

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Chester
Osheyack for amendment of Rule
25-4.113(1)(f), F.A.C., Refusal
or Discontinuance of Service.

DOCKET NO. 990869-TL
ORDER NO. PSC-99-1591-FOF-TL
ISSUED: August 16, 1999

The following Commissioners participated in the disposition
of this matter:

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

**ORDER DENYING PETITION FOR AMENDMENT
OF RULE 25-4.113(1)(f), FLORIDA ADMINISTRATIVE CODE**

BY THE COMMISSION:

On July 1, 1999, Chester Osheyack filed a Petition to Amend Disconnect Authority Rule. Invoking the provisions of Section 120.536, Florida Statutes, Mr. Osheyack asks us to amend Rule 25-4.113 (1)(f), Florida Administrative Code, which permits a local exchange company to disconnect a customer's local telephone service for non-payment of a bill for long distance telephone service. At our July 27, 1999, Agenda Conference, we denied Mr. Osheyack's petition. We determined that Rule 25-4.113(1)(f) satisfies the requirements of Section 120.536, because it implements the specific powers granted to the Commission by Sections 364.03 and 364.19, Florida Statutes. This Order memorializes our decision, as Section 120.536(2), Florida Statutes, requires.

The rule in question, 25-4.113(1)(f), Florida Administrative Code, provides, in pertinent part:

(1) As applicable, the company may refuse or discontinue telephone service under the following conditions provided that, unless otherwise stated, the customer shall be given notice and allowed a reasonable time to comply with any rule or remedy any deficiency . . .

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(f) For nonpayment of bills for telephone service, including the telecommunications access system surcharge referred to in Rule 25-4.160(3), provided that suspension or termination of service shall not be made without 5 working days' written notice to the customer, except in extreme cases. The written notice shall be separate and apart from the regular monthly bill for service. A company shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the company. No company shall discontinue service to any customer for the initial nonpayment of the current bill on a day the company's business office is closed or on a day preceding a day the business office is closed. . .

In previous cases before the Commission, the Florida Supreme Court, the Division of Administrative Hearings, and the Second District Court of Appeals, Mr Osheyack has attacked the rule on a variety of substantive and procedural grounds. In this case Mr. Osheyack contends that the rule does not satisfy the requirements of the Administrative Procedures Act, Section 120.536(1), Florida Statutes, which provides that an agency may only adopt rules that implement or interpret specific powers and duties granted by statute. According to Mr. Osheyack, sections 364.03 and 364.19, Florida Statutes, which the Commission cites as authority for the rule in question, provide broad discretionary powers to regulate the telecommunications industry, but they do not provide specific power to disregard or override existing state and Federal law governing debt collection practices, and statutes of limitations relating to them. Therefore, Mr. Osheyack contends, we have exceeded our rulemaking authority. He asks us to amend Rule 25-4.113(1)(f) "in a manner consistent with applicable State and Federal debt collection statutes."

Section 364.19, Florida Statutes, "Telecommunications service contracts; regulation by Commission" provides that "[t]he Commission may regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons." Mr. Osheyack acknowledges this broad grant of authority, but contends the rules enacted must be "reasonable." He argues that since there are no specific standards incorporated in Section 364.19 for discontinuance of service, the rule must incorporate debt collection standards from other existing law. Since the rule does not do that, it is not "reasonable," and

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since it is not reasonable, it exceeds the specific authority granted in Section 364.19, Florida Statutes.

Rule 25-4.113 is clearly a rule governing the terms of telecommunications service contracts between telecommunications companies and their patrons. It implements the specific power over contracts granted by the statute, and the particular type of contract term it addresses is termination of service. It is directly and specifically related to the authority granted by the statute. Nowhere does the statute require compliance with Federal or state debt collection statutes in the regulation of telecommunications service contracts between telecommunications companies and their patrons. Those statutes are not applicable to local exchange company billing and collection arrangements with interexchange carriers.

We believe that Rule 25-4.113 meets the standard of reasonableness found in Section 364.19, Florida Statutes. It is directly related to the terms of a telecommunications service contract and the Commission's long-standing policy that telecommunications consumers should not have to absorb the high costs of bad debt through their telecommunications rates. See Chester Osheyack v. Public Service Commission, Final Order issued August 11, 1997, Case No. 97-1628RX, where the Administrative Law Judge specifically upheld Rule 25-4.113 on the grounds that the rule was reasonable, not arbitrary or capricious, and based on competent substantial evidence in the record. That decision was affirmed Per Curiam by the Second District Court of Appeal. Chester Osheyack, v. State of Florida, Division of Administrative Hearings (Public Service Commission), Case No. 97-03581, issued June 19, 1998.

For these reasons, we deny Mr. Osheyack's petition. The rule meets the procedural requirements of Section 120.536, Florida Statutes. We have not, however, reviewed this rule in over three years. Considering the changes that have taken place in telecommunications in that time, we believe we should review it again, to determine whether the policies it implements are still appropriate. Our staff will include a review of Rule 25-4.113(1)(f) in its current rulemaking projects. It is therefore,

ORDERED by the Florida Public Service Commission that Chester Osheyack's Petition to Amend Disconnect Authority Rule is denied for the reasons stated above. It is further

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ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 16th
day of August, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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