented: 364.01, 364.02, 364.32, 364.335, 364.337 F.S.

21 History: Revised 12/1/68, Amended 3/31/76, formerly 25-4.03,

22 Amended 2/23/87, 3/4/92, 12/21/93, 3/10/96, \_\_\_\_\_.

23

24 25-4.110 Customer Billing for Local Exchange Telecommunications  
25 Companies.

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1 (1) Each company shall issue bills monthly. Each bill shall  
2 show the delinquent date, set forth a clear listing of all charges  
3 due and payable, and contain the following statement:

4 "Written itemization of local billing available upon request."

5 (a) Each LEC ~~local-exchange-company~~ shall provide an itemized  
6 bill for local service:

7 1. With the first bill rendered after local exchange service  
8 to a customer is initiated or changed; and

9 2. To every customer at least once each twelve months.

10 (b) The annual itemized bill shall be accompanied by a bill  
11 stuffer which explains the itemization and advises the customer to  
12 verify the items and charges on the itemized bill. This bill  
13 stuffer shall be submitted to the Commission's Division of  
14 Communications for prior approval. The itemized bill provided to  
15 residential customers and to business customers with less than 10  
16 access lines per service location shall be in easily understood  
17 language. The itemized bill provided to business customers with 10  
18 or more access lines per service location may be stated in service  
19 order code, provided that it contains a statement that, upon  
20 request, an easily understood translation is available in written  
21 form without charge. An itemized bill shall include, but not be  
22 limited to the following information, separately stated:

23 1. Number and types of access lines;

24 2. Charges for access to the system, by type of line;

25 3. Touch tone service charges;

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- 1 4. Charges for custom calling features, separated by feature;
  - 2 5. Unlisted number charges;
  - 3 6. Local directory assistance charges;
  - 4 7. Other tariff charges; and
  - 5 8. Other nontariffed, regulated charges contained in the bill.
- 6 (c) Each bill rendered by a local exchange company shall:
- 7 1. Separately state the following items:
    - 8 a. Any discount or penalty, if applicable;
    - 9 b. Past due balance;
    - 10 c. Unregulated charges, identified as unregulated;
    - 11 d. Long-distance charges, if included in the bill;
    - 12 e. Franchise fee, if applicable; and
    - 13 f. Taxes, as applicable on purchases of local and long
    - 14 distance service; and
  - 15 2. Contain a statement that nonpayment of regulated charges
  - 16 may result in discontinuance of service and that the customer may
  - 17 contact the business office (at a stated number) to determine the
  - 18 amount of regulated charges in the bill.
- 19 (2) Each company shall make appropriate adjustments or refunds
- 20 where the subscriber's service is interrupted by other than the
- 21 subscriber's negligent or willful act, and remains out of order in
- 22 excess of 24 hours after the subscriber notifies the company of the
- 23 interruption. The refund to the subscriber shall be the pro rata
- 24 part of the month's charge for the period of days and that portion
- 25 of the service and facilities rendered useless or inoperative;

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1 | except that the refund shall not be applicable for the time that  
2 | the company stands ready to repair the service and the subscriber  
3 | does not provide access to the company for such restoration work.  
4 | The refund may be accomplished by a credit on a subsequent bill for  
5 | telephone service.

6 | (3) (a) Bills shall not be considered delinquent prior to the  
7 | expiration of 15 days from the date of mailing or delivery by the  
8 | utility. However, the company may demand immediate payment under  
9 | the following circumstances:

10 | 1. Where service is terminated or abandoned;

11 | 2. Where toll service is two times greater than the  
12 | subscriber's average usage as reflected on the monthly bills for  
13 | the three months prior to the current bill, or, in the case of a  
14 | new customer who has been receiving service for less than four  
15 | months, where the toll service is twice the estimated monthly toll  
16 | service; or

17 | 3. Where the company has reason to believe that a business  
18 | subscriber is about to go out of business or that bankruptcy is  
19 | imminent for that subscriber.

20 | (b) The demand for immediate payment shall be accompanied by  
21 | a bill which itemizes the charges for which payment is demanded,  
22 | or, if the demand is made orally, an itemized bill shall be mailed  
23 | or delivered to the customer within three days after the demand is  
24 | made.

25 | (c) If the company cannot present an itemized bill, it may

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1 present a summarized bill which includes the customer's name and  
2 address and the total amount due. However, a customer may refuse  
3 to make payment until an itemized bill is presented. The company  
4 shall inform the customer that he may refuse payment until an  
5 itemized bill is presented.

6 (4) Each telephone company shall include a bill insert  
7 advising each subscriber of the directory closing date and of the  
8 subscriber's opportunity to correct any error or make changes as  
9 the subscriber deems necessary in advance of the closing date. It  
10 shall also state that at no additional charge and upon the request  
11 of any residential subscriber, the exchange company shall list an  
12 additional first name or initial under the same address, telephone  
13 number, and surname of the subscriber. The ~~Such~~ notice shall be  
14 included in the billing cycle closest to 60 days preceding the  
15 directory closing date.

16 (5) Annually, each telephone company shall include a bill  
17 insert advising each residential subscriber of the option to have  
18 the subscriber's name placed on the "No Sales Solicitation" list  
19 maintained by the Department of Agriculture and Consumer Services,  
20 Division of Consumer Services, and the 800 number to contact to  
21 receive more information.

22 (6) Where any undercharge in billing of a customer is the  
23 result of a company mistake, the company may not backbill in excess  
24 of 12 months. Nor may the company recover in a ratemaking  
25 proceeding, any lost revenue which inures to the company's

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1 detriment on account of this provision.

2 (7) Franchise fees and municipal telecommunications taxes.

3 (a) When a municipality charges a company any franchise fee,  
4 or municipal telecommunications tax authorized by Section 166.231,  
5 Florida Statutes, the company may collect that fee only from its  
6 subscribers receiving service within that municipality. When a  
7 county charges a company any franchise fee, the company may collect  
8 that fee only from its subscribers receiving service within that  
9 county.

10 (b) A company may not incorporate any franchise fee or  
11 municipal telecommunications tax into its other rates for service.

12 (c) This subsection shall not be construed as granting a  
13 municipality or county the authority to charge a franchise fee or  
14 municipal telecommunications tax. This subsection only specifies  
15 the method of collection of a franchise fee, if a municipality or  
16 county, having authority to do so, charges a franchise fee or  
17 municipal telecommunications tax.

18 (8)(a) When a company elects to add the Gross Receipts Tax  
19 onto the customer's bill as a separately stated component of that  
20 bill, the company must first remove from the tariffed rates any  
21 embedded provisions for the Gross Receipts Tax.

22 (b) If the tariffed rates in effect have a provision for gross  
23 receipts tax, the rates must be reduced by an amount equal to the  
24 gross receipts tax liability imposed by Chapter 203, Florida  
25 Statutes, thereby rendering the customer's bill unaffected by the

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1 election to add the Gross Receipts Tax as a separately stated tax.

2 (c) This subsection shall not be construed as a mandate to  
3 elect to separately state the Gross Receipts Tax. This subsection  
4 only specifies the method of applying such an election.

5 (d) All services sold to another telecommunications vendor,  
6 provided that the applicable rules of the Department of Revenue are  
7 satisfied, must be reduced by an amount equal to the gross receipts  
8 tax liability imposed by Chapter 203, Florida Statutes, unless  
9 those services have been adjusted by some other Commission action.

10 (e) When a nonrate base regulated telecommunications company  
11 exercises the option of adding the gross receipts tax as a  
12 separately stated component on the customer's bill then that  
13 company must file a tariff indicating such.

14 (9) Each LEC ~~local exchange company~~ shall apply partial  
15 payment of an end user/customer bill first towards satisfying any  
16 unpaid regulated charges. The remaining portion of the payment, if  
17 any, shall be applied to nonregulated charges.

18 (10) After January 1, 1999, or six months after the effective  
19 date of this rule, whichever is later, all bills produced shall  
20 clearly and conspicuously display the following information for  
21 each service billed in regard to each company claiming to be the  
22 customer's presubscribed provider for local, local toll, or toll  
23 service:

24 (a) The name of the certificated company and its certificate  
25 number:

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1        (b) Type of service provided, i.e., local, local toll, or  
2 toll; and

3        (c) A toll-free customer service number.

4        ~~(11)-(10)~~ This section applies to LECs ~~local-exchange-companies~~  
5 ~~and interexchange-carriers~~ that provide transmission services or  
6 bill and collect on behalf of Pay Per Call providers. Pay Per Call  
7 services are defined as switched telecommunications services  
8 between locations within the State of Florida which permit  
9 communications between an end use customer and an information  
10 provider's program at a per call charge to the end user/customer.  
11 Pay Per Call services include 976 services provided by the LECs  
12 ~~local-exchange-companies~~ and 900 services provided by interexchange  
13 carriers.

14        (a) Charges for Pay Per Call service (900 or 976) shall be  
15 segregated from charges for regular long distance or local charges  
16 by appearing separately under a heading that reads as follows:  
17 "Pay Per Call (900 or 976) nonregulated charges." The following  
18 information shall be clearly and conspicuously disclosed on each  
19 section of the bill containing Pay Per Call service (900 or 976)  
20 charges:

21        1. Nonpayment of Pay Per Call service (900 or 976) charges  
22 will not result in disconnection of local service;

23        2. End users/customers can obtain free blocking of Pay Per  
24 Call service (900 or 976) from the LEC ~~local-exchange-telephone~~  
25 ~~company~~;

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1           3. The local or toll-free number the end user/customer can  
2 call to dispute charges;

3           4. ~~The With 900 service,~~ the name of the IXC interexchange  
4 carrier providing 900 service; and

5           5. The Pay Per Call service (900 or 976) program name.

6           (b) Pay Per Call Service (900 and 976) Billing. LECs and IXCs  
7 ~~Local exchange companies and interexchange carriers~~ who have a  
8 tariff or contractual relationship with a Pay Per Call (900 or 976)  
9 provider shall not provide Pay Per Call transmission service or  
10 billing services, unless the provider does each of the following:

11           1. Provides a preamble to the program which states the per  
12 minute and total minimum charges for the Pay Per Call service (900  
13 and 976); child's parental notification requirement is announced on  
14 preambles for all programs where there is a potential for minors to  
15 be attracted to the program; child's parental notification  
16 requirement in any preamble to a program targeted to children must  
17 be in language easily understandable to children; and programs that  
18 do not exceed \$3.00 in total charges may omit the preamble, except  
19 as provided in Section ~~(11)~~~~(10)~~(b)3.;

20           2. Provides an 18-second billing grace period in which the end  
21 user/customer can disconnect the call without incurring a charge;  
22 from the time the call is answered at the Pay Per Call provider's  
23 premises, the preamble message must be no longer than 15 seconds.  
24 The program may allow an end user/customer to affirmatively bypass  
25 a preamble;

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- 1           3. Provides on each program promotion targeted at children  
2 (defined as younger than 18 years of age) clear and conspicuous  
3 notification, in language understandable to children, of the  
4 requirement to obtain parental permission before placing or  
5 continuing with the call. The parental consent notification shall  
6 appear prominently in all advertising and promotional materials,  
7 and in the program preamble. Children's programs shall not have  
8 rates in excess of \$5.00 per call and shall not include the  
9 enticement of a gift or premium;
- 10           4. Promotes its services without the use of an autodialer or  
11 broadcasting of tones that dial a Pay Per Call (900 and 976)  
12 number;
- 13           5. Prominently discloses the additional cost per minute or per  
14 call for any other telephone number that an end user/customer is  
15 referred to either directly or indirectly;
- 16           6. In all advertising and promotional materials, displays  
17 charges immediately above, below, or next to the Pay Per Call  
18 number, in type size that can be seen as clearly and conspicuously  
19 at a glance as the Pay Per Call number. Broadcast television  
20 advertising charges, in Arabic numerals, must be shown on the  
21 screen for the same duration as the Pay Per Call number is shown,  
22 each time the Pay Per Call number is shown. Oral representations  
23 shall be equally as clear;
- 24           7. Provides on Pay Per Call services that involve sales of  
25 products or merchandise clear preamble notification of the price

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1 that will be incurred if the end user/customer stays on the line,  
2 and a local or toll free number for consumer complaints; and

3 8. Meets internal standards established by the LEC or IXC  
4 ~~local exchange company or the interexchange carrier~~ as defined in  
5 the applicable tariffs or contractual agreement between the LEC and  
6 the IXC; or between the LEC/IXC and the Pay Per Call (900 or 976)  
7 provider which when violated, would result in the termination of a  
8 transmission or billing arrangement.

9 (c) Pay Per Call (900 and 976) Blocking. Each LEC ~~local~~  
10 ~~exchange company~~ shall provide blocking where technically feasible  
11 of Pay Per Call service (900 and 976), at the request of the end  
12 user/customer at no charge. Each LEC or IXC ~~local exchange company~~  
13 ~~or interexchange carrier~~ must implement a bill adjustment tracking  
14 system to aid its efforts in adjusting and sustaining Pay Per Call  
15 charges. The LEC or IXC ~~carrier~~ will adjust the first bill  
16 containing Pay Per Call charges upon the end user's/ customer's  
17 stated lack of knowledge that Pay Per Call service (900 and 976)  
18 has a charge. A second adjustment will be made if necessary to  
19 reflect calls billed in the following month which were placed prior  
20 to the Pay Per Call service inquiry. At the time the charge is  
21 removed, the end user/customer may agree to free blocking of Pay  
22 Per Call service (900 and 976).

23 (d) Dispute resolution for Pay Per Call service (900 and 976).  
24 Charges for Pay Per Call service (900 and 976) shall be  
25 automatically adjusted upon complaint that:

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1           1. The end user/customer did not receive a price  
2 advertisement, the price of the call was misrepresented to the  
3 consumer, or the price advertisement received by the consumer was  
4 false, misleading, or deceptive;

5           2. The end user/customer was misled, deceived, or confused by  
6 the Pay Per Call (900 or 976) advertisement;

7           3. The Pay Per Call (900 or 976) program was incomplete,  
8 garbled, or of such quality as to render it inaudible or  
9 unintelligible, or the end user/customer was disconnected or cut  
10 off from the service;

11           4. The Pay Per Call (900 and/or 976) service provided  
12 out-of-date information; or

13           5. The end user/customer terminated the call during the  
14 preamble described in 25-4.110(11)(b)2., but was charged for  
15 the Pay Per Call service (900 or 976).

16           (e) If the end user/customer refuses to pay a disputed Pay Per  
17 Call service (900 or 976) charge which is subsequently determined  
18 by the LEC to be valid, the LEC or IXC may implement Pay Per Call  
19 (900 and 976) blocking on that line.

20           (f) Credit and Collection. LECs and IXCs ~~Local-exchange~~  
21 ~~companies and interexchange-carriers~~ billing Pay Per Call (900 and  
22 976) charges to an end user/customer in Florida shall not:

23           1. Collect or attempt to collect Pay Per Call service (900 or  
24 976) charges which are being disputed or which have been removed  
25 from an end user's/customer's bill; or

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1           2. Report the end user/customer to a credit bureau or  
2 collection agency solely for non-payment of Pay Per Call (900 or  
3 976) charges.

4           (g) ~~LECs and IXCs Local exchange companies and interexchange~~  
5 ~~carriers~~ billing Pay Per Call service (900 and 976) charges to end  
6 users/customers in Florida shall implement safeguards to prevent  
7 the disconnection of phone service for non-payment of Pay Per Call  
8 (900 or 976) charges.

9           (12) The customer must be notified via letter or on the  
10 customer's first bill and annually thereafter that a PC Freeze is  
11 available. Existing customers must be notified by January 1, 1999,  
12 or six months after the effective date of this rule, whichever is  
13 later, and annually thereafter that a PC Freeze is available.

14           (13) By January 1, 1999, or six months after the effective  
15 date of this rule, whichever is later, the customer must be given  
16 notice on the first or second page of the customer's next bill in  
17 conspicuous bold face type when the customer's provider of local,  
18 local toll, or toll service has changed.

19 Specific Authority: 350.127 F.S.

20 Law Implemented: 364.17, 350.113, 364.03, 364.04, 364.05, 364.19,  
21 F.S.

22 History: New 12/1/68, Amended 3/31/76, 12/31/78, 1/17/79,  
23 7/28/81, 9/8/81, 5/3/82, 11/21/82, 4/13/86, 10/30/86, 11/28/89,  
24 3/31/91, 11/11/91, 3/10/96, \_\_\_\_\_.

25

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1 25-4.118 Local, Local Toll, or Toll Provider Interexchange Carrier  
2 Selection.

3 (1) The provider primary interexchange company (PIC) of a  
4 customer shall not be changed without the customer's authorization.  
5 The customer or the customer's spouse are the authorized person to  
6 change residential service. The person designated as the contact  
7 for the local telecommunications company, an officer of the  
8 company, or the owner of the company is the person authorized to  
9 change business service. A LEC ~~local exchange company (LEC)~~ shall  
10 accept a provider PIC change requests by telephone call or letter  
11 directly from its customers; or

12 (2) A LEC shall also accept a PIC change requests from a  
13 certificated LP or IXC interexchange company (IXC) acting on behalf  
14 of the customer. A certificated LP or IXC certified IXC that will  
15 ~~be billing customers in its name~~ shall may submit a PIC change  
16 request, ~~other than a customer-initiated PIC change, directly or~~  
17 ~~through another IXC, to a LEC~~ only if it has first certified to the  
18 LEC that at least one of the following actions has occurred prior  
19 ~~to the PIC change request:~~

20 (a) The provider IXC has a letter of agency (LOA), as  
21 described in (3), on-hand a ballot or letter from the customer  
22 requesting the such change;

23 (b) The provider has received a customer-initiated call, and  
24 has obtained the following:

25 1. The customer's consent to record the requested change and

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1       2. An audio recording of the information set forth in (3) (a)  
2 ~~through (a); the customer initiates a call to an automated 800~~  
3 ~~number and through a sequence of prompts, confirms the customer's~~  
4 ~~requested change; or~~

5       (c) A firm that is independent and unaffiliated with the  
6 provider claiming the subscriber has verified the customer's  
7 requested change by obtaining the following:

8       1. The customer's consent to record the requested change; and

9       2. An audio recording of the information stated in subsection  
10 ~~(3) (a) through (a); is verified through a qualified, independent~~  
11 ~~firm which is unaffiliated with, or~~

12       (d) The provider the ICS has received a customer's change  
13 ~~customer request, to change his PIC and has responded within three~~  
14 ~~days by mailing of an informational package that shall include the~~  
15 ~~following: includes a prepaid, returnable postcard and an~~  
16 ~~additional 14 days have past before the ICS submits the PIC change~~  
17 ~~to the LEC. The information package should contain any information~~  
18 ~~required by Rule 25 4.118(3).~~

19       1. A notice that the information is being sent to confirm that  
20 a telemarketer obtained a customer's request to change the  
21 customer's telecommunications provider;

22       2. A description of any terms, conditions, or charges that  
23 will be incurred;

24       3. The name, address, and telephone number of both the  
25 customer and the soliciting company;

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1 4. A postcard which the customer can use to confirm a change  
2 request;

3 5. A clear statement that the customer's local, local toll, or  
4 toll provider will be changed to the soliciting company only if the  
5 customer signs and returns the postcard confirming the change; and

6 6. A notice that the customer may contact by writing the  
7 Commission's Division of Consumer Affairs, 2540 Shumard Oak  
8 Boulevard, Tallahassee, Florida 32399-0850, or by calling, toll-  
9 free (TDD & Voice) 1-800-342-3552, for consumer complaints.

10 The soliciting company shall submit the change request to the  
11 LP only if it has first received the postcard that must be signed  
12 by the customer.

13 (3)(a) The LOA ballot or letter submitted to the interexchange  
14 company requesting a provider PIG change shall include, but not be  
15 limited to, the following information (each shall be separately  
16 stated):

17 (a) Customer's billing name, phone/account number and  
18 address, and each telephone number to be changed;

19 (b) Statement clearly identifying the certificated name of the  
20 provider company and the service to which the customer wishes to  
21 subscribe, whether or not it uses the facilities of another  
22 company;

23 (c) Statement that the person requesting the change is  
24 authorized to request the PIG change; and

25 (d) Statement that the customer's change request will apply

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1 ~~that the customer's selection will apply only to that number, and~~  
2 ~~that the customer's local exchange company may charge a fee to~~  
3 ~~switch service providers. Such statement shall be clearly legible~~  
4 ~~and printed in type at least as large as any other text on the~~  
5 ~~page.~~

6 (4) The LOA shall not be combined with inducements of any kind  
7 on the same document. The ~~if any such document is not used solely~~  
8 ~~for the purpose of requesting a PIC change, then the document as a~~  
9 whole must not be misleading or deceptive. For purposes of this  
10 rule, the terms "misleading or deceptive" mean that, because of the  
11 style, format or content of the document or oral statements, it  
12 would not be readily apparent to the person signing the document or  
13 providing oral authorization that the purpose of the signature or  
14 the oral authorization was to authorize a provider PIC change, or  
15 it would be unclear to the customer who the new ~~long distance~~  
16 ~~service~~ provider would be; that the customer's selection would  
17 apply only to the number listed and there could only be one  
18 provider for that number; or that the customer's LR local exchange  
19 company might charge a fee to switch service providers. If any  
20 part of the LOA document is written in a language other than  
21 English, then it ~~the document~~ must contain all relevant information  
22 in each the same language. Notwithstanding the above, the LOA may  
23 be combined with checks that contain only the required LOA language  
24 as prescribed in subsection (3) of this section and the information  
25 necessary to make the check a negotiable instrument. The LOA check

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1 shall not contain any promotional language or material. The LOA  
2 check shall contain in easily readable, bold-face type on the front  
3 of the check, a notice that the consumer is authorizing a primary  
4 carrier change by signing the check. The LOA language shall be  
5 placed near the signature line on the back of the check.

6 ~~(c) If a PIG change request results from either a customer~~  
7 ~~initiated call or a request verified by an independent third party,~~  
8 ~~the information set forth in (3)(a)1. 3. above shall be obtained~~  
9 ~~from the customer.~~

10 (5) A prospective provider must have received the signed LOA  
11 before initiating the change.

12 (6) LOAs and audio recordings shall ~~(d) Notices or letters~~  
13 ~~will~~ be maintained by the provider ~~for~~ for a period of one year.

14 (7) ~~(4)~~ Customer requests for other services, such as travel  
15 card service, do not constitute a provider change in PIG.

16 (8) ~~(5)~~ Charges for unauthorized provider PIG changes and all  
17 charges billed on behalf of the unauthorized provider for the first  
18 90 days or first billing cycle, whichever is longer, higher usage  
19 rates, if any, over the rates of the preferred company shall be  
20 credited to the customer by the company ~~for~~ responsible for the  
21 error within 45 days of notification. After the first 90 days up  
22 to 12 months, charges over the rates of the preferred company will  
23 be credited to the customer by the company responsible for the  
24 error within 45 days of notification. Upon notice from the  
25 customer of an unauthorized provider PIG change, the LEC shall

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1 change the customer back to the prior IKG, or to another company of  
2 the customer's choice. The change must be made within 24 hours  
3 excepting Saturday, Sunday, and holidays, in which case the change  
4 shall be made by the end of the next business day. ~~In the case~~  
5 ~~where the customer disputes the ballot or letter, the IKG appearing~~  
6 ~~on the ballot/letter will be responsible for any charges incurred~~  
7 ~~to change the PIC of the customer.~~

8 ~~(9)(6)~~ The company IKG shall provide the following disclosures  
9 when soliciting a change in service from a customer:

10 (a) Identification of the company IKG;

11 (b) That the purpose of the visit or call is to solicit a  
12 change of the provider PIC of the customer;

13 (c) That the provider shall not PIC ~~can not~~ be changed unless  
14 the customer authorizes the change; and

15 (d) ~~All~~ Any additional information as referenced in Rule  
16 25-24.490(3)(4).

17 (10) During telemarketing and verification, no misleading or  
18 deceptive references shall be made while soliciting for  
19 subscribers.

20 (11) A provider must provide the customer a copy of the  
21 authorization it relies upon in submitting the change request  
22 within 15 calendar days of request.

23 (12) Each company shall provide a live operator or shall  
24 record end user complaints made to its customer service number 24  
25 hours a day, 7 days a week. A combination of live operators and

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1 recorders may be used. If a recorder is used, the company shall  
 2 attempt to contact each complainant no later than the next business  
 3 day following the date of recording and each subsequent day until  
 4 the customer is reached. A minimum of 95 percent of all call  
 5 attempts shall be completed to a company's toll-free customer  
 6 service number and be answered within 60 seconds after the last  
 7 digit is dialed. Station busies will not be counted as completed  
 8 calls. The term "answer" as used in this subsection means more  
 9 than an acknowledgment that the customer is waiting on the line.  
 10 It shall mean the provider is ready to render assistance or accept  
 11 the information necessary to process the call.

12 Specific Authority 350.127(2) F.S.

13 Law Implemented 364.01, 364.19, 364.285 F.S.

14 History: New 3/4/92, Amended 5/31/95,\_\_\_\_\_.

15  
 16 25-24.490 Customer Relations; Rules Incorporated.

17 (1) The following rules are incorporated herein by reference  
 18 and apply to IXCs, interexchange companies. ~~In the following~~  
 19 ~~rules, the word "local" should be omitted or interpreted as "toll,"~~  
 20 ~~as they shall apply only to interexchange and not local service.~~

| 21 | Portions not    |                         |                             |
|----|-----------------|-------------------------|-----------------------------|
| 22 | Section         | Title                   | Applicable                  |
| 23 | <u>25-4.110</u> | <u>Customer Billing</u> | <u>Subsections (10).</u>    |
| 24 |                 |                         | <u>(11), (12), and (13)</u> |
| 25 | 25-4.111        | Customer Complaint      | <u>All except</u>           |

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|    |          |                              |                 |
|----|----------|------------------------------|-----------------|
| 1  |          | and Service Requests         | Subsection (2)  |
| 2  | 25-4.112 | Termination of Service       | <u>All</u> None |
| 3  |          | by Customer                  |                 |
| 4  | 25-4.113 | Refusal or Discontinuance    |                 |
| 5  |          | of Service by Company        | <u>All</u> None |
| 6  | 25-4.114 | Refunds                      | <u>All</u> None |
| 7  | 25-4.117 | 800 Service                  | <u>All</u> None |
| 8  | 25-4.118 | <u>Local, Local Toll, or</u> | <u>All</u> None |
| 9  |          | <u>Toll Provider</u>         |                 |
| 10 |          | <u>Interexchange Carrier</u> |                 |
| 11 |          | Selection                    |                 |

12           (2) An IXC ~~interexchange company~~ may require a deposit as a  
13 condition of service and may collect advance payments for more than  
14 one month of service if it maintains on file with the Commission a  
15 bond covering its current balance of deposits and advance payments  
16 (for more than one month's service). A company may apply to the  
17 Commission for a waiver of the bond requirement by demonstrating  
18 that it possesses the financial resources and income to provide  
19 assurance of continued operation under its certificate over the  
20 long term.

21           (3) Upon request, each company shall provide verbally or in  
22 writing to any person inquiring about the company's service:

- 23           (a) any nonrecurring charge,
- 24           (b) any monthly service charge or minimum usage charge,
- 25           (c) company deposit practices,

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- 1 (d) any charges applicable to call attempts not answered,  
 2 (e) a statement of when charging for a call begins and ends,  
 3 and  
 4 (f) a statement of billing adjustment practices for wrong  
 5 numbers or incorrect bills.

6 In addition, the above information shall be included in the first  
 7 bill, or in a separate mailing no later than the first bill, to all  
 8 new customers and to all customers presubscribing on or after the  
 9 effective date of this rule, and in any information sheet or  
 10 brochure distributed by the company for the purpose of providing  
 11 information about the company's services. The above information  
 12 shall be clearly expressed in simple words, sentences and  
 13 paragraphs. It must avoid unnecessarily long, complicated or  
 14 obscure phrases or acronyms.

15 Specific Authority 350.127(2) P.S.

16 Law Implemented 364.03, 364.14, 364.15, 364.19, 364.337 P.S.

17 History: New 2/23/87, Amended 10/31/89, 3/5/90, 3/4/92, 3/13/96,  
 18 \_\_\_\_\_.

19  
 20 25-24.845 Customer Relations; Rules Incorporated.

21 The following rules are incorporated herein by reference and  
 22 apply to ALECs. In the following rules, the acronym 'LEC' should be  
 23 omitted or interpreted as 'ALEC'.

| 24 Section  | Title            | Portions Applicable     |
|-------------|------------------|-------------------------|
| 25 25-4.110 | Customer Billing | Subsections (10), (11). |

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(12), and (13)

24-4.118      Local, Local Toll, or      All  
Toll Provider Selection

Specific Authority: 350.127(2) and 364.337(2), P.S.

Law Implemented: 364.337(2).

History: New

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