

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 8, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Cibula) *SMC*
Division of Competitive Markets & Enforcement (R. Kennedy) *RK*
Division of Economic Regulation (Hewitt) *CBH*

RECEIVED-FPSC
07 JUL -8 AM 11:38
COMMISSION CLERK

RE: Docket No. 040167-TP – Proposed adoption of Rules 25-4.082, F.A.C., Number Portability, and 25-4.083, F.A.C., Preferred Carrier Freeze; and proposed amendment of Rules 25-4.003, F.A.C., Definitions; 25-24.490, F.A.C., Customer Relations; Rules Incorporated; and 25-24.845, F.A.C., Customer Relations; Rules Incorporated.

AGENDA: 07/20/04 – Regular Agenda – Rule Adoption – Participation is Limited to Commissioners and Staff

RULE STATUS: Adoption Should Not Be Deferred

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040167.RCM.DOC

Case Background

On April 20, 2004, the Commission voted to propose the adoption of Rules 25-4.082, Number Portability, and 25-4.083, Preferred Carrier Freeze, and the amendment of Rules 25-24.490, Customer Relations; Rules Incorporated, and 25-24.845, Customer Relations; Rules Incorporated. The purpose of the rule adoptions and amendments was to establish rules addressing issues surrounding number portability and the use of preferred carrier freezes (PC Freezes).

The Commission published its Notice of Proposed Rulemaking in the May 7, 2004, Florida Administrative Weekly. Although the Commission did not receive any requests for hearing on the proposed rules, it did receive comments on the rules submitted jointly by US LEC of Florida Inc. and XO Florida, Inc. (collectively referred to herein as US LEC/XO) and the staff

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of the Joint Administrative Procedures Committee (JAPC). This recommendation addresses whether the Commission should make changes to the proposed rules based on these comments.

The Commission has rulemaking authority in this matter pursuant to sections 120.54, 350.127, 364.01, 364.16, 364.337, and 364.603, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission adopt changes to proposed Rules 25-4.082, 25-4.083, and 25-24.490, Florida Administrative Code, to address US LEC/XO's and JAPC staff's comments?

Recommendation: Yes. The Commission should adopt proposed Rules 25-4.082, 25-4.083, and 25-24.490 with changes, as set forth in Attachment A. (Cibula, R. Kennedy)

Staff Analysis: As stated in the case background, the Commission voted to propose the adoption of Rules 25-4.082 and 25-4.083 and the amendment of Rules 25-24.490 and 25-24.845 on April 20, 2004. US LEC/XO and JAPC staff submitted comments on the proposed rules.

US LEC/XO's comments pertain to the term "working number" set forth in Rules 24-4.082 and 25-24.490. Specifically, the companies state that the rules do not define when a telephone number is considering "working." US LEC/XO state that they understand that a number that has been disconnected would not be considered a working number. However, they state that when service has been disconnected, the number may continue to have 9-1-1 or other emergency service number capabilities and may be connected to a customer service office. US LEC/XO further state that as the number has not been completely decommissioned, it may still be considered a working number, although limited in nature. US LEC/XO state that they would consider such numbers to be non-working.

US LEC/XO assert that no port should be required for numbers that have been suspended or disconnected. The companies request that the Commission clarify the proposed rules to state that "a working number does not include a number where the associated service has been suspended or discontinued in compliance with the applicable Commission rules, prior to the request for LNP from another carrier."

At the April 20, 2004, agenda conference, the Commission voted that only working numbers should be ported. To clarify the proposed rules, staff recommends that proposed Rules 25-4.082 and 25-24.490 be changed to state that a working number is a telephone number that is fully functional to the customer, as shown in Attachment A, pages 6 and 12. Staff believes that it is better to provide an example of a working number than to list exceptions as suggested by US LEC/XO. This change will address the concerns raised by US LEC/XO and is consistent with the Commission's intent for the rules.

In addition to US LEC/XO's comments, JAPC staff commented on proposed Rule 25-4.083. Specifically, it asked for the meaning of "appropriately qualified" in subsection (6)(c) of the proposed rule.¹ Staff included this language in the rule so that it would mirror the federal rule on the subject, Code of Federal Regulations (CFR), Title 47, Part 64, Subsection 1190. However, upon further reflection, staff recommends that these words can be deleted from the rule. Staff believes that the words are not necessary and adding a definition for these words may unduly complicate the rule. Staff would also note that the rule already sets forth requirements

¹ Staff notes that JAPC staff's letter also included a couple of other comments on Rules 25-4.082 and 25-4.083, to which staff counsel responded and resolved. No action is necessary by the Commission in regard to these comments.

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for the independent third party under the rule in subsection (6)(c). See Attachment A, page 8, beginning at line 14. Thus, staff recommends that Rule 25-4.083 be changed as set forth in Attachment A, page 8. If a question develops as to the qualifications for the independent third party required by the rule, the rule can be amended at a future date.

Based on the foregoing, staff recommends that the Commission adopt proposed Rules 25-4.082, 25-4.083, and 25-24.490, Florida Administrative Code, with changes, as set forth in Attachment A.

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Issue 2: Should the rules be filed for adoption with the Secretary of State and the docket closed?

Recommendation: Yes. A Notice of Change should be published in the Florida Administrative Weekly. After the notice is published, the rules may be filed for adoption with the Secretary of State and the docket may then be closed. (Cibula)

Staff Analysis: If the Commission approves the changes to Rules 25-4.082, 25-4.083, and 25-24.490 as set forth in Issue 1, a Notice of Change must be published in the Florida Administrative Weekly. After the notice is published, Rules 25-4.082, 25-4.083, 25-24.490, and 25-24.845 may be filed for adoption with the Secretary of State and the docket may then be closed.

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25-4.082 Number Portability.

(1) The serving local provider shall facilitate porting of the subscriber's telephone number upon request from the acquiring company.

(2) A working number (e.g., a telephone number that is fully functional to the customer) shall be ported regardless of whether a balance is owed.

(3) A local provider shall not disconnect a subscriber's working number, regardless of whether a balance is owed, after receiving a local service request from another local provider.

Specific Authority: 350.127, F.S.

Law Implemented: 364.01, 364.16, 364.337, F.S.

History: New XX-XX-XX.

1 **25-4.083 Preferred Carrier Freeze.**

2 (1) A PC Freeze shall not be imposed or removed on a subscriber's account without
3 the subscriber's authorization and shall not be required as a condition for obtaining service.

4 (2) A PC Freeze shall be implemented or removed at no charge to the subscriber.

5 (3) The subscriber's authorization shall be obtained for each service for which a PC
6 Freeze is requested. Procedures implemented by local exchange providers must clearly
7 distinguish among telecommunications services (e.g., local, local toll, and toll) subject to a
8 PC Freeze.

9 (4) All notification material regarding PC Freezes must include:

10 (a) An explanation of what a PC Freeze is and what services are subject to a freeze;

11 (b) A description of the specific procedures necessary to lift a PC Freeze and an
12 explanation that the subscriber will be unable to make a change in provider selection unless
13 the subscriber authorizes lifting of the PC Freeze; and

14 (c) An explanation that there are no charges for implementing or removing a PC
15 Freeze.

16 (5) A local provider shall not solicit, market, or induce subscribers to request a PC
17 Freeze. A local provider is not prohibited, however, from informing an existing or potential
18 new subscriber who expresses concerns about slamming about the availability of a PC
19 Freeze.

20 (6) A local exchange provider shall not implement a PC Freeze unless the
21 subscriber's request to impose a freeze has first been confirmed in accordance with one of
22 the following procedures:

23 (a) The local exchange provider has obtained the subscriber's written or electronically
24 signed authorization in a form that meets the requirements of subsection (7);

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CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1 (b) The local exchange provider has obtained the subscriber's electronic
2 authorization, placed from the telephone number(s) on which the PC Freeze is to be imposed.
3 The electronic authorization should confirm appropriate verification data (e.g., the
4 subscriber's date of birth or the last four digits of the subscriber's social security number)
5 and the information required in subsection (7)(a) through (d). Telecommunications providers
6 electing to confirm PC Freeze orders electronically shall establish one or more toll-free
7 telephone numbers exclusively for that purpose. Calls to the number(s) will connect a
8 subscriber to a voice response unit, or similar mechanism that records the required
9 information regarding the PC Freeze request, including automatically recording the
10 originating automatic numbering identification; or

11 (c) An ~~appropriately qualified~~ independent third party has obtained the subscriber's
12 oral authorization to submit the PC Freeze and confirmed the appropriate verification data
13 (e.g., the subscriber's date of birth or the last four digits of the subscriber's social security
14 number) and the information required in subsection (7)(a) through (d). The independent third
15 party must not be owned, managed, or directly controlled by the provider or the provider's
16 marketing agent; must not have any financial incentive to confirm PC Freeze requests for the
17 provider or the provider's marketing agent; and must operate in a location physically separate
18 from the provider or the provider's marketing agent. The content of the verification must
19 include clear and conspicuous confirmation that the subscriber has authorized a PC Freeze.

20 (7) A local exchange provider shall accept a subscriber's written and signed
21 authorization to impose a PC Freeze on a preferred provider selection. A written
22 authorization shall be printed in a readable type of sufficient size to be clearly legible and
23 must contain clear and unambiguous language that confirms:

24 (a) The subscriber's billing name and address and the telephone number(s) to be
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1 covered by the PC Freeze;

2 (b) The specific service, (e.g., local, local toll, and toll), separately stated, on which a
3 PC Freeze will be imposed.

4 (c) That the subscriber understands that to make a change in provider selection, the
5 subscriber must lift the PC Freeze; and

6 (d) That there will be no charge to the subscriber for a PC Freeze.

7 (8) All local exchange providers shall, at a minimum, offer subscribers the following
8 procedures for lifting a PC Freeze:

9 (a) Acceptance of a subscriber's written or electronically signed authorization; and

10 (b) Acceptance of a subscriber's oral authorization along with a mechanism that
11 allows the submitting provider to conduct a three-way conference call between the provider
12 administering the PC Freeze and the subscriber. The provider administering the PC Freeze
13 shall confirm appropriate verification data (e.g., the subscriber's date of birth or the last four
14 digits of the subscriber's social security number) and the subscriber's intent to lift a specific
15 PC Freeze.

16 (9) Information obtained under (6) and (8)(a) shall be retained by the provider for a
17 period of one year.

18 (10) A PC Freeze shall not prohibit a local provider from changing wholesale services
19 when serving the same end user.

20 (11) Local providers shall make available an indicator on the customer service record
21 that identifies whether the subscriber currently has a PC Freeze in place.

22 (12) Local providers shall make available the ability for the subscriber's new local
23 provider to initiate a local PC Freeze using the local service request.

24 Specific Authority: 350.127, 364.603, 364.01, F.S.

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1 Law Implemented: 364.603, F.S.

2 History: New XX-XX-X.

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1 **25-24.490 Customer Relations.**

2 (1) The following rules apply to IXC's.

3	<u>Section</u>	<u>Title</u>	<u>Portions Applicable</u>
4	25-4.083	Preferred Carrier Freeze	All except subsections (11) and (12)
5	25-4.110	Customer Billing	Subsections (11), (12), (14), (15), (17),
6			(18), and (20)
7	25-4.111	Customer Complaint and	All except subsection (2)
8		Service Requests	
9	25-4.112	Termination of Service	All
10		by Customer	
11	25-4.113	Refusal or Discontinuance of	All
12		Service by Company	
13	25-4.114	Refunds	All
14	25-4.117	800 Service	All
15	25-4.118	Local, Local Toll, or Toll	All
16		Provider Selection	

17 (2) An IXC may require a deposit as a condition of service and may collect advance
18 payments for more than one month of service if it maintains on file with the Commission a
19 bond covering its current balance of deposits and advance payments (for more than one
20 month's service). A company may apply to the Commission for a waiver of the bond
21 requirement by demonstrating that it possesses the financial resources and income to provide
22 assurance of continued operation under its certificate over the long term.

23 (3) Upon request, each company shall provide verbally or in writing to any person
24 inquiring about the company's service:

25 (a) Any nonrecurring charge,

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- 1 (b) Any monthly service charge or minimum usage charge,
- 2 (c) Company deposit practices,
- 3 (d) Any charges applicable to call attempts not answered,
- 4 (e) A statement of when charging for a call begins and ends, and
- 5 (f) A statement of billing adjustment practices for wrong numbers or incorrect bills.

6 In addition, the above information shall be included in the first bill, or in a separate mailing
7 no later than the first bill, to all new customers and to all customers presubscribing on or after
8 the effective date of this rule, and in any information sheet or brochure distributed by the
9 company for the purpose of providing information about the company's services. The above
10 information shall be clearly expressed in simple words, sentences and paragraphs. It must
11 avoid unnecessarily long, complicated or obscure phrases or acronyms.

12 (4) Toll free number transfers.

13 (a) The serving IXC shall facilitate the transfer of the subscriber's toll free telephone
14 number (e.g., 800, 877, 888) upon request from the acquiring company.

15 (b) The serving IXC shall not disconnect a subscriber's working toll free number
16 (e.g., a telephone number that is fully functional to the customer) after receiving a service
17 transfer request from another IXC.

18 (c) A working toll free number shall be transferred regardless of whether a balance is
19 owed.

20 Specific Authority: 350.127(2), 364.604(5), 364.337(4), FS.

21 Law Implemented: 364.03, 364.14, 364.15, 364.16, 364.19, 364.337, 364.602, 364.603,
22 364.604, FS.

23 History: New 2-23-87, Amended 10-31-89, 3-5-90, 3-4-92, 3-13-96, 12-28-98, 7-5-00, 11-
24 16-03, XX/XX/XX.

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1 **25-24.845 Customer Relations.**

2 The following rules apply to CLECs. In the following rules, the acronym “LEC” should be
3 omitted or interpreted as “CLEC”.

4 <u>Section</u>	<u>Title</u>	<u>Portions Applicable</u>
5 25-4.082	Number Portability	All
6 25-4.083	Preferred Carrier Freeze	All
7 25-4.110	Customer Billing	Subsections (11), (12), (14), (15), (16), (17), 8 (18), and (20)
9 24-4.118	Local, Local Toll, or 10 Toll Provider Selection	All

11 Specific Authority: 350.127(2), 364.337(2), 364.604(5), FS.

12 Law Implemented: 364.16, 364.337(2), 364.602, 364.603, 364.604, FS.

13 History: New 12-28-98, Amended 7-5-00, 11-16-03, XX/XX/XX.
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