

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of Rule 25-4.0161,
F.A.C., Regulatory Assessment Fees;
Telecommunications Companies.

DOCKET NO. 110224-TP
ORDER NO. PSC-11-0465-NOR-TP
ISSUED: October 13, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

NOTICE OF RULEMAKING

BY THE COMMISSION:

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to amend Rule 25-4.0161, Florida Administrative Code, relating to telecommunications regulation.

The attached Notice of Rulemaking will appear in the October 14, 2011 edition of the Florida Administrative Weekly.

If timely requested, a hearing will be held at the date, time and place shown below (if not requested, this hearing will not be held):

Date and Time: Tuesday, November 22, 2011, at 1:30 p.m.
Place: Room 148, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida

Written requests for hearing and written comments or suggestions on the rules must be received by the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than November 4, 2011.

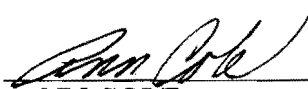
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FPSC-COMMISSION CLERK

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By ORDER of the Florida Public Service Commission this 13th day of October, 2011.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

KC

NOTICE OF PROPOSED RULE

PUBLIC SERVICE COMMISSION

RULE NO: RULE TITLE:

25-4.0161: Regulatory Assessment Fees; Telecommunications Companies

PURPOSE AND EFFECT: Rule 25-4.0161 is amended to reduce the regulatory assessment fee for telecommunications companies under s. 350.113 and 364.336, F.S., as required by s. 364.336, F.S., to remove references to interexchange companies since they are no longer regulated by the Commission, to amend regulatory assessment fee filing forms consistent with the rule amendments, and to clarify requirements for requesting a filing extension.

Docket No. 110224-TP

SUMMARY: Rule 25-4.0161 is amended to reduce the regulatory assessment fee for telecommunications companies from 0.0020 to 0.0016, company types are redefined consistent with statutory changes, certain minimum regulatory assessment fees are changed, filing forms are amended to be consistent with the rule changes, and the procedure for requesting a filing extension is amended to require a statement of good cause consistent with s. 350.113(5), F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: A SERC has been prepared by the agency. Based on the SERC, the agency has determined that this rule amendment will not have an adverse impact on small businesses, will not likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after implementation of the rule, and will not require legislative ratification pursuant to s. 120.541(3), F.S. Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 350.127(2), FS

LAW IMPLEMENTED: 350.113, 364.285, 364.336, FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: Tuesday, November 22, 2011, at 1:30 p.m.

PLACE: Room 148, Betty Easley Conference, 4075 Esplanade Way, Tallahassee, Florida 32399-0850

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kathryn G. W. Cowdery, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6216, kcowdery@psc.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS: [TYPE AND STRIKE VERSION]

25-4.0161 Regulatory Assessment Fees; Telecommunications Companies.

(1) For the purposes of this rule and except for pay telephone service providers, all incumbent local exchange companies, shared tenant service providers, alternative access vendors, and competitive local exchange companies that hold an active certificate of public convenience and necessity that was obtained prior to July 1, 2011, and all telecommunications companies that hold an active certificate of authority obtained after July 1, 2011, are defined as local telephone service providers. Companies classified as pay telephone service providers are those companies that hold an active pay telephone certificate of public convenience and necessity that was obtained prior to July 1, 2011, and those companies that hold an active pay telephone certificate of authority obtained after July 1, 2011.

(2) (a) (-) For the interim period January 1, 2011 through December 31, 2011, as applicable and as provided in Sections 350.113 and 364.336, F.S., each company shall remit a fee based upon its gross operating revenue as provided below. Each company that has paid by August 15, 2011, regulatory assessment fees for the period January 1, 2011 through June 30, 2011, shall pay a regulatory assessment fee in the amount of 0.0016 of its gross operating revenues derived from intrastate business during the period July 1, 2011 through December 31, 2011. Each company that has not paid any regulatory assessment fees for the period January 1, 2011 through December 31, 2011, shall pay a regulatory assessment fee in the amount of 0.0018 of its gross operating revenues derived from intrastate business. The minimum regulatory assessment fees provided in subsection (2) (b) shall apply and shall be filed in accordance with the

schedules provided in subsections (3) and (4). For the purpose of determining this fee, each telecommunications company shall deduct from gross operating revenues any amount paid to another telecommunications company for the use of any telecommunications network to provide service to its customers.

(b) Effective January 1, 2012, as ~~As~~ applicable and as provided in Sections 350.113, ~~364.02 (12)~~ ~~364.02(13)~~ and 364.336, F.S., each company shall remit a fee based upon its gross operating revenue as provided below. This fee shall be referred to as a regulatory assessment fee, and each company shall pay a regulatory assessment fee in the amount of ~~0.0016~~ ~~0.0020~~ of its gross operating revenues derived from intrastate business. For the purpose of determining this fee, each telecommunications company shall deduct from gross operating revenues any amount paid to another telecommunications company for the use of any telecommunications network to provide service to its customers. Regardless of the gross operating revenue of a company, a minimum annual regulatory assessment fee shall be imposed as follows:

1. (a) Local Telephone Service Provider Exchange Company – \$600 ~~\$1,000; and~~

2. (b) Pay Telephone Service Provider – \$100;

~~(c) Shared Tenant Service Provider – \$100;~~

~~(d) Interexchange Company – \$700;~~

~~(e) Alternative Access Vendor – \$600;~~

~~(f) Competitive Local Exchange Company – \$600.~~

(3) (2) Telecommunications companies that owed gross regulatory assessment fees of \$10,000 or more for the preceding calendar year shall pay the fee and remit the appropriate form twice a year. The regulatory assessment fee and appropriate form shall be filed no later than July 30 for the preceding period of January 1 through June 30, and no later than January 30 of the following year for the period of July 1 through December 31. Telecommunications companies that owed gross regulatory assessment fees of less than \$10,000 for the preceding calendar year shall pay the fee and remit the appropriate form once a year. The regulatory assessment fee and appropriate form shall be filed no later than January 30 of the subsequent year for the current calendar year operations.

(4) (3) If the due date falls on a Saturday, Sunday, or legal holiday, the due date is extended to the next business day. If the fees are sent by registered mail, the date of the registration is the United States Postal Service's postmark date. If the fees are sent by certified mail and the receipt is postmarked by a postal employee, the date on the receipt is the United States Postal Service's postmark date. The postmarked certified mail receipt is evidence that the fees were delivered. Regulatory assessment fees are considered paid on the date they are postmarked by the United States Postal Service or received and logged in by the Commission's Division of Administration Services in Tallahassee. Fees are considered timely paid if properly addressed, with sufficient postage, and postmarked no later than the due date.

(5) (4) Commission Form PSC/RAD 159 (XX/XX) PSC/RAD-25 (04/07), entitled "Local Telephone Service Provider Exchange Company Regulatory Assessment Fee Return," is available at [link]; Form PSC/RAD 160 (XX/XX), entitled "Interim Local Telephone Service Provider Regulatory Assessment Fee Return," is available at [link]; Form PSC/RAD 26 (XX/XX) (04/07), entitled "Pay Telephone Service Provider Regulatory Assessment Fee Return," is available at [link]; and Form PSC/RAD 161(XX/XX) (04/07), entitled "Interim Pay Telephone Service Provider Regulatory Assessment Fee Return," is available at [link]. ; Form PSC/RAD 34 (04/07), entitled "Shared Tenant Service Provider Regulatory Assessment Fee Return"; Form PSC/RAD 153 (04/07), entitled "Interexchange Company Regulatory Assessment Fee Return"; Form PSC/RAD 1 (04/07), entitled "Alternative Access Vendor Regulatory Assessment Fee Return"; and Form PSC/RAD 7 (04/07), entitled "Competitive Local Exchange Company Regulatory Assessment Fee Return" These forms are incorporated into this rule by reference and may also be obtained from the Commission's Division of Administrative Services. The failure of a telecommunications company to receive a return form shall not excuse the company from its obligation to timely remit the regulatory assessment fees.

(6) (5) Each telecommunications company shall have up to and including the due date in which to submit the applicable form and:

(a) Remit the total amount of its fee, or

(b) Remit an amount which the company estimates is its full fee.

(7) (6) Where the company remits less than its full fee, the remainder of the full fee shall be due on or before the 30th day from the due date and shall, where the amount remitted was less than 90 percent of the

total regulatory assessment fee, include interest as provided by subsection (9)(b) paragraph (8)(b) of this rule.

~~(8) (7)~~ A company may request ~~from the Division of Administrative Services~~ either a 15-day or a 30-day extension of its due date for payment of regulatory assessment fees or for filing its return form by submitting to the Division of Administrative Services Commission Form PSC/ADM 124 (XX/XX) entitled "Regulatory Assessment Fee Extension Request," which is incorporated into this rule by reference and is available at [link]. This form may also be obtained from the Commission's Division of Administrative Services.

~~(a) The request for extension must be received by the Division of Administrative Services at least two weeks before the due date. The request for extension must be submitted on Form PSC/ADM 124 (01/05) and will be granted if the company has applied for the extension within the time required in paragraph (b) below and the company does not have any unpaid regulatory assessment fees, penalties or interest due from a prior year. Form PSC/ADM 124 (01/05), entitled "Regulatory Assessment Fee Extension Request" is incorporated into this rule by reference and may be obtained from the Commission's Division of Administrative Services.~~

~~(b) The request for extension will not be granted if the company has any unpaid regulatory assessment fees, penalties, or interest due from a prior period. The request for extension must be received by the Division of Administrative Services at least two weeks before the due date.~~

~~(c) Where a telecommunications company receives an extension of its due date pursuant to this rule, the telecommunications company shall remit a charge as set out in Section 350.113(5), F.S., in addition to the regulatory assessment fees, as set out in Section 350.113(5), F.S.~~

~~(d) The return forms may be obtained from the Commission's Division of Administrative Services. The failure of a telecommunications company to receive a return form shall not excuse the company from its obligation to timely remit the regulatory assessment fees.~~

~~(9) (8)~~ The delinquency of any amount due to the Commission from the telecommunications company pursuant to the provisions of Section 350.113, F.S., and this rule, begins with the first calendar day after any date established as the due date either by operation of this rule or by an extension pursuant to this rule.

(a) A penalty, as set out in Section 350.113, F.S., shall apply to any such delinquent amounts.

(b) Interest at the rate of 12 percent per annum shall apply to any such delinquent amounts.

~~(10) (9)~~ The Division of Administrative Services shall send by certified mail a regulatory assessment fee delinquency notice to any company that fails to file a regulatory assessment fee return and that fails to pay the regulatory assessment fee by the date specified in subsection ~~(3) (2)~~, unless the company has met the requirements of subsections ~~(7) (6)~~ and ~~(8) (7)~~.

~~(11) (10)~~ If a company fails to pay the regulatory assessment fee within ~~20~~ 15 days after receiving a delinquency notice, the Division of Administrative Services, in cooperation with the Division of Regulatory Analysis and the Office of General Counsel, will establish a docket and administratively issue a Notice of Proposed Agency Action Order Imposing Penalties and Collection Costs, and Requiring Payment of Delinquent Regulatory Assessment Fees, or Cancelling Certificates ~~or Removing From the Register~~ for Violation of Rule 25-4.0161, F.A.C., and Section 364.336, F.S. The company must pay the past due regulatory assessment fees, the penalty and interest for late payment as provided in Section 350.113, F.S., and as stated in subsection ~~(9) (8)~~ above, and must also pay the applicable penalty stated in subsection ~~(12) (11)~~ for failure to file the regulatory assessment fee return.

~~(12) (11)~~ Pursuant to Section 364.285, F.S., the Commission has the authority to impose a penalty or cancel a certificate ~~or registration~~ if a company refuses to comply with Commission rules, orders, or Florida Statutes. The penalty, which will include collection costs, for failure to file the regulatory assessment fee return by the date stated in the delinquency notice shall be as follows:

(a) First violation – \$500;

(b) Second violation – \$1,000;

(c) Third violation – \$2,000.

Failure of the company to pay the full amount due and stated in the Notice of Proposed Agency Action will result in the cancellation of the company's certificate. ~~Certificate of Public Convenience and Necessity, or will result in the cancellation of the company's tariff and removal of its name from the Commission's register, whichever is applicable.~~

~~(13) (12)~~ For a company's fourth failure to pay the regulatory assessment fee after being sent a delinquency

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notice, Commission staff shall file a recommendation to the Commission for further action.

~~(14) (13)~~ A company that reapplies for a Certificate of Authority ~~Public Convenience and Necessity, or~~
~~refiles for registration~~, must pay all prior unpaid regulatory assessment fees, plus the penalty and interest
defined in subsection ~~(9)~~ ~~(8)~~, and any prior unpaid penalty assessed in accordance with subsection ~~(11)~~
~~(10)~~.

Rulemaking Authority 350.127(2) FS. Law Implemented 350.113, 364.285, 364.336 FS. History--New 5-
18-83, Formerly 25-4.161, Amended 10-19-86, 1-1-91, 12-29-91, 1-8-95, 12-26-95, 7-7-96, 11-11-99, 12-
7-04, 10-6-05, 4-16-07, ~~xx-xx-xx~~.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kathryn G. W. Cowdery, Office of General
Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6216,
kcowdery@psc.state.fl.us

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service
Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 4, 2011

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 37, Number
30, July 29, 2011