ORIGINAL

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Ms. Blanca S. Bayo, Director
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Florida Public Service Commission
2540 Shumard Oak Boulevard
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March 16, 1998

Re: Docket No. 970662-TI
Joint Petition of Robert A. Butterworth, Attorney General, and the Citizens of the State of Florida, by and through the Office of Public Counsel, for initiation of formal proceedings pursuant to Section 120.57(1), Florida Statutes, to investigate the practice of "slamming," i.e. the unauthorized change of a customer's preauborized carrier, and to determine the appropriate remedial measures

Dear Ms. Bayo:

ACK
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Please find enclosed an original and fifteen copies of GTE Florida Incorporated's Postheering Statement and Comments for filing in the above matter. Also enclosed is a diskette with a copy of the Postheering Statement in WordPerfect 6.1 format. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at (613) 483-2617.

Very truly yours,

Kimberly Caswell/dm

Kimberly Caswell

KC:tas
Enclosures

A part of GTE Corporation

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FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of 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 25-24.480, F.A.C. Customer Relations; Rules Incorporated	Docket No. 970682-TI Filed: March 16, 1998

GTE FLORIDA INCORPORATED'S POSTHEARING STATEMENT AND COMMENTS

GTE Florida Incorporated (GTEFL) files it posthearing brief and comments in accordance with Commission Rule 25-22.056(3) and the Prehearing Order in this case (Order no. PSC-98-0200-PHO-TI).

GTEFL's Basic Position

GTEFL agrees that slamming is a problem that should be addressed. The best way to do so is through more vigilant use of existing mechanisms, such as substantial fines and certificate revocation. If the Commission believes, however, additional rules are warranted, they should be in keeping with the nature and scope of the problem. Only a very tiny fraction (GTEFL estimates six-tenths of 1%) of the annual primary interexchange carrier (PIC) changes in Florida are slams, and slamming, properly defined, is mostly the result of intentional, fraudulent behavior on the part of just a few bad actors. There is, moreover, consensus among all the parties that slamming can probably never be completely stopped.

Given these considerations, the Commission should institute measures that are narrowly tailored to curb deliberately fraudulent activity, but avoid imposing rules whose

costs don't justify their potential benefits. These costs will, in the end, be passed on to the vast majority of consumers who are never slammed.

As discussed below, two proposed rules in particular that cannot be justified in terms of consumer benefits are (1) the requirement to print each carrier's certificate number on the end user's bill; and (2) a customer entitlement to 90 days' worth of service credit after claiming a slam.

GTEFL's Specific Positions

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?

Summary of Position: ** Yes. Regulatory requirements should be imposed on all carriers in a nondiscriminatory fashion, so the extension of these customer relations rules to alternative local exchange carriers is a positive step. **

This rule revision, if adopted, would require alternative local exchange carriers (ALECs) as well as interexchange carriers (IXCs) to abide by the Commission's rules relating to customer billing and local and toll provider selection. In general, GTEFL believes regulatory requirements should be imposed upon all local providers in a nondiscriminatory manner. Otherwise, efficient competition will never develop. Extension of these requirements to ALECs is thus a step in the right direction.

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?

GTEFL's Position ** GTEFL does not oppose these definitional revisions. **

Issue 3: Should the Commission adopt the proposed amendments to Rule 25-24.110, F.A.C., as proposed by the Commission at the December 16, 1997 , agenda conference?

GTEFL's Position: " The Commission should not require certificate numbers on the bill. The high costs of this proposal are not justified by any benefits; indeed, customers are likely to be confused by this information, which is meaningless to them. In addition, the Commission should allow companies to determine the typeface and placement of the notice that a customer's provider has changed. "

GTEFL believes there is no need for additional rules regarding slamming. Most slamming is caused by a relatively small number of carriers who willfully and repeatedly engage in fraudulent tactics. (Scobie, Tr. 489.) The Commission's primary goal should be to reduce the incidence of slamming resulting from this deliberate conduct. (Scobie Direct Testimony (DT) at 2.)

The Commission must also recognize that while slamming is a very serious problem for the slammed individual, slams are an extremely tiny fraction of the millions of PIC changes annually in Florida, probably only about six-tenths of 1% (Scobie, Tr. 490; see also Watts, Tr. 326; Buysse-Baker (Sprint processed 99.991% of PIC changes without complaint in 1997.)). A serious gap in the presentations of OPC and Staff was their lack of investigation to determine how many PIC changes take place in Florida annually. (Taylor, Tr. 166; Poucher, Tr. 243.) It is impossible to draw meaningful conclusions about the severity of the slamming problem without knowing the proportion of slams to total PIC changes. It is, moreover, unrealistic to expect that slamming can be entirely eliminated. (Scobie DT at 2; Watts DT at 7.)

With these facts in mind, the most effective way to address slamming is through already existing sanctions. It is far more desirable, from a policy and competitive efficiency

perspective, to make better use of existing regulations than to adopt costly new ones. (Scobie DT at 3, Tr. 489; Hendrix, Tr. 459.) The Commission already has at its disposal the ultimate tools to address slamming abuses--including heavy fines and certificate revocation. (Scobie DT at 2-3; Watts, Tr. 329-30.) These measures will take away any financial incentive to slam Florida customers and can even put dishonest companies out of business. Once the financial incentive to slam is removed, slamming should drastically decrease. (Hendrix Direct Testimony (DT) at 3-4.)

The Commission seems to agree that more vigilant use of current regulations could ease the slamming problem. As such, it has in recent months stepped up its anti-slamming enforcement activity. (Taylor, Tr. 145.) The Commission should wait for a few months longer to assess the effect this new policy, as well as the outcome of the FCC rulemaking on slamming. To avoid customer confusion, undue cost increases and administrative complications, the Commission should avoid rules that are inconsistent with the federal scheme. (Hendrix DT at 4; Scobie DT at 10; Watts, Tr. 334; Green, Tr. 587)

If, despite these considerations, the Commission feels compelled to adopt rules now, GTEFL does not oppose adoption of most of the revisions proposed for Rule 25-24.110. The certificate number requirement of subsection (10)(a), however, is entirely unreasonable and unjustified. GTEFL would also suggest revising subsection (13) to allow carriers leeway in determining the typeface and placement of the notice of a provider change. (GTEFL will not comment here on the billing block, which it also opposes, because GTEFL understands that proposal is not subject to decision in this phase of the proceeding.) GTEFL's specific criticisms are set forth in the sections below.

In no event should the Commission add any rules that Staff did not propose in the rulemaking notice. Aside from the questionable legality of such action (for instance, the requisite economic analysis was not performed for Mr. Poucher's rule recommendations), there is no demonstrated need for any of these additional proposals. In particular, the Commission should reject any suggestion that the incumbent local exchange carriers' (ILECs') processes need to be revised. In fact, Ms. Buysse-Baker, initially the most vocal critic of the ILECs, later deleted most of her prefiled testimony discussing the ILECs' motivation to use the PIC change process for anticompetitive ends. (Buysse-Baker, Tr. 594-96.) She agreed there was no evidence that any Florida ILEC was manipulating the PIC change process to its benefit. (Buysse-Baker, Tr. 629.) MCI's witness King similarly acknowledged that her statements about the ILECs "self-interest in mischaracterizing consumer inquiries as slams" were not well-founded as to any Florida ILEC. (King, Tr. 566-67.) And although both Ms. Buysse-Baker and Ms. King discussed transferring PIC change administration from the ILECs to a third party, neither recommended that measure specifically for Florida. (King, Tr. 567; Buysse-Baker, Tr. 629.)

Likewise, Mr. Poucher could not credibly criticize GTEFL's business office practices for responding to slamming complaints, because he admittedly didn't know what those practices are. (Poucher, Tr. 246.) He was unable to give any examples of ILEC processes that "abused" the customer when a slam has occurred. (Tr. 249.) His suggestion for the ILEC to remove the billed amounts from the customer's bill and charge them back to the allegedly slamming IXC (Poucher DT at 6) ignores the fact that GTEFL (or, to GTEFL's knowledge, any other carrier) does not disconnect local service for

disputed charges, including slamming-related amounts. (Scobie, Tr. 510.) In fact, they cannot do so if a customer disputes a bill to the Commission. (Erdman-Bridges, Tr. 94; Rule 25-4.113.) Furthermore, under the no-fault dispute policy to which the IXCs in this proceeding subscribe, ILECs will change a customer back to his preferred carrier, no questions asked. (Hendrix, Tr. 460-61.) So, contrary to Mr. Poucher's understanding, the ILEC does not remain in the middle of the dispute between the customer and the IXC, and the customer's local telephone service will not be impaired while the slamming inquiry is underway.

A. Certificate Numbers on the Bill Will Not Benefit Customers, So This Proposal is Unjustified.

Proposed Rule 25-4.110(10)(a) would require all bills to display the Florida certificate number of each provider of each service billed. This requirement, if adopted, is more likely to confuse than help customers. Its significant expense is unjustified, especially when there are other, relatively costless, methods to achieve Staff's objectives.

The certificate number is not necessary from the viewpoint of a customer trying to resolve a slamming or cramming issue. Under the proposed rule, the bill will already reflect the name of the certificated company, the type of service provided, and a toll-free customer service number. The name and number of the company (which GTEFL already prints on its bills) are all that the consumer needs to contact the relevant provider to question a charge for any service. Placing the certificate number on the bill will only tend to confuse him because it is highly unlikely that the vast majority of customers know what a certificate number is. (Scobie DT at 4.) The objective in billing is to concisely convey

all information the customer needs to understand what he has been billed for and who billed him. Adding the certificate number will, if anything, undermine the goal of simplifying the bill, as the consumer would be forced to sift through meaningless certificate numbers before identifying the contact information for the company he wishes to reach.

GTEFL today prints the name and telephone number of each provider in a yellow margin to the left of the bill page. This contact information thus can be easily identified. Adding the certificate number here will increase crowding in this limited space and make it harder to distinguish the contact information the customer truly needs.

Staff witness Taylor, who sponsored the certificate proposal, was unable to articulate any real need for the certificate number on the bill. Mr. Taylor cited the following reasons for his certificate proposal: (1) it "will help reduce consumer confusion"; (2) it will "encourage the industry to help us weed out uncertificated providers and reduce the number of slams facilitated by carriers at a third party's request"; and (3) it will "assist the Commission in identifying the carrier when we receive consumer bills without the certificated name of the carrier on the bill." (Taylor DT at 5; Taylor, Tr. 139-40.) In the course of cross-examination of Mr. Taylor, it became clear that the certificate number proposal is not necessary to meet any of these objectives.

As GTEFL explained above, there is no evidence or rationale to indicate that printing the certificate number on the bill will satisfy Mr. Taylor's first objective of reducing customer confusion. To the contrary, this information--meaningless to the customer--will only increase clutter on the bill and confusion for the customer.

Mr. Taylor's second goal of weeding out uncertificated providers who may facilitate slams can be met in more direct and less expensive ways than printing the certificate number on the bill. If there exists a problem with underlying carriers providing service to uncertificated entities (Mr. Taylor did not give any indication as to the size of this purported problem, although he noted that the provision is not aimed at BellSouth or GTEFL, Taylor, Tr. 135), the obvious solution would be to require them not to. This Commission has the jurisdiction to require aggregators and IXCs (as well as local exchange carriers) to obtain certificate numbers of resellers or other carriers with which they do business.

In fact, Mr. Taylor admitted that adding the certificate number to the bill would be unnecessary if the underlying providers simply collected the certificate information: "if they did do it, no, I wouldn't have any complaints that resulted from it and I wouldn't need this rule." (Tr. 159-61.) He added that if underlying carriers would agree to obtaining the certificate numbers, "that's fine with me." (Tr. 161.) Requiring carriers to collect the certificate information thus obviates Mr. Taylor's perceived need for printing the certificate number on the bill. There is no reason to believe that carriers would not comply with the data collection requirement, especially since the Commission has the ability to impose severe sanctions--including certificate revocation--for any violations.

Finally, the certificate number on the bill is not necessary to fulfill Mr. Taylor's third objective of assisting the Staff in researching slamming problems. The Commission has records of all certificated providers, so Staff can ascertain the certificate number of a particular provider based on those records. (Taylor, Tr. 164.) In the event billing for an uncertificated carrier should occur, Staff would also know that because the provider's

name would not appear on the Commission's list of certificated carriers. And if Staff could not understand an abbreviated carrier name on the bill, it could just call the listed contact number for the company to inquire about certificate or other information. (Tr. 204.) GTEFL assumes that Staff will need to contact the provider anyway, in order to investigate the customer's complaint. Of course, if the Commission directs the billing LECs and underlying carriers to collect certificate information, the Staff could also contact these carriers for certificate and provider information.

There is almost no cost to the ILECs or IXCs (and thus to the customers) associated with a system where these companies collect and record certificate numbers. Mr. Taylor's recommendation to go one step further and print the certificate number on the bill would, on the other hand, entail substantial expense. As Mr. Hendrix explained, there would be costs to develop and administer comprehensive databases to maintain the certificate numbers, certified names, and "doing business as" names. Mechanisms for transporting such information would also be needed, along with the development of an interface between the PIC database and the carrier billing process. (Hendrix DT at 7.),

These changes present obvious, large expenses for carriers and their customers. BellSouth's costs alone would likely run into the millions. (Hendrix DT 8.) LCI, a relatively small IXC, estimates the nonrecurring cost of this proposal, if adopted, to be $250,000. (Nicholls, Tr. 309-10.) Staff member Lewis confirmed that the proposal to place the certificate number on the bill was an example of one of the most expensive aspects of the rules. (Lewis, Tr. 46.)

But Mr. Taylor appears to have given no consideration at all to the costs of this or any other proposal, (see generally Taylor DT; Scobie DT at 11.) despite acknowledging that "you have to balance the savings against the added costs" that the rules might cause, (Tr. 147-48), and that consumers will ultimately pay for these costs. (Taylor, Tr. 143.)

Given a choice between a relatively cost-free measure and an expensive one that will meet the same objective, GTEFL believes the Commission is obliged to choose the former--if the Commission even believes any action is needed.

In regard to the question of need for any rules, the Commission should recognize that, contrary to Mr. Taylor's suggestions that the ILECs aren't very interested in addressing slamming and cramming problems, carriers have voluntarily instituted measures to curb these abuses. GTEFL, for instance, has acted on the recognition that although it may not be the root cause of a customer's complaint, it is the first customer interface for slamming, cramming and other complaints. As such, in the last half of 1997, it implemented a program that it believes will significantly reduce these complaints. (Scobie DT at 6, Tr. 491.) For each carrier with which GTEFL has a billing contract, GTEFL establishes a complaint threshold. If the threshold is exceeded for three consecutive months, carriers are put on notice to take steps to reduce complaints below the threshold. (The nationwide objective is two billing complaints per 100,000 bills rendered. Scobie, Tr. 505.) If complaints continue to exceed the designated standard, GTEFL has the option to terminate its billing contract with that carrier. Although the program has been in place only a few months, complaints have already dropped by half. (Scobie DT at 6-7.) In addition, 13 carriers are on notice that their contracts will be

terminated if their complaints do not decrease. (Scoble, Tr. 506-06.) This program is concrete proof that carriers will listen to the marketplace to develop effective solutions to customer problems without the need for regulatory intervention.

B. Carriers Should Have Some Discretion to Choose Typeface and Placement of PIC Change Notifications.

Subsection (13) of Rule 25-4.110 would require the billing company to give the customer notice of any change of local or toll providers on the first or second page of his next bill after the change "in conspicuous bold face type." GTEFL does not oppose, in concept, a PIC change notification rule. However, carriers should be free to determine the placement and typeface that is most appropriate within the context of the entire bill. In a particular instance, placing the notice on the first or second page or using particular type may make the bill more confusing, depending on the information surrounding the PIC change notification. In addition, in a competitive, open-market environment, consumers must be expected to take some responsibility for knowing their service choices and providers. (Scoble DT at 5.) Even consumer advocates agree that one of the best ways for customers to protect themselves from unauthorized PIC changes and service charges is to read their bills--their entire bills. (See King, Tr. 558, citing President, National Consumers League.) This rule encourages the misguided notion that the most important information is near the front, so there is no need to carefully review the rest of the bill. The billing entity should thus be able to choose the placement and type that is most appropriate, consistent with the rule's intent to clearly notify the customer of a PIC change.

Issue 4: Should the Commission adopt the proposed amendments to Rule 25-24.118, F.A.C., as proposed by the Commission at the December 18, 1997, agenda conference?

GTEFL's Position: " GTEFL specifically opposes that portion of the proposed rule that would credit a customer for 90 days' worth of charges upon a claimed slam. This rule would encourage fraudulent and delayed claims, at the expense of the general customer body. "

The Commission should be wary of adopting any new measures that would tend to introduce even greater fraud into the PIC change process. GTEFL believes subsection (6) of the proposed rule is such a measure.

The proposed rule entitles a customer, upon a claim of a slam, to receive 90 days' credit of charges assessed by the purportedly unauthorized provider. Thus, a customer could switch carriers, wait 90 days, then falsely claim he had been slammed. Or, even if a customer has really been slammed, he could deliberately delay reporting that slam for the 90-day period for which he can receive free service. (Watts, Tr. 331-32; King, Tr. 555.)

Just as there are unscrupulous companies, there are unscrupulous customers. Ms. Erdman-Bridges' opinion that there is only a small percentage of people who would take advantage of the credit provision, (Erdman-Bridges, Tr. 76-77), is little comfort. The facts point to the opposite conclusion. One need only look at the $4 billion in toll uncollectibles per year (Tr. 92) to know that a certain customer segment will quickly learn how to take advantage of the system if an opportunity arises.

There are scores of certificated IXCs in Florida, so customers could exploit the "free service" provision over and over. Commission records would have no effect on this

behavior, because the incident wouldn't even be reported to the Commission. A customer determined to defraud a carrier certainly won't contact the Commission--and there would be no need to under the rule, which simply requires the carrier to issue the credit. The defrauded carrier will have no way of knowing it is dealing with a "repeat offender" since it is not privy to other carriers' records.

Losses due to deliberate fraud (as well as just customer inattention to their bills, King, Tr. 555) would be compounded by the fact that the proposed rule does not even make clear what kind of situation will be deemed a slam. For instance, it is not clear as to who can authorize a change of PIC--whether it is anyone in the household or just any non-minor. (Tr. 127-28.) So if, for instance, a PIC change was authorized by the wife of the subscriber of record, that subscriber could easily argue it was a slam because he did not authorize the change. Although the carrier acted reasonably (and in accordance with customary practice today), it would have no legal basis to contest the customer's claim because the rule does not adequately define the scope of behavior that is considered a slam. Even Mr. Taylor agrees that if this aspect of the rules is not clear (and it is not), then it should be changed. (Taylor, Tr. 128, 131-32.) As Commissioner Clark pointed out, "If you are going to apply sanctions, I think you have to be extremely careful as to whether or not the rule has been violated and it can't be left to discretion." (Tr. 133; see also King, Tr. 578.)

This proposed rule has much more potential to harm customers in the end than help them. As the Commission heard time and again in this proceeding, it is the customers who will pay the costs of new regulatory measures. They will be the source of recovery for the

higher uncollectibles this rule is sure to cause. (King, Tr. 564.) In addition, carriers will be forced into an adversarial role with their customers because this rule would necessarily lead to replacement of the current no fault approach with one in which every PIC dispute would need to be thoroughly investigated. (King, Tr. 555-56.)

To avoid these anti-consumer outcomes, GTEFL recommends the Commission adopt BellSouth's proposed language for subsection (8). This language would limit the customer's financial responsibility to the charges that would have occurred had the unauthorized change not taken place. (Hendrix DT at 22-23.)

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?

GTEFL's Position: " Yes. GTEFL believes the Commission should treat all market participants alike. Application to IXCs and ALECs of the existing rules on customer billing and carrier selection will promote this nondiscrimination objective. "

As explained above, efficient competition will never develop as long as some providers are treated more favorably than others under the regulatory scheme. It is thus a step in the right direction to extend the billing and carrier selection rules to IXCs and ALECs.

Respectfully submitted on March 16, 1998.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Posthearing Statement and Comments in Docket No. 970662-TI were sent via U.S. mail on March 16, 1998, to the parties on the attached list.

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