



Public Service Commission

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RECORDS AND REPORTING

DATE: MAY 25, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (CALDWELL) *DWC CB*
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (HEWITT, *CBH*)
CAUSSEAU, ROMIG, WRIGHT) *ag BK*
DIVISION OF CONSUMER AFFAIRS (DURBIN) *SAS*
DIVISION OF COMMUNICATIONS (MOSES, SIMMONS, KENNEDY) *RK*

RE: DOCKET NO. 990994-TP - PROPOSED AMENDMENTS TO RULES 25-4.003, F.A.C., DEFINITIONS; 25-4.110, F.A.C., CUSTOMER BILLING FOR LOCAL EXCHANGE TELECOMMUNICATIONS COMPANIES; 25-4.113, F.A.C., REFUSAL OR DISCONTINUANCE OF SERVICE BY COMPANY; 25-24.490, F.A.C., CUSTOMER RELATIONS; RULES INCORPORATED; AND 25-24.845, F.A.C., CUSTOMER RELATIONS; RULES INCORPORATED.

AGENDA: JUNE 4, 2000 - REGULAR AGENDA - RULE ADOPTION - PARTICIPATION LIMITED TO COMMISSION AND STAFF

RULE STATUS: PROPOSAL MAY NOT BE DEFERRED

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990994A.RCM

CASE BACKGROUND

On February 29, 2000, the Commission proposed amendments to Rules 25-4.003, F.A.C., Definitions; 25-4.110, F.A.C., Customer Billing for Local Exchange Telecommunications Companies; 25-4.113, F.A.C., Refusal or Discontinuation of Service by Company; 25-24.490, F.A.C., Customer Relations; Rules Incorporated; 25-24.845, F.A.C., Customer Relations; Rules Incorporated. At the Agenda Conference, the Commission on its own motion separated for hearing the incorporation by reference Sections (2) and (19) of Rule 25-4.110, F.A.C., to apply to interexchange carriers (25-24.490, F.A.C.) and alternative local exchange carriers (25-24.845,

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F.A.C.). The hearing on those two sections has been set for August 21, 2000.

Notice was published in the March 17, 2000, Florida Administrative Weekly advising all persons of the proposed rules. Interested persons were notified that comments or requests for hearings were due on April 7, 2000. On April 7, 2000, comments and requests for hearing on the matters already set for hearing were filed by the Florida Competitive Carriers Association/Telecommunication Resellers Association (FCCA/TRA), OnePoint Communications (OnePoint), and Sprint Communications Company Limited Partnership (Sprint). On April 10, 2000, Billing Concepts, Inc. (BCI) filed comments.

Staff files this recommendation to address the comments filed by BCI. BCI addresses the application of three sections of the proposed rules, 25-4.110(2), (18), and (19), to alternative local exchange carriers and interexchange carriers by incorporation in Rules 25-24.490 and 25-24.845, F.A.C. Because issues related to the application of subsections (2) and (19) to these carriers are set for hearing and will not be effective at this time, staff will only address BCI's comments related to subsection (18). In addition, staff does not address the request for hearing by Sprint or FCCA/TRA or the comments by OnePoint because the subject of their filings also will be addressed at the August 21, 2000, hearing.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept as timely filed Billing Concepts, Inc.'s Comments?

RECOMMENDATION: No. Staff recommends that the Comments filed by Billing Concepts Inc. should not be accepted as timely.

STAFF ANALYSIS: The Florida Administrative Weekly Notice of Proposed Rules published on March 17, 2000, for Rules 25-4.003, 25-4.110, 25-4.113, 25-24.490, and 25-24.845, Florida Administrative Code, (proposed rules) states "Written comments or suggestions on the proposed rule may be submitted to the FPSC, Division of Records and Reporting, within 21 days of the date of this notice for inclusion in the record of the proceeding." Any changes to the proposed rules need to be based on the comments received or on the record of the hearing.

The 21-days for filing comments concerning the proposed rules ended on April 7, 2000. Records and Reporting received BCI's comments on April 10, 2000. Staff believes these comments were not timely filed. Case law and the Uniform Rules support staff's position.

Generally, a paper is deemed to be "filed when it is delivered to the proper official and received by that official to be kept on file. Blake v. R.M.S. Holding Corp. 341 So. 2d 795 (Fla. 3d DCA 1977). In order to be timely, a notice of appeal must be filed with the appropriate court within the required time, and merely mailing the notice or having the notice placed in a post office box within the required time period is not sufficient. See Coca Cola Foods v. Cordero, 589 So. 2d 961 (Fla. 1st DCA 1991).

Raysor v. Raysor, 706 So. 2d 400, 401 (Fla. 1st DCA 1998). (Appellant's notice was mailed before the last day but received by the Clerk one day after the last day for invoking the Court's jurisdiction; the Court found the filing was not timely.)

Moreover, the Uniform Rules state:

(1) In construing these rules or any order of a presiding officer, filing shall mean received by the office of the agency clerk during normal business hours . . .

* * *

(3) Any document received by the office of the agency clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.
. . .

Rule 28-106.104, Florida Administrative Code.

This Commission has always construed the due date for comments to be on the twenty-first day. Staff believes this policy is consistent with Chiapelli v. Atkins, 429 So. 2d 852, 853 (Fla. 4th DCA 1983), which provides that no additional time should be allowed for mailing when the court issues an order directing a party "to file or serve anything by a specific, designated date."

Based upon the foregoing, staff recommends that the Comments filed by Billing Concepts Inc. should not be accepted as timely.

Should, however, the Commission find that the Comments were timely filed, staff believes that BCI's Comments are not persuasive and, therefore, the proposed rule should not be modified.

In its Comments, BCI addresses three sections of the proposed rules: 25-4.110(2), (18), and (19). Again, because issues relating to subsections (2) and (19) are set for hearing, staff will only address BCI's comments relating to subsection (18).

Subsection 25-4.110(18), F.A.C., provides:

If a customer notifies a billing party that they did not order an item appearing on their bill or that they were not provided a service appearing on their bill, the billing party shall promptly provide the customer a credit for the item and remove the item from the customer's bill, with the exception of the following: (a) charges that originate from 1. Billing party or its affiliates

Billing Concepts, Incorporated's Comments

BCI generally urges the Commission to allow the industry to police itself, acknowledging the need for bills to be clear, understandable, and legitimate in order to assist consumers and to encourage competition. BCI states that billing clearinghouses and the service providers for whom they bill act in the public interest by enhancing competition and increasing consumer choice.

With respect to Subsection 25-4.110(18)(a)1., BCI disagrees with the inclusion of billing parties' "affiliates" in the proposed language. BCI states it is very concerned that LECs could use their provision of billing and collection services to harm their competitors. Specifically, BCI argues that LECs could jeopardize the competitive position of new market entrants by favoring their own services and the services of their affiliates over those of competitors when enforcing conditions for inclusion of charges on the telephone bill. As an example, BCI states that under the guise of protecting consumers from cramming, a LEC could discontinue billing for a competitive provider who was the subject of a certain number of consumer complaints. In a case where the LEC's affiliate provided a similar service and received the same or even a greater number of complaints, but the LEC did not remove its affiliate's

offering from the local bill, BCI believes that this would constitute anti-competitive behavior.

In support of its argument, BCI states that it is an expressed objective of the Telecommunications Act of 1996 (the Act) to provide "a pro-competitive, de-regulatory national policy framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." Comments, p. 3. BCI suggests that Florida also embrace this objective. BCI asserts that billing and collection of third party services through the local telephone bill furthers this objective by making it more economical for competitive telecommunications providers to bill their services, thus creating widespread communications opportunities for Florida consumers. BCI argues that to the extent that the Commission bars discrimination related to third party charges on the local bill, that action will ensure the proliferation of existing and new telecommunication services.

BCI argues non-discriminatory treatment in the provision of billing and collection services is critical to competition because telecommunications service providers rely heavily on the local bill to facilitate their business. BCI claims there are no viable or feasible alternatives other than incumbent LEC billing and collection services. BCI states utilizing credit card bills, for example, does not permit itemization of telecommunications services, such as separate charges for each call. Further, BCI argues that the credit card bill, unlike the telephone bill, is not ubiquitous. BCI asserts that Americans use a variety of credit cards, and some have no credit card at all; also direct billing by service providers may not always be a viable option. BCI argues that direct billing is usually economically infeasible for smaller competitive providers and those providers that need to bill only small and intermittent charges. BCI concludes that contracting for LEC billing and collection is the only realistic alternative for many telecommunications providers. Accordingly, BCI argues LEC billing and collection services are essential to the ability of telecommunications providers to bring services to consumers and the potential for discrimination by LECs could significantly impair competitive telecommunications providers.

Next, BCI urges that in the event that the "Commission deems it necessary to act now or in the future to enact new policies or rules regarding billing," the Commission should ensure that such policies and rules are not discriminatory or overly broad and will not result in substantial increases in the costs of providing

billing and collection services, or worse yet, create incentives for the LECs to stop providing billing services entirely. BCI states it is concerned that further initiatives by the Commission may not materially reduce consumer confusion, but may facilitate anti-competitive conduct by certain LECs. BCI asserts that continued access to the local phone bill is in jeopardy in many areas due in part to opportunistic use of billing initiatives. BCI asserts it is not coincidence that the pressure to eliminate or dramatically reduce third-party billing is occurring just as the regional Bell Operating Companies are winning relief from restriction on the nature and extent of the services they may offer.

Finally, BCI concludes by stating that cramming problems are in rapid retreat nationwide due to voluntary industry efforts and other measures taken by regulatory entities. It urges the Commission to balance the need for rules against the cost to identify the types of information that billing entities must place on customers' telephone bills. BCI believes that the proposed rules should be tightly drawn so that they do not unintentionally harm the competitive market place and adversely affect prices.

Consideration

Subsection 364.604(2), Florida Statutes, provides:

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

Staff believes that the proposed amendments to Rule 25-4.110(18), Florida Administrative Code, implement that provision. The rules require a billing party to credit a customer or remove the item from a customer's bill when a customer notifies the billing party that they did not order an item that appears on the bill. Exceptions are provided for certain types of charges because, the rule could obtain absurd results when applied without the exception. For instance, a customer could call and say "I did not order local service, please take those charges off my bill." Or, "I did not order taxes, please take the taxes off my bill." Charges that originate from a billing party or its affiliate are one exception. The inclusion of the term "or its affiliates" was added to allow bundled billing of wireless and Internet products, to name a couple of examples.

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BCI's argument that the provision would promote anti-competitive behavior or favoritism ignores reality. First, the rule does not prohibit companies from billing for third parties. Its purpose is to prevent companies from adding unauthorized charges to the bill. Rarely will a customer ask to have an authorized charge removed from his bill, and in the event that an authorized charge is initially removed, the charge may be put back on the bill if the investigation proves the charge is valid. Therefore, staff believes that so long as a company is not cramming charges on the customer's bill, the language is not a problem. Moreover, the rules prohibit any company from billing unauthorized charges either for itself or for its affiliates; therefore, staff believes that the customer is still protected.

Finally, staff believes that BCI's argument that billing companies must rely upon the local telephone bill is without merit. As stated above, third party charges can be billed on the local telephone bill; it is the charge for a service the customer claims he did not receive or order that must be removed. Staff believes that the rule promotes competition and gives the customer more control over his bill. Staff believes that the rules are consistent with the Act, as well as Florida Statutes. Staff believes that the proposed amendments to the rules, the provision in 25-4.110, (18)(a)1. in particular, are a reasonable interpretation of the Telecommunications Consumer Protection Act.

Therefore, based upon the foregoing, staff recommends that the Commission adopt the rules as proposed without changes. Staff believes that there is an overall advantage of bundled billing that outweighs the few problems that may occur with the rule language "or its affiliates." Staff believes that should any company try to take advantage of the provision, the company would be subject to a show cause proceeding before this Commission as the charges on a bill must always be legitimate.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendation on Issue 1, Rules 25-4.003, 25-4.110, 25-4.113, 25-24.490 (with the exception of incorporating subsections 25-4.110(2) and (19)) and 25-24.845 (with the exception of incorporating subsections 25-4.110(2) and (19)), F.A.C., proposed by the Commission may be filed with the Secretary of State for adoption. If the Commission denies staff on Issue 1 and modifies Rule 25-4.110(18), F.A.C., after a Notice of Change is published in the Florida Administrative Weekly, the rule may be filed with the Secretary of State for adoption. The docket should remain open pending the outcome of the hearing on Rules 25-24.490 and 25-24.845, F.A.C.

STAFF ANALYSIS: If the Commission approves staff's recommendation on Issue 1, Rules 25-24.003, 25-4.110, 25-4.113, 25-24.490 (with the exception of incorporating subsections 25-4.110(2) and (19)) and 25-24.845 (with the exception of incorporating subsections 25-4.110(2) and (19)), F.A.C., proposed by the Commission may be filed with the Secretary of State for adoption. If the Commission denies staff on Issue 1 and modifies Rule 25-4.110(18), F.A.C., after a Notice of Change is published in the Florida Administrative Weekly, the rule may be filed with the Secretary of State for adoption. The docket should remain open pending the outcome of the hearing on Rules 25-24.490 and 25-24.845, F.A.C.