

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. UNDOCKETED

INITIATION OF RULEMAKING TO
AMEND RULE 25-4.118, FLORIDA
ADMINISTRATIVE CODE, LOCAL,
LOCAL TOLL, OR TOLL PROVIDER
SELECTION, AND TO REPEAL RULE
25-4.083, FLORIDA ADMINISTRATIVE
CODE, PREFERRED CARRIER FREEZE.

PROCEEDINGS: STAFF WORKSHOP

TAKEN AT THE
INSTANCE OF: The Staff of the Florida
Public Service Commission

DATE: Monday, December 5, 2011

TIME: Commenced at 9:30 a.m.
Concluded at 9:47 a.m.

PLACE: Betty Easley Conference Center
Room 140
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
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P R O C E E D I N G S

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2 **MS. GERVASI:** Good morning. I think we're
3 ready to go ahead and start. It's 9:30, so we will go
4 ahead and call the meeting order.

5 This time and place has been noticed for an
6 undocketed staff workshop. It's a rule development
7 workshop on the initiation of rulemaking to amend Rule
8 25-4.118, F.A.C., relating to unauthorized charges of a
9 subscriber's local telecommunications service and
10 preferred carrier freezes to incorporate the substance
11 of Rule 25-4.083 into Rule 25-4.118, and to repeal Rule
12 25-4.083.

13 We have extra copies of the agenda and of the
14 draft rule on the table, if anybody needs a copy of
15 those. And before we begin discussing the draft rule,
16 I'd like to begin with a very brief overview, just to
17 remind everybody that we do have a court reporter here
18 this morning recording the workshop, and she can only
19 record one person's voice at a time. So when you are
20 called upon to make your comments, please speak into
21 one of the microphones. Clearly state your name first
22 so that the transcripts reads well. And we will call
23 upon those who are present in the room first to give
24 their comments, and then we will turn to anybody who
25 may be participating telephonically. I don't know

1 whether anybody is.

2 Is there anyone on the telephone?

3 **MR. O'ROARK:** Hi. This is De O'Roark with
4 Verizon.

5 **MS. GERVASI:** Okay. Thank you. We will call
6 upon you, Mr. O'Roark, after the people who are present
7 here complete their commentary. And then, finally, if
8 you plan to give us suggested changes to the draft rule
9 language, we would very much appreciate if you would
10 refer us to the specific paragraph and line numbers
11 that you're talking about. And to the extent possible,
12 provide us with specific alternative language that you
13 would suggest that we consider.

14 And with that, I'd like to turn it over to
15 Laura King for a staff overview of the rule.

16 **MS. KING:** Good morning, everyone. Thank you
17 for coming.

18 Basically, with this rule what we tried to do
19 is be consistent with the changes in Florida Statute
20 364.16(5), which basically states that the Commission
21 shall adopt rules to prevent unauthorized changing of
22 subscribers' telecommunications service. The rules
23 need to be consistent with the Telecommunications Act,
24 provide for specific verification methodologies,
25 provide for the notification to subscribers of the

1 ability to freeze the subscriber's choice of carriers,
2 allow these freezes at no charge, and allow for the
3 subscriber to change -- the subscriber's change be
4 considered valid if verification was performed
5 consistent with Commission rules, and provide for
6 remedies and violations. And we think we have done
7 that in the rule without going beyond our statutory
8 charge, and we are interested to hear back from any
9 parties that have any specific comments with regard to
10 the rules. Thank you.

11 **MS. GERVASI:** Do we have folks who wish to
12 give comments?

13 **MR. FEIL:** I do. This is Matt Feil with the
14 Gunster law firm representing TW Telecom. I had more
15 questions than comments, per se. My first comment or
16 question is on Page 4 in relation to what is on Page 5,
17 and specifically let me start with Page 4, Line 15
18 through 16. It says there that if a company complies
19 with the following things there's deemed to be no
20 unauthorized carrier change infraction. And then it
21 lists the things that you are supposed to do, one, two,
22 three. Then in (b), at the start of the top of the
23 next page, Page 5, it indicates that if there is a
24 violation, here are the things that you're going to
25 look at.

1 And what I wanted to get some input or
2 clarity from staff, if I could, please, is when I read
3 the two of these together, I'm trying to reconcile the
4 two of them, and I'm having a little trouble doing
5 that. On the one hand on Page 4 it indicates if you do
6 these three things you are not in violation. There is
7 no violation. At least that's my read of it. There is
8 no violation if you do these three things. Whereas at
9 the top of Page 5, it indicates that even if you do
10 these three things there may be a violation. So I was
11 looking for some reconciliation, and I don't know that
12 I was understanding everything, so that's why I'm
13 asking.

14 **MS. KING:** Okay. Thanks, Matt.

15 Basically, (a) and (b) are separate. 2(a),
16 if we find that a company has complied with 2(a)1., 2.,
17 and 3., we wouldn't go after them for remedies or
18 penalties. So they are supposed to be separate. If
19 it's not clear, maybe we need to make those separate
20 sections. If we find that you didn't do 1., 2., and
21 3., we would look at it and then look at these other
22 provisions under (b). And if you think it would be
23 helpful to maybe make those two separate stand-alone
24 sections for clarity, that's certainly something we
25 could consider.

1 **MR. FEIL:** And, I'm sorry, I didn't come with
2 any suggested language, because I wanted to make sure I
3 understood first before I started throwing things out
4 there.

5 **MS. KING:** Okay.

6 **MR. FEIL:** My second question actually
7 doesn't get -- doesn't come up until Page 8, and I
8 didn't know whether or not I would be speaking out of
9 order to go that far along right now. It's up to you.

10 **MS. KING:** Are there any questions before
11 Page 8, or comments?

12 **MR. HATCH:** Nope. This is Tracy Hatch with
13 AT&T Florida. No comments, no questions.

14 **MR. KONUCH:** This is Dave Konuch with Florida
15 Cable Telecom Association, and I would actually request
16 that maybe the staff could kind of walk us through
17 maybe section-by-section and describe what the intent
18 was behind this.

19 I heard your initial comments, and really
20 last year during the deregulation, the PC freeze
21 portion of the statute was really just kind of moved
22 from one section to the other. So I'm not sure that it
23 necessarily meant that, you know, the rules had to be
24 revised, since it was just being moved. Although I
25 guess the language about creating rules was still in

1 there. To me, really, the part of this that probably
2 had to be addressed in some way was the fact that the
3 IXCs are no longer regulated other than that they have
4 to continue to pay access charges, and the Commission
5 is allowed to enforce that.

6 So, really, the challenge in this was kind of
7 maybe recognizing how IXCs are going to interact with
8 everyone else in the context of PC freeze, rather than
9 kind of coming up with something completely new. As
10 far as cable is concerned, as long as there is a level
11 playing field, and, you know, if this happens to one of
12 our customers, we're able to seek redress before the
13 Commission, that's really our main goal. But we're
14 here to just kind of listen and to understand the
15 staff's thinking behind these changes. So if you could
16 maybe elaborate on that a little bit, I would be very
17 appreciative.

18 **MS. KING:** Sure. And just as a general
19 comment, really we haven't changed a whole lot in these
20 rules. We have really tried to streamline things by
21 adopting some of the FCC protocols that are already in
22 place that we believe companies are already doing and
23 having to abide by so there's not two separate
24 standards.

25 So with that said, on Page 4, 25-4.118(1),

1 that's what that paragraph is intended to capture. We
2 are adopting some of the definitions that are in the
3 FCC's rules so there is consistency. There is no need
4 to have two separate sets of definitions.

5 The verification of orders, that's a specific
6 requirement of the statute. That was in the rules in
7 the past, we just chose to adopt the FCC's verification
8 method. And instead of having two different
9 verification methods, we think that makes it a lot
10 easier on companies. And the same thing in Line 6.
11 They are adopting 64.1130, letter of agency form and
12 content. Again, that has always been a requirement.
13 We just decided that let's go with what the FCC is
14 doing. Companies are already doing that, no need to
15 have two separate sets of rules and regulations.

16 So it looks like a lot of things have been
17 stricken, but really they have just been rearranged,
18 maybe moved, or we have adopted what the FCC is doing.
19 There haven't been drastic changes here.

20 Later in that Page, (2)(a), this is what Mr.
21 Feil had asked about, that is just basically a caveat
22 that if a company is doing what is required by this
23 rule, they will not be found as violating the rule.
24 Certainly there would be a process that we would go
25 through, but that's saying that, you know, if you are

1 doing what you are supposed to do, we are not looking
2 to go after you. Part (b), which is on Page 5, again,
3 that just clarifies how remedies will be determined.
4 That is a specific provision from the statute that
5 addresses how the Commission will determine remedies.
6 And then there's all the criteria there. Most of the
7 stuff has been in there. I don't believe we have added
8 anything under that criteria.

9 Page 6. A lot of that was the Commission's
10 verification procedure, and now we are adopting the
11 FCC's verification procedure, or we are recommending
12 adopting the FCC's verification procedure. At the
13 bottom Page 6, this is just about refunds. If a
14 customer is charged without authorization, that just
15 talks about refunds. That was there before, I believe.
16 I don't believe anything has changed there.

17 Page 7, again, this is just making customers
18 aware that a PC freeze is available upon request.
19 That's specifically called for in 364.16. Again, most
20 of that has not changed. We are adopting part of the
21 FCC's procedure which was in the rule in the past.

22 And, Page 8, again, we're getting rid of a
23 lot of things that are no longer necessary because of
24 adoption of the FCC's rules. We're trying to
25 streamline the procedure. And, Matt, on Page 8 you

1 said you had a question. Would this be a good time to
2 talk about what you had there?

3 **MR. FEIL:** If you would like to, yes, ma'am.

4 My question is in Subsection 7, starting on
5 Line 20, I just wanted to confirm that the
6 notification, whether it's the first notification,
7 annual notification, notification to existing
8 customers, whatever, can be done through a bill
9 message.

10 **MS. KING:** Yes, that's our intent.

11 **MR. FEIL:** Okay. And that was all.

12 **MS. KING:** Okay.

13 Page 9. We're getting rid of, again,
14 stuff -- some of this has been moved. Charges for
15 unauthorized provider changes, that's moved to a
16 different section. That, again, is just talking about
17 refunds. So most of these things have either been
18 moved to another section or have been taken care of by
19 adoption of the FCC's procedures. And that's true for
20 Page 9, 10, and 11. And these procedures are the same
21 whether it's an ILEC or a CLEC.

22 Are there any more specific questions,
23 concerns, or comments with regard to the rule changes
24 or the proposed changes?

25 **MR. O'ROARK:** Laura, this is De O'Roark with

1 Verizon.

2 MS. KING: Good morning.

3 MR. O'ROARK: Good morning.

4 A couple of things, and thank you for letting
5 me participate telephonically. On Page 6, starting at
6 Line 23, it speaks of the local service provider
7 changing the customer back. There may be a potential
8 technical concern here for resellers and what used to
9 be known as UNE-P providers, that is, where the
10 customer's local exchange carrier is not the one that
11 physically moves the customer back. The ILEC actually
12 has to do that, and we may have a comment on that.
13 Does that make sense?

14 MS. KING: I think I understand where you are
15 coming from, De. And, yes, we are going to ask for
16 written comments at the end, so I don't know if you
17 would like to provide those comments then, or --

18 MR. O'ROARK: Sure. I mean, I just wanted to
19 flag that potential concern that -- I mean, you
20 obviously wouldn't want to impose an obligation on a
21 carrier that it's not able to, you know, literally
22 comply.

23 MS. KING: Okay.

24 MR. O'ROARK: And as a practical matter,
25 what, say, the reseller would do is send some kind of

1 notification to the underlying provider, and the
2 underlying provider then would move the customer back.
3 And perhaps that's just understood, but I thought I
4 would at least flag that point.

5 **MS. KING:** Okay.

6 **MR. O'ROARK:** And then the only other thing
7 that came up for us on the PC freeze notification, and
8 I don't know whether this is ultimately going to be a
9 concern or not. I'm at Page 8, Line 21, where there is
10 a requirement that the notification be provided with
11 the customer's first bill. That may be a concern as
12 opposed to doing it annually. If it turns out that
13 would be something that would be difficult for us to
14 do, we'll let you know that in our comments, but I
15 thought I would just flag that for you in advance.
16 Those are the only two points that came up on our side.

17 **MS. KING:** Okay. Thank you, De.

18 **MR. O'ROARK:** Sure. And that's all I have.

19 **MS. GERVASI:** Does anyone have any other
20 comments about any portion of the rule changes,
21 suggested rule changes.

22 **MS. KHAZRAEE:** This is Sandy Khazraee with
23 CenturyLink, and we had no comments. It looked like to
24 us like you were going with the FCC's rules, which we
25 do follow already.

1 **MS. GERVASI:** Thank you. Anybody else?
2 Seeing nothing, then we will -- before we adjourn, I
3 would like to set a deadline for the filing of
4 post-workshop comments, which would be very helpful to
5 us to receive, if you do have changes, even if you
6 flagged those changes to our attention this morning.
7 Is two weeks long enough to get comments to us?

8 **MR. KONUCH:** I think with the holiday season
9 coming up, where would that two weeks end up being?

10 **MS. GERVASI:** The 19th, December 19th on a
11 Monday, two weeks from today is what we wanted to throw
12 out there as an offer.

13 **MR. FEIL:** I have no objection.

14 **MR. HATCH:** That's fine with me.

15 **MS. GERVASI:** Okay. Let's go ahead and do
16 that, then. We will look for those comments to be
17 filed with the Commission Clerk on the 19th. Although
18 it is an undocketed matter, you can still file it with
19 the Clerk's Office and they will file it in that big
20 huge undocketed file and we will find it in there. And
21 that's it. We appreciate your participation today, and
22 the workshop is adjourned.

23 (The workshop concluded at 9:47 a.m.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 5th day of January, 2011.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
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