

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
TALLAHASSEE, FLORIDA

IN RE: Proposed Rule 25-24.845, F.A.C., Customer Relations;  
Rules Incorporated; and proposed amendments to Rules  
25-4.003, F.A.C., Definitions; 25-4.110, F.A.C., Customer  
Billing; 25-4.118, F.A.C., Interexchange Carrier Selection;  
and 25-24.490, F.A.C., Customer Relations; Rules  
Incorporated.

DOCKET NO. 970882-TI

**COPY**

BEFORE: CHAIRMAN JULIA A. JOHNSON  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER SUSAN F. CLARK  
COMMISSIONER JOE GARCIA  
COMMISSIONER E. LEON JACOBS

PROCEEDING: AGENDA CONFERENCE

ITEM NUMBER: 5

DATE: May 19, 1998

PLACE: 4075 Esplanade Way, Room 148  
Tallahassee, Florida

BUREAU OF REPORTING

RECEIVED 6-1-98

JANE FAUROT, RPR  
P.O. BOX 10751  
TALLAHASSEE, FLORIDA 32302  
(850) 561-5598

DOCUMENT NUMBER-DATE

05857 JUN-18

FPSC-RECORDS/REPORTING

STAFF RECOMMENDATION

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

Recommendation: Yes. New Rule 25-24.845, Florida Administrative Code, should be adopted without change.

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

Recommendation: No. The Commission should adopt the proposed amendments to Rule 25-4.003, F.A.C., with certain exceptions.

Issue 3: Should the Commission adopt the proposed amendments to Rule 25-4.110, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

Recommendation: No. The Commission should adopt the proposed amendments to Rule 25-4.110, F.A.C., with certain changes recommended by staff.

Issue 4: Should the Commission adopt the proposed amendments to Rule 25-4.118, F.A.C., as proposed by the Commission at the December 16, 1997, agenda conference?

Recommendation: No. Staff recommends adoption of proposed amendments to Rule 25-4.118, F.A.C., with certain changes.

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

Recommendation: Yes. Staff recommends amendments to Rule 25-24.490, F.A.C., be adopted as proposed.

Issue 6: Should the rule amendments as proposed be filed for adoption with the Secretary of State and the docket closed?

Recommendation: Yes. The rules as approved by the Commission should be filed for adoption with the Secretary of State and the docket closed.

P R O C E E D I N G S

1  
2 CHAIRMAN JOHNSON: Item 5.

3 MS. CALDWELL: Commissioners, Item Number 5 is  
4 the adoption of proposed rules relating to slamming.  
5 A hearing was held on the proposed rules and  
6 post-hearing comments were filed.

7 The staff is recommending changes to relax some  
8 of the requirements that were proposed in the rule.  
9 Before discussing the changes recommended by staff and  
10 the effects of the proposed rules with those changes,  
11 I need to make two corrections on the recommendation.

12 The first is on Page 9 of the recommendation  
13 within the first full paragraph. There are  
14 typographical errors that I need to correct, and I  
15 would like to read it correctly beginning with the  
16 second sentence. "Staff recommends revising the  
17 definition to allow the customer and the company to  
18 design the PC freeze restrictions to be placed on the  
19 account and how the restriction is to be removed.  
20 Staff recommends removing the provisions providing for  
21 the standard Commission PC freeze form." Finally,  
22 staff recommends a technical change. The acronym PIC  
23 should be revised to PC. PIC means preferred  
24 interexchange carrier, and PC means preferred carrier.

25 The next correction is an addition to the index

1 of changes on Page 26. After the paragraph beginning  
2 on Page 21, Lines 14 through 15, another paragraph --

3 CHAIRMAN JOHNSON: I'm sorry, what page was that?

4 MS. CALDWELL: This is on Page 26. After the  
5 paragraph beginning Page 21, Lines 14 through 15,  
6 another paragraph needs to be added that states, "Page  
7 22, Lines 5 through 6, insert the provision the  
8 customer or the customer's spouse are the authorized  
9 person to change residential service. The person  
10 designated as the contact for the local  
11 telecommunications company, an officer of the company,  
12 or the owner of the company is the person authorized  
13 to change business service." So that should be added.

14 Staff has recommended the following changes to be  
15 made to the proposed rules. I will summarize them by  
16 topic. These changes were in response to the comments  
17 filed by the companies or the customers but are  
18 intended to remove excessive burdens on the companies.

19 The first one deals with PIC freezes. The  
20 definition was revised, the requirements for a  
21 specified PSC form was deleted to allow companies to  
22 decide how PIC freezes will work, whether written,  
23 verbal, through a PIN number, et cetera.

24 The requirements, the telemarketers must inform  
25 customers during the sales calls that the PIC freeze

1 was also deleted, and the companies, the billing  
2 companies can notify the customer on the bill, a bill  
3 stuffer, or by letter. The other restrictions as to  
4 when they do it on an annual basis and initially has  
5 been maintained.

6 Dates by which the companies have to make changes  
7 to its bill have been changed somewhat to specify that  
8 it is January 1st, 1999, or six months after the  
9 effective date of the rule, whichever is longer, to  
10 make sure that they have ample time to make changes to  
11 their bills.

12 The staff is recommending to no longer require  
13 recording of the ANI for incoming calls. Staff  
14 recommends that check inducements be allowed and the  
15 language on the check be consistent with that allowed  
16 in the FCC's proposed rules. Staff further recommends  
17 modifying the language referred to on the refund of 90  
18 days, it being 90 days or the first billing cycle,  
19 whichever is longer. It used to read the first three  
20 billing cycles.

21 Staff further recommends deleting the provision  
22 requiring a welcome letter by the new provider after  
23 the LOA or verification is complete. And staff added  
24 a provision which I just read earlier, which  
25 designates who is authorized to change residential or

1 business service.

2 And, finally, added language. Staff recommends  
3 adding language to assure that the customer must be  
4 reached if a complaint is recorded. This is in the  
5 service requirements where if a company -- where a  
6 company has either an operator or recording of a  
7 customer complaint, the customer -- the company is  
8 required to reach the -- or contact the customer the  
9 next business day. If the customer is not there, then  
10 the company is required to keep trying to contact that  
11 customer.

12 Those are the changes that staff recommends and  
13 by doing that we feel that this is how the rules are  
14 intended to work. It requires information for the  
15 customers to be provided on the bill. The type of  
16 service, the name of the provider, the certificate  
17 number of the provider and a toll free customer  
18 service number must be printed on the bill. Within  
19 the first or second page of the bill notice is to be  
20 given in bold print that the customer's service is  
21 changed. That would be on the first bill after the  
22 service has been changed is when the notice has to be  
23 provided.

24 And, finally, notice of the PIC freeze must also  
25 be provided on the bill. That the PIC freeze is

1 available from the company.

2 CHAIRMAN JOHNSON: Say that one again. The  
3 notice of the PIC freeze.

4 MS. CALDWELL: Okay. That notice has to be given  
5 on the bill that a PIC freeze is available to the  
6 customer.

7 CHAIRMAN JOHNSON: Now, didn't you say --

8 MS. CALDWELL: Okay. It can be either on the  
9 bill, but staff has revised that to be, you know, also  
10 in a bill stuffer, or it could be through separate  
11 letter, just so long as the customers are notified  
12 that the PIC freeze is available.

13 CHAIRMAN JOHNSON: Okay. So it does not have to  
14 be on the bill, they have --

15 MS. CALDWELL: It does not have to be on the  
16 bill, but it may be.

17 COMMISSIONER DEASON: And who is required to give  
18 that notice?

19 MS. CALDWELL: That would be the local exchange  
20 company or the billing company, whoever has the bill,  
21 whoever is providing a bill to the customer.

22 COMMISSIONER DEASON: So whoever is providing the  
23 bill?

24 MS. CALDWELL: Yes.

25 COMMISSIONER DEASON: And if the IXC is utilizing

1 the billing services of the local company, then the  
2 IXC has no obligation to notify of the PIC freeze  
3 option, it's just that whoever is doing the billing  
4 has that obligation?

5 MS. CALDWELL: Yes.

6 COMMISSIONER DEASON: And they have the option of  
7 doing it on the bill or a separate notification?

8 MS. CALDWELL: That's correct.

9 COMMISSIONER DEASON: So we are not requiring  
10 both the LEC and the IXC to notify of the PIC freeze  
11 option?

12 MS. CALDWELL: No. The rules provide for --

13 CHAIRMAN JOHNSON: I'm sorry, back on that. And  
14 how often do they have to provide that notice?

15 MS. CALDWELL: For new customers, the customer is  
16 notified on his first bill. First, he is notified  
17 with the first bill either by letter -- but upon  
18 initiating new service, and then annually thereafter.  
19 The existing customers, we have a date of January 1st  
20 or six months after the effective date of the rule and  
21 then annually thereafter. So that all customers will  
22 be notified on an annual basis.

23 The rules provide four ways in which a customer's  
24 preferred carrier can be changed; through customer  
25 initiated calls, the company can change when they --



1 if they record the conversation through a customer  
2 initiated call, that does not preclude companies from  
3 receiving a customer initiated call and using any of  
4 the other methods to verify the call. A letter of  
5 agency must be signed, can be signed and --

6 COMMISSIONER CLARK: Let me be clear. When a  
7 customer initiates the call, what are the methods to  
8 verify it? Does it have to be verified? The customer  
9 initiates the call --

10 MS. CALDWELL: If the customer calls a company  
11 and says I want to change to you, the company has the  
12 option of going ahead and recording that call and then  
13 making the change. If the customer does not want to  
14 record, they can have a third party verifier make the  
15 verification and then they can make the change. They  
16 can send out an informational package and make the  
17 change, or probably possibly through the company  
18 simply sending in an LOA that they received from the  
19 company in some manner.

20 COMMISSIONER CLARK: I want to be clear, what  
21 does our rule require if the customer calls, that they  
22 have to do one of those things in addition to the  
23 recording?

24 MS. CALDWELL: No. If the customer calls -- if  
25 the customer calls in and the company wants to make

1 the change immediately, that request has to be  
2 recorded. If the company chooses not to record that  
3 incoming call, they may use the other three methods,  
4 being a letter of agency, a third party verification  
5 or --

6 COMMISSIONER GARCIA: Which is also recorded.

7 MS. CALDWELL: Which is also recorded, or an  
8 informational package which has the return postcard.

9 CHAIRMAN JOHNSON: Ms. Caldwell, if I called a  
10 company and wanted to change my service, but didn't  
11 want it recorded, but wanted it changed that day, what  
12 would the company tell me, what could they do?

13 MS. CALDWELL: They should tell you that they  
14 can't make the change unless they authorize the  
15 recording of that because the recording protects the  
16 company.

17 CHAIRMAN JOHNSON: Okay.

18 MS. CALDWELL: Later on.

19 CHAIRMAN JOHNSON: So if I wanted it immediately  
20 as a customer, then I would have to go with the  
21 recording.

22 MS. CALDWELL: That's correct.

23 CHAIRMAN JOHNSON: But if I didn't want it  
24 immediately, then I could do the -- the company could  
25 use some of those other options, the third party

1 verifier --

2 MS. CALDWELL: The third party verifier or a  
3 letter of agency.

4 COMMISSIONER GARCIA: They still have to be  
5 recorded, though.

6 MS. CALDWELL: What staff is recommending is that  
7 through any way -- through these changes it's either  
8 going to be recorded either by the company or the  
9 third party verifier, or that the company have some  
10 kind of written confirmation, the LOA or the return  
11 postcard which has the same information as an LOA.  
12 So, it's either going to be by recording or an LOA  
13 that the customer has requested the change.

14 CHAIRMAN JOHNSON: And the purpose of the rule,  
15 this is to protect, I guess, the companies so that --

16 MS. CALDWELL: It would protect both the  
17 customers and the companies. The companies would have  
18 the authorization that they can change and the  
19 customers would know that they are making the change  
20 because they have been walked through the verification  
21 requirements or they have signed it.

22 COMMISSIONER DEASON: Can you contrast that, you  
23 just described the situation of the customer  
24 initiating the call requesting a change in service.  
25 What about when the call is initiated by the company

1 or a sales agent of the company to the customer?

2 MS. CALDWELL: The other ways can be through  
3 either a telemarketing or some kind of -- well, let me  
4 walk through the other four ways, I think that might  
5 help.

6 If you have a telemarketer, and the telemarketer  
7 solicits customers, and they get someone, the  
8 telemarketer can take the order, but then the other  
9 ways -- it still has to be verified, so that they may  
10 say you are going to get a call from a third party  
11 verifier, and they may hang up. They may also say --

12 COMMISSIONER GARCIA: Or they may record  
13 themselves.

14 MS. CALDWELL: They could as long as it's  
15 recorded.

16 COMMISSIONER GARCIA: Right.

17 COMMISSION STAFF: The telemarketer may --

18 COMMISSIONER DEASON: Let me interrupt you for  
19 just a second. If they record that -- this is someone  
20 that is soliciting the business and they record that,  
21 then there is the need for a third party verification  
22 and recording of that, as well?

23 COMMISSIONER GARCIA: No. Let me go through it.  
24 There is -- if you don't mind, Commissioner.

25 COMMISSIONER DEASON: That's fine.

1           COMMISSIONER GARCIA: There is four ways, and I  
2           may not go in the order that Diane has. There is the  
3           recording, which is becoming more and more an industry  
4           standard, that is I am an IXC, and I call a client,  
5           and I say do you want to change your service, the  
6           person says yes, and --

7           COMMISSIONER CLARK: Joe. Let me interrupt you  
8           just -- you are only describing when it is the  
9           provider who initiates the call, is that right?

10          COMMISSIONER GARCIA: Either way. If you want me  
11          to go in another way, I will.

12          COMMISSIONER CLARK: Well, I think it's important  
13          to make -- I think there are different rules that  
14          ought to apply when I call MCI and tell them I want it  
15          changed, I want it changed right away. But where they  
16          initiate the call, I think a different standard should  
17          apply, and that's why I think it's important to  
18          distinguish the two.

19          COMMISSIONER DEASON: And that's what I was  
20          trying to do, get the contrast between those two  
21          different scenarios.

22          COMMISSIONER GARCIA: But I don't think we did  
23          create a difference standard. I think we hold them  
24          both to the same standard.

25          COMMISSIONER CLARK: Well, then that's a

1 discussion we have to have. And if that's not  
2 correct, if we don't have different standards for when  
3 the customer initiates the call and the provider  
4 initiates the call, I would like to know that.

5 MS. CALDWELL: I would say that there is not a  
6 different standard, that we require either the signed  
7 LOA or a recording.

8 COMMISSIONER GARCIA: Commissioners, I would say  
9 to you that while I understand the hope of having a  
10 different standard, I think that we have to realize  
11 that a lot of these companies are national competitors  
12 and the more complex we make our rules the more  
13 difficult it is for them to enter our market and exit  
14 our market. I think that the rules that have been  
15 initiated by staff or created by staff, what they do  
16 is they protect the company and the consumer on the  
17 same level. In other words, if I call AT&T and I wish  
18 AT&T's service, the four options are still available  
19 to AT&T.

20 COMMISSIONER CLARK: Right. But let me point out  
21 that the protection you're offering to the companies  
22 they didn't ask for. At least as I read their  
23 comments, they said when it's an inbound call from a  
24 customer that it should not have to be recorded or  
25 verified in any way. And, frankly, I think that has

1 some appeal, because I know when I call to get mine  
2 changed, I want it done and I want it done right away.

3 COMMISSIONER JACOBS: Can I ask a question?

4 COMMISSIONER GARCIA: And it can be done right  
5 away, it just has to be recorded.

6 COMMISSIONER CLARK: But I don't know that that  
7 is an expense that it's worth it, frankly. But if the  
8 customer initiated it, and I want to make that  
9 distinction.

10 COMMISSIONER GARCIA: Commissioner, but if you  
11 don't mind, just to finish this discussion with  
12 Commissioner Clark. But the truth is the company has  
13 to do it anyway for all other business, and most of  
14 the business is created through them reaching out to  
15 customers, not in the inverse.

16 Now, if you have an aversion to being recorded,  
17 then all you have to do is send it in in writing. If  
18 you want it done right away, it can be done right  
19 away, you simply have to be recorded.

20 COMMISSIONER CLARK: Well, let me ask staff a  
21 question. How many of our slamming complaints are the  
22 result of inbound calls from customers requesting a  
23 change?

24 MR. DURBIN: Commissioner, at this point there  
25 are very few of those calls. The rule that we have

1 proposed is intended to preempt what we expect could  
2 be a problem. The rule as it exists, or as we have  
3 proposed would not prevent a company from making a  
4 change to a customer who has made an inbound call the  
5 same day. What would have to happen is the customer  
6 calls and says I want to be changed, the company would  
7 then have --

8 COMMISSIONER CLARK: I appreciate --

9 MR. DURBIN: -- the third party verifier make the  
10 call to the customer and verify it, and the change can  
11 be made that day. The thing that we were concerned  
12 about is the -- since we are closing so many doors for  
13 the slammers, that there was the possibility of an  
14 unscrupulous company having somebody make numerous  
15 calls to an IXC saying I'm Joe Smith, I want my number  
16 switched to you.

17 COMMISSIONER CLARK: I appreciate that, Mr.  
18 Durbin, but I think the issue here is that we ought to  
19 address the problems that have been caused by our  
20 rules being written the way they are, and I don't see  
21 an in bound call from a customer being a problem. And  
22 if you look at it from the customer standpoint, it  
23 holds up them getting their service changed to either  
24 record it or say could we have somebody call you back  
25 before we change it. It ought to be up to the



1 customer to say I have called, I want it changed, I  
2 want it changed now.

3 COMMISSIONER GARCIA: Commissioner, the problem  
4 is that we have had cases like this, and I think Mr.  
5 Durbin will probably be able to cite to the example.

6 COMMISSIONER CLARK: Well, he indicated very few.

7 COMMISSIONER GARCIA: Well, very few in terms of  
8 the individual people coming to us in this hearing,  
9 but I remember, and we have done cases here at this  
10 Commission where marketers have simply gone down a  
11 phone book and they have picked a number and called up  
12 the LEC and changed it. And what is not required here  
13 is -- you do realize we took off one of the checks,  
14 which was the ANI. The ANI, is that what it's called?

15 COMMISSIONER CLARK: I do realize that.

16 COMMISSIONER GARCIA: If we had the ANI, I  
17 wouldn't have a problem with your rule. But that's an  
18 additional burden. But I could call from my office  
19 and say --

20 COMMISSIONER CLARK: Well, I would point out I  
21 want to be able to call from -- say, another call and  
22 say I want it changed on my home line. And I think we  
23 need to look at it from the customer standpoint. I  
24 mean, how many times have we gotten complaints about  
25 the menus you get on -- and all I want -- menus that

1           you get when you call anyplace, I guess including the  
2           Commission to some extent. But when people call and  
3           they know they want a long distance carrier changed,  
4           it ought to be user friendly to them. I'm just making  
5           a distinction when it is a customer initiated call.

6           COMMISSIONER DEASON: Well, let me say I agree --

7           COMMISSIONER JACOBS: Can I ask a question for  
8           clarification real quick?

9           CHAIRMAN JOHNSON: On the same issue?

10          COMMISSIONER JACOBS: Yes, on this issue. And  
11          maybe staff can help me out with this. I'm hearing  
12          the discussion referring to when a customer initiates a  
13          call to an IXC, that these criteria apply. What  
14          happens -- and I think I see it, but just to make  
15          sure. What happens when that customer initiates the  
16          call directly to the LEC?

17          MR. TUDOR: Then he can have his service changed  
18          -- and I think that goes to Commissioner Johnson's  
19          question about if he wanted it done that day, without  
20          a recording, he could call his LEC and do that.

21          COMMISSIONER CLARK: Well, is that what we are  
22          going to tell the IXCs? When I call MCI they can say,  
23          well, if you want it done today you can call Sprint  
24          and get it changed? How many of us like that when we  
25          are told, you know, we are calling up the carrier we

1 want and they're saying, well, if you really want it  
2 done today, call this other number?

3 MR. TUDOR: I think the number of people that  
4 would hesitate to have their order recorded would be  
5 minimal. I don't think many people are really, you  
6 know, really distraught over that. And the recording  
7 verifies that the rule has been followed, that all the  
8 information has been provided, and that's why the  
9 choices are really two; you either write it down on a  
10 piece of paper, on a document that has the  
11 information, or you show, you verify that you have  
12 provided all the information to the customer by  
13 recording the call.

14 COMMISSIONER GARCIA: Let me -- because you just  
15 brought up a point that I either failed to realize it  
16 or I didn't see it. I can change my service without  
17 recording by simply calling the LEC and that goes  
18 around the rule? I don't think that's the case,  
19 because if that is the case we are simply going to  
20 create another avenue for slamming.

21 COMMISSIONER CLARK: But I would point out,  
22 again, it's the customer, and if somebody is calling  
23 and misrepresenting them, I think all those questions  
24 you ask and even recording may not prevent that.

25 COMMISSIONER GARCIA: It will protect the company

1 certainly, and --

2 COMMISSIONER CLARK: And I would point out they  
3 didn't ask for that protection. They indicated it was  
4 an expense to them.

5 COMMISSIONER JACOBS: My reading of the rule,  
6 Page 22, Lines 9 --

7 COMMISSIONER GARCIA: Wait, could I get my  
8 question answered, because I didn't get an answer?

9 COMMISSIONER JACOBS: This is it, Joe. Page 22,  
10 Lines 9 through 11 is the language that I am looking  
11 at.

12 COMMISSIONER GARCIA: Page 22?

13 COMMISSIONER JACOBS: Yes.

14 MS. CALDWELL: It states a LEC shall accept a  
15 provider change request by telephone call or letter  
16 directly from its customer.

17 COMMISSIONER JACOBS: What does that mean?

18 COMMISSIONER GARCIA: That means exactly what  
19 staff just said.

20 MR. TUDOR: What the customer would not  
21 necessarily be able to accomplish by calling his LEC  
22 is getting on the rate plan that he desires. If he  
23 calls his LEC directly and has his service changed  
24 from one IXC to another, the LEC can accomplish that,  
25 but if he wants to be on the special ten cent a minute

1 or whatever rate, he will need to contact his  
2 interexchange company to make himself a customer in  
3 their records.

4 COMMISSIONER CLARK: Let me ask you this. This  
5 is the scenario, I call MCI and tell them I want to  
6 change, and they say, well, if you want it done today,  
7 call Sprint and you can get it done. And I call  
8 Sprint, and then I call back MCI and make sure I'm on  
9 the right plan? How many phone calls is that?

10 COMMISSIONER GARCIA: Three.

11 MR. TUDOR: Well, the preferred way to do it  
12 would be to call the IXC, because you do need to  
13 arrange for the rate plan that you want on. You need  
14 to become their customer. They don't know who you  
15 are. If the local exchange company changes your  
16 service from one carrier to another, when that call  
17 shows up, what they have done is mechanically changed  
18 it so when you dial 1+, that's who the call goes to.

19 When you arrive at the IXC, to them you look no  
20 different than someone who dialed 10XXX. They don't  
21 know who you are. They have never heard of you. And  
22 you have to establish an account with that long  
23 distance company. That's why generally it would be  
24 preferable to call the IXC, make one phone call and  
25 say I would like to change to your service. They

1 would say here is all the information we need to tell  
2 you, and what rate plan would you like. And it's all  
3 done with that one phone call.

4 COMMISSIONER CLARK: I don't disagree that they  
5 should have the option of recording it. I guess I  
6 take issue with the notion of us putting it as a  
7 requirement when, first of all, we have not had -- you  
8 have said they have been few, and, you know, some  
9 people just don't like to be recorded. And, frankly,  
10 when I make the call, I don't see the necessity of  
11 having it recorded.

12 MR. TUDOR: Again, the recording verifies for any  
13 later complaint that the information was provided. If  
14 it is not recorded --

15 COMMISSIONER CLARK: It protects the company and  
16 they haven't asked for it.

17 MR. TUDOR: Well, we will be in a quandary when  
18 the complaint comes in. The customer will say I was  
19 not told this, or that, or the other, and the company  
20 will say yes, they were, and we will just have a he  
21 said, he said kind of a situation without the  
22 recording.

23 CHAIRMAN JOHNSON: Who has the burden? Who has  
24 the burden of proof? Who carries the burden?

25 MS. CALDWELL: I would say at this point the

1 company would.

2 CHAIRMAN JOHNSON: So if the company carries the  
3 burden and they have chose note to record, then they  
4 are going to lose in every instance. And the customer  
5 is protected, but the company left itself wide open,  
6 but it was at the company's own discretion.

7 MR. TUDOR: Commissioners, one other thing that I  
8 should point out concerning customer initiated calls  
9 to IXCs, we have had complaints in which customers  
10 said that they contacted an IXC to request information  
11 about their rates, and as a result of the call  
12 inquiring about the rates where they give the company  
13 their name, address, and telephone number, and they  
14 have been switched based upon a call just requesting  
15 information. So we do believe that this is not unduly  
16 burdensome to the customer.

17 COMMISSIONER GARCIA: Let me just say,  
18 Commissioner Clark, and hopefully this will ease some  
19 of the burden, and if it doesn't, it doesn't. And I  
20 understand that you want to create a different  
21 standard, and you're right, it should be that the  
22 customer has that option. However, let me just say  
23 that most of these companies and most of this  
24 businesses is generated by marketing departments of  
25 one sort or another. In other words, most of the

1 interest in switching is generated by the company  
2 reaching out to people. At least in my case when I  
3 get about ten calls a night.

4 But what is true is that our rule is going to  
5 require them in some way or form to record that,  
6 either their third party verifier or they themselves  
7 have to record it. Therefore, the expense has already  
8 been made by the company. So the savings on the other  
9 side where you are saying, well, if I call in, if I  
10 see the AT&T ad and I call in and I want to switch to  
11 AT&T, I shouldn't have to be recorded if I don't want  
12 to be recorded. That's understandable. But AT&T is  
13 already going to have to get either their third party  
14 verifier or a recording system to do this. So the  
15 additional expense is not that great. And --

16 COMMISSIONER CLARK: If we put these rules in  
17 effect.

18 COMMISSIONER GARCIA: Oh, okay. Well, I thought  
19 that you didn't have a problem with these rules that  
20 we have in terms of if the company is calling you,  
21 that I thought you agreed with the four methods.

22 COMMISSIONER CLARK: What I'm saying is there  
23 needs to be different standards for the two.

24 COMMISSIONER GARCIA: I understand that.

25 COMMISSIONER CLARK: And the reason I'm concerned



1 is not -- I want to be clear about this. It is very  
2 important that with these rules we strike the  
3 appropriate balance between protecting the competitors  
4 -- customers, and not stifling competition. That's  
5 what I'm really concerned about, because I know there  
6 are a number -- I've heard from a number of people who  
7 have said don't stop those checks that come to me and  
8 I can change my carrier. And we need to be careful  
9 about protecting the customers but also making it easy  
10 for them to change when they want to change, and that  
11 was my concern.

12 COMMISSIONER GARCIA: And I wasn't disagreeing  
13 with you, Commissioner. What I was trying to specify  
14 is that if we do adopt these rules for when the -- and  
15 I will make the distinction -- for a company initiated  
16 call, then the company is either going to have a third  
17 party verifier or they are going to have a recording  
18 system themselves. So the additional expense to the  
19 caller who calls in the company has already had.

20 COMMISSIONER CLARK: Well, I thought I read in  
21 the comments that that was not the case. That they  
22 felt there should be a distinction when it was an  
23 inbound call because of the expense related to it.

24 COMMISSION STAFF: Commissioner Clark, you are  
25 correct. AT&T, and I believe subject to check it was

1 MCI have procedures in place where they do not record  
2 inbound calls, and I believe again subject to check  
3 they do not record third party verification, although  
4 they use third party verification. I believe the  
5 reason for that is in the present FCC rules, and,  
6 again, I would like to make this subject to  
7 verification, the third party verification is not  
8 required to be recorded. In the FCC rules, when an  
9 incoming call is made, one of the ways, one of the  
10 four ways that they may verify and make the switch is  
11 to record that call and -- to audio record that call  
12 and to capture the ANI, which we took out of our rule.  
13 But another --

14 COMMISSIONER CLARK: That is in the current FCC  
15 rules?

16 COMMISSION STAFF: I believe it is. But another  
17 way that would get to what you are trying to  
18 accomplish is if they did not do that, then I believe  
19 they could do a third party verification which does  
20 not require under the FCC rules audio recording. Our  
21 third party verification option requires audio  
22 recording and our -- as does our inbound calls. And  
23 those were some of the different expenses. Some of  
24 the companies already have their procedures in place  
25 and believe that this part of the rule that would

1           require them to record the third party verification  
2           would add some expense.

3           COMMISSIONER DEASON: Let me get some  
4           clarification on that. I want to make absolutely  
5           sure, and this is what staff has represented to me  
6           that the verification procedures are the same  
7           regardless of whether it is a company initiated call  
8           and is an outgoing call, or whether it is a customer  
9           initiated call, an incoming call, is that correct?

10          COMMISSION STAFF: Under our rules now?

11          COMMISSIONER DEASON: As they are proposed, as  
12          staff is recommending.

13          MS. CALDWELL: That is correct, yes.

14          COMMISSIONER DEASON: Okay. Now, when there is a  
15          customer initiated call coming into the IXC inquiring  
16          about a change of service, the IXC has the option of  
17          just recording that transaction, if the customer  
18          agrees the transfer can be made immediately. Or a  
19          third party verification can be used, and when third  
20          party verification is used that has to be recorded  
21          also under our rules.

22          MS. CALDWELL: That is correct.

23          COMMISSIONER DEASON: Okay. Now, and third party  
24          verification is only required if the IXC chooses not  
25          to record that incoming call itself?

1 MS. CALDWELL: That would be correct.

2 COMMISSIONER DEASON: There is not the need to  
3 both record the incoming call and record a third party  
4 verifier.

5 MS. CALDWELL: That is correct.

6 COMMISSIONER DEASON: Okay. And that is the same  
7 whether it's incoming or outgoing?

8 MS. CALDWELL: That is correct.

9 CHAIRMAN JOHNSON: Commissioner Jacobs.

10 COMMISSIONER JACOBS: And to kind of follow up on  
11 that question, they can also mail them out the  
12 informational package which would have the signed LOA,  
13 and they could expedite that, of course, couldn't  
14 they?

15 MS. CALDWELL: That is also correct, yes.

16 COMMISSIONER JACOBS: If the -- no, the question  
17 I had was this, and this is an interesting point, the  
18 contrast between the FCC rules and ours. And, of  
19 course, the major factors that we add the requirement  
20 for the recording, and it's a legitimate question, I  
21 think, for a company as to whether or not that is a  
22 reasonable, rational, i.e., arbitrary requirement.  
23 Could you give me some thought, or some of your  
24 rationale as to why that is a reasonable extra  
25 precaution to take in the promulgation of this rule?

1 MS. CALDWELL: We believe that the verification  
2 requirements that we have recommended here or proposed  
3 -- or recommended here protect both the customer and  
4 the company. That if the verification procedures as  
5 prescribed by the rule are followed, then the company  
6 is absolved from any slamming. Therefore, to us we  
7 feel that it is in their best interest to have these  
8 requests verified or recorded so that they have  
9 evidence. It also protects the customer because they  
10 can say that's not my voice or that's not my signature  
11 and it helps protect them.

12 COMMISSIONER JACOBS: And if I recall this goes  
13 to some testimony where IXCs came in and explained  
14 that in many instances they accepted what they thought  
15 was a valid LOA or a verbal authorization and it turns  
16 out that it was not valid because the person who gave  
17 it was not the proper person to give it, or they did  
18 not -- there was some miscommunication, they did not  
19 call back the right number. A host of circumstances  
20 where the IXCs came in and explained that they went  
21 through proper procedures, thought they had a valid  
22 authorization, but, in fact, they did not. Is that  
23 correct? There was testimony --

24 MS. CALDWELL: Right, there was testimony to  
25 that effect, yes.

1           COMMISSIONER CLARK: Let me follow up on a  
2 question Commissioner Deason asked. I take it what  
3 this has boiled down to now is the recording protects  
4 the company.

5           MR. TUDOR: And the customer. The information  
6 that has to be provided -- as an example, let's say I  
7 have two lines and I only want to have one of them  
8 changed. I call up and say I want just my first line  
9 changed to the new carrier. They change both of them.  
10 Yes, the customer would be able to say if there was a  
11 recording or an LOA that listed each of the phone  
12 numbers, you know, he could be sure himself as well as  
13 he could argue for a rebate or rerating if he could  
14 have some evidence that he had only requested the one  
15 line to be changed.

16           COMMISSIONER CLARK: Well, I think Commissioner  
17 Johnson asked the question who has the burden of proof  
18 that this customer wasn't slammed, and it's the IXC,  
19 is that correct?

20           COMMISSION STAFF: Yes.

21           COMMISSIONER CLARK: So if the customer says, no,  
22 I didn't do it, and they don't have anything to back  
23 them up to say, you know, we got the requisite  
24 information, then the customer will have been slammed.  
25 If the company is concerned about not being able to

1 show that they gave all the information, they can turn  
2 it over to the -- they have a means of protecting  
3 themselves through the third party verification which  
4 is recorded.

5 MS. CALDWELL: Right.

6 COMMISSIONER CLARK: And if they would -- for  
7 marketing reasons and for reasons of competition that  
8 they are willing to take the risk when the customer  
9 calls and change it immediately and not record it, why  
10 shouldn't they be able to do that, if it doesn't  
11 protect the customer?

12 MS. CALDWELL: I think in some instances -- I  
13 mean, it would protect the customer.

14 COMMISSIONER CLARK: In what way?

15 MS. CALDWELL: Well, I understand with your  
16 burden of proof --

17 COMMISSIONER CLARK: But you agree with me what  
18 the burden of proof is.

19 MS. CALDWELL: I agree with you, yes.

20 COMMISSIONER GARCIA: We're certain that that is  
21 the burden of proof, so the burden of proof is on the  
22 company to prove that they have to pay, and that's how  
23 we handle it. We're certain of that. I'm not sure,  
24 so I want to make sure.

25 MR. DURBIN: I think it would be wise to put that

1 in the rule and say if on a customer initiated call  
2 one option for the company is to record it and then  
3 there should be limited questions afterwards. If the  
4 company chooses not to record it, I think probably we  
5 should put a statement in that they are doing that at  
6 their risk and any protest of any change --

7 COMMISSIONER CLARK: I'm trying to look at it  
8 from the customer's standpoint. If somebody calls up  
9 and says, you know, I want to change it and I don't  
10 want it recorded. I just want to answer your  
11 questions, get it changed right away, and I'm  
12 concerned that what we are putting in here will stifle  
13 that kind of robust competition.

14 And, you know, maybe I've made this too personal.  
15 It is so frustrating to me to call up to try and get  
16 something changed and either have to make another call  
17 or have to wait until they start recording it. And I  
18 think we need to just be careful that what we were  
19 requiring accomplishes something that needs to be done  
20 to protect the consumers.

21 COMMISSIONER GARCIA: Well, I don't have a  
22 problem. If that's what you want, staff's wording is,  
23 I think, perfect. I wouldn't have a problem as long  
24 as the customer is protected. I'm certainly not doing  
25 it to protect the company. Protecting the company is



1 an added benefit. But if you think that there is a  
2 group of customers out there who do not wish to be  
3 recorded and want it changed right away, I don't have  
4 a problem with that wording being added, and that the  
5 burden is on the company and it's the company's risk.

6 Because I think the vast majority, as certain  
7 companies have told me, they have said point blank  
8 this proceeding is unnecessary, the number of slamming  
9 complaints that occur are infinitesimal when you  
10 consider the huge market. This is unnecessary. Yet  
11 when you travel through the state and meet all the  
12 citizens and see the good work that our Consumer  
13 Affairs people are doing and our communications staff,  
14 you realize there is a problem out there. That being  
15 the case, if the company wants to take a risk, I don't  
16 have a problem with it as long as the customer doesn't  
17 have to take the risk with the company.

18 COMMISSIONER CLARK: And I don't think they are  
19 taking the risk, because it will always be the burden  
20 of the company to prove that they legitimately  
21 switched that customer, and if they don't have the  
22 wherewithal to prove it then they have slammed the  
23 customer.

24 COMMISSIONER DEASON: Let me ask a question about  
25 third party verification. Why is it necessary to

1 record that?

2 MS. CALDWELL: My understanding -- it's staff's  
3 belief that the testimony was fairly compelling that  
4 there was, again, problems with the third party  
5 verifying, that the customer really wasn't sure what  
6 plan they were getting on. That it would just, again,  
7 go back to this protection of the customer, and I  
8 think Commissioner Clark's argument that it goes back  
9 to protection of the company that they, in fact, got  
10 the verification.

11 MR. DURBIN: Commissioner Deason, in reviewing  
12 many of the third party verification tapes that we  
13 have received in Consumer Affairs, we find that much  
14 of the verification script language is written so as  
15 to prevent the customer from truly understanding that,  
16 one, that their long distance carrier is being  
17 switched and, two, which company they are being  
18 switched to. Many of the AT&T resellers, for example,  
19 make it sound as if the customer has only approved a  
20 discount savings plan of some sort on the AT&T  
21 network.

22 COMMISSIONER JACOBS: Who generally writes that  
23 script?

24 MR. DURBIN: The script is written by the  
25 reseller, by the reseller itself.

1 COMMISSIONER JACOBS: Oh, the IXC.

2 MR. DURBIN: The IXC, yes.

3 COMMISSIONER JACOBS: What was used in -- the  
4 third party verifier generally is the one that writes  
5 the script, is that correct?

6 MR. DURBIN: That's correct. The script is given  
7 to the third party verifier by the IXC.

8 CHAIRMAN JOHNSON: Mr. Durbin, I'm still not  
9 understanding. Explain the concern, again, as to why  
10 it needs to be recorded?

11 MR. DURBIN: The customers -- we have received a  
12 lot of tapes. If the IXC --

13 CHAIRMAN JOHNSON: So these things were being  
14 recorded?

15 MR. DURBIN: Excuse me?

16 CHAIRMAN JOHNSON: You received actual taped  
17 recordings?

18 MR. DURBIN: Yes. We have boxes and boxes of  
19 third party verification tapes. Where we have filed a  
20 slamming complaint the company has sent us a recording  
21 that says, hey, here is our tape. We verified it with  
22 this customer, and here is the tape of the  
23 conversation, the third party verification. In most  
24 cases the company does not ask the customer did you,  
25 in fact, approve a change of your long distance

1 carrier from Company A to Company B. Do you  
2 understand that your new carrier will be, for  
3 instance, this reseller.

4 The wording is very often couched in -- and  
5 another thing is they are not determining whether the  
6 person that they are speaking to is the customer of  
7 record. They will call, for instance, a business and  
8 say are you in charge of long distance, or are you in  
9 charge of telephone bills. Well, it may be the little  
10 secretary that pays the bills, so she says sure. They  
11 say, you know, you are eligible for a discount on the  
12 -- for a certain discount savings plan on the AT&T  
13 network, for instance. The customer is already an  
14 AT&T customer, she thinks she is talking to AT&T  
15 getting some savings plan with AT&T.

16 CHAIRMAN JOHNSON: So you're using the tape, so  
17 it's not -- so the tape is helpful to staff to help  
18 staff determine whether or not the proper procedures  
19 have been followed?

20 MR. DURBIN: Exactly. Whether it was fully  
21 disclosed to the customer that they are, in fact,  
22 changing long distance carriers or whether --

23 CHAIRMAN JOHNSON: But for the tape what would  
24 you do? If you didn't have the tape, if the third  
25 party verifier said we don't tape our discussions, and

1 a customer still stated that he or she had been  
2 slammed. What would you do?

3 MR. DURBIN: This is a pretty common problem,  
4 because right now third party verification is not  
5 required to be taped, we have a number of companies  
6 that say we have got third party verification, we have  
7 got this, this, and this information. But since we do  
8 not have the tape, we don't know under what  
9 circumstances what questions were asked of the  
10 customer to get that information.

11 CHAIRMAN JOHNSON: So what do you do?

12 MR. DURBIN: Typically, we take the customer's  
13 word for it that they did not authorize a long  
14 distance carrier change.

15 CHAIRMAN JOHNSON: So the burden is on the  
16 company?

17 MR. DURBIN: The burden is on the company to  
18 demonstrate that they --

19 CHAIRMAN JOHNSON: So this mechanism -- I'm  
20 sorry, go ahead, Mr. Durbin.

21 MR. DURBIN: The burden that is on the company to  
22 prove that they complied with the rule, and if they  
23 don't provide us that tape, we are going to -- we are  
24 going to take the customer's word, and say no, the  
25 company did not provide us proof.

1           CHAIRMAN JOHNSON: So what's wrong with that  
2 process? Because, again, it seems as if we are trying  
3 to put a methodology or some procedures in place that  
4 will help protect the company, because when they don't  
5 have the tape, we take the customer's allegations as  
6 true, and the burden is on the company to demonstrate  
7 otherwise. But it's kind of the company's choice in  
8 an open market. If they don't want -- and they, I  
9 guess, and help me out with this, over time if they  
10 decide it's worth the risk, we don't want to pay X  
11 amount of dollars to put this system in place, so when  
12 there is a complaint against us we know the Commission  
13 put the burden on us, we can't meet it, I mean, why  
14 shouldn't the company have that, the discretion to  
15 determine whether or not they record or not?

16           MR. DURBIN: The argument has been made by  
17 several, several companies that if they comply with  
18 the rule as it's written, that any PIC change should  
19 be considered approved and authorized, a legitimate  
20 PIC change. So as it is right now if the company does  
21 not record and we get 100 complaints against them, and  
22 every one of them was a third party verification for  
23 which they don't have a recording, in Consumer Affairs  
24 we say, yes, we believe that this is a rule violation.  
25 We do a show cause, the companies are going to come to

1 us and say, hey, we complied with the rule as it's  
2 written, we believe that this is a legitimate change,  
3 so you are going to hear that argument in show cause  
4 proceedings.

5 CHAIRMAN JOHNSON: But in each instance we have  
6 determined in the customer's favor because they  
7 haven't had any proof other than them saying they did  
8 one thing and the customer saying they did something  
9 else?

10 MR. DURBIN: Yes. The company has complied with  
11 our rules, with our rules, but -- or so they say, but  
12 they don't have any proof that they did. On the other  
13 hand, we don't have any proof that they didn't.

14 COMMISSIONER CLARK: I have a question. Who has  
15 objected to the recording of the third party  
16 verification, has anyone? When they do the third  
17 party verification, we are requiring that be recorded.  
18 Has there been an objection generally to that?

19 MS. CALDWELL: To third party verification or  
20 recording?

21 COMMISSIONER CLARK: Recording the third party  
22 verification.

23 MS. CALDWELL: Yes, there have -- I mean, there  
24 has been objection to the recording. I don't think  
25 anybody --

1           COMMISSIONER CLARK: I didn't know -- of the  
2           third party verification, I did not read that in here.

3           COMMISSION STAFF: Has there been objection to  
4           actually conducting --

5           COMMISSIONER CLARK: The requirement that if you  
6           choose to use third party verification it should be  
7           recorded.

8           COMMISSION STAFF: -- or audio recording it?

9           COMMISSIONER CLARK: Recording it. Has there  
10          been an objection to recording it?

11          COMMISSION STAFF: In the responses to the data  
12          requests to gather the costs, yes, those companies I  
13          mentioned, AT&T and MCI, I believe who presently use  
14          third party verification but they do not audio record  
15          it, they -- I guess you would call it an objection.  
16          They certainly raised the cost issues that it would be  
17          burdensome to them to change the process that they  
18          have set up now, and that they realize that our rule  
19          would require them to do that, which would be some  
20          added expense.

21          CHAIRMAN JOHNSON: That's what I understood, too.

22          COMMISSION STAFF: Whether they are formal  
23          comments that Diana has included --

24          CHAIRMAN JOHNSON: Because the FCC does not  
25          require the recording of the third party verifier, and



1 I think that's what some of the national companies  
2 were objecting to.

3 MS. CALDWELL: The FCC standard does not require  
4 recording of third party verifiers.

5 COMMISSION STAFF: Commissioners, I would also  
6 like to clarify something about the burden of proof  
7 and that statement. When we show cause companies, the  
8 burden is on us, the Commission, that it's clear and  
9 convincing evidence that the company violated our  
10 rules.

11 COMMISSIONER GARCIA: That's exactly the opposite  
12 of where we put it. I mean, the customer --

13 COMMISSIONER CLARK: It's a he said she said  
14 thing, and given that circumstance, you know, I'm  
15 inclined to believe the customer. I mean, unless they  
16 come up with some corroborating evidence to say that  
17 they did that, you know, it still seems to me it's  
18 their -- I agree with you, we have the burden to show  
19 that they did the slamming, but we meet that burden by  
20 having the customer say we didn't do it, and they say,  
21 well, yes, we did, so it's just the argument that he  
22 said she said.

23 COMMISSIONER GARCIA: You said third party  
24 unrecorded verifier who says that Dick Durbin told me  
25 to change his service, and so, Dick Durbin, I've got

1 two proofs, what do you have, customer?

2 COMMISSIONER CLARK: You're arguing a -- I was  
3 really just talking about the inbound customer call.  
4 I have not yet discussed the third party verification,  
5 whether or not --

6 COMMISSIONER GARCIA: Let's talk about the  
7 incoming, so we can say -- I want to feel as  
8 comfortable --

9 COMMISSIONER CLARK: Let me just point out that  
10 by recording the third party verification, by  
11 requiring that, then the company has a choice here.  
12 You know, if they choose not to, they can accept the  
13 risk, or they can decide it's worth it to use the  
14 third party verification and, you know, the debate  
15 then comes should we require the recording.

16 MR. TUDOR: Commissioners, we may be at a point  
17 where we are trying to go to a new level of  
18 enforcement in terms of fines and refunds to customers  
19 and those sorts of things, and to the extent we go to  
20 a higher level of enforcement, there may be, you know,  
21 greater objections raised when it's just a he said she  
22 said situation.

23 COMMISSIONER CLARK: Yes. And greater incentive  
24 for them to protect themselves.

25 MR. TUDOR: It may be, yes.

1           COMMISSIONER GARCIA: And greater ability to hide  
2 behind the fact that there is no proof either way  
3 except he said she said. But when this Commission  
4 levies a \$6 million fine against -- a show cause order  
5 against a company, I would like our staff to be able  
6 to have some recordings where it shows the company  
7 acting incorrectly or the company has simply violated  
8 our rules. They could have protected themselves, they  
9 didn't; but, nonetheless, I think it shows us an  
10 understanding of what is happening out there, it gives  
11 our people the ability to figure out what is going on  
12 out there and to protect the customers.

13           CHAIRMAN JOHNSON: Any other questions on this  
14 point?

15           COMMISSIONER JACOBS: The concern I have is that  
16 when we waded into this whole arena, it wasn't with a  
17 focus on how well the companies could negotiate our  
18 regulations. It was because consumers were being  
19 confused about how they were getting long distance  
20 services and the effort here is to minimize that  
21 confusion.

22           I think that there is a balancing that is  
23 required here, but I think the balancing should favor  
24 the minimization of confusion for consumers to  
25 understand what long distance service they have. If

1 the companies can -- I have seen, I thought I looked  
2 for least costly alternative proposals from companies.  
3 I went through specifically to look at that. And all  
4 that I saw were that we don't record these calls now,  
5 and that's an acceptable alternative.

6 The concern I have is we have seen complaints  
7 from consumers growing astronomically in the last two  
8 years as a result of existing practices. And if that  
9 is our goal, I do not see how we are balancing it in  
10 favor of the consumers by continuing existing  
11 practices. I think some effort is necessary to change  
12 this equation to favor consumers. It will be the  
13 consumer who is going to come and ask for their money  
14 back pursuant to our rule that for the time that they  
15 were slammed who is going to run up against the  
16 opposition of saying we got a valid LOA from you or we  
17 got a third party verification from you. Now prove  
18 that we didn't. And the consumer is here wanted his  
19 money back.

20 That is the circumstance we are going to see most  
21 often under this rule. And I think it favors -- the  
22 balance should favor the consumer in that encounter.  
23 This consumer says I didn't do it, I want my money  
24 back. The company says you did do it, I have a third  
25 party verification. We have to find a way to make

1           that encounter favor the consumer. If there is  
2           something other than doing it by calling -- I mean, by  
3           recording the calls, we should be open to that. But I  
4           didn't see anything from the companies that spoke to  
5           that point. All I heard was that we don't do it now,  
6           the FCC says we shouldn't do it, it's an existing  
7           acceptable practice, and that's okay. That doesn't  
8           rhyme with what I'm seeing today.

9           COMMISSIONER DEASON: Well, is it your position,  
10          then, that requiring the recording of third party  
11          verification is a customer protection or a company  
12          protection or both?

13          COMMISSIONER JACOBS: I think I agree with staff,  
14          it's both. But my position is if it is already -- if  
15          what we're doing essentially by taking out the  
16          recording of -- third party verification, recording  
17          that I think is a good idea. I'm less wedded to that,  
18          but recording of the incoming calls I think is more  
19          the central part of my focus. And what I'm saying  
20          basically is that existing practices don't appear to  
21          be protecting consumers. At least they don't  
22          understand it as protecting them.

23          And then I hear the companies are recording their  
24          verifications and submitting them as support, in  
25          support of the complaints that have been received

1           against their service. In other words, they are  
2           saying we recorded something, customer, that you did,  
3           and now issues certain proof, and I don't know how  
4           many companies are doing that, I don't how often they  
5           do that, so I can't speak to how prevalent a practice  
6           that is. But it certainly says that companies  
7           understand that that is the viable option to take in  
8           dealing with this issue. It certainly says that.

9           CHAIRMAN JOHNSON: Mr. D'Haeseleer.

10           MR. D'HAESELEER: Commissioners, I'm kind of  
11           frustrated, and one of the reasons why we are here and  
12           why we want strong slamming rules is because of the  
13           Commissioners wanting us to take a strong action  
14           against slammers. And I have been frustrated in a  
15           couple of cases when I have been told we had a weak  
16           case because of lack of documentation and whatever, so  
17           we have had to do things that normally I wouldn't like  
18           to do. So that's the reason why some of these rules  
19           are the way they are, is so there is documentation so  
20           that when we have to take action that I have got a  
21           case that I can proceed.

22           COMMISSIONER CLARK: I agree with you, Walter,  
23           but I think you need to balance that against what it  
24           will do to competition. And my only issue here -- let  
25           me just be clear, I'm talking about recording inbound

1 customer calls. I have not yet gotten to the third  
2 party verification, and it seems to me Commissioner  
3 Deason has pointed out that if the company needs that  
4 kind of -- believes that kind of protection is  
5 appropriate, and the cost is worth it, they can do it.  
6 And I'm only singling out that inbound call. To me it  
7 is a whole different ballgame when you have a  
8 marketing initiated or provider initiated, and it's my  
9 understanding that the bulk of our slamming problems  
10 come from that type of issue and finding the  
11 sweepstake cards and stuff like that. So I don't  
12 think we want to address a problem that isn't there.

13 MR. D'HAESELEER: Well, I agree that the majority  
14 of the complaints are not the direct inward calling,  
15 nevertheless, this he said she said, you know, is  
16 driving us crazy, and it's not clear, at least in my  
17 opinion that the burden is always on the company. It  
18 always comes back as he said she said and you don't  
19 have a clear case, therefore.

20 COMMISSIONER CLARK: Well, I would also point out  
21 that, you know, these companies are in the business of  
22 providing service, they have to have customer  
23 satisfaction, and it's my understanding a lot of times  
24 that they will react if a customer doesn't want us, we  
25 don't want the customer. I do think that we need --

1 I'm just trying to strike that appropriate balance,  
2 and that's why I have brought up that particular  
3 issue. I would say it is not the only issue I have.

4 COMMISSIONER GARCIA: Well, Commissioner, I just  
5 think your -- my honest opinion is that I think you  
6 are giving the field. I think that I understand what  
7 is going on, and that I understand Walter's position,  
8 and I understand staff having looked at some of these  
9 things, and he said she said is fine when you've got  
10 all the time in the world, but when you've got 3,000,  
11 4,000-plus complaints that is only of the 40 percent  
12 of calls that even get to the switchboard because we  
13 can't even handle the number of complaints that are  
14 coming in, you realize the quandary that our staff  
15 finds itself.

16 And what this tries to do, first of all, if I  
17 know I'm being recorded while I'm making this pitch,  
18 I'm going to make a much fairer pitch, because you can  
19 record someone saying yes to pretty much anything  
20 depending on how you ask the question. But if we have  
21 a recording, we have something to look at so that we  
22 can figure out what happened in the call. You have a  
23 tendency of the company being much more careful in how  
24 it does business. We have got a standardized format  
25 for how that business is conducted.



1           This is a problem that is only getting worse, and  
2           one of the reasons it's getting worse is because  
3           people know we are doing something about it. But when  
4           you listen to -- your comments about companies want  
5           happy customers, I will tell you from the testimony at  
6           least I saw and how I perceived it, some of these  
7           companies could care less if their customers were  
8           happy. There were companies who would slam them week  
9           in and week out. They would take their service off  
10          and because they had written some tricky tariff at  
11          this Commission, they would slam them again. And a  
12          month after that they would slam them again. They  
13          didn't care. It's the money that they are going for.

14                 COMMISSIONER CLARK: I understand that,  
15           Commissioner Garcia, but I would only -- I am trying  
16           to make sure that we look at it from the customers'  
17           viewpoint, who calls up and knows they want it changed  
18           and doesn't want to be bothered with a lot of that,  
19           you know, are you going to have it recorded, well, if  
20           the company feels it needs to be recorded they can say  
21           they can going to turn you over to a third party  
22           verification. I think we have to also look at those  
23           customers who want it changed. That's all I'm saying.

24                 CHAIRMAN JOHNSON: I was leaning towards, I  
25           guess, originally maybe retreating from the position

1 of recording both incoming and third party  
2 verification, but there were a couple of points raised  
3 by Ms. Caldwell and Mr. Tudor and Mr. D'Haeseleer that  
4 does cause me some concern. And that is first going  
5 to the burden of proof issue, and because these will  
6 be enforcement/penalty type procedures, the burden  
7 will be on the Commission. So that kind of puts a  
8 different light on this.

9 Additionally, given the fact that our staff --  
10 they have been working very aggressively in bringing  
11 these kinds of matters to our attention, companies may  
12 become more aggressive not only in trying to --  
13 hopefully trying to prevent slamming from occurring,  
14 but when allegations are made because the penalties  
15 are so severe, they may be less likely to settle some  
16 of these cases. And if they did end up in a court, we  
17 would need to have the best record possible in order  
18 to defend those kind of actions.

19 That, in and of itself may necessitate -- but us  
20 having the burden of proof may necessitate us having a  
21 better record to rely upon when we move forward. So  
22 with that I just want to be clear that I am much more  
23 leaning towards requiring the verification for  
24 purposes of having a complete record to protect both  
25 the companies and the customers, and the Commission in

1 pursuing the action.

2 COMMISSIONER CLARK: One way to do that is to say  
3 if it is an inbound call, you know, you don't have to  
4 -- there is no requirement that you record it. You  
5 can record it if they choose to, but a third party  
6 verification has to be recorded.

7 COMMISSIONER GARCIA: But doesn't the burden  
8 shift, and I think Julia just -- Chairman Johnson just  
9 hit the nail on the head. The burden does shift,  
10 doesn't it, Walter? I mean, when it's we are taking  
11 care of the customer's problem, that problem is  
12 usually taken care of, because some of these companies  
13 do want to solve this problem and get this off the  
14 books. But when Walter turns around and is handling  
15 100 or 200 slamming complaints, the burden is no  
16 longer on the company. The burden is on us, if I'm  
17 not mistaken, to prove up that case. And then he said  
18 she said loses its strength for this Commission to  
19 proceed in an enforcement.

20 COMMISSIONER DEASON: May I ask a question?  
21 Thanks. What about the burden of proof? If you have  
22 a customer that files a complaint with this Commission  
23 and says that I was slammed, I was not asked these  
24 questions, I was misinformed, I never authorized it, I  
25 do not want this company as my carrier. And you have

1 a company that says, well, we have no recording, but  
2 this customer wanted the change and we third party  
3 verified that. What do we do? The fact that there is  
4 a customer that's saying it, is that enough evidence  
5 for this Commission to so-called carry its burden in a  
6 show cause proceeding or not?

7 MR. TUDOR: You know, on virtually all of our  
8 complaints about slamming and cramming both, what  
9 happens is most of the time the customer complains,  
10 the company says we don't have the time to fool with  
11 researching it, we will probably never even know the  
12 answer ourselves. We probably can't even figure it  
13 out. You know, let's just change them.

14 And so for the time period that they were a  
15 customer of the slamming company, the customer, you  
16 know, may be offered a rerate to the lower rate,  
17 sometimes that doesn't even happen. They just say  
18 let's just get it back where it was. And the evidence  
19 is never gone into because it's such an extensive  
20 research effort to try to find out the answer to why  
21 it happened, and you may never find out.

22 But, you know, at best about what happens usually  
23 is they just get back to where they were, back to the  
24 carrier they wanted. And there is never really any  
25 effort to try to figure out who made the wrong

1 statement or made a bad decision in the process. We  
2 just don't, you know, have the time on each of these  
3 slamming complaints to research them back that far.  
4 And a lot of times you really can't figure it out.  
5 All you know is there is a tape that came from the IXC  
6 to the LEC and the LEC made the change maybe, but you  
7 may have a hard time finding out how on Earth that  
8 ever got put on the IXC's tape in the first place.

9 COMMISSIONER DEASON: Well, I guess I'm having a  
10 little bit of difficulty, you know, staff is adamant  
11 that we should record third party verification, but  
12 some companies have been doing that anyway and there  
13 seem to be just as many complaints against those  
14 companies that were doing that. And so, I guess I'm  
15 at a loss as to what is to be accomplished by our  
16 absolutely requiring there is to be recording of third  
17 party verification. Is the idea that if they are  
18 required to record it then they are going to be more  
19 up-front with the customer and make sure the customer  
20 fully understands before they make the change?

21 MR. TUDOR: That certainly is part of it.

22 COMMISSIONER DEASON: That's the hope.

23 MR. TUDOR: Yes.

24 COMMISSIONER DEASON: But apparently Consumer  
25 Affairs has indicated that they have got a box full of

1 tapes that are third party verification that are the  
2 subject of complaints that there was not the full  
3 disclosure and a full understanding by the customer of  
4 what was being transacted.

5 MR. TUDOR: And if these rules are in place then  
6 what will happen is -- and I know we haven't touched  
7 on this yet, but if that happens under these rules,  
8 then the company is going to be subject to up to 90  
9 days or one billing cycle of free service, not just  
10 rerating the call. I know we haven't talked about  
11 that and decided it yet, but that is a penalty that  
12 could occur. So they have more to lose in the future.

13 COMMISSIONER DEASON: Yes. And isn't that going  
14 to result in less of what you said has happened where  
15 companies just say, well, let's just switch the  
16 customer back, they don't want us as their customer.  
17 We thought they wanted us, they don't, let's just  
18 switch it back, get everything -- now they may not be  
19 inclined to do that because they are not going to want  
20 to pay 90 days of free service and say we are going to  
21 fight this one.

22 MR. TUDOR: Right. But now we will have  
23 something to look at when the fight occurs. And we  
24 will have something to judge from.

25 COMMISSIONER CLARK: Commissioners, I would point

1 out that what I tried to do when I looked at these  
2 rules, and I think we should look at cumulatively what  
3 will they accomplish, and not one single piece should  
4 be looked at individually as accomplishing what we  
5 want. And when I raised the issue about the  
6 recording, I just thought the costs involved according  
7 to some of the participants didn't result in the kind  
8 of benefit that we would be looking for. And we are,  
9 after all, under an obligation to look at least cost  
10 alternatives to accomplish it. And it just seems to  
11 me when you marry up the other changes that we will  
12 get what we need without adding this expense.

13 CHAIRMAN JOHNSON: Any other comments,  
14 Commissioners?

15 MR. D'HAESELEER: Commissioners, it all comes  
16 down to what kind of message do you want to send out  
17 there. And I thought we were really here to come up  
18 with the strongest rules we could because we wanted  
19 this practice of slamming stopped. And not only that,  
20 but when we had our enforcement procedures that we  
21 could identify that the person was slammed and that we  
22 could take some action that would hold up when we went  
23 to DOAH or wherever to, you know, prevail.

24 CHAIRMAN JOHNSON: We're going to take a ten  
25 minute break.

1 (Brief recess).

2 CHAIRMAN JOHNSON: We are going to go back on the  
3 record. Commissioners, we were still discussing the  
4 recording of incoming calls and/or the recording of  
5 the third party verification calls. Are we prepared  
6 to go forward and continue our discussions or allow  
7 staff to go forward with presenting the item? Any  
8 other questions on the recording points?

9 Staff, if you could, then.

10 MS. CALDWELL: I think we were on the four ways  
11 in which a customer's preferred carrier could be  
12 changed. We had the incoming calls being recorded and  
13 we have a signed and completed LOA. The third party  
14 verification must be by an independent unaffiliated  
15 entity, and that must be recorded, or a written  
16 informational package with a positive signed postcard  
17 so that the customer would have to sign the postcard  
18 and send it back to the company, and the company could  
19 not make the change until they received that postcard.  
20 So if the customer never returned that postcard, then  
21 they could not effectuate the change.

22 The rules also -- staff recommended that the  
23 inducements -- there are still no inducements, but we  
24 did change it so that checks were allowed, and we  
25 followed the proposed FCC language that had only the



1 language necessary for negotiable instrument and only  
2 the language necessary for an LOA on those checks,  
3 which was, as I said, consistent with the FCC proposed  
4 rules. We require the customer service numbers --

5 CHAIRMAN JOHNSON: Could you explain -- could you  
6 go back and explain what we are requiring here. How  
7 is that different from what companies can do now?

8 MS. CALDWELL: As far as -- I mean, we currently  
9 allow checks, and in the proposed rules we did not  
10 allow checks whatsoever. There was no inducements,  
11 combined inducements, so we went back and said, well,  
12 we still don't combined inducements such as  
13 sweepstakes, but this would allow, we believe the  
14 language would allow instances where frequent flier  
15 miles, if they send you an envelope and it has  
16 frequent flier miles in it, and then the LOA is  
17 required to be a separate and distinct letter of  
18 authorization. You could send in -- the LOA would be  
19 specific for the purpose of changing your provider in  
20 that package, but it has to be a separate LOA, it  
21 cannot be severable where you tear it off, you tear  
22 off the LOA on one side and you have the -- it has to  
23 be a totally separate document. And it is a single  
24 purpose letter of agency. There cannot be by signing  
25 this LOA you win a car. It would only be by signing

1 this you are changing your provider.

2 CHAIRMAN JOHNSON: Okay. Thank you.

3 MS. CALDWELL: The customer service numbers have  
4 a standard where they must be answered by a live  
5 operator or you can combine the live operator with a  
6 recording, or have all recording. If you do have a  
7 recording, companies must respond to the customer's  
8 complaint or customer inquiries within the next  
9 business day. And if the customer isn't there, they  
10 have to keep trying to contact the customer. And,  
11 finally, this applies to both IXCs as well as ALECs.

12 COMMISSIONER DEASON: Let me ask you a question  
13 on your very last comment there. There is a  
14 requirement that there has to be a response and answer  
15 within 60 seconds. That's the rule, right?

16 MS. CALDWELL: That's correct.

17 COMMISSIONER DEASON: Now, what about a company  
18 that has some type of a menu that they respond and say  
19 if you want X, press one; if you want Y, press two.  
20 Is the 60 second met once they indicate that there is  
21 a menu or does the 60 seconds continue to run until  
22 they get to the person to which they wish to speak?  
23 How is the 60 seconds measured?

24 MR. TUDOR: Commissioner, it's measured as after  
25 the last digit is dialed by the customer.

1 MS. CALDWELL: But the question is --

2 COMMISSIONER DEASON: What if you dial another  
3 digit to get connected to a particular section of the  
4 company as opposed -- most companies now have some  
5 type of an automated system which directs calls, and  
6 my question is how do you measure the 60 seconds in  
7 that type of a scenario.

8 MR. TUDOR: It's after the company's toll free  
9 customer service number is dialed, after the last  
10 digit of that number is dialed, 60 seconds. The menu,  
11 the numbers you punch in the menu are not part of that  
12 customer service number. That's the way the rule is  
13 written.

14 COMMISSIONER DEASON: And what about the  
15 requirement to -- there is a requirement on the  
16 company to return calls, to call back and speak with  
17 the customer, and they have to do that at least daily  
18 until they actually contact the customer, is that  
19 correct?

20 MS. CALDWELL: I think that the language would  
21 allow if they have called back and not reached the  
22 customer, and made attempts for subsequent days, that  
23 if they wrote a letter that would also be a contact to  
24 say we have been trying to contact you, you have not  
25 responded. We have logged in the complaint. They

1 write them by letter. So it does not preclude them  
2 from writing them a letter.

3 COMMISSIONER DEASON: So if they try to contact  
4 the customer once a day for the following three days  
5 and can't make contact, they can abide by the rule by  
6 writing a letter to them?

7 MS. CALDWELL: That is correct.

8 CHAIRMAN JOHNSON: I didn't know that. Where is  
9 that stated?

10 MS. CALDWELL: That was one of the changes that  
11 staff recommended. It's on Page 29, Lines -- really,  
12 1 through 4. It says, "If a recorder is used, the  
13 company shall attempt to contact each complainant no  
14 later than the next business day following the date of  
15 recording, and each subsequent day until the customer  
16 is reached." And we believe that, you know, calling  
17 someone week in and week out may not work, but we do  
18 want them to attempt to contact the customer and not  
19 make one single phone call on the next business day.

20 CHAIRMAN JOHNSON: The part about they can do the  
21 letter.

22 MS. CALDWELL: Well, a contact could be a letter.

23 CHAIRMAN JOHNSON: Okay. Very good. That's a  
24 good clarification. I wasn't aware of that. You can  
25 continue.

1 MS. CALDWELL: That's essentially it.

2 CHAIRMAN JOHNSON: Well, I had one question back  
3 in one of the initial things that you stated, and that  
4 was putting the certificate numbers on the bill.

5 MS. CALDWELL: That's correct.

6 CHAIRMAN JOHNSON: Could you go through that, and  
7 why we think that's necessary, and what are we trying  
8 to cure there?

9 MS. CALDWELL: It's staff's position that the  
10 certificate number is a useful tool for the customer,  
11 that it will do several things by requiring it on the  
12 bill. It will inform the customer that the company is  
13 a certificated company in the State of Florida. Staff  
14 does not believe that having these extra numbers is  
15 going to confuse the customer, that they will become  
16 accustomed -- that they are accustomed to companies  
17 being licensed or having license numbers. Daycares,  
18 roofers, they are all required to display their  
19 license number, and I don't think that is confusing to  
20 the customer.

21 Staff also believes that by requiring the  
22 certificate number being placed on the bill, that the  
23 billing agent will then know for certain that they are  
24 billing for a certificated company.

25 CHAIRMAN JOHNSON: And has that been a big

1           problem within this issue? I know it has been a  
2           problem generally, but --

3           MS. CALDWELL: Well, it has been a problem to the  
4           extent that there are times when companies have not  
5           been certificated, or mostly that customers cannot get  
6           in contact with the companies. They may contact the  
7           Commission and the Commission doesn't know who they  
8           are, as well, and we have no way of contacting them  
9           either. So if we have their certificate number, then  
10          we can go ahead and get the information and contact  
11          them on behalf of the customer.

12          COMMISSIONER CLARK: But we are already -- the  
13          new rule would require them to use their certificated  
14          name.

15          MS. CALDWELL: Right.

16          COMMISSIONER CLARK: And with respect to telling  
17          the billing agent their certificated number, it seems  
18          to me we took that issue up in another rule on whether  
19          or not they had to send that to the -- let me state it  
20          differently. I thought that issue was already taken  
21          care of in another rule as far as the billing agent is  
22          concerned, and what they need to know.

23          MS. CALDWELL: Right. You're talking about the  
24          rule that requires the billing agent is only allowed  
25          to bill for certificated companies.

1 COMMISSIONER CLARK: Right.

2 MS. CALDWELL: I understand.

3 COMMISSIONER CLARK: I mean, so these rules  
4 aren't designed to protect them. It seems to me that  
5 the real question is is this necessary information  
6 that benefits the customers.

7 MS. CALDWELL: It may be redundant information if  
8 you use a certificated name.

9 COMMISSIONER CLARK: And I understood the new  
10 rules to require you use the certificated name.

11 MS. CALDWELL: That is correct.

12 CHAIRMAN JOHNSON: Okay. Could you go over the  
13 other benefits. Let's assume that there is some  
14 redundancy as to using the certificate so that they  
15 can identify the company. What are some of the other  
16 benefits of including the certificate, the  
17 certificated -- the number.

18 MS. CALDWELL: Well, again, it goes back to staff  
19 being able to -- one, making sure that the billing  
20 agent has the certificated number, and by putting it  
21 on the bill then when staff is contacted, or mostly if  
22 staff is contacted, that a customer can't get ahold of  
23 the company, or that they feel like they have been  
24 slammed, or have a complaint, then staff can use that  
25 certificated number to contact the company. They also

1 have the certificated name.

2 MR. TUDOR: Commissioner, one big assistance that  
3 that would be for is in Consumer Affairs is when a  
4 customer calls us about his long distance bill, it  
5 would help us identify the company. So often  
6 companies will use a d/b/a. For instance, a couple of  
7 days ago I got a call from a customer complaining  
8 about his billing from Phoenix Network. Well, Phoenix  
9 Network is a d/b/a for Office Depot. Had we had the  
10 certificate number there, and I looked in my book and  
11 didn't find Phoenix Network, I could ask the customer  
12 what is that certificate number, and then I could just  
13 go to the master Commission directory, and immediately  
14 identify who that company is by the certificate  
15 number. It will just allow us to help more customers  
16 there by being able to go directly to the appropriate  
17 company.

18 CHAIRMAN JOHNSON: Was this one of the items that  
19 the companies talked about that there was an added  
20 cost for the companies providing the certificate  
21 number?

22 COMMISSION STAFF: Yes. This was an item that  
23 was consistent among all companies believed that it  
24 would be costly. There weren't -- a lot of companies  
25 didn't provide the actual numbers because they had



1           trouble quantifying how much it would be. The  
2           concerns were that for large companies like BellSouth,  
3           they can certainly do this, they are used to placing  
4           this kind of information on the bill. We often tell  
5           them what to put on the bill. For smaller companies,  
6           they use often a billing and collection company. Most  
7           IXCs, for example, bill their services on a national  
8           basis and they would contract with somebody. They  
9           were concerned that it would drive up the cost of  
10          those billing and collection contracts because the  
11          billing and collection provider would say, well, now  
12          we have got to do something special for you, because  
13          it's a Florida bill being rendered to a Florida  
14          customer, we will have to add that certificate number.  
15          We will also have to keep track of it, update it, and  
16          keep the list.

17                 CHAIRMAN JOHNSON: Any response to that?

18                 COMMISSION STAFF: Yes. Well, this was proposed  
19                 by the FCCA as a lower cost alternative. What they  
20                 proposed was just to delete this requirement  
21                 altogether, the certificate number. In my analysis of  
22                 that I relied on the testimony of staff witness Allen  
23                 Taylor, who said that it would help ensure that  
24                 underlying carriers don't provide their services to  
25                 uncertificated companies. Having the certificate

1 number on the bill would be helpful there. Also,  
2 resellers appear to account for a disproportionate  
3 number of slams, those are the one who are often  
4 uncertified, and, therefore, having a certificate  
5 number on the bill would seem to better accomplish  
6 what we are seeking to do with the rule than totally  
7 deleting the requirement.

8 I think if you are trying to go to a lower cost  
9 objective, you need to come up with something that  
10 would still help us obtain the certificate number even  
11 if we don't have to put it on the bill. Like could  
12 the billing and collection companies or the billing  
13 companies keep the list on the side, you know, and  
14 give it to us instantly. Well, there are costs there,  
15 but it may not be as great as actually putting it on  
16 the bill.

17 COMMISSIONER GARCIA: In theory, you could, in  
18 essence, add this to the full name of the company.  
19 Your company's name could be Joe Garcia  
20 Telecommunications 12345, or whatever the number of  
21 our certificate would be. And I remember this being  
22 specifically important also for precisely in those  
23 companies whose mode of operation is -- it has several  
24 layers, and it's not only that you were slammed by one  
25 guy, that your service is being provided by another,

1 but you are also being billed by someone, and each of  
2 them denies relationship to the other except that they  
3 are doing part of the job.

4 COMMISSIONER CLARK: Well, but I thought that  
5 issue was accomplished by requiring them to put their  
6 certificated name on the bill.

7 MS. CALDWELL: That would be correct, that their  
8 certificated name is what appears on the certificate,  
9 and so there still is -- staff still believes there is  
10 a little bit of problem that we need access to the  
11 certificated number, as well, and that would help ease  
12 the confusion. But if the billing agent had that list  
13 that we could get to --

14 COMMISSIONER CLARK: Yes, and I think that goes  
15 to the issue of the least cost alternative. They have  
16 indicated that what we are proposing is an expensive  
17 way of trying to accomplish something that can be  
18 accomplished in another way. And in terms of the  
19 testimony on it, it was really to help the billing  
20 agent. And, you know, we had that argument and came  
21 up with our rules on what had to be submitted and what  
22 had to be verified in terms of the billing agent.

23 CHAIRMAN JOHNSON: Any other questions on that  
24 point or other points?

25 COMMISSIONER DEASON: Well, is it clear that our

1 current rules require that the billing agent use the  
2 name as it appears on the certificate and not a d/b/a?

3 COMMISSION STAFF: It allows either the  
4 certificated name or the d/b/a, which as long as that  
5 d/b/a is part of their certificated name, which is  
6 pretty much the practice. I mean, they can't use the  
7 d/b/a unless it's on file here in the master  
8 Commission directory.

9 COMMISSIONER DEASON: And within our own  
10 Commission records the d/b/a is part of our record,  
11 and we can associate that with the specific  
12 certificate number.

13 MS. CALDWELL: That's correct. That's my  
14 understanding.

15 COMMISSIONER GARCIA: And so you're telling --  
16 let's make sure of this. You are telling us, then,  
17 that this is -- we don't need this? Allen, why don't  
18 you come -- can Allen --

19 COMMISSIONER DEASON: No, Allen can't speak.

20 COMMISSIONER GARCIA: Allen can't speak.

21 MS. CALDWELL: We believe that the certificated  
22 number is necessary at least at the billing agent --  
23 in the billing agent's possession. But, our rules  
24 require that the certificated name, if they are going  
25 to use a d/b/a, that has to be part of their

1           certificated name so that it will not be confusing to  
2           the Commission that they are using d/b/a -- part of  
3           their certificated name would be the d/b/a.

4           COMMISSION STAFF: That is correct. The d/b/a is  
5           part of the certificated name, so it would be Joe  
6           Garcia, d/b/a JG Telephone Service is the certificated  
7           name.

8           COMMISSIONER GARCIA: In that case, if I were to  
9           call you -- in that case, Dick, if I were to call you,  
10          there would be no problem because you would be able to  
11          find Joe Garcia or JG. So you don't need the  
12          certificate number? I'm getting the feeling that what  
13          we are asking for here is superfluous. I thought it  
14          added to the efficiency of your ability to --

15          MR. DURBIN: We could still go to the master  
16          Commission directory and punch in the d/b/a name and  
17          find the company, yes.

18          COMMISSIONER GARCIA: But when you get the  
19          certificate number, it's just much quicker for you?

20          MR. DURBIN: Yes, just a whole lot easier.

21          COMMISSION STAFF: And I think once the consumer  
22          is educated, as well, they are going to associate that  
23          certificate number as a license to do business in  
24          Florida.

25          CHAIRMAN JOHNSON: Any other questions on the

1 certificate number? Other questions, Commissioners?

2 COMMISSIONER DEASON: On any section?

3 CHAIRMAN JOHNSON: Yes. I think staff said they  
4 were --

5 MS. CALDWELL: Yes. I mean, we are pretty much  
6 finished.

7 CHAIRMAN JOHNSON: We may want to start with the  
8 issues that she raised in her review and then go on to  
9 others.

10 COMMISSIONER CLARK: I have some questions. Let  
11 me start with some minor ones, and maybe get them out  
12 of the way. Look on Page 51, Lines 10 through 12.  
13 That one sentence, what is that? Does that have  
14 application to A, B, C, and D, or just D? The  
15 language is the soliciting company shall submit the  
16 change request to the LP only if it has first received  
17 a postcard signed by the customer.

18 MR. TUDOR: D is about the informational package  
19 that --

20 COMMISSIONER CLARK: Right.

21 MR. TUDOR: -- can be sent to a customer, and  
22 those lines you're talking about relate to the  
23 postcard that is a part of the informational package.  
24 To answer your question, it's part of D. The  
25 soliciting company shall not submit that change

1 request to the LEC until they have physical possession  
2 of that signed postcard.

3 COMMISSIONER CLARK: All right. Then you need to  
4 make that a 7, I think, or somehow identify it so it  
5 only relates to D and not A, B, and C.

6 MR. TUDOR: Yes. D, and the list of items below  
7 are things that are included in the package, and so  
8 Item 4 at the top of Page 24 is the postcard, the  
9 unsigned postcard. So that's a list of the things  
10 that go out to the customer, so I don't think you  
11 would make it a 7.

12 COMMISSIONER CLARK: Okay.

13 MR. TUDOR: You could make it an E maybe, or  
14 something --

15 MS. CALDWELL: The reason that we put it like  
16 that is because you are really still in Subsection D,  
17 but it didn't make sense to put it, you know, you  
18 shall include the following, so --

19 COMMISSIONER CLARK: I agree. Let me suggest a  
20 change. That you should make the first paragraph of  
21 D, D(1), or D -- yes, D(1), and then have those  
22 subparagraphs, and that be the second paragraph. The  
23 way you have it here, it's not clear that it is  
24 limited to D, and it implies that all of them have to  
25 have the postcard. And I don't think we are intending

1 to do that.

2 MS. CALDWELL: No.

3 COMMISSIONER DEASON: Well, none of the other, A,  
4 B, or C even contemplate a postcard, do they?

5 MS. CALDWELL: That's correct.

6 COMMISSIONER CLARK: That's what I thought, but  
7 the way it's out there, it needs to be clearly moved  
8 under that section, because when it's unnumbered like  
9 that it's not clear as to what it applies to. The  
10 same goes for on Page 25.

11 MS. CALDWELL: The signature above and below,  
12 that was the same situation where on the LOA we wanted  
13 that information on there. Again, it didn't seem to  
14 fit, and maybe we can do the same thing where you  
15 would put --

16 COMMISSIONER CLARK: You can do a renumbering.

17 MS. CALDWELL: 1, 2, and then 3 start with that.

18 COMMISSIONER DEASON: Commissioner Clark, are you  
19 going straight through the rules with your questions?

20 COMMISSIONER CLARK: No, those were just little  
21 -- to make sure that the changes were what I  
22 understood them to be. No, those were the easy ones.

23 COMMISSIONER DEASON: Because if you were going  
24 straight through, I had some things before. But I  
25 will certainly defer to your questions at this point.



1           COMMISSIONER CLARK: The only other question I  
2           had was with respect to the time period for customers  
3           to be reimbursed when they were inappropriately  
4           changed. And I have a copy of your memo to the  
5           Chairman on the fact that when -- I'm just wondering  
6           if we will be on safer ground if we follow what is  
7           done for consumer services that are ordered. And I  
8           understand it's a 30-day. Have I read this memo  
9           right? There is no magic in the 90 day. The 90 day  
10          was just what was applicable for rerating, right?

11          MS. CALDWELL: Right. And there is no magic to  
12          the 90 days, it was just --

13          COMMISSIONER CLARK: But Chapter 501 seems to  
14          contain some policy. While one would argue that it's  
15          not directly applicable to us, but the 30 days  
16          certainly is within what has been found reasonable by  
17          the legislature for other services. It was 30 days in  
18          here, wasn't it?

19          MS. CALDWELL: I am unfortunately struggling to  
20          find that memo and review it. There were several  
21          different provisions, and actually some of them were  
22          right of recision, some I think --

23          COMMISSIONER CLARK: Yes. In effect, the  
24          customer within 30 days -- if the goods are not  
25          delivered within 30 days, or the customer returns it

1           within 30 days there is no obligation for payment.

2           MS. CALDWELL: That's correct. I mean, there are  
3           also shorter time periods, because there is --  
4           essentially what most of these provisions in the  
5           Consumer Protection Act did was it stated that a  
6           contract had to be signed and consummated, and even  
7           after a contract was signed the customer had a three  
8           day right of rescision on that contract. And so any  
9           costs incurred by the customer if they ordered a  
10          product, the product had to be returned by the  
11          customer. If there was a service associated with,  
12          say, installation of that product, and the consumer  
13          within the statutory time period returned that  
14          product, the service, the cost of that service would  
15          not be -- could not be recouped from the customer  
16          during that rescision period. So, that is -- my  
17          understanding of the intent of the consumer protection  
18          laws were that there was a period of time the customer  
19          was put on notice that he had this rescision period,  
20          and would not incur costs during that period. But it  
21          was a shorter time than 90 days.

22          COMMISSIONER DEASON: But that rescision was  
23          basically consumer regret in that they have signed  
24          something, then they thought about it, and said, no, I  
25          really don't want this product or this service. And

1 then they have the opportunity to basically cancel.

2 COMMISSION STAFF: That's correct. And it's my  
3 understanding to say the intent of this was to  
4 actually allow since they were purchasing the product  
5 over the phone or something that they didn't see, they  
6 were being solicited, that they could actually -- they  
7 get the product in hand to examine and inspect it, and  
8 upon inspection it was really like if you go to the  
9 mall you can certainly look at the product. If you  
10 are buying it over the phone, you don't get to see the  
11 product, so this allowed them a chance to make sure  
12 that what they were buying was what they were getting.

13 COMMISSIONER CLARK: What is staff's response to  
14 the notion of 30 days or when you get your bill,  
15 whichever, when you are first notified of it?

16 COMMISSION STAFF: Staff really does not have a  
17 problem with a 30-day limitation.

18 COMMISSIONER CLARK: I guess I'm struggling with  
19 the idea that I do think the customer should get their  
20 money back, because they didn't ask for this provider  
21 and I think this more than anything is going to  
22 provide the incentive for people to be very careful  
23 about switching without having the appropriate  
24 information and making it very clear.

25 But I am concerned that, you know, is there

1 incentive there for you to look at it and say, well, I  
2 know I have 90 days, I can use this service and get it  
3 free. We need to strike the appropriate balance. I  
4 do think it should be longer if they don't get the  
5 bill, but the question in my mind is the 90 days the  
6 appropriate --

7 COMMISSIONER GARCIA: I would agree with you. I  
8 think we almost invite a customer to gain on the  
9 system. If they were unfortunate enough to be  
10 slammed, then they could say, well, it's time to talk  
11 to the family in Ireland, you know, and get that  
12 going. And I think that where it's sort of inviting  
13 them to gain the system, and I think your suggestion  
14 of either whichever, you know, the bill or whenever  
15 you get the first bill since you have been slammed,  
16 because clearly the other safeguards that we have  
17 added about making sure that when you get changed it's  
18 easily identifiable by the customer and other  
19 provisions, also adds to the customers' safety. I  
20 understand the other side of it that it could clearly  
21 -- it's an even more onerous thing for the company to  
22 think that they can lose three months worth of  
23 billing, but I think it may invite people to gain on  
24 the system.

25 CHAIRMAN JOHNSON: Could we have language to

1 address the issue that you suggested, because I  
2 remember when the conversations came up, I think we  
3 were either in Pensacola or Panama, and some people  
4 talked about quarterly billing. Does the language  
5 address that?

6 MS. CALDWELL: What we have is or the first bill.  
7 So if they bill quarterly, if they bill annually, it  
8 would be the first bill, so that's covered.

9 COMMISSIONER GARCIA: Right. And they would be  
10 out of luck. If they bill quarterly they are going to  
11 get a bigger hit.

12 COMMISSIONER CLARK: That's right. They have the  
13 ability to control that.

14 COMMISSIONER GARCIA: That's their choice.

15 COMMISSIONER CLARK: Commissioner Deason, that's  
16 my questions.

17 COMMISSIONER DEASON: Oh, that's all your  
18 questions?

19 COMMISSIONER CLARK: Yes.

20 COMMISSIONER DEASON: Okay.

21 CHAIRMAN JOHNSON: Let me follow up on that last  
22 question, though, on this changing it from 90 to  
23 perhaps 30 days or whatever the billing cycle might  
24 be, and the memo that you referenced, Commissioner  
25 Clark. There was some language in the bill that is

1 now sitting before the Governor, of course it's not  
2 law yet, but there was language under the billing  
3 practices section that I wanted clarification on the  
4 record at least as to staff's interpretation of what  
5 that language meant.

6 The language was in Section 364.604, and it  
7 states that a customer shall not be liable for any  
8 charges for telecommunications or information services  
9 that the customer did not order or that were not  
10 provided to the customer. I would ask staff to  
11 analyze that, because I remember -- and I cannot  
12 recall who asked this question. It was one of the  
13 consumer groups. It might have been Monte Belote, I  
14 don't remember. But when that language appeared the  
15 question was asked of me, to which I didn't have a  
16 response, but whether or not that meant that if you  
17 were slammed you got a service that you didn't order  
18 so you shouldn't be charged period. Could you respond  
19 to that, and how staff is interpreting this language,  
20 and whether or not this impacts our slamming rules at  
21 all?

22 MS. CALDWELL: We believe that .604, billing  
23 practices, is a very general statute, and it relates  
24 to billing practices. However, 364 603 and House Bill  
25 4785 is a specific statute dealing with slamming. And

1 we feel -- staff believes that our authority for  
2 slamming, the rules that we are proposing we believe  
3 is consistent with these rules under .603.

4 And, in addition to that, it provides for  
5 remedies to the customer. Provide remedies for  
6 violations of the rules, and allow for the imposition  
7 of other penalties available in Chapter 364. I think  
8 it gives the Commission the authority to provide  
9 whatever penalties, whatever remedies, be it a 30-day  
10 rule, a 90-day rule for free service, and I think that  
11 it is more specific to a slamming situation, whereas  
12 the billing practices language in .604 might be more  
13 general and go to our other billing.

14 CHAIRMAN JOHNSON: Let me ask the question in a  
15 different way just to make sure I understood what you  
16 said. Assume we adopt -- let's assume we adopt what  
17 staff proposed, 90 days, and a customer came in to us  
18 after 120 days and said I was slammed, and they rely  
19 upon this -- could they rely upon this provision to  
20 say I shouldn't be charged for the whole 120 days,  
21 because this provision says any service that I didn't  
22 order I'm not liable for? Could this provision even  
23 be used in that way to give them additional free  
24 service?

25 MS. CALDWELL: My answer to him would be that you

1 would get 90 days free service and you would be  
2 rerated for the additional, not 30 days that you got,  
3 that you claim, the additional month. And my  
4 authority for that would be that under .603, the  
5 Commission has adopted rules that provided for  
6 remedies for violations of the rules, and that we  
7 allowed -- and that was that they would get 90 days  
8 free service, and we were to rerate the additional  
9 calls, I mean, the calls after that.

10 CHAIRMAN JOHNSON: Okay. So our rule isn't  
11 inconsistent with this language?

12 MS. CALDWELL: We don't believe that it is.

13 COMMISSIONER CLARK: The issue would be what does  
14 order mean. If you, in fact, made the call it wasn't  
15 that particular provider you wanted, and I think what  
16 is that legal maxim, the specific overrules the  
17 general.

18 MS. CALDWELL: Right.

19 COMMISSIONER CLARK: I think that is the general,  
20 and the specific is that we provide the remedies and  
21 the rules when it's slamming. And that's your point.

22 CHAIRMAN JOHNSON: Thank you. I wanted that  
23 clarified, because I had been asked a similar  
24 question.

25 COMMISSIONER GARCIA: Before you start off on



1           yours, should we look at the ones that you had a  
2           question on, since we have already discussed them,  
3           because the way that this rule is laid out, it's in  
4           different places, and it might be easier if you had a  
5           question on this other issue of 30 versus 90 days,  
6           that we go ahead and vote out that change now, and  
7           then go addressing things as Commissioner Deason has  
8           some questions and we address his? Since we have  
9           already had this discussion, it may be easier than  
10          coming back to it in a little while. If you would --

11           COMMISSIONER CLARK: I think we should get the  
12          questions out and then --

13           COMMISSIONER GARCIA: That's fine. I just  
14          thought since we already had a pretty thorough  
15          discussion of it, if we are ready to vote that way we  
16          don't have to come back around to it.

17           COMMISSIONER CLARK: I see that as being a valid  
18          way to approach it, but I also see this as a  
19          cumulative rule, and while you might say, all right, I  
20          can live with that, but I can only live with that if  
21          this is in here.

22           COMMISSIONER GARCIA: Okay, that's fine.

23           CHAIRMAN JOHNSON: Commissioner Deason.

24           COMMISSIONER DEASON: Well, I had, I guess, a  
25          follow-up question or comment as it pertains to

1 Commissioner Clark's question concerning the 90 days  
2 of free service. It seemed to me that during the  
3 hearing process that one of the concerns expressed by  
4 some customers was that the party engaging in slamming  
5 was not being penalized, because if all they had to do  
6 was rerate at least they are getting the revenue that  
7 some other company would have gotten and they are  
8 basically stealing the revenue from the preferred  
9 carrier. But I understand that there is a provision  
10 in the FCC rules which address that. And I asked  
11 staff about that question, and it's my understanding  
12 that under the FCC rules that there would be an  
13 obligation to make the preferred carrier that had  
14 their authorized customer switched without their  
15 authorization, that the guilty party, so to speak,  
16 would have to make the company whole. Am I reading  
17 that proposed rule correctly?

18 MS. CALDWELL: Yes.

19 COMMISSIONER DEASON: That is just proposed at  
20 this point?

21 MS. CALDWELL: Right. And maybe I should clarify  
22 several things going on, to the best of my  
23 understanding of what is going on in the federal area.  
24 There has been a Senate Bill 1618, I think, that has  
25 been passed in the Senate, there are comparable bills

1 in the House, so they are dealing with slamming. We  
2 don't know if the House bill is going to be passed or  
3 not, so we -- I mean, some say yes, some say no that  
4 there would actually be legislation coming out of  
5 Congress. In addition to that, the FCC proposed some  
6 rules, and it was also my understanding that they  
7 would be coming out with final rules in June.  
8 However, with Congress doing something about slamming,  
9 as well, it's my understanding, again, that the FCC  
10 may wait until at least the close of Congress, or this  
11 term of it, that they would wait and see if the bill  
12 actually came out of Congress. So that the FCC rules  
13 are sort of on hold to my best understanding.

14 However, with that in mind, there are  
15 reimbursement procedures. One, the Telecommunications  
16 Act provides for the carrier, the slamming carrier to  
17 reimburse the preferred provider for charges collected  
18 by the subscriber. The FCC took that and went on in  
19 their proposed rules, Section 67.1170, reimbursement  
20 procedures, where they have a -- upon receiving  
21 notification from the subscriber that the subscriber's  
22 carrier selection was changed without authorization,  
23 within ten days the properly authorized carrier, the  
24 preferred carrier, within ten days had to request from  
25 the unauthorized carrier an amount equal to the

1 charges paid by the subscriber to the unauthorized  
2 carrier, and an amount equal to the value of any  
3 premiums which the subscriber would have been entitled  
4 to if the subscriber selection had not been changed.

5 And where a subscriber notifies the unauthorized  
6 carrier rather than the properly authorized carrier,  
7 the unauthorized subscriber's carrier has to within  
8 ten days notify the properly authorized carrier. And  
9 then they go back and they require remitting of the  
10 amounts that were collected. So that's the  
11 reimbursement procedure.

12 But the way we read it is there is really nothing  
13 -- they are required to restore premium programs,  
14 which would be -- I mean, we heard like Friends and  
15 Family, some people were not getting restored back to  
16 that program, and the FCC requires that. But there  
17 did not seem to be anything for the subscriber in the  
18 FCC rules, that the subscriber really did not, it did  
19 not seem to take care of the subscriber as I read it.  
20 Which we felt like our 90 day rule sort of put the  
21 subscriber back where they needed to be.

22 COMMISSIONER DEASON: Then I have a question  
23 concerning Page 22 of the rule, which is Page 49 of  
24 the recommendation, concerning the definition of the  
25 customer which is authorized to make a change in

1 service. Basically, for residential we have  
2 identified that as the customer or the customer's  
3 spouse, as I understand the language.

4 MS. CALDWELL: That's correct.

5 COMMISSIONER DEASON: My question is are there  
6 going to be situations where this -- this probably  
7 would be sufficient in 99 out of 100 cases, but what  
8 about the situation where there is a parent, elderly,  
9 and the child takes care of the billing and wants  
10 their parents to change to some other long distance  
11 carrier.

12 Technically, that child, even though they are  
13 competent and should have the authority under our  
14 rule, they could not do that for their elderly parent.  
15 It seems to me there are going to be some exceptions  
16 to the way we have got it worded, because we are  
17 fairly specific.

18 I guess the general question I have is why don't  
19 we just have the obligation on the carrier to ask the  
20 question to the customer, are you authorized to make  
21 this change, as opposed to are you the spouse of the  
22 person that is authorized to make the change. Are you  
23 authorized? And if they indicate that they are and  
24 then come to find out that they aren't, it looks to me  
25 like that is a problem between the customer and

1 perhaps their child who they didn't want them to do  
2 that and indicated they were authorized or whatever.

3 But it seems to me that if there is an obligation  
4 on the carrier to inquire as to whether the person is  
5 truly authorized and they get an affirmative that that  
6 probably should meet the requirements. And I will  
7 need some feedback from staff as to why that is not  
8 sufficient.

9 MS. CALDWELL: We struggled with this and  
10 recognize it to be a very slippery slope, and felt  
11 like we wanted to give some position on it and felt  
12 like, again, we were at least covering the 90, 95  
13 percent of the cases in the situation. I think we  
14 recognize that, again, it comes up to -- I think it  
15 would be common sense on the part, and I guess it was  
16 staff's position that they wanted to at least name  
17 some authorized party.

18 Whether or not the company would allow and how  
19 the Commission would view the company allowing, if the  
20 person called up and said, you know, I'm taking care  
21 of my mother's account now, or she is just getting  
22 older and we feel like it's necessary to, you know,  
23 watch over her things, and we would like to change the  
24 account for her. I think that in that situation,  
25 either the parent could put the child on the account,

1 the company could make itself satisfied that this  
2 person was authorized through contact with maybe the  
3 parent whose name is on the account, or just to feel  
4 satisfied that the story or the explanation from the  
5 caller might be sufficient.

6 COMMISSIONER GARCIA: I just think we may be  
7 getting ourselves into a domestic dispute situation.  
8 I mean, I think that as a general rule the companies,  
9 at least the credible ones, that is the question they  
10 ask, are you the authorized person to change the call.  
11 I mean, if a husband and wife, or people who are  
12 living together, or friends, or whatever live in the  
13 same household, that should be their decision. And  
14 clearly recording it is going to be borne out by the  
15 evidence that we have before us.

16 COMMISSIONER CLARK: Well, I think that is the  
17 Commissioner's point, we have limited it to the person  
18 or their spouse, and it should say "or other  
19 authorized person."

20 COMMISSIONER GARCIA: Right.

21 COMMISSIONER CLARK: And I think if you put that  
22 in the rule then it will be on the obligation of the  
23 company.

24 MS. CALDWELL: To make sure that they are  
25 authorized.

1           COMMISSIONER CLARK: Yes.

2           MS. CALDWELL: I mean, that might be a solution  
3           that the company and the customer can work some -- you  
4           know, say these are the people that are authorized on  
5           my account.

6           COMMISSIONER CLARK: Right.

7           MR. DURBIN: Commissioners, we have had a number  
8           of instances in Consumer Affairs in which the IXC will  
9           contact a household, and perhaps talk to a teen-age  
10          son in the home, and this child has told the IXC that,  
11          yes, he has authorization. What happens is that the  
12          IXCs do not typically ask the person that they are  
13          talking to if they have the authorization to change  
14          the long distance carrier on this account.

15          The wording that they use is typically are you  
16          authorized to make a decision about this account,  
17          rather than the specific language are you authorized  
18          to change the carrier. And this is the thing that we  
19          are very concerned about.

20          The initial tendency in writing this rule was  
21          that only the customer of record should be allowed to  
22          make the change. So we, of course, heard a lot of  
23          comments of say if I call to change my long distance  
24          carrier and the account is in my wife's name and they  
25          don't let me, boy, am I going to be upset.



1           COMMISSIONER DEASON: Well, it seems to me that  
2           there is an obligation on the company to make a  
3           bonafide request to get information from the customer  
4           to say are you authorized. And if they get a response  
5           that yes, they are, they shouldn't inquire, well, are  
6           you the spouse or are you this or that. You know, if  
7           they ask a question, ask it in terminology that the  
8           person can understand and they get an affirmative  
9           answer, it looks to me like they have met their  
10          obligation to meet that requirement.

11           Now, if that person is not truly authorized, if  
12          it is a situation of a teen-age son who the parent has  
13          said don't be changing my telephone service and they  
14          do it anyway, that's a domestic dispute that I don't  
15          think we need to get involved with. And I know these  
16          things are very delicate, but it just seems to me that  
17          we may be putting too much of a burden on the  
18          companies in asking intrusive questions. You know,  
19          are you the spouse, you know, and that is really none  
20          of their business. If they're authorized, they're  
21          authorized; if they're not, they're not.

22           MR. DURBIN: What we run into so often is they  
23          talk to little Jimmy Jones, but the bill comes to his  
24          father, Joe Jones. And Joe John says, hey, fine, if  
25          they want to change Jimmy Jones' telephone number,

1 send him the bill, you know. But I'm the one that's  
2 getting billed for it, and I should have control over  
3 my account.

4 COMMISSIONER DEASON: Well, you would think,  
5 though, that a reputable company could tell that they  
6 were probably talking to a minor, and would either  
7 just say I will call back later or whatever. But if  
8 they are talking to an adult and the adult indicates  
9 that they are authorized, it seems to me that it  
10 probably should be sufficient and they don't need to  
11 inquire of the marital status or anything else.

12 COMMISSIONER GARCIA: I would go further. You  
13 know, there are relationships that don't include a  
14 spouse and yet are relationships that exist, and I  
15 don't think we need to be involved in it. That's why  
16 I think the spouse is superfluous, just an authorized  
17 person. At least in reputable companies that is the  
18 standard. Are you authorized to make, you know, once  
19 you get this two or three times, well, then we know  
20 what we are looking at also from a Commission point of  
21 view.

22 MS. CALDWELL: Commissioner, staff was, you know,  
23 we recognize this as well, and we just attempted to  
24 draw a line. I think that if, you know, you feel  
25 comfortable that it's an authorized person and then

1 have the company -- staff has no -- we are not wed to  
2 this. We really were struggling with it, as well.

3 COMMISSIONER DEASON: Do you have any proposed  
4 language?

5 MS. CALDWELL: Or other -- well, I do believe  
6 that particularly like the business, you need to go  
7 back, but --

8 COMMISSIONER GARCIA: No, the business one I  
9 understand.

10 COMMISSIONER CLARK: I think if you say  
11 authorized for residential, you've covered it. Then  
12 the company can decide when they -- how to determine,  
13 in fact, they are authorized. They may require  
14 something in addition, or they may be willing to rely  
15 on that, and that is a risk they can take.

16 MR. DURBIN: If I could ask, Commissioners, if we  
17 remove this specific language and a customer gets  
18 changed based upon a telemarketing call to the home,  
19 and an unauthorized person in the home says, yes, go  
20 ahead and change it, I'm authorized. When we get this  
21 report back from the long distance company and they  
22 say, yes, we had authorization from Jimmy Jones. And  
23 Joe Jones says, well, they didn't have my  
24 authorization, I'm the customer here, I want my 30  
25 days free service because they didn't have my

1 authorization. I think that this is something that we  
2 are going to have to keep in mind, because we are  
3 going to run into these situations in which customers  
4 are going to say if the rule says that I get 30 or 90  
5 days, however it's voted out, who is going to make  
6 this determination as to whether the company has to  
7 provide this credit?

8 COMMISSIONER GARCIA: We are.

9 MR. DURBIN: Are we in Consumer Affairs going to  
10 make that determination?

11 COMMISSIONER GARCIA: At some point, or the  
12 person can keep appealing it, and they can bring it up  
13 here. I don't think that's made as a windfall  
14 provision, you know. I also don't want the father  
15 encouraging Jimmy to say yes every time someone calls  
16 to change the service. But I think somewhere along  
17 the line we have to do a cutoff.

18 MS. CALDWELL: Commissioner Deason, you asked for  
19 some suggested language, how about this, on Line 5,  
20 the customer or other person authorized to -- or other  
21 person authorized may change the residential service.  
22 The customer or other person authorized may change the  
23 residential service.

24 COMMISSIONER DEASON: And we require in the  
25 verification section of this rule that the company has

1 to inquire as to whether the person is authorized to  
2 make the change, that's standard procedure, is it not?

3 MR. TUDOR: I don't believe that question is  
4 required to be asked. On Page 24 is a list of things,  
5 and that is not a required question.

6 COMMISSIONER DEASON: It should have been. I'm  
7 looking at Page 24.

8 MR. TUDOR: Page 24, Line 13.

9 COMMISSIONER DEASON: The statement that the  
10 person requesting the changes is authorized to request  
11 the change.

12 MS. CALDWELL: Right. Under C, that was existing  
13 language, so that would --

14 COMMISSIONER DEASON: Then that remains.

15 MS. CALDWELL: Right. That is for the LOA, so  
16 what we need to make sure is that when they are making  
17 a phone -- when they are doing a telemarketing call --  
18 okay. So that would be a question that the company  
19 would have to ask in each instance.

20 MR. TUDOR: Would you like to add to the list,  
21 then, the name of the person calling if it is not the  
22 customer?

23 COMMISSIONER DEASON: It just seems to me that  
24 the company, if they are soliciting a change, that  
25 they have an obligation to ask the person to whom they

1 are speaking if they are authorized to make the  
2 change. And if they get an affirmative response, I  
3 think then that the company has met their obligation.  
4 Unless they realize that they are talking to a minor  
5 child. I mean, if it is -- you know, I think some  
6 common sense has got to apply in these rules, as well,  
7 when we start looking at specific complaints.

8 But you're saying that under the telemarketing  
9 section that there is not a requirement that there has  
10 to be an inquiry as to if the person is authorized?

11 MR. TUDOR: No, I'm sorry. This list under LOA  
12 is cross referenced in the telemarketing, so it's the  
13 same list.

14 COMMISSIONER DEASON: Okay. Well, then I don't  
15 have a problem with the suggested change. I just  
16 think that we need to be a little flexible when we  
17 start defining who is authorized, and I'm sure there  
18 are probably going to be some situations arise where  
19 it's going to be a little delicate, but we will deal  
20 with those when we have to.

21 MS. CALDWELL: I have sort of a question in that  
22 language. It's a question, do you think we ought to  
23 put the customer or other designated person and have  
24 -- I guess what we are saying is that the customer who  
25 is of record on the account is not going to say you

1 are designated to -- you know, is not going to create  
2 a list at the LEC. It's just going to be an internal  
3 household thing that when --

4 COMMISSIONER DEASON: I'm not looking for there  
5 to be any type of extra recordkeeping or any type of  
6 added requirements in that regard, it's simply a thing  
7 within the household as to who is authorized and who  
8 is not. And it's not the obligation of the company to  
9 inquire behind that other than if they get a positive  
10 response from the person to whom they are speaking  
11 that they are authorized, they should take that at  
12 face value and go ahead and accept that, and not  
13 inquire about other questions that perhaps our  
14 language would require them to do.

15 COMMISSIONER GARCIA: Richard did make a good  
16 point that should we ask the company to ask the name  
17 of the person, would that be helpful? I understand  
18 what you're saying, but it might be helpful to us as  
19 well as the company, as well as the customer to find  
20 out who this person is as part of, you know, are you  
21 authorized to make changes, what is your name, and  
22 then go ahead. I think that's what you asked, right?

23 MR. TUDOR: Yes.

24 COMMISSIONER GARCIA: Should the company ask the  
25 name of the person whom they are speaking to.

1 MR. TUDOR: Because all we ask for now is the  
2 customer's billing name, and it just might -- it might  
3 help resolve some complaints if the person calling  
4 said either I'm the customer, Richard Tudor, or I'm  
5 not the customer, but my name is and I want to change  
6 the account of Richard Tudor.

7 COMMISSIONER DEASON: Well, I would think that  
8 most marketers would want that information anyway, so  
9 I don't see where it would be burdensome.

10 COMMISSIONER GARCIA: I can understand that.  
11 Right. I don't, either. That's what I'm saying. You  
12 know, I don't think it would be burdensome. I don't  
13 know if we need to add it because they do it  
14 naturally, but it might be helpful to us if we added  
15 it so that our people can have a clue when -- so we  
16 know who it was that did it.

17 COMMISSIONER DEASON: What does staff feel about  
18 that?

19 MS. CALDWELL: I would be very comfortable with  
20 that. Because, again, we recognize that somebody --  
21 we needed to address this, but we needed to say who  
22 would be authorized or who could answer the call. The  
23 company should be able to ask that question, are you  
24 authorized. I think by having the name of the person  
25 speaking would clarify a lot of problems if they did



1           arise later to say, well, this is the person we talked  
2           to. I think it's just a common sense type of  
3           information that you would want to ask anyway.

4           We were not just -- again, when we put the spouse  
5           and the customer, it was with a lot of debate, because  
6           we recognized all the other situations that may arise  
7           that are certainly legitimate situations that we  
8           didn't want to preclude, but did not also want to  
9           leave it so open-ended. We wanted to address it. And  
10          I think this addresses our concerns, as well.

11          COMMISSIONER DEASON: Well, my desire is to have  
12          some flexibility involved here so hopefully some  
13          common sense can prevail, and it not be structured so  
14          it's very specific and either you are in that category  
15          or you are not, and I don't think that would apply in  
16          all situations where -- an example that comes to mind  
17          is one I gave earlier about an adult child that is  
18          taking care of the account for an elderly parent,  
19          those type situations.

20          MS. CALDWELL: And I think this meets those -- I  
21          think this takes care of a lot of -- I think this  
22          would take care of a lot of the authorization  
23          questions, and I think that it would clarify the  
24          change. I mean, it would clarify possible complaints  
25          later on. Well, you know, by asking the name, well,

1 this is the person, and I think that it would help all  
2 parties involved. It would help the company, it would  
3 help the customer, and I think it would give us some  
4 guidance, as well. And I think this is broad enough  
5 language and gives the company some direction without  
6 being too restrictive.

7 COMMISSIONER DEASON: Madam Chairman, that is all  
8 the questions I have.

9 CHAIRMAN JOHNSON: Okay. Any other questions,  
10 Commissioners?

11 COMMISSIONER CLARK: I'm ready to make a motion.

12 CHAIRMAN JOHNSON: Let me look over and make sure  
13 I don't have any other questions.

14 COMMISSIONER GARCIA: Let me just take this time  
15 to thank staff for meeting with me yesterday and some  
16 of the questions that I had we sort of worked through  
17 yesterday, and it was very helpful for my  
18 understanding of this massive document. And also to  
19 thank staff for the work they did on this. It was  
20 very thorough, it was well researched.

21 I think the consumers who participated in our  
22 hearings, we had a lot of very positive responses from  
23 them about what we did, and I think we met the  
24 challenge. And to some degree I appreciate Public  
25 Counsel and the Attorney General -- what would be the

1           proper word? Putting a little bit of fire under us to  
2           make sure that we moved forward.

3           I know that our staff had been work on this for  
4           quite awhile. In fact, since I arrived here we have  
5           been working on one form or another of trying to  
6           address a more comprehensive rule on slamming, and I  
7           believe that the work here with I'm certain a few  
8           modifications that will be made shortly I think is  
9           wonderful, and I think it will address the bulk of the  
10          problems that we are having in this area.

11          COMMISSIONER DEASON: While we are on that, I  
12          know we haven't even moved the rule yet, but while we  
13          are on that, I want to echo those comments. And I  
14          want to thank all the customers who took time to come  
15          to our hearings, because it was very enlightening and  
16          there were extremely positive suggestions, and there  
17          were customers who had researched the subject matter  
18          and had very specific problems and recommendations to  
19          address those problems. They were some of the most  
20          instructive and productive hearings that I have been  
21          in through my career here on the Commission.

22          COMMISSIONER GARCIA: You know what, I guess we  
23          also have to thank the Chairman for agreeing to do  
24          these meetings across the state, which I think worked  
25          out very positively.

1 CHAIRMAN JOHNSON: Susan, you have a motion?

2 COMMISSIONER CLARK: Yes, Madam Chairman. I'm  
3 not sure how to address this, because I know that  
4 there is at least one provision that may not be  
5 acceptable to everyone, but as I heard the discussion,  
6 the things that I would like to see changed in the  
7 rule are, first, that I don't think we should do an  
8 audio recording of the inbound call when it is  
9 customer initiated. I don't think we should require  
10 the certificate. I agree with Commissioner Deason  
11 that it should be other authorized person. I think  
12 the number of days for the payment should be 30 days  
13 or the next billing cycle.

14 CHAIRMAN JOHNSON: Slow down.

15 COMMISSIONER CLARK: I have written down the page  
16 numbers in the rules, and maybe we could go that way.  
17 I guess my first motion would be on Page 42, Line 24,  
18 we delete -- and 25, we delete the language "and its  
19 certificate number."

20 COMMISSIONER GARCIA: I'm sorry, you're on what  
21 page?

22 CHAIRMAN JOHNSON: It's Page 15 of -- wait a  
23 minute. 15 of the rule, 42 of the recommendation.

24 COMMISSIONER GARCIA: Okay. And Line 25, you  
25 said?

1           COMMISSIONER CLARK: 24 and 25. I would delete  
2 the language "and its certificate number."

3           COMMISSIONER DEASON: We are going to do these  
4 one-by-one or you are just indicating --

5           COMMISSIONER CLARK: Maybe --

6           COMMISSIONER GARCIA: I would rather do them  
7 one-by-one, that way we can address our --

8           COMMISSIONER DEASON: I second the motion.

9           CHAIRMAN JOHNSON: Okay. There is a motion that  
10 we delete on Page 15, Lines 24 through 25, the phrase  
11 "and its certificate number," and there is a second.

12           COMMISSIONER GARCIA: I'm just going to ---  
13 before we vote, I oppose this motion. I think it  
14 helps our staff to go through this. I think it's a  
15 heads-up to the billing operators so that they see a  
16 certificate number, they know that this company has  
17 sort of a seal of approval to operate in Florida, and  
18 to bill in Florida. And I know that the amount of  
19 work that we have in our Consumer Affairs, this will  
20 to some degree, and it may be seconds, but it will  
21 expedite their ability to find who these people are  
22 and where they are.

23           COMMISSIONER DEASON: Let me say that I respect  
24 that, and I think you are correct, but the reason I'm  
25 seconding the motion is I'm coming down on trying to

1           make a balance between cost and benefit. And on this  
2           particular one, I have been persuaded that perhaps the  
3           incremental benefit does not justify the incremental  
4           cost. And we all need to realize that even though  
5           this is a competitive market now, if you start  
6           imposing additional costs, certain costs can't be  
7           competed away, it just means that people compete at a  
8           higher threshold. And I don't want there to be  
9           unnecessary costs on customers. So that was the  
10          reason I seconded the motion. But you certainly make  
11          very valid points.

12                 CHAIRMAN JOHNSON: I echo the comments made by  
13           Commissioner Deason, with one point that I thought was  
14           clarified. That we do have a rule that allow for the  
15           billing agents, and I know Allen worked a lot on this  
16           rule, but it allows for -- we have a rule that  
17           requires that before you provide services to someone  
18           that they have to provide you a certificate number,  
19           don't you? We're not having that problem anymore.

20                 MS. CALDWELL: Before you bill, you have to bill  
21           for a certificated company.

22                 CHAIRMAN JOHNSON: Right. And that was the  
23           problem that we addressed before, because that was a  
24           major problem for the Commission. But I thought that  
25           that had been resolved. And the answer to that is yes

1 or --

2 COMMISSIONER JACOBS: I thought I recalled  
3 hearing testimony from IXCs that they were getting  
4 requests, or LOAs, or whatever, from uncertificated  
5 companies. Did I recall that testimony?

6 COMMISSIONER CLARK: Here is my logic on that.  
7 This rule is not designed to protect billing agents or  
8 deal with the idea of uncertificated carriers  
9 providing service. We have a rule on that and they  
10 are you can't provide service to someone unless they  
11 have a certificate, and they have an affirmative  
12 obligation to make sure whoever they are providing  
13 service to has a certificate. And, in fact, every  
14 time we show cause them we tell the carriers you  
15 should no longer provide service to them.

16 I was viewing this rule as the benefit, the  
17 consumer protection benefit, and what Commissioner  
18 Deason said is exactly my reason for deleting it. The  
19 incremental benefit of this is not worth the cost that  
20 has been indicated to us, and staff has told us the  
21 certificated company, you have the doing business as  
22 also on their certificate so they can be found.

23 CHAIRMAN JOHNSON: And I would agree with you,  
24 Commissioner Clark. My only concern was in making  
25 that balance. Had we not already set up a process

1 that allowed us to make sure that we had a process to  
2 ensure that uncertificated carriers were not providing  
3 service, that that would tilt the scales. But I think  
4 we already have a process set in place that will  
5 protect that problem, so that this would be redundant  
6 from that perspective.

7 And also as long as the certificated name is on  
8 the bill, it may be an extra step for our -- the only  
9 thing that I saw as a differential was an extra step  
10 for our Consumer Affairs, and I'm not minimizing that,  
11 but the cost didn't outweigh the benefit.

12 MS. CALDWELL: That would be the correct  
13 analysis. What I wanted to say is the -- and I  
14 apologize for not being fresher on this particular  
15 issue, but my understanding was that our rules require  
16 them -- somehow the LECs were putting it in their  
17 tariff that they would not provide these, so there was  
18 still a loophole that as long as they were providing  
19 the information by tariff, which this rule takes care  
20 of because we are requiring the certificated name on  
21 it. We are requiring the certificated name on the  
22 bill, so as long as you have the requirement that they  
23 have their certificated name on the bill, we can still  
24 find that information. But I think there was still a  
25 loophole that this takes care of, because -- and I'm



1           sorry if I'm not clear --

2                   (Simultaneous conversation).

3           COMMISSIONER JACOBS: As I recall, this came up  
4           with --

5           MS. CALDWELL: But it is dealing with the tariff,  
6           filing the tariffs.

7           COMMISSIONER JACOBS: As I recall, this came up  
8           in testimony where staff will receive a complaint on a  
9           company that they did not have a certificate and they  
10          couldn't respond to that consumer, is that correct?

11          MR. DURBIN: We have had some complaints in which  
12          there were uncertificated resellers. Not a lot  
13          recently. Typically, the uncertificated companies  
14          that we deal with have to do more with cramming rather  
15          than slamming.

16          COMMISSIONER GARCIA: But let me go back to that,  
17          because that is one of the reasons that perhaps I  
18          didn't articulate properly. And, Commissioner Deason,  
19          I understand your rationale, and it makes perfect  
20          sense. I guess because I have been looking a lot at  
21          what has been going on Consumer Affairs, sort of  
22          bending over backwards to try to see if we can help  
23          meet some of the need there, but one of the issues is  
24          also what happens when you get -- you don't get that  
25          certificated name that you end up looking for, and

1           they are not certificated, and having the number, you  
2           know, if they have changed it. I know that they are  
3           already in violation, but I just thought it would make  
4           it easier to move along. But, am I mistaken, Mr.  
5           Durbin, that you sometimes get another name because  
6           the biller for a reseller just changes the name or --

7                    COMMISSIONER CLARK: You know, if they are  
8           uncertificated that won't help, they will just make up  
9           a number.

10                   COMMISSIONER GARCIA: Right.

11                   COMMISSIONER CLARK: If they made up a name they  
12           will make up a number.

13                   COMMISSIONER GARCIA: That's absolutely true.

14                   CHAIRMAN JOHNSON: Any other questions? Any  
15           other statements from staff?

16                   MS. CALDWELL: I think -- it's coming back to me.  
17           Part of the clarification is that I think that when  
18           companies are buying interstate services off of like a  
19           tariff off the FCC, then there is not -- I don't think  
20           they are required to be certificated in the State of  
21           Florida. So if it just so happens they are in  
22           Florida, it's an interstate service and they wouldn't  
23           be certificated. But here if they are billing for  
24           that company for the interstate service if they are  
25           billing for it they would have to have a certificated

1 name, and that's why this closes that loophole.

2 COMMISSIONER JACOBS: And if I recall, most of  
3 the IXC witnesses said this happens most often when we  
4 have got folks who are buying off their interstate  
5 tariff, is that correct?

6 MS. CALDWELL: Right. What would happen is they  
7 would buy off the FCC interstate tariff. Our rule  
8 requires that on the intrastate tariff they have to  
9 have the certificate number, so if they buy off the  
10 federal tariffs then they don't.

11 COMMISSIONER JACOBS: And so if they actively  
12 sell to companies from the interstate tariff, they  
13 don't care whether or not they have a certificate in  
14 Florida or not, they could not be certificated  
15 anyplace, is that correct?

16 MS. CALDWELL: They would have to be  
17 certificated.

18 COMMISSIONER JACOBS: Someplace, to buy off the  
19 interstate tariff.

20 MS. CALDWELL: Right.

21 COMMISSIONER JACOBS: But we just don't know  
22 where.

23 MS. CALDWELL: And by requiring to bill it,  
24 requiring a certificated name on the bill would make  
25 them be certificated in Florida.

1           CHAIRMAN JOHNSON: I didn't understand that,  
2           because why wouldn't they just put their FCC  
3           certificate number on the bill? Wouldn't they just --  
4           if they were certificated by the FCC, why wouldn't  
5           they just put that certificate number? Why would that  
6           require them to now have to come into the -- if they  
7           didn't otherwise, how could a slamming rule now  
8           require them to have to be certificated in Florida?

9           MS. CALDWELL: I apologize, I may be creating  
10          something that I have no clue what I'm talking about,  
11          so let's just -- I think that staff is comfortable  
12          with the certificated name only, and if the Commission  
13          feels like not including the certificated number we  
14          can deal with the certificated name.

15          CHAIRMAN JOHNSON: Okay. There is a motion and a  
16          second to delete "and its certificate number." All  
17          those in favor signify by saying aye.

18          COMMISSIONER CLARK: Aye.

19          COMMISSIONER DEASON: Aye.

20          CHAIRMAN JOHNSON: Aye. Opposed.

21          COMMISSIONER GARCIA: Nay.

22          COMMISSIONER JACOBS: Nay.

23          CHAIRMAN JOHNSON: Show it approved on a 3-to-2  
24          vote.

25          COMMISSIONER CLARK: Madam Chairman, my second

1 suggestion is on -- well, I have two suggestions on  
2 Page 49 of the recommendation, which is Page 22 of the  
3 rule. I would suggest we do change the language with  
4 respect to residential services, that it be the  
5 language you suggested, Richard, on authorized --

6 MS. CALDWELL: The language would be the customer  
7 or other person authorized may change the residential  
8 service.

9 COMMISSIONER CLARK: And that would be my motion.

10 COMMISSIONER GARCIA: I'll second.

11 CHAIRMAN JOHNSON: There is a motion and a  
12 second. Any further discussion? Seeing none, all  
13 those in favor signify by saying aye.

14 (Unanimous affirmative vote).

15 CHAIRMAN JOHNSON: Show that approved  
16 unanimously.

17 COMMISSIONER CLARK: Then the next change on Page  
18 49 would be down at the bottom, and up at the top of  
19 the next page. I would suggest that on Page 23 it  
20 simply change -- let's see. D be changed, "the  
21 provider has received a customer initiated call  
22 requesting service from that provider," and then I  
23 would delete "and has obtained the following," and I  
24 would delete Line 25. And then over on the next page,  
25 I would delete Number 2.

1 MR. TUDOR: Commissioner Clark, I'm sorry, I may  
2 not have followed that. If you delete Number 2,  
3 that's the grocery list of things they have to ask.  
4 It's a cross reference.

5 COMMISSIONER CLARK: All right. But it's not --  
6 what I would like to say, then, is has requested a  
7 change, and then it should say "and received the  
8 information required in 3(a) through (e)."

9 MR. TUDOR: Okay. So you wouldn't eliminate all  
10 of 2, just the reference to the audio recording?

11 COMMISSIONER CLARK: Yes.

12 MR. TUDOR: Okay.

13 COMMISSIONER CLARK: And that's my motion.

14 CHAIRMAN JOHNSON: Okay.

15 MS. CALDWELL: So we would essentially get a  
16 statement that the customer -- Number 1 would be a  
17 statement that the customer requests the change, and  
18 2, obtains the information set forth in 3(a) through  
19 3(e).

20 COMMISSIONER CLARK: Correct.

21 CHAIRMAN JOHNSON: There is a motion, is there a  
22 second? The motion dies for lack of a second.

23 COMMISSIONER CLARK: Oh, then let me make another  
24 one. Not on this point, since I have obviously lost  
25 that one. But also on Page 54, I would change the 90

1 to 30 on Line 18, and then also on Line 21. Wait a  
2 minute. Wait a minute. I know it has to be 18, does  
3 it have to be on 21?

4 MR. TUDOR: Yes.

5 COMMISSIONER GARCIA: You mean on Line 60? This  
6 is 54 and 27, right? And you are going to Line 18?

7 COMMISSIONER CLARK: Yes. All right, Line 18 and  
8 Line 20, the 90 should be changed to 30. That's my  
9 motion.

10 COMMISSIONER GARCIA: Could we change it to 30  
11 days or first billing cycle, and then we can just get  
12 whichever is longer? All we need to do is get rid of  
13 whichever is longer, right? Oh, no, you're right.  
14 I'm sorry.

15 COMMISSIONER CLARK: It's in there.

16 MR. TUDOR: I think all you want to do is change  
17 the 90 to 30.

18 COMMISSIONER CLARK: Yes. If we change the time  
19 frame then we're okay.

20 COMMISSIONER GARCIA: You're right, that does  
21 address it.

22 COMMISSIONER CLARK: That's my motion.

23 CHAIRMAN JOHNSON: Okay. There is a motion.

24 COMMISSIONER DEASON: I second the motion. Let  
25 me indicate that I think that we are putting

1           safeguards in this rule to require customers to be  
2           notified of a change so they are put on notice  
3           hopefully earlier than what has transpired before when  
4           there was no such requirement. So I think that goes a  
5           long way in addressing the problem, and that 30 days  
6           under that scenario would be much more reasonable than  
7           the 90 days.

8           CHAIRMAN JOHNSON: There is a motion and a  
9           second. Any further discussion? Seeing none, all  
10          those in favor signify by saying aye.

11          (Unanimous affirmative vote).

12          CHAIRMAN JOHNSON: Show it approved unanimously.

13          COMMISSIONER CLARK: Madam Chairman, I don't know  
14          what to do at this point. It seems like I have lost  
15          the battle on that one issue, but I will defer to the  
16          rest of the Commission. And with those changes I am  
17          willing to move the rules with the understanding I  
18          don't agree with the necessity of recording.

19          CHAIRMAN JOHNSON: Okay.

20          MS. CALDWELL: May I ask for a clarification?  
21          You also had mentioned -- in my mind it would be a  
22          technical change, but moving the languages that were  
23          not numbered, moving those paragraphs into a numbered,  
24          to me that would be technical, but --

25          COMMISSIONER CLARK: I would include in my motion



1           those technical changes be made.

2           COMMISSIONER GARCIA: And I will second the  
3 motion, understanding that I do not agree with the  
4 issues that Susan does not agree with, but, again, I  
5 will move the entire proposal with the changes we  
6 made.

7           COMMISSIONER JACOBS: As amended.

8           COMMISSIONER CLARK: I will move the rules as  
9 amended, including the technical change, but with the  
10 understanding that I would have changed the necessity  
11 of recording the inbound call, but finding no support  
12 for that I will support the rest of the Commission on  
13 the rule.

14          CHAIRMAN JOHNSON: There is a motion and a  
15 second. Any further discussion? Seeing none, all  
16 those in favor signify by saying aye.

17          (Unanimous affirmative vote).

18          CHAIRMAN JOHNSON: Opposed. Show that, then,  
19 approved unanimously. Again, I would like to thank  
20 staff for all of their hard work. The Commissioners,  
21 it was a long several months with quite a few hearings  
22 that I think we all found to be very, very productive.  
23 And the industry for their comments, and the citizens  
24 for their input and all of their patience.

25          COMMISSIONER JACOBS: Good job.

1           COMMISSIONER CLARK: And I will say the same  
2           thing. I have to say when we first started this  
3           process I thought, oh, my goodness. What are we going  
4           to find out? And I agree with Commissioner Deason,  
5           the customers who came out and the conversations we  
6           had were extremely beneficial, and I think we have  
7           come out with a very good rule. And I think that we  
8           should advocate this to the FCC as to the way that  
9           they should pursue their rulemaking.

10           CHAIRMAN JOHNSON: With that, thank you.

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## CERTIFICATE OF REPORTER

6 STATE OF FLORIDA )

7 COUNTY OF LEON )

8

I, JANE FAUROT, RPR, do hereby certify that the  
9 foregoing proceeding was transcribed from cassette tape,  
10 and the foregoing pages number 1 through 115 are a true and  
11 correct record of the proceedings.

12

I FURTHER CERTIFY that I am not a relative, employee,  
13 attorney or counsel of any of the parties, nor relative or  
14 employee of such attorney or counsel, or financially  
15 interested in the foregoing action.

16

DATED THIS 1st day of June, 1998.

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Jane Faurot  
JANE FAUROT, RPR  
P. O. Box 10751  
Tallahassee, Florida 32302