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September 13, 1999  
VIA Hand Delivery

Blanca S. Bayo, Director  
Division of Records and Reporting  
Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0870

Re: Docket No. 990994-TP

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 15 copies of the Comments of the Florida Competitive Carriers Association and the Telecommunications Resellers Association's in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Yours truly,



Vicki Gordon Kaufman

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Proposed Amendments  
to Rule 25-4.110, F.A.C.,  
Customer Billing for Local  
Exchange Telecommunications  
Companies.

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Docket No. 990994-TP

Filed: September 13, 1999

**Comments of the Florida Competitive Carriers Association  
and the Telecommunications Resellers Association**

The Florida Competitive Carriers Association (FCCA) and the Telecommunications Resellers Association (TRA) file their comments on the proposed rules.

**Introduction**

FCCA is an organization of competitive telecommunications providers, including national industry associations of competitive telecommunications service providers, which directs its efforts to promoting competition in all segments of the telecommunications industry. TRA is a national industry association representing nearly 800 entities engaged in, or providing products and services in support of, telecommunications services, primarily on a resold basis. TRA's mandate is to foster and promote telecommunications resale and to support the telecommunications resale industry. FCCA and TRA support the Commission's efforts to eliminate the practice of "cramming."<sup>1</sup> FCCA and TRA look forward to working cooperatively with the Commission to fashion cramming rules which combat the problem but which are not overly burdensome and expensive.

As the Commission begins the rulemaking process, it must carefully balance appropriate

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<sup>1</sup> The term "cramming" is used herein to refer to the inclusion of unauthorized charges on a bill for nonregulated services the consumer did not order or did not use. A definition should be included in the rule.

consumer protection against the consumer benefits of a fully competitive market. The Commission must avoid overly burdensome and expensive regulation which would impact the ability of both large and small carriers to serve Florida consumers. Any rules adopted to address the issue of cramming must be narrowly drawn to deal with specifically identified problems and must consider the expense which burdensome regulations will impose on the telecommunications industry. If such rules are not narrowly drawn, they will interfere with the legislative mandate set out in §§ 364.01(4)(b)(encourage competition through flexible regulatory treatment) and (4)(d) (promote competition by encouraging new entrants into telecommunications markets).

Many of the proposed requirements appear burdensome for all carriers and may particularly impact small companies who want to serve consumers in Florida. The rules which Staff has set forth for discussion in this workshop are quite broad and appear to go well beyond the bounds of addressing the problem of cramming. The burden of the additional costs of complying with the proposed rules appear to significantly outweigh any benefits. Such costs are ultimately borne by consumers and will reduce the number of companies willing to compete in the Florida marketplace. In these comments, FCCA and TRA will provide their preliminary comments on the proposed rule changes.

### **Comments on Specific Proposed Rules**

#### **25-4.110 Customer Billing<sup>2</sup>**

In essence, this portion of the proposed rules dictates exactly what information must be on

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<sup>2</sup>The rule does not appear to address prepaid local exchange services. FCCA and TRA suggest that such services be exempt from the rule because after-the-fact billing is not involved and because customers affirmatively elect to use and pre-pay for such services.

each bill and how that information must be laid out. The Commission should not dictate bill format to carriers and the level of detail required by the proposed rule appears beyond the scope of the statute being implemented. The proposed rule would require carriers to provide information customers do not want or need, would needlessly complicate the bill, and would impose millions of dollars of costs on individual carriers that would ultimately be borne by consumers. Further, the state specific requirements contained in the proposed rule are problematic for nationwide carriers and would require an entirely separate billing mechanism and process just for the state of Florida. Such Florida-specific requirements would be very expensive and very unwieldy.

Specifically, the terminology in §(2)(c)3.a. for the federal charges is particularly problematic because it does not appear to be standard terminology and because the Commission lacks authority to "name" federal charges, just as the FCC would lack authority to direct carriers to describe state-imposed charges. Rather, billing parties should use the terms adopted by FCC. If the FCC has not adopted a particular term, billing parties should be required to use terms that are descriptive and not misleading.

Section (4) is unclear. It could be read to require itemization of each local fee by *authority*. This would require not only separate bills for Florida but the preparation of separate bills for *each* county or other authority in Florida. Such a requirement is wholly unworkable. Similarly, the requirement in §(k)(1) that a discrete amount be calculated for *each* customer would be impossible to carry out and even if it could be done would be exorbitantly expensive. The purpose of this portion of the rule could be served by requiring only the listing of all taxes and fees in easily understood language that is not misleading and that allows the customer to identify each separate

tax or fee being added to the bill.

**25-4.113 Refusal or Discontinuance of Service by Company<sup>3</sup>.**

FCCA and TRA do not object to this section, but suggest an addition. Lifeline customers who cannot pay their toll bills should be required to install toll blocking to avoid incurring large charges which they cannot pay.

**25-4.114 Refunds**

The proposed rule adds a new section which appears to be redundant, and which the FCCA and TRA suggest, is unnecessary. It states that when an overcharge is the result of a company mistake, a refund shall be made in accordance with rules 25-114(4) and 25-4.114(5). Subsection (4) details how refunds are to be made *if* the Commission orders refunds to be made with interest. This rule presupposes that the Commission, when it finds it is appropriate, will order a refund with interest. Subsection (5) details how refunds are to be distributed. If the purpose of the new rule is to require a refund with interest without a Commission determination that this is the appropriate course of action, FCCA and TRA suggest that the rule should be deleted. It should be up to the Commission to determine based on the facts whether or not interest is appropriate. If this is not the purpose of the proposed rule, it is redundant and should be deleted.

**25-4.119 Information Services**

Subsection (2) should be clarified to make it clear that the conditions set out in (a) through (j) are to be included in the *contract* between the originating party and the billing party. As the

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<sup>3</sup>This rule should not apply to prepaid ALECs who should be able to disconnect service if the end user chooses not to prepay for another month of service. Prepaid ALECs should not have to notify end users that service is being terminated/

proposed rule currently reads, it could be interpreted to mean that the billing party must *monitor* the originating party's *activities* to ensure compliance with items (a) through (j). Such a requirement would not only be totally unworkable, it would have the effect of turning the billing party into an arbiter and censor of the marketing decisions of the originating (and perhaps competing) party<sup>4</sup>.

Therefore, this language should be clarified as follows:

LECs who have a tariff or contractual relationship with an originating party or its agent shall include in the contract or tariff that the LEC shall not provide transmission services or billing services, unless the originating party does each of the following things. . . .

Subsection (2)(h) provides that the arrangement with the originating party must meet internal standards defined in tariffs or contracts, which, when violated, would result in the termination of a transmission or billing arrangement. FCCA and TRA suggest that this section is simply unnecessary. It is self-evident that an originating party must meet the terms of the tariff or contract.

Subsection (2)(j) appears to require that when a customer chooses an information service provider, the provider's toll free number must appear on the first bill. Because customers may have more than one such provider and may change providers frequently (adding or deleting them), the requirement that *each* provider's number appear on the bill and that it appear the first time the provider is chosen would be extremely burdensome and expensive for the billing party. This requirement would have the effect of lengthening the bills and requiring individual customization of *each* bill. It would seem far more appropriate that such information be provided by the originating party to the consumer when the consumer first selects the particular service.

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<sup>4</sup>Such a requirement would also interfere with the originating party's 1st Amendment rights.

Subsection (3) requires the telephone numbers of subscribers electing the blocking option to be provided to billing and collection customers. This requirement is problematic because it implicates issues of customer privacy as well as proprietary business list issues.

Subsection (4) appears to suggest that anytime a customer complains as to an information service, the carrier "shall automatically adjust charges." As the Commission is well aware, customers often change their minds about a service or when confronted by a household member, deny that such a service was ever ordered. There must be a mechanism via which the consumer's complaint is investigated rather than a requirement that the carrier "automatically" adjust the disputed charge. FCCA and TRA suggest language patterned after rule 25-4.118 which does not require a credit if the claim made by the customer is false.

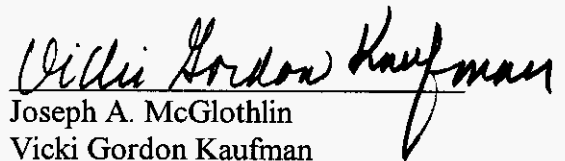
Further, the disputed charge is the responsibility of the originating party *not* the billing party. Section (8) recognizes this distinction by making the originating party responsible for resolving the consumer's complaint. It is the originating party with whom the customer has a complaint, not the billing party.

### **Safe Harbor**

If the Commission ultimately adopts cramming rules such rules should include a "safe harbor" provision so that carriers who have complied with the rules' provisions will be deemed to have complied with the rules. FCCA and TRA suggest language patterned after rule 25-4.118(13)(a), which provides that a carrier shall not be deemed to have committed an unauthorized carrier change if the carrier complies with the rules.

## Conclusion

Several of the proposed rules are unworkable and/or prohibitively expensive. As the Commission is well aware it must weigh the costs and benefits of any rule to ensure that regulatory costs could not be reduced by a less costly alternative. The FCCA and TRA suggest that the Staff work with the industry to frame rules that will accomplish the purpose of deterring cramming while at the same time be narrowly drawn and capable of implementation.



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of the Florida Competitive Carriers Association and the Telecommunications Resellers Association has been furnished by (\*) hand delivery or U.S. mail this 13<sup>th</sup> day of September to the following:

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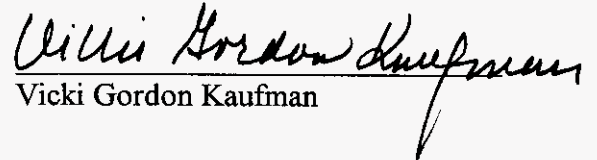
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